

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION)
OF MORGAN COUNTY RURAL)
WATER CORPORATION, A NON-)
PROFIT PUBLIC UTILITY LOCATED)
IN MARTINSVILLE, INDIANA, FOR)
APPROVAL OF A NEW SCHEDULE OF) **CAUSE NO. 45198**
RATES AND CHARGES FOR WATER)
UTILITY SERVICE)

FILED
September 16, 2019
INDIANA UTILITY
REGULATORY COMMISSION

ORDER OF THE COMMISSION

Presiding Officers:

Sarah Freeman, Commissioner

Loraine Seyfried, Administrative Law Judge

On February 1, 2019, Morgan County Rural Water Corporation (“Petitioner,” “MCRW” or “Company”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”), seeking authority to (i) increase its rates and charges for water service rendered by it, (ii) modify its existing rate design, and (iii) modify and create new non-recurring charges. That same day MCRW also filed testimony and exhibits from the following witnesses:

- Glen C. Miller, General Manager of MCRW
- Scott A. Miller, CPA and partner with Baker Tilly Virchow Krause, LLP (formerly H.J. Umbaugh & Associates, Certified Public Accountants, LLP); and
- John W. Wetzel, P.E., President of Midwestern Engineers, Inc.

Pursuant to notice and as provided in 170 IAC 1-1.1-15, the Commission scheduled a Prehearing Conference for March 11, 2019. However, on March 5, 2019, MCRW and the Office of Utility Consumer Counselor (“OUCC”) (together, the “Parties”) filed their Stipulation as to Procedural Matters in Lieu of a Preliminary Hearing. On March 8, 2019, the Commission issued a Docket Entry establishing a procedural schedule, setting an evidentiary hearing for July 18, 2019 and cancelling the Preliminary Hearing. On April 9, 2019, MCRW and the OUCC submitted their joint Motion to Vacate and Reschedule Evidentiary Hearing, requesting that the evidentiary hearing be rescheduled to September 10 and 11 and that the procedural schedule be modified accordingly. On April 17, 2019, the Commission issued a Docket Entry granting said Motion.

On June 24, 2019, the Parties filed a joint Notice of Settlement requesting leave to file a settlement agreement and requesting the Commission set a settlement hearing for September 10, 2019. On June 26, 2019, the Commission issued a Docket Entry setting the deadline to file a

settlement agreement for July 25, 2019 and converting the evidentiary hearing to a settlement hearing. On July 25, 2019, MCRW and OUCC filed a Joint Stipulation and Settlement Agreement (the “Settlement Agreement”), including attachments, with respect to all issues raised in this Cause. On that same day, Petitioner filed Settlement Testimony from Glen C. Miller and Scott A. Miller, and the OUCC filed Settlement Testimony from Jerome Mierzwa and Thomas W. Malan.

On August 30, 2019, the Presiding Officers’ issued a docket entry asking Petitioner to provide support for reasonableness of the agreed upon minimum \$300 tampering charge. Petitioner responded on September 4, 2019.

On September 10, 2019, a settlement hearing was held and the parties’ evidence, including the Settlement Agreement and supporting testimony, was admitted into the record in this Cause without objection. Petitioner’s September 6, 2019 response to the Commission’s August 30, 2019 docket entry was admitted into the record, without objection, as Petitioner’s Exhibit No. 4.

Having considered all of the evidence presented in this proceeding, based on the applicable law and evidence, the Commission now finds:

1. Notice and Jurisdiction. Due, legal and timely notice of the Petition filed in this Cause was given and published by Petitioner as required by law. Proper and timely notice was given by Petitioner to its customers summarizing the nature and extent of the proposed changes in its rates and charges for water service. Due, legal and timely notices of the public hearings in this Cause were given and published as required by law. Petitioner is a “public utility” within the meaning of that term in Ind. Code § 8-1-2-1(a)(2) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. Accordingly, this Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner’s Organization and Business. MCRW is a public utility with its principal place of business located at 1395 East Shore Drive, Martinsville, Indiana. MCRW provides water utility service to approximately 3,400 members located in and around Morgan and Owen Counties in Indiana.

MCRW renders such water and sewer utility service by means of utility plant, property, equipment and related facilities owned, leased, operated, managed and controlled by it which are used and useful for the convenience of the public in the production, treatment, transmission, distribution and sale of water for residential, commercial, industrial, and public authority purposes.

3. Existing Rates. Petitioner’s existing basic rates and charges for water and wastewater utility service were established pursuant to the Commission’s order dated May 14, 2008 in *Morgan County Rural Water Corporation*, Cause No. 42993 (the “2008 Rate Order”) as a true-up of the Phase II rates approved on September 28, 2006 in the same case. Since the conclusion of the 2008 Rate Order, the Commission has also approved four tracker charges associated with the portion of MCRW’s water supply purchased from what is now commonly known as Citizens Water. The Commission also last approved an increase in MCRW’s Connection Charge in response to MCRW’s 30-day filing, on December 19, 2012.

4. **Test Year.** As authorized by Ind. Code § 8-1-2-42.7(d)(2) (“Section 42.7”), Petitioner proposed a historic test period using previously collected data. The 12-month period selected by MCRW and agreed upon by OUCC was August 2017 through July 2018.

5. **MCRW’s Requested Relief.** In its Petition, MCRW sought Commission approval of an overall increase in rates and charges for water service that would produce an overall revenue increase of 15.38%. As detailed in MCRW’s Petition and supporting exhibits, Petitioner also requested Commission approval of a new rate design that would eliminate the current minimum bill, establish a monthly base meter charge, and consolidate the current five-tier volume rate into a single volume rate applicable to all volumes and customers, as well as modifications to existing non-recurring charges and creation of additional non-recurring charges.

6. **Response.** The OUCC did not file direct testimony in this Cause. Instead, it raised a number of challenges to MCRW’s filing as part of the settlement negotiations undertaken in this Cause. The OUCC challenged the calculations used to arrive at the proposed rate increase and the proportionate impact of the proposed single volume rate on high volume customers compared to the average customer. The OUCC additionally objected to the requested Backflow Prevention Policy Fine as punitive rather than cost-based. The extent to which the parties’ positions differed is more thoroughly discussed within the parties’ Settlement Testimony.

7. **Settlement Agreement.** The Settlement Agreement filed with the Commission on July 25, 2019 (Settling Parties’ Joint Exhibit 1), presents the Parties’ resolution of all issues in this Cause. The Settlement Agreement is attached to this Order and incorporated by reference. The witnesses offering settlement testimony discussed the arm’s-length nature of the negotiations and the efforts undertaken to reach a balanced settlement that fairly resolves the issues. The Settlement Agreement and supporting evidence is outlined below.

MCRW witness Glen C. Miller testified in support of the Settlement Agreement. He testified that the Settlement Agreement was the result of arm’s-length negotiations between the Parties and represented a fair and reasonable resolution to all issues of this case and that the public interest would be served by Commission approval of the Settlement Agreement. MCRW Ex. B, p. 2-3. In addition, Glen Miller’s testimony addressed in detail the Parties’ agreements regarding MCRW’s revenue requirements, the overall rate increase, and the changes to MCRW’s schedule of rates and charges.

MCRW witness Scott A. Miller also testified in support of the Settlement Agreement. He testified that the Settlement Agreement was the result of good faith efforts on the part of the Parties to assure that MCRW is able to safely and efficiently provide service to its customers, while adequately recovering the cost of providing such service to the different classes of customers. MCRW Ex. C, p. 4-6. Miller’s testimony also directly addressed the revenue requirements, rate increase, and rate design aspects of the Settlement Agreement.

OUCC witness Thomas W. Malan testified in support of the Settlement Agreement. He testified that the Settlement Agreement represented a fair and reasonable resolution to all issues of this case, resulting in benefit to both MCRW and its customers. Public’s Ex. 1S, p. 6. Malan’s

testimony presented the OUCC's position on the agreed rate increase and changes to MCRW's non-recurring charges.

OUCC witness Jerome D. Mierzwa also testified in support of the Settlement Agreement. Mierzwa testified that the Settlement Agreement was a comprehensive agreement addressing all issues of the case and that it should be approved by the Commission. Public's Ex. 2S, p. 4. Mierzwa's testimony specifically addressed the cost allocation and rate design aspects of Settlement Agreement.

While these witnesses testified to the reasonableness of the Settlement Agreement as a whole, their respective settlement testimony also offered additional perspective on the terms of the Settlement Agreement as discussed below.

A. Revenue Requirements. As discussed by Petitioner's witnesses Glen Miller and Scott Miller, and OUCC witness Mr. Malan, Section 1 of the Settlement Agreement sets forth the parties' agreement on MCRW's revenue requirements. Glen Miller testified that the parties agreed MCRW's net revenue requirement would be \$2,209,072. MCRW Ex. B, p. 4. Although MCRW initially proposed a net revenue requirement of \$2,218,177, the agreed upon amount is the result of recalculations to MCRW's Cost of Service Study made during the discovery period of this case. MCRW Ex. C., p. 3. Specifically, MCRW's proposed operating expenses were reduced by \$13,462 due to the elimination of two test year purchased power reimbursements, the addition of additional purchased power, chemicals and postage expense to reflect the normalized customer growth on the system during the test year, modifications to the pro forma worker's compensation expense, and modifications to periodic maintenance expenses "to reflect the understanding of the parties regarding MCRW's needs on a going forward basis and to better categorize the expenditures incurred during the test year vis-à-vis the future requirements." MCRW Ex. C, p. 3-4, ex. SAM 1-R; Public's Ex. 1S, p. 3-4. Additionally, late fee revenue was reclassified, reconnect fee revenue was increased to reflect the parties' agreement on an increased reconnect fee; and revenue from the returned check fee, which was omitted from MCRW's initial proposal, was added to the calculation. MCRW Ex. C, p. 3-4, ex. SAM 1-R; Public's Ex. 1S, p. 4.

B. Rate Design. As discussed by Scott Miller and Mr. Mierzwa, Section 2 of the Settlement Agreement sets forth the parties' agreement regarding MCRW's rate design. Scott Miller testified that the parties agreed that MCRW's rate structure will consist of a declining block rate structure, which provides for the first 25,000 gallons to be billed at \$10.10 per 1,000 gallons, the next 25,000 gallons to be billed at \$7.65 per 1,000 gallons, and all consumption over 50,000 gallons to be billed at \$4.60 per 1,000 gallons. MCRW Ex. C, p. 6. Mr. Mierzwa testified that the OUCC objected to MCRW's proposal for a single block volume rate design to replace its five block volume rate design because MCRW's largest volume customers would incur a nearly 150% increase in their rates. Public's Ex. 2S, p. 6. Mr. Mierzwa testified that this would violate the principle of gradualism rendering MCRW's proposal inconsistent with sound rate design. *Id.* The Settlement Agreement resolved these issues by reducing the impact on larger volume customers to an approximate 35% increase, while not unduly burdening the residential class of customers and progressing toward MCRW's goal of transitioning toward a single-block usage rate. Public's Ex. 2S, p. 6-7, MCRW Ex. C, p. 6.

C. Rate Increase. Glen Miller, Scott Miller and Mr. Malan also testified regarding the rate increase set forth in Section 3 of the Settlement Agreement. Glen Miller testified that the Settlement Agreement provided for a rate increase of approximately 13.42%, which is a reduction from MCRW's proposed 15.38% increase. MCRW Ex. B, p. 6. Because MCRW's proposed rate increase was directly tied to its calculation of revenue requirements, the agreed-upon rate increase is a direct result of the recalculations of MCRW's revenue requirements. *Id.* Where MCRW's initial proposal was based upon an increase in MCRW's revenue requirement of \$295,613, the rate increase provided for by the Settlement Agreement is based upon revenue requirements of \$261,441, which represents a 13.42% increase over current requirements. MCRW Ex. C, p. 5, Public's Ex. 1S, p. 2.

D. Non-recurring Charges. Glen Miller and Mr. Malan also testified regarding the modifications and additions to MCRW's non-recurring charges within its Schedule of Rates and Charges as set forth in Section 4 of the Settlement Agreement. Specifically, MCRW sought to increase its Membership Fee from \$200 to \$300, to increase its Connection Charge from \$1,960 to \$2,415, and to increase its System Development Charge from \$500 to \$750 per each new equivalent unit. MCRW Ex. B, p. 6. MCRW also sought to replace its "Reconnection Charge" of \$48 with a "Delinquency Service Charge" of \$75, to replace its "Reconnection Surcharge" of \$29 and "General Service Surcharge" of \$15, with a single "After Hours Service Charge" of \$65, to add a new "Easement Recording Charge" of \$35, to add a "Tampering Charge" of a minimum of \$300.00, and to add a "Backflow Prevention Policy Fine" of up to \$2,500 per day.

Mr. Malan testified that MCRW's proposed Connection Charge was based on an incorrect labor estimate and additional easement recording fee and that recalculations using correct values resulted in a Connection Charge of \$2,020, to which MCRW agreed. Public's Ex. 1S, p. 4. As part of the recalculation of the Connection Charge, the Easement Recording Charge was removed, as it became a separate charge. MCRW Ex. B., p. 7. Similarly, the Delinquency Service Charge of \$75 was reduced to \$60 after recalculating actual costs associated with delinquencies. *Id.* at 5. The parties further agreed to insert additional language clarifying exactly when the Delinquency Service Charge would be assessed. MCRW Ex. B., p. 8; Public's Ex. 1S, p. 5. The OUCC additionally requested and MCRW agreed to separate its existing Dishonored Check Charge from the Failed ACH Charge and to decrease the Failed ACH Charge to \$25, as MCRW does not incur a \$5 bank fee for failed ACH payments. MCRW Ex. B., p. 8-9; Public's Ex. 1S, p. 5. MCRW also agreed to clarify that the Failed ACH Charge will not be assessed for failures outside the customer's control. *Id.*

Mr. Malan and Glen Miller testified that the parties agreed to MCRW's proposed implementation of a \$300 Tampering Charge, and MCRW agreed to add language to the description of that charge clarifying that it would not apply to accidental damage. MCRW Ex. B., p. 9; Public's Ex. 1S, p. 5. In response to the Commission's Docket Entry Request dated August 30, 2019, Mr. Miller also testified that the Tampering Charge is designed to address the situations that occur in which a customer intentionally and illegally obtains water from the utility through a service line by cutting a meter pin lock, bypassing a meter, or "jumping" an inactive service setter without a meter, and that in these situations, the service setter is frequently damaged and has to be replaced, with the current cost of a service setter being \$271.68, which does not include labor and other costs resulting from such tampering. MCRW Ex. A to Response to Docket Entry Request, pp. 1-2. The OUCC agreed to MCRW's proposals relating to the Membership Fee, the System

Development Charge, and the After Hours Service Charge in their entirety. MCRW Ex. B., p. 7, 9. MCRW agreed, at the OUCC's request, to modify the description of the General Service Charge to clarify that it will only apply to service requests during regular business hours. MCRW Ex. B., p. 8.

Finally, the OUCC objected to the inclusion of the Backflow Prevention Policy Fine because it viewed the fine as punitive and not cost-related. MCRW Ex. B., p. 9-10. MCRW agreed with OUCC's assessment and removed the fine. MCRW Ex. B., p. 9-10; Public's Ex. 1S, p. 5.

8. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code § 8-1-2-1 et seq., and that such agreement serves the public interest.

The Commission has before it substantial evidence from which to determine the reasonableness of the terms of the Settlement Agreement. Our review of the reasonableness of the Settlement Agreement is aided by the parties' express agreement on the revenue requirements to be used in Petitioner's rate increase, the agreed upon allocation of the increase, agreed upon rate design, and the agreed upon schedule of rates and charges filed with the Commission as MCRW Exhibit A to the Settlement Agreement. All of the agreed-upon pro forma adjustments are supported by and explained in the attachments to Settlement Agreement and supporting settlement testimony. Therefore, we are able to examine the basis for all of the components of the increase in base rates and charges and the modifications to MCRW's non-recurring charges as reflected in the proposed Schedule of Rates and Charges provided for in the Settlement Agreement, and hereby find they are reasonable for purposes of settlement and supported by the evidence of record.

Further, approval of the Settlement Agreement eliminates the risks, uncertainty and consumption of time and resources that would otherwise be required for the Commission to issue its final order in this proceeding. The Settlement Agreement resolves various disputed issues about Petitioner's revenue forecasts, revenue requirements, revised rate design, and modifications to Petitioner's Schedule of Rates and Charges.

Below, the Commission will review and address some of the specific components of the Settlement Agreement.

A. Revenue Requirements. The record reveals minimal differences between MCRW's proposed revenue requirements and the OUCC's estimation of those requirements. Indeed, the differences that do exist are simply the result of reclassification of certain revenue, recalculations of costs, and adjustments that needed to be made upon MCRW's acceptance of the OUCC's proposed modifications to MCRW's non-recurring charges. The evidence submitted by the parties supports the necessity of each proposed increase within the revenue requirements, and each increase is reasonable. Based on the settlement testimony of Glen Miller, Scott Miller, and Mr. Malan, the Commission finds that this resolution is reasonable in the context of the overall Settlement Agreement, and is in the public interest.

B. Rate Design. While MCRW's initial proposal to shift completely to a single block volume rate design would likely ease administration, the OUCC's concern regarding the impact of such a shift on MCRW's high volume customers cannot be ignored. The evidence in the record amply supports the validity of this concern. The parties' agreed resolution adequately balances MCRW's desire to ease administration and simplify the rate design against the need to insure that a modification in the rate design does not disproportionately affect one class of customers. Therefore, based upon the settlement testimony of Scott Miller and Mr. Mierzwa, the Commission finds that this resolution is reasonable in the context of the overall Settlement Agreement, and is in the public interest.

C. Rate Increase. As the evidence in the record supports the parties' agreement regarding MCRW's revenue requirements, it likewise supports the parties' agreement on MCRW's rate increase. The rate increase provided in the Settlement Agreement is proportional to the increase in revenue requirements. Based on the settlement testimony of Glen Miller, Scott Miller, and Mr. Malan, the Commission finds that this resolution is reasonable in the context of the overall Settlement Agreement, and is in the public interest.

D. Non-recurring Charges. The OUCC had a number of disagreements with MCRW's proposed modifications and additions to its non-recurring charges. The most substantial disagreement centered around MCRW's proposal to add a Backflow Prevention Policy Fine to its existing schedule of rates and charges. The OUCC objected to this addition arguing that it bore no relation to MCRW's costs, and therefore, would be an inappropriate charge. MCRW agreed with this conclusion and agreed to strike the Backflow Prevention Policy Fine from its proposal. The remaining disagreements resulted from recalculations performed in estimating MCRW's revenue requirements and the OUCC's recommendation that the descriptions of several of the charges clarify when such charges would be applicable. The OUCC also accepted several of MCRW's proposed modifications and additions without any recommended changes. Based on the settlement testimony of Glen Miller and Mr. Malan, the Commission finds that this resolution is reasonable in the context of the overall Settlement Agreement, and is in the public interest.

9. Conclusion. The testimony supporting the Settlement Agreement addresses why the Settlement Agreement is reasonable and in the public interest. Based upon our review of the record, particularly the Settlement Agreement terms and supporting testimony and exhibits, the

Commission finds the Settlement Agreement is within the range of potential outcomes and represents a just and reasonable resolution of the issues.

On the basis of the Settlement Agreement and the supporting evidence presented in these proceedings, we find that Petitioner should be authorized to increase its rates and charges to produce additional operating revenue of \$261,441, or a 13.42% increase in total operating revenues, resulting in total annual operating revenue of \$2,209,072.

The Commission further finds and concludes that the Settlement Agreement is reasonable, supported by substantial evidence, and in the public interest. Accordingly, the Settlement Agreement is approved.

10. Effect of Settlement Agreement. Consistent with the terms of the Settlement Agreement, the Settlement Agreement is not to be used as precedent in any other proceeding or for any other purpose except to the extent necessary to implement or enforce its terms; consequently, with regard to future citation of the Settlement Agreement or of this Order, we find our approval herein should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/1997).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. The July 25, 2019 Joint Stipulation and Settlement Agreement, a copy of which is attached to this Order, shall be and hereby is approved in its entirety.

2. Petitioner shall be and hereby is authorized to adjust and increase its base rates and charges for water utility service to produce an increase in total operating revenues of approximately 13.42% in accordance with the findings herein, which rates and charges shall be designed to produce total annual operating revenues of \$2,209,072.

3. The Proposed Schedule of Rates and Charges set forth in MCRW Exhibit A to the Settlement Agreement, is hereby approved, and Petitioner is hereby authorized to implement said Schedule of Rates and Charges.

4. Petitioner shall file its new schedule of rates and charges with the Water/Wastewater Division of the Commission. Petitioner's new schedule of rates and charges shall be effective on the date of the Commission's Order in this case.

5. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR

APPROVED:

I hereby certify that the above is a true
and correct copy of the Order as approved.

Mary M. Becerra
Secretary to the Commission