ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Veleta	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF SOUTH BEND, INDIANA, FOR (1) AUTHORITY TO ISSUE BONDS, NOTES, OR OTHER OBLIGATIONS, (2) AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR WATER SERVICE, AND (3) FOR APPROVAL OF NEW SCHEDULES OF WATER RATES AND CHARGES.	)	**CAUSE NO. 45719** **APPROVED: JAN 25 2023**

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On May 6, 2022, Petitioner, the City of South Bend, Indiana ("Petitioner" or "South Bend") filed its Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission"), seeking authority to issue bonds, notes, or other evidence of indebtedness, and to increase its rates and charges for water service, and requesting approval of new schedules of water rates and charges. South Bend also filed the direct testimony, including attachments, of Eric Horvath, Executive Director of South Bend's Public Works Department, and Alex D. Hilt, a certified public accountant and Director with Baker Tilly Municipal Advisors LLC.

On May 18, 2022, Petitioner filed an Agreed Procedural Schedule on behalf of itself and the Indiana Office of Utility Consumer Counselor ("OUCC"). After review of the parties' agreement, the Presiding Officers established the procedural schedule and related requirements in a June 3, 2022 Docket Entry.

On August 12, 2022, the OUCC filed the testimony and attachments of Carla F. Sullivan, Utility Analyst in the Water/Wastewater Division; Shawn Dellinger, Senior Utility Analyst in the Water/Wastewater Division; and Carl N. Seals, Assistant Director in the Water/Wastewater Division. On September 8, 2022, Petitioner filed the rebuttal testimony of Mr. Hilt.

On October 18, 2022, the parties filed a Joint Agreed Motion to Continue the Evidentiary Hearing requesting that the Commission continue the evidentiary hearing to allow the parties additional time to engage in settlement discussions. The Commission issued a Docket Entry on October 19, 2022, wherein the Presiding Officers approved the parties' request and continued the hearing to November 22, 2022.

On November 10, 2022, Petitioner filed a Stipulation and Settlement Agreement ("Settlement Agreement") between Petitioner and the OUCC with respect to all issues raised in this Cause. On that same day, Petitioner filed settlement testimony from Mr. Hilt and the OUCC filed settlement testimony from Ms. Sullivan. As the parties' filing of the Settlement Agreement and supporting testimony was not filed by the established deadline and additional time was required for review by Commission staff, the Presiding Officers, in a November 16, 2022 Docket Entry, continued the hearing to December 12, 2022.

On December 12, 2022, a settlement hearing was held and the parties' evidence, including the Settlement Agreement and supporting testimony, was admitted into the record in this Cause.

Based on the applicable law and evidence, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the hearing conducted in this Cause was given as required by law. Petitioner is a municipally owned utility as defined by Ind. Code § 8-1-2-1(h). Under Ind. Code § 8-1.5-3-8(f)(2), Petitioner is required to obtain Commission approval of its water utility rates and charges, and under Ind. Code § 8-1.5-2-19 Petitioner is required to obtain Commission approval for the issuance of bonds, notes, or other obligations that are payable more than 12 months after execution. Therefore, the Commission has jurisdiction over South Bend and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** South Bend owns and operates municipal waterworks facilities providing water sales and service to customers in and near the City of South Bend, Indiana. Additionally, Petitioner sells water at wholesale to certain other customers.

3. **Test Year.** The test year selected for determining Petitioner's actual and pro forma operating revenues, expenses, and operating income under present and proposed rates is the 12 months ended June 30, 2021. With adjustments for changes that are fixed, known and measurable, we find that this test period is sufficiently representative of Petitioner's normal operations to provide reliable data for ratemaking purposes.

4. **Petitioner's Requested Relief.** By its Petition, South Bend requested authority to increase its rates and charges by 7.7% in two phases on an across-the-board basis, with a 3.50% increase in Phase 1 and a 4.18% increase in Phase 2, for a total increase in water revenues of $1,419,904. Petitioner also requested authority to issue long-term debt in a principal amount not to exceed $46,785,000.

Mr. Horvath provided a copy of South Bend's rate and bond ordinances authorizing the requested rate increase and debt issuance as well as South Bend's five-year capital improvement plan ("CIP") totaling $53,927,000 in capital improvements. Mr. Horvath testified Petitioner needs to increase rates to fund necessary operation and maintenance ("O&M") expenses and a portion of its CIP. He explained South Bend's proposed financing will fund 60% of its CIP and identified the projects to be funded. He also noted Petitioner anticipates funding other projects through depreciation expense but recognized that some projects may be delayed due to South Bend's decision to reduce its requested rate increase to minimize customer impact. Mr. Horvath described Petitioner's approach to water main extensions/replacements and hydrant and valve replacements and stated South Bend also intends to pursue grants and other funding through Indiana's Drinking Water State Revolving Fund ("SRF") to replace customer lead service lines.

Mr. Hilt provided a copy of the Accounting Report he prepared to support South Bend's request for increased rates and charges. He explained the Accounting Report is organized in four sections and described some of the details contained in the report. Regarding South Bend's proposed financing, Mr. Hilt testified the bond ordinance will authorize up to $46,785,000 in bonds in multiple series and is based on $35,000,000 of debt for identified projects and $11,785,000 in funding flexibility for lead service line replacements. He explained the proposed 2023 SRF bonds are assumed to be wrapped around Petitioner's existing debt service and amortized over 20 years at an assumed interest rate of 2.5%. Similarly, the proposed 2024 SRF bonds are assumed to be financed over 20 years at an assumed interest rate of 2.75% to reflect the current rising rate environment. He testified that following the bond sales, Petitioner will submit a true-up report adjusting rates based on the actual amortization schedules.

5. OUCC's Responsive Testimony. Ms. Sullivan testified the OUCC recommended an across-the-board revenue increase of $292,042 or a 1.58% increase to be implemented in one phase. Ms. Sullivan explained the chief drivers of the difference between South Bend's revenue requirement and the OUCC's recommended revenue requirement is: (1) payment in lieu of taxes ("PILT"); (2) the non-recurring purchase of South Bend's computer system; and (3) the calculation of debt service expense. Ms. Sullivan accepted Petitioner's proposed operating revenue adjustments but recommended different O&M expense adjustments for salaries and wages and employee benefits, purchased power, contractual services, rate case expense, and utility receipts tax. She also recommended South Bend include extensions and replacements rather than depreciation expense in its revenue requirement.

Mr. Dellinger addressed Petitioner's financing requests and recommended Petitioner be authorized to borrow $47,791,000 and that rates be based upon $35,000,000 of debt as Petitioner requested, with the additional authority conditioned on South Bend only using it to accomplish lead service lines replacements through SRF. He further recommended an annual debt service revenue requirement of $2,640,488 and an annual debt service reserve revenue requirement of $499,870. Mr. Dellinger explained these amounts were based on a slight increase in assumed interest rates and on an average annual cost through the life of the rates. He also recommended $330,000, which will be used to pay off a maturing bond, be reflected in the calculation of the debt service reserve revenue requirement. Finally, Mr. Dellinger also recommended true-up procedures and reporting requirements, as well as some clarifications if the bond offering was on the open market.

Mr. Seals generally discussed Petitioner's water system and CIP. Mr. Seals recommended South Bend follow the recommendations presented in the 2016 Water System Evaluation Technical Memorandum Final Report prepared by Arcadis ("Arcadis Report") and evaluate whether some assets should be taken out of service. He further recommended South Bend draw a distinction between O&M expenses and capital projects in its next rate case.

6. Petitioner's Rebuttal. Mr. Hilt testified Petitioner accepts many of the OUCC's proposed adjustments to the utility's revenue requirement and summarized Petitioner's position on each of the OUCC's proposed adjustments. Mr. Hilt disagreed with the OUCC's adjustments to: remove computer upgrade costs from operating expenses, exclude certain personnel costs, modify the calculation of PILT to exclude future projects, and lower the overall allowance for debt service revenue requirement based on an average annual requirement instead of a maximum debt service. Mr. Hilt also explained his disagreement with certain true-up proposals of the

OUCC and some definitions regarding potential open market financing.

7. **<u>Settlement Agreement</u>.** The Settlement Agreement reflects the parties' resolution of all issues raised in this Cause. The witnesses offering settlement testimony discussed the Settlement Agreement as a fair and reasonable resolution of the issues.

Ms. Sullivan testified the Settlement Agreement is a reasonable compromise between the positions of the parties and demonstrates the give and take of settlement negotiations in resolving contested issues in a manner acceptable to the parties. She testified the Settlement Agreement is in the public interest as it provides South Bend with the funds required to construct much-needed improvements to provide safe and reliable service and is consistent with the state's policy of affordability as expressed in Ind. Code § 8-1-2-0.5.

Mr. Hilt testified the Settlement Agreement is beneficial to both South Bend and its customers and will provide Petitioner sufficient funds to pay for necessary operating expenses and critical capital improvements. He also explained the reasons Petitioner agreed to certain restrictions on its debt financing for purposes of settlement and why he believes the terms are appropriate considering Petitioner's overall financing request.

A. **<u>Revenue Requirement Issues</u>.** Paragraph 3 of the Settlement Agreement reflects the parties' compromise with respect to the revenue requirement issues in this Cause. For purposes of settlement, the parties stipulate the total increase in revenue requirement shall be calculated to produce an increase in annual operating revenues of $1,419,904 and a total revenue requirement of $19,899,642. The parties further agree South Bend's increase in rates shall take place in two steps: a 3.5% increase in Phase 1 (for an increase in revenues of approximately $650,000), to take effect upon issuance of a final order in this Cause; and a 4.0% increase in Phase 2 (for an increase in revenues of just under $770,000), to take effect one year later.

Ms. Sullivan, in her settlement testimony, explained Petitioner and the OUCC both made concessions to achieve settlement agreement on the revenue requirement issues. For purposes of settlement, Petitioner agreed to the $13,611,484 in operating expenses and $1,448,073 for PILT as proposed by the OUCC. Further, the parties negotiated a $2,933,936 total debt service revenue requirement and a $617,049 debt service reserve requirement as shown on Table CFS-2 of OUCC Exhibit 1-S, which was based upon more current interest rate information. *See also*, Petitioner's Exhibit 2-S, Schedule 1. Further, the debt service requirement used average annual costs through the life of the rates and reflected the debt service funds that will be used to pay off maturing bonds. Ms. Sullivan further testified that the OUCC also agreed to Petitioner's total revenue requirement of $23,209,318, recognizing that there was substantial need for extensions and replacements equal to or in excess of regulatory adjustments the OUCC made to other expenses. The revenue requirement as agreed to by the parties is set forth on Table CFS-2 of OUCC Exhibit 1-S, as well as the table set forth at page 2 of Petitioner's Exhibit 2-S.

B. **<u>Financing Issues</u>.** As noted above, Petitioner initially requested authority to issue long-term debt in a principal amount not to exceed $46,785,000 million. Mr. Hilt explained that Petitioner's funding plan is based on issuing $35,000,000 of debt to fund Petitioner's identified capital projects and to use the additional $11,785,000 in authority to allow Petitioner flexibility to take advantage of existing programs that provide funds for lead service line replacements without impacting the overall borrowing cost. OUCC witness Dellinger agreed with Petitioner's request and recommended Petitioner be authorized to borrow $47,791,000, with the understanding that rates would be based upon $35,000,000 of debt as Petitioner requested.

For purposes of settlement, the parties agreed that certain conditions will be placed on Petitioner's authorized financing authority and these terms are set forth in Paragraph 2 of the Settlement Agreement. Specifically, Paragraph 2 addresses the parties' agreement with respect to funding Petitioner's debt service reserve; the use of any reoffering premium; the use of revenue collected prior to the issuance of debt; and issues related to debt true-up and tariff revisions. For purposes of settlement, the parties agreed Petitioner shall have fully funded its debt service reserve by the end of 60 months, constituting the anticipated life of rates, from the date of a final order in this Cause. Further, the parties agreed that if Petitioner issues debt on the open market, and there is a net offering premium of more than 1% of the borrowed amount, the amount of the net offering premium shall be amortized over the remaining life of rates and used to reduce the debt service requirement in this Cause in a rate reduction, subject to the true-up process.

The parties also agreed to certain requirements with respect to the effect of timing differences in Petitioner's proposed bond issuances. With respect to the first tranche of bonds, if Petitioner does not issue the bonds within six months of the final order in this Cause, Petitioner agreed that all such debt service amounts collected before closing on the debt shall be placed into a restricted account and used to reduce the amount borrowed. Further, if Petitioner does not issue the second tranche of debt by December 31, 2024, then all such debt service amounts collected after November 30, 2024 shall be placed into a restricted account and used to reduce the amount borrowed.

The parties also agreed to certain true-up and tariff revisions procedures. Specifically, South Bend will file a true-up report under this Cause within 30 days after closing on a debt issuance. Within 21 days thereafter, the OUCC will indicate whether it objects to the true-up report. If no objection is made or the parties agree that any increase or decrease would be immaterial, then South Bend will file its revised tariffs with the Commission.

C. Stipulation Effect, Scope, and Approval. Paragraph 4 of the Settlement Agreement addresses the effect and scope of the parties' agreement, the approval being sought for the settlement, and applicable conditions regarding the effect of the settlement. This paragraph specifically makes clear that the parties' settlement is the result of compromise in the settlement process, and that neither the making of the Settlement Agreement nor any of its provisions shall constitute an admission or waiver by either party in any proceeding, now or in the future, nor shall it be cited as precedent. It also states that the Settlement Agreement is a compromise and will be null and void unless approved in its entirety without modification or further condition that is unacceptable to either party. The Settlement Agreement also includes provisions concerning the substantial evidence in the record supporting approval of the Settlement Agreement, recognizes the confidentiality of the settlement communications, and reflects other terms typically found in settlement agreements before this Commission.

8. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *U. S. Gypsum, Inc. v. Ind. 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 Coal. of Ind., Inc. v. PSI Energy, Inc.,* 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 Coal.*, 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. *U. S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind., Inc. v. Pub. Serv. Co. of Ind., Inc.*, 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 ch. 8-1-2, and that such agreement serves the public interest.

The parties submitted substantial evidence for consideration by the Commission in determining the reasonableness of the Settlement Agreement. The parties' supporting testimony provides an explanation of the components underlying the agreed-upon increase in South Bend's base rates and charges provided for in the Settlement Agreement. The evidence shows that South Bend agreed to the OUCC's recommended adjustments to O&M expense and PILT as well as the adjusted debt service by using current interest rate assumptions and the OUCC's recommended five-year average methodology. The OUCC, in recognition of South Bend's substantial need to complete capital projects at an estimated cost that equals or exceeds the OUCC's recommended adjustments to other expenses, agreed to Petitioner's requested revenue requirement through an increase in the annual E&R revenue allowance. Accordingly, based on the evidence presented, we find the Settlement Agreement provides for a reasonable increase in Petitioner's rates and charges and allows South Bend to make much needed capital improvements to its system.

In addition, the parties agreed South Bend should be authorized to issue up to $47,791,000, with $35,000,000 supported by the utility's rates and the additional funding for the utility's participation in potential incentive programs for lead service line replacements. The Settlement Agreement, as discussed above, provides that Petitioner's debt issuances will also be subject to certain conditions. Based on the evidence presented, the Commission finds that the identified capital projects in Petitioner's CIP to be funded with the proceeds of the bond issuances are reasonably necessary for the provision of adequate and efficient utility services, and the debt issuances are a reasonable method for financing such projects. The Commission further finds that the Settlement Agreement provides for rates and charges that will provide sufficient funds for utility operation and to pay the principal and interest on the proposed bonds, together with a surplus or margin of at least 10%, and thus, satisfies the requirements of Ind. Code § 8-1.5-2-19(b).

While the parties agree the Settlement Agreement resolves all issues between them, the Settlement Agreement does not specifically address the OUCC's recommendation that Petitioner follow the Arcadis Report recommendations to evaluate whether some assets should be taken out of service to avoid unnecessary projects and maintenance expense or for Petitioner to draw a distinction between O&M expenses and capital projects in its next base rate case. Because we agree with these recommendations, South Bend is directed to continue following the recommendations of the Arcadis Report and update its CIP accordingly and to better delineate between O&M expenses and capital projects in its next rate case filing.

Based on the Settlement Agreement and the supporting evidence presented, we find that Petitioner should be authorized to increase its rates and charges to produce additional revenue of $1,419,904, or an overall increase of 7.7% on an across-the-board basis and implemented in two phases as set forth below:

	Settlement Phase I	Settlement Phase II
Operating Expenses	$ 13,611,484	$ 13,611,484
Extensions and Replacements	3,825,776	4,598,776
Payment in Lieu of Taxes	1,448,073	1,448,073
Debt Service:		
Current	1,337,879	1,337,879
Proposed	1,596,057	1,596,057
Debt Service Reserve	617,049	617,049
Total Revenue Requirements	22,436,318	23,209,318
Less Revenue Requirement Offsets:		
Leak Protection	(1,085,018)	(1,085,018)
Late Fees	-	-
Interest Income	(193,000)	(193,000)
Other Income Not Subject To Increase	(2,031,658)	(2,031,658)
Net Revenue Requirement	19,126,642	19,899,642
Less: Water Revenues and Fire Protection	(18,400,541)	(18,400,541)
Late Fees	(79,197)	(79,197)
Phase I Increase		(646,904)
Net Revenue Increase Required	$ 646,904	$ 773,000
Recommended Percentage Increase	3.50%	4.18%

We further find Petitioner should be authorized to issue long-term debt in a principal amount not to exceed $47,791,000 as discussed in the parties' case-in-chief testimony and approved in this Order. 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.

9. <u>Effect of Rate Increase on Customers</u>. Based on the rate increase approved in this Order, the average residential monthly water bill will increase as follows:

Average Residential Monthly Bill for 5,000 gallons (includes volumetric and public fire protection rates)		
Inside Customers	Current	Settlement
Ph. I	$19.60	$20.29
Ph. 2	$19.60	$21.14
Outside Customers		
Ph. 1	$22.35	$23.13
Ph. 2	$22.35	$24.10

10. <u>Effect of Settlement Agreement</u>. 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 March 19, 1997).

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

1. The November 10, 2022 Stipulation and Settlement Agreement, a copy of which is attached to this Order, is approved.

2. Petitioner is authorized to increase its rates and charges for water service, across-the-board, in two Phases with the increase for Phase 1 constituting approximately a 3.5% increase in order to increase annual operating revenues by approximately $650,000, and for Phase 2 constituting approximately a further 4.0% increase in order to produce additional annual operating revenues of approximately $770,000.

3. Petitioner is granted a Certificate of Authority to issue additional long-term debt in one or more issues to the SRF or pursuant to competitive sale or private placement at or below competitive market rates and in principal amount not to exceed $47,791,000 as approved in this Order.

4. Prior to implementing the approved rates, Petitioner shall file the tariff and applicable rate schedules under this Cause for approval by the Commission's Water/Wastewater Division. For Phase 1, such rates and charges shall be effective upon the issuance of an Order in this Cause, subject to approval by the Water/Wastewater Division. The Phase 2 schedule shall be effective one year later, subject to approval by the Water/Wastewater Division.

5. Petitioner shall file a true-up report as provided in Paragraph 2.d. of the Settlement Agreement.

6. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days from the date of the Order, into the Treasury of the State of Indiana, through the Secretary of the Commission:

Commission Charges:	$ 4,285.05
OUCC Charges:	$ 9,900.07
Legal Advertising Charges:	$ 65.82
Total:	$14,250.94

7. In accordance with Ind. Code § 8-1-2-85, Petitioner shall pay a fee equal to $0.25 for each $100 of water utility revenue bonds issued, to the Secretary of the Commission, within 30 days of the receipt of the financing proceeds authorized herein.

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

HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR

APPROVED: **JAN 25 2023**

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

Dana Kosco Digitally signed by Dana Kosco Date: 2023.01.25 10:34:15 -05'00'

Dana Kosco
Secretary of the Commission

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF SOUTH BEND, INDIANA, FOR (1) AUTHORITY TO ISSUE BONDS, NOTES, OR OTHER OBLIGATIONS, (2) AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR WATER SERVICE, AND (3) FOR APPROVAL OF NEW SCHEDULES OF WATER RATES AND CHARGES.	)	CAUSE NO. 45719

STIPULATION AND SETTLEMENT AGREEMENT

The City of South Bend, Indiana ("South Bend" or "City" or "Petitioner") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively, the "Settling Parties"), by their respective counsel, respectfully request the Indiana Utility Regulatory Commission ("Commission") to approve this Stipulation and Settlement Agreement ("Stipulation"). The Settling Parties agree that the terms and conditions set forth below represent a fair and reasonable resolution of the issues described herein, subject to incorporation into a final order of the Commission, which approves this Stipulation without any modification or condition that is not acceptable to the Settling Parties.

1. In this proceeding, this Stipulation follows the Settling Parties' prefiled testimony and attachments, as well as rebuttal testimony filed by Petitioner. Since the time of Petitioner's filing of its rebuttal testimony in this Cause, the parties have engaged in discussions to address items the OUCC has identified in testimony as its primary issues in this Cause. Those interactions framed the discussions between the Settling Parties and formed the basis for the Settling Parties to reach agreement on the terms reflected in this Stipulation. A basic component of each party's willingness to enter this agreement is the overall result that is achieved hereby. The Settling Parties have agreed to concessions on individual issues to which the Settling Parties would not be willing to agree but for the overall result produced by this Stipulation and Settlement Agreement. In other words, each party is agreeing to forego or compromise on positions on individual issues in exchange for the overall result produced

collectively by all of the concessions. As set forth below, the parties have negotiated terms that resolve all issues in this proceeding. In most cases, the agreed upon terms are founded upon documented positions that are in the record in this proceeding, including in Settlement Testimony that the Settling Parties have agreed each of them will file in support of this Stipulation. While the parties intend to submit testimony in support of the settlement, the parties agree that the respective cases of the parties and facts in evidence substantially support all terms of the settlement.

2. For purposes of settlement of the non-revenue requirement issues, the Settling Parties stipulate and agree as follows:

a. **Establishment and Funding of a Debt Service Reserve Fund.** By the end of sixty (60) months of the life of rates, South Bend shall have fully funded its debt service reserve. For purposes of this term, "60 months from the life of rates" means sixty (60) months after the date of the Final Order in this Cause.

b. **Effect of Reoffering Premium.** If Petitioner issues debt on the open market, and there is a net reoffering premium of more than one percent (1%) of the borrowed amount, the amount of the net reoffering premium shall be amortized over the remaining life of the rates and used to reduce the debt service requirement in this Cause in a rate reduction, subject to the true-up process set forth in Section 2.d. For purposes of this term, the "life of rates" means sixty (60) months after the date of the Final Order in this Cause. In such case, at the end of the 60-month period, South Bend's rates shall revert to the higher amount.

c. **Effect of Timing Differences in Bond Issuances.**

i. If Petitioner does not issue the first tranche of debt within six (6) months of the Final Order in this Cause, then all such debt service amounts collected before closing on the debt shall be placed into a restricted account and used to reduce the amount borrowed.

ii. If Petitioner does not issue the second tranche of debt by December 31, 2024, then all such debt service amounts collected after November 30, 2024 shall be placed into a restricted account and used to reduce the amount borrowed.

d. **True-Up Report and Revision of Tariff.** Within thirty (30) days after closing on a debt issuance contemplated in this Cause, South Bend shall file a true-up report describing the final terms of the debt issuance, the amount of the debt service reserve, and the amortization schedule for the debt issuance. South Bend shall also restate in its true-up report the precise terms of this section of the settlement agreement. Within twenty-one (21) calendar days of service of the true-up report, the OUCC shall state whether it objects or disagrees with the true-up report. If there is no objection or disagreement, South Bend shall file with the Commission a revised tariff adjusting the rates to include the final amount of annual interest payments on the debt. However, if both parties state in writing to the Commission that the increase or decrease indicated by the true-up report need not occur because the increase or decrease would be immaterial, then no true-up is required.

3. **Rates.** The Settling Parties stipulate that Petitioner shall be permitted to increase its customer rates as follows: The total increase in revenue requirement shall be calculated to produce an increase in annual operating revenues of $1,419,904 and a total revenue requirement of $19,899,642. The revenue requirement includes $617,049 per year for debt service reserve associated with Petitioner's proposed financing. The increase in rates shall take place in two steps: a3.5% increase in Step 1 (for an increase in revenues of approximately $650,000), to take effect upon issuance of a Final Order in this Cause; and a 4.0% increase in Step 2 (for an increase in revenues of just under $770,000), to take effect one (1) year later.

4. **Stipulation Effect, Scope and Approval.** The Stipulation is conditioned upon and subject to its acceptance and approval by the Commission in its entirety without any change or condition that is unacceptable to any Settling Party. Each term of the Stipulation is in consideration and support of each and every other term. If the Commission does not approve the Stipulation in its entirety or if the Commission makes modifications that are unacceptable to any Settling Party, the Stipulation shall be null and void and shall be deemed withdrawn upon notice in writing by any party within 14 days after the date of the final order stating that a modification made by the Commission is unacceptable to the Settling Party.

The Stipulation is the result of compromise in the settlement process and neither the making of the Stipulation nor any of its provisions shall constitute an admission or waiver by any Settling Party in any other proceeding, now or in the future. The Stipulation shall not be used as precedent in any other current or future proceeding or for any other purpose except to the extent provided for herein or to the extent necessary to implement or enforce its terms.

The evidence to be submitted in support of the Stipulation, together with evidence already admitted, constitutes substantial evidence sufficient to support the Stipulation and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of the Stipulation.

The parties agree that the communications and discussions and materials produced and exchanged during the negotiation of the Stipulation relate to offers of settlement and shall be privileged and confidential.

The undersigned represent and agree that they are fully authorized to execute the Stipulation on behalf of the designated party who will be bound thereby.

The Settling Parties will either support or not oppose on rehearing, reconsideration and/or appeal, a Commission Order accepting and approving this Stipulation in accordance with its terms.

ACCEPTED and AGREED this 10th day of November, 2022.

City of South Bend, Indiana

By:____________ ______________
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