

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3003141
Office of Consumer Advocate	:	C-2018-3003732
	:	
v.	:	
	:	
Borough of Indiana	:	

**RECOMMENDED DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

This decision recommends approval of a joint petition for settlement wherein the parties agree to an increase in annual operating revenue of \$719,000 over present rates, of which \$316,816 is applicable to customers whose service is regulated by the Commission.

**HISTORY OF THE PROCEEDINGS**

On June 28, 2018, the Borough of Indiana (Borough) filed Supplement No. 11 to Sewer - Pa. P.U.C. No. 1, to become effective September 1, 2018, seeking approval to implement rate changes that would increase the level of rates that it charges for providing service to its customers.

The Borough requested an increase in base rate revenues in the amount of \$880,920 from its customers. This represents an approximate 33% increase in the Borough's annual revenues at present rates. The Borough stated that \$390,062 of this increase would be

attributable to customers outside the Borough. This represents an approximate 31.76% increase for customers outside the Borough.

The Borough serves approximately 3,214 customers inside the Borough and 3,973 outside the Borough. Of the 3,973 PUC jurisdictional customers, 3,524 are residential. Jurisdictional customers are located in White Township, Indiana County.

On July 31, 2018, the Office of Consumer Advocate (OCA) filed a formal complaint (C-2018-3003732) against the proposed increase in rates and a Notice of Appearance. The Bureau of Investigation and Enforcement (BIE) filed a Notice of Appearance on August 16, 2018. On August 23, 2018, the Commission issued an Order initiating an investigation into the lawfulness, justness and reasonableness of the proposed rates, and suspended the effective date until April 1, 2019, by operation of law.

By notice dated August 28, 2018, a prehearing conference was scheduled for September 5, 2018, and this matter was assigned to me for disposition. A prehearing conference order was issued which, among other things, directed the parties to file prehearing memoranda. By email dated August 29, 2018, the Borough notified the Commission that it would participate in the Commission's mediation process. The Borough filed Supplement No. 11 to Sewer - Pa. P.U.C. No. 1, which voluntarily suspended the effective date of the proposed tariff to June 1, 2019.

Prehearing memoranda were filed by the parties as directed. The first prehearing conference convened as scheduled. Counsel for the Borough, BIE, and OCA appeared. The parties agreed to convene a further prehearing conference on October 31, 2018, to report on the status of the negotiations and to agree on a litigation schedule if one was necessary.

The further prehearing conference was convened on October 31, 2018. All of the parties appeared. A litigation schedule was established, which included dates for the filing of testimony and scheduled evidentiary hearings in Harrisburg in January 2019.

By email dated November 21, 2018, the parties reported that they had reached a settlement in principle and requested a suspension of the litigation schedule. The parties filed a Joint Petition for Approval of Settlement of Rate Proceeding (Settlement) and statements in support, as well as a Joint Stipulation for Admission of Evidence (Stipulation) on December 7, 2018. By interim order dated September 10, 2018, the Joint Stipulation for Admission of Evidence was approved and the direct testimony of Roland Francis, Kimberly A. Dorchak and Dennis M. Kalbarczyk was admitted into evidence for the purpose of supporting the proposed settlement.

### STIPULATED FACTS

1. Indiana Borough is a borough located in Indiana County, Pennsylvania. It provides wastewater treatment service to the public for compensation inside the borough limits and in White Township, Indiana County. As of year-end 2017, the Borough provided wastewater treatment service to 3,214 customers inside the Borough and 3,973 customers outside the Borough. (Stipulation ¶ 1)

2. The Borough's last rate increase was in 2002. Since that time, the Borough has made changes to its wastewater treatment plant, including replacing the existing belt filter press with a more efficient rotary-type press for sludge disposal. (Stipulation ¶ 2)

3. On June 28, 2018, the Borough filed proposed Supplement No. 11 to Sewer – Pa. P.U.C. No. 1 (“Supplement No. 11”), to be effective September 1, 2018. The proposed tariff supplement provided for an increase in base rate revenues of \$880,920, of which \$390,062 was attributable to customers outside Borough. The Borough also filed the supporting data required by 52 Pa.Code § 53.52. (Stipulation ¶ 3)

4. The Borough subsequently submitted an updated revenue requirement study, which concluded that the Borough's original filing did not comport with generally-established ratemaking methodologies in certain respects. According to the updated revenue requirement study, generally-established ratemaking methodologies supported a revenue increase

over current rates greater than that of the Borough's as-filed request. The Borough, however, did not increase its rate request. (Stipulation ¶ 4)

### TERMS OF THE SETTLEMENT

The parties agreed to the settlement terms as set forth below. The original paragraph numbers have been retained as an aid to the reader.

#### A. Revenue Requirement

20. Following entry of a Commission final order approving this Settlement, Indiana Borough shall file a compliance tariff supplement, effective on 1 day's notice, with new rates designed to produce \$719,000 in additional annual operating revenue base.

21. \$316,816 (approximately 44%) of the increase will be allocated to PUC jurisdictional customers, \$402,841 (approximately 56%) of the increase will be allocated to non-jurisdictional customers.

#### B. Stay out

22. Indiana Borough will not file with the Commission a tariff or tariff supplement proposing a general increase in base rates earlier than two years from the effective date of the tariff supplement described in Paragraph 20, provided, however, that the foregoing provision shall not prevent Indiana Borough from filing a tariff or tariff supplement proposing a general increase in rates in compliance with Commission orders or in response to fundamental changes in regulatory policies affecting Indiana Borough's rates.

#### C. Audited Financial Statements

23. The Borough's auditor shall submit the Borough's annual audited financial statement to the OCA and I&E at the same time that the annual audited financial statement is submitted to the Department of Community and Economic Development. This provision is effective until the filing of the Borough's next rate case, or until the Borough ceases to fall under the jurisdiction of the PUC.

D. Miscellaneous

24. It is recognized by the settling parties that this is a “black box” settlement that is a compromise of the settling parties’ positions on various issues.

The Settlement also included the usual “additional terms and conditions” that are typically included in settlements. These terms, which, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future rate cases by any particular position taken in this case. If the Settlement is approved without modification, the parties have agreed to waive their individual rights to file exceptions with regard to the Settlement. These additional terms and conditions will not be repeated here verbatim. The reader is directed to the petition itself.

In addition to the statements in support of each party (Appendix C through E), the Settlement includes a proof of revenue, including a rate impact analysis for each customer class, attached as Appendix A and a *pro forma* tariff supplement attached as Appendix B.

DISCUSSION

The Commission encourages parties in contested on-the-record proceedings to settle cases.<sup>1</sup> Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the parties’ positions, which arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached

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<sup>1</sup> See 52 Pa.Code § 5.231.

suits the public interest.<sup>2</sup> In their supporting statements, the Borough, BIE and OCA conclude, after extensive discovery and discussion, that this Settlement resolves all contested issues in this case and unanimously agree that the Settlement is in the public interest. The parties claim that acceptance of the Settlement will avoid the necessity of further administrative and possibly appellate proceedings regarding the settled issues at what would have been a substantial cost to the parties and the Borough's customers.

Each of the parties filed statements in support of the partial settlement, but not every party took a position on every issue or addressed every issue in equal detail. Generally the parties agreed that the Settlement was in the interests of the stakeholders whom they represent, and the Settlement represents a reasonable outcome of their various disputes.

#### A. Revenue Requirement

The Settlement provides for a total system (Jurisdictional and Non-Jurisdictional) net revenue increase of \$719,000 annually, based upon the *pro forma* level of operations for the twelve months ended December 31, 2017 (i.e., the end of the historic test year). This amount is approximately 81% of the Borough's original total system revenue increase request of \$880,920. The settlement agreement continues the same proportionality between inside/outside customers because the jurisdictional settlement revenue increase of \$316,816, when compared to the \$390,062 as-filed request, is approximately the same (81%) on a total system basis.

The Borough observes that it has not increased rates since October 2002.<sup>3</sup> Due to inflation during the period 2002-2018, the costs of operating the wastewater treatment plant have increased. In addition, the Borough has made significant capital improvements at the plant, including replacement of the existing belt filter press with a more efficient rotary-type press for sludge removal.<sup>4</sup> Other improvements since 2002 include: building and outfitting the laboratory;

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<sup>2</sup> *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

<sup>3</sup> *Pa. Pub. Util. Comm'n v. Borough of Indiana – Sewer Fund*, Docket No. R-00027550 (Order entered October 10, 2002).

<sup>4</sup> Borough of Indiana Statement RF-1, Direct Testimony of Roland Francis p. 2.

replacing the roof on the control building; enlarging and replacing various main line sewers to the plant; installing new channel grinders at the headworks; adding a flow-trend filtering system for the vacuum truck; purchasing a new loader, security system, dump trucks and other vehicles; and upgrading the heating and lighting systems.<sup>5</sup> None of these capital improvements have been placed into rate base previously.

Finally, the Borough observes that quality of service was not a significant issue in this proceeding. The anticipated increase in the Borough's annual operating revenues should enable it to continue to provide reasonable and adequate service to customers while meeting the economic challenges caused by inflation and by the need to fund projects to update and maintain the treatment plant. The Borough accordingly believes that the Settlement is in the best interests of the Borough, its customers, and the public in general, and therefore should be approved without modification on an expedited basis.

BIE takes the position that the level of revenue provided in the Settlement will provide the Borough with sufficient operating funds in order to provide safe and adequate service. Additionally, ratepayers are protected as the resulting increase minimizes the impact of the Borough's initial request. Mitigation of the level of the rate increase benefits ratepayers and results in "just and reasonable" rates in accordance with the Public Utility Code, regulatory standards, and governing case law.<sup>6</sup>

OCA also agrees that the settled revenue requirement is just and reasonable. OCA states that based on its analysis of the Borough of Indiana's filing, discovery responses received, and testimony by the Borough, it is the OCA's position that the revenue increase under the Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case. The increase is reasonable and yields a result that is in the public interest, particularly when accompanied by other important conditions contained in the Settlement. The increase agreed to in the Settlement provides adequate funding to allow the

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<sup>5</sup> Borough of Indiana Statement RF-1, Direct Testimony of Roland Francis p. 3.

<sup>6</sup> See 66 Pa.C.S. § 1301.

Borough to provide safe, adequate, reliable, and continuous service. As such, the OCA submits the Settlement should be approved by the Commission.

B. Allocation Between Jurisdictional and Non-Jurisdictional Customers

The Borough's original rate case filing provided for a rate increase of approximately 33% on all customers, both inside and outside of the Borough's municipal limits.<sup>7</sup> As a result, \$390,062 (or approximately 44% of the proposed \$880,920 increase) was allocated to jurisdictional as opposed to non-jurisdictional customers.<sup>8</sup>

In the Settlement, the parties agreed to continue to allocate approximately 44% of the increase to jurisdictional customers. The Borough will increase rates across-the-board by approximately 27% for all customers. Jurisdictional customers will pay approximately \$316,816 of the total increase of \$719,000, or approximately 44%, and the non-jurisdictional customers will pay the remaining \$402,841.<sup>9</sup>

The Borough explains that maintaining the present allocation of the revenue requirement between jurisdictional and non-jurisdictional customers is important to the Borough because it allows the Borough to continue charging the same rates to all of its customers, regardless of their location. Having one rate zone is administratively easier than having two rate zones. Additionally, from a customer relations perspective, the Borough believes it is important that customers outside the Borough be treated the same as customers inside the Borough. The Borough accordingly believes that the Settlement is in the best interests of the Borough, its customers, and the public in general and therefore should be approved without modification.

BIE states that maintaining the distinction between jurisdictional and non-jurisdictional customers increase is important and will assist BIE with a future base rate case.

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<sup>7</sup> Borough of Indiana – Sewer Fund, Specific Reasons for Proposed Increase in Sewer Rates, p. 2.

<sup>8</sup> *Id.*, p. 3.

<sup>9</sup> Settlement Appendix A, p. 1.



Because municipal systems serve both customers which fall under the Commission's jurisdiction and those that do not, determining the proper allocation between these groups is in the public interest as it ensures that costs are being assigned appropriately.

OCA observes that the parties agreed that the percentage of the total increase attributable to PUC jurisdictional customers is the same as originally proposed by the Borough. Under the proposed Settlement, the bill for the typical residential customer will increase from \$12.57 to \$15.95, or by approximately 27%, rather than to \$16.72 (33%) as originally proposed by the Borough. The OCA submits that the Settlement is reasonable, and when accompanied by other important conditions contained in the proposed Settlement, yields a result that is just and reasonable, in the public interest, and should be approved.

#### C. Rate Case Stay-Out

The Settlement generally prohibits the Borough from filing another rate case within two years after the effective date of the tariff supplement filed following the Commission's order in this case. This provision is in the interest of customers, in that they will experience rate stability; as a practical matter, it is unlikely that rates will increase again in less than 33 months from the effective date of the tariff filed at the conclusion of this case. This provision is also in the interest of the Borough, because it does not lock the Borough into the agreed-upon rates for an excessive period of time. The Borough accordingly believes that the Settlement is in the best interests of the Borough, its customers, and the public in general and therefore should be approved without modification.

According to BIE, this stay-out provision will provide rate continuity to ratepayers for at least two years following the effective date of the increase. At the same time, the Borough will avoid hardship if certain unforeseeable events necessitate it to propose rate relief. For these reasons, the stay-out provision is in the public interest and should be approved.

The stay-out provision was also important to OCA. The proposed stay-out provision should prevent another rate increase becoming effective before September 2021,

assuming the Borough files as soon as the stay-out expires and assuming the next rate case is fully litigated. Thus, BIE asserts this provision will provide a measure of rate stability for consumers and will prevent rate increases in quick succession.

#### D. Reporting Requirements

Finally, the Settlement requires the Borough's auditor to submit the Borough's audited financial statement to the OCA and BIE at the same time that the audited financial statement is submitted to the Department of Community and Economic Development each year, a copy of which is also provided to PENNVEST who is one of the Borough's major lenders. This requirement will be in effect until the filing of the Borough's next rate case, or until the Borough ceases to fall under the jurisdiction of the PUC.

BIE supports this term because it will provide the advocates with a more detailed account of the Borough's finances. It is important to BIE to have detailed records when evaluating a utility's needs to operate its business. By obtaining the annual audited financial statement, BIE is in a better position to analyze and assess the Borough's filing in its next base rate case.

OCA agrees. The Borough's audited financial statements will provide important information regarding the Borough's finances between rate cases.

### RECOMMENDATION

The parties note that this settlement is a "black box" settlement. The Commission has approved such settlements which do not include each and every adjustment made to produce the agreed-upon operating revenue amount:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered

January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding . . . .<sup>[10]</sup>

All of the parties to this proceeding agree that a black box settlement was the best mechanism for efficiently resolving this dispute. All of the parties represent that the terms of the settlement and the overall result are within the range of likely outcomes if the matter had been fully litigated.

Although black box settlements may streamline the negotiation process in a rate case, it is the Commission's duty to ensure that the public interest is protected. Therefore, there must be sufficient information provided in a settlement in order for the Commission to determine that a revenue requirement calculation and accompanying tariffs are in the public interest and properly balance the interests of ratepayers and utility stockholders.<sup>11</sup>

In reviewing the settlement terms and the accompanying statements in support, the Settlement provides sufficient information to support the conclusion that the revenue requirement and other settlement terms are in the public interest. The reduction in proposed revenue requirement increases, the revenue allocations, the reduction in the proposed residential customer charge, along with all of the other terms and conditions of the Settlement together represents a fair and reasonable settlement.

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<sup>10</sup> *Pub. Util. Comm'n v. Peoples TWP, LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013), slip op. at 27. See also *Pub. Util. Comm'n v. UGI Penn Natural Gas, Inc.*, Docket R-2016-2580030 (Order entered August 31, 2017)(approving a black box settlement).

<sup>11</sup> See *Pa. Pub. Util. Comm'n v. Pennsylvania Power Co.*, 55 Pa. PUC 552, 579 (1982); *Pa. Pub. Util. Comm'n v. National Fuel Gas Dist. Corp.*, 73 Pa. PUC 552, 603-605 (1990).

Also of note, the Settlement finds support from a range of parties with diverse interests. Each party represents a variety of interests. The Borough advocates on behalf of its citizens and ratepayers. The Office of Consumer Advocate is tasked with advocacy on behalf of consumers in matters before the Commission.<sup>12</sup> The Bureau of Investigation and Enforcement is tasked with balancing these various interests and concerns on behalf of the general public interest. Each of these public advocates maintains that the interests of their respective constituencies have been adequately protected and they further represent that the terms of the Settlement are in the public interest.

Resolution of this proceeding by negotiated settlement removes the uncertainties of litigation. In addition, all parties obviously benefit by the reduction in rate case expense and the conservation of resources made possible by adoption of the proposed Settlement in lieu of litigation. The acceptance of the Settlement will negate the need for the filing of additional testimony by all parties, participation at in-person hearings, the filing of main and reply briefs, exceptions and reply exceptions, and potential appeals. These savings in rate case expense serve the interests of the Borough and its ratepayers, as well as the parties themselves.

For all of the foregoing reasons, I find the Settlement embodied in the Joint Petition for Approval of Settlement is both just and reasonable and its approval is in the public interest. I recommend the Commission approve the Settlement without modification.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 501 *et seq.*

2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. CS*

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<sup>12</sup> Section 904-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 309-4.

*Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

3. The Joint Petition for Approval of Settlement of Rate Proceeding is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa.Cmwlt. 2006).

### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Settlement of Rate Proceeding at Docket No. R-2018-3003141, filed on December 7, 2018, by the Borough of Indiana, the Commission's Bureau of Investigation and Enforcement, and the Office of Consumer Advocate is approved without modification.

2. That the Borough of Indiana shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Approval of Settlement of Rate Proceeding and changes to rates, rules and regulations as set forth in the *pro forma* tariff attached to the Joint Petition as Appendix B, to become effective upon at least one (1) day's notice after entry of the Commission's Order approving the Joint Petition, so as to produce an annual increase in base rate operating revenues of not more than \$719,000.

3. That the investigation at Docket No. R-2018-3003141 is terminated upon the filing of the approved tariffs.

