ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY REGULATORY COMMISSION'S INVESTIGATION **OF** MATTERS **CAUSE NO. 43115** RELATED TO THE CONTINUED **PRACTICES BUSINESS OF RIVER'S APPROVED:** AUG 2 5 2010 EDGE UTILITY, INC., IN THE STATE OF INDIANA PURSUANT TO INDIANA CODE

BY THE COMMISSION:

Larry S. Landis, Commissioner David E. Veleta, Administrative Law Judge

8-1-2-1(A), 8-1-2-58, 8-1-2-69, 8-1-2-89, et seq.

The Indiana Utility Regulatory Commission ("Commission") conducted an investigation and issued an Interim Order on May 21, 2008, in which it found that River's Edge Utility, Inc. ("REUI") had "severe deficiencies it has failed to remedy." Order at 31. The Commission advised REUI that it could show that it had remedied the deficiencies at issue, but as a contingency in the absence of such a showing, the Commission set a hearing to determine the necessity for appointment of a receiver to run REUI. Shortly after the May 21, 2008 Interim Order, REUI filed its Notice of Relinquishment of Certificate of Territorial Authority and No Opposition to Receivership ("Notice"). REUI and the Office of Utility Consumer Counselor ("OUCC") then appeared at a July 11, 2008 hearing to discuss pursuing a buyer for REUI. After several continuances, the Commission held a hearing on April 14, 2009, at which REUI and the OUCC again appeared and counsel for REUI advised that Wastewater One, LLC ("Wastewater One") had tentatively agreed to purchase REUI's Assets.

On June 9, 2009, Wastewater One filed a Petition to Intervene. On June 19, 2009, Wastewater One filed a Petition Seeking Transfer of Assets, Including Certificate of Territorial Authority from River's Edge Utility, Inc., to Wastewater One, LLC ("Transfer Petition") and the Prefiled Direct Testimony of Stephen R. Tolliver, Sr. and Bonnie J. Mann. In its Transfer Petition and prefiled direct evidence, Wastewater One sought approval to purchase REUI's sewer and water assets (including its Certificate of Territorial Authority ("CTA")) and authority to impose a new schedule of rates for service. On August 10, 2009, the OUCC filed a Motion to Modify the Procedural Schedule and Notice of Request for a Field Hearing. The Commission granted the OUCC's request and held a field hearing on September 1, 2009, at 6:00 p.m. in the Charlestown Community Center, 1005 Main Street, Charlestown, Indiana.

On September 14, 2009, a second Intervenor, the Residential Customer Group ("RCG"), filed a Petition to Intervene and Motion to Modify Procedural Schedule. Wastewater One filed a Response in Opposition to Petition to Intervene and Motion to Modify Procedural Schedule; on September 15, 2009, the Commission granted the RCG's request to intervene and modify the procedural schedule. On September 24, 2009, the OUCC prefiled the Direct Testimony and

Exhibits of Scott A. Bell and Margaret A. Stull. On October 7, 2009, the RCG prefiled the testimony of R. April Paul, M.D. and Richard A. Wheeler. On October 30, 2009, Wastewater One prefiled the Rebuttal Testimony and Exhibits of Stephen R. Tolliver, Sr. and Bonnie J. Mann. On December 2, 2009, the RCG prefiled the Supplemental/Rebuttal Testimony and Exhibits of R. April Paul, M.D.

On December 3, 2009, Wastewater One and the OUCC filed their Joint Stipulation and Settlement Agreement Addressing Less Than All the Issues ("Settlement Agreement"). In the Settlement Agreement, Wastewater One and the OUCC agreed to a monthly user rate that would be charged by Wastewater One if Wastewater One were approved to purchase REUI's sewer and water assets. Simultaneous with the filing of the Settlement Agreement, the OUCC prefiled the Settlement Testimony of Margaret A. Stull. After the evidentiary hearing was continued from December 10, 2009, to March 3, 2010, the RCG's attorney, J. David Agnew, filed a Motion to Withdraw. In his Motion, Mr. Agnew stated that the RCG had decided to end its competing bid to acquire REUI.

Pursuant to notice as required by law, a final evidentiary hearing was held in this matter on March 3, 2010, at 9:30 a.m. in Room 224, National City Center, 101 West Washington Street, Indianapolis, Indiana. At the March 3, 2010 hearing, counsel for REUI and the OUCC appeared, along with their respective witnesses. Wastewater One and the OUCC introduced their evidence into the record, including the Settlement Agreement. The RCG did not appear at the hearing or offer its evidence into the record. On May 12, 2010, Wastewater One filed its Motion Requesting Acceptance of Late-Filed Exhibit No. 12. On June 10, 2010, the Commission issued a docket entry requesting that Wastewater One file a verified copy of Intervenor's Exhibit No. 12. On June 25, 2010, Wastewater One filed a response to the Commission's June 10, 2010 docket entry, which included a verified copy of Intervenor's Exhibit No. 12. On July 27, 2010, the Presiding Administrative Law Judge granted Intervenor's Motion to late file Exhibit No. 12.

Based upon the applicable law and the evidence herein, and being duly advised, the Commission now finds that:

Notice and Jurisdiction. Due, legal, and timely notice of the public hearing 1. conducted by the Commission in this Cause was given as required by law. REUI is a "public utility" as that term is defined under Indiana Code § 8-1-2-1(a). REUI is a for-profit corporation which owns and operates both water and wastewater utilities serving residential and campground customers within the River's Edge subdivision in Clark County, Indiana. REUI is located several miles east of Charlestown, Indiana on the Ohio River. REUI provides water and sewer service to eleven (11) residential customers and fifty-two (52) campground customers. As set forth in the Commission's Order in Cause No. 42234 issued on February 5, 2003, REUI maintains two water wells as a source of supply, two pressure tanks for water storage, and distribution mains with valves. The wastewater utility consists of collection mains, two lift stations and a mound-cluster type treatment system with two dosing stations. The utilities are owned and operated by David and Carolyn Stone, also the developers of the River's Edge Development. Wastewater One is a "public utility" as defined within the Public Service Commission Act, as amended, and the Commission has jurisdiction over the parties and the subject matter of this Cause to the extent provided by the laws of the State of Indiana.

Indiana Code § 8-1-2-58 provides the Commission with broad authority to investigate public utilities, and Indiana Code § 8-1-2-59 provides the Commission with authority to hold a formal hearing regarding an investigation. After such an investigation, the Commission may issue such an order to "fix just and reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed, and followed in the future[.]" Indiana Code § 8-1-2-69. This affords the Commission the power to correct what it determines to be an unsafe condition or inadequate provision of service. *Illinois-Indiana Cable Television Ass'n v. Pub. Serv. Comm'n*, 427 N.E.2d 1100 (Ind. App. 1981). As to the granting of a CTA to a sewage disposal company, the Commission continues to have jurisdiction regarding whether or not the company is providing the requisite reasonably adequate sewage disposal services. Indiana Code § 8-1-2-89(h). Accordingly, this Commission has jurisdiction over the parties and the subject matter of this proceeding.

- 2. <u>Relief Requested.</u> Wastewater One has intervened and requested that the Commission: (i) approve Wastewater One's proposed purchase of all of REUI's sewer and water assets, including its CTA (collectively, "REUI Assets"); and (ii) authorize Wastewater One to impose a new schedule of rates for service.
- 3. <u>Wastewater One's Prefiled Direct Testimony and Exhibits</u>. While this case began as an investigation into REUI's business practices, Wastewater One subsequently filed the Transfer Petition and prefiled evidence seeking approval to purchase the REUI Assets and impose new rates. Wastewater One's prefiled direct evidence in this case included testimony and exhibits from Witnesses Tolliver and Mann.
- A. Stephen R. Tolliver, Sr. Mr. Steve Tolliver presented testimony and exhibits generally describing the terms of Wastewater One's purchase. Mr. Tolliver attached to his prefiled testimony as Intervenor's Exhibit 4 a copy of the agreement between REUI and Wastewater One. Pursuant to Intervenor's Exhibit 4, Wastewater One "offered" to pay \$11,190 for the "assets". The "assets" included all "pipes, pumps, equipment, inventory, treatment plants, two six-inch water wells, pumping stations, easements, land, customers, records, software, past due customer accounts, drawings, and other items necessary for the operation of the water and wastewater utilities." Wastewater One's "offer" was contingent upon receiving approval from the Commission to impose rates and fees acceptable to Wastewater One prior to closing. Witness Tolliver testified at the hearing that the papers identified as Exhibit 4 constituted the complete written agreement between Wastewater One and the current owners of REUI.

In support of Wastewater One's proposed purchase, Mr.Tolliver testified that Wastewater One currently owns, operates, and provides financial support to three other utilities in southern Indiana. These utilities include two wastewater treatment plants located at the Indiana Army Ammunition Plant and a small residential wastewater treatment plant located in Floyd County, Indiana. Mr. Tolliver explained that Wastewater One intended to utilize the same technical, managerial, and financial resources used at Wastewater One's three other utilities to own and operate the REUI Assets.

As to the proposed rates to be charged by Wastewater One, Witness Tolliver stated that he had provided a copy of the estimated expenses to Wastewater One's financial advisor, Mrs.

Bonnie Mann. Mr. Tolliver noted that many of the expenses were "service" or "staff" related expenses that were necessary in order for the utility to achieve and maintain compliance with the requirements of the Indiana State Department of Health ("ISDH"), Indiana Department of Environmental Management ("IDEM"), and the Commission. An example of such expense, according to Witness Tolliver, is the need for and requirement of a suitably qualified part-time water and wastewater operator. In considering the various expenses and adjustments, Mr. Tolliver testified that Wastewater One would need an increase to REUI's current rates and charges.

Mr. Tolliver explained in his testimony how Wastewater One intended to address REUI's outstanding wastewater treatment issues with the ISDH. Witness Tolliver testified that Wastewater One could achieve compliance with the ISDH by supplying the ISDH with "asbuilt" drawings of the existing sewage facilities and providing documentation certifying the amount of flow received from the existing customer base. In the event more capacity is required, Witness Tolliver explained at the hearing that the current owners of REUI would be transferring in excess of five (5) acres of ground to Wastewater One. Tr. at G-30. Approximately three (3) acres of the five (5) acre parcel were currently unused and additional mounds could be added on this land to increase capacity. Tr. at G-31. Mr. Tolliver testified that to his knowledge this property does percolate well and could be used for additional mounds. Tr. at G-32. Mr. Tolliver noted that there are other available wastewater treatment options other than adding mounds that are cost effective solutions that Wastewater One has investigated to increase capacity in the future. Id. Mr. Tolliver testified that it is Wastewater One's intention to have the mound system certified by an engineer. Tr. at G-36. Mr. Tolliver noted that the ISDH has requested that Wastewater One certify whether the mound system is rated at the proper capacity. Tr. at G-38. Mr. Tolliver testified that Wastewater One is planning to provide this information to the ISDH if and when Wastewater One becomes the owner of the utility. Tr. at G-39.

Finally, Mr. Tolliver described a series of improvements that need to be made to the REUI Assets. Specifically, Mr. Tolliver explained that Wastewater One would need to replace or install water meters for the well. One of the wells currently has no control building or housing; such a facility needs to be installed. The roof for one of the existing well houses also needs replacement. In addition to the meter and well house improvements, Wastewater One needs to install an alarm system or telemetry that would be used to notify Wastewater One if a failure occurred. Mr. Tolliver indicated that installation of the telemetry would allow Wastewater One to better serve the REUI customers and would therefore be in the customers' best interest. Mr. Tolliver estimated that Wastewater One would incur at least \$2,500 in engineering fees to address the concerns previously raised by the ISDH. In total, the cost of improvements, including the anticipated ISDH engineering fees, was \$24,500.

B. Bonnie J. Mann. Ms. Bonnie Mann offered testimony and exhibits analyzing the financial requirements of the utility, assuming Wastewater One was authorized to purchase the REUI Assets. Based on her analysis, Ms. Mann concluded that Wastewater One could not operate the REUI Assets without an increase to REUI's existing rates.

In support of her conclusion, Ms. Mann presented an accounting report attached to her testimony as Intervenor's Exhibit 8. In her accounting report, Ms. Mann proposed that the capital structure consist of 100% common equity. See Exhibit A to Intervenor's Exhibit 8. Ms.

Mann calculated the cost of common equity at 12% based on, among other things, the extremely small size of the utility, the risk associated with operating such a small utility, and the existing utility's relatively poor financial history. Exhibit B to Ms. Mann's accounting report calculates the authorized return. In this schedule, Ms. Mann proposed to use the net utility plant in service from the existing utility (i.e. \$68,681), an appropriate amount for working capital (i.e. \$9,604), and she then multiplied the original cost rate base of \$78,285 by the proposed 12% return. Based on this calculation, Ms. Mann proposed that a return of \$9,394 be included in Wastewater One's revenue requirement. Ms. Mann next prepared the operating income statement at *pro forma* present and proposed rates. In this schedule, Ms. Mann made a proposed adjustment to test year revenues and expenses for such items as the number of customers, the estimated purchased power cost, the expense of a certified water and wastewater operator, rate case expense, depreciation expense, utility receipts and property taxes, and income taxes.

After including the proposed return and making her proposed adjustments, Ms. Mann proposed new rates for customers of \$157.00 per month for non-metered customers and \$15.70 for each one thousand gallons per month for metered water customers, and \$15.70 for each one thousand gallons per month for metered sewer customers. Ms. Mann testified that she believed these rates were appropriate under these circumstances and were consistent with the rates imposed by other similarly-sized sewer and water utilities.

- 4. <u>OUCC's Prefiled Direct Testimony and Exhibits</u>. The OUCC prefiled the testimony and exhibits of witnesses Scott A. Bell and Margaret A. Stull.
- A. Scott A. Bell. Mr. Bell outlined the legal requirements under Indiana Code § 8-1-2-89(a) for the transfer of the CTA from REUI to Wastewater One. Mr. Bell noted that Wastewater One currently possesses a CTA from the Commission, and it was his opinion that Wastewater One possessed the lawful power and authority to acquire REUI's CTA. Mr. Bell further stated that he believed Wastewater One had the financial ability to provide sewage disposal service to REUI's service area. As to whether the public convenience and necessity required Wastewater One to render sewage disposal service to REUI's service area, Mr. Bell did not make a recommendation in his prefiled direct testimony due to the fact that another party (i.e. the RCG) had intervened and was participating in the case at that time. Mr. Bell recommended that if the Commission decides that the public convenience and necessity require Wastewater One to provide service to REUI's service area, the Commission should approve Wastewater One's request for transfer of the CTA.
- B. Margaret A. Stull. Ms. Stull testified regarding Wastewater One's financial ability to provide service to REUI's CTA area and Wastewater One's proposed rates and charges if Wastewater One were approved to purchase the REUI Assets. Ms. Stull specifically stated that based on Wastewater One's access to capital and demonstrated ability to financially support three other utilities, she believed that Wastewater One had the financial ability to install, commence, and maintain service to REUI's CTA Area.

Although she agreed with Mr. Bell that Wastewater One had satisfied the requirements of Indiana Code § 8-1-2-89 to transfer the CTA (from REUI to Wastewater One), Witness Stull proposed a number of adjustments to Ms. Mann's proposed rates. Initially, Witness Stull proposed to reduce the amount of Wastewater One's original cost rate base from \$78,285 to

\$60,190. Based on findings in REUI's prior rate case that REUI's current plant was contributed by REUI's customers, Ms. Stull testified that Wastewater One should not include the original cost rate base for REUI as Wastewater One's rate base in this case. Rather, Witness Stull proposed to include the amount of the purchase price, the transaction costs associated with the purchase price, an amount for rate case cost and working capital to arrive at the rate base figure of \$60,190. Witness Stull then reduced Wastewater One's proposed weighted cost of capital from 12% to 10%. As a result of the rate base and cost of capital adjustments, Ms. Stull proposed that Wastewater One be authorized to earn a return of \$6,019 as compared to Wastewater One's proposal of \$9,394.

Ms. Stull also disagreed with Witness Mann's proposed revenue adjustment to normalize test year water and sewer revenues. Ms. Stull stated that based on her review of test year billings, certain affiliated customers of REUI had not been billed. After including the additional affiliated customers, Witness Stull presented *pro forma* unmetered revenues of \$31,902 or an increase to test year unmetered water and sewer revenues of \$9,562. Additionally, Witness Stull proposed *pro forma* metered water and sewer revenues of \$5,950 which results in an increase to test year revenues of \$473. Witness Stull recommended eliminating non-recurring revenues of \$2,335 from *pro forma* revenues. Witness Stull disputed Ms. Mann's adjustments for purchased power, certain contractual services such as engineering, mowing services, and equipment charges, and insurance expense, bad debt expense, phone expense, and certain miscellaneous expenses. Witness Stull also proposed differing expenses for the IURC fee, depreciation expense, property taxes, utility receipts taxes, and state and federal income tax. As a result of her adjustments, Witness Stull recommended that Wastewater One be authorized to increase its revenue requirement by \$16,418 or 43.25% if Wastewater One were approved to purchase the REUI Assets.

- 5. <u>Wastewater One's Rebuttal Evidence</u>. Wastewater One prefiled the rebuttal testimony of Stephen R. Tolliver, Sr. and Bonnie J. Mann as Intervenor's Exhibits 9 through 11. In its rebuttal testimony and exhibits, Wastewater One primarily addressed the prefiled direct testimony and exhibits of the RCG. Because RCG did not offer its testimony and exhibits into the record, the Commission will not discuss Wastewater One's rebuttal testimony in any further detail.
- 6. Settlement Agreement and Settlement Testimony of Margaret A. Stull. On December 2, 2009, the OUCC and Wastewater One executed the Settlement Agreement which was later filed by the parties as Joint Exhibit 1. On December 3, 2009, the OUCC filed the settlement testimony of Margaret A. Stull. The purpose of Ms. Stull's settlement testimony was to provide support for the Settlement Agreement. In her settlement testimony, Witness Stull explained that the Settlement Agreement resolved all differences between the OUCC and Wastewater One as to the amount of rates Wastewater One should charge if it were approved to acquire the REUI Assets. Ms. Stull stated that the parties had agreed to a 76.83% increase to REUI's existing rates, which would yield a flat monthly rate of \$79.68 for sewer and water service or \$7.97 per one thousand gallons of consumption for sewer and water service. No change to rate design was being proposed by either party. To arrive at the 76.83% increase, the parties reached a compromise on the following items.

- A. Rate Base, Cost of Capital, and Net Operating Income. Ms. Stull explained that Wastewater One had agreed to the OUCC's proposed original cost rate base of \$60,190. As to the appropriate cost of capital, Ms. Stull explained that Wastewater One's parent company, the Hughes Group, is the source of wastewater investment funds and therefore the Hughes Group's capital structure should be used in calculating the appropriate cost of capital. The parties agreed that the parent company's average weighted cost of capital was 8.86%. With this cost of capital and the agreed-upon rate base, the authorized net operating income on the rate base is \$5,333.
- **B.** Operating and Other Expenses. Witness Stull explained that the parties had resolved their differences regarding three outstanding contract service expenses. The OUCC agreed that Wastewater One's proposed annual equipment charge of \$6,600 and annual mowing expense of \$9,800 should be allowed. Wastewater One agreed that its proposed engineering costs would be greater as capital and not included in operating expenses for purposes of calculating rates.

As part of the Settlement Agreement, the parties agreed on the rate treatment for rate case and acquisition costs, as well as the amount of certain miscellaneous expenses. For rate case and acquisition costs, the parties agreed that Wastewater One should include these costs in rate base. Wastewater One should, in turn, depreciate these costs and earn a return on the undepreciated balance. Wastewater One agreed to the OUCC's proposed amounts for phone, utilities, transportation, bad debt, and IURC fee expenses. Wastewater One also agreed to the OUCC's proposed annual depreciation expense of \$1,214, which is 2.2% of Wastewater One's *pro forma* utility plant of \$55,190. The OUCC agreed to include \$5,000 in rates for liability insurance.

C. Taxes and Gross Conversion Factor. In the Settlement Agreement, Wastewater One agreed to the OUCC's proposed property tax expense of \$1,197 and the OUCC's proposed utility receipt tax of \$517. In her settlement testimony, Witness Stull recognized that Wastewater One should be authorized to include state and federal income taxes in rates. Wastewater One and the OUCC agreed to include a state tax benefit of \$1,678 and a federal income tax benefit of \$6,319 in *pro forma* present rate net income. Ms. Stull testified that the income tax expense for the proposed rate increase should be included in the gross revenue conversion factor. For the gross revenue conversion factor, Wastewater One initially proposed a factor of 169.217% and the OUCC proposed a factor of 101.530%. Wastewater One and the OUCC agreed in the Settlement Agreement to a factor of 168.347%. This factor includes state income taxes at 8.5% and federal income taxes at 34%. This factor also includes IURC fees at the current rate of .1073599% but does not include any bad debt expense.

As a result of the agreed-upon adjustments, Ms. Stull explained that the Settlement Agreement provided for a 76.83% increase to REUI's current rates. In terms of revenues, the Settlement Agreement provides for a total revenue increase of \$29,163 from present pro-forma operating revenues of \$37,960 to anticipated pro-forma operating revenues of \$67,123. Pursuant to the Settlement Agreement, Wastewater One's net operating income would be \$5,333.

7. Prospective Improvements and Phase II Rates. At the hearing and in his prefiled testimony, Witness Tolliver testified about the need for certain capital improvements that would need to be made within two (2) years if Wastewater One were approved to acquire the REUI Assets ("Phase II Improvements"). According to Mr. Tolliver, the cost of the Phase II

improvements will be \$24,500. In response to a request from the Commission at the hearing (Tr., p. 44, lines 19-24), Wastewater One late-filed an exhibit (i.e. Intervenor's Exhibit 12) which showed that Wastewater One's proposed rate would increase from \$79.68 to \$85.11 per month for both sewer and water service ("Phase II Rate") after inclusion of the Phase II Improvements in rate base.

- 8. <u>Commission Discussion and Findings</u>. In this Cause, Wastewater One intervened and requested that the Commission: (i) approve Wastewater One's proposed purchase of all REUI's sewer and water assets, including its CTA; and (ii) authorize Wastewater One to impose a new schedule of rates for service. In light of the evidence presented in this case and the partial settlement of the parties, the Commission now finds as follows:
- Transfer of REUI Assets to Wastewater One. The record reflects that Wastewater One has previously been recognized by this Commission as having the lawful power and authority to own and operate sewage disposal and treatment assets. Similarly, the record shows that Wastewater One intends to use the same financial, technical, and managerial resources used in operating three other utilities to own and operate the REUI Assets. Based upon the evidence of record and the undisputed need for service to REUI's existing customers, the Commission finds that the public convenience and necessity would be served by Wastewater One purchasing and thereafter operating the REUI Assets. Accordingly, the Commission hereby approves the transfer of the REUI Assets to Wastewater One. As a condition of our approval of the transfer of the REUI Assets to Wastewater One, we find that Wastewater One shall physically protect all acquired land associated with potential mound expansion areas until adequate permitting requirements are received from the Indiana State Department of Health. Additionally, Wastewater One shall provide to the Commission quarterly reports of progress toward successful permitting of the mound system with the Indiana State Department of Health including issue of the final permit and any required expansion of the absorption field(s).
- **B.** <u>Initial Rates for Service</u>. Recognizing that we have approved the transfer of the REUI Assets to Wastewater One, we now turn our attention to review of the Settlement Agreement presented by Wastewater One and the OUCC. The Settlement Agreement proposes to establish a prospective rate for sewer and water service assuming Wastewater One is the owner and operator. 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 Indiana Code § 8-1-2, and that such agreement serves the public interest.

As we review the Settlement Agreement, we find that the parties have provided: the parties' respective cases in chief, Wastewater One's rebuttal testimony, the Settlement Agreement, Settlement testimony; as well as evidence as to the original positions taken by the parties and the reasonableness of the compromise positions reached in negotiations. Based on the record in this Cause, the Commission finds that the Settlement Agreement is reasonable, in the public interest, and should be approved. Consistent with the Settlement Agreement and the schedules attached to Public's Exhibit No. 1-Settlement, Wastewater One is authorized to increase rates by 76.83% or \$29,163. The tables below show the calculation. Based on Public's Exhibit No. 1-Settlement Schedule 2 Page 1, Wastewater One's adjusted operating results under its present rates are as follows:

	Present Rate NOI
	After Pro Forma
	Adjustments
Total Operating Revenues	\$37,960
Operating and Maintenance Expenses	55,019
Depreciation and Amortization Expenses	1,214
Taxes Other Than Income	1,714
Income Taxes	(7,997)
Total Operating Expenses	49,950
Net Operating Income	(\$11,990)

Based upon Public's Exhibit No. 1-Settlement Schedule 1 Page 1, Wastewater One's revenue increase and percentage rate increase are as follows:

Original Cost Rate Base	\$60,190
Times: Weighted Cost of Capital	8.86%
Net Operating Income Required	5,333
Less: Adjusted Net Operating Income at Present Rates	(11,990)
Additional NOI Required	17,323
Gross Revenue Conversion Factor	168.3469%
Recommended Revenue Increase	\$29,163
Percentage Increase	76.83%

Based upon Public's Exhibit No. 1-Settlement Schedule 6 Page 1, the 76.83% rate increase results in a current flat monthly rate of \$79.68 for sewer and water service and a \$7.97 per thousand gallons of consumption for sewer and water service. The parties agree that the Settlement Agreement should not 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 this Settlement Agreement, we find that our approval herein shall be construed in a manner consistent with our Order in *Richmond Power & Light*, Cause No. 40434 (Indiana Utility Regulatory Commission, March 19, 1997).

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

- 1. The December 2, 2009, Settlement Agreement between Wastewater One and the OUCC, an executed copy of which is attached hereto as Exhibit A, shall be and hereby is approved.
- 2. Wastewater One is hereby authorized to purchase the sewer and water assets of River's Edge Utility, Inc.
- 3. Wastewater One is hereby authorized to increase its rates and charges as provided in this Order.
- 4. Wastewater One shall file with the Commission's Water/Sewer Division a new tariff setting forth the rates and charges consistent with this Order. New rates and charges shall be effective on and after the date of approval.
- 5. Wastewater One shall physically protect all acquired land associated with potential mound expansion areas until adequate permitting is issued by the Indiana State Department of Health.
- 6. Wastewater One shall provide to the Commission quarterly reports of progress toward successful permitting of the mound system with the Indiana State Department of Health including issue of the final permit and any required expansion of the absorption field(s).
 - 7. This Order shall be effective on and after the date of its approval.

HARDY, ATTERHOLT, MAYS AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: AUG 2 5 2010

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

Brenda A. Howe,

Secretary to the Commission

FILED
December 03, 2009
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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JOINT STIPULATION AND SETTLEMENT AGREEMENT ADDRESSING LESS THAN ALL ISSUES

This Joint Stipulation and Settlement Agreement Addressing Less Than All Issues ("Settlement Agreement") is entered into this day of December, 2009, by and between Wastewater One, LLC ("Wastewater One") and the Office of the Utility Consumer Counselor ("OUCC"), who stipulate and agree for purposes of settling certain, but not all, matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of specific issues in this Cause, subject to their incorporation in a final Indiana Utility Regulatory Commission ("Commission") Order without modification or the addition of further conditions that may be unacceptable to either party. If the Commission does not approve the Settlement Agreement in its entirety and incorporate the conclusions herein in its final Order, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties.

Terms and Conditions of Settlement Agreement

1. Requested Relief. This Cause arose out of an investigation into the practices of River's Edge Utilities, Inc. ("REUI"). Since July, 2008, the Commission and the parties in this Cause have sought a qualified third party who would purchase and thereafter operate REUI's sewer and water system. On June 9, 2009, Wastewater One filed its Petition to Intervene in this case, and on June 19, 2009, filed a Petition for authority to purchase REUI's assets provided

REUI's existing rates and charges were increased to a level acceptable to Wastewater One. On September 14, 2009, a second intervenor, the Residential Customer Group ("RCG"), intervened in this case and requested that Wastewater One's request for authority to purchase the utility (and raise REUI's existing rates) be denied.

- 2. Partial Settlement. Through analysis, discussion, and negotiation, as aided by their respective technical staff and experts, Wastewater One and the OUCC have agreed to a partial settlement that only resolves the rates that would be charged by Wastewater One if Wastewater One were approved to purchase and thereafter operate REUI's sewer and water system. The remaining issue, namely whether Wastewater One should be authorized to purchase the assets, is not being settled in this agreement.
- 3. Agreed Upon Rates. The parties agree that should Wastewater One be approved by the Commission to purchase and thereafter operate REUI's assets, Wastewater One shall be authorized to impose rates and charges that are consistent with the Schedule A attached hereto and incorporated herein by reference.
- 4. Admissibility and Sufficiency of Evidence. The parties agree to stipulate to the admission of evidence of Wastewater One and the OUCC into the record of this proceeding without objection, and agreed that such evidence constitutes substantial evidence sufficient to support this Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed. This provision shall only apply to Settlement Testimony and Exhibits of the parties and the evidence prefiled by the parties on or before October 30, 2009.
- 5. Non-Precedential Effect of Settlement. The Settlement is a result of compromise derived from unusual and specific facts and representations particular to this Cause. The Parties stipulate that this Settlement should not be construed nor be

cited as precedent or deemed an admission by any party in any proceeding except as necessary to enforce its terms before the Commission or any court of competent jurisdiction on these particular issues. This Settlement is solely the result of compromise in the settlement process and, unless otherwise provided herein, is without prejudice to and shall not constitute a waiver of any position that the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceeding and shall not be admissible in any subsequent proceeding without regard to whether it has been approved by the Commission. The Parties agree that, other than to enforce the terms of this Settlement, no Party may offer this Settlement or any terms of this Settlement or testimony in support of this Settlement against another party to this proceeding in any subsequent proceeding; and the Parties agree that any such effort is objectionable and constitutes a satisfactory basis for sustaining an objection to the admittance of the evidence or motion to strike.

- 6. Authority to Execute. The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients who will hereafter be bound thereby.
- 7. Approval of Settlement Agreement in its Entirety. As a condition of this settlement, the parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties. The parties further agree that in the event the Commission does not issue a Final Order in the form that reflects the Agreement described herein, the matter should proceed to be heard by the Commission as if no settlement had been reached unless otherwise agreed to by the parties in a writing that

is filed with the Commission.

8. <u>No Other Agreements</u>. There are no agreements in existence between the parties relating to the matters

WASTEWATER ONE, LLC

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River's Edge Utilities, Inc. Cause No. 43115 Summary of Settlement

Rate Increase Proposed by Settlement

							Proposed		Per
							Pet	OUCC	Settlement
Rate Increase Proposed by the OUCC (09/24/09)		\$	16,418	43.25%	\$	64.55	248.297%	43.25%	76.83%
Weighted Average Cost of Ca	pital		(686)				12.00%	10.00%	8.86%
Operating Expenses									
Contract Services			7,610						
Equipment	2,310						6,600	4,290	6,600
Mowing	5,300						9,800	4,500	9,800
Other Operating Expenses			2,225						
Insurance	2225						5,548	2,775	5,000
Additional IURC Fee			13				. 84	18	31
Taxes and Fees			3,581						
Utility Receipts Tax	178						973	229	407
State Income Taxes	798						1,629	-	798
Federal Income Taxes	2,605						5,093	-	2,605

29,161

76.83% \$

79.68