

STATE OF INDIANA

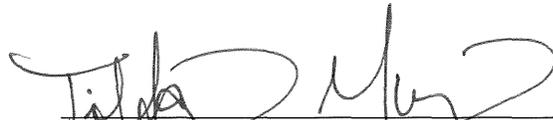
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF TOWN OF)
OGDEN DUNES WATERWORKS FOR A NEW) CAUSE NO. 44384-U
SCHEDULE OF RATES AND CHARGES.)

SUBMISSION OF SETTLEMENT AGREEMENT

The OUCC, by counsel, hereby submits the Stipulation and Settlement Agreement entered into among all parties to this Cause on February 6, 2014. The Stipulation and Settlement Agreement reflects Ogden Dunes Waterworks' agreement with each recommendation proposed by the OUCC in its report, including its recommendation of a 17.5% rate increase.

Respectfully submitted,

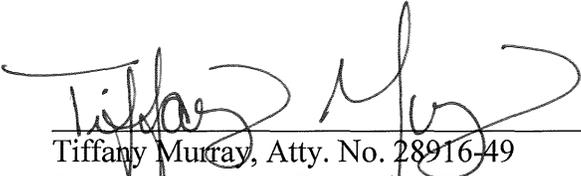


Tiffany Murray, Atty. No. 28916-49
Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Submission of Settlement Agreement* has been served upon the following counsel of record in the captioned proceeding by electronic service on February 6, 2014.

Greg Casimer
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Ogden Dunes, IN 46368
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Tiffany Murray, Atty. No. 28916-49
Deputy Consumer Counselor

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
OGDEN DUNES WATERWORKS FOR A NEW) **CAUSE NO. 44384-U**
SCHEDULE OF RATES AND CHARGES)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On August 21, 2013, Ogden Dunes Municipal Water Utility (Ogden Dunes) filed its application for an increase in its monthly recurring rates and charges, as well as for changes to its non-recurring charges, pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1.

Ogden Dunes' application requested authority to increase its monthly recurring rates and charges on an across-the-board basis by 20.29% to generate \$55,526 in revenue.

The OUCC recommended in its case-in-chief that the Commission only authorize Ogden Dunes to increase its rates and charges by 17.5% in a single phase in order to generate \$47,771 of additional operating revenue. The OUCC also recommended in its case-in-chief that the Commission require Ogden Dunes to file an annual report showing, at minimum, the amount(s) collected and expended each year for each of the three E&R projects. This E&R report should identify the number and type of hydrants replaced and the associated cost of replacement per year. The report should also indicate the completion dates and total cost for both the natural gas pump replacement and main extension projects. The cost of all three of these projects should be recorded in Ogden Dunes' books as utility plant in service (UPIS). The OUCC recommended that this

additional E&R report should be due at the same time as Ogden Dunes' annual IURC report.

Following negotiations, Ogden Dunes agreed to each of the adjustments and additional requirements recommended by the OUCC. Ogden Dunes and the OUCC (collectively the "Parties") reached an agreement with respect to all the issues before the Commission, including without limitation as follows:

1. Stipulated Rates and Revenues. Ogden Dunes is a public utility providing water utility service to fewer than 5,000 retail customers and does not serve another utility. Also, Ogden Dunes is a municipal utility and, accordingly, the provisions of 170 IAC 14-1-2(c) are not applicable to Ogden Dunes' application. The Parties agree that Ogden Dunes' application satisfies all of the requirements of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. The Parties stipulate and agree that Ogden Dunes' current rates and charges are inadequate and that Ogden Dunes' rates and charges should be increased immediately in a single phase upon the issuance of a Commission Order on an across-the-board basis by 17.5% so as to produce \$47,771 in additional annual operating revenue as shown in the schedules attached to the OUCC's report, included with this agreement as Joint Settlement Exhibit 1.

2. Test Year. The period used by the Parties for determining Ogden Dunes revenues and expenses incurred in providing water utility service to its customers was the twelve months ended December 31, 2012. With adjustments for changes that are fixed, known and measurable, this test year is sufficiently representative of Ogden Dunes normal operations to provide reliable information for ratemaking purposes.

3. Additional Covenants.

A. As of December 9, 2013, Ogden Dunes has appointed a permanent Waterworks Manager. The Parties stipulate and agree that this appointment satisfies its recommendation that Ogden Dunes appoint a permanent Manager within six months of a final order in this Cause.

B. The Parties stipulate and agree that Ogden Dunes shall file an annual report showing, at minimum, the amount(s) collected and expended each year for each of the three E&R projects. This E&R report must identify the number and type of hydrants replaced and the associated cost of replacement per year. The report must also indicate the completion dates and total cost for both the natural gas pump replacement and main extension projects. This report must be filed at the same time as Ogden Dunes' annual IURC report.

4. Waiver of Hearing and Admission of Evidence. Each of the Parties stipulates to the admission into evidence in this Cause of the Parties' previously filed cases-in-chief and waives for itself any cross-examination of the other Parties' respective witnesses. The Parties shall jointly sponsor this Settlement Agreement and Joint Settlement Exhibits 1 and 2 at any evidentiary hearing in this Cause. If the Commission should request additional evidence to support the Settlement, the Parties shall cooperate to provide such requested additional evidence.

5. Mutual Conditions on Settlement Agreement. Each of the Parties stipulates that the terms and conditions set forth in this Settlement Agreement are supported by the evidence and based on the Parties' independent review of the evidence, represent a fair, reasonable and just resolution of all the issues in this Cause, subject to

their incorporation in a final order in the form attached as Joint Settlement Exhibit 2 without modification or further condition, which may be unacceptable to either party. If the Commission does not approve this Settlement Agreement in its entirety and incorporate it into a final order as provided above, it shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties. The Parties represent that there are no other agreements in existence between them relating to the matters covered by this Settlement Agreement.

6. Non-Precedential. As a condition precedent to the Settlement Agreement, the Parties condition their agreement on the Commission providing assurance in the final order issued herein that it is not the Commission's intent to allow this Settlement Agreement or the final order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of the Settlement Agreement. As set forth in the Order in *Re Petition of Richmond Power & Light*, the Parties agree that this Settlement Agreement shall not be construed nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein is without prejudice to and shall not constitute a waiver of any position that either of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceedings and, failing approval by the Commission, shall not be admissible in any subsequent proceedings.

7. Authority to Stipulate. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients who will be bound thereby.

Respectfully submitted,

OGDEN DUNES WATERWORKS


By: Gregory P. Casimer
Ogden Dunes Waterworks
Secretary

INDIANA OFFICE OF
CONSUMER COUNSELOR


By: Tiffany Murray
Its Attorney

OGDEN DUNES MUNICIPAL WATER UTILITY
CAUSE NUMBER 44384-U

**Comparison of Petitioner's and OUCC's
 Revenue Requirements**

	Per Petitioner	Per OUCC	Sch Ref	OUCC More (Less)
Operating Expenses	\$ 267,894	\$ 261,706	4	\$ (6,188)
Taxes Other Than Income	9,895	7,143	4	(2,752)
Extensions and Replacements	59,200	59,200	7	-
Working Capital	-	-		-
Payment in Lieu of Taxes	-	-		-
Total Revenue Requirements	336,989	328,049		(8,940)
Less: Interest Income	106	106	3	-
Other Income	-	-		-
Net Revenue Requirements	336,883	327,943		(8,940)
Less: Revenues at current rates subject to increase	(273,723)	(273,028)	4	695
Other revenues at current rates	(7,812)	(7,812)	4	-
Net Revenue Increase Required	55,348	47,103		(8,245)
Divide by Revenue Conversion Factor (100% - 1.4%)	0.986	0.986		0.986
Recommended Increase	\$ 56,134	\$ 47,771		\$ 8,363
Recommended Percentage Increase	20.51%	17.50%		-3.01%

<u>Quarterly Current Rate for 15,000 Gallons</u>	<u>Proposed</u>		<u>OUCC</u>
	<u>Petitioner</u>	<u>OUCC</u>	<u>More (Less)</u>
Current Rate = \$72.69	\$ 87.60	\$ 85.41	\$ (2.19)

OGDEN DUNES MUNICIPAL WATER UTILITY
CAUSE NUMBER 44384-U

Reconciliation of Net Operating Income Statement Adjustments
Pro-forma Present Rates

	<u>Per Petitioner</u>	<u>Per OUCC</u>	<u>OUCC More (Less)</u>
Operating Revenues			
Water Sales	\$ -	\$ (695)	\$ (695)
Fire Protection	-	-	-
Penalties	-	-	-
Other	-	-	-
Total Operating Revenues	<u>-</u>	<u>(695)</u>	<u>(695)</u>
O&M Expense			
Capital/Nonrecurring	-	(6,188)	(6,188)
Rate Case	600	600	-
Taxes Other than Income	3,927	1,175	(2,752)
			-
Total Operating Expenses	<u>4,527</u>	<u>(4,413)</u>	<u>(8,940)</u>
Net Operating Income	<u>\$ (4,527)</u>	<u>\$ 3,718</u>	<u>\$ 8,245</u>

OGDEN DUNES MUNICIPAL WATER UTILITY
CAUSE NUMBER 44384-U

COMPARATIVE BALANCE SHEET
As Of

<u>ASSETS</u>	<u>12/31/2012</u>	<u>12/31/2011</u>
Utility Plant:		
Utility Plant in Service	\$ 1,389,045	\$ 1,389,045
Less: Accumulated Depreciation	921,897	898,283
Net Utility Plant in Service	<u>467,148</u>	<u>490,762</u>
Current Assets:		
Cash and Cash Equivalents	62,432	48,919
Special Deposits	25,000	25,000
Accounts Receivable	88,098	75,022
Prepaid Rent	12,790	25,748
Total Current Assets	<u>188,320</u>	<u>174,689</u>
Total Assets	<u>\$ 655,468</u>	<u>\$ 665,451</u>
<u>LIABILITIES</u>		
Equity		
Retained Earnings	\$ 639,197	\$ 665,451
Current Liabilities		
Accounts Payable	16,271	-
Total Liabilities	<u>\$ 655,468</u>	<u>\$ 665,451</u>

OGDEN DUNES MUNICIPAL WATER UTILITY
CAUSE NUMBER 44384-U

COMPARATIVE INCOME STATEMENT
Twelve Months Ended

	<u>12/31/2012</u>	<u>12/31/2011</u>
Operating Revenues		
Water Sales	\$ 235,552	\$ 197,972
Fire Protection	37,238	38,309
Penalties	933	773
Other	7,812	1,892
Total Operating Revenues	<u>281,535</u>	<u>238,946</u>
Operating Expenses		
Salaries and Wages - Employees	53,564	51,781
Salaries and Wages - Officers/Directors	-	-
Purchased Water	134,328	98,775
Purchased Power	3,819	2,796
Chemicals	368	
Materials and Supplies (supplies, fuel, postage)	20,701	23,496
Contractual Services	46,126	28,735
Transportation Expense	590	
Insurance	3,641	661
Regulatory Expense	597	30
Rents	2,500	2,600
Miscellaneous Expense	1,060	1,324
Total O&M Expense	<u>267,294</u>	<u>210,198</u>
Depreciation Expense	23,614	23,614
Taxes Other than Income		
Utility Receipts	2,000	4,200
FICA	3,968	3,971
Total Taxes Other Than Income	<u>5,968</u>	<u>8,171</u>
Total Operating Expenses	<u>296,876</u>	<u>241,983</u>
Net Operating Income	(15,341)	(3,037)
Other Income (Expense)		
Interest Income	<u>106</u>	<u>88</u>
Net Income (Loss)	<u>\$ (15,235)</u>	<u>\$ (2,949)</u>

OGDEN DUNES MUNICIPAL WATER UTILITY
 CAUSE NUMBER 44384-U

Pro-forma Net Operating Income Statement

	Year Ended 12/31/12	Adjustments	Sch Ref	<i>Pro-forma</i> Present Rates	Adjustments	Sch Ref	<i>Pro-Forma</i> Proposed Rates
Operating Revenues							
Water Sales	\$ 235,552	\$ (695)	5-1	\$ 234,857	\$ 41,092	1	\$ 275,949
Fire Protection	37,238			37,238	6,515	1	43,753
Penalties	933			933	163	1	1,096
Other	7,812			7,812	-	1	7,812
Total Operating Revenues	<u>281,535</u>	<u>(695)</u>		<u>280,840</u>	<u>47,771</u>		<u>328,610</u>
O&M Expense	267,294			261,706			261,706
Salaries and Wages		-					
Employee Benefits		-					
Purchased Water		-					
Purchased Power		-					
Materials and Supplies		-					
Contractual Services		-					
Capital/Nonrecurring		(6,188)	6-1				
Miscellaneous Expense		-					
Rate Case Expense		600	Pet				
Taxes Other than Income							
FICA Tax	3,968	-		3,968			3,968
Utility Receipts Tax	2,000	1,175	6-2	3,175	668	1	3,843
Total Operating Expenses	<u>273,262</u>	<u>(4,413)</u>		<u>268,849</u>	<u>668</u>		<u>269,517</u>
Net Operating Income	<u>\$ 8,273</u>	<u>\$ 3,718</u>		<u>\$ 11,991</u>	<u>\$ 47,103</u>		<u>\$ 59,093</u>

OGDEN DUNES MUNICIPAL WATER UTILITY
CAUSE NUMBER 44384-U

Revenue Adjustments

(1)

To adjust operating revenues for test year minimum bills miscalculation.

2012 Quarterly Billing	Number of Bills	Amount Overbilled	Total
January - March	161	\$1.11	\$ (179)
April - June	80	1.11	(89)
July - September	162	1.11	(180)
October - December	223	1.11	(248)
		Adjustment Increase (Decrease)	<u>\$ (695)</u>

**OGDEN DUNES MUNICIPAL WATER UTILITY
 CAUSE NUMBER 44384-U**

Expense Adjustments

(1)

Capital/Non-Recurring Items

To adjust test year operating expenses for capital or non-recurring items.

<u>Vendor</u>	<u>Date</u>	<u>Invoice</u>	<u>Description</u>	
Utility Supply	3/5/2012	1057871	80 meters@\$55	\$ (4,400)
Utility Supply	3/5/2012	1057870	4 meters @169.25	(677)
Utility Supply	3/5/2012	1057870	20 meters @ \$55	(1,100)
Utility Supply	3/5/2012	1057870	6 meter gaskets @\$1.85	<u>(11)</u>
Adjustment Increase (Decrease)				<u>\$ (6,188)</u>

(2)

Utility Receipts Tax

To adjust operating expenses to reflect pro forma utility receipts tax at present rates.

Pro forma operating receipts at present rates.		\$	280,840
Less: Exemption			<u>1,000</u>
			279,840
Times: Tax rate			<u>1.4%</u>
			3,918
Less: Test year estimated payments	\$	2,000	
True-up paid 1/28/13		<u>743</u>	<u>2,743</u>
Adjustment Increase (Decrease)			
<u>\$ 1,175</u>			

**OGDEN DUNES MUNICIPAL WATER UTILITY
CAUSE NUMBER 44384-U**

Extensions and Replacements

Fire hydrant replacement - 22 hydrants @ \$4,000 each
Replace NG Pump - engineering estimate between \$138,000 and \$188,000 per Attachment 2
Extend Main to Ski Hill

	Total
\$	88,000
	147,500
	60,500
	296,000
	5
\$	<u>59,200</u>

Amortize over 5 years

Average Annual Extensions and Replacements

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF) CAUSE NO. 44384-U
OGDEN DUNES WATERWORKS FOR A NEW)
SCHEDULE OF RATES AND CHARGES) APPROVED: _____

BY THE COMMISSION

David Ziegner, Commissioner
David Veleta, Administrative Law Judge

On August 21, 2013, Ogden Dunes Municipal Water Utility, (Ogden Dunes or Utility) applied for rate relief to the Indiana Utility Regulatory Commission (Commission) pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. The Commission determined Ogden Dunes' application was complete on September 12, 2013. The Indiana Office of Utility Consumer Counselor (OUCC) filed its report on December 11, 2013. On February 4, 2014, Ogden Dunes and the OUCC submitted a Stipulation and Settlement Agreement to the Commission wherein Ogden Dunes agreed to the terms of the OUCC's report.

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

1. **Statutory Notice and Commission Jurisdiction.** Legal notice of the filing of Ogden Dunes' application was published in accordance with law and gave proper notice to its customers of the nature and extent of the relief it is seeking. Therefore, due legal and timely notice of the matters in this proceeding was given and published as required by law. Further, as that same information and the parties' Settlement Agreement show, Ogden Dunes is an Indiana municipal water utility that provides water utility service to 640 customers in Porter County, Indiana. Accordingly, the provisions of 170 IAC 14-1-2(c) are not applicable to Ogden Dunes' application. Ogden Dunes' application satisfies all of the requirements of Indiana Code 8-1-2-61.5 and 170 IAC 14-1. The Commission, therefore, has jurisdiction over the parties and subject matter of this case.
2. **Petitioner's Characteristics.** Ogden Dunes is an Indiana municipal water utility in Porter County, Indiana. Ogden Dunes is a residential community in the sand dunes area north

of Portage, Indiana. The Town of Ogden Dunes Water Board administers the water distribution system. Ogden Dunes purchases all of its water from Indiana-American Water Company, Inc. (Indiana-American), a privately-owned utility. The purchased water is distributed through the community via a water distribution system first constructed in 1961. Ogden Dunes' long time superintendent, Mr. James Kopp, lost his battle to cancer in May of 2013. The Town appointed Mr. Chuck Litzkow as the "Acting" Waterworks Manager on June 3, 2013.

Ogden Dunes' current rates and charges were instituted as a result of a Settlement Agreement approved by the Commission on January 16, 2008 in Cause No. 43295-U.

3. **Positions of the Parties.**

A. **Ogden Dunes' Case-in-Chief.** Ogden Dunes' application requested authority to increase its monthly recurring rates and charges on an across-the-board basis by 20.29% to generate \$55,526 in revenues. Ogden Dunes proposed these increases to pay for increased operating and maintenance expenses and to fund certain capital improvement projects. Upon reviewing Ogden Dunes' calculation of its proposed rate increase, the OUCC determined that \$600 of rate case expenses was inadvertently omitted from the operating expenses revenue requirement. Correcting this error changed the proposed rate increase to 20.51%, generating \$56,134 in additional revenues. Additionally, Schedule 11 (page 29) of Ogden Dunes' Rate Application indicates a service charge or minimum rate per month per meter size. Per Ogden Dunes' tariff, this is a quarterly minimum rate.

B. **OUCC Case-in-Chief.** The OUCC recommended in its report and testimony filed as its case-in-chief that the Commission authorize Ogden Dunes to increase its rates and charges by 17.5% to generate \$47,771 of additional revenue. In reaching its recommendation on an increase to Ogden Dunes' monthly recurring rates and charges, the OUCC proposed an

adjustment to Ogden Dunes' proposed test year revenues based on a billing error for all customers who received minimum bills in the test year. The OUCC also proposed several adjustments to Ogden Dunes' test year operating and maintenance expenses, including an adjustment to Ogden Dunes' test year Utility Receipts Tax expense. The OUCC disagreed with Ogden Dunes' calculation of the Utility Receipts Tax because Ogden Dunes did not properly reduce its *pro forma* expense calculation by its estimated test year Utility Receipts Tax expense and subsequent true-up. The OUCC also identified meter expenses that were capital in nature and eliminated those costs from test year operating expenses.

Ogden Dunes requested funding for three extensions and replacement (E&R) projects: (1) fire hydrant replacements, (2) replacement of a natural gas pump for firefighting operations, and (3) extension of a water main on Summit Lane. The OUCC described the capital improvements that were approved in Ogden Dunes' most recent rate case, Cause No. 43295-U, which included the replacement of thirty-two (32) fire hydrants. During informal discovery in this Cause, Ogden Dunes was unable provide any invoices for the fire hydrant replacement approved in its last case. Per a fire hydrant inspection report to the OUCC by Ogden Dunes, the newest fire hydrants in Ogden Dunes are 2008 model hydrants and no hydrants have been replaced since 2009. Since its last rate case, Ogden Dunes has collected \$24,000 a year or \$120,000 total from its customers for hydrant replacement. The OUCC noted that Ogden Dunes should document all future capital improvements, including retaining invoices for all capital expenditures.

The OUCC's report detailed the delay it encountered in obtaining sufficient supporting documentation from Ogden Dunes to support the Utility's E&R request. After repeated requests for information, the OUCC received an engineering report that provided probable construction costs that differ from the project cost estimates in Ogden Dunes' request. The OUCC concluded

that the engineering report adequately supported Ogden Dunes' request for the three E&R projects and made adjustments to the costs of each project to coincide with the engineering report's probable construction costs. The OUCC's recommendation was predicated on a requirement that, following a final order in this Cause, Ogden Dunes must file an annual report showing, at minimum, the amount(s) collected and expended each year for each of the three E&R projects. This E&R report should identify the number and type of hydrants replaced and the associated cost of replacement per year. The report should also indicate the completion dates and total cost for both the natural gas pump replacement and main extension projects. The cost of all three of these projects should be recorded in Ogden Dunes' books as utility plant in service (UPIS). The OUCC recommended that this additional E&R report should be due at the same time as Ogden Dunes' annual IURC report.

The OUCC's report noted that it believes the difficulty it encountered in obtaining supporting documentation was attributable, at least in part, to the death of Mr. Kopp and Ogden Dunes' delay in appointing a permanent Waterworks Manager. As such, in order to establish operational continuity and sufficient recordkeeping, the OUCC recommended that the Town of Ogden Dunes Water Board initiate a search for a permanent Waterworks Manager immediately with the goal to select a permanent Manager within the next six months at the latest.

4. Settlement Agreement. The Settlement Agreement recites that it addresses all of the issues before the Commission in this Cause, including the following:

A. Stipulated Rates and Revenues. Ogden Dunes is a public utility providing water utility service to fewer than 5,000 retail customers and does not serve another utility. Also, Ogden Dunes is a municipal utility and, accordingly, the provisions of 170 IAC 14-1-2(c) are not applicable to Ogden Dunes' application. The Parties agreed that Ogden Dunes'

application satisfies all of the requirements of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. The Parties agreed that Ogden Dunes' rates and charges are inadequate and that Ogden Dunes' rates and charges should be increased immediately in a single phase upon the issuance of a Commission Order on an across-the-board basis by 17.5% so as to produce \$47,771 in additional annual operating revenue.

B. **Test Year.** The period used by the parties for determining Ogden Dunes' revenues and expenses incurred in providing water utility service to its customers was the twelve months ended December 31, 2012. The Parties agree that, with adjustments for changes that are fixed, known and measurable, this test year is sufficiently representative of Ogden Dunes' normal operations to provide reliable information for ratemaking purposes.

C. **Additional Agreements of the Parties.** In addition to the matters described above, the parties agree that:

i. As of December 9, 2013, Ogden Dunes has appointed a permanent Waterworks Manager. The Parties agree that this appointment satisfies the OUCC's recommendation that Ogden Dunes appoint a permanent Manager within six months of a final order in this Cause.

ii. Ogden Dunes shall file an annual report showing, at minimum, the amount(s) collected and expended each year for each of the three E&R projects. This E&R report must identify the number and type of hydrants replaced and the associated cost of replacement per year. The report must also indicate the completion dates and total cost for both the natural gas pump replacement and main extension projects. This report must be filed at the same time as Ogden Dunes' annual IURC report.

5. Commission Analysis and Findings Regarding the Settlement Agreement. In

several Orders of the Commission in other proceedings, we have previously discussed our policy with respect to settlements:

Indiana law strongly favors settlement as a means of resolving contested proceedings. *See, e.g., Manns v. State Department of Highways*, (1989), Ind., 541 N.E.2d 929, 932; *Klebes v. Forest Lake Corp.*, (1993), Ind. App. 607 N.E.2d 978, 982; *Harding v. State*, (1992), Ind. App., 603 N.E.2d 176, 179. A settlement agreement “may be adopted as a resolution on the merits if [the Commission] makes an independent finding, supported by substantial evidence on the record as a whole, that the proposal will establish ‘just and reasonable’ rates.” *Mobil Oil Corp. v. FPC*, (1974), 417 U.S. 283, 314 (emphasis in original).

Indianapolis Power & Light Co., Cause No. 39936, p. 7 (IURC 9/24/95); *see also Commission Investigation of Northern Ind. Pub. Serv. Co.*, Cause No. 41746, p. 23 (IURC 9/23/02).

Pursuant to the Commission’s procedural rules and prior determinations by this Commission, a settlement agreement will not be approved by the Commission unless it is supported by probative evidence. 170 IAC 1-1.1-17. 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). Any settlement agreement that is approved by the Commission “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition 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 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 790 at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before the Commission can approve the Settlement Agreement, we must

determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1.5-3-8, and that such agreement serves the public interest.

In this case, Ogden Dunes agreed with each of the adjustments made by the OUCC to its accounting presentation. The result of the parties' agreement is that Ogden Dunes' annual operating income will be increased by 17.5% in order to provide it with an opportunity to earn additional revenue of \$47,771 calculated pursuant to the OUCC's schedules, which the Parties attached to the Settlement Agreement as Joint Settlement Exhibit 1. The parties agree that Ogden Dunes' present rates are inadequate and an increase of \$47,771 in operating revenue is fair and reasonable and will enable Ogden Dunes' to render adequate, reliable and safe water service.

The Commission has before it sufficient evidence with which to judge the reasonableness of the terms of the Settlement Agreement. Based upon our review of that evidence and consideration of the provisions in the Settlement Agreement and its exhibits, we find that Ogden Dunes' current rates and charges are inadequate to provide for Ogden Dunes' annual revenue requirement pursuant to Indiana Code § 8-1-2-61.5. Accordingly, the Commission finds Ogden Dunes should be authorized to increase its rates by 17.5% to produce a net revenue increase of \$47,771. Ogden Dunes' net revenue requirement is illustrated below:

Operating Expenses	\$261,706
Taxes Other Than Income	7,143
Extensions and Replacements	<u>59,200</u>
Total Revenue Requirement	328,049
Less: Interest Income	<u>106</u>
Net Revenue Requirement	\$327,943

Each of the factors relevant to the agreed-to increase in annual operating revenues generated by Ogden Dunes' monthly recurring rates and charges was addressed by the OUCC in its report and exhibits, or in the Settlement Agreement and its exhibits. Therefore, the

Commission has been able to examine the basis for all of the components of the total revenue requirements and can see exactly how each issue has been resolved. We find the provisions of the Settlement Agreement regarding the proposed increase in Petitioner's operating revenues are reasonable for purposes of settlement and amply supported by the evidence of record.

Additionally, we find that Ogden Dunes' has satisfied the OUCC's recommendation that it appoint a permanent Waterworks Manager. We also find that as the Parties have stipulated, Ogden Dunes shall file an annual report showing, at minimum, the amount(s) collected and expended each year for each of the three E&R projects. This E&R report must identify the number and type of hydrants replaced and the associated cost of replacement per year. The report must also indicate the completion dates and total cost for both the natural gas pump replacement and main extension projects. This report must be filed at the same time as Ogden Dunes' annual IURC report.

For all of the foregoing reasons, we find the Settlement Agreement is reasonable, supported by the evidence of record and in the public interest and should be approved.

With regard to future citation of the Settlement Agreement, we find the Settlement Agreement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/97) and the terms of the Settlement Agreement regarding its non-precedential effect. The Settlement Agreement shall not constitute an admission or a waiver of any position that any of the Parties may take with respect to any or all of the items and issues resolved therein in any future regulatory or other proceedings, except to the extent necessary to enforce its terms.

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

1. The Settlement Agreement, a copy of which is attached to this Order, is hereby accepted and approved in its entirety and without modification.

2. Ogden Dunes shall and is hereby authorized to increase its monthly recurring rates and charges by 17.5% so as to produce additional revenue of \$47,771 and, together with other revenues, total annual operating revenues of \$328,610.

3. Ogden Dunes shall file an annual report showing, at minimum, the amount(s) collected and expended each year for each of the three E&R projects. This E&R report must identify the number and type of hydrants replaced and the associated cost of replacement per year. The report must also indicate the completion dates and total cost for both the natural gas pump replacement and main extension projects. This report must be filed at the same time as Ogden Dunes' annual IURC report.

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

ATTERHOLT, MAYS, AND ZIEGNER CONCUR:
APPROVED:

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

Brenda A. Howe
Secretary to the Commission