

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE PETITION OF)
BLOOMINGTON, INDIANA, FOR APPROVAL)
OF A NEW SCHEDULE OF RATES AND)
CHARGES FOR WATER UTILITY SERVICE) CAUSE NO. 45533
AND FOR AUTHORITY TO ISSUE AND)
APPROVAL OF BONDS, NOTES, OR OTHER)
OBLIGATIONS)**

**CITY OF BLOOMINGTON, INDIANA’S RESPONSE IN OPPOSITION TO
CONSUMER PARTIES’ JOINT NOTICE OF SETTLEMENT
AMONG LESS THAN ALL THE PARTIES AND
REQUEST FOR ATTORNEYS’ CONFERENCE**

The Petitioner, the City of Bloomington, Indiana (“Petitioner”), by counsel, hereby responds to the Consumer Parties Joint Notice of Settlement Among Less Than All the Parties and Request for Attorneys’ Conference (the “Notice”). Petitioner opposes any modification to the procedural schedule at this juncture of the proceeding. In opposition to the Notice’s request for an attorneys’ conference to establish a procedural schedule for consideration of the purported settlement among the Office of Utility Consumer Counselor (“OUCC”), the Trustees of Indiana University (“IU”), and Washington Township Water Authority (“WTWA”) (collectively, the “Opposing Parties”), Petitioner states as follows:

1. Petitioner filed its petition and case-in-chief on April 16, 2021, nearly 5 months ago. The presiding officers issued a docket entry establishing the procedural schedule on May 18, 2021, which was largely consistent with the stipulated procedural schedule agreed to by Petitioner and the Opposing Parties and filed with the Indiana Utility Regulatory Commission on May 10, 2021. That stipulated schedule tracked the rate case timeline set forth in GAO 2013-5. Due to scheduling

conflicts, the evidentiary hearing was set for three days beginning on Day 174 after Petitioner's petition and case-in-chief were filed. Day 174 is 13 days past the latest date set forth in GAO 2013-5 for an evidentiary hearing (GAO 2013-5 provides for an evidentiary hearing between Days 147-161).

2. Petitioner initiated this case and is the only party to this proceeding seeking affirmative relief. Petitioner's relief has already been delayed by scheduling conflicts. The presiding officers should not allow additional delay simply because parties that do not seek any affirmative relief appear now to have collectively determined the relief they believe Petitioner should receive in this proceeding. Modifying the procedural schedule at this late juncture to accommodate non-petitioning parties would be prejudicial to Petitioner. GAO 2013-5 was designed to give all parties a fair opportunity to be heard (which the Opposing Parties have already availed themselves of by filing their pre-filed evidence) and for petitioning parties to receive relief on a known schedule. Regardless of whether GAO 2013-5 technically applies in this proceeding, GAO 2013-5 has become the *de facto* standard for how rate case procedural schedules are established and moreover, the procedural schedule is already established to give Petitioner a hearing date on September 27, 2021.
3. While the Commission's procedural rules and GAO 2013-5 allow for settlements among less than all the parties, counsel for Petitioner has been unable to locate any case where a petitioning party was not a party to a settlement among less than all the parties. The obvious reason for the absence of any cases exhibiting such a situation is if the petitioning party is not a party to the settlement, then the settling

parties oppose the relief the petitioner is requesting and have already had an opportunity to pre-file evidence. Here, all of the Opposing Parties pre-filed their cases on July 30, 2021, and pre-filed cross-answering testimony on September 3, 2021. The Opposing Parties have had an opportunity to state their cases in opposition to the relief requested by Petitioner. Allowing the Opposing Parties another bite at the apple to file evidence opposing Petitioner's relief is highly prejudicial to Petitioner.


4. The Opposing Parties delayed filing the Notice until the eleventh hour. They could have collaborated on their respective cases and filed their settlement earlier. They did not. The Opposing Parties are using the Notice in an attempt to place additional evidence in the record that should have been included with the Opposing Parties' pre-filed testimony.
5. Delaying the procedural schedule in this proceeding disparately impacts Petitioner and the Opposing Parties. In Petitioner's rebuttal case, it seeks a Phase I increase in revenues of \$1,419,781 (*Verified Rebuttal Testimony of Jennifer Z. Wilson, Attachment JZW-5*), which when divided by 365 days in a year, equates to approximately \$3,990 per day for each day that relief is delayed. If relief were delayed by two months, that would be nearly a quarter of a million dollars that Petitioner would lose by the presiding officers allowing the procedural schedule to be disrupted. That quarter of a million dollars could fund several capital projects proposed in this case, which in itself demonstrates the prejudice to Petitioner of modifying the procedural schedule. Conversely, the two Opposing Parties that actually pay rates have a vested interest in delaying the procedural schedule as long

as possible. IU and WTWA stand to see the biggest rate increases under Petitioner's case (and ironically, the OUCC's), so delay furthers their respective interests. Again, delaying the procedural schedule at this juncture of the proceeding is prejudicial to Petitioner.

6. For the reasons stated above, Petitioner opposes the Opposing Parties' request to delay the procedural schedule, convene an attorneys' conference and establish a new procedural schedule. Petitioner therefore requests the presiding officers to deny the relief sought in the Notice.

Dated this 14th day of September, 2021.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been served by electronic service on the following this 14th day of September, 2021:

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