

In the Matter of a Mediation and Arbitration Between:

WINDSOR UTILITIES COMMISSION

— and —

TOWN OF TECUMSEH

MINUTES OF SETTLEMENT
made as of September 22, 2020

WHEREAS:

A. Windsor Utilities Commission (“WUC”), the Town of Tecumseh (“Tecumseh”) and the City of Windsor (“Windsor”) are parties to an agreement dated October 2004, amended in writing dated January 16, 2006 (both, together with the minutes of settlement dated August 14, 2018 referred to below, the “Agreement”), concerning the provision of water by WUC to Tecumseh;

B. there arose a dispute between WUC and Tecumseh concerning the interpretation and application of the Agreement;

C. in accordance with Part 10 of the Agreement, WUC and Tecumseh submitted the dispute to the Hon. Warren Winkler, Q.C. for mediation and arbitration;

D. although an apparent party to the Agreement, Windsor disagreed with its being a “necessary party” for the purposes of the conduct of the mediation and disagreed with its being a “disputant”, did not and did not intend to participate in or contribute to the mediation and agrees to be bound by the outcome of the process between Tecumseh and WUC;

E. the dispute was mediated by the Hon. Warren Winkler, Q.C. in August 2018 which resulted in Minutes of Settlement dated August 14, 2018 (which were later ratified by each of Tecumseh and WUC) and again in May 2019 and then further discussions between WUC and Tecumseh ensued; and

F. WUC and Tecumseh agree to the following in settlement of their dispute, and wish it to be the subject of an arbitral award by the Hon. Warren Winkler, Q.C.

THEREFORE:

1. WUC will no longer charge Tecumseh a “Summer Levy” (as referred to in Schedule “A”, Part I, subparagraph 1(b) to the Agreement and in Schedule “B” to the Agreement);

2. The Bulk Supply Rate of water by WUC to Tecumseh is set at \$0.4165 per cubic meter of water as of January 1, 2020 and will be adjusted from that date in accordance with the Agreement and these Minutes of Settlement;


3. For the purposes of calculating the Part II: TEN YEAR ADJUSTMENT at Schedule "A" to the Agreement, WUC and Tecumseh agree that the rate to be used for the 2016 Base Rate is \$0.3870 per cubic meter.
4. To the extent that there is any inconsistency between the Agreement and paragraphs 1 and 2 of these Minutes of Settlement, these Minutes of Settlement prevail;
5. The parties have negotiated and agreed upon an Interpretation Guidance to govern the interpretation of Schedule A to the Agreement and a copy of this Interpretation (with schedules) is attached as Exhibit A hereto;
6. To the extent that there is any inconsistency between Exhibit A to these Minutes of Settlement and the Agreement, Exhibit A prevails;
7. WUC and Tecumseh ask the Hon. Warren Winkler, Q.C. to give effect to these minutes of settlement by arbitral award; and
8. Each party is to bear its own costs of this mediation and arbitration.

THE CORPORATION OF THE TOWN OF TECUMESH

per: _____
Gary McNamara, Mayor

per: _____
Laura Moy, Clerk

WINDSOR UTILITIES COMMISSION


per: _____
Drew Dilkens, Chair

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 12/22/20


per: _____
Helga Reidel, Authorized Signatory

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EXHIBIT A
to the Minutes of Settlement made as of September 25, 2020

Interpretation Guidance

This is the proposed approach to application of Part II: TEN YEAR ADJUSTMENT to Schedule "A" to the Agreement. The schedules form part of this document. To the extent that there is any inconsistency between this document and the Agreement, this document prevails.

1. The steps set out below describe the process used in interpreting and applying the language in the Agreement.
2. The start of the Ten Year Adjustment period is Base Year (2016, 2026, etc.), and the conclusion of the Ten Year Adjustment period is Year 10 (2026, 2036, etc.).
3. First, the parties must identify the items which give rise either to a "Regulatory Price Change" or a "Non-Regulatory Improvement Price Change" that are the subject of the Ten Year Adjustment (the "Items").
4. Once the Items are identified, the cumulative difference between Base Year and Year 10 is calculated. Specifically, the annual cost of each and every of the Items in Base Year and the annual cost of each and every of the Items in Year 10 (i.e., the end of the 10 year period) are determined. The total of the costs associated with the Items in Base Year will be the "Base Year Eligible Costs", and the total of the costs associated with the Items in Year 10 will be the "Year 10 Eligible Costs".
5. For clarity, if an item is established after the Base Year and disappears before Year 10, the item is lost for purposes of this calculation. In respect of such an item for which amortization is established, refer to paragraph 12 below.
6. For an existing eligible item, the start value will be the annual cost in the Base Year. For a new item, the start value will be zero in the Base Year. For a disputed item or the amortization of its useful life, failing agreement between the parties, the dispute resolution team will decide whether it is an eligible item or not, and the amortization of such item's useful life.
7. Next, we calculate the impact of CPI on the Base Year Eligible Costs. This means that the Base Year Eligible Costs are increased by the cumulative impact of CPI between the Base Year and Year 10 (the "Adjusted Base Year Eligible Costs").
8. The difference between the Year 10 Eligible Costs (as per paragraph 4) and the Adjusted Base Year Eligible Costs (as per paragraph 6) will be the "Costs Eligible

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for Rate Increase". These are the actual costs in excess of the cumulative CPI if any.

9. Next, we must convert the actual costs in excess of the cumulative CPI to a potential rate adjustment. This is done by:
 - Determining Tecumseh's share of the actual costs accrued over the ten year period. To do this, first we divide Tecumseh's water volume in Year 10 by WUC's total volume of sales to all customers in Year 10. This is the "Tecumseh Ratio".
 - "Tecumseh's Share" of the cost is arrived at by multiplying the Tecumseh Ratio by the Costs Eligible for Rate Increase (as per paragraph 7).
10. Finally, we determine the "Adjustment to the Bulk Supply Rate" by dividing the Costs Eligible for Rate Increase (as per paragraph 7) by Tecumseh's Share (as per paragraph 8).

In any event, the Adjustment to the Bulk Supply Rate plus the cumulative CPI increase over the Ten Year Adjustment period will not exceed the lesser of (a) 10% of the Bulk Supply Rate in Year 10 (2026, 2036, etc.) and (b) the percentage increase in WUC's cost of water production over the same period (a sample calculation is attached as Schedule A). For this purpose WUC's cost of water production shall include operating costs of production. For illustrative purposes, an example is attached as Schedule "B".

11. The dispute resolution team referred to at paragraph 5 will be an engineer and an accountant satisfactory to all parties who have experience in the field. Upon reasonable request from Tecumseh, WUC shall provide detail/background information to support any of the items listed on Schedule "B". Ideally this would be regularized on an annual basis and provided as part of the PJSLC meeting process. Where the PJSLC is subsequently unable to resolve any remaining question following provision of such detail/background information, the issue shall be referred to the dispute resolution team.

12. In respect of capital items:

- capital items are amortized over their useful life
- where the useful life is less than the duration of the Agreement, the replacement of the capital item would not be eligible for a rate adjustment
- similarly, there would be no reduction in the rate where amortization of a continuing asset expires.

13. The Summer Levy will be blended into the Bulk Supply Rate as set out in Schedule C

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This is the approach to definitions in the Agreement:

I. RPCs do not include the costs of:

- distribution transmission and distribution feeder mains unless mandated under the *Safe Drinking Water Act* (as amended or replaced) or the regulations thereunder.
- distribution mains,
- local watermains,
- service connections,
- hydrant connections
- 70% of Hanna elevated tank and its future replacement/relocation so long as it treats water (for the sake of clarity, 30% of the costs of the Hanna elevated tank and its future replacement/relocation so long as it treats water are eligible for inclusion as an RPC provided they are not otherwise included as an eligible NRIPC)
- 70% of New Reservoir –G (for the sake of clarity, 30% of the costs of the New Reservoir – G are eligible for inclusion as an RPC provided they are not otherwise included as an eligible NRIPC)
- 70% of any reservoir beyond the plant site the primary purpose of which is system storage so long as it treats water (for the sake of clarity, 30% of the costs of any such reservoir are eligible for inclusion as an RPC provided they are not otherwise included as an eligible NRIPC)
- corporate overhead charges
- corporate wages
- administrative wages
- all maintenance costs

All other items in the treatment and supply of water that meet the definition of a Regulatory Price Change within the relevant 10 year period are eligible to be RPCs provided they are not otherwise included as an eligible NRIPC.

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II. NRIPCs do not include the costs of:

- distribution transmission mains
- distribution feeder mains
- distribution mains,
- local watermains,
- service connections,
- hydrant connections
- 70% of Hanna elevated tank and its future replacement/relocation so long as it treats water (for the sake of clarity, 30% of the costs of the Hanna elevated tank and its future replacement/relocation so long as it treats water are eligible for inclusion as an NRIPC provided they are not otherwise included as an eligible RPC)
- 70% of New Reservoir –G (for the sake of clarity, 30% of the costs of the New Reservoir – G are eligible for inclusion as an NRIPC provided they are not otherwise included as an eligible RPC)
- 70% of any reservoir beyond the plant site the primary purpose of which is system storage so long as it treats water (for the sake of clarity, 30% of the costs of any such reservoir are eligible for inclusion as an NRIPC provided they are not otherwise included as an eligible RPC)
- corporate overhead charges
- all maintenance costs
- corporate wages
- administrative wages

All other non-regulatory improvements made by the Commission to its water treatment facilities, which result in significant and measureable improvements in water quality are eligible to be NRIPCs provided they are not otherwise included as an eligible RPC.

III. Paragraphs 2, 3, 4 and 5 of Part II of Schedule A of the Agreement will be read such that "Price Change or Changes" shall be read as "Price Change(s)".

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Schedule A

Illustrative Rate Calculation

Assumptions

Tecumseh volume (m3)	Year 10	3,200,000	A
WUC Volume (Billed to all WUC customers)	Year 10	37,000,000	B
Tecumseh Ratio (% of total)		8.6%	$C = A / B$
CPI Index Base Year (Last year of prior 10 year test) ¹		128.00	D
CPI Index Year 10		145.00	E
Increase in CPI Index		17.00	$F = E - D$
Cumulative Impact of CPI (%)		13.3%	$G = F / D$

Eligible Items (RPC and NRIPC)

		<u>Base year</u>	<u>Year 10</u>	<u>% Increase</u>	
Item 1	Operating	\$ 50,000	\$ 100,000	100%	
Item 2	Operating	30,000	40,000	33%	
Item 3	Operating	-	90,000	n/a	
		<u>\$ 80,000</u>	<u>\$ 230,000</u>	188%	H
Item 4	New Capital	\$ -	\$ 10,000,000		
Transaction 4 Annual Cost - 15 year amortization			666,667		I
Interest - Prime at time of calculation (end of year 10)			26,333		$J = I \times \text{prime rate}$
Base Year Eligible Costs		<u>\$ 80,000</u>	<u>\$ 923,000</u>	<u>\$ 896,667</u>	$K = H + I + J$

Apply CPI to Year 0 Costs

Base year costs, as above	\$ 80,000	L (from Base Year K)
Factor to Increase for Cumulative CPI	(1 + .133)	$M = (1 + G)$
Adjusted Base Year Eligible Costs	<u>\$ 90,640</u>	$N = L \times M$

Costs Eligible for Rate Increase

Base Year Eligible Costs , as above	\$ 923,000	from K
Adjusted Base Year Eligible Costs	90,640	from N
Costs Eligible for Rate Increase	<u>\$ 832,360</u>	$O = K - N$
Tecumseh's Share	8.6% \$ 71,988	$P = C \times O$
Tecumseh Volume	3,200,000	from A
Potential 10 Year Rate adjustment	<u>\$ 0.0225</u>	$Q = P / A$

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Rate Cap Test

1. Calculate WUC Production Cost Increase

Total Water Production Costs before Depreciation ¹	Base Year	\$ 7,250,000	R
Total Water Production Costs before Depreciation ²	Year 10	\$ 8,364,778	S
Total Water Production Costs before Depreciation - Increase %		15.4%	$T = (S - R) / R$

2. Calculate Potential Tecumseh Rate Increase

	Total Rate	Increase	
Tecumseh rate @ Base Year	\$ 0.3601		U
Cumulative Impact of CPI (%)	13.3%		from G
Tecumseh rate @ Year 10	\$ 0.4079	\$ 0.0478	$V = U \times (1 + G)$
Potential 10 Year Rate adjustment	\$ 0.0225	\$ 0.0225	from Q
Potential Rate after adjustments	\$ 0.4304		$W = V + Q$
Total Potential Rate Increase over 10 years (CPI + Adjustment)		\$ 0.0703	$X = V + Q$

Potential Cumulative Rate Increase (CPI + 10 Year Adjustment) (%) 19.5% $Y = X / U$

-- Cannot exceed the increase in WUC Cost of Water Production over the Period

-> It does in this example. The next step applies the test

3. Apply the Rate Cap Limitation Based on WUC Cost of Water Production

a) Determine the impact of the actual water production % increase:

Ultimate Tecumseh Rate Increase is the Lower of:

WUC Production Costs (Including amortization) (%)	- from above	15.4%	from T
Potential 10 Year Rate Adjustment (%)	- from above	19.5%	from Y
Tecumseh 10 Year Adjusted Rate Increase (%)		15.4%	$Z = \text{lesser of } (T \text{ or } Y)$
Tecumseh Rate in Base Year	\$ 0.36010		from U
Add: Permitted Rate Increase	15.4%		from Z
Tecumseh 10 Year Rate with cap		\$ 0.4155	$AA = U \times (1 + Z)$
Potential Rate before cap	From Above	\$ 0.4304	from W
Impact of cap		\$ (0.0150)	$AB = AA - W$
10 Year Rate adjustment permitted with Cap		\$ 0.0075	$AC = Q + AB$

b) In addition to the cap imposed by the increase in WUC Cost of Water Production as noted above, the 10 year rate adjustment can also not exceed 10% the Bulk Supply Rate in the 10th year. In this example:

Base Year Bulk Supply Rate =	\$ 0.3601	U
Cumulative CPI in recent 10 years	13.3%	from G
Bulk Supply Rate, Year 10 before adjustment	\$ 0.4079	from V
Maximum Possible rate adjustment %	10%	
Maximum rate increase per m3	\$ 0.0408 10% Max	$AD = V \times 10\%$

c) Determine the Adjustment to the Bulk Supply Rate Increase:

Rate increase (possible) as above	- before cap	\$ 0.0225	from Q
	- after cap		
	10% max	\$ 0.0408	from AD
actual water production Increase		\$ 0.0075	from AC
		\$ 0.0075	$AE = \text{lesser of } Q, AD, AC$

Conclusion

The rate Increase will be \$0.0075, after application of the cap due to increase in WUC's cost of water production. This is in addition to the CPI increase.

The ending rate would be:

\$ 0.4079
\$ 0.0075

from V
from AE

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\$ 0.4155

- Note 1** Actual amounts used for this calculation are for illustrative purposes and do not represent the actual Base Year
- Note 2** For illustrative purposes, the 2018 values from Schedule B were used to represent Year 10. The actual Year 0 and Year 10 will be consistent with the original agreement renewal periods. This is only for illustrative and calculation purposes.

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Schedule B

WUC Cost of Water Production - Example for May 2019 Mediation For the Years 2013 to 2018

	December 2018	December 2017	December 2016	December 2015	December 2014	December 2013	Notes
<u>Cost of water production - Operating Expenses</u>							
501000 Filtration Plant	3,370,350	3,240,882	2,565,461	2,551,675	2,419,618	2,077,328	
501010 Filtration Plant Chemicals	936,528	977,524	972,948	886,798	1,010,820	1,080,567	
501020 Laboratory	490,697	572,843	284,570	292,100	306,743	321,786	
501030 Pumping Station	1,829,339	1,796,941	1,871,469	1,605,570	1,745,051	1,712,390	
501040 Pumping Station Chemicals	-	-	-	-	-	2,455	
Cost of water production (per AFS)	6,626,914	6,588,191	5,694,449	5,336,143	5,482,232	5,194,525	
(excluding depreciation and unallocated direct)							
Water Treatment -unallocated costs	355,931	257,348	1,290,942	1,487,945	1,438,005	1,429,741	*
Direct Water Production costs before Depreciation	6,982,845	6,845,539	6,985,391	6,824,088	6,920,237	6,624,265	**
<i>Costs included in the Administrative Section of Audited Financial Statements, directly attributable to Water Production and Supply'</i>							
Liability Insurance	351,299	372,214	430,528	351,049	360,336	401,773	
Property Tax	757,621	760,652	784,220	782,099	740,760	823,196	
Employee Future Benefits	273,014	252,472	260,117	261,495	270,476	267,481	***
Total Water Production Costs before Depreciation	8,364,778	8,230,877	8,460,256	8,218,731	8,291,808	8,116,716	

Notes

- * Unallocated costs represent the cost of wages, benefits, training , supplies and office expenses of employees at the water treatment plan.
- ** 2016 Amount consistent with LaSalle Agreement total for Cost of Water Production
- *** EFB expense estimated as 17.8% of gross wage of Water Treatment Plant cost centre employees, whose total cost is included in Water Production cost.

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Schedule C

WUC / Tecumseh Bulk Supply Rate Incorporation of the Summer Levy into the Bulks Supply Rate

Background

The current WUC / Tecumseh contract contains a summer levy that applies to increased water usage during summer months.

To simplify the contract the parties have agreed that the summer levy will be blending into the base Bulk Supply Rate

It has been agreed that the new blended bulk rate which includes Summer Levy will be:

\$0.4165 per cubic metre

This new rate will become effective January 1, 2020 and will be adjusted in accordance with the agreement between the parties including by the increase in CPI annually.

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