

To Whom It May Concern:

We are writing to express our concern and disappointment over the settlement entered into between the City of East Chicago and the Office of the Utility Consumer Counselor in Cause No. 44826. Under the terms of the settlement, an item providing for the use of Drinking Water State Revolving Fund (DWSRF) money to replace lead service lines was eliminated. As a result, we will be saddled with a 55% increase in our water bills, but may never be able to drink the water for which we are paying.

The problem of lead contamination in East Chicago's drinking water, recently brought to light by EPA's independent testing,<sup>1</sup> compounds the lead contamination in our yards, gardens and homes. The USS Lead Superfund site in East Chicago, which covers three East Chicago neighborhoods (West Calumet, Calumet, and East Calumet) is especially heavily affected by lead contamination. The neighborhoods in the USS Lead Superfund site, where many of us reside, are home to several thousand people. In addition to the ongoing evacuation of the West Calumet Housing Complex (formerly home to more than 1000 people), hundreds of homes in our neighborhoods exceed residential screening levels for lead in the soil and are awaiting EPA cleanup; dozens more have already been subject to emergency cleanup actions. Because lead exposure is cumulative, the public health impact of lead-contaminated drinking water is even greater in the Superfund site, where residents—especially children—are exposed to high levels of lead from other sources, than it would be elsewhere. Thus, the denial of funding for lead service line replacement is of particularly great concern for our communities.

The settlement that eliminated lead service line replacement was announced on December 27, 2016, more than one month after the official deadline for public comments and scarcely two weeks before the intervention deadline. In view of the serious public health concerns, the OUCC and the City should at least have sought additional public input. There was no excuse for failing to recognize that the threat of lead contamination in the drinking water was serious and immediate: The EPA announced it had found severe lead contamination in the drinking water of 18 out of 43 tested homes in the Superfund site two weeks before the OUCC and the City reached their settlement.

Therefore, in view of the serious public health concerns and lack of public input, we respectfully suggest that the IURC should modify the settlement to restore the City's original request for DWSRF funds for lead service line replacement. At the very least, because information is *still* coming to light regarding the causes and effects of lead contamination in East Chicago drinking water, and the only previous field hearing was held long before the OUCC and the City reached their settlement, the IURC should withhold its approval until it does additional fact-finding and holds an additional field hearing in East Chicago.

### **The settlement denies us potable water**

As ratepayers of a public water utility, we are entitled to potable water.<sup>2</sup> And as things stand, the drinking water the City provides to many homes in the Superfund site is not potable: The EPA has warned residents against drinking it because of the high level of lead. Thus, we aren't getting what we

1 Lauren Cross (Dec. 8, 2016), "East Chicago mayor: Elevated lead levels in drinking water for some homes," *Times of Northwest Indiana*, [http://www.nwitimes.com/news/local/lake/east-chicago-mayor-elevated-lead-levels-in-drinking-water-for/article\\_e050fa5b-64a6-5215-946c-b06d849d977d.html](http://www.nwitimes.com/news/local/lake/east-chicago-mayor-elevated-lead-levels-in-drinking-water-for/article_e050fa5b-64a6-5215-946c-b06d849d977d.html) .

2 See, for example, the IURC's decision in *In Re Indiana-American Water Co., Inc.*, Cause No 42029 (Nov. 6, 2002) (observing that "[c]ustomers who pay for the cost of service including cost of improvements to the Utility's plant through rates should receive adequate water quality").

pay for. And if the IURC approves the settlement, it is possible we never will: The City's representative told us on January 13, 2017, that the City has no alternative plans for financing lead service line replacement.

We have every reason to believe that the East Chicago Municipal Water Department itself is responsible for making our water undrinkable. The City, not us, is responsible for the corrosion control that prevents lead in pipes from leaching into the water. Independent testing by the EPA has found very low or nonexistent levels of orthophosphate, which is necessary for corrosion control.<sup>3</sup> In addition, the City's own testimony in support of the settlement shows substantial delays in adopting IDEM-recommended changes to corrosion control.<sup>4</sup> Thus, although the full picture is only beginning to emerge, this is clearly the City's mess and it is entirely reasonable to use funds derived from the rates we are currently paying to clean the mess up and provide us with the potable water to which we are entitled as ratepayers.

### **Utility funding of lead service line replacement is efficient and appropriate**

If the City Water Department drove a truck into our front porch, not even the OUCC would object to using money from rate payments to repair the damage, even though the porch is on private property. And what has happened here is no different: Pipes on private property have been damaged by the City's negligence in failing to use proper corrosion control procedures. Indeed, under the terms of the City's original proposal, the utility is getting a much *better* deal than it is likely to be entitled to in court, if it becomes necessary for citizens to engage in lengthy, inefficient litigation to resolve this problem. The OUCC's objection to covering service line replacement costs through the rate petition is accordingly counterproductive and contrary to the interests of even those ratepayers who do not have lead service lines.

The sort of cost-sharing arrangement envisioned by the City's original proposal is well-accepted as a proper use of public funds. Indeed, a "main-to-meter" service line replacement project was approved for DWSRF funds in Brown County earlier in 2016.<sup>5</sup> Even 100% public funding of service line replacement is supported by EPA policy.<sup>6</sup> And innovative financing arrangements such as the City proposed here are recognized to be necessary for solving the difficult national problem of lead service line replacement.<sup>7</sup> The Indiana Finance Authority likewise recognizes the importance of supporting the needs of low-income communities through the DWSRF.<sup>8</sup> The OUCC's objection is therefore questionable on its face, even without taking into account the lead contamination crisis in our neighborhoods, or the fact that the EPA has found unacceptable levels of lead contamination in East

3 Sarah Reese (Jan. 13, 2017), "Actions defended in EPA's letter to Visclosky," *Times of Northwest Indiana*, [http://www.nwitimes.com/news/local/lake/actions-defended-in-epa-s-letter-to-visclosky/article\\_259cad60-ec9f-5a24-93ad-faa743110916.html](http://www.nwitimes.com/news/local/lake/actions-defended-in-epa-s-letter-to-visclosky/article_259cad60-ec9f-5a24-93ad-faa743110916.html) .

4 Crowley Engineering (Dec. 22, 2016), "Preliminary Engineering Report," Petitioner's Exhibit 1S, Attachment 1S-1, pages 7-8 (noting that City did not begin following IDEM's 2011 recommendation to use sodium hexametaphosphate until 2015).

5 State of Indiana (July 1, 2016), "Drinking Water State Revolving Fund Loan Program Annual Report: Fiscal Year 2016," <https://secure.in.gov/ifa/srf/files/DWSRF%202016%20Annual%20Report%20FINAL.pdf> (page 26).

6 Anita Maria Thompkins, USEPA (May 9, 2016), "Clarification of Drinking Water State Revolving Fund Eligibility of Service Line Replacement on Private Property," [http://www.ct.gov/dph/lib/dph/drinking\\_water/pdf/memo\\_-\\_clarification\\_of\\_dwsrf\\_eligibility\\_of\\_service\\_line\\_replacement\\_on\\_private\\_property.pdf](http://www.ct.gov/dph/lib/dph/drinking_water/pdf/memo_-_clarification_of_dwsrf_eligibility_of_service_line_replacement_on_private_property.pdf) .

7 USEPA (Aug. 24, 2015), "Report of the Lead and Copper Rule Working Group," <https://www.epa.gov/sites/production/files/2016-01/documents/ndwaclerwgfinalreportaug2015.pdf> .

8 Indiana Finance Authority (July 1, 2015), "Drinking Water State Revolving Fund Loan Program: Intended Use Plan," [http://www.in.gov/ifa/srf/files/2016-05\\_CW\\_IUP\\_Final.pdf](http://www.in.gov/ifa/srf/files/2016-05_CW_IUP_Final.pdf) .

Chicago drinking water. If anything, the City's proposed funding solution did not go far *enough* in providing for public financing of lead service line replacement on private property.

Thus, the OUCC's decision to block ratepayer funding for lead service line replacement—without which ratepayers cannot receive potable water—was unreasonable and counterproductive, and the settlement should not be approved. At the very least, additional opportunities for public comment should be provided.

### **People and organizations submitting this comment**

The East Chicago/Calumet Coalition is the Community Advisory Group for the U.S.S. Lead Superfund Site in East Chicago, Indiana. The East Chicago/Calumet Coalition's mission is to demand protection of the health, safety, and human rights, civil rights, and other legal rights of the diverse communities and individuals living within the U.S.S. Lead Superfund site; to raise up the local community's voice and concerns to EPA, the State of Indiana and the City of East Chicago; and to share information widely with the community when EPA, the State of Indiana, and the City of East Chicago provide updates or documents for community input.

We the People For East Chicago (WTPFEC) is a community organization whose members are property owners and other residents and concerned citizens of East Chicago. WTPFEC is a non-profit corporation. People most affected by a problem are in the best position to help determine the solution. It is towards this goal that WTPFEC is working for the citizens of East Chicago to educate, to help them become aware of the various needs for environmental and social justice, and to assist them in their fight to succeed in making the necessary changes in their community to improve the overall quality of life. This includes assisting them in making a wider audience aware of the needs for change and to require those accountable to make the necessary changes. WTPFEC members primarily live in Zones 2 and 3. WTPFEC has undertaken extensive canvassing to ensure that their neighbors learn about the contamination, the health risks associated with the contamination, EPA meetings, and Community Advisory Group meetings.

The Community Strategy Group is comprised of residents from the USS Lead Superfund Site in East Chicago Indiana, and representatives of allied organizations.

The Duneland Environmental Justice Alliance is a multiracial grassroots organization in the Calumet Industrial corridor of Northwest Indiana fighting for a healthy environment.

The Hoosier Environmental Council (HEC) is Indiana's oldest and largest non-profit environmental advocacy organization, founded in 1983. As part of its commitment to public health and environmental justice, HEC has been working with the affected communities in East Chicago on the issue of lead contamination since August 2016.

Respectfully submitted,

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