ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN WATER COMPANY, INC. ("INDIANA AMERICAN") AND THE CITY OF CHARLESTOWN, INDIANA ("CHARLESTOWN") FOR APPROVAL AND AUTHORIZATION OF: (A) THE ACQUISITION BY INDIANA-AMERICAN OF CHARLESTOWN'S WATER UTILITY PROPERTIES (THE "CHARLESTOWN WATER SYSTEM") IN CLARK COUNTY, INDIANA IN ACCORDANCE WITH A PURCHASE AGREEMENT THEREFOR; (B) APPROVAL OF ACCOUNTING AND RATE BASE TREATMENT; (C) APPLICATION OF INDIANA AMERICAN'S AREA ONE RATES AND CHARGES TO WATER SERVICE RENDERED BY INDIANA AMERICAN IN THE AREA SERVED BY THE CHARLESTOWN WATER SYSTEM ("THE CHARLESTOWN AREA"); (D) APPLICATION OF INDIANA AMERICAN'S DEPRECIATION ACCRUAL RATES TO SUCH ACQUIRED PROPERTIES; (E) THE SUBJECTION OF THE ACQUIRED PROPERTIES TO THE LIEN OF INDIANA AMERICAN'S MORTGAGE INDENTURE AND THE POTENTIAL ENCUMBRANCE FROM RIGHT OF FIRST REFUSAL; AND (F) THE PLAN FOR REASONABLE AND PRUDENT IMPROVEMENTS TO PROVIDE ADEQUATE, EFFICIENT, SAFE AND REASONABLE SERVICE TO CUSTOMERS OF THE CHARLESTOWN WATER SYSTEM.	**CAUSE NO. 44976**
VERIFIED COMPLAINT AND REQUEST FOR COMMISSION INVESTIGATION BY NOW! INC. AND CUSTOMERS OF THE CITY OF CHARLESTOWN AGAINST INDIANA AMERICAN WATER COMPANY REGARDING ITS PROPOSED ACQUISITION OF THE CITY OF CHARLESTOWN'S WATER UTILITY	**CAUSE NO. 44964**
	APPROVED: MAR 14 2018

ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Interim Chairman
Carol Sparks Drake, Administrative Law Judge

NOW!, Inc. ("NOW"), on behalf of more than 10 water utility customers of the City of Charlestown, Indiana, ("Charlestown" or "City") filed a Verified Complaint Against Indiana-

American Water Company, Inc. ("Indiana-American") on July 7, 2017, with the Indiana Utility Regulatory Commission ("Commission") in Cause No. 44964. In its complaint, NOW requested the Commission: (1) investigate Indiana-American's proposed purchase of Charlestown's water utility; (2) temporarily bar Indiana-American from acquiring the City's water utility pending the outcome of the Commission's investigation, and (3) enter such orders as are supported by the evidence and the Commission finds are in the public interest. On July 25, 2017, Indiana-American filed its Answer to Complaint responding to NOW's complaint.

On July 31, 2017, NOW filed a motion requesting leave under 170 IAC 1-1.1-1-8(c) to amend its complaint. A docket entry was issued on August 17, 2017, granting this motion, and NOW filed an amended complaint in Cause No. 44964 on September 13, 2017. Indiana-American filed an Answer to Verified Amended Complaint on October 3, 2017. The Indiana Department of Natural Resources ("IDNR") was served with NOW's amended complaint but did not respond or otherwise appear.

On August 17, 2017, Indiana-American and Charlestown (collectively "Joint Petitioners") initiated Cause No. 44976 by filing a Joint Petition seeking the Commission's approval of Indiana-American's acquisition of Charlestown's water utility properties under Ind. Code § 8-1-30.3-5(d) prior to Joint Petitioners closing on this acquisition. That same day, the Joint Petitioners filed their cases-in-chief in Cause No. 44976, with the exception of Charlestown's notice to its customers of the proposed acquisition. This notice was late filed with the Commission on September 1, 2017.[1]

A prehearing conference was held in Cause No. 44964 on August 18, 2017. At the prehearing conference, Indiana-American, the Indiana Office of Utility Consumer Counselor ("OUCC"), and NOW agreed a motion would be filed to consolidate Cause No. 44964 with Cause No. 44976 and that NOW would become an intervenor in Cause No. 44976. NOW filed its Petition to Intervene on August 21, 2017, in Cause No. 44976, which was granted on August 29, 2017. On August 28, 2017, Joint Petitioners, the OUCC, and NOW filed a Joint Request for Consolidation and Stipulation as to Procedural Matters requesting Cause No. 44976 be consolidated with the proceedings in Cause No. 44964 and stipulating upon a procedural schedule in the consolidated proceeding. A docket entry was issued on September 21, 2017, consolidating Cause No. 44964 with Cause No. 44976, vacating the prehearing conference scheduled in Cause No. 44976, establishing a procedural schedule in this consolidated Cause, and directing that future filings under Cause No. 44964 be filed under Cause No. 44976.

On August 29, 2017, NOW filed a Motion to Dismiss Joint Petition And/Or Motion to Strike Joint Petitioners' Case-In-Chief in Cause No. 44976. On August 31, 2017, the OUCC filed OUCC's Motion to Dismiss Joint Petitioners' Cause. Joint Petitioners filed a response to the two motions to dismiss on September 8, 2017, to which the OUCC filed a response on September 15, 2017, in support of its motion to dismiss.

[1] At the conclusion of the evidentiary hearing in this consolidated proceeding, Joint Petitioners, NOW, and the OUCC agreed that for purposes of computing the 210 day period within which Ind. Code § 8-1-30.3-5(e) requires an Order to be issued upon the Joint Petition, this time period shall commence on September 1, 2017, when notice of Indiana-American's proposed acquisition was confirmed in Joint Petitioners' case-in-chief.

On November 2, 2017, NOW and the OUCC each filed their cases-in-chief. Charlestown, on November 15, 2017, moved to strike the testimony of NOW's witness Michael Williams. On November 20, 2017, Joint Petitioners filed their rebuttal testimony. The City's motion to strike was denied by docket entry issued on November 28, 2017.

On November 22, 2017, the Presiding Officers issued a docket entry denying both NOW's and the OUCC's motions to dismiss. On November 27, 2017, NOW filed a Motion for Summary Judgment and Designation of Evidence, and Brief in Support of Motion for Summary Judgment. Charlestown filed a response on December 7, 2017, in opposition to NOW's summary judgment motion. This motion remains pending.

On November 29, 2017, the Presiding Officers issued a docket entry requesting certain information from Joint Petitioners and the OUCC. Joint Petitioners and the OUCC each filed their respective response to the docket entry questions on December 4, 2017. On December 7, 2017, the Presiding Officers issued a docket entry requesting additional information from Joint Petitioners. On December 11, 2017, Indiana-American and Charlestown filed their respective responses to this second docket entry request.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in consolidated Cause Nos. 44976 and 44964 was held commencing at 9:30 a.m. on December 13, 2017, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The hearing continued for three successive days, concluding on December 15, 2017.

Based upon the applicable law and the evidence, the Commission finds:

1. **Commission Notice and Jurisdiction.** Notice of the evidentiary hearing in this consolidated proceeding was published as required by law. Indiana-American is a public utility as defined in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission. The Charlestown water system is a municipally owned utility as defined in Ind. Code § 8-1-2-1(h) and is subject to the Commission's jurisdiction for purposes of rates and charges and financing. Under Ind. Code ch. 8-1-30.3 and Ind. Code § 8-1.5-2-6.1, the Commission has jurisdiction over the proposed sale of a municipally owned utility; therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. **Joint Petitioners' and NOW's Characteristics.** Indiana-American is an Indiana corporation engaged in providing water utility service to the public in numerous communities throughout Indiana, including Clark County, for residential, commercial, industrial, public authority, sale for resale, and fire protection purposes. Its principal office is in Greenwood, Indiana, and Indiana-American serves approximately 300,000 water customers. Indiana-American also provides sewer utility service in two Indiana communities.

Charlestown is a municipality located in Clark County, Indiana. Charlestown owns and operates a water system serving approximately 2,898 metered accounts. Charlestown also supplies water on a wholesale basis to the Sellersburg and Marysville water utilities. The

municipally owned water system Charlestown operates ("Charlestown's Water System") is near Indiana-American's existing Southern Indiana Operations. Charlestown's Water System includes a well field along the Ohio River, four raw water wells, approximately 15,000 feet of raw water transmission main, a 1.5 million gallon ground storage tank, pump station and treatment facility, a 250,000 gallon stand pipe, a 500,000 gallon elevated tank, approximately 290,000 feet of water mains, 488 valves, and 296 hydrants.

NOW is an Indiana nonprofit corporation that, on behalf of more than 10 Charlestown water customers, opposes the sale of Charlestown's water utility.

3. **Relief Requested.** Joint Petitioners filed Cause No. 44976 requesting that the Commission (1) grant such approvals as necessary to consummate the acquisition of the assets comprising the Charlestown Water System by Indiana-American on the terms described in the Joint Petition and the Asset Purchase Agreement between Indiana-American and Charlestown; (2) authorize Indiana-American, without regard to the amounts recorded on Charlestown's books and records and without regard to grants or contributions Charlestown may have received, to record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed in Joint Petitioners' evidence; (3) authorize Indiana-American to apply the rules and regulations and rates and charges generally applicable to Indiana-American's Area One rate group, as the same may be changed from time to time, for service Indiana-American provides in the areas Charlestown Water System currently serves; (4) authorize Indiana-American to apply its existing depreciation accrual rates to the Charlestown Water System; and (5) approve encumbering the properties comprising the Charlestown Water System with the lien of Indiana-American's mortgage indenture. In the Joint Petition, Charlestown and Indiana-American also asked the Commission to approve Indiana-American's plan for reasonable and prudent improvements to provide adequate, safe, and reasonable service to Charlestown's water customers, but that request was subsequently withdrawn.

The relief NOW requests pursuant to its Amended Complaint and pending summary judgment motion is discussed in Finding Nos. 9 and 10 below.

4. **Joint Petitioners' Direct Evidence.** Joint Petitioners presented the direct testimony of G. Robert Hall, Mayor of Charlestown, Donna S. Coomer, Clerk-Treasurer of Charlestown, William A. Saegesser, President of Saegesser Engineering, Inc., Matthew Prine, Community and Government Affairs Director for Indiana-American, Gary M. VerDouw, Director of Rates and Regulatory for Indiana-American, and Stacy S. Hoffman, Indiana-American's Director of Engineering.

A. **Ind. Code §§ 8-1.5-2-6.1 and 8-1-30.3-5.** Mr. Prine testified regarding Ind. Code § 8-1.5-2-6.1 ("Section 6.1") which governs the relief Joint Petitioners seek. He explained that prior to the passage of Section 6.1, Ind. Code ch. 8-1-30.3 ("Chapter 30.3") was established as a new chapter during the 2015 legislative session governing the process and standards to be applied in the sale of distressed utility property. According to Mr. Prine, during the 2016 legislative session, Section 6.1 was passed as a new section in the Code, and Chapter 30.3 was amended. Mr. Prine testified that together, these changes redefined the Commission's

role and the standards to be applied in approving the sale or disposition of non-surplus municipal utility property.

Mr. Prine testified that one result of these legislative changes is to encourage regionalization as a strategy in addressing the State's ongoing infrastructure needs. He noted that Chapter 30.3 allows a public water or wastewater utility acquiring the utility property of a municipally owned distressed utility to petition the Commission to include the cost differential associated with the acquisition as part of its rate base. He also noted the term distressed utility is defined by statute (Ind. Code §§ 8-1-30.3-2 and -5(a)). Mr. Prine stated that an Indiana Finance Authority report on water utility infrastructure needs throughout Indiana (the "2016 IFA Report") encouraged system regionalization and emphasized the need for: (1) prioritizing replacement of aging or failing water mains, and (2) developing a schedule of asset management that organizes the construction needed to maintain and extend the life of a utility system. Mr. Prine testified that the Charlestown Water System faces challenges in the areas the 2016 IFA Report highlights.

Mr. Prine further testified that due to these legislative changes, the process for the sale of a municipally owned water or sewer utility has changed. He explained that a municipality must now obtain the Commission's approval to sell its water or sewer utility, with this grant of approval determined under Section 6.1 or Ind. Code § 8-1-30.3-5 ("Section 30.3-5"), as applicable.

Mr. Prine sponsored a flow chart describing the process for sales by municipally owned utilities of nonsurplus property. He explained that under the current process, the Mayor/Council President or Council of a city or town considering an acquisition must appoint three appraisers to appraise the system's value. Upon return of the appraisal, the municipality must hold a public hearing on the proposed acquisition. If the municipality decides to sell, an ordinance must be adopted approving the proposed acquisition. For ordinances adopted pursuant to this process after March 28, 2016, Commission approval is required under Section 6.1. The standard for approval is whether the sale, according to the proposed terms and conditions, is in the public interest. If a petition is filed pursuant to Ind. Code § 8-1-30.3-5(d) ("Section 30.3-5(d)") and the Commission makes the required findings set forth in Ind. Code § 8-1-30.3-5(c) ("Section 30.3-5(c)"), according to Mr. Prine, Section 6.1 directs that the proposed sale is in the public interest. Mr. Prine stated that under Section 6.1, the purchase price is deemed to be reasonable if it does not exceed the appraised value. Mr. Prine described why he believes the proposed acquisition of the Charlestown Water System followed this process. On cross-examination, Mr. Prine acknowledged that NOW filed a summary judgment motion alleging Charlestown failed to comply with the first step in the appraisal process under Ind. Code § 8-1.5-2-4, but he testified that although no public hearing was conducted within 90 days after the appraisal was first returned, the appraisal was recertified, and the hearing timely occurred after this return. Mr. Prine testified that because the Charlestown Water System is considered a distressed utility, the Joint Petitioners filed the petition in this Cause under Section 30.3-5, and he outlined the various requirements of Sections 30.3-5(c) and (d).

Mr. Prine testified the proposed purchase price to be paid to Charlestown is $13,403,711, which consists of the appraised value of the water utility assets ($13,244,711) plus the appraised

value of the real property included in the acquired assets ($205,000), which total $13,449,711. From this amount, the appraised value of the wells and well pumps were excluded ($46,000) because the wells are being leased to Indiana-American, not sold; therefore, the purchase price equals the appraised value of the system.

With respect to the requirements in Section 30.3-5(d), Mr. Prine testified that he believes the notices required under Section 30.3-5(d) have been provided and, as explained in Mr. VerDouw's testimony, that the proposed acquisition will not cause the rates to Indiana-American's customers to increase by more than 1% of Indiana-American's base annual revenues. He testified that Indiana-American has a plan for reasonable and prudent improvements to the Charlestown Water System, but he deferred to Mr. Hoffman to describe this plan.

After describing why he believes Indiana-American satisfied each of the requirements in Sections 30.3-5(c) and 30.3-5(d), Mr. Prine summarized how Section 6.1 interacts with Chapter 30.3. According to Mr. Prine, if the purchase price of the proposed acquisition does not exceed the appraised value and the elements of Sections 30.3-5(c) and 30.3-5(d) are met, Section 6.1 directs the issuance by the Commission of a final order approving the sale within 210 days after the filing of Joint Petitioners' case-in-chief. The order is to authorize the acquiring utility to record as the net original cost of the utility plant in service assets being acquired: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition, allocated in a reasonable manner among appropriate utility plant in service accounts.

B. Proposed Acquisition and Asset Purchase Agreement. G. Robert Hall, Mayor of Charlestown, testified upon the purpose for the proposed acquisition of Charlestown's Water System. Mayor Hall provided an overview of Charlestown's water utility and its history of brown water issues. He testified that when he was first elected, Charlestown's water utility system was in a woeful state. In 2000, it was common to have two to three water leaks and 15 to 20 brown water complaints daily, and Mayor Hall noted that, as explained by Ms. Coomer, the City's Clerk-Treasurer, no records or water system maps predating 2000 exist. These utility records were lost or destroyed by prior administrations. Mayor Hall testified that after his election, Charlestown embarked on a plan to remediate its water utility, and its system is now significantly better. Today, the utility has approximately two to three water leaks per month in contrast to per day earlier and eight to ten brown water calls per month in contrast to the 15 to 20 per day experienced in 2000. Mayor Hall explained that while a remediation program was implemented and system improvements have been made, significant work remains to solve the City's brown water issues. He testified that Charlestown estimates the next phase of improvements will cost at least $7.2 million, with these improvements more fully described in the testimony of Charlestown's engineering consultant, Mr. Saegesser.

Mayor Hall testified that if the City makes the recommended system improvements, it is estimated water rates will increase to at least $46 per month for an average residential customer to allow the utility to recover its costs. Mayor Hall explained that Charlestown's inability to remediate the brown water issues is one of the reasons Charlestown decided to sell its utility to Indiana-American. Mayor Hall believes Indiana-American has the expertise and access to capital to effectively resolve these issues. Additional benefits from the proposed transaction, from the Mayor's perspective, include taking politics out of raising water rates, providing a lower level of

investment risk to the City's residents and businesses, and facilitating economic development. He explained that political administrations often avoid rate increases to escape political backlash which results in deferred maintenance. In Charlestown's case, according to Mayor Hall, deferred maintenance allowed manganese and minerals to build up within the distribution system pipes creating the brown water problems current Charlestown residents must deal with. Mayor Hall opined that taking politics out of water rates is a good thing for Charlestown. Mayor Hall also shared that Charlestown is poised for growth and wants a professional water company to handle that growth so the City can focus on creating economic development opportunities rather than fixing the brown water issues.

Mayor Hall testified the City followed the statutory process required to sell its water assets. Initially, he delegated his authority to Saegesser Engineering, Inc. to retain the appraisers. Contracts were entered into to appraise the City's utility property. Mayor Hall explained that the appraisal was initially provided to Charlestown in November 2016, but the City did not make a decision on the sale within the statutory timeframe established in Ind. Code § 8-1.5-2-5. Instead, Charlestown continued to consider potentially selling its water utility and later asked the appraisers to review their appraisal. The appraisers did so and returned the appraisal to Charlestown as of April 1, 2017. Mayor Hall sponsored a copy of the original appraisal as Attachment GRH-2 and a copy of the appraisal recertification as Attachment GRH-3.

Mayor Hall testified the proposed sale was discussed at an April 3, 2017, meeting of the Common Council of the City of Charlestown ("City Council"), and he was authorized by unanimous vote to begin sale negotiations. The City Council set a public hearing on the appraisal for May 11, 2017, and provided notice of this hearing on April 11, 2017. Mayor Hall stated the City Council introduced an ordinance approving the proposed acquisition on July 3, 2017, and adopted the ordinance on July 6, 2017. The ordinance the City Council adopted and the relevant meeting minutes were included as attachments to the testimony of Charlestown witness Ms. Coomer.

Mayor Hall testified that Charlestown intends to use the sale proceeds to pay off outstanding water utility revenue bonds of approximately $1,125,000, establish a fund from which to make sewer utility bill credits to lessen the immediate rate impact of the water utility acquisition on Charlestown's residents by, in essence, providing a lower aggregate water and sewer bill, and to establish a strategic reserve with the remaining proceeds. Mayor Hall testified the sewer utility credits will be $20 per month the first year, $15 per month the second year, $10 per month the third year, and $5 per month in year four, with the total cost of the sewer credit package being approximately $1,740,000. The record is unclear upon how many of Charlestown's sewer customers are water customers.

On cross-examination, Mayor Hall explained that through the City Council's public process, Charlestown's citizens and its elected officials had many opportunities to assess the proposed transaction and ask questions. Ultimately, four of the five City Council members, including the member elected at-large, voted favorably upon the proposed transaction.

Ms. Coomer, Clerk-Treasurer of Charlestown, testified regarding Charlestown's financial records related to its water utility. Ms. Coomer stated the water utility's capital improvements

have historically been funded from non-utility funds. She testified that Charlestown complied with Indiana law in using non-utility funds to invest in the water utility, and no State Board of Accounts ("SBOA") audit has found fault with Charlestown expending non-utility funds on the water utility. Ms. Coomer testified that Charlestown issued water utility revenue bonds in 2006, as authorized by the Commission in Cause No. 42878, and the bond proceeds were spent and system improvements made consistent with the City's testimony in Cause No. 42878. Ms. Coomer further testified that Charlestown has not disbursed or otherwise directed water utility funds in violation of Indiana law, including Ind. Code § 8-1.5-2-25.

Ms. Coomer testified regarding Charlestown's capital asset ledger. She explained on cross-examination that this ledger is a document she prepares with the help of her deputy and the SBOA. Due to the lack of records prior to 2000, it has been difficult to create this document. Ms. Coomer stated that she expects the appraisal in this Cause to be a more accurate assessment of Charlestown's assets than the ledger, because the appraisal was conducted by disinterested professionals.

Ms. Coomer testified in support of the proposed transaction between Charlestown and Indiana-American. In response to questions from the Presiding Officers, she confirmed that the three Charlestown officials elected by the entire City—herself, Mayor Hall, and the at-large City Council member—support the proposed transaction.

Mayor Hall also testified regarding Charlestown's negotiations with Indiana-American and the resulting Asset Purchase Agreement. He noted the Agreement includes $7.2 million of guaranteed investment by Indiana-American in the water utility, so the City anticipates significant reductions in brown water incidents. He testified the negotiations leading to the Asset Purchase Agreement were conducted at arm's length. In addition, Mayor Hall testified regarding the agreement entered into between Charlestown and Indiana-American to lease Charlestown's well field, as described in Mr. Saegesser's testimony.

Mr. Saegesser testified regarding Charlestown's rights to its well field and Indiana-American's intention to lease the wells. Mr. Saegesser testified that while Charlestown does not own all of the real estate used for its wells, it holds an "Easement for Right of Way Water Wells" granted by the United States Department of the Army in 1978. He believes Charlestown could sell the property outright that it owns in fee, but could not sell the property subject to the Easement Right of Way for Water Wells. Mr. Saegesser testified that Charlestown decided to lease its wells to Indiana-American in connection with the proposed transaction and enter into a Well Field Lease Agreement for this purpose prior to closing.

The Asset Purchase Agreement, sponsored by Mr. Prine as Attachment MP-3,[2] sets forth the terms and conditions of the sale of the Charlestown Water System. Mr. Prine testified that Indiana-American proposes to acquire all of the property described in Section 2.1 of the Asset Purchase Agreement, apart from the well field and related equipment and assets, at a purchase price of $13,403,711; provided, Indiana-American is also not acquiring: (1) insurance policies

[2] During the evidentiary hearing it was observed that the version of the Asset Purchase Agreement attached to Mr. Prine's testimony was not executed. A copy of the fully executed Asset Purchase Agreement was obtained and admitted into evidence as Joint Petitioners' Ex. 11.

and rights thereunder; (2) personnel records and other records Charlestown is required to retain in its possession; (3) office furniture and equipment, including computers; (4) employee benefit plans and employment/independent contractor contracts; (5) cash, cash equivalents, and short-term investments; (6) accounts receivable, or (7) customer service connections. Mr. Prine testified the purchase price was determined based upon the appraised value of the Charlestown Water System. He stated that consummation of the transaction is conditioned on obtaining certain approvals from the Commission, including recognition of the full purchase price plus transaction costs in net original cost rate base, and the application of Indiana-American's Area One rates to Charlestown's water customers.

Mr. Prine testified that Charlestown's water customers and Indiana-American's existing customers will benefit from the acquisition. First and foremost, Charlestown customers will benefit from Indiana-American rectifying the City's water quality issues. Mr. Prine testified these customers will also benefit from full-time management of their water system, including, but not limited to, a full-time operations staff, 24/7 customer service and emergency response, and enhanced security measures, along with full-time functional specialists in the areas of engineering and water quality. He stated Charlestown customers will also benefit from improvements to service as discussed in Mr. Hoffman's testimony. Mr. Prine testified that customers will benefit from the acquisition, as the system will be included in Indiana-American's prioritization model, allowing planning and asset management needs like those the 2016 IFA Report identified to be met.

Mr. Prine testified that given Charlestown's water quality issues, continuation of current ownership could lead to a troubled future for the Charlestown Water System. He echoed Mayor Hall's testimony that Indiana-American is in a better position than the City to address these issues. Both Mr. Prine and Mr. VerDouw testified that Section 30.3-5(d) did not require Indiana-American to provide notice to its customers because the proposed acquisition will not increase Indiana-American rates in an amount greater than 1%. Mr. VerDouw testified on cross-examination that this notice was, however, provided to comply with the Commission's Order in Cause No. 44915 issued on October 11, 2017, regarding Indiana-American's acquisition of Georgetown's water utility properties ("*Georgetown Order*") directing utilities to over inform, not under inform, their customers of an acquisition that will impact their rates.

C. <u>Brown Water Issues and Indiana-American's Plan for Improvements</u>. Mr. Saegesser, President of Saegesser Engineering, Inc., testified regarding Charlestown's water quality issues and what Charlestown has done to address these. He testified that Charlestown's brown water issues are caused by build-up over several decades of manganese and minerals in the City's storage tanks and distribution system that was not removed by regular flushing and cleaning. Mr. Saegesser explained that because Charlestown's brown water issues are a distribution system problem, Charlestown cannot solve these issues with water from a different source. Mr. Saegesser testified the next phase of the City's improvements is projected to cost $7.2 million. These improvements will primarily address water age issues. Mr. Saegesser further testified that a $7.2 million upgrade to Charlestown's water utility will place significant rate pressure on Charlestown's ratepayers, and for this reason, among others, he believes the proposed asset sale to Indiana-American is in the best interests of Charlestown and its residents.

Mr. Hoffman, Director of Engineering at Indiana-American, testified regarding the approach Indiana-American will likely take to address the challenges associated with Charlestown's system. He noted Charlestown has taken steps to address the accumulated manganese and significantly reduced the brown water occurrences, but optimal results have not yet been achieved. Mr. Hoffman testified that Indiana-American will thoroughly test, evaluate, and understand the raw water concentrations of manganese. But, Indiana-American's first objective, according to Mr. Hoffman, is to assure the quality of the water its customers consume, so the first priority of its capital investment in Charlestown's Water System will be dedicated to that assurance. In describing Indiana-American's plan for improvements as contemplated in Section 30.3-5(d), Mr. Hoffman testified that Indiana-American will identify improvement needs after a more thorough evaluation of the Charlestown Water System. He had not studied the improvements proposed in the Saegesser Preliminary Engineering Report, but he expects many of these could be valuable for effective operation of Charlestown's system.

Mr. Hoffman explained that Indiana-American's history of delivering quality water is built on a commitment to higher operational standards than may be fiscally prudent or possible for smaller water utilities. He testified that Indiana-American's plan describes the method Indiana-American intends to follow to achieve the end of improving the Charlestown Water System and its operations as opposed to identifying specific projects. Consistent with prioritizing water quality, the initial issue to be addressed is the distribution system because the water age in the distribution system is resulting in chlorine residual readings that violate primary drinking water standards and pose a public health risk from microbial contamination. Mr. Hoffman described how Indiana-American, through its plan, intends to address water age issues, investigate source water, and thoroughly test, evaluate, and understand the raw water concentrations of manganese along with likely distribution system improvements. He explained that depending on the results of these actions, Indiana-American may take subsequent actions, including locating another source of supply farther away from the existing location, treating Charlestown's groundwater supply, and/or vigorous unidirectional flushing of the distribution system.

Mr. Hoffman testified on cross-examination that Indiana-American's plan is to study the issues and does not specify the solutions for resolving Charlestown's water quality issues, as it is impossible for Indiana-American to identify these prior to operating the system. He explained that Charlestown's Water System has a myriad of problems that will require a variety of solutions. Indiana-American's plan includes possible solutions to address the system's problems which will be evaluated after Indiana-American acquires the system.

D. <u>Accounting and Ratemaking Treatment</u>. Mr. VerDouw testified that Indiana-American is proposing to record the net original cost of the Charlestown Water System in the manner reflected in the proposed journal entry shown on Attachment GMV-1. He noted that the purchase price for the acquisition includes a cost differential as that term is defined in Chapter 30.3. Based on Charlestown's Annual Report to the Commission as of December 31, 2016, which was filed with the Commission on April 25, 2017, Mr. VerDouw testified the total rate base for the Charlestown Water Utility is $1,761,014. The difference between the original cost rate base requested in this Cause ($13,583,711) and the rate base included in the City's Annual Report to the Commission as of December 31, 2016, ($1,761,014) is $11,822,697 which, according to Mr. VerDouw, could be considered the cost differential amount in this acquisition.

The investor-supplied original cost rate base for the Charlestown Water System would be equal to the full purchase price plus incidental expenses and other acquisition costs. Mr. VerDouw testified that the original cost rate base being requested in this Cause is $13,583,711. Joint Petitioners' Ex. 5 at 6. He testified that with the proposed journal entry, Indiana-American is allocating the full purchase price plus transaction costs (including the cost differential) in a reasonable manner among appropriate utility plant in service accounts.

Mr. VerDouw testified that the accounting and ratemaking treatment reflected in the proposed journal entry complies with the treatment granted under Section 30.3-5(c) where all of the factors set forth in that section are met. He stated that if the Commission makes the required findings, Ind. Code § 8-1-30.3-5(e) specifies the accounting entries for recording the acquisition that the Commission shall authorize, similar to the directive in Section 6.1(f).

Mr. VerDouw stated that the proposed purchase price is reasonable and the result of arm's length negotiations. He testified that under Section 6.1(d), the purchase price is deemed conclusively reasonable if it does not exceed the appraised value, and that in this case, it does not. Mr. VerDouw further testified that the depreciation accrual rates to be applied to the Charlestown Water System assets will be the rates the Commission approved in Cause No. 43081 on November 21, 2006, as included in the calculation of rates with the approval of Indiana-American's rate case in Cause No. 43187 on October 10, 2007.

Mr. VerDouw testified that Indiana-American has access to the necessary funds to support the acquisition, with those funds initially coming from internally generated funds. He stated that the projected investment to acquire the Charlestown Water System is equal to approximately 1.5% of Indiana-American's total capital structure as of June 2017, and thus, Indiana-American does not believe the acquisition will impair its ability to raise necessary capital on reasonable terms while maintaining a reasonable capital structure. Mr. VerDouw also described the encumbrance to be placed on the Charlestown Water System assets as a result of the acquisition under Indiana-American's general mortgage, which secures most of Indiana-American's utility property for the benefit of Indiana-American's bond holders.

Mr. VerDouw stated that Indiana-American intends to apply Indiana-American's Area One tariff rates for water service and private and public fire service which are on file with and approved from time to time by the Commission to Charlestown's water customers. Application of the Area One rates is supported by Charlestown's close proximity to Indiana-American's Southern Indiana Operations. Mr. VerDouw testified that the monthly bill for a residential customer using 5,000 gallons will increase from $18.03 to $44.17 for customers with fire protection, based on the current tariff in effect for both utilities; however, Mr. VerDouw reiterated that Charlestown is and has been unable to undertake the necessary improvements to its system to furnish and maintain adequate service. Its projected rates, if the improvements Mr. Saegesser recommended in the amount of $7.2 million were implemented, will exceed Indiana-American's Area One rates in effect as of the hearing. Mr. VerDouw further testified that given the relatively small size of Charlestown's system, Indiana-American's rates are not expected to increase unreasonably as a result of acquiring the Charlestown Water System.

5. OUCC's Evidence. Margaret Stull, Senior Utility Analyst in the OUCC's Water/Wastewater Division, testified upon the proposed accounting transaction and

recommended changes in the proposed journal entry. She expressed concern that Indiana-American proposes to record Charlestown's assets at their gross value (replacement cost), less accumulated depreciation (percent depreciated). According to Ms. Stull, Indiana-American's proposed journal entry will cause $25,705,535 of utility plant in service to be recorded for assets with a purchase price of $13,583,711. Based on Indiana-American's effective depreciation rate of 2.86%, depreciation expense on the acquired Charlestown assets under Indiana-American's proposed journal entry will be $729,315 in contrast to a depreciation expense of $382,631 based on the purchase price. Ms. Stull testified that on an annual basis Indiana-American will recover excess depreciation expense of $346,684 under its proposed journal entry, nearly double the depreciation expense on the assets acquired. Over the life of the acquired assets, Indiana-American will receive a return of its investment that is $12,121,824 greater than its actual investment. She also noted the proposed total replacement cost of $25.7 million is a hypothetical cost that has not been incurred; consequently, Ms. Stull asserted Indiana-American should not be allowed to record this level of utility plant in service and charge ratepayers for depreciation expense based on a hypothetical replacement cost that has not actually been incurred.

Ms. Stull sponsored the OUCC's proposed journal entry as Attachment MAS-1 which records gross utility plant in service equal to the purchase price, plus transaction costs, and no accumulated depreciation. She testified that the journal entry Mr. VerDouw sponsored as Attachment GMV-1 is inconsistent with the accounting and ratemaking treatment Ind. Code § 8-1-30.3-5 authorizes. While Indiana-American proposes to record the purchase of Charlestown's water utility assets in a manner that will permit Indiana-American to earn depreciation expense on more than $25 million, Ms. Stull testified that under Ind. Code § 8-1-30.3-5 it is the purchase price that should be reflected in the accounting entry as the original cost of the utility plant in service of the assets acquired. She testified that the OUCC does not oppose Indiana-American's acquisition of Charlestown's utility assets, but Indiana-American should be required to record the transaction in a manner consistent with the OUCC's proposed journal entry. The increase to Indiana-American's rate base is the same in both proposed accounting transactions, but the OUCC's journal entry only allows Indiana-American a return of its actual investment.

Carl N. Seals, Utility Analyst with the OUCC, testified that under Section 30.3-5(d), Indiana-American is required to provide "a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility [Charlestown]." Ind. Code § 8-1-30.3-5(d)(4). Mr. Seals testified that Indiana-American did not provide such a plan and, therefore, has not qualified for the statutory remedy. Mr. Seals stated that instead of providing the required plan, Indiana-American suggested it needs to more thoroughly evaluate the Charlestown Water System, including gaining experience through operating the system. From Mr. Seals' perspective, Mr. Hoffman spoke in terms of possible solutions, likely improvements, and further evaluation, but what Mr. Hoffman identified in his testimony is not sufficiently developed to constitute a plan for purposes of Section 30.3-5(d)(4). He further testified that the OUCC expects to see identified projects, a timeline for when these will commence, an estimation of the associated costs, and an explanation of how the projects will address Charlestown's system's problems.

Mr. Seals reviewed the "possible solutions" Mr. Hoffman mentioned. These consisted of: (a) addressing the distribution system, (b) thoroughly testing, evaluating, and understanding the raw water concentrations of manganese, (c) locating another source of supply farther away from

the existing location, (d) treatment of the existing well supply by removal of manganese through oxidation and filtration or adsorption, (e) filter backwashing, and (f) unidirectional flushing. Mr. Seals opined that none of the foregoing "possible solutions" were developed. Instead, with respect to whether filtration should be installed, Mr. Hoffman stated that it would be prudent to investigate filtration. Joint Petitioners' Ex. 6 at 14. Mr. Seals testified that Mr. Hoffman had also not yet studied the improvements proposed in Mr. Saegesser's Preliminary Engineering Report, but simply expected that many of the proposed improvements could be valuable for effective operation of the system. Public's Ex. 3 at 4. From Mr. Seals' perspective, prospective investigations and expectations do not equate to a plan under Section 30.3-5(d)(4).

Mr. Seals stated that the OUCC sought additional information from Indiana-American upon the required plan. In response to the OUCC's request for all plans for reasonable and prudent improvements to the system, Indiana-American provided the following:

> Please refer to page 18 of Mr. Hoffman's direct testimony for reply to this request, which is attached as "OUCC DR 1.15-R1.pdf". Additionally, Indiana American anticipates making improvements to the supervisory and data acquisition (SCADA) system. A detail cost of possible SCADA improvements is not determined at this time. Indiana American will also further evaluate customer meter performance and/or age upon acquisition to determine a schedule for replacing meters. The timing and cost of any meter replacements is not determined at this time. As Indiana American identifies further improvement needs with more thorough evaluation and with direct operation of the Charlestown system, Indiana American will incorporate the improvement needs in its capital planning and investment prioritization models. (emphasis added)

From Mr. Seals' perspective, Indiana-American only has a plan to form a plan. He stated that neither SCADA nor replaced meters address Charlestown's water quality issues. Mr. Seals testified that through Mr. Hoffman's testimony referenced in the above response Indiana-American provides little in the way of a tangible "plan for reasonable and prudent improvements." Section 30.3-5(d)(4). He asserted that Indiana-American's promise to "[identify] further improvement needs with more thorough evaluation ... of the system" is not providing a plan for reasonable and prudent improvements. Mr. Seals testified that without more detail, the OUCC and the Commission lack the information necessary to determine whether Indiana-American's plan includes improvements that are reasonable and prudent and otherwise satisfy the criteria of Section 30.3-5(d)(4). Public's Ex. 3 at 5.

Mr. Seals also testified upon the appraisal in this Cause. He took exception with the appraised value of the meters, stating the meters are likely at the end of their useful life.

James T. Parks, P.E., Utility Analyst II with the OUCC, testified regarding the appraisal performed for this acquisition. Mr. Parks reviewed flaws in the appraisal process which, from his perspective, resulted in a Valuation Report that failed to account for asset condition, relied on understated asset ages, overstated total replacement costs, and included assets that will not be acquired. (Public's Ex. 4 at 3, 5). Mr. Parks testified that Charlestown started its water system in

1937, and the system grew during World War II when the Indiana Army Ammunition Plant fostered economic and population growth in the Charlestown area; consequently, large portions of Charlestown's water system were installed during this growth period, with the utility's capital asset ledger showing water main additions totaling 126,000 feet between 1935 and 1938. (Public's Ex. 4 at 31). Yet, the Valuation Report in Table 1 does not list any pipe from the 1930s and 1950s which is inaccurate. Mr. Parks' criticisms challenged why the appraisers did not use more accurate installation dates for certain assets and categories of assets.

He was also critical of the Valuation Report not accounting for asset condition. Mr. Parks testified the appraisers calculated depreciation to determine present value based solely on asset age (Public's Ex. 4 at 11), thereby failing to account for asset condition. (Public's Ex. 4 at 3). Mr. Parks disagreed with the water main and service line ages used in the report. He stated it appeared the appraisers made simplifying assumptions that had the effect of distributing water main installation evenly throughout the decades (excluding the 1930s and 1950s). (Public's Ex. 4 at 28). He criticized the appraised value of the fire hydrants and mains, stating that both the present value and age of fire hydrants used in the appraisal are inaccurate or at best unreliable. According to Mr. Parks, the appraisers used fire hydrant dates to establish the age of water mains, but Charlestown has replaced more than half of its fire hydrants since 2000. He stated that in older water distribution systems where hydrants, but not water mains, have been replaced, relying on hydrant age to establish water main ages can create erroneous results that understate water main ages and overstate present values.

Mr. Parks testified that the methodology the appraisers used to value Charlestown's utility assets included flaws that affect the values across most categories of plant. He stated that of particular concern is the failure to incorporate into the valuation the poor condition of certain assets within Charlestown's Water System. Mr. Parks further testified that the values presented in the Valuation Report in Tables 1 and 2 are based upon flawed assumptions, including unsupported cost estimates, that cast doubt on the replacement cost and the present values on which the utility purchase is based. (Public's Ex. 4 at 35-36). Mr. Parks testified that when the flaws that arise due to inaccurate assumptions are corrected, the present value of Charlestown's Water Services is $955,000 less. (Public's Ex. 4 at 23). Mr. Parks also took issue with the appraised value of multiple assets, including a ground storage tank, a 258,000 gallon standpipe in which finished water is stored, a 500,000 gallon elevated water tank, and the pump building. In each instance, he testified upon why the Valuation Report overstated the value of these assets.

Edward Kaufman, Assistant Director of the OUCC's Water-Wastewater Division, also testified regarding the appraisal, opining that the Valuation Report includes mathematical, mechanical, and methodology flaws. Mr. Kaufman's appraisal concerns include the asset life determination methods used, the assumption that Water Services have a 50% remaining life, the depreciation percentage calculations, and the appraisers' failure to consider the condition of system assets. By way of example, Mr. Kaufman testified that the appraisal is approximately two years stale, using data from 2015, which failed to capture two years of depreciation. This use of stale data caused the valuation to be overstated by approximately $620,000. He stated the valuation methodology used also inappropriately combines elements of a reproduction costs study and a replacement costs study, thereby overstating the value. Finally, Mr. Kaufman testified that the appraisal in this Cause is much shorter and less detailed than other appraisals he has reviewed and as such is atypical.

Mr. Kaufman also testified that Indiana-American failed to comply with the notice requirement in Section 30.3-5(d)(2). Mr. Kaufman testified that based upon his calculations, Indiana-American's revenue requirement will increase by more than 1%. His calculations showed Indiana-American's proposed acquisition will exceed the statute's 1% threshold requiring notice; therefore, he testified notice to Indiana-American's customers was required in this Cause. Mr. Kaufman testified that although Indiana-American indicated notice was provided to its customers in the November 2017 billing cycle, this notice did not mitigate his concerns because Indiana-American should have provided its customers with notice before petitioning the Commission for approval of the proposed acquisition. He also criticized the notice Indiana-American provided because it failed to substantively notify Indiana-American's customers that the proposed Charlestown acquisition will cause their rates to increase or the anticipated scope of the increase, which he testified are necessary elements of the notice to Indiana-American's existing customers. Mr. Kaufman testified that Indiana-American has not satisfied the notice required under Section 30.3-5(d)(2).

6. **NOW's Direct Evidence.** Robert L. Isgrigg, P.E., provided testimony on behalf of NOW. He testified upon the proposed sale of the Charlestown water utility from an engineering perspective. Mr. Isgrigg expressed concerns regarding the ownership of the City's well field. He stated that the well field deed requires IDNR's approval prior to transferring easements to other parties, and this requirement presumably applies to Indiana-American.

Mr. Isgrigg also expressed concerns regarding whether the sale will be equitable to Charlestown's customers. He testified the sale will increase water bills for Charlestown's customers 150% with no immediate improvement in water quality. He also testified the proposed sale does not advance the goal of improving Charlestown's water quality. Mr. Isgrigg disagreed with Mr. Saegesser's report indicating a $7.2 million investment is needed to mitigate Charlestown's water quality problems. He testified there are at least four viable, cheaper alternatives that could be used together or separately to improve Charlestown's water quality. These alternatives include simple basic changes to Charlestown's operations and maintenance procedures, as well as pumping or buying water from a different source, including the IDNR. Mr. Isgrigg testified that any of these alternatives would be cheaper; however, purchasing fully-treated water from the IDNR is an especially appealing alternative because it is simple and very quick. He suggested the sale between Indiana-American and Charlestown, without investigating or comparing the IDNR option, has an implication of collusion that does not look after the best interests of Charlestown's customers.

Based on his experience, Mr. Isgrigg testified that Mr. Saegesser's $7.2 million improvement plan does not constitute reasonable and prudent improvements if the goal is "to ensure that [Charlestown] customers ... will receive adequate, efficient, safe and reasonable service." He further testified that generating $13.4 million from this sale to fund private development projects seems like an insufficient reason for the sale and that raising customers' rates for this purpose is not equitable to Charlestown's utility customers.

Mr. Michael Williams, CPA, also testified on NOW's behalf regarding whether the City observed the accounting guidelines established by the State Board of Accounts ("SBOA") and Indiana law. Mr. Williams testified regarding audit exceptions found during the SBOA's 2008-2009 audit. He suggested that because audit exceptions were found in the 2008-2009 audit,

exceptions should have been found in the 2010 and 2011 audits. Mr. Williams stated his belief that it is improbable Charlestown could have corrected its "serious" violations in one year and suggested exceptions will be found in the audit SBOA is currently conducting.

In addition to this testimony, NOW offered the transcript, exhibits, and findings of fact from a trial court preliminary injunction hearing concerning City building code enforcement actions. A nexus between the facts and issues in the injunction proceeding and the water utility sale was not established, although NOW proffered related arguments.

7. Joint Petitioners' Rebuttal Testimony.

A. Accounting Transaction. In his rebuttal testimony, Mr. VerDouw testified that the accounting entry Indiana-American proposed in this Cause did not deviate from the approach Indiana-American used in *Indiana American Water & Town of Georgetown,* Cause No. 44915 (IURC 10/11/2017) ("*Georgetown*"), but he agreed that Ms. Stull's journal entry is consistent with the statute and is reasonable; therefore, Mr. VerDouw testified that Indiana-American accepts the OUCC's proposed accounting transaction, and he sponsored a revised journal entry as Attachment GMV-R1. Mr. VerDouw noted that this accounting treatment does not impact net original cost rate base, and Indiana-American will record $13,583,711 as net original cost rate base.

B. Plan for Reasonable Improvements. Mr. Hoffman responded to Mr. Seals' criticisms that Indiana-American has presented a plan to develop a plan, but not the plan Section 30.3-5(d)(4) requires. Mr. Hoffman disagreed with Mr. Seals and believed it was critical to consider the context in which the statute requires a plan in order to understand what is required. He explained that the acquisition will not be completed until after Commission approval is obtained. According to Mr. Hoffman, Indiana-American cannot and should not perform the evaluations necessary to develop the specific projects and details Mr. Seals testified he expects to see. Mr. Hoffman testified that what Indiana-American can do—and has done—is identify steps Indiana-American will take to implement improvements to plant and operations that will solve Charlestown's water quality problems.

Mr. Hoffman testified on rebuttal that following closing, the next steps include further identifying improvement needs through: (1) a more thorough evaluation of the Charlestown system and (2) direct operation of the system. Joint Petitioners' Ex. 6-R at 6. He opined that in the context of this acquisition case, Indiana-American's plan is the method Indiana-American intends to follow to achieve improved operations. Joint Petitioners' Ex. 6-R at 5. He described the plan, in summary form, as the following:

> (1) Addressing distribution system and chlorine issues that Mr. Saegesser identified to improve chlorine residual and reduce water age;
>
> (2) Investigating source water through test drilling, pumping, and sampling, and individual sampling of existing wells; and
>
> (3) Testing, evaluating, and understanding the raw water concentrations of manganese.

Depending upon the results of the above, potential subsequent actions include:

(4) Locating another source of supply further away from the existing location;

(5) Treating groundwater supply by removal of manganese through oxidation and filtration or adsorption and filter backwashing; and

(6) Vigorous unidirectional flushing of the distribution system.

Joint Petitioners' Ex. 6-R at 5-6).

Mr. Hoffman reiterated that the statute only requires Indiana-American have a plan for improvements and does not require a specific list of projects. On rebuttal and during cross-examination, he contrasted the plan required in connection with the proposed acquisition with the plan that is approved for energy utilities in connection with transmission and distribution system improvements pursuant to Ind. Code ch. 8-1-39 ("TDSIC"). According to Mr. Hoffman, the word "projects" is instructional because unlike the TDSIC statute, the distressed utility statute does not reference "projects." Mr. Hoffman opined that the difference between the two statutes makes sense because in a TDSIC proceeding, the utility is ultimately requesting rate relief for specific improvement projects associated with what it already owns, which is not the case for a utility in an acquisition proceeding. Mr. Hoffman stated Indiana-American has presented a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility, including a plan to provide these customers with water quality comparable to what Indiana-American provides to other customers of Indiana-American's Southern Indiana Operations.

In response to a docket entry question, Mr. Hoffman set forth categories of capital investments and estimates of potential costs. He explained that the investment shown covers five years, and some of the investments may obviate the need for other investments. The total estimated investments was $13.2 million. Joint Petitioners' Ex. 8, Response to Request 7. In addition, the Asset Purchase Agreement requires Indiana-American to make investments of at least $2.3 million each of the first two years following closing and a total investment of $7.2 million within five years of closing. Attachment MP-3 at 11.

C. Appraisal Criticisms. Mr. Hoffman responded to Mr. Parks' appraisal criticisms, noting that while Mr. Parks was critical of the appraisal, he did not recommend the appraisers' valuation be changed or testify to an alternative appraisal value. Mr. Hoffman further criticized Mr. Parks' overall approach by noting there is no single right answer upon the value of an asset that every appraiser must arrive at and that qualified appraisers may arrive at different asset values based on their experience, review of information, and judgments. While stating there is no single right answer upon the value of an asset, on cross-examination Mr. Hoffman acknowledged there can be wrong answers. Mr. Hoffman was, generally, critical of Mr. Parks' approach because Mr. Parks frequently concluded asset values were overstated but never criticized an asset value for being understated. Mr. Hoffman also responded to Mr. Parks' criticism of the valuation of specific assets.

Mr. Hoffman testified that Mr. Parks improperly seized upon language in the Commission's *Georgetown Order* as inviting his criticisms of the appraisal. *Georgetown Order*

at 15; Joint Petitioner's Ex. 6-R at 9. Mr. Hoffman testified that he does not believe Mr. Parks' approach is what the Commission had in mind when indicating that it is appropriate to consider whether the appraisal was conducted appropriately. Mr. Hoffman explained that he believes the Commission was referring to whether the statutory requirements for an appraisal have been met, including appointing three disinterested, qualified appraisers consistent with Ind. Code § 8-1.5-2-4 who satisfy the qualifications in Ind. Code § 8-1.5-2-5(a)(1).

Mr. Hoffman testified that the appraisal in this Cause was conducted appropriately because three disinterested, qualified appraisers were appointed and conducted the appraisal. Mr. Hoffman testified both in his rebuttal and on cross-examination that Mr. Parks' criticisms are biased as an OUCC witness and are ultimately irrelevant to the Commission's determination in this Cause upon the reasonableness of the purchase price. On cross-examination, Mr. Prine echoed Mr. Hoffman's rebuttal testimony in claiming that the OUCC's witnesses are not disinterested persons per the meaning of the appraisal statute. Mr. Hoffman recommended that the independent qualified appraisers' valuation be recognized as complying with the statute. On cross-examination, Mr. Prine acknowledged, however, that a purchaser will pay more for a used car if it is in good condition than if it is in poor condition, but the appraisal for the proposed acquisition is based on the age of the assets without taking into consideration their condition. He also testified on cross-examination that Indiana-American did not evaluate the condition of the assets before entering into the Asset Purchase Agreement or perform an internal evaluation of the appraisal. According to Mr. Prine, Indiana-American does not second guess the appraisal. Mr. Hoffman concurred on cross-examination that Indiana-American had not analyzed the accuracy or quality of the appraisal.

In his rebuttal, Mr. VerDouw also responded to the OUCC's appraisal criticisms. Mr. VerDouw noted that despite the appraisal concerns the OUCC's witnesses raised, no OUCC witness recommended changing the appraised value or offered the Commission guidance upon how the OUCC's criticisms should be reflected in the journal entry for ratemaking purposes. Mr. VerDouw quantified the impact of the OUCC's collective criticisms and testified the total effect would reduce the appraised value ($13,403,711) by $1,966,500. On cross-examination, Mr. VerDouw acknowledged that the OUCC's witness Kaufman quantified an additional $620,000 overstatement in the value of Charlestown's assets attributable to not capturing two years of depreciation, yielding a total overstatement of approximately $2.6 million. Mr. VerDouw testified that he is not suggesting the Commission reduce the appraised value and does not believe the OUCC provided a basis for doing so. He reiterated that the appraisal satisfies the requirements of Ind. Code § 8-1.5-2-5 because it was conducted by three professionals possessing the qualifications the statute requires. He testified that reducing the appraised value is inconsistent with Ind. Code § 8-1.5-2-5 which provides that an appraisal signed by two appraisers constitutes a good and valid appraisal. Mr. VerDouw further testified that the OUCC witnesses are merely second guessing the work of qualified appraisers.

D. Notice Criticisms. Mr. VerDouw also responded to Mr. Kaufman's assertion that Indiana-American failed to satisfy the notice required under Section 30.3-5(d)(2). Mr. VerDouw testified the statute says nothing about how this notice is to be provided and does not require any particular information to be included. Although Indiana-American's calculations show the proposed acquisition will not increase its existing customers' rates by an amount greater than 1% of Indiana-American's base annual revenue, Mr. VerDouw testified that Indiana-

American took its cue from the *Georgetown Order* and informed its customers of the Charlestown acquisition via a November bill insert. This notice identified the acquisition, the relief Indiana-American seeks in this Cause, and the purchase price. It also directed customers to a link on Indiana-American's website with additional information and the Commission's online docket where orders and information filed in this Cause can be found. Mr. VerDouw testified that Indiana-American provided its customers with an abundance of notice, and compliance with Section 30.3-5(d)(2) was exceeded.

Mr. VerDouw testified that he disagreed with Mr. Kaufman's testimony that Indiana-American should have provided notice to its customers before petitioning the Commission in this Cause. He reiterated that the statute only requires notice if the 1% threshold is exceeded, which is not the case in this Cause. Mr. VerDouw identified an error in Mr. Kaufman's 1% calculation and explained that when irrelevant information included in Mr. Kaufman's calculation is ignored, this calculation shows Indiana-American is below the 1% threshold. Mr. VerDouw testified that he accepted two of the OUCC's adjustments, and he sponsored Attachment GMV-R2, the revised calculation using these adjustments. According to Mr. VerDouw, making these two changes produces an anticipated increase of 0.832%, which is below the 1% threshold. Mr. VerDouw stated that if the calculation exceeded 1%, the statute requires Indiana-American to provide notice to its customers before it acquires the utility property, not before filing the petition. Thus, Mr. VerDouw testified Indiana-American was not required to provide notice in this Cause, but did so prior to closing; therefore, the notice requirements have been met.

In responding to the Commission's docket entry question dated November 29, 2017, Indiana-American revised the 1% calculation. This reduced the additional revenue requirement to give effect to the additional interest synchronization deduction corresponding to the debt portion of the capital structure, reducing the future effect of the acquisition on Indiana-American customers. In response to a request from the Presiding Officers during the hearing, Indiana-American also filed Joint Petitioners' Late Filed Exhibit 1 in which Indiana-American's potential investment in system improvements was increased to $13.2 million consistent with its docket entry response dated December 11, 2017. In each of Indiana-American's revised calculations, the effect of acquiring Charlestown's water system assets upon Indiana-American's overall revenue requirement was less than 1%.

E. Rebuttal of NOW Position. Mr. Prine testified that much of NOW's position in this Cause seems driven by political disputes with Charlestown's administration, and he noted NOW is the only party opposing the sale. Mr. Prine disagreed with the implication in Mr. Isgrigg's testimony that there has been collusion, stating that Indiana-American has not interfered with the appraisers or the local decision-making process upon whether to sell the City's Water System. He reiterated that the acquisition negotiations were conducted in good faith and at arm's length. Mr. Prine also responded to Mr. Isgrigg's concern that IDNR's approval may be needed to transfer certain easements. He stated this issue is not a concern and will be addressed in the due diligence process prior to closing.

Mr. Saegesser also responded to Mr. Isgrigg's testimony. Mr. Saegesser challenged Mr. Isgrigg's lack of specificity and broad brush approach. He provided NOW data request responses evidencing that Mr. Isgrigg last worked on Charlestown water matters in the 1970s (Attachment WAS-2R) and has not designed water treatment, distribution, or storage facilities since January

2007 (Attachment WAS-5R). Mr. Saegesser reviewed his use of hydraulic modeling to develop the recent engineering report for Charlestown's water utility and explained how the use of this model provided an integrated approach to improving system operations, analyzing water quality, and planning water system improvements. He testified that Mr. Isgrigg's recommendations were made without the benefit of a hydraulic model of Charlestown's system. Mr. Saegesser concurred with Mr. Prine that the real estate approval issue Mr. Isgrigg raised is a non-issue in this proceeding, as the parties will separately address consent requirements prior to closing.

Mr. Hoffman responded to Mr. Isgrigg's testimony regarding Charlestown's water quality. He stated that some of Mr. Isgrigg's statements regarding water quality are perplexing, while other statements are wrong. Mr. Hoffman responded in detail to Mr. Isgrigg's statements that he perceived as incorrect. Mr. Hoffman testified that the approach Mr. Isgrigg suggested in his testimony focusing on hardness will not alleviate Charlestown's brown water problems; however, the steps described in Mr. Hoffman's direct testimony will address such issues.

Mayor Hall testified the public has had the opportunity to request information on the proposed transaction and to provide input at multiple public meetings and City Council meetings. Mayor Hall testified that no member of the public, including NOW members, made a request to review the appraiser contracts or the appraisal. He pointed out that no officer or board member of NOW testified in this proceeding. Mayor Hall also testified that there has been no collusion with respect to the transaction, and the proposed transaction has been negotiated at arm's length.

Ms. Coomer, Charlestown's elected Clerk-Treasurer, responded to Mr. Williams' testimony regarding Charlestown's SBOA audits. Ms. Coomer testified that none of the audit exceptions the 2008-2009 SBOA audit identified, as referenced in Mr. Williams' testimony, related to the water utility. She testified the SBOA has conducted subsequent audits of Charlestown, and no audit exceptions have been identified since the 2008-2009 audit. Ms. Coomer disagreed with Mr. Williams' suggestion that because exceptions were found in the 2008-2009 audit, exceptions should have been found in the 2010 and 2011 audits and will be found in the current audit. She testified this is not supported by the facts, and she has no reason to doubt the SBOA's conclusions or to believe the SBOA's judgment was flawed.

8. Commission Discussion and Findings. Indiana-American and Charlestown seek approval of Indiana-American's prospective acquisition of the Charlestown Water System pursuant to Section 6.1 and Chapter 30.3. More specifically, Indiana-American and Charlestown filed their Petition under Ind. Code § 8-1-30.3-5(d) and assert the proposed transaction satisfies the requirements of Ind. Code § 8-1-30.3-5(c). As such, Joint Petitioners request the Commission approve the transaction under the terms and conditions of the Asset Purchase Agreement, finding the transaction proposed is in the public interest in accordance with Ind. Code § 8-1.5-2-6.1(e)(1). This acquisition is proceeding pursuant to Section 6.1 and Section 30.3-5.

As the Commission explained in the *Georgetown Order*, Section 6.1 applies to a municipality that adopts an ordinance under Ind. Code § 8-1.5-2-5(d) after March 28, 2016, addressing the sale or disposition of nonsurplus utility property. Section 6.1(b) requires a municipality adopting such an ordinance to obtain Commission approval prior to the transaction occurring. Mayor Hall testified that Charlestown adopted an ordinance approving the proposed acquisition of the Charlestown Water System by Indiana-American on July 6, 2017. Thereafter,

Charlestown and Indiana-American entered into the Asset Purchase Agreement on July 31, 2017, and now seek Commission approval. Jt. Petitioners Ex. 11.

This acquisition is proceeding pursuant to Section 6.1 and Section 30.3-5. Section 6.1 states:

> (a) This section applies to a municipality that adopts an ordinance under section 5(d) [Ind. Code § 8-1.5-2-5(d)] of this chapter after March 28, 2016.
>
> (b) Before a municipality may proceed to sell or otherwise dispose of all or part of its nonsurplus utility property under an ordinance adopted under section 5(d) of this chapter, the municipality and the prospective purchaser must obtain the approval of the commission under this section.
>
> (c) As part of the sale or disposition of the property, the municipality and the prospective purchaser may include terms and conditions that the municipality and the prospective purchaser consider to be equitable to the existing utility customers of:
>
> (1) the municipality's municipally owned utility; and
>
> (2) the prospective purchaser;
>
> as applicable.
>
> (d) The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest. For purposes of this section, the purchase price of the municipality's nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of this chapter.
>
> (e) The following apply to the commission's determination under subsection (d) as to whether the proposed sale or disposition according to the proposed terms and conditions is in the public interest:
>
> (1) If:
>
> (A) the municipality's municipally owned utility petitions the commission under IC 8-1-30.3-5(d); and
>
> (B) the commission approves the municipality's municipally owned utility's petition under IC 8-1-30.3-5(c);
>
> the proposed sale or disposition is considered to be in the public interest.
>
> (2) If subdivision (1) does not apply and subject to subsection (h), the commission shall consider the extent to which the proposed terms and conditions of the proposed sale or disposition would require the existing utility customers of either the prospective purchaser or the municipality's municipally owned utility, as applicable, to pay rates that would subsidize utility service to the other

party's existing customers. If the commission determines that:

(A) the proposed terms and conditions would result in a subsidy described in this subdivision; and

(B) the subsidy would cause the proposed terms and conditions of the proposed sale or disposition not to be in the public interest;

the commission shall calculate the amount of the subsidy that would result and shall set forth in an order under this section such changes to the proposed terms and conditions as the commission considers appropriate to address the subsidy. The prospective purchaser and the municipality shall each have thirty (30) days from the date of the commission's order setting forth the commission's changes to either accept or reject the changes. If either party rejects the commission's changes, the proposed sale or disposition is considered not to be in the public interest.

(3) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required after the proposed sale or disposition.

(f) As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:

(1) the full purchase price;

(2) incidental expenses; and

(3) other costs of acquisition;

allocated in a reasonable manner among appropriate utility plant in service accounts.

(g) The commission shall issue a final order under this section not later than two hundred ten (210) days after the filing of the parties' case in chief.

(h) In reviewing a proposed sale or disposition under subsection (e), the commission shall determine whether the factors set forth in IC 8-1-30.3-5(c) are satisfied as applied to the proposed sale or disposition of the municipality's nonsurplus municipally owned utility property for purposes of section 5(m) [IC 8-1.5-2-5(m)] of this chapter. If the commission determines that the factors set forth in IC 8-1-30.3-5(c):

(1) are satisfied as applied to the proposed sale or disposition, section 5(g) through 5(k) of this chapter does not apply

to the municipality's ordinance adopted under section 5(d) of this chapter; or

(2) are not satisfied as applied to the proposed sale or disposition:

(A) section 5(g) through 5(k) of this chapter applies to the municipality's ordinance adopted under section 5(d) of this chapter; and

(B) the question as to whether the sale or disposition should be made must be submitted to the voters of the municipality at a special or general election if at least the number of the registered voters of the municipality set forth in section 5(h) of this chapter sign and present a petition to the legislative body opposing the sale or disposition, in accordance with section 5(g) through 5(k) of this chapter.

However, notwithstanding this subsection, in reviewing a proposed sale or disposition under subsection (e)(2), the commission may not condition its approval of the proposed sale or disposition on whether the factors set forth in IC 8-1-30.3-5(c) are satisfied or on any other factors except those provided for in subsection (e)(2) and (e)(3).

Under Section 6.1, the Commission is required to approve the sale if we find "the sale or disposition according to the terms and conditions proposed is in the public interest." Section 6.1(d). In evaluating whether the proposed transaction is in the public interest, Section 6.1(e) provides two avenues. First, under Section 6.1(e)(1), if a municipally owned utility files a petition under Section 30.3-5(d) and the Commission approves this petition under Section 30.3-5(c), then "the proposed sale or disposition is considered to be in the public interest." Alternatively, if Section 30.3-5 does not apply, Section 6.1(e)(2) requires the Commission to consider the degree to which the terms of the acquisition will require one utility's customers to subsidize service to the other and whether that subsidy will cause the transaction not to be in the public interest. In addition, in reviewing the proposed transaction under either of these alternatives, i.e., Section 6.1(e)(1) or (e)(2), the Commission is required to "consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required under the proposed sale." Section 6.1(e)(3).

In this Cause, Joint Petitioners filed their petition under Section 30.3-5(d) seeking Commission approval of the petition under Section 30.3-5(c). The Commission must, therefore, initially consider whether the requirements of Sections 30.3-5(d) and (c) have been satisfied. Chapter 30.3 applies if: (1) a utility company[3] is acquiring property from another utility company in a transaction involving a willing buyer and willing seller at a cost differential; and (2) one of the two utility companies is subject to the Commission's regulation. It is not disputed that Indiana-American and Charlestown are both subject to our regulation. There is also no dispute that with respect to the proposed transaction, Charlestown is a willing seller, and Indiana-

[3] A utility company for purposes of Chapter 30.3 is defined as a public utility, municipally owned utility, or not-for-profit utility that provides water or wastewater service. Ind. Code § 8-1-30.3-3(1).

American is a willing buyer. The acquisition also includes a cost differential. Accordingly, the Commission finds that Joint Petitioners have satisfied the criteria to seek Commission approval of the proposed transaction under Chapter 30.3; consequently, we must determine whether Sections 30.3-5(d) and (c) have been satisfied.

A. Ind. Code § 8-1-30.3-5(d) Requirements. This statutory provision provides the threshold upon what a utility seeking the Commission's approval of an acquisition before the utility property is acquired must preliminarily provide, stating:

> (d) A utility company may petition the commission in an independent proceeding to approve a petition under subsection (c) [Section 30.3-5(c)] before the utility company acquires the utility property if the utility company provides:
>
> (1) notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility;
>
> (2) notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue;
>
> (3) notice to the office of the utility consumer counselor; and
>
> (4) a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

(1) Notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility. To demonstrate Indiana-American's compliance with Section 30.3-5(d)(1), Mr. Prine sponsored Attachment MP-7. Attachment MP-7 was late-filed and included a letter to Charlestown residents dated June 28, 2017, a letter to Charlestown residents dated August 28, 2017, and a news article about the ramifications of the sale of Charlestown's water utility.

After reviewing the June letter, we find this letter simply afforded Charlestown residents a heads up that Joint Petitioners were exploring a "possible sale" of Charlestown's water system. It did not notify them of the proposed acquisition or any associated changes in rates. The news article was just that—a news report, but also not the required notice to Charlestown's customers of the proposed acquisition. Only the August letter afforded notice of the actual acquisition proposed and a statement that after closing Charlestown resident will be charged Indiana-American's Area One rates. The letter includes the Area One rates that Charlestown's customers using 4,000 gallons of water per month will be charged. The rate for customers using other volumes is not stated. Charlestown's customers are advised in the August letter that Indiana-American will "provide lower rates long term" than Charlestown's rates, a statement upon which the evidence in this Cause is conflicting. The letter includes a web link to additional information about Indiana-American, including its rates and tariffs, and to the Commission's online resources. Referencing online resources may certainly be helpful for customers, but we

caution against reliance upon an Internet resource reference to satisfy Section 30.3-5(d)(1). The notice itself must be complete.

While not as robust as the Commission would expect, especially with respect to the rate changes, the August letter notified Charlestown's customers of the proposed acquisition and contained a statement upon what rates Charlestown customers will be charged after the closing and the amount a residential customer using 4,000 gallons will be billed; consequently, the Commission finds Section 30.3-5(d)(1) was satisfied.

NOW and the OUCC also raised concerns about whether the notice to Charlestown's water customers should have been given before the petition was filed. Doing so would assure notice is given early to not impact due process. In this instance, based upon the postage statement included in Attachment MP-7, the notice was mailed on August 31, 2017, two weeks after Joint Petitioners filed their petition on August 17, 2017, and their case-in-chief. Joint Petitioners demonstrated this letter was mailed to every customer on Charlestown's current customer list. Joint Petitioners' Ex. 7. In establishing the 210 day procedural schedule applicable in this Cause under Section 30.3-5(e), Joint Petitioners agreed the 210 days commenced on September 1 when the notice was late-filed, thereby mitigating any potential impact upon the statutory timeline by not including the notice in Joint Petitioners' case-in-chief filing. Given the agreements reached upon when the 210 day schedule commenced in this Cause, the Commission finds the notice afforded Charlestown's water customers an opportunity to participate if they chose to do so and that late filing this notice was not shown to adversely impact the parties or these customers.

(2) Notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent of the utility company's base annual revenue. As the Commission stated in *Georgetown*, the purpose of the inquiry Section 30.3-5(d)(2) requires is to determine whether the utility should notify its customers that a proposed acquisition will in the future affect the rates they pay. "[I]nforming customers of an acquisition that impacts their rates at the time of the acquisition affords customers the intended due process to contest the acquisition." *Georgetown Order* at 12. Under the statute, what triggers the requirement to notify Indiana-American's customers is the potential rate impact upon them, not simply the proposed acquisition; consequently, the Commission finds that if notice is required under Section 30.3-5(d)(2), that notice must apprise the utility company's customers, in this case Indiana-American's customers, that the proposed acquisition is expected to have a rate impact upon them by increasing their rates in the future more than 1%. It must notify them there is a projected rate impact. Also, notice must be timely given to not prejudice the rights of those entitled to notice to make an informed decision upon whether to participate in the acquisition proceeding.

As discussed below, the evidence is conflicting upon the rate impact of the proposed acquisition and, therefore, whether the notice requirement in Section 30.3-5(d)(2) was triggered. This is important because the notice Indiana-American provided its customers was given months after Joint Petitioners' case-in-chief was filed and did not notify Indiana-American's ratepayers that the proposed acquisition is projected to have an impact on their rates. There was also no mention of the projected increased rates or percentage. If the Charlestown Water System acquisition is expected to increase Indiana-American's rates by more than 1%, the Commission

finds the notice Indiana-American gave was deficient because customers were simply advised that Indiana-American's family of customers is growing. They were not notified that this growth comes with a projected impact upon their rates. Section 30.3-5(d)(2) requires notice because of the rate impact, not simply because an acquisition is proposed; therefore, the Commission finds that statutory compliance requires the utility company's customers to be notified that the acquisition is expected to increase their rates, if that increase is going to exceed 1%, so these customers have an opportunity to make an informed decision upon what, if any, action to take. What Indiana-American touted as its notice, Attachment GMV-3, wrongfully omitted rate impact information.

With the notice Section 30.3-5(d)(2) requires not having been given, the decisive issue becomes whether the notice requirement in Section 30.3-5(d)(2) was triggered. The Commission recognized in *Georgetown* that there are multiple methodologies that may be employed to estimate the impact to Indiana-American's rates as a result of an acquisition. *Georgetown Order* at 13. Indeed, the record in this proceeding provides several, albeit conflicting, calculations developed through different methodologies. The calculations the OUCC presented all project a greater than 1% increase in Indiana-American's rates associated with the proposed acquisition. Joint Petitioners, however, presented calculations which show an anticipated increase of less than 1%, Attachment GMV-R2 and Joint Petitioners' Ex. Late Filed 1, so our review begins with the acceptability of the Joint Petitioners' calculations since, if acceptable, notice was not required under Section 30.3-5(d)(2).

On rebuttal, Mr. VerDouw provided a revised rate impact calculation as Attachment GMV-R2 which took into account the adjustments the OUCC recommended. With the OUCC's adjustments, Attachment GMV-R2 shows an anticipated increase of 0.832%, but this calculation erroneously omitted the effect of an interest expense deduction for income tax purposes, otherwise known as interest synchronization. At the request of the Presiding Officers, Indiana-American late-filed an updated calculation correcting this omission and reflecting an increase in the potential rate base and return effect of Indiana-American's updated projected investment in system improvements. Earlier calculations included a capital investment of $7.2 million based upon Section 6.1 of the Asset Purchase Agreement, Joint Petitioners' Ex. 11, but in delineating Indiana-American's plan for improvements in Joint Petitioners' Ex. 8, Indiana-American projected a $13.2 million investment. With the updated investment level of $13.2 million, Indiana-American's calculation shows a projected increase of 0.745%. Joint Petitioners' Ex. Late Filed 1.

After reviewing Indiana-American's updated calculation, the methodology used is accepted except the interest synchronization amount ($457,220), while shown, was erroneously omitted from the total additional revenue requirement amount ($1,545,641). While the revenue conversion factor should not be applied to the interest synchronization amount, the interest should not be excluded from the revenue requirement. When added to that total, the estimated increase is 0.965%, barely below the 1% threshold. Although we believe the total estimated property tax expense would have increased commensurate with Indiana-American's capital investment amount increasing from $7.2 million to $13.2 million, Indiana-American and the OUCC made no such adjustment in their calculations, so the record does not support the Commission doing so; therefore, the Commission finds the projected rate impact does not exceed the 1% threshold which triggers notice under Ind. Code § 8-1-10.3-5(d)(2).

The Commission reiterates that there are multiple methodologies that may be employed to estimate the potential impact to rates as a result of a proposed acquisition. The methodology reviewed above is an alternative which, to be acceptable, requires the adjustment discussed, i.e., inclusion of the interest synchronization amount in the total additional revenue requirement. In this Cause, Indiana-American came precariously close to noncompliance with Section 30.3-5(d)(2).[4]

(3) Notice to the Office of the Utility Consumer Counselor. On cross-examination, the OUCC asserted that Joint Petitioners should have provided notice of the proposed acquisition to the OUCC before filing their petition and case-in-chief. In response, Mr. VerDouw stated that Section 30.3-5(d) includes no specifics regarding when and in what manner notice to the OUCC must be provided.

In construing a statute, "it is just as important to recognize what a statute does not say as it is to recognize what it does say." *U.S. Steel Corp. v. Northern Indiana Pub. Serv. Co.*, 951 N.E.2d 542, 559 (Ind. Ct. App. 2011)(citing *Peele v. Gillespie,* 658 N.E.2d 954, 958 (Ind. Ct. App. 1995). Although the OUCC may prefer to receive notice earlier, we decline the OUCC's request to read additional notice requirements into Section 30.3-5(d)(3) that are not included. *Id.* at 559 (declining Steel Producers' request to read into Ind. Code § 8-1-2-87.5(b) the additional requirement that an entity engaging in gas distribution must do so as part of a bypass arrangement). We find notice was provided to the OUCC through service of the petition and the Joint Petitioners' case-in-chief.

(4) A plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility. OUCC witness Seals testified that Section 30.3-5(d)(4), pursuant to which Joint Petitioners requested approval of the acquisition, requires a purchasing utility to provide a "plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility." The OUCC and NOW contend that Indiana-American failed to present the required plan and, instead, presented a plan to make a plan. Mr. Seals testified that instead of presenting the required plan, Mr. Hoffman spoke in terms of possible solutions, likely improvements from Mr. Saegesser's Preliminary Engineering Report, and further evaluations. Mr. Seals listed the possible solutions Mr. Hoffman mentioned which included: (a) addressing the distribution system, (b) thoroughly testing, evaluating, and understanding the raw water concentrations of manganese, (c) locating another source of supply farther away from the existing location, (d) treatment of the existing well supply by removal of manganese through oxidation and filtration or adsorption and filter backwashing, and (e) unidirectional flushing. Mr. Seals stated that none of the foregoing possible solutions was developed; therefore, what Indiana-American presented is a plan to form a plan. He testified that Mr. Hoffman's testimony provided little in the way of a tangible "plan for reasonable and prudent improvements." From Mr. Seals' perspective, Indiana-American's plan to identify improvement needs with a more

[4] NOW and the OUCC also contended that Indiana-American should have provided its customers with notice before the petition was filed and that the notice to Indiana-American's customers was too late to be meaningful. Because of our finding that the 1% threshold was not reached, the Commission does not address the merits of these arguments.

thorough evaluation of the system after its acquisition is not a plan for reasonable and prudent improvements.

Mr. Seals testified that a plan would identify the projects, state which components of the water system will be affected, identify when the projects will commence, estimate what the specific projects will cost, and explain how the projects will address system problems. The OUCC and NOW assert that without specific projects and costs, the reasonableness and prudence of the improvements to be carried out under the plan cannot be determined.

Mr. Hoffman disagreed that Indiana-American had not provided a plan as required by Section 30.3-5(d)(4). He noted that Indiana-American is seeking approval to acquire a distressed utility and asserted that until Indiana-American owns the Charlestown system, it cannot and should not perform the evaluations that are necessary to develop specific projects. Mr. Hoffman asserted it would be a waste of resources to identify, engineer, and design the detailed project list Mr. Seals described before owning the system and gathering the information that operating the system will provide. Mr. Hoffman testified that the statute does not require a detailed project list. Instead, it refers to "improvements" which is not a defined term in the statute but is commonly defined as an act or process of being improved. Mr. Hoffman testified that what he described is a plan for improvements.

On rebuttal, Indiana-American clarified that notwithstanding that plan approval was requested in their petition, Joint Petitioners are no longer asking for Commission approval of the plan; that request was withdrawn. In his rebuttal testimony, in describing Indiana-American's plan, Mr. Prine stated:

> In the simplest form, our plan is to run a regulated utility free of partisan political claims of neglect, misappropriation, and malfeasance. We plan to operate a system which reliably and prudently invests in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Charlestown citizens. In short, our plan is to follow the State's policy added as a preamble [Ind. Code § 8-1-2-0.5] to utility regulation during the 2016 Session.

Joint Petitioners' Ex. 6-R at 10.

Notwithstanding Indiana-American's assertion that what Mr. Prine describes is, indeed, a plan for improvements, the Commission disagrees. We find that what Mr. Prine describes are laudable objectives, to be encouraged, but not the required plan for improvements. Under Section 30.3-5(d)(4), the purchasing utility is to provide a plan—in other words, demonstrate that it has a plan as opposed to how it plans to perform. We concur with the OUCC that there is a difference between having the ability to find a solution to a problem and having a plan to solve the problem.

On rebuttal, Mr. Hoffman elaborated upon Indiana-American's plan, testifying that Indiana-American will first address distribution system and chlorine issues to improve chlorine residual issues and reduce water age, because these are public health concerns. Joint Petitioners'

Ex. 6-R, at 5. Next, Indiana-American will investigate source water through test drilling, pumping, and sampling of existing wells. *Id.* at 6. Then, Indiana-American will thoroughly test, evaluate, and understand the raw water concentrations of manganese. *Id.* Depending on the results of these actions, next steps may include locating another source of supply, construction of treatment facilities, and/or vigorous unidirectional flushing. In response to docket entry questions, Indiana-American supplied cost estimates for each step of this plan, totaling $13.2 million over five years. Joint Petitioners' Ex. 8 at 3. Not all of these costs may be incurred, as some of the items listed may obviate the need for other improvements, but we find the improvements and capital investments identified evidence a plan for reasonable and prudent improvements under Section 30.3-5(d)(4). Indiana-American's ability to improve the quality of service to Charlestown customers through these steps was not disputed.

We find that Indiana-American presented a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility. In doing so, we are not approving the improvements identified for rate recovery. Having withdrawn the request for plan approval, Indiana-American will be required to demonstrate the prudence of the plan improvements implemented before rate recovery associated with the costs of these improvements will be approved.

B. Ind. Code § 8-1-30.3-5(c) Requirements. Having determined that Joint Petitioners have satisfied the requirements for filing a petition under Section 30.3-5(d), we now address the factors identified in Section 30.3-5(c) on which the Commission is required to make findings to approve the petition as follows:

(1) The utility property is used and useful in providing water service, wastewater service, or both water and wastewater service. Mr. Prine described the Charlestown Water System and provided a map depicting the area currently served. He testified that Charlestown's service area includes residential, commercial, and industrial customers and is near Indiana-American's existing Southern Indiana Operations. He noted that Charlestown also supplies water on a wholesale basis to the Sellersburg and Marysville water utilities. Based on the evidence, we find the Charlestown Water System is used and useful in providing water service.

We note that NOW, in its Amended Complaint, represented that Charlestown does not own the well field that is the subject of the Well Field Lease Agreement between Indiana-American and Charlestown. Those wells are, however, excluded from the proposed acquisition under review and, therefore, not included in the utility property we find used and useful. NOW also contends that because Indiana-American may replace Charlestown's meters, the meters are not used and useful. There was no evidence showing, however, that these meters are not used and useful in providing water service for purposes of appraising Charlestown's system.

(2) The distressed utility failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities. What constitutes inadequate, inefficient, unsafe, or unreasonable service and facilities is defined by the circumstances enumerated in Ind. Code § 8-1-30.3-6, any one of which satisfies this element. Mr. Prine testified that Charlestown is a municipally owned system that serves fewer than 5,000 customers and, therefore, qualifies as a

distressed utility under Ind. Code § 8-1-30.3-6(5). Mr. Prine explained that while it is not necessary to satisfy a second condition, the Charlestown Water System also satisfies Ind. Code § 8-1-30.3-6(4) because Charlestown has experienced water quality issues, including brown water problems, for many years, and been unable to adequately remediate these issues.

Mr. Hoffman also testified regarding Charlestown's water quality issues. He stated that Charlestown's chlorine residual, at times, has fallen below levels required by IDEM and that not maintaining the required chlorine residual level poses a risk to public health. Mayor Hall testified that a remediation program has been implemented and improvements made to the system during his administration, but he acknowledged significant work remains to resolve brown water and water quality issues. Manganese has been a recurring complaint. Mayor Hall and Mr. Saegesser identified improvements that are needed to remedy Charlestown's water quality problems, and testified that making these improvements (with the costs spread over Charlestown's small customer base) would cause Charlestown's water rates to be higher than Indiana-American's current rates.

The Commission finds that the evidence demonstrates that as a municipally owned system with fewer than 5,000 customers, the Charlestown Water System is a distressed utility and that it has failed to maintain adequate, efficient, safe, and reasonable service and facilities.

(3) The utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service. As discussed above, Indiana-American, primarily through the testimony of Mr. Hoffman and the utility's responses to docket entry inquiries, described its plan for improvements to the Charlestown Water System and its operations. Based on that discussion, the Commission found that Indiana-American has a plan for reasonable and prudent improvements to ensure that Charlestown Water System customers will receive adequate, efficient, safe, and reasonable services. Indiana-American also demonstrated that it has the financial, managerial, and technical ability to provide such utility services following closing.

Mr. Hoffman, on cross-examination, described the myriad of problems facing the Charlestown Water System, and he committed that Indiana-American will address these problems so that Charlestown customers receive the same quality water service experienced throughout Indiana-American's operations. He stated that Indiana-American will begin in the distribution system by addressing water age and the chlorine residual issue. NOW's witness Isgrigg testified that Indiana-American "clearly has the technical know-how to fix the water quality." NOW Ex. 1, at 6, line 25. We find that Indiana-American will make reasonable and prudent improvements to ensure Charlestown's water customers will receive adequate, efficient, safe, and reasonable service.

(4) The acquisition of the utility property is the result of a mutual agreement made at arm's length. Mayor Hall described the process Charlestown undertook prior to entering into the transaction and testified that negotiations occurred over several months while Charlestown undertook the statutory process. He stated the negotiations were conducted at arm's length. Mr. Prine and Mr. VerDouw echoed Mayor Hall's testimony and also testified that the negotiations leading up to executing the Asset Purchase Agreement were conducted at arm's

length. Although NOW witness Isgrigg implied there was "collusion" in this transaction, NOW presented no evidence substantiating this claim, and no other witness disputed that the Asset Purchase Agreement was the result of an arm's length transaction. We, therefore, find the proposed acquisition is the result of a mutual agreement made at arm's length.

(5) The actual purchase price of the utility property is reasonable. Ind. Code § 8-1.5-2-6.1 provides that the purchase price shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required by Ind. Code § 8-1.5-2-5. The evidence presented demonstrates the purchase price is equal to the appraisal performed by the statutorily appointed appraisers.

Mayor Hall sponsored the appraisal. He maintained that Charlestown followed the statutory process necessary to sell its water assets, including appointing three disinterested qualified appraisers. Mayor Hall testified the appraisal was initially provided to Charlestown in November 2016, but the City was not ready to make a decision on the sale within the timeframe the statute (Ind. Code § 8-1.5-2-5(d)) requires. As a result, Mayor Hall testified that Charlestown continued its consideration of potentially selling the water utility and later asked the appraisers to review their original appraisal, which he testified they recertified and returned to Charlestown as of April 1, 2017. Mayor Hall sponsored a copy of the original appraisal as Attachment GRH-2 (Valuation Report) and a copy of the recertified appraisal as Attachment GRH-3.

Mayor Hall testified that the City Council timely set a public hearing on the final appraisal for May 11, 2017, and on April 11, 2017, provided notice of this hearing. Mayor Hall stated that the City Council introduced the ordinance approving the proposed acquisition on July 3, 2017, and on July 6, 2017, adopted that ordinance, Ordinance No. 2017-OR-11, An Ordinance Approving an Asset Purchase Agreement and Well Field Lease Agreement and Granting Authority to Mayor to Execute Documents (the "Ordinance"). The Ordinance and the City Council's related meeting minutes were sponsored by Ms. Coomer, Charlestown's Clerk-Treasurer, as Attachments DSC-8 and DSC-6 respectively.

Mr. Prine testified that Indiana-American proposes to acquire all of the property that is subject to the City's appraisal (Attachment GRH-2), apart from the well field and related equipment and assets, at a purchase price of $13,403,711. He testified the purchase price was determined based upon the appraised value of the Charlestown Water System as determined by the three appraisers. The OUCC through witnesses Parks, Kaufman, and Seals dedicated considerable time and effort to analyzing the appraisal. They identified particular assets or asset categories for which they assert the appraisers made mistakes or applied erroneous assumptions and concluded a lower appraised value was appropriate. On rebuttal, Mr. VerDouw quantified the monetary impact of the OUCC's criticisms and testified the total effect would reduce the appraised value ($13,403,711) by $1,966,500. On cross-examination, Mr. VerDouw acknowledged an additional $620,000 overstatement the OUCC's witness Kaufman testified upon in the value of Charlestown's assets because the appraisal did not capture two years of depreciation, yielding a total overstatement of approximately $2.6 million.

The Commission recognizes that potentially overstating a $13.4 million appraisal by $2.6 million is a significant amount, but under the statutory framework pursuant to which the Joint

Petition was filed, if the purchase price does not exceed the appraised value determined under Ind. Code § 8-1.5-2-5, the Legislature has directed that it "shall be considered reasonable." Ind. Code § 8-1.5-2-6.1 (d) states:

> (d) The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest. For purposes of this section, the purchase price of the municipality's nonsurplus utility property **shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 [IC 8-1.5-2-5] of this chapter.** (emphasis added)

As a statutory creation, the Commission can exercise only the power conferred upon it by statute, and any doubt upon the Commission's statutory authority is required to be resolved against the existence of such authority. *United Rural Elec. Membership Corp. v. Ind. & Mich. Elec. Co.*, 549 N.E.2d 1019, 1021 (Ind. 1990). We also note that the first step in interpreting a statute is to determine whether the Legislature spoke clearly and unambiguously. If so, any rules of construction other than to require that the words and phrases be taken in their plain, ordinary, and usual sense are not to be applied. *See City of Carmel v. Steele*, 865 N.E.2d 612, 618 (Ind. 2007).

We find no ambiguity in Ind. Code § 8-1.5-2-6.1(d) that authorizes the Commission to determine the appropriateness of the OUCC's proposed adjustments in the purchase price.[5] The proposed purchase price does not exceed the valuation the appraisers determined. The appraisers were shown to be qualified under Ind. Code § 8-1.5-2-5; consequently, the purchase price is deemed "reasonable." The Commission, therefore, finds the actual purchase price for purposes of Section 30.3-5(c)(5) is reasonable.

In making the foregoing finding we note that NOW challenged whether recertification of the appraisal is permitted and also contended Charlestown failed to comply with Ind. Code § 8-1.5-2-4 because a single appraisal document was not available for inspection and copying. The Return of Appraisement (Attachment GRH-3) returned on April 1, 2017, is signed by all three appraisers. In this document each appraiser affirmed that "the just and true valuation of the Charlestown Water Utility ... is $13,449,711." While a recertification process is not expressly identified in Ind. Code § 8-1.5-2-5, in light of all three appraisers affirming to the true and just valuation stated in the Return of Appraisement, we find the appraisal presented to the City Council on April 1, 2017, was not shown to be defective. It is noted that the evidence showed the timeline for notice and the public hearings the City Council conducted after receiving the Return of Appraisement complied with Ind. Code § 8-1.5-2-5; therefore, the public's opportunity to comment and be heard by the City Council was not shown to be impacted by the appraisal being

[5] To the extent our discussion in the *Georgetown Order* at 15 under item (e) was interpreted in this Cause as opening the door to dispute the propriety of asset values within the appraisal, that interpretation is incorrect. If the purchase price exceeds the appraised value, its reasonableness may be challenged. If the appraisers did not possess the requisite qualifications, did not come to agreement on the appraised value, or the appraisal process was not conducted consistent with applicable statutes, that non-adherence with the statute may be challenged. But the Commission is not authorized to, essentially, second guess the appraisers' work.

provided twice. The challenges NOW raises about the availability of the appraisal document will be addressed below in resolving NOW's pending summary judgment motion.

(6) The utility company and the distressed utility are not affiliated and share no ownership interests. Mr. Prine's testimony that Charlestown and Indiana-American are not affiliated and share no ownership interests was not controverted. We, therefore, find this requirement is satisfied.

(7) The rates charged by the utility company before acquiring the utility property of the distressed utility will not increase unreasonably as a result of acquiring the utility property. Mr. VerDouw testified that Charlestown will be operated as part of Indiana-American's Southern Indiana Operations, and its former water customers will, therefore, be subject to Indiana-American's Area One rates. While Charlestown's water customers will experience a rate increase, with the monthly bill for a residential customer using 5,000 gallons changing from $18.30 to $44.17 for customers with fire protection, Mr. VerDouw testified Indiana-American's rates will remain unchanged following this proceeding as a result of this acquisition. He explained that in future rate proceedings, given the small size of the Charlestown Water System, the rates Indiana-American charges are not expected to increase unreasonably as a result of acquiring the Charlestown Water System. Accordingly, we find the rates charged by Indiana-American will not increase unreasonably as a result of this acquisition.

(8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base. Mr. VerDouw testified that the purchase price for the acquisition includes a cost differential as that term is defined in Chapter 30.3. For purposes of this acquisition, he testified that Indiana-American is proposing to reflect a total original cost rate base of $13,583,711 which Indiana-American intends to book as shown in the journal entry he sponsored by reflecting the asset values by asset category, as recommended in the appraisal, with the estimated transaction costs spread over the asset values on a pro-rated basis.

Mr. VerDouw testified that the proposed journal entry allocates the entire purchase price in a reasonable manner among appropriate utility plant in service accounts.[6] In this fashion, the cost differential will be amortized and charged to expense over a reasonable period of time with corresponding reductions to rate base through depreciation expense calculated pursuant to Indiana-American's approved depreciation accrual rates. We find the modified journal entry is appropriate.

C. Conclusion upon Public Interest. On the basis of the reasons discussed and the findings made above, we find Joint Petitioners satisfied the requirements of Ind. Code § 8-1-30.3-5 (c) and (d) and, therefore, for purposes of Ind. Code § 8-1.5-2-6.1(e)(1), the proposed transaction is in the public interest.

[6] On rebuttal, Mr. VerDouw accepted Ms. Stull's recommendation with regard to recording Utility Plant in Service based upon the full purchase price, with no entry for depreciation reserve. The modified journal entry is Attachment GMV-R1.

D. Ind. Code § 8-1.5-2-6.1(e)(3). In reviewing the terms and conditions of the proposed sale as agreed upon in the Asset Purchase Agreement, we are required to consider the financial, managerial, and technical ability of Indiana-American to provide the required water utility service. Ind. Code § 8-1.5-2-6.1(e)(3). Mr. Prine testified that Indiana-American currently provides residential, commercial, industrial, and municipal water service, including sale for resale and public and private fire protection service, to approximately 300,000 customers. He stated that Indiana-American's Southern Indiana Operations will perform the day-to-day operations, and Charlestown customers will receive full-time management of their water system, including a full-time operations staff, 24/7 customer service and emergency response, enhanced security measures, and full-time engineering and water quality specialists. Indiana-American will also institute reasonable and prudent asset management by adding the Charlestown Water System to Indiana-American's ongoing prioritization model.

Mr. VerDouw testified that Indiana-American has access to all necessary funds to support its purchase of the Charlestown Water System and is capable of financing the proposed asset purchase without significant financial consequences. The OUCC did not contest Indiana-American's financial, managerial, or technical ability to provide the proposed water utility service. Based upon the testimony presented, we find Indiana-American possesses the financial, managerial, and technical ability to provide the required utility service after the sale.

E. Sale Approval and Accounting Treatment. Having determined that Joint Petitioners satisfied the requirements listed in Ind. Code § 8-1-30.3-5(c) and (d) and that the sale proposed under the terms and conditions set forth in the Asset Purchase Agreement satisfies Ind. Code § 8-1.5-2-6.1(e)(3), pursuant to Ind. Code § 8-1.5-2-6.1(d) the proposed sale is approved. Because the statutory requirements for approval have been satisfied, Section 6.1(f) directs the Commission as follows:

> As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:
>
> (1) the full purchase price;
> (2) incidental expenses; and
> (3) other costs of acquisition;
>
> allocated in a reasonable manner among appropriate utility plant in service accounts.

As directed by the statute, we find that without regard to the amounts recorded on Charlestown's books and records and without regard to any grants or contributions Charlestown may have received, Indiana-American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, plus incidental expenses and other costs of acquisition, allocated among utility plant in service accounts in the fashion Mr. VerDouw recommended. We further find that the incidental expenses should include $25,500 for the costs Indiana-American paid for Charlestown's appraisal since this incidental expense was incurred to facilitate the transaction and was not

shown to be unreasonable. *See Georgetown Order* at 18. Consistent with our discussion in *Georgetown*, we also find that total incidental expenses and other costs of the acquisition should be limited to such actual expenses and costs as are reasonably incurred.

We further find that Indiana-American's proposed accounting and journal entries as described in Mr. VerDouw's rebuttal testimony and Attachment GMV-R1, should be approved, and the costs so reflected on the books and records of Indiana-American should be used as the original cost of such properties for accounting, depreciation, and rate base valuation purposes. The journal entry should be adjusted to reflect actual (rather than estimated) incidental expenses and other costs of acquisition. *See Georgetown Order* at 19. We find that Indiana-American's existing depreciation accrual rates approved by the Commission in Cause No. 43081 on November 21, 2006, should be applied on and after the closing date of the acquisition to depreciable property purchased from Charlestown pursuant to the Asset Purchase Agreement, and as the same may be adjusted in the pending Indiana-American depreciation case, Cause No. 44992.

F. Rates and Rules. Indiana-American currently has on file with the Commission a schedule of rates and charges and rules and regulations applicable to water utility service Indiana-American provides in its Area One rate group. We find that, on and after the closing, Indiana-American's generally applicable rates and charges and rules and regulations for water service and private and public fire service applicable in Indiana-American's Area One rate group on file with and approved by the Commission should apply to services Indiana-American provides through the Charlestown Water System, as the same are in effect from time to time.

G. Encumbrances. We find that the encumbering of the properties comprising the Charlestown Water System by subjecting such properties to the lien of Indiana-American's general mortgage as of the closing should be approved.

H. Proposed Sewer Credit. Mayor Hall testified that Charlestown intends to set up a fund from the sale proceeds from which to phase-in the impact of the increase in water rates by providing Charlestown sewer customers with a credit on sewer utility bills for four years. He testified the monthly credit will be $20 the first year after the acquisition, $15 the second year, $10 the third year, and $5 the fourth year. This will afford Charlestown sewer customers who are also Charlestown water customers a lower aggregate water and sewer bill. He quantified the total cost of the sewer credit package to be approximately $1,740,000. Mayor Hall testified that Charlestown will also use the sale proceeds to pay off debt of approximately $1,125,000 on its outstanding water utility revenue bonds, with the remaining proceeds to be held by Charlestown as a strategic reserve.

The power of this Commission is derived solely from statute, and without statutory grant of power, there is none. *Citizens Action Coal. of Ind., Inc. v. N. Ind. Pub. Serv. Co.*, 485 N.E.2d 610, 612 (Ind. 1985). How a municipality uses the proceeds from the sale of a municipally owned utility is not within the Commission's jurisdiction. Accordingly, our approval of the proposed acquisition is not contingent upon the sale proceeds being used consistent with Mayor Hall's testimony, although mitigating the impact of a 141% increase in water rates via a credit over four years, as described, helps support its reasonableness.

9. **Commission Discussion and Findings on NOW Amended Complaint.** In its Amended Complaint, NOW requests the Commission open an investigation into the acquisition of the Charlestown Water System by Indiana-American, issue an order temporarily barring the acquisition of the Charlestown Water System by Indiana-American, and enter such other orders as are supported by the evidence and the Commission finds to be in the public interest. In support of its Amended Complaint, NOW makes three allegations: misuse by Charlestown of utility funds, inability of Charlestown to convey real property rights per the Asset Purchase Agreement, and an alternative water source makes assets of Charlestown's water utility not used and useful utility property in contravention of Section 30.3-5(c). We address these allegations below.

A. Use of Utility Funds. NOW's amended allegations pertaining to Charlestown's misuse of utility funds fall into two categories: misuse of water utility funds and future misuse of the sale proceeds. Each of these allegations is addressed below.

(1) Misuse of Water Utility Funds. NOW alleged that $1.86 million in "bonds were issued as part of a comprehensive plan to upgrade [Charlestown]'s water system, including the installation of a new water treatment plant." Amended Complaint, ¶ 16. Earlier in the Amended Complaint, NOW conveys "concerns about whether these funds were all actually used to make improvements to the Water Utility's distribution system, or whether some of those funds were improperly diverted to non-utility projects." Amended Complaint at 2. NOW's case-in-chief does not substantiate this allegation. NOW's financial witness, Mr. Williams did not perform a thorough review of Charlestown's water utility records. He provided SBOA audits of Charlestown for 2008 and 2009 that identified accounting issues, but Ms. Coomer testified those issues did not affect Charlestown's water utility. Ms. Coomer also sponsored the most recently completed SBOA audit for Charlestown as Attachment DSC-3. The SBOA is the state agency charged with overseeing financial recordkeeping of municipalities, and its most recent audit did not evidence financial misdealing in Charlestown's water utility. Ms. Coomer also sponsored a report on the use of the 2008 bond proceeds as Attachment DSC-4. Water utility funds were not shown to have been misused.

Based upon the evidence presented, we find that NOW's allegations pertaining to misuse of water utility funds by Charlestown were not substantiated and deny relief to NOW based upon these allegations.

(2) Prospective Misuse of Sale Proceeds. NOW's second allegation concerning misuse of utility funds concerns prospective misuse by Charlestown of the sale proceeds from the proposed acquisition. As discussed above in Finding No. 8.H., the Commission does not have jurisdiction over a municipality's use of proceeds from the sale of a municipally owned utility. NOW's allegations in the Amended Complaint pertaining to the prospective misuse of the sale proceeds are outside the scope of our jurisdiction.

B. Conveyance of Interests in Real Property. NOW also alleged that Charlestown does not have sufficient ownership interests in certain real property it intends to dispose of pursuant to the Asset Purchase Agreement and Well Field Lease Agreement. Mr. Saegesser and Mr. Isgrigg testified that the IDNR owns certain real property on which Charlestown operates wells and that IDNR's approval is needed to transfer the IDNR-owned property from Charlestown to Indiana-American pursuant to the Well Field Lease Agreement.

The Commission does not have jurisdiction to decide real property questions. *See Indiana Farm Gas Prod. Co. v. S. Indiana Gas & Elec. Co.*, 662 N.E.2d 977, 980 (Ind. Ct. App. 1996) ("*Indiana Farm Gas III*") (discussing prior proceeding where the Commission found it lacked jurisdiction to determine whether the gas was owned by Indiana Farm Gas Production Company or Southern Indiana Gas and Electric Company because this is a question of property law, which is outside the scope of delegated authority and expertise of the Commission).[7] It is well-settled that "[t]he commission can only exercise power conferred upon it by statute." *United Rural Elec. Membership Corp. v. Indiana & Michigan Elec. Co.*, 549 N.E.2d 1019, 1021 (Ind. 1990) (citing *General Telephone Co. of Indiana v. Indiana Pub. Serv. Comm'n*, 150 N.E.2d 891, 894 (Ind. 1958)). Under Indiana law, the Commission is not delegated authority to resolve real property matters.

While we are not determining real property interests in this Cause, we note that Joint Petitioners addressed the issue of third party approvals for real property disposition by including a provision in the Well Field Lease Agreement, Section 18, which recognizes the Well Field Lease Agreement is subject to approval of any necessary parties. Obtaining necessary consents is a specific condition to closing. Joint Petitioners' Ex. 6-R at 5-6 and Attachments MP-3 and MP-5. The IDNR's consent, to the extent it is required, remains a condition to closing unaffected by this Order. We find there is no relief within our jurisdiction to grant upon NOW's allegations pertaining to Charlestown's conveyance of an interest in real property that Charlestown does not own.

C. Alternative Water Source/"Used and Useful" Property. NOW's Amended Complaint alleges that a 3 mgd alternative water source is readily available from the IDNR and the availability of this water source renders certain of Charlestown's water utility assets and potential improvements to not be "used and useful" in providing water service. In support of this allegation NOW provided Mr. Isgrigg's testimony.

The record reflects that Mr. Isgrigg performed engineering services related to the Charlestown Water System in the 1970s. Mr. Isgrigg has not designed water treatment, storage, or distribution facilities since January 1, 2007. He provided recommendations for improving Charlestown's water quality issues, based on his historical knowledge of this system, stating that

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[7] *Indiana Farm Gas* has a complex history. SIGECO purchased natural gas from an interstate pipeline and stored it in an underground field. Indiana Farm Gas then constructed wells and began pumping the stored gas to the surface and filed a petition with the Commission pursuant to Ind. Code § 8-1-2-87.6 seeking an order requiring SIGECO to transport it as "Indiana-produced natural gas." The ultimate issue was who owned the gas. SIGECO filed a motion to dismiss, and the Commission applied the rule of capture to conclude Indiana Farm Gas was the rightful owner. On appeal, the Court of Appeals reversed and directed the cause to be dismissed because "[u]ltimately this is a question of property law, which is outside the scope of delegated authority and expertise of the Commission." *Southern Indiana Gas & Elec. Co. v. Indiana Farm Gas*, 540 N.E.2d 621, 625 (Ind. Ct. App. 1989) ("*Indiana Farm Gas I*"). On rehearing, the Court vacated the portion of its opinion directing dismissal on remand because what had been submitted at that point was prefiled testimony that had not yet been adopted under oath. Instead, the Court directed a hearing to address the question of jurisdiction. *Southern Ind. Gas & Elec. Co. v. Indiana Farm Gas*, 549 N.E.2d 1063, 1064 (Ind. Ct. App. 1990), *trans. denied* ("*Indiana Farm Gas II*"). On remand, the Commission held a hearing and dismissed the petition because it lacks jurisdiction to decide questions of property law. *Indiana Farm Gas*, Cause No. 38239 (IURC 7/20/1994) at 9. Indiana Farm Gas appealed, and the Court held that its prior determination that the Commission lacked jurisdiction to decide questions of property law was deemed the "law of the case." *Indiana Farm Gas III.*

if Charlestown bought all its water from the IDNR/River's Edge treatment plant, Charlestown would no longer be relying upon its own well field, and these well field facilities, including the lines from the well field, would be rendered unnecessary. No evidence was introduced, however, demonstrating that this perspective is more than conjecture.

The evidence demonstrated that the IDNR's water source is 2 mgd rather than 3 mgd, as stated by Mr. Isgrigg and in the Amended Complaint. On rebuttal, Mr. Saegesser, who currently provides engineering services for Charlestown and its water utility, testified that while the IDNR might have had 4 mgd of well capacity, it built a 2 mgd treatment plant. He provided the October 2017 monthly operations report for the IDNR treatment plant (Attachment WAS-8R). This demonstrated the IDNR treatment plant has a 2 mgd capacity, and its current maximum day usage is approximately 871,000 gallons. Mr. Saegesser testified that with Charlestown's peak usage at approximately 1.2 mgd and the IDNR's monthly report of operations demonstrating an October demand of over 800,000 gpd, the IDNR does not have sufficient capacity for Charlestown and its projected growth.

Mr. Saegesser further testified on rebuttal that an efficient, reliable, and cost-effective solution with IDNR water is not possible. Mayor Hall testified that Charlestown had negotiated to purchase water from the IDNR for approximately two years but was unable to reach an agreement. While the IDNR may have some capacity available, the parties have been unable to reach agreement for water supply after two years of negotiations. We find relief is not merited upon NOW's allegations of alternative water supply and used and useful property because NOW did not meet its burden of proving the Charlestown utility property at issue is not used and useful in Charlestown's provision of water service.

Accordingly, the Commission finds that, through the consolidation of Cause No. 44964 in which NOW filed its Amended Complaint with Cause No. 44976, the Commission has investigated the acquisition of the Charlestown Water System by Indiana-American and that NOW has had the opportunity to present evidence supporting its allegations through filing its Complaint, its Amended Complaint, a motion to dismiss/motion to strike case-in-chief,[8] its case-in-chief evidence, and its motion for summary judgment. As discussed in this Order, the Joint Petitioners have satisfied the statutory requirements relating to the proposed transaction, and Indiana-American's acquisition of the Charlestown Water System has been found to be in the public interest. For the foregoing reasons, including our findings above upon the allegations of NOW's Amended Complaint, the Commission finds that NOW has not met its burden of proving the allegations stated in the Amended Complaint, and no relief is, therefore, granted upon NOW's Amended Complaint.

10. NOW's Summary Judgment Motion. NOW filed NOW!, Inc.'s Motion for Summary Judgment and Designation of Evidence in this Cause on November 27, 2017. Charlestown filed a response opposing this motion on December 7, 2017. This motion remained pending as of the evidentiary hearing. In its summary judgment motion, NOW contends that

[8] NOW!, Inc.'s Motion to Dismiss Joint Petition and/or Motion to Strike Joint Petitioner's Case-in-Chief filed in this Cause on August 29, 2017, was denied by the Presiding Officers in a Docket Entry issued on November 22, 2017. No appeal of that denial ruling was made to the Commission under 170 IAC 1-1.1-25.

Charlestown failed to comply with Ind. Code § 8-1.5-2-4. Ind. Code § 8-1.5-2-4 states as follows:

> Whenever the municipal legislative body or the municipal executive determines to sell or otherwise dispose of nonsurplus municipally owned utility property, it shall provide for the following in a written document that shall be made available for inspection and copying at the offices of the municipality's municipally owned utility in accordance with IC 5-14-3.
>
> (1) The appointment, as follows, of three (3) residents of Indiana to serve as appraisers:
> (A) One (1) disinterested person who is an engineer licensed under IC 25-31-1.
> (B) One (1) disinterested appraiser licensed under IC 25-34.1.
> (C) One disinterested person who is either:
> (i) an engineer licensed under IC 25-31-1; or
> (ii) an appraiser licensed under IC 25-34.1.
> (2) The appraisal of the property.
> (3) The time that the appraisal is due.

NOW contends Charlestown failed to satisfy Ind. Code § 8-1.5-2-4 for two reasons: (1) NOW interprets this statute as requiring Charlestown to prepare a single document appointing the three appraisers and (2) requiring the appointment document to be physically present in the office of Charlestown's municipally owned utility. For the reasons discussed below, we agree with NOW that Ind. Code § 8-1.5-2-4 contemplates the information listed being in a single written document, but we conclude Charlestown substantially complied with this statute, and its substantial compliance does not negate the Commission's approval of the proposed acquisition. We further find there are material issues of fact which preclude the Commission from concluding, for purposes of summary judgment, that the referenced documentation was not available for inspection and copying as Ind. Code § 8-1.5-2-4 requires. To the contrary, we find the weight of the evidence demonstrates otherwise.

Charlestown claims that while Ind. Code § 8-1.5-2-4 requires the appraiser appointments to be made in a written document, all three appraisal appointments are not required to be made in the same document. According to Charlestown, to reach NOW's interpretation, "in the same document" or "in a single document" must be read into the statute. Charlestown asserts that principles of statutory construction prohibit the addition of such language to Ind. Code § 8-1.5-2-4. We believe, however, that it is Charlestown who improperly reads language into the statute instead of taking the plain language of the statute, giving its words their ordinary meaning, and considering the structure of the statute as a whole. *See Indiana Alcohol and Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 376 (Ind. 2017). In directing that Charlestown shall provide for the appointment of three residents to serve as appraisers "in a written document," we find the statute unambiguously directs the appraiser "appointment"—not each appraiser appointment—to be memorialized in a written document along with the other information listed.

In this instance, agreements to appraise Charlestown's utility property were executed with two engineering firms (Attachment GRH-1R) with an email exchange for the real estate

appraisal assignment (Attachment GRH-2 at 062-063 and 108-109). For purposes of summary judgment, NOW focuses upon the listed information not being in a single document as opposed to claiming the appointments were not made in any document. Certainly, adherence to the statute should be effectuated by making the appointment in a document, such as an ordinance or resolution consistent with the title of this statute, but we find the multi-document process Charlestown used substantially complied by memorializing the appraiser appointments, the work to be performed, i.e., an appraisal of Charlestown's utility property, and the related timeline and that NOW has not shown any adverse impact or prejudice therefrom. Three disinterested persons were appointed to appraise the utility property with two being licensed engineers and one being a licensed appraiser. We find the appraisal documentation substantially complied with the Ind. Code § 8-1.5-2-4 requirements because the objectives of this statute were met. *See, e.g., Hamill v. City of Carmel*, 757 N.E.2d 162, 165 (Ind. Ct. App. 2001). Because of this determination, we do not also address whether NOW waived challenging the appraiser appointments by not raising its challenge sooner than summary judgment or whether summary judgment is the appropriate recourse for a technical misstep at the outset when appointing the appraisers.

While the record is not disputed that the appraisal appointments were not made in a document, we find there are material issues of fact upon whether the appointment documentation was available for inspection and copying as the statute requires. In support of its position, NOW provided copies of public information requests for information from Charlestown, but these did not include a request for a copy of the appraiser appointment. Also, as shown in Exhibit A to NOW's motion for summary judgment, Charlestown claimed in its responses to NOW's Data Request #7, Question 7.1, "The documents appointing the appraisers and related contracts were available for inspection and copying as provided in IC 5-14-3 at all times following their creation and would have been produced upon request at either the Mayor's office, the municipal utility office, or the Clerk-Treasurer's office. Notably, no one ever requested to inspect or copy any such documents." Clearly, the availability of the subject documents for copying or inspection was disputed, precluding summary judgment. Based on what was presented in this Cause, we find that NOW has not shown the documentation was not available in compliance with the statute or actual harm associated with NOW's claim.

Based on the discussion and findings above, we conclude that NOW's Motion for Summary Judgment should be and is denied.

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

1. Joint Petitioners are authorized to consummate the acquisition of the Charlestown Water System by Indiana-American on the terms described in the Asset Purchase Agreement and as discussed herein.

2. The acquisition of the Charlestown Water System by Indiana-American on the terms and conditions described in the Asset Purchase Agreement and in the evidence is in the public interest as defined in Ind. Code § 8-1.5-2-6.1(d) and (e), and the same is approved.

3. Indiana-American is authorized to record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to the full purchase price, actual

incidental expenses, and other actual costs of acquisition reasonably incurred, allocated among utility plant in service accounts as Indiana-American proposed.

4. Indiana-American is authorized to charge customers currently served by the Charlestown Water System the current rates and charges and apply the same rules and regulations for water service and private and public fire service applicable in Indiana-American's Area One rate group on file with and approved by the Commission, as the same are in effect from time to time.

5. Indiana-American is authorized to reflect the acquisition of the Charlestown Water System on its books and records as of the closing by making the accounting and journal entries described in Attachment GMV-R1, as adjusted to actual, reasonable incidental expenses and other actual costs of the acquisition.

6. The net original cost, as defined herein, of the acquired property shall be used for accounting, depreciation, and rate base valuation purposes after closing.

7. Indiana-American is authorized to apply its depreciation accrual rates on and after the closing date of the acquisition to depreciable property purchased from Charlestown pursuant to the Asset Purchase Agreement.

8. Indiana-American is authorized to encumber the properties comprising the Charlestown Water System with the lien of Indiana-American's mortgage indenture.

9. The relief sought in NOW's Amended Complaint is denied.

10. NOW's Motion for Summary Judgment is denied.

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

HUSTON, WEBER, AND ZIEGNER CONCUR; FREEMAN CONCURS WITH SEPARATE OPINION:

APPROVED: MAR 14 2018

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

Mary M Becerra

Mary M. Becerra
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN WATER COMPANY, INC. ("INDIANA AMERICAN") AND THE CITY OF CHARLESTOWN, INDIANA ("CHARLESTOWN") FOR APPROVAL AND AUTHORIZATION OF: (A) THE ACQUISITION BY INDIANA-AMERICAN OF CHARLESTOWN'S WATER UTILITY PROPERTIES (THE "CHARLESTOWN WATER SYSTEM") IN CLARK COUNTY, INDIANA IN ACCORDANCE WITH A PURCHASE AGREEMENT THEREFOR; (B) APPROVAL OF ACCOUNTING AND RATE BASE TREATMENT; (C) APPLICATION OF INDIANA AMERICAN'S AREA ONE RATES AND CHARGES TO WATER SERVICE RENDERED BY INDIANA AMERICAN IN THE AREA SERVED BY THE CHARLESTOWN WATER SYSTEM ("THE CHARLESTOWN AREA"); (D) APPLICATION OF INDIANA AMERICAN'S DEPRECIATION ACCRUAL RATES TO SUCH ACQUIRED PROPERTIES; (E) THE SUBJECTION OF THE ACQUIRED PROPERTIES TO THE LIEN OF INDIANA AMERICAN'S MORTGAGE INDENTURE AND THE POTENTIAL ENCUMBRANCE FROM RIGHT OF FIRST REFUSAL; AND (F) THE PLAN FOR REASONABLE AND PRUDENT IMPROVEMENTS TO PROVIDE ADEQUATE, EFFICIENT, SAFE AND REASONABLE SERVICE TO CUSTOMERS OF THE CHARLESTOWN WATER SYSTEM.	)	CAUSE NO. 44976
VERIFIED COMPLAINT AND REQUEST FOR COMMISSION INVESTIGATION BY NOW! INC. AND CUSTOMERS OF THE CITY OF CHARLESTOWN AGAINST INDIANA AMERICAN WATER COMPANY REGARDING ITS PROPOSED ACQUISITION OF THE CITY OF CHARLESTOWN'S WATER UTILITY	)	CAUSE NO. 44964 APPROVED:

CONCURRING OPINION OF COMMISSIONER SARAH E. FREEMAN

I concur in result today because the public interest is best served by Indiana-American providing service to Charlestown's water customers sooner rather than later. The Commission Order supports this result, but I nevertheless wish to address separately three areas of concern, all

relating to Indiana-American's treatment of the notice and plan requirements set forth in IC 8-1-30.3-5(d).[1]

First, Indiana-American failed to provide the notice required under section 5(d)(1) in a timely manner as contemplated by the statute. Petitioner mailed a letter[2] to Charlestown residents on August 31, 2017, two weeks after it initiated this Cause on August 17, 2017. Given that section 5(d)(1) is a condition of seeking Commission approval under section 5(d), this delay would have been fatal to Indiana-American had it not agreed to base the procedural schedule in this Cause from the date on which it late-filed the letter, September 1, 2017.

Second, the notice requirement in section 5(d)(2) was not triggered because the record is devoid of any evidence with respect to the treatment of additional property tax expenses in Indiana-American's revenue requirement as a result of Indiana-American's capital investment amount increasing from $7.2 million to $13.2 million. The Commission's long-standing practice of limiting its review to the evidence and arguments presented to it today works in favor of Indiana-American; as it stands, 0.965% is less than 1%.

Third, section 5(d)(4) requires Indiana-American to provide "a plan for reasonable and prudent improvements" to Charlestown's water system, which should have been at the very least a component of Indiana-American's case-in-chief. I find the testimony of Indiana-American reproduced on page 28 of the Commission Order credible and consistent with my observation of Indiana-American's existing business operations. Sentiment alone, however, does not satisfy section 5(d)(4), nor does it by itself justify the recovery of millions of dollars through rates. Rather, it was through rebuttal and cross-examination testimony and responses to docket entry questions that Indiana-American presented enough specifics to support the Commission's finding that section 5(d)(4) is satisfied.

Ultimately, IC 8-1-30.3-5 and IC 8-1.5-2-6.1 afford a petitioner a meaningful opportunity to present the Commission – and the petitioner's present and future customers – with any evidence supporting its position that its acquisition of a distressed utility is in the public interest. This opportunity should not be squandered.

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[1] IC 8-1-30.3-5(d) allows Indiana-American to take a certain action (seek Commission approval of Indiana-American's petition under IC 8-1-30.3-5(c)) at a certain time (before Indiana-American acquires Charlestown) if Indiana-American satisfies certain other requirements (the notice and plan requirements enumerated in subdivisions (d)(1) through (d)(4)). The notice and plan requirements are conditions that must be satisfied in order for a petition to be properly filed with the Commission under section 5(d). While IC 8-1-30.3-5(d) does not specify whether these conditions must be satisfied before or concurrently with the filing, a reasonable reading of section 5(d) implies at the very least a concurrent (as opposed to a subsequent) filing. Based on this reading, notice to the OUCC in the form of service of the petition and case-in-chief satisfies IC 8-1-30.3-5(d)(3) and is not addressed in the body of this separate opinion.

[2] The Commission Order addresses the content inadequacies of this letter on pages 24-25.