

August 31, 2017

INDIANA UTILITY

REGULATORY 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

OUCC’S AMENDED MOTION TO DISMISS JOINT PETITIONERS’ CAUSE

The Indiana Office of Utility Consumer Counselor (“OUCC”) through its undersigned attorney moves to dismiss Joint Petitioners’ petition or in the alternative stay the procedural schedule. This Motion is made pursuant to 170 IAC 1-1.1-12(3) and (5).

1. Joint Petitioners Indiana-American Water Company, Inc. (“Indiana-American”) and City of Charlestown (“Charlestown”) filed their petition pursuant to IC 8-1-30.3-5(c) in which

a utility company that acquires utility property from a distressed utility may petition to include cost differentials in its rate base.

2. Pursuant to IC 8-1-30.3-5(d) a utility company may petition the Commission in an independent proceeding to approve a petition under subsection (c) before the utility company acquires the property if the utility company provides certain notices and a plan for improvements. IC 8-1-30.3-5(d)(1-4). Accordingly, the provision of such notices and the plan is a condition precedent to an independent proceeding under IC 8-1-30.3-5(d).

3. Joint Petitioners filed their petition and “Submission of Case-in-Chief” on August 17, 2017. However, Joint Petitioners did not include as part of their case-in-chief proof they have satisfied all notices required by IC 8-1-30.3-5(d).

4. IC 8-1-30.3-5(d)(1) requires “notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility.” The notice required by IC 8-1-30.3-5(d)(1) has not been provided as of the filing of this motion. Furthermore, Joint Petitioners’ case-in-chief testimony indicates the notice had not been given at the time Joint Petitioners filed their case. Indiana-American witness Matthew Prine testified that “Charlestown customers will be notified of the proposed acquisition and proposed application of Indiana-American’s rates which will result in an increase in their current rates” (Joint Petitioners’ Exhibit No. 4, p. 14. (Emphasis added.) Joint Petitioners have not satisfied an essential condition precedent to filing a petition under IC 8-1-30.3-5(d).

5. IC 8-1-30.3-5(d)(2) requires “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.”

6. Indiana-American proposes a \$13,583,711 increase to its rate base, which will generate a higher return that must be grossed-up for taxes as well as higher depreciation expense. Indiana-American also guaranteed Charlestown it would spend at least \$7.2 million in improvements of which \$4.6 million would be spent in the first two years following the acquisition (Joint Petitioners' Exhibit 1, p. 13, lines 19 – 21.) Further, while Indiana-American will secure additional revenues from the Charlestown customers, Indiana-American will presumably experience added costs to operate the acquired assets (e.g., property tax). Indiana-American has not provided evidence that quantifies the net effect of the acquisition on its rates.

7. Indiana-American's position appears to be that no such notice is required because Indiana-American is not asking for a general rate increase *in this Cause*.¹ (See the testimonies of Matthew Prine and Gary VerDouw - Joint Petitioners' Exhibit No. 4, p. 14, lines 6 – 9 and Joint Petitioners' Exhibit No. 5, p. 13.) Indiana-American's interpretation of IC 8-1-30.3-5(d)(2) is unsupported and unwarranted.

8. A reasonable reading of the statute requires a utility company seeking the relief afforded by IC 8-1-30.3-5(c) and (d) to show in its case either that it has provided the notice required under IC 8-1-30.3-5(d)(2) *or*, in a transparent manner and with evidence, that the acquisition will not increase the utility company's rates by more than one percent (1%) of the utility company's current base annual revenue. Indiana-American has done neither. Joint Petitioners have not satisfied an essential condition precedent to filing a petition under IC 8-1-30.3-5(d).

¹ The meaning of IC 8-1-30.3-5(d)(2) was disputed in Cause No. 44915 (order pending).

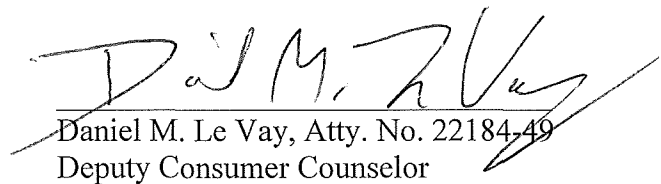
9. In a proceeding under IC 8-1-30.3-5(d), the Commission is expected to issue its final order no later than 210 days after the filing of the case-in-chief. Indiana-American considers the 210 day countdown to have begun. It has not.

10. Unless addressed at this time, Joint Petitioners' failure to satisfy all notice requirements under IC 8-1-30.3-5(d) will prejudice the rights of those entitled to such notice to be informed and to participate in this Cause. Further, that failure would prejudice the rights of the OUCC to be more fully informed of the concerns and particular knowledge of both utilities' customers.

11. Joint Petitioners' petition should be dismissed without prejudice with instructions to not re-file until all conditions set forth in IC 8-1-30.3-5(d) have been satisfied. No party will be prejudiced by a grant of the relief requested in this Motion to Dismiss.

WHEREFORE, Joint Petitioners' petition should be dismissed without prejudice for failure to satisfy the conditions precedent to a filing under IC 8-1-30.3-5(d); or in the alternative, the OUCC's and Intervenor's filing date should be stayed and rescheduled to an appropriate date once Joint Petitioners have provided both notices required by IC 8-1-30.3-5(d)(1) and (2); and the Commission should grant such other relief that the Commission deems proper.

Respectfully submitted,


Daniel M. Le Vay, Atty. No. 22184-49
Deputy Consumer Counselor

Jesse James, Atty. No. 29971-53
Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *OUCC's Amended Motion to Dismiss* has been served upon the following counsel of record in the captioned proceeding by electronic service on August 31, 2017.

Indiana-American Water Company, Inc.

Nicholas K. Kile
Hillary J. Close
Lauren Box
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
nicholas.kile@btlaw.com
hillary.close@btlaw.com
lauren.box@btlaw.com

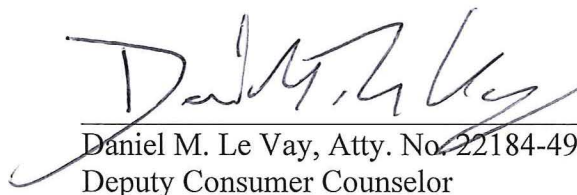
NOW!, Inc.

J. David Agnew
Christopher L. King
LORCH NAVILLE WARD LLC
506 State Street, P.O. Box 1343
New Albany, Indiana 47151-1343
dagnew@LNWLegal.com
cking@lnwlegal.com

City of Charlestown, Indiana

David McGimpsey
Bingham Greenebaum Doll LLP
212 West Sixth Street
Jasper, IN 47546
DMcGimpsey@bgdlegal.com

Alex Gude
Bingham Greenebaum Doll LLP
10 West Market Street, Suite 2700
Indianapolis, IN 46204
agude@bgdlegal.com


Daniel M. Le Vay, Atty. No. 22184-49
Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
317/232-2494 – Phone
317/232-5923 – Facsimile