

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**JOINT PETITION OF INDIANA-AMERICAN)
WATER COMPANY INC. (“INDIANA)
AMERICAN”) AND SILVER CREEK)
WATER CORPORATION (“SILVER)
CREEK”) FOR APPROVAL AND)
AUTHORIZATION OF: (A) THE)
ACQUISITION BY INDIANA AMERICAN)
OF SILVER CREEK’S UTILITY PROPERTY)
(THE “SILVER CREEK WATER SYSTEM”))
IN CLARK AND FLOYD COUNTIES IN)
INDIANA IN ACCORDANCE WITH A)
PURCHASE AGREEMENT THEREFOR; (B))
APPROVAL OF ACCOUNTING AND RATE)
BASE TREATMENT; (C) APPROVAL OF)
THE RATES AND CHARGES TO BE)
APPLIED TO THE SILVER CREEK WATER)
SYSTEM AFTER CLOSING; (D) APPROVAL)
OF APPLICATION OF INDIANA)
AMERICAN’S RULES AND REGULATIONS)
FOR WATER SERVICE TO THE SILVER)
CREEK WATER SYSTEM; (E))
APPLICATION OF INDIANA AMERICAN’S)
DEPRECIATION ACCRUAL RATES TO)
SUCH ACQUIRED PROPERTIES; AND (F))
THE SUBJECTION OF THE ACQUIRED)
PROPERTIES TO THE LIEN OF INDIANA-)
AMERICAN’S MORTGAGE INDENTURE.)**

CAUSE NO. 46023

PUBLIC’S EXHIBIT NO. 1

TESTIMONY OF MARGARET A. STULL

ON BEHALF OF

THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

May 28, 2024

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



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CERTIFICATE OF SERVICE

This is to certify that a copy of the *Public's Exhibit No. 1 - Testimony of Margaret A. Stull on behalf of the OUCC* has been served upon the following captioned proceeding by electronic service on May 28, 2024.

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TESTIMONY OF OUCC WITNESS MARGARET A. STULL
CAUSE NO. 46023
INDIANA AMERICAN WATER COMPANY, INC.
AND SILVER CREEK WATER CORPORATION

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Margaret A. Stull, and my business address is 115 W. Washington St.,
3 Suite 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor (“OUCC”) as
6 a Chief Technical Adviser in the Water/Wastewater Division. My qualifications are
7 set forth in Appendix “A” attached to this testimony.

8 **Q: What is the purpose of your testimony?**

9 A: I discuss the transaction proposed in this proceeding by Joint Petitioners (Indiana
10 American Water Company, Inc. (“Indiana American”) and Silver Creek Water
11 Corporation (“Silver Creek”)). I discuss Joint Petitioner Indiana American’s
12 proposal to include in its rate base the proposed acquisition price plus actual
13 incidental costs. I recommend the Commission deny Indiana American’s request to
14 apply its Area One rates to the Silver Creek customers and direct Indiana American
15 to continue to apply Silver Creek’s rates.

16 **Q: If you do not address a specific topic in your testimony, does that mean you**
17 **agree with or endorse Petitioner’s request or position?**

18 A: No. It is neither practical nor reasonable for me to address every issue, item, or
19 adjustment presented in Petitioner’s testimony, exhibits, work papers, or discovery
20 responses. The scope of my testimony is strictly limited to the specific items I

1 address. My silence in response to any actions, decisions, or positions stated or
2 implied by Petitioner in its request should not be construed as an endorsement.

3 **Q: Please describe the review and analysis you performed.**

4 A: I reviewed the Joint Petition as well as the testimony and attachments filed by Joint
5 Petitioners Indiana American and Silver Creek. I also prepared discovery questions
6 and reviewed Joint Petitioners' responses to those questions.

II. PROPOSED ACQUISITION

7 **Q: Please summarize the relief requested by Joint Petitioners.**

8 A: Joint Petitioners request approval of the acquisition by Indiana American of certain
9 water utility assets currently owned by Silver Creek in accordance with the Asset
10 Purchase Agreement (Joint Petitioners' Attachment JS-2). Joint Petitioners also
11 request approval of accounting and rate base treatments that will allow Indiana
12 American to reflect as net original cost rate base the full purchase price plus
13 transaction costs, including approval of Indiana American's proposed accounting
14 entry. Indiana American asks the Commission to authorize it to apply its Area One
15 rates and charges to the customers to be acquired from Silver Creek. Joint
16 Petitioners request approval to apply the same rules and regulations applicable to
17 Indiana American's existing water customers. Joint Petitioners also seek authority
18 for Indiana American to apply Indiana American's existing depreciation accrual
19 rates to the water utility assets acquired from Silver Creek. Finally, Joint Petitioners
20 seek authority for Indiana American to encumber the acquired water utility assets,
21 which will be subjected to the lien of Indiana American's Mortgage Indenture.

A. Assets Being Acquired

1 **Q: What assets would be acquired by Indiana American?**

2 A: Joint Petitioners' witness and Indiana American employee Mr. Justin Schneider
3 explained "Indiana American proposes to acquire all of the property necessary to
4 operate the Silver Creek System, the property that is the subject of the appraisal of
5 the Silver Creek System, as set forth in Section 2.1 of the Asset Purchase
6 Agreement ("the Agreement"). The acquired assets are listed in the appraisal
7 sponsored by Mr. Snyder as Attachment CAS-2."¹ Section 2.1 of the Agreement
8 states the assets being acquired include, but are not limited to: (a) real property,
9 including the office building, garage, and storage buildings, easements and rights-
10 of-way; (b) tangible personal property; (c) data and records related to seller's
11 operation of the business, including a customer list; (d) materials contracts set forth
12 on Schedule 2.1(d); (e) permits and pending applications for renewals thereof or
13 exemptions therefrom; and (f) intangible rights and property utilized in operation
14 of the business. (See Joint Petitioners' Attachment DAB-2.)

15 **Q: What is specifically excluded from the proposed acquisition?**

16 A: According to Section 2.2 of the Agreement, the acquisition would *exclude* (a) all
17 insurance policies and rights thereunder; (b) all personnel records and other records
18 the seller is required by law to retain; (c) all rights in connection with and assets of
19 Silver Creek's employee benefit plans; (d) all Silver Creek's rights under the
20 transaction documents; (e) cash and cash equivalents; (f) accounts receivable

¹ See Joint Petitioners' Exhibit No. 2, Testimony of Justin Schneider, page 7, lines 15 - 19.

1 arising prior to the effective time; and (g) customer service connections which
2 remain the property of the customer.

B. Agreed Purchase Price

3 **Q: What is the agreed purchase price for Silver Creek's water utility assets?**

4 A: As explained by Joint Petitioners' witness and American Water employee Mr.
5 Gregory D. Shimansky, the agreed purchase price is \$45,000,000 per the
6 Agreement.² The total purchase price Indiana American proposes to record is
7 \$45,159,000, which includes the \$45,000,000 purchase price as set forth in the
8 Agreement and an additional \$159,000 of transaction costs.³

9 **Q: What support is provided for the agreed purchase price of \$45,000,000?**

10 A: Joint Petitioners provided a Public Water System Facilities Inventory/Valuation
11 report (hereafter "Valuation Report"), prepared by BLN Engineering and Banning
12 Engineering and dated November 2022. Joint Petitioners also provided a separate
13 land appraisal, prepared by BNL Right-Of-Way Services. These reports were
14 sponsored by Joint Petitioners' witness Christopher Adam Snyder as Joint
15 Petitioners' Attachment CAS-2.

16 **Q: What is the total appraised value of the assets being acquired?**

17 A: Based on the November 2022 Valuation Report, the Silver Creek water system was
18 valued at \$44,517,100. The value of the real estate and land was \$4,140,500. The
19 total value of Silver Creek's water system was determined to be \$48,657,600.⁴

² Joint Petitioners' Attachment JS-2, Section 2.3.

³ Joint Petitioners' Exhibit No. 4, Testimony of Gregory D. Shimansky, page 4, lines 10 – 13.

⁴ Joint Petitioners' Exhibit No. 1, Testimony of Christopher Adam Snyder, page 5, lines 12 - 15.

C. Qualification of Transaction under IC 8-1-30.3 et seq

1 **Q: Under what statute is Indiana American proposing to secure favorable**
2 **ratemaking treatment in this case?**

3 A: Indiana American is proposing to secure favorable ratemaking treatment for the
4 acquisition of the Silver Creek Water Utility pursuant to IC 8-1-30.3-5. That
5 treatment requires a finding that “The offered utility is too small to capture
6 economies of scale or has failed to furnish or maintain adequate, efficient, safe, and
7 reasonable service and facilities.” IC 8-1-30.3-5(d)(2).

8 **Q: Has Silver Creek failed to furnish or maintain adequate, efficient, safe, and**
9 **reasonable service and facilities?**

10 A: No, Silver Creek has provided and continues to provide safe, reliable water service
11 and facilities to its customers. In fact, Silver Creek indicated in a “Frequently Asked
12 Questions” document that “SCWC is in good financial health” and that “SCWC
13 and its water system are not, in any way, financially troubled or in a state of
14 technical or operational distress.”⁵

15 **Q: Is Silver Creek too small to capture economies of scale?**

16 A: According to IC 8-1-30.3-6(5), if the “offered utility serves fewer than eight
17 thousand (8,000) customers” it is deemed to be too small to capture economies of
18 scale.

19 **Q: Does Silver Creek have fewer than 8,000 customers?**

20 A: Joint Petitioners assert that for purposes of the statute Silver Creek had, as of July
21 28, 2023, “approximately 7,938 individual customers.”⁶ However, according to

⁵ Joint Petitioners' Exhibit No. 1, Testimony of Christopher Adam Snyder, Attachment CAS-5, p. 4.

⁶ Joint Petitioners' Exhibit No. 2, Testimony of Justin Schneider, p. 3

1 Silver Creek's 2022 IURC Annual Report, Silver Creek has 8,041 customers.
2 According to its Annual Report provided to the IURC, Silver Creek would appear
3 to exceed the 8,000-customer limit.

4 **Q: Did the OUCC look further into Joint Petitioners' claim that it had fewer than**
5 **8,000 customers under IC 8-1-30.3-6(5)?**

6 A: Yes, the OUCC sought and received additional information (some confidential) to
7 verify that the actual number of customers, as defined in 170 IAC 6-1-1(d), was
8 less than 8,000. What we discovered was that Silver Creek reports "memberships"
9 in its annual reports.

10 Silver Creek requires membership for each metered connection. Therefore,
11 if an individual or entity has more than one meter, they will have more than one
12 membership. Customers with more than one meter at the premises may include
13 apartment complexes, schools, and residential customers with domestic and
14 irrigation meters. Looking at the facts of Silver Creek's operations, the OUCC was
15 satisfied that Silver Creek should be considered to have fewer than 8,000 customers
16 for purposes of qualifying for the determination that it is too small to capture
17 economies of scale as a matter of law.

18 **Q: Does the OUCC consider that Silver Creek is *as a matter of fact* too small to**
19 **capture economies of scale?**

20 A: No. However, the statute does not permit such an evaluation if the offered utility
21 simply has fewer than 8,000 customers. The Commission must make the finding
22 regardless whether the offered utility is, as a matter of fact, better or worse than the
23 acquiring utility at capturing economies of scale. Authorizing favorable ratemaking
24 treatment through acquisition adjustments was a long-standing role of the

1 Commission, which required it to consider whether such benefits as the
2 procurement of economies of scale and other customer benefits were present. As a
3 result of IC 8-1-30.3-5, the Indiana Utility Regulatory Commission no longer has
4 the discretion to determine that favorable ratemaking treatment is not so justified.
5 Such benefits are now presumed based on basic factors such as size of the offered
6 utility.

7 **Q: Do you believe Silver Creek's customers will be served by a utility that will**
8 **capture economies of scale as a matter of fact?**

9 A: I would only respond that *capturing economies of scale*⁷ typically suggests lower
10 costs and therefore prices of services. In this case, Silver Creek customers will
11 experience a significant increase in rates by switching to a provider with presumed
12 economies of scale (larger than 8,000 customers).

D. Customer Comments

13 **Q: Did the OUCC receive customer comments for this case?**

14 A: Yes. The OUCC received two customer comments, primarily expressing concerns
15 about the resulting price increase, board member conflicts of interest, lack of a
16 public hearing, and distribution of funds to Silver Creek board members and
17 employees. These comments are included in OUCC Attachment MAS-1.

⁷ The Cambridge Dictionary defines economies of scale as “the reduction of production costs that is a result of making and selling goods in large quantities, for example, the ability to buy large amounts of materials at reduced prices.” See <https://dictionary.cambridge.org/us/dictionary/english/economies-of-scale>

III. ACCOUNTING TRANSACTION

1 **Q: What accounting transaction does Joint Petitioner Indiana American propose**
2 **in this case?**

3 A: Indiana American proposes to reflect a total original cost rate base of \$45,159,000,
4 a figure that will be adjusted to reflect the purchase price of \$45,000,000 plus the
5 incidental and acquisition costs actually incurred. Indiana American intends to
6 book this acquisition via the journal entry proposed in Joint Petitioners' Attachment
7 GDS-1 by reflecting the asset values by asset category as recommended in the
8 appraisal, reduced on a pro-rata basis to reflect the reduced purchase price plus the
9 estimated transaction costs. The "cost differential" will be included as part of each
10 of the asset categories reflected in the journal entry proposed in Joint Petitioners'
11 Attachment GDS-1 on a pro-rated basis.

12 **Q: Does the OUCC accept the cost differential proposed by Joint Petitioners?**

13 A: Joint Petitioners did not specifically identify a cost differential in this case. Instead,
14 Joint Petitioners assert the purchase price includes a cost differential and the full
15 purchase price plus transaction costs, including the cost differential, should be
16 included in Indiana American's rate base for ratemaking purposes.

17 **Q: Assuming the Commission finds that all criteria under IC 8-1-30.3-5(d) have**
18 **been met, do you accept Indiana American's proposed journal entry?**

19 A: Yes.

E. Other Requested Relief

20 **Q: What rates does Indiana American propose to charge the acquired Silver**
21 **Creek customers?**

22 A: Indiana American proposes to charge its Area One rates to customers acquired from
23 Silver Creek. Currently, Silver Creek residential customers using 4,000 gallons of

1 water are charged \$26.95.⁸ After the acquisition is finalized, these customers will
2 be charged \$55.46⁹ based on tariffs provided in Indiana American's "Submission
3 of Revised Step 2 Compliance Filing" in Cause No. 45870. This represents a \$28.51
4 increase per month or a nearly 106% rate increase.

5 **Q: Do you agree Silver Creek customers be charged according to Indiana**
6 **American Water Company's Area One rates?**

7 A: Yes. However, that change should not occur until Indiana American's next rate
8 order. Nothing in IC 8-1-30.3-5 establishes that the Commission *must* authorize the
9 imposition of the acquiring utility's rate structures. In fact, in several recent
10 acquisitions the Commission has authorized Indiana American to continue to
11 charge the customers it acquired according to the rate schedule established by the
12 selling utility. For instance, in Cause No. 45550, Indiana American was authorized
13 to continue to charge the Town of Lowell's higher water rate as was the case in
14 Cause No. 45461, where Indiana American was authorized to continue to charge
15 the River's Edge Water System rate. In Cause No. 45290, Indiana American
16 received permission to continue to charge the Town of Riley's rate, which was
17 lower than the rate Indiana American charged its existing customers. As in that
18 case, Silver Creek currently provides water service at a lower cost. Indiana
19 American already provides water service indirectly to Silver Creek's customers.
20 Indiana-American has not evidenced what additional marginal costs it will
21 experience as a result of adding Silver Creek's customers directly to its operations.

⁸ Per the IURC's 2024 Water Billing Survey.

⁹ Consisting of a fixed charge of \$20; a volumetric charge of \$30.69 (2.5 x \$12.2775); and a fire protection charge of \$4.77. The \$20 fixed charge includes 1,500 gallons of water.

1 Indiana American has not shown why it cannot provide the same basic service to
2 this set of customers at the rates those customers are currently paying to a utility,
3 which, as a matter of law, is too small to capture economies of scale. In this case,
4 Indiana American should be required to follow the same practice it has established
5 in those other cases.

6 **Q: Will not imposing Area One rates until the next rate case possibly cause**
7 **Indiana American's existing customers to subsidize Silver Creek's customer's**
8 **services?**

9 A: No. No level of subsidization has been established. Moreover, what Indiana
10 American's existing customers pay Indiana American for water service will not be
11 affected during the life of these rates by what Indiana American charges former
12 customers of Silver Creek. (Indiana American's current rates were recently
13 established in Cause No. 45870.)

14 **Q: Do you recommend Silver Creek customers be subject to any capital tracker**
15 **charges Indiana American may be authorized to impose?**

16 A: Yes. If Silver Creek customers are paying lower rates under the existing schedules,
17 it would be appropriate for those customers to be subject to any capital tracker
18 charges Indiana American may be authorized to collect, including distribution
19 system improvement charges and system enhancement improvement charges.

IV. CONCLUSION

20 **Q: Assuming the Commission finds that all criteria under IC 8-1-30.3-5(d) have**
21 **been met, does the OUCC accept Indiana American's proposed journal entry?**

22 A: Yes. However, the OUCC recommends Silver Creek customers continue to be
23 charged their currently approved tariff rates until Indiana American's next base rate
24 case, whereupon Area One rates would be applied.

1 **Q:** Does this conclude your testimony?

2 **A:** Yes.

APPENDIX A

1 **Q: Please describe your educational background and experience.**

2 A: I graduated from the University of Houston at Clear Lake City in August 1982 with
3 a Bachelor of Science degree in Accounting. From 1982 to 1985, I held the position
4 of Gas Pipeline Accountant at Seagull Energy in Houston, Texas. From 1985 to
5 2001, I worked for Enron in various positions of increasing responsibility and
6 authority. I began in gas pipeline accounting, was promoted to a position in
7 financial reporting and planning for both the gas pipeline group and the
8 international group, and finally was promoted to a position providing accounting
9 support for infrastructure projects in Central and South America. In 2002, I moved
10 to Indiana, where I held non-utility accounting positions in Indianapolis. In August
11 2003, I accepted a utility analyst position with the OUCC. I was promoted to Senior
12 Utility Analyst in 2011. In 2018, I was promoted to my current position as Chief
13 Technical Advisor.

14 Since joining the OUCC I have attended the National Association of
15 Regulatory Utility Commissioners (“NARUC”) Eastern Utility Rate School in
16 Clearwater Beach, Florida, and the Institute of Public Utilities’ Advanced
17 Regulatory Studies Program in East Lansing, Michigan. I have also attended several
18 American Water Works Association and Indiana Rural Water Association
19 conferences as well as the National Association of Utility Consumer Advocates
20 (“NASUCA”) Water Committee Forums. I have participated in the NASUCA
21 Water Committee and the NASUCA Tax and Accounting Committee, including
22 serving as chair for the Tax and Accounting Committee from 2016 – 2021.

1 **Q: Have you previously testified before the Indiana Utility Regulatory**
2 **Commission?**

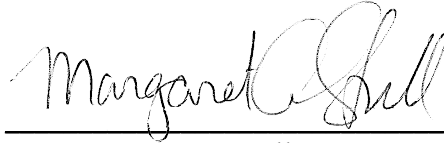
3 A: Yes. I have testified before the Commission as an accounting witness in various
4 causes involving water, wastewater, electric, and gas utilities.

5 **Q: Have you held any professional licenses?**

6 A: Yes. I passed the CPA exam in 1984 and was licensed as a CPA in the State of
7 Texas until I moved to Indiana in 2002.

AFFIRMATION

I affirm the representations I made in the foregoing testimony are true to the best of my knowledge, information, and belief.



By: Margaret A. Stull
Cause No. 46023
Office of Utility Consumer Counselor (OUCC)

Date: May 28, 2024

From: [James Barnett](#)
To: [UCC Consumer Info](#)
Subject: Silver Creek Water Company
Date: Friday, March 29, 2024 8:52:32 PM

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

SCWC is selling to Indiana water Co. and money they pay to Directors will be about \$125,000. Customers to receive about \$4,500. Employees maybe \$90,000. No notice of how many voted to sell that included names. This was started last year. Since they are selling the Directors have not had an annual election in January 2024 because of the so called bonus. Thanks Ky. Col. J. E. Barnett, Jr.
Sent from my iPad

From: [Keith Alexander](#)
To: [UCC Consumer Info](#)
Subject: IURC Cause no. 46023 Indiana American Water and Silver Creek Water
Date: Wednesday, May 8, 2024 11:40:52 AM
Attachments: [IURC cause number 46023 Indiana American Water Comapnay and Silver Creek Water Corporation.docx](#)

****** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ******

I have attached information to the best of my knowledge collected. I have a portion of the meeting minutes sent to me from Mr. Janak. He indicated if the OUCC wanted these records you could ask for them. The minutes I received were lacking the underlying documents voted on at the meetings. I did receive those documents for 2021. The years when all of the sale information was discussed, underlying documents were not provided.(2022 2023). I would encourage your office to request those documents or I can send what I have. I would also encourage the OUCC to investigate the extent each board member was involved in the negotiations. It appears to me only a few were involved in the negotiations and the rest discussed it at meetings in which they are already paid a stipend. I strongly believe a board of directors can't negotiate a deal in which they have a vested interest. With all the NDA agreements in place it will be very difficult for me to get information. It took me 7 months to get meeting minutes. Let me know if I can help in any way. The rural customers are counting on you. I am getting double what most customers are getting in the deal. One would think I would just take my extra money. My interest is in the rural customers and water rate that has benefited those customers for 60 years as a not for profit.

Keith Alexander
8129895525

My name is Keith Alexander and I am a member of the Silver Creek Water Corporation. Here is a list of problems I feel need to be addressed before any sale of the not-for-profit water company.

The Boards reason for selling the water company.

1. The board and the Management team want to retire in the next couple years.
 - a. Three people indicated they wanted to run for the two terms that expired in March.
2. Hiring people would be difficult.
 - a. The water company has hired two people in the past 2 years. There are only 11 in total.
3. The water company is classified as a distressed corporation because it has fewer than 8000 connections and the sale price would amount to less than half of the appraisal and we could not sell the water company for appraisal value if we reach more than 8000 connections.
 - a. According to the information provided to IDEM our system has 8011 service connections.
<https://indwv.gecsws.com/WaterSystem?n0=IN5210011%20%20%20>
4. The water rate was going up 50 percent according to letter sent to members.
 - a. My water went up from 18.17 to 19.41. A far cry from the amount portrayed to the members from the board in their letter. Consumers are losing out in this deal.
5. The water company has experienced a material increase in operating and maintenance costs.
 - a. Note the water company is at the end of the 2017 Master Plan with improvements and getting water storage to satisfy the ten state standard.
<https://silvercreekwater.org/wp-content/uploads/2020/11/Silver-Creek-H2O-Project-Schedule-NOV2020-Master-Plan-1-of-2.pdf>
<https://silvercreekwater.org/wp-content/uploads/2020/04/Silver-Creek-H2O-Project-Schedule-Completed-Projects1996-2011.pdf>
 - b. <https://projects.propublica.org/nonprofits/organizations/351119457>
According to the 990's filed for 2022 2021 2020, page 11 expenses, The main driver for expense increases is wages and salaries, conferences, conventions and meetings. (line 7, line 19, and 24b). All the other expenses are steady except for the amount of interest we paid as we conclude the 2017 master plan items. Revenue has also kept up with the expenses according to the 990. (2022 4.29 million, 2021 4 million, 2020 3.89 million). From the 990 report it looks like net income adding back expensed depreciation (page 11 line 22) is...(2022 \$1,285,047 million, 2021 \$1,281,167 million, \$1,243,233 million) If the annual meeting was not cancelled, I would have the 2023 information.
 - c. There should have been a public meeting.

Actions by the board to notify the members they were in negotiations with Indiana American Water since **July 2022**.

1. Members were notified in August 2023 after a signed contract in July with IAW was executed and had approximately 30 days to decide. No public hearing!
2. Public hearings. None! In fact, the board notified the members that the only public hearing will be with the IURC. From additional questions and answers from the board

“Is there a public hearing scheduled so that water corporation customers can publicly be heard about this proposed sale?”

“There will be a public evidentiary hearing with the IURC (Indiana Utility Regulatory Commission) at a later date if membership approves the transaction.

I think the IURC stated in the Charlestown vs IAW case there were short comings in the process by the board but at least they had several public meetings for residents to attend.

3. Annual meeting notifications. The only notification of annual meetings is buried in the water quality report issued sometime in the spring of each year under the heading The U.S. Environmental Protection Agency (EPA) wants you to know. This is the only notification to members about a meeting for the following March in the next calendar year.
https://silvercreekwater.org/wp-content/uploads/2023/03/Silver-Creek_IN5210011_2022CCR.pdf

Ways the Board could notify members of upcoming annual meetings

1. Notify members for several months prior to march on the water bill in the information section.
2. Put it on the website.
3. Send an information letter notifying the members of their negotiations. Allowing members to come to the March 2023 annual meeting. The board began talks with IAW July 2022. The board awarded themselves over a million dollars February 2023.

The members were afforded none of these actions. August 2023 was the first notification to members.

Place to have the meeting.

1. Put up a tent at the current location of the Water Company
2. Rent local gym space from Church in the area
3. Have the meeting at Silver Creek High School like the Clark County REMC does.
4. Rent the Clark County REMC Meeting Room

In the May 2202 meeting minutes IAW requested to attend the June Board meeting. Regular meeting minutes May 2 2022

June 2022 the board listens to the presentation from IAW Indiana American June 6th regular meeting minutes.

July 2022 the board discusses the requests from Indiana American Water. Regular meeting July 11, 2022

In August of 2022 minutes the board in the old business

“the board discussed the requests from Indiana American Water. The board agrees to have Beam, Longest & Neff to complete the appraisal. They have previous water system work, and all work is done in house. Chris and Doug will look at the agreement that needs to be signed and see if our attorney needs to review.”

In September 2022 a new employee is hired. September 12 2022 minutes. I only point this out because one of the points made by the board is that with everyone wanting to retire, they would not be able to fill those positions.

September 2022 A special meeting was held at Covered Bridge Golf Course Clubhouse to discuss the pros and cons of a possible acquisition by IAW.

October 2022 another employee is hired by the water company. October 17 2022 minutes.

November 2022 the appraisal report was emailed to the board and will be presented at the December 5th meeting. November 21 2022 minutes

December 2022 the Appraisal report was presented to the Board by BLN. December 5 2022

January 2023 Old business

“Indiana American Water Company (IAWC) -The board recapped the negotiations with Indiana American Water. Chris brought additional information to the board that he had acquired from meetings with Justin at IAWC. The board agreed additional legal information is needed before any decisions are made.

February 2023 **old business**

“ Kenny made a motion that if acquisition takes place then approximately 10 % of the sale will go toward Board and Employee severences packages. The motion was second by Sam and passed on a voice vote. Mark made a motion that if the acquisition takes place the severance package presented this evening for disbursements as of this date, payoff goes to current board of directors in place on February 2, 2023, or their heirs and current employees that are employed as of February 2, 2023, or their heirs and are in good standing up to and through the completion of transition to Indiana American Water Corporation. The motion was second by Tim and passed on a voice vote. Chris made a motion to accept the letter of intent. Sam second and the motion passed by show of hands.

Bylaws are clear Article IV section 5

“The Officers and Directors shall receive compensation in an amount as approved by the membership at the annual meeting.”

<https://silvercreekwater.org/wp-content/uploads/2020/12/By-Laws-2020-revised-for-March-2021-Silver-Creek-Waterdec1.pdf>

A member cannot vote on a measure by mail. A member must attend an annual meeting to vote on Directors or by law changes. One vote per member. The survey allowed a member with more than one meter to vote as many times as they have meters. When you attend a meeting, you are only allowed to vote once. If the Silver Creek Water company wanted to leave the jurisdiction of the IURC, I think this

organization would make people show up in person to vote. I do not think the IURC would allow a mail in vote. The annual meeting is the perfect opportunity to have an open forum for members to ask questions and then vote. That should be the minimum standard.

Voting procedure sent to members: “The accompanying ballot is being sent to you because Silver Creek’s records reflect that you are a member of Silver Creek. If you are not a Silver Creek Member, please discard the ballot. Consistent with its established practice and interpretation of Silver Creeks articles of incorporation and bylaws, any customer who has more than one meter for service from Silver Creek is treated as having a separate membership for each meter. A customer will be entitled to one vote per membership.”

By laws of Silver Creek Water Corporation

Article III Section 3 “The members present at any annual meeting of the Members shall constitute a quorum at any meeting for the transaction of business. No Member shall be entitled to more than one (1) vote, and no voting by proxy shall be allowed.”

The bylaws do not distinguish between members with multiple meters. The member can only vote once. The bylaws do not give the board blanket discretion to interpret the language. In my opinion the board would have to change the language of the by laws and require the membership to vote to approve their interpretation. We are a member organization not a municipality.

Puget Sound Plywood v. Commissioner, 44 T.C. 305, 307-308 (1965), acq.1966-1 C.B. 3

Rev. Rul. 72-36, 1972-1 C.B. 151, sets out organizational and operational

requirements an I.R.C. 501(c)(12) cooperative must satisfy to insure democratic control, operation at cost, and subordination of capital. They are:

- The organization must keep adequate records of each member’s rights and interest in the assets of the organization;
- The organization must distribute any savings to members in proportion to the amount of business done with them (based on the operation at cost principle);
- The cooperative must not retain more funds than it needs to meet current losses and expenses (also based on the operation at cost principle);
- **The cooperative cannot forfeit a member’s right and interest in the organization upon termination of membership; and**
- **Upon dissolution, the cooperative must distribute any gains from the sale of any appreciated asset to all who were members while the cooperative owned the asset in proportion to the amount of business done with each, so far as practical.**

Whether a cooperative satisfies the basic cooperative principles or the requirements of Rev. Rul. 72-36 is a question of fact. A specialist must review the documentation

(bylaws, articles of organization, etc.) to determine if the cooperative has satisfied these principles and requirements.

<https://www.irs.gov/pub/irs-tege/eotopice02.pdf>

1. Members should have had a public meeting.
2. One vote per member and you had to attend the meeting to vote.
3. Members should have a say on disbursement of funds. By volume or by meter.
4. Section 5 of the Bylaws clearly state “the officers and Directors shall receive compensation in an amount as approved by the membership at the annual meeting.” This was not voted on at an annual membership meeting. The board cannot receive more than their annual stipend.
5. The board should not have been able to cancel the 2024 annual meeting because three members were going to run against two of them. The bylaws clearly state directors will serve a term of 3 years. Chris Snyder and Mark Belles terms expired March 2024. The board decided not to have a meeting and therefore not fill these positions.
6. The by-laws clearly state how these elections are to occur. Article IV section 1.
7. The board could not even secure an amount equal to the appraised value. The board negotiated a contract in which they had a vested interest. This is most egregious in my view. The conflict of interest in these negotiations can not be understated. They should have had an outside negotiator that did not have a vested interest in the deal. We will never know the motivations of a board and management team who may have just wanted to cut a deal in their best interest as they have all acknowledged they want to retire.

Thank you for your consideration in this matter. The consumer is the loser in this deal. The water company is sound. The profits are in alignment with a not-for-profit water company. My water bill changed by a \$1.19. The Rural customers who started this corporation are the losers. These are the people in most need of a low water bill. If the board and management want to retire then move aside so we can establish new leadership and continue the mission of the Silver Creek Water Corporation.

This sale was not handled properly and needs to be sent back so that public meetings can be held and members can publicly ask questions and discuss the implications of the sale. Hire an outside negotiator who has no vested interest in the sale. Members vote at a public meeting. One vote per member.

Approval of this measure sets a precedence for other not for profit corporations in Indiana and could motivate other boards to begin negotiations to sell with a vested interest. I do not think this serves the public interest.