

# ORIGINAL

## STATE OF INDIANA

### INDIANA UTILITY REGULATORY COMMISSION

Commissioner	Yes	No	Not Participating
Huston	✓		
Bennett	✓		
Freeman	✓		
Veleta	✓		
Ziegner	✓		

JOINT PETITION OF CROSSROADS )  
UTILITIES, LLC (“CROSSROADS”) AND )  
LMH UTILITIES CORP. (“LMH”) FOR )  
APPROVAL AND AUTHORIZATION OF: (A) )  
THE ACQUISITION BY CROSSROADS OF )  
LMH’S WASTEWATER UTILITY PROPERTY )  
(THE “LMH SYSTEM”) IN DEARBORN )  
COUNTY, INDIANA PURSUANT TO THE )  
PURCHASE AGREEMENT THEREFOR; (B) )  
APPROVAL OF ACCOUNTING AND RATE )  
BASE TREATMENT; (C) APPROVAL OF THE )  
APPLICATION OF LMH’S EXISTING RATES )  
AND CHARGES AFTER CLOSING; (D) )  
APPROVAL OF CROSSROADS’ RULES AND )  
REGULATIONS FOLLOWING CLOSING; (E) )  
APPLICATION OF LMH’S DEPRECIATION )  
ACCRUAL RATES TO SUCH ACQUIRED )  
PROPERTIES; AND (F) THE APPROVAL OF )  
THE TRANSFER OF LMH’S CERTIFICATE )  
OF TERRITORIAL AUTHORITY TO )  
CROSSROADS )

CAUSE NO. 45833

APPROVED: JUL 26 2023

### ORDER OF THE COMMISSION

#### Presiding Officers:

Sarah E. Freeman, Commissioner

Greg S. Loyd, Administrative Law Judge

On January 3, 2023, Joint Petitioners, Crossroads Utilities, LLC (“Crossroads”) and LMH Utilities Corp. (“LMH”) (collectively “Joint Petitioners”) filed their Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) initiating this Cause. Through this petition, Joint Petitioners seek various approvals related to Crossroads’ proposed acquisition of LMH’s wastewater utility property (“LMH System”) pursuant to an asset purchase agreement executed between Joint Petitioners. Also on January 3, 2023, Joint Petitioners filed their case-in-chief, which included the testimony and attachments of following:

- Chris Lagaly, Operations Manager for Envirolink of Indiana, LLC
- Michael Myers, President, and Board Member of Crossroads
- June Tucker, Chief Financial Officer for LMH
- Zach Tucker, Operations Manager for Envirolink of Indiana, LLC
- Gary VerDouw, Owner/CEO of VerDouw Regulatory Services LLC

On March 23, 2023, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Notice of Settlement in Principle and a notice that it did not intend to file testimony, other than settlement testimony to be filed at a later date.

On April 14, 2023, Crossroads filed a Joint Stipulation and Settlement Agreement (“Settlement Agreement”) and the settlement testimony of Michael Myers and Gary VerDouw. That same day, the OUCC filed the settlement testimony of Margaret Stull, Chief Technical Advisor in the OUCC’s Water/Wastewater Division.

On April 27, 2023, the Presiding Officers issued docket entries requesting additional information from Joint Petitioners and the OUCC. Joint Petitioners and the OUCC filed their respective responses on May 1, 2023.

The Commission held an evidentiary hearing in this Cause at 9:30 a.m. on May 4, 2023, in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared and participated in the evidentiary hearing, during which their respective testimony and exhibits were admitted into the record without objection.

**1. Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing was given and published as required by law.

Ind. Code § 8-1-2-1 defines “public utility” to include “every . . . limited liability company . . . that *may* own, operate, manage, or control any plant or equipment within the state for the . . . collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste . . .” (emphasis added). LMH meets this definition because it actively owns, operates, manages, or controls a wastewater system. Crossroads meets this definition because it was created for the purpose of owning the LMH System and will actively function as a public utility upon acquiring the LMH System. The Commission therefore has jurisdiction over Joint Petitioners.

Pursuant to Ind. Code § 8-1-2-83, the Commission has jurisdiction over the sale and transfer of the LMH System. Further, the Commission has jurisdiction under Ind. Code §§ 8-1-2-83 and 8-1-2-89 regarding the disposition of LMH’s certificates of territorial authority (“CTA”). The Commission therefore has jurisdiction over the subject matter of this Cause.

**2. Joint Petitioners’ Characteristics.** LMH is an Indiana corporation engaged in the business of rendering wastewater utility service to customers in Dearborn County, Indiana. Crossroads is an Indiana limited liability company that will own, operate, manage, and control the LMH System upon approval by the Commission and closing of the acquisition. Since approximately May of 2022, Crossroads’ affiliate, Envirolink of Indiana, LLC (“Envirolink”), has been the contract operator for LMH.

**3. Relief Requested.** Joint Petitioners request that the Commission: (1) grant such approvals as may be necessary to consummate the acquisition of the LMH System by Crossroads and permit the operation thereof by Crossroads on the terms described in the Asset Purchase Agreement; (2) approve the requested accounting and rate base treatment of the acquisition; (3) authorize Crossroads to adopt LMH’s existing rates and charges following closing of the

transaction; (4) approve Crossroads' proposed rules and regulations following closing of the transaction; (5) authorize Crossroads to apply LMH's depreciation accrual rates to the acquired property; and (6) approve the transfer of LMH's certificates of territorial authority to Crossroads following the closing of the transaction.

**4. Evidence Presented.** In its case-in-chief, Joint Petitioners provided their Asset Purchase Agreement as Attachment MM-8 to Joint Petitioners' Exhibit 2. According to the Asset Purchase Agreement, Crossroads will acquire the entire LMH System, including the collection system, treatment plant, all force mains, lift stations, equipment, real estate, easements and permits, and all other assets located within the LMH System which are part of the collection and treatment of wastewater utilized to provide wastewater service to customers. The assets excluded from the transaction are identified in Section 2.2 of the Asset Purchase Agreement.

The Asset Purchase Agreement provides for Crossroads to acquire the utility assets of LMH for a purchase price of \$1,712,173. Mr. Myers testified that the purchase price was determined through arm's-length negotiations between Crossroads and LMH along with consideration of three independent appraisals of the LMH System conducted by Banning Engineering, William R. Schreiner, and Lloyd W. Stoner, all of which were included as Attachment MM-9 to Joint Petitioners' Exhibit 2. Mr. Myers noted LMH and Crossroads initiated negotiations in 2021, which continued over the course of several months. He stated each party was represented by separate and unaffiliated engineers, attorneys, and financial advisors. Mr. Myers testified that the purchase price is much lower than the appraised value assigned by all of the appraisers.

June Tucker testified that LMH owners no longer desire to be in the wastewater business. She explained that LMH was originally created to serve residential areas developed by LMH's owners. She testified that operation of the system requires 24/7 attention and LMH's owners are ready to exit the business and transfer the system to a new, responsible owner. She testified that LMH's Board of Directors authorized LMH to enter into the Asset Purchase Agreement with Crossroads.

Joint Petitioners also offered testimony regarding the condition of the LMH System. Mr. Zach Tucker, whose family built the LMH System, testified that he has worked with the LMH System since 2011. Mr. Tucker is now employed by Envirolink. Mr. Tucker testified that the LMH System has experienced seven IDEM reportable events in the past two years. He stated that the LMH System has issues with ammonia, aging collection system components, and under-sized lift stations and gravity lines.

LMH ownership, in mid-2022, turned over the day-to-day operations and maintenance of the LMH System to Crossroads' affiliate, Envirolink. Crossroads intends to continue contracting with Envirolink for these functions following approval of the transaction and closing on the Asset Purchase Agreement. To this end, Crossroads intends to enter into an arm's length affiliate agreement with Envirolink for the continued day-to-day operation and maintenance of the LMH System.

Mr. Lagaly testified that although the LMH System is providing adequate service, there are opportunities for improvements that will render the system more efficient and cost-effective. Mr. Lagaly testified that there is excessive inflow and infiltration (“I&I”) in the LMH System causing overflows during heavy rainfall in short periods. Mr. Lagaly testified that there are sump pumps connected to the LMH collection system that contribute to the I&I and those issues need to be addressed.

Mr. Myers testified that as part of its due diligence, Crossroads caused an independent engineer to inspect the LMH System. The resulting engineering report noted the need for corrective actions in the near-term to address fairly significant I&I during heavy rainfall. The engineering report also recommended a closed-circuit television inspection of the collection system, installation of automated telemetry to monitor and proactively manage flows to avoid overflows, and adding a unit to the sequencing batch reactor system to maintain efficiency during heavy rainfall events. Mr. Myers testified that this analysis, together with mid- and longer-term improvements already identified, will enable Crossroads to evaluate and develop a long-term and prudent asset management plan. Mr. Myers and Mr. Lagaly testified that Crossroads will also bring improvements to customer service, including reverse 411 informational announcements, additional billing and payment options, and 24/7 customer support.

Mr. Myers testified that Crossroads has the financial, managerial, and technical ability to own, operate and maintain the LMH System. In addition to providing Crossroads’ confidential financial information (admitted as Joint Petitioners’ Exhibit 2-C), Mr. Myers testified that Crossroads is ultimately partially owned by National Utility Infrastructure (“NUI”). He stated that NUI and its associated funds are backed by more than \$2.5 billion of net assets under management that the leadership team has raised since the firm’s inception in 2013. He noted that NUI owns a majority interest in portfolio companies with more than 20,000 employees throughout the world. Mr. Myers sponsored the management biographies, admitted as Attachment MM-5 to Petitioner Exhibit 2, of the Crossroads directors who will be primarily responsible for the management and financial oversight of the LMH System. He stated that the day-to-day operations and maintenance of the LMH System will be overseen by Chris Lagaly and Zach Tucker, who have operated the LMH System for a combined 12 years and both of whom are employed by Envirolink. Mr. Myers testified that both Mr. Lagaly and Mr. Tucker are licensed Indiana operators and longtime residents of Dearborn County with experience as water and wastewater infrastructure and utility industry professionals with a blended understanding of operations and financials. Mr. Myers testified that Crossroads’ dedicated team of operational professionals has decades of experience leading and implementing complex utility and infrastructure projects that leverage private sector resources for the public benefit.

Gary VerDouw testified on Crossroads’ behalf regarding the accounting and ratemaking treatment surrounding the proposed acquisition. Mr. VerDouw verified the purchase price and testified that the parties reasonably expect to incur \$360,000 in incidental expenses and other costs of the acquisition, for a total estimated original cost rate base for Crossroads of \$2,072,173. Mr. VerDouw testified that Crossroads intends to book only actual incurred incidental expenses and other acquisition costs in the final journal entry to calculate rate base.

Mr. VerDouw testified that because there are several assets on LMH's books and records that have not been recognized by the Commission in prior orders, he proposes a rate base journal entry that uses the asset totals in the Banning and Schreiner appraisals reduced on a pro-rata basis to reflect the proposed acquisition price plus the estimated transaction costs to be paid by Crossroads. Mr. VerDouw noted that a similar approach was approved in Cause No. 45461. Mr. VerDouw further testified that Crossroads proposes to continue using LMH's practice of applying a composite depreciation accrual rate of 2.5% per year, or a 40-year depreciation rate, to depreciable assets. Mr. VerDouw testified that Crossroads is not requesting any adjustment to LMH's existing rates in this proceeding. He further provided calculations of the rate impact of various rate base levels as a reference for the potential rate impact of the acquisition.

**5. Settlement Agreement.** Mr. VerDouw testified that the Settlement Agreement, admitted as Joint Exhibit 1, presents the Settling Parties' resolution of all issues in this Cause. The Settlement Agreement is attached to this Order and incorporated by reference. Each of the witnesses offering settlement testimony discussed the arms-length nature of the negotiations that led to the Settlement Agreement and the efforts undertaken to reach a balanced settlement that fairly resolves the issues.

Mr. Myers provided testimony in support of a finding that the Settlement Agreement is in the public interest. First, he noted that LMH is a family-owned business whose owners have decided that they no longer wish to own and operate the LMH System. He asserted that the acquisition and Asset Purchase Agreement provide for an orderly transition of the LMH System to Crossroads that preserves continuity of service to LMH's customers. Second, he testified that the purchase price for the LMH System is reasonable given that it is well below the appraised value established by the three appraisals. Third, Mr. Myers stated that Crossroads has the financial, managerial, and technical ability to own and operate the LMH System so that customers continue to receive reasonably adequate service. Fourth, he explained that Crossroads has expressed an interest in making reasonable and prudent investments in the LMH System to ensure that it operates effectively and efficiently for the long term. Finally, Mr. Myers testified that customers of the LMH System will benefit from system improvements and efficiencies from the Crossroads family of companies in communication, billing, and customer service issues.

Mr. VerDouw's settlement testimony echoed Mr. Myers' testimony that the Settlement Agreement is in the public interest. He testified that based on his work with Crossroads and his understanding of the various concerns raised by the parties, the Settlement Agreement is a reasonable compromise of all the issues and fairly balances the interests of the public, Crossroads, and LMH.

OUCC witness Stull testified that the OUCC agreed to the purchase price, which the OUCC found to be reasonable based on the appraisals provided by Joint Petitioners and on the OUCC's own knowledge of LMH assets. Ms. Stull testified that the Settling Parties agreed that the transaction costs of \$281,500 as of March 21, 2023, were reasonable and the Settling Parties further agreed that Crossroads should be entitled to include in rate base an additional amount of actually incurred transaction costs following March 21, 2023, not to exceed \$30,000, for a total in transaction costs not to exceed \$311,500. Ms. Stull testified that the Settling Parties agreed to Crossroads' use of LMH's composite depreciation rate of 2.5%. She testified that the Settlement

Agreement's terms on these issues, as well as approval of Crossroads' proposed rules and regulations modified to align with the Commission's administrative rules on customer deposits, benefit ratepayers. She stated that these settlement terms ensure that the current rates and charges will continue to be charged to LMH customers until new rates and charges are evaluated and authorized by the Commission. She said the settlement terms will ensure the Commission's composite depreciation rate will continue to apply to the acquired assets as well as additional investments made by Crossroads. Finally, she said the settlement terms ensure that the rules and regulations imposed on customers are in compliance with the Commission's requirements. Ms. Stull concluded that the Settlement Agreement produces benefits to ratepayers, is an equitable resolution, and strikes an appropriate balance between ratepayers and the utility.

While these witnesses testified to the reasonableness of the settlement as a whole, their respective settlement testimony also offered additional perspectives on its terms, as discussed below.

**A. Inclusion in Rate Base of Purchase Price and Transaction Costs.** The Settlement Agreement provides that Crossroads will be permitted to include in rate base the purchase price of \$1,712,173 plus transaction costs not to exceed \$311,500. Ms. Stull's settlement testimony explained that the parties agreed that Crossroads should be permitted to include in rate base \$281,500 of transaction costs incurred through March 21, 2023, and up to an additional \$30,000 in transaction costs to be incurred thereafter. Mr. Myers testified that the transaction costs were derived from actual invoices that Crossroads presented to the OUCC for appraisals, professional and engineering fees, and work performed in order to consummate the transaction plus an estimate of additional not yet invoiced fees to close the transaction. Mr. VerDouw testified that upon approval and completion of the acquisition, Crossroads will book only actual incurred incidental expenses and other costs of acquisition in the final journal entry to calculate rate base.

**B. Crossroads' Capital Structure.** Ms. Stull testified that while Crossroads is not committing to achieve a particular capital structure, it agrees to use certain factors and criteria, set forth in paragraph 7 of the Settlement Agreement, to establish a level of debt for capital improvements to the acquired system. Those factors and criteria will guide Crossroads' decision on the use of debt for capital projects.

**C. Future Projects, Expenditures, and Rate Adjustment Requests.** Mr. Myers testified that because Crossroads is not seeking preapproval of any potential improvements or a rate adjustment in this proceeding, the Settlement Agreement provides that each party reserves its right to argue its respective positions in future proceedings regarding potential improvements, including, but not limited to, the need, prudence, scope, cost, and timing of any potential improvements. Mr. Myers stated that Crossroads discovered needed improvements to the LMH System as part of its due diligence leading to the acquisition. Ms. Stull testified that the OUCC has concerns with the need for the proposed projects and their treatment as capital costs. Mr. Myers testified that Crossroads is committed to an open and transparent dialogue with the OUCC. He said Crossroads agreed to consult informally from time to time with the OUCC to update the OUCC and to receive the OUCC's input and suggestions on issues related to potential improvements, but Crossroads is not bound to adopt or implement the OUCC's suggestions. Likewise, the OUCC does not waive any subsequent positions by not taking a position at that time.

**D. Crossroads' Rules and Regulations.** Mr. Myers testified that Crossroads intends to submit its revised Rules and Regulations to the OUCC and the Commission following an order approving the Settlement Agreement. He stated that Crossroads will modify its rules for customer deposits to ensure compliance with 170 I.A.C. 8.5-2-3. In so doing, he stated that ratepayers will be assured that deposits will be treated in a manner that aligns with the Commission's rules.

**E. LMH Tax Issues.** Mr. VerDouw and Ms. Stull testified that LMH currently has a regulatory liability on its books representing excess accumulated deferred income tax ("Excess ADIT") as a result of the Tax Cuts and Jobs Act. This regulatory liability, originally in the amount of \$104,800, was approved on December 27, 2018, by the Commission in Cause No. 45032 S-17. In accordance with the Commission's order, LMH is to amortize the total Excess ADIT balance over a 14.45-year period, with the annual amortization amount to be \$7,253. Amortization, which Mr. VerDouw noted began in calendar year 2019, of this regulatory liability is reflected in LMH's current rates and will be fully amortized in 2033. Although the Excess ADIT issue belongs entirely to LMH, the regulatory liability associated with the Excess ADIT is part of the current rate structure in place for LMH. In order to resolve this issue going forward, Crossroads will continue to charge LMH's rates and therefore will continue to amortize and account for this regulatory liability. In order to accomplish this, LMH agrees to pay Crossroads at closing the net present value of the Excess ADIT Regulatory Liability in the amount of \$57,962, which reflects a discount rate of 5%, and assumes Crossroads will assume the amortization of Excess ADIT by year-end 2023. In return, the Settling Parties agree that Crossroads will continue to amortize the remaining balance of the Excess ADIT Regulatory Liability until it is fully amortized in 2033. Mr. VerDouw testified that this agreed resolution provides the least amount of disruption in rates as a result of the Excess ADIT amortization and makes all parties whole when resolving the Excess ADIT issue going forward. As a result, he stated that this represents a reasonable compromise by the Settling Parties in resolving this issue.

**F. Crossroads' Tax Liability.** Mr. VerDouw testified that since Crossroads is a limited liability company and in response to the OUCC's concern that a tax expense for a non-taxable entity may not be included as a revenue requirement, the Settling Parties agreed that if Crossroads is permitted to include tax liability in rates, it will employ a mechanism to track the resulting deferred tax liability that otherwise will not be recorded in Crossroads' accounting books and records. He noted that at the time of the settlement, the parties were unsure if there will ever be a situation where a deferred tax liability will need to be dealt with and recorded for Crossroads. However, should that situation arise, he testified that the Settlement Agreement's provision represents a reasonable compromise by the Settling Parties to resolve this issue. Ms. Stull agreed that this provision of the Settlement Agreement benefits ratepayers.

**G. Affiliate Transaction Commitments.** Mr. Myers testified that Crossroads agrees that costs for goods or services provided directly or indirectly by an unregulated affiliate will be charged to Crossroads at the lower of the fully allocated cost or market rates for the goods or services. He said the Settlement Agreement defines "fully allocated cost" as "the sum of the direct costs plus an appropriate share of indirect costs." Joint Exhibit 1 at 9. Ms. Stull testified that this approach is consistent with the Guidelines for Cost Allocations and Affiliate Transactions

issued by the National Association of Utility Regulatory Commissioners. Mr. Myers stated that Crossroads agrees to allow the OUCC access to the books and records of affiliates that have provided or will provide goods or services directly or indirectly to Crossroads, which will be provided through reasonable and appropriate arrangements including a non-disclosure agreement if necessary. Mr. Myers indicated that, where Crossroads seeks recovery of a cost paid to an affiliate for goods or services, the affiliate will provide Crossroads access to the affiliates' books and records and information establishing the affiliates' costs. Mr. Myers testified that the Settlement Agreement provides for a fair and transparent process for handling the OUCC's concerns that ratepayers not be charged rates that reflect unreasonable charges paid to affiliates.

**6. Commission Discussion and Findings.** The Settlement Agreement represents the Settling Parties' proposed resolution of the issues in this Cause. As the Commission has previously discussed, settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind. v. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that it serves the public interest.

As set forth in Ind. Code § 8-1-2-83, the Commission may approve the transfer of the LMH assets only if we determine, based on the evidence of record, that the proposed transfer is in the public interest. Joint Petitioners and the OUCC have presented substantial and uncontroverted evidence that the proposed transfer is in the public interest and should be approved.

**A. Public Convenience and Necessity.** The Commission has before it substantial evidence that proves the reasonableness of the Settlement Agreement's terms, including the Settling Parties' agreement on Crossroads' inclusion of the purchase price and transaction costs in rate base; Crossroads' adoption of LMH's rates, charges, and depreciation accrual rates; Crossroads' rules and regulations; guidelines for affiliate transactions and capital structure; and tax issues, all of which we find are supported by the settlement testimony. In particular, we note that the purchase price is substantially lower than any of the three appraisals of the LMH System. Crossroads completed its due diligence, has identified known issues with a plan to address those issues, and has, through an arm's-length negotiation, agreed to a reasonable purchase price for the LMH system. The reasonableness of the Settlement Agreement is further supported by Joint Petitioners' May 2, 2023 docket entry response, admitted as Joint Petitioners' Exhibit 8, in which they noted that LMH's system development charge ("SDC") funds

will transfer to Crossroads as part of the acquisition. Joint Petitioners also noted that Crossroads will continue to follow the Commission's Order in Cause No. 43431 with respect to maintaining SDCs in a restricted interest-bearing account and used solely for plant capacity improvements until changed by a subsequent order of the Commission.

The evidence demonstrates that Crossroads has the financial, managerial, and technical ability to own, operate and maintain the LMH System. Joint Petitioners' financial records, Confidential Attachment MM-7 to Petitioner's Exhibit 2 that were admitted as Exhibit 2-C, and Mr. Myers' discussion of NUI's financial position support a finding that Crossroads will have sufficient financial ability to operate and maintain the LMH System. The biographies of the Crossroads directors who will be primarily responsible for the management and financial oversight of the LMH System, NUI's background, and the experience that Chris Lagaly and Zach Tucker will bring for day-to-day operations and maintenance establish that Crossroads has the managerial and technical ability to operate and maintain the LMH System.

The Asset Purchase Agreement provides for an orderly transition that will allow LMH's owners to exit the business under reasonable terms and conditions. The public now served by the LMH System should be able to benefit from Crossroads' financing opportunities, asset management plans, and customer service capabilities. Based on the evidence of record, the Commission finds that the acquisition and operation of the LMH System by Crossroads on the terms described in the Asset Purchase Agreement and pursuant to the Settlement is supported by public convenience and necessity and is in the public interest. Furthermore, following the closing, Crossroads shall be authorized to serve in the areas currently served by LMH.

**B. Crossroads' Rates and Rules.** Crossroads has requested authority to continue charging the rates currently in effect for the LMH System after closing of the transaction. We find that, on and after the closing, LMH's rates and charges shall remain in effect. Consistent with the Settlement Agreement, we further approve Crossroads' proposed rules and regulations with the adjustment to the customer deposit provisions to align with 170 I.A.C. 8.5-2-3. We find that Crossroads shall file said rules and regulations as a compliance filing in this Cause within 30 days of this Order.

We further find that the purpose of including the factors and criteria for determining when debt should be issued, and the amount of debt to be incurred are all important to consider and reduce the likelihood that all the future capital improvements will be funded by equity. Moreover, we believe the 20% debt funded future improvements is a goal Crossroads can achieve. Crossroads will become an affiliate of Envirolink, which operates in six states to provide water and wastewater utility management services to over 150 utilities. Envirolink should have access to loans from investment grade national banks.

**C. Accounting Treatment.** Ind. Code §§ 8-1-2-12 and -14 give the Commission authority over the accounting procedures utilized by public utilities in Indiana. The Settlement Agreement calls for the Commission "to authorize Crossroads to record for ratemaking treatment the \$1,712,173 purchase price it agreed to pay for LMH's assets plus reasonable transaction costs." Mr. VerDouw testified that Crossroads intends to book this acquisition via the journal entry proposed in Attachment GMV-3 to Joint Petitioners' Exhibit 3. The OUCC

confirmed in its May 1, 2023 docket entry response (Public Exhibit 2) that it agreed with this accounting method.

In determining whether to allow such favorable ratemaking treatment, the Commission has considered whether the utility to be acquired is a small, troubled utility; whether the transaction was the result of an arm's length negotiation; whether the purchase price is reasonable; and whether the accruing ratepayers will benefit from the acquisition. See *Indiana-American Water Company, Inc.*, Cause No. 40103 (IURC May 30, 1996).

It is appropriate to allow Crossroads to book as net original cost the purchase price plus reasonable transaction costs. LMH is a small utility because it only has 1,331 customers. It is a troubled utility because of the collection system problems and needed improvements outlined above. Mr. Myers and Ms. Stull both acknowledged that the Asset Purchase Agreement terms were reached through arm's-length negotiations over the course of several months. Additionally, the \$1,712,173 purchase price is reasonable because it is substantially below the \$4,000,000 and \$12,000,000 LMH System appraisals. Additionally, LMH's current ratepayers will benefit from Crossroads' financing opportunities, asset management plans, and customer service capabilities. We also find the agreed upon transaction costs are reasonable and supported by the evidence.

We therefore find that Crossroads' proposed accounting and journal entries as described in Attachment GMV-1S to Joint Petitioners' Exhibit 7 and as set forth in Finding No. 5.A. above, should be approved and that the costs so reflected on the books and records of Crossroads be used as the original cost of such properties for accounting, depreciation, and rate base valuation purposes. We find that on and after the closing date of the acquisition, Crossroads shall continue to apply LMH's existing composite depreciation rate of 2.5% approved by the Commission on July 29, 2020, in Cause No. 45307 U to depreciable property purchased from LMH pursuant to the Asset Purchase Agreement.

**D. Certificates of Territorial Authority.** Ind. Code § 8-1-2-89(j) provides that upon Commission approval, any CTA may be sold, assigned, leased, or transferred by the holder to any sewage disposal company to which a CTA might lawfully be issued. In considering the transfer of LMH's CTA to Crossroads, the Commission looks to Ind. Code § 8-1-2-89(e). Ind. Code § 8-1-2-89(e) provides that if an applicant seeking to obtain a CTA proves: (i) it has the lawful power and authority to apply for said certificate and to operate said proposed service; (ii) it has the financial ability to install, commence, and maintain said service; and (iii) the public convenience and necessity require the rendering of the proposed service, then the CTA "shall be granted" to the applicant.

The evidence establishes that Crossroads is a limited liability company that has the lawful power and authority to apply for and be granted a CTA and to provide sewer service. As noted above, the evidence establishes that the public convenience and necessity support approval of the Asset Purchase Agreement and thus the public convenience and necessity will continue to be served by the transfer of LMH's CTA to Crossroads. Further, for the reasons supporting the request for favorable ratemaking treatment, we also find that Crossroads has the financial ability to own, operate, maintain, and construct necessary improvements to the LMH System. Based upon the

evidence presented, we find that the requirements for the issuance of a CTA have been satisfied and we authorize the transfer of LMH's CTAs to Crossroads.

**E. Other Settlement Matters.** We further find that the Settlement Agreement's provisions on Crossroads' capital structure, future improvements and expenditures, tax issues and affiliate transactions are reasonable and in the public interest. The evidence establishes that the guidelines and criteria established for Crossroads' capital structure allow for the use of debt in a manner that fairly balances the interests of ratepayers and Crossroads. We find that since Crossroads is not seeking project pre-approval or a rate adjustment in this proceeding, the Settlement Agreement appropriately reserves for a future proceeding the parties' respective positions on those issues. We further find that the Settlement Agreement's provisions on Crossroads' tax liability as a limited liability company and for addressing LMH's regulatory liability for Excess ADIT described in sections 5.E. and 5.F. represent a rational, efficient, and reasonable resolution of those issues. Additionally, we conclude that the Settlement Agreement's guidelines for affiliate transactions provides a fair and transparent process to ensure that rates do not reflect unreasonable charges paid to affiliates.

Ultimately, we find that the Settlement Agreement is in the public interest and it is approved.

**F. Effect of Settlement.** The parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849 at \*7-8 (IURC March 19, 1997).

**G. Confidential Information.** On January 3, 2023, Petitioner filed its Motion for Confidential Treatment of Financial Information with a supporting affidavit asserting that certain information to be submitted to the Commission was trade secret information as defined in Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. A Docket Entry was issued on January 24, 2023, in which the Presiding Officers determined the information should be held confidential on a preliminary basis, after which the information was submitted under seal. After review of the information and consideration of the affidavit, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. The attached Settlement Agreement is approved and adopted by the Commission, in its entirety, without change or modification. Crossroads shall file in this Cause a notification of closing within 30 days of closing of the transfer of the LMH System and shall serve this notice upon the OUCC.

2. Joint Petitioners are authorized to consummate the acquisition of the LMH System by Crossroads and permit the operation thereof by Crossroads on the terms described in the Asset Purchase Agreement and the Settlement Agreement, including the transfer to Crossroads of LMH's certificates of territorial authority and all necessary licenses, permits, and franchises to provide utility service through the LMH System following closing.

3. Crossroads is authorized to reflect the acquisition of the LMH System on its books and records as of the closing by making the accounting and journal entries described in Finding No. 6.C. above.

4. Crossroads is authorized to charge customers of the LMH System the rates and charges currently in effect as approved by the Commission on July 29, 2020, in Cause No. 45307 U and to continue to apply LMH's existing composite depreciation rate of 2.5% to depreciable property purchased from LMH pursuant to the Asset Purchase Agreement.

5. Crossroads is authorized to apply its proposed rules and regulations for wastewater service subject to the Settlement Agreement's provision that said rules and regulations with regard to customer deposits be modified to comply with the Commission's administrative rules at 170 I.A.C. 8.5-2-3. Crossroads shall electronically submit its rules and regulations as a compliance filing along with its revised tariff for approval by the Water and Wastewater Division by following the tariff filing instructions in the Commission's electronic filing system user manual.

6. The information submitted under seal in this Cause pursuant to Crossroads' request for confidential treatment is determined to be confidential trade secret information as defined in Ind. Code § 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29.

7. Crossroads shall email its point of contact's name, address, email address, and phone number to the Director of the Commission's Water and Wastewater Division within 30 days of this Order.

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

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: JUL 26 2023**

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

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**Dana Kosco**  
**Secretary of the Commission**

**STATE OF INDIANA**  
**INDIANA UTILITY REGULATORY COMMISSION**

**JOINT PETITION OF CROSSROADS )**  
**UTILITIES, LLC (“CROSSROADS”) AND LMH )**  
**UTILITIES CORP. (“LMH”) FOR APPROVAL AND )**  
**AUTHORIZATION OF: (A) THE ACQUISITION )**  
**BY CROSSROADS OF LMH’S WASTEWATER )**  
**UTILITY PROPERTY (THE “LMH SYSTEM”) IN )**  
**DEARBORN COUNTY, INDIANA PURSUANT TO )**  
**THE PURCHASE AGREEMENT THEREFOR; ) CAUSE NO. 45833**  
**(B) APPROVAL OF ACCOUNTING AND RATE BASE )**  
**TREATMENT; (C) APPROVAL OF THE APPLICATION )**  
**OF LMH’S EXISTING RATES AND CHARGES AFTER )**  
**CLOSING; (D) APPROVAL OF CROSSROADS’ )**  
**RULES AND REGULATIONS )**  
**FOLLOWING CLOSING; (E) APPLICATION OF )**  
**LMH’S DEPRECIATION ACCRUAL RATES TO SUCH )**  
**ACQUIRED PROPERTIES; AND (F) THE APPROVAL OF )**  
**THE TRANSFER OF LMH’S CERTIFICATE OF )**  
**TERRITORIAL AUTHORITY TO CROSSROADS. )**

**JOINT STIPULATION AND SETTLEMENT AGREEMENT**

This Joint Stipulation and Settlement Agreement (“Settlement Agreement”) is entered into this 14th day of April, 2023, by and between Crossroads Utilities, LLC (“Crossroads”), LMH Utilities Corp. (“LMH”), and the Indiana Office of Utility Consumer Counselor (“OUCC”) (together, the “Settling Parties”), who stipulate and agree for purposes of settling all matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of all issues in this Cause, subject to their incorporation in a final Order of the Indiana Utility Regulatory Commission (“Commission”) without modification or the addition of further conditions that may be unacceptable to either party. If the Commission does not approve the Settlement Agreement in its entirety and incorporate the conclusions herein in its final Order, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

## **Terms and Conditions of Settlement Agreement**

1. **Factual and Procedural Background.** LMH currently operates a for-profit wastewater utility in rural Dearborn County, Indiana, headquartered in Bright, Indiana. LMH currently serves 1,331 customers. LMH's system includes a 480,000 gallons per day sequencing batch reactor wastewater treatment plant, 263 manholes, 17 lift stations, and a sanitary sewer collection system. LMH is subject to the Commission's jurisdiction in accordance with Indiana Code § 8-1-30.3-5(a)(2) for purposes of its wastewater rates, charges and financings. LMH is a family-owned business and no longer desires to own and operate a wastewater utility. Crossroads is an Indiana limited liability company newly-formed under the laws of the State of Indiana. Crossroads and LMH engaged in arm's length negotiations to arrive at an Asset Purchase Agreement (the "Agreement") providing for Crossroads' purchase of LMH's franchise, works and system (the "LMH System"). As part of this proceeding, Crossroads seeks the transfer of LMH's original and four expanded Certificates of Territorial Authority ("CTAs") (the "Collective CTAs") to Crossroads<sup>1</sup>. The Agreement provides that prior to closing, Crossroads shall have received an Order from the IURC including the following approvals:

- (A) Approval of the acquisition;
- (B) Approval to transfer LMH's System to Crossroads;
- (C) Authorization for Crossroads to serve the customers of the LMH System;
- (D) Approval of Crossroads' proposed accounting and rate base treatment with respect to the acquisition including recognition of the full purchase price and cost differential, costs of acquisition, in net original cost rate base; and

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<sup>1</sup> LMH's original CTA was approved by the Commission on August 22, 1990 in Cause No. 38965. LMH's CTA was expanded on June 30, 1993 in Cause No. 39645; on May 3, 1995 in Cause No. 40004; on August 5, 1998 in Cause No. 40891; on March 22, 2000 and May 24, 2001 in Cause No. 41413.

- (E) Approval of the application of LMH's depreciation accrual rates to the LMH System assets.

Upon Commission approval in Cause No. 45833 and closing of the transaction, Crossroads will be a public utility subject to regulation by the Commission in the manner and to the extent provided by the laws of the State of Indiana, including Indiana Code § 8-1-2-1 *et. seq.* As the new owner of the LMH System, Crossroads will own, operate, manage and control plant, property, equipment and facilities for the collection, treatment, purification and disposal in a sanitary manner of liquid waste, sewage, night soil, and industrial waste.

2. **Requested Relief.** On January 3, 2023, LMH and Crossroads initiated this Cause by filing their Joint Petition requesting approval and authorization of the acquisition, approval of the requested accounting and rate base treatment, approval of LMH's existing rates and charges following closing, approval of Crossroads' proposed rules and regulations following closing, application of LMH's depreciation and accrual rates to such acquired properties, and approval of the transfer of LMH's certificates of territorial authority to Crossroads.

3. **Prefiled Evidence of Parties.** In support of their Joint Petition, LMH filed Prefiled Testimony of June Tucker, and Crossroads filed the Prefiled Testimony and Exhibits of Michael Myers, Gary VerDouw, Chris Lagaly and Zach Tucker. On March 23, 2023, the OUCC filed its Notice of Intent Not to File Testimony as the parties to this proceeding had reached a settlement in principle.

4. **Settlement.** Through analysis, discussion, and negotiation, as aided by their respective staff and experts, the Settling Parties have agreed on the terms and conditions as described herein that resolve all issues between them in this Cause.

5. **Asset Purchase Agreement, Purchase Price and Rate Base.** The Settling Parties agree that LMH should be authorized to transfer to Crossroads LMH's assets as described in the

Asset Purchase Agreement and that Crossroads shall receive a certificate of territorial authority to serve the areas currently served by LMH. Further, the Settling Parties agree that Crossroads should be authorized to record as the original cost rate base of the acquired assets an amount not to exceed \$2,023,673, which is comprised of a purchase price of \$1,712,173 plus related transaction costs not to exceed \$311,500 as described in paragraph 9 of this Settlement Agreement. For purposes of this provision, *transaction costs* shall have the same meaning as *incidental expenses and other costs of acquisition*. The Settling Parties further agree that following closing of the transaction, Crossroads shall be the holder of CTAs in the areas currently served by LMH pursuant to the Commission's orders. Finally, the Settling Parties agree that LMH's current rates and charges and LMH's depreciation accrual rates currently applicable to the acquired property shall both remain in effect until adjusted by the Commission.

6. **Payment to LMH of Full Purchase Price.** Pursuant to the Asset Purchase Agreement Crossroads will pay LMH \$1,180,000 upon closing and subsequently Crossroads shall pay the remaining \$532,173 of the Purchase Price to LMH in installments following a final, non-appealable Commission Order authorizing a rate adjustment that approves a net original cost rate base of at least \$1,712,173 relative to LMH assets purchased. The Settling Parties agree that Crossroads' obligation to pay \$532,173 to LMH shall be reflected as a 0% interest loan from LMH and reflected in Crossroad's capital structure for rate setting purposes in Crossroad's first rate case. LMH and Crossroads warrant that all assets that are to be conveyed and are necessary for the operation of LMH's assets and the provision of sewage disposal service are to be acquired for the \$1,712,173 purchase price.

7. **Crossroads Capital Structure.** The Settling Parties agree that Crossroads is not committing to achieve any particular capital structure. However, Crossroads will use the following

factors and criteria to determine the level of debt it uses to make capital improvements to its acquired system:

Factors:

- a. Cost of available debt including interest rate and cost of issuing the debt.
- b. Prevailing cost of equity
- c. Effect of procuring debt on the WACC compared to the effect of relying entirely on an equity infusion.
- d. Ability to find an investment grade nationally recognized lending institution, willing to issue debt to fund the projects anticipated by Crossroads.

Criteria:

If Crossroads is able to consolidate debt with other affiliated utilities in order to obtain a larger debt offering for a lending institution to consider when applying debt, including applicable fees, Crossroads will agree to finance no less than 20% of its total capital investment in new projects for which it seeks recovery in its next base rate case through debt.

If Crossroads is not in a position to consolidate debt with other affiliated utilities in order to obtain a larger debt offering from a lending institution to consider when obtaining debt, including applicable fees, Crossroads will attempt to obtain financing for Crossroads projects on a standalone utility basis by seeking financing from three different investment grade national banks. If standalone financing cannot be obtained from one of those three banks, Crossroads will have no obligation to issue debt.

Crossroads will use debt to finance some level of future capital improvements if applying the cost of debt, including applicable fees, would result in a lower weighted average cost of capital (WACC) than a 100% equity investment using the application of a reasonably anticipated cost of equity determination. After consideration of the foregoing factors and criteria, if applying the cost of debt, including applicable fees, would result in a lower weighted average cost of capital (WACC) than a 100% equity investment, Crossroads shall finance through debt no less than 20% of the cost of capital improvement projects for which it seeks recovery in its next base rate case.

Nothing herein is intended to preclude or discourage Crossroads from securing debt in excess of the amount required by the foregoing provisions.

8. **Future Crossroads Expenditures, Projects and Rate Requests.** In Crossroads' case-in-chief, Mr. Myers indicated that during its due diligence, its engineer noted several potential

projects and improvements including but not limited to efforts to locate and remediate inflow and infiltration through televising and adding a unit to the sequencing batch reactor system (together, the “Potential Improvements”). Crossroads indicated it would work to time its investments to balance the potential rate impacts and urgency of each recommended project to create a prudent asset management plan.<sup>2</sup> The Settling Parties acknowledge that Crossroads is not seeking approval or preapproval of any Potential Improvements in this proceeding. Crossroads acknowledges that by entering into this Settlement Agreement, the OUCC is not agreeing that any described or planned projects or improvements should be considered reasonable or prudent. The Settling Parties agree that for purposes of settling this case, each party reserves its right to argue its respective positions in future proceedings with regard to any described or planned projects or improvements, including but not limited to the need, prudence, scope, cost, and timing of any Potential Improvements. Crossroads agrees to consult informally from time to time with the OUCC to update the OUCC and to receive the OUCC’s input and suggestions on issues related to Potential Improvements, but Crossroads shall not be bound to adopt or implement the OUCC’s suggestions nor shall the OUCC be considered to waive any argument or position by virtue of a position it takes or omits to take in the forgoing consultations.

9. **Jurisdictional Basis for Commission’s Order.** The Settling Parties agree Crossroads withdraws its request for ratemaking treatment under Indiana Code §§ 8-1-30.3-1 et al. The Settling Parties agree the Commission has jurisdiction pursuant to IC 8-1-2-89(j)(1) and in accordance with prior Commission decisions in acquisition proceedings to grant the relief sought by Joint Petitioners and to authorize Crossroads to record for ratemaking treatment the \$1,712,173 purchase price it agreed to pay for LMH’s assets plus reasonable transaction costs. The

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<sup>2</sup> Direct Testimony of Michael Myers at 9-10.

Settling Parties acknowledge the Commission's longstanding practice to use its discretion to grant favorable ratemaking treatment on acquisition adjustments, and that such jurisdiction has been exercised by the Commission in many of its orders. The Settling Parties agree that the Commission's authority to allow acquiring utilities to receive favorable ratemaking treatment on acquisition adjustments, which predates Indiana Code § 8-1-30.3-1, continues to apply. The Settling Parties agree for settlement and ratemaking purposes that Crossroads qualifies under traditional regulatory criteria for Commission approval to record the agreed purchase price and transaction costs as net book original cost (i.e., the basis on which Crossroads may earn a return on and of the purchase price and transaction costs.) The Settling Parties agree that the evidence Joint Petitioners provided in its case constitutes a prima facie case for favorable ratemaking treatment under traditional acquisition adjustment methodology as described by the Commission, for instance in the final order in Cause No. 43817. The OUCC agrees that for purposes of this settlement, reasonable transaction costs include acquisition costs incurred by Crossroads as of March 21, 2023 of \$281,500 and thereafter, reasonable transaction costs paid not to exceed \$30,000 for a total not to exceed \$311,500.

10. **Crossroads' Rules and Regulations.** The Settling Parties agree that Crossroads' proposed Rules and Regulations should continue to apply to Crossroads' operations except that Crossroads' proposed rules governing customer deposits shall be modified to comply with 170 I.A.C. 8.5-2-3. Nothing herein prohibits either party from asking the Commission to effect rule changes in any subsequent proceeding.

11. **LMH Tax Issues.** LMH currently has a regulatory liability on its books representing excess accumulated deferred income tax (excess ADIT) as a result of the Tax Cuts and Jobs Act. This regulatory liability, originally in the amount of \$104,800, was approved on December 27, 2018 by the Commission in Cause No. 45032 S-17. In accordance with the

Commission's order, LMH is to amortize the total excess ADIT balance over a 14.45-year period, with the annual amortization amount to be \$7,253. The amortization began in calendar year 2019. The amount of the regulatory liability remaining on the books as of December 31, 2022 is \$75,788, and it is being amortized at a rate of approximately \$605 a month. Amortization of this regulatory liability is reflected in LMH's current rates and will be fully amortized in 2033. The Settling Parties agree that the regulatory liability for excess ADIT currently on LMH's books will remain in place after closing on the acquisition. Crossroads will continue to charge LMH's rates and therefore will continue to amortize and account for this regulatory liability. In order to accomplish this, LMH agrees it shall pay Crossroads at closing the net present value of the excess ADIT Regulatory Liability in the amount of \$57,962, which reflects a discount rate of 5%, and assumes Crossroads will assume the amortization of excess ADIT by year-end 2023. In return, the Settling Parties agree that Crossroads shall continue to amortize the remaining balance of the excess ADIT Regulatory Liability until it is fully amortized in 2033.

12. **Crossroads Tax Liability.** Recognizing that Crossroads is a limited liability company and in response to the OUCC's concern that a tax expense for a non-taxable entity may not be included as a revenue requirement, the Settling Parties agree that if Crossroads is permitted to include tax liability in rates, it will employ a mechanism to track the resulting deferred tax liability that otherwise will not be recorded in Crossroads' accounting books and records.

13. **Crossroads Affiliate Transactions.** Crossroads agrees that costs for goods or services provided directly or indirectly by an unregulated affiliate will be charged to Crossroads at the *lower of* the fully allocated cost or market rates for the goods or services. Through reasonable and appropriate arrangements including, if necessary, the application of a non-disclosure agreement to protect proprietary information, Crossroads agrees the OUCC will have access to the books and records of affiliates that have provided or will provide goods or services directly or

indirectly to Crossroads. To that end, any agreement for the provision of such goods or services between Crossroads and an affiliate shall require the affiliate, and any other affiliate ultimately providing the goods or services to Crossroads, to provide Crossroads access to the affiliates' books and records and information establishing the affiliates' costs. "Fully allocated cost" means "the sum of the direct costs plus an appropriate share of indirect costs." Any affiliate agreement filed with the Commission shall be provided at that time to the OUCC to the attention of the OUCC's Director of the Water/Wastewater Division.

14. **Admissibility and Sufficiency of Evidence.** The Settling Parties hereby stipulate that the prefiled testimony and exhibits of LMH and Crossroads should be admitted into the record without objection or cross-examination by any party. Concurrent with the filing of this Settlement Agreement, the Settling Parties will also submit testimony and exhibits supporting the settlement, and the Settling Parties stipulate that any settlement testimony and exhibits of LMH, Crossroads and the OUCC should be admitted into the record without objection or cross-examination by any party. The Settling Parties agree that such evidence constitutes substantial evidence sufficient to support the Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of the Settlement Agreement as filed.

15. **Non-Precedential Effect of Settlement.** The Settling Parties agree that the facts in this Cause are unique and all issues presented are fact specific. Therefore, the Settling Parties agree and intend the Settlement Agreement not constitute nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission or any Court of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process, except as provided herein, and is without

prejudice to and shall not constitute waiver of any position that any party may take with respect to any issue at any future regulatory or non-regulatory proceeding.

16. **Authority to Execute.** The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of the designated parties, who will hereafter be bound thereby.

17. **Approval of Settlement Agreement in its Entirety.** As a condition of this settlement, the Settling Parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties. The Settling Parties further agree that if the Commission does not issue a Final Order in the form that reflects the Agreement described herein, then this matter should proceed to be heard by the Commission as if no settlement had been reached unless otherwise agreed to by the Settling Parties in a writing that is filed with the Commission. In such event, the OUCC shall have a reasonable time within which to file its case. If the Commission does not approve the settlement in its entirety, each settling Party shall have 14 days after the final order to advise the other Settling Parties whether it intends to deem the Settlement Agreement null and void.

18. **Settlement Testimony and Proposed Order.** The Settling Parties anticipate filing settlement testimony contemporaneously with the filing of this Joint Stipulation and Settlement Agreement, and filing a proposed order on or before April 27, 2023.

**LMH UTILITIES CORP.**

/s/ Jeffrey M. Peabody

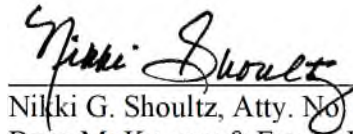
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