STATE OF INDIANA

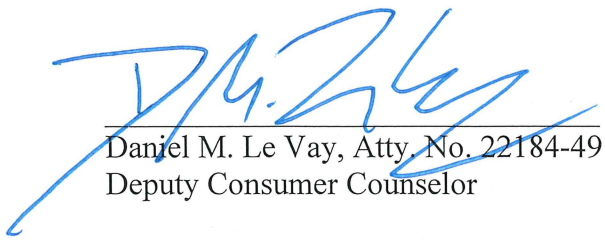
INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN WATER COMPANY, INC. ("INDIANA AMERICAN") AND THE TOWN OF GEORGETOWN, INDIANA ("GEORGETOWN") FOR APPROVAL AND AUTHORIZATION OF: (A) THE ACQUISITION BY INDIANA-AMERICAN OF GEORGETOWN'S WATER UTILITY PROPERTIES (THE "GEORGETOWN WATER SYSTEM") IN FLOYD COUNTY, INDIANA IN ACCORDANCE WITH A PURCHASE AGREEMENT THEREFOR; (B) APPROVAL OF ACCOUNTING AND RATE BASE TREATMENT; (C) APPLICATION OF INDIANA AMERICAN'S AREA ONE RATES AND CHARGES TO WATER SERVICE RENDERED BY INDIANA AMERICAN IN THE AREA SERVED BY THE GEORGETOWN WATER SYSTEM ("THE GEORGETOWN AREA"); (D) APPLICATION OF INDIANA AMERICAN'S DEPRECIATION ACCRUAL RATES TO SUCH ACQUIRED PROPERTIES; (E) THE SUBJECTION OF THE ACQUIRED PROPERTIES TO THE LIEN OF INDIANA AMERICAN'S MORTGAGE INDENTURE; AND (F) THE PLAN FOR REASONABLE AND PRUDENT IMPROVEMENTS TO PROVIDE ADEQUATE, EFFICIENT, SAFE AND REASONABLE SERVICE TO CUSTOMERS OF THE GEORGETOWN WATER SYSTEM.	**CAUSE NO. 44915**

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S PROPOSED ORDER

The Indiana Office of Utility Consumer Counselor ("OUCC") hereby submits its proposed order attached.

Respectfully submitted,



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

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ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On March 16, 2017, Joint Petitioners Indiana-American Water Company, Inc. ("Indiana-American" or the "Company") and Town of Georgetown, Indiana ("Georgetown" or the "Town") filed their joint petition and prepared testimony and exhibits constituting their case-in-chief with the Indiana Utility Regulatory Commission ("Commission") in this matter. On June 1, 2017, Indiana-American submitted its late-filed Attachment MP-7.

On June 2, 2017, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the Direct Testimony of Margaret A. Stull.

On June 9, 2017, Indiana-American submitted a revised page 9 of Joint Petitioners' Ex. 1, the Direct Testimony of Matthew Prine. On June 19, 2017, Indiana-American submitted the Rebuttal Testimony and Attachments of Gary M. VerDouw.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in this Cause was held at 9:30 a.m. on July 12, 2017 in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared and participated in the hearing. The parties' prefiled evidence was offered and admitted into the record. No members of the general public appeared.

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

1. Notice and Jurisdiction. Due, legal and timely notice of the public hearing conducted herein was given by the Commission as required by law. Indiana-American is a "public utility" within the meaning of that term in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. The Georgetown water system is a municipally owned utility as that term is defined in Ind. Code § 8-1-2-1. The Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. Joint Petitioners' Characteristics. Indiana-American is an Indiana corporation engaged in the provision of water utility service to the public in and around numerous communities throughout the State of Indiana for residential, commercial, industrial, public authority, sale for resale and public and private fire protection purposes. Indiana-American also provides sewer utility service in Wabash and Delaware Counties.

Georgetown is a municipality located in Floyd County, Indiana. Georgetown owns and operates a water distribution system serving 1,309 individually metered customers. Georgetown withdrew from the jurisdiction of the Commission for purposes of rates and charges and financing on August 21, 1995. The Georgetown Water System is near and interconnected with Indiana-American's existing Southern Indiana Operation. Georgetown receives water on a sale-for-resale basis from the Ramsey Water Corporation, which in turn receives its water on a sale-for-resale basis from Indiana-American.

3. Relief Requested. Joint Petitioners request that the Commission (1) approve that without regard to amounts that may be recorded on Georgetown's books and records and without regard to any grants or contributions that Georgetown may have received, Indiana-American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed in Joint Petitioners' evidence; (2) grant such approvals as may be necessary to consummate the acquisition of the assets comprising the water distribution system owned by Georgetown (the "Georgetown Water System") by Indiana-American on the terms described in the Joint Petition and the Asset Purchase Agreement between Indiana-American and Georgetown (Attachment MP-3); (3) approve Indiana-

American's plan for reasonable and prudent improvements to provide adequate, safe, and reasonable service to customers of the Georgetown Water System; (4) authorize Indiana-American to apply the rules and regulations and rates and charges generally applicable to Indiana-American's Area One rate group, as the same may be changed from time to time, for service to be provided by Indiana-American in the areas currently served by the Georgetown Water System; (5) authorize Indiana- American to apply its existing depreciation accrual rates to the Georgetown Water System; and (6) approve the encumbering of the properties comprising the Georgetown Water System with the lien of Indiana-American's Mortgage Indenture.

4. Joint Petitioners' Direct Evidence. Joint Petitioners presented the direct evidence of Matthew Prine, Gary M. VerDouw, Director of Rates and Regulatory for Indiana-American, and Everett Pullen, President of the Georgetown Town Council.

A. Indiana Code § 8-1.5-2-6.1 and § 8-1-30.3-5. Mr. Prine testified regarding Ind. Code § 8-1.5-2-6.1 ("Section 6.1"), the Indiana Code section which governs the relief sought in this Cause. He explained that, prior to the passage of Section 6.1, Ind. Code 8-1-30.3 ("Chapter 30.3") was established as a new chapter during the 2015 legislative session governing the process and standards to be applied in the sale of distressed utility property. Mr. Prine further explained that during the 2016 legislative session, Section 6.1 was passed as a new section in the Code as a part of Senate Enrolled Act ("SEA") No. 257, and Chapter 30.3 was amended; together these changes redefined the Commission's role and the standards to be applied in approving the sale or disposition of nonsurplus municipal utility property.

Mr. Prine noted SEA 257 allows a public water or wastewater utility that acquires the utility property of a municipally owned "distressed utility" to petition the Commission to include the "cost differential" associated with the acquisition as part of its rate base. He stated that the term "distressed utility" is defined by statute (Ind. Code §§ 8-1-30.3-2 and -5(a)). Mr. Prine noted that in addition to SEA 257, an Indiana Finance Authority report on water utility infrastructure needs throughout the State of Indiana (the "2016 IFA Report") also encouraged system regionalization and emphasized the need for (i) prioritization of replacement of aging or failing water mains and (ii) development of a schedule of asset management that organizes the construction needed to maintain and extend the life of a utility system. Attachment MP-4, pp. 7-8. Mr. Prine testified that the Georgetown Water System faces challenges in all of these areas highlighted in the 2016 IFA Report.

Mr. Prine further testified that due to the passage of SEA 257, the process for the sale of a municipally owned water or sewer utility has changed. He explained that a municipality must now obtain the approval of this Commission to sell its water or sewer utility, with this grant of approval determined under Section 6.1.

Mr. Prine sponsored Attachment MP-5, a flow chart describing the process for sales by municipally-owned utilities of nonsurplus property. Mr. Prine explained that under the new process, as described in the flow chart and accompanying explanations, the Mayor/Council President or Council of a city or town considering an acquisition must appoint three appraisers to appraise the system's value. Upon return of the appraisal, the municipality must hold a public hearing on the proposed acquisition. If the municipality decides to sell, it must adopt an ordinance approving the proposed acquisition. For an ordinance adopted pursuant to this process after March 28, 2016, Commission approval is required under Section 6.1. He stated the standard for approval is whether the sale according to the proposed terms and conditions is in the

public interest. He said if a petition is filed pursuant to IC 8-30.3-5(d) ("Section 30.3-5(d)"), and the Commission makes the required findings set forth in IC 8-l-30.3-5(c) ("Section 30.3-5(c)"), then Section 6.1 directs that the proposed sale is in the public interest. Mr. Prine noted that under Section 6.1, the purchase price is deemed to be reasonable if it does not exceed the statutory appraised value. He described how the proposed acquisition of the Georgetown Water System followed this process. He testified that because the Georgetown Water System is considered a "distressed utility," the Joint Petitioners in this Cause have filed a petition under Chapter 8-1-30.3, the next step in the process. He explained that in order to be approved, the acquisition must be found to be in the public interest, which is satisfied by meeting all of the elements listed in Section 30.3-5(c) and (d) or alternatively under Section 6.1(e). He outlined how he believes this acquisition satisfies the various requirements of Section 30.3-5(c) and (d), which we will further describe as we undertake our required findings thereunder.

Mr. Prine testified that the proposed purchase price for the system is $6,426,000, which is a combination of the appraised value of the water utility assets ($6,402,500) and the appraised value of the real property on which the elevated tank and booster station are located ($23,500). Therefore, the purchase price does not exceed the appraised value of the system. After describing how he believes that Indiana-American has satisfied each of the requirements listed under Sections 30.3-5(c) and 30.3-5(d), Mr. Prine summarized how Section 6.1 interacts with Chapter 8-30.3. He explained that if the purchase price of the proposed acquisition does not exceed the appraised value, and the elements of Sections 30.3-5(c) and 30.3-5(d) are met, Section 6.1 directs the issuance of a final order not later than 210 days after the filing of the case in chief authorizing the acquiring utility company to record: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition; as the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

B. <u>Proposed Acquisition and Asset Purchase Agreement</u>. Everett Pullen, President of the Georgetown Town Council, testified regarding the purpose for the proposed acquisition of Georgetown's Water System by Indiana-American. Mr. Pullen explained that operation of the Georgetown Water System is controlled by the Town Council. He testified that, historically and in the present day, members of the Town Council have lacked the time, the technical expertise, and the resources to manage a water utility in today's age of increasing drinking water regulation. He expressed concern that customers of the Georgetown Water System deserve a level of service that the Town Council is ill-equipped to provide. He further stated that the costs to customers associated with the Town owning and managing the utility is far greater than it will be with Indiana-American operating the utility.

Mr. Pullen testified that the Town followed the statutory process necessary to sell its water assets and voted on March 21, 2016 to appoint Tracy L. Williams of Donahue & Associates, Inc., Judith M. Cleland, P.E. of Cleland Environmental Engineering, Inc., and Terry Watson of Associated Appraisal Group as the official appraisers of the Georgetown Water System. Mr. Pullen stated that a public hearing on the sale of the system was held on October 19, 2016, following notice published on September 7 and September 16, 2016. He testified that on December 8, 2016, the Town adopted an ordinance approving the proposed acquisition.

Mr. Pullen testified that a proposed purchase agreement from Indiana-American was received by the Town in August 2016. He stated that negotiations over several months resulted in

the purchase agreement being finalized and signed on February 16, 2017. Mr. Pullen testified that the negotiations leading up to the execution of the Asset Purchase Agreement were conducted at arm's length.

The complete terms and conditions of the purchase and sale of the Georgetown Water System are set forth in the Asset Purchase Agreement, filed as Attachment MP-3. Mr. Prine testified that Indiana-American proposes to acquire all of the property that is subject to the Town's appraisal sponsored by Mr. Pullen as Attachment EP-1, at a purchase price of $6,426,000. He testified that the purchase price was determined based upon the appraised value of the Georgetown Water System as determined by the statutorily appointed appraisers. Mr. Prine stated that consummation of the transaction is conditioned on obtaining certain approvals from the Commission, including with respect to recognition of the full purchase price plus incidental expenses and other costs of acquisition.

Mr. Prine testified that the customers of the Georgetown Water System and Indiana-American's existing customers will benefit from the acquisition. Georgetown customers will benefit from full time management of their water system, including, but not limited to, a full-time operations staff, 24/7 customer service and emergency response, enhanced security measures, along with full-time functional specialists in the areas of engineering and water quality. He stated Georgetown customers will also benefit from lower rates after the closing of the transaction. He testified that continuation of current ownership could lead to a troubled future for the Georgetown Water System. He further testified that customers will benefit from the acquisition as the system will be included in Indiana-American's prioritization model, allowing planning and asset management needs like those identified by the 2016 IFA Report to be met. Mr. Prine testified that all Georgetown customers were notified of the proposed transaction and that no customer has contacted Indiana-American to object to the acquisition.

C. Accounting and Ratemaking Treatment.

Mr. VerDouw testified that the accounting and ratemaking treatment reflected in the proposed journal entry conforms with the treatment to be granted under Section 30.3-5(c), where all of the factors set forth in that section are met. Mr. VerDouw also addressed elements of Section 30.3-5 which were not addressed by Mr. Prine. Mr. VerDouw testified that pursuant to Section 30.3-5(e), if this Commission makes the required findings, the resulting Order is to authorize Indiana-American "to make accounting entries recording the acquisition that reflect: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition; as the original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts." *Id*. Mr. VerDouw testified that as a result, Indiana-American is proposing to record the net original cost of the Georgetown Water System in the manner reflected in the proposed journal entry shown on Attachment GMV-1.

Mr. VerDouw further testified that the depreciation accrual rates to be applied to the Georgetown Water System assets would be the rates approved by the Commission in Cause No. 43081 on November 21, 2006, as included in the calculation of rates with the approval of Indiana-American's rate case in Cause No. 43187 on October 10, 2007.

Mr. VerDouw testified that Indiana-American has access to all of the necessary funds to support the acquisition, with those funds coming initially from internally generated funds. He

stated that the projected investment to acquire the Georgetown Water System is less than 0.71% of Indiana-American's total capitalization as of December 2016, and, thus, Indiana-American does not believe the acquisition would impair its ability to raise necessary capital on reasonable terms while maintaining a reasonable capital structure. Mr. VerDouw also described the encumbrance that would be placed on the Georgetown Water System assets as a result of the acquisition under Indiana-American's General Mortgage, which secures most of Indiana-American's utility property for the benefit of Indiana-American's bond holders.

Mr. VerDouw further testified regarding Indiana-American's intention to apply Indiana-American's Area One tariff rates for water service and private and public fire service on file from time to time to the customers of the Georgetown Water System. Support offered by Joint Petitioners for application of the Area One rates includes the fact that Georgetown is already interconnected with Indiana-American's Southern Indiana Operations, and that Georgetown receives water on a sale-for-resale basis from Ramsey Water Corporation, which in turn is a sale-for-resale customer of Indiana-American and subject to Area One rates. The monthly bill for a residential customer using 5,000 gallons would drop from $78.09 to $42.52 for customers with fire protection, based on the current tariff in effect for both utilities. Mr. VerDouw testified that Indiana-American's rates will not change as a result of this proceeding and, given the small size of the Georgetown Water System, the rates charged by Indiana-American in future general rate cases will not increase unreasonably as a result of acquiring the system.

5. **OUCC's Direct Evidence**. Ms. Margaret Stull, Senior Utility Analyst in the Water/Wastewater Division provided testimony on behalf of the Office of Utility Consumer Counselor. Ms. Stull generally described the proposed acquisition and provided recommendations with regard thereto. She stated the OUCC does not oppose Indiana-American's acquisition of Georgetown's assets but did have issues regarding the absence of a determination of the cost differential and the lack of testimony from an appraiser to support the proposed utility plant valuation. Ms. Stull also disagreed with the inclusion of the appraisal costs as part of the transaction costs in this case and further stated the transaction costs should be limited to the qualified amounts actually incurred by Indiana-American.

Ms. Stull recommended the Commission find that Indiana-American had not met its burden to establish the presumption that the cost differential is reasonable. Ms. Stull explained a cost differential under IC 8-1-30.3-1 is defined as the difference between the purchase price plus incidental expenses and other costs of acquisition and the original cost minus depreciation and contributions in aid of construction ("CIAC"). Under IC 8-1-30.3-5, the purchaser may petition the Commission to include the cost differential as part of its rate base. Further, under IC 8-1-30.3-5(b), there is a rebuttable presumption the cost differential is reasonable. Ms. Stull testified Indiana-American did not calculate the cost differential and include it in its case. Ms. Stull questioned whether in the absence of such information Indiana-American could establish the rebuttable presumption that the cost differential is reasonable or show that the purchase price is reasonable.

Ms. Stull testified Indiana-American seeks to include in rate base the fair value for the assets acquired in this transaction as established by a committee of three professionals. Without the appraisers appearing before the Commission in this proceeding, the Commission is denied the opportunity to examine the appraisers to determine precisely the methodologies employed, the assumptions made, the accuracy and completeness of the data relied upon, the level of

scrutiny exercised by them, and whether their review included any bias. The Commission, which is authorized and required by law to establish the rate base of utilities, is asked to make a decision based on evidence prepared by individuals who do not stand before them in this proceeding. The issue is not simply what the appraisal determined, but to what extent the appraisals should be used to determine the fair value of the utility's assets.

Ms. Stull recommended that the Commission not allow Indiana-American to include in rate base the $15,233 it paid for Georgetown's appraisal. Ms. Stull testified that Georgetown was the party that incurred the expense of the appraisals and therefore Georgetown was the party required to pay the expense under the Asset Purchase Agreement. Thus, Ms. Stull reasoned, the $15,233 cost is not a cost of Indiana-American under the Asset Purchase Agreement and should not have been included in net original rate base. Ms. Stull further recommended that the amount of transaction costs to be included in rate base should be limited to amounts actually incurred at a "not-to-exceed" amount of $87,777.

6. **Joint Petitioners' Rebuttal Testimony**. Mr. VerDouw provided rebuttal testimony addressing the specific issues raised in Ms. Stull's testimony. Mr. VerDouw provided historical background regarding the genesis of the Commission's standard as applied to Indiana-American's acquisition of municipal utility property in order to explain why Section 6.1 reveals that the issues raised by Ms. Stull in her direct testimony do not apply to this case.

Mr. VerDouw explained that Commission's standard developed over the following four Orders: (1) *Indiana-American Water Company*, Cause No. 41655 (IURC 4/4/2001) ("*Freeman Field*"); (2) *Indiana-American Water Co. & Town of New Whiteland*, Cause No. 43883 (3/2/2011) ("*New Whiteland*"); (3*) Indiana-American Water Co. & Town of Riley*, Cause No. 43855 (IURC 4/5/2011) ("*Riley*"); and (4) *Indiana-American Water Company*, Cause No. 44584 (7/22/2015) ("*Russiaville*"). The standard formerly applied to Indiana-American was set forth in the *Freeman Field* case, where Indiana-American was permitted to reflect the full appraised value purchase price plus transaction costs as original cost of such properties for accounting, depreciation, and rate base valuation purposes, due to the recognition of the general shortcomings of municipal recordkeeping and resulting difficulty of recreating books and records as well as the unique circumstances in municipal sales that the proceeds will go to benefit the residents of the municipality who are generally the customers of the municipal utility. Further, in the *Freeman Field* case, there was a government-funded grant for a storage tower, and Indiana-American was not required to record CIAC corresponding to it. Mr. VerDouw testified, however, that the Commission effectively reversed the *Freeman Field* decision nearly ten years later in *New Whiteland* and *Riley*, where the Commission found that decisions of the Indiana Court of Appeals required the Commission to make an offset for customer contributions for both developer contributions (*New Whiteland*) and government grants (*Riley*). The reversal in *Freeman Field* was complete with the Commission's decision in *Russiaville*, where the Commission found that the Uniform System of Accounts required Indiana-American to record a journal entry which reflects, by account, the original cost (as estimated and recreated) on the seller's books, and reaffirmed the decision in *Riley* that even government grant contributions must be excluded from rate base.

Mr. VerDouw testified that despite coming against a backdrop where consolidation in the water industry was being recognized as a tool for addressing growing needs in the water industry, *New Whiteland*, *Riley* and *Russiaville* imposed obstacles to consolidation that had not

existed under the *Freeman Field* Order. Mr. VerDouw described the three obstacles that he perceived resulted from these Orders, including: (1) the requirement that the purchaser attempt to "recreate" books by forcing public utility accounting onto transactions long ago recorded using municipality accounting; (2) the misconception that original cost is relevant to municipal sales; and (3) artificial constraints imposed on what statutory appraisers can determine to be value, as a result of this recreation of a theoretical "original cost" or deduction for something someone believes to have been CIAC.

After providing this historical background, Mr. VerDouw explained that Section 6.1 addresses the concerns raised by Ms. Stull in her direct testimony by removing the reasons on which the Commission relied when it reached its orders reversing *Freemen Field*. Mr. VerDouw explained that with the passage of Section 6.1, the Legislature largely returned the law to what it was at the time of *Freeman Field*, with Section 6.1(f) eliminating the requirement from *Russiaville* to follow Accounting Instruction 21 from the USOA; eliminating the requirement to deduct CIAC from rate base; and commanding that the value determined by the appraisers is conclusive. He further noted that, as applied to this transaction, Section 6.1 provides only one option for recording net original cost rate base, does not allow one to second guess the work of appraisers, and commands that the only issue for the Commission to decide is whether the sale or disposition is in the public interest. With respect to this public interest determination, Mr. VerDouw reiterated that as long as the Joint Petitioners satisfy the elements of Section 30.3-5(d) and this Commission makes the findings set forth in Section 30.3-5(c), the transaction pursuant to its terms and conditions is deemed to be in the public interest and approval under Section 6.1 follows necessarily.

With this background, Mr. VerDouw responded directly to Ms. Stull's criticisms, restating such criticisms as follows: (1) no testimony was included in the Joint Petition from the appraisers about the net original cost of the assets being acquired, including the value of CIAC; (2) Indiana-American did not provide a "cost differential" calculation in its case-in-chief; and (3) Indiana-American should not be allowed to include in rate base the $15,233 it paid for Georgetown's appraisal. Before responding to each of these criticisms, however, Mr. VerDouw noted that Ms. Stull testified that she did not oppose Indiana-American's acquisition of the utility assets. Further, she did not testify that the proposed transaction is not in the public interest, the ultimate issue under Section 6.1.

With respect to Ms. Stull's first criticism, Mr. VerDouw reiterated that the statute is clear that "the purchase price of the municipality's nonsurplus property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of this chapter." Section 6.1(d). He noted that Ms. Stull does not dispute that the appraisers meet the statutory qualifications, and does not contend that the purchase price exceeds the appraised value; therefore the purchase price is reasonable. Further, with respect to Ms. Stull's concern that there has been no opportunity to review the appraisers' work and question their conclusion, Mr. VerDouw testified that Section 6.1 eliminates these concerns as potential issues, and noted that the cost of calling one or more appraisers as a witness, which would have been added to rate base under Section 6.1, would not have been a useful expenditure given that the appraisers' testimony would have had no bearing on any of the statutory considerations.

With respect to Ms. Stull's concern that Indiana-American did not provide a calculation of the "cost differential" as part of its testimony, Mr. VerDouw testified that Indiana-American

was not required to provide a calculation of the cost differential in this proceeding. The key determination under Section 6.1 is whether the public interest findings in Sections 30.3-5(c) and (d) are satisfied. Mr. VerDouw noted that only one of these requirements even mentions "cost differential," and explained how Indiana-American had satisfied that requirement at page 6 of his direct testimony. He further disagreed with Ms. Stull's suggestion that a person must first calculate the cost differential in order to address the elements in Section 30.3-5 and opined that if the precise calculation were an element, it surely would have been listed with the 12 other specifically delineated elements in this section. Mr. VerDouw testified that he believes the real issue is whether this transaction includes a cost differential. He noted that this proposed transaction does include a cost differential, and he set forth three reasons why he knows this to be true. First, since Section 30.3-5 only requires that there be "a" cost differential, one will exist necessarily in any transaction where the purchase price is based on something other than original cost figures. Second, and as set forth in the appraisal report included in Joint Petitioners' case-in-chief, the appraisers assigned a value to assets that had been contributed. Finally, he sponsored Georgetown's most recent State Board of Accounts ("SBOA") audit available on the SBOA's website, which reported an original cost as of December 31, 2011 of $7,569,810, which included CIAC and which was prior to any provision for depreciation. He testified that the appraisal report (Attachment EP-1) shows minimal plant added after 2011 and that the system is nearly 40% depreciated. He testified that with any reasonable assumption of depreciation, it was clear that there was a cost differential. He reiterated, however, that Joint Petitioners did not calculate it because neither Section 30.3-5(c) or (d) requires it. Mr. VerDouw explained that to take Ms. Stull's position, and require a precise calculation of the cost differential, would force the Joint Petitioners to recreate books to arrive at a hypothetical and incomplete cost figure; such position would thus reinstate one of the impediments the General Assembly sought to address with the passage of Chapter 8-1-30.3 and Section 6.1(f), and would be contrary to such legislation. Mr. VerDouw further stated that he disagreed with Ms. Stull's opinion that without knowledge of the cost differential the OUCC is not able to agree that the proposed purchase should be considered reasonable, because, as stated previously, the statute is clear that the purchase price is deemed reasonable as long as it does not exceed the appraised value.

Mr. VerDouw further testified that he disagreed with Ms. Stull's recommendation to not allow Indiana-American to include in rate base $15,223 for Georgetown's appraisal costs. First, Mr. VerDouw explained that Indiana-American agreed to reimburse Georgetown for the appraisal costs and stated that, as evidenced by Attachment GMV-R2, the appraisal costs total $15,223. Second, and most importantly, Mr. VerDouw testified that Section 6.1(f) dictates that rate base include incidental expenses, and opined that if reimbursing statutorily mandated appraisal costs is not an incidental expense, he does not know what it would be considered and would not know how to record it. By statute, it is a cost that must be incurred for the transaction to proceed. Mr. VerDouw further testified that he did not have any objection to limiting the incidental expenses and costs of the acquisition to the actual amounts incurred, but stated that he did not accept Ms. Stull's "not-to-exceed" figure.

Mr. VerDouw concluded his rebuttal testimony by testifying that the proposed transaction was filed and is proceeding pursuant to Section 6.1. He noted that Ms. Stull does not dispute that it fully meets the requirements of a required filing under this statute. As such, he recommended that the Commission approve the proposed acquisition.

7. Commission Discussion and Findings. Joint Petitioner Indiana-American seeks favorable ratemaking treatment under Indiana Code 8-1-30.3-1 et al. The utility company that acquires utility property may petition the Commission to include the cost differential as part of its rate base if the Commission makes certain findings, which are set forth at IC 8-1-30.3-5(c). Further under IC 8-1-30.3-5(d) a utility company may petition for ratemaking approval in advance of acquisition subject to the provisions stated therein. The qualifications under (5)(c) include a provision that the "cost differential will be added to the utility' company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in rate base." IC 8-1-30.3-5(c)(8). The issue of whether the cost differential must be identified was an issue on which the parties disagreed. The OUCC maintained that under the statute the cost differential should be quantified and Indiana-American maintained that, at least with respect to municipal utilities, the cost differential need not be isolated and quantified.

A. Cost Differential. The first section of Chapter 30.3 defines "cost differential" and establishes how the "cost differential" is calculated. IC 8-1-30.3-1[1] Chapter 30.3 further establishes that "there is a rebuttable presumption that a cost differential is reasonable." IC 8-1-30.3-5(b). However, as the OUCC pointed out, Indiana-American did not calculate the cost differential it seeks to include in rate base. Given the statute introduces the concept of a rebuttable presumption that the cost differential is reasonable, it is counterintuitive that the cost differential would not need to be calculated and is somehow irrelevant to this proceeding.

The OUCC maintained that without quantifying the cost differential, it isn't possible to determine the cost differential is reasonable or rebut any presumption that it is reasonable. In response, Indiana-American asserted it was not required to provide a calculation of the cost differential in this proceeding. Indiana-American asserted it need only establish a cost differential exists. Indiana-American asserted the OUCC's position, which would require a precise calculation of the cost differential, would force the Joint Petitioners to recreate books to arrive at a hypothetical and incomplete cost figure, reinstating one of the impediments Indiana-American asserts the General Assembly sought to address with the passage of Chapter 8-1-30.3 and Section 6.1(f), and would be contrary to such legislation.

We reject Indiana-American's assertions regarding the purpose of the legislation creating IC chapter 8-1-30.3 and Section 6.1(f), which depends on Indiana-American's particular explication of several commission orders over several years. The true measure of the meaning and intention of the statute must be the language of the statute itself. Chapter 30.3 mentions "cost differential" no less than four times. IC 8-1-30.3-1 defines "cost differential" by directing how it is to be calculated. IC 8-1-30.3-5(c) authorizes utility companies to include cost differentials in rate base provided the Commission makes certain findings. IC 8-1-30.3-5(c)(8) establishes how the cost differential should be amortized. Finally, IC 8-1-30.3-5(b) creates a rebuttable presumption that the cost differential is reasonable. In sum, the plain meaning of these provisions contradict Indiana-American's assertions that a cost differential need not be quantified. Rather, they indicate a cost differential should be identified as an amount. Thus, w also reject the concept that a quantified cost differential is not germane to the proceedings.

[1] Ind. Code § 8-1-30.3-1 defines "cost differential" as the difference between the purchase price plus incidental expenses and other costs of acquisition and the original cost minus depreciation and contributions in aid of construction ("CIAC").

The Indiana General Assembly established "a rebuttable presumption that a cost differential is reasonable." Certainly the Indiana General Assembly intended that presumption would affect whether the relief being requested should be granted. There would be little point of rebutting a presumption if success in that endeavor did not affect the outcome. Moreover, that statement also establishes the presumption may be rebutted, conferring a statutory right and due process on the OUCC and other parties. If the cost differential is not identified and quantified, those parties are deprived of any opportunity to rebut such a conclusion.

The cost differential is a component part of the purchase price. And if the cost differential is not reasonable, then it may be concluded that the purchase price is not reasonable. Thus, the "cost differential" affects the rights of the parties. We have traditionally held to the principle that where there has been no investment by the utility, there shall be no return. As such, we have typically rejected transactions conditioned on approval of customers being required to pay the acquiring utility a return on assets paid for by the customers or on behalf of those customers. To promote the sale of a distressed utility as defined, the Indiana General Assembly has directed us to not prohibit including a purchase price in rate base out of hand merely because the customers will be paying a return on property contributed to the selling utility company. If the language on "cost differential" has any meaning, it is that there may be proposed purchase prices that in some instances should not be included in rate base. One of the reasons may be that the purchase price is unreasonable because the level of customer contributions included in the purchase price will result in an inequitable result.[2]

There is another reason why establishing the cost differential is necessary -- even in the case of municipal utilities that have sold their assets at an appraised value.[3] IC § 8-1-30.3-5(c)(8) requires us to find that "the cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base." (Emphasis added.) This indicates the creation of a regulatory asset, which will be amortized over a period of time established at the beginning of that period. The Commission has authority to approve or otherwise establish the precise manner in which the cost differential may be amortized. In contravention of the statute, Indiana-American is not proposing to create a regulatory asset. Because the cost differential is not identified as a distinct value, Indiana-American proposes to embed the unknown cost differential in utility plant in service, which will be subject to Indiana-American's approved depreciation rates. This means Indiana-American will recover the cost differential until the acquired assets are retired. The retirement date of those assets is unknown resulting in potential over-recovery of the cost differential. We will address that issue in more detail below.

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[2] IC § 8-1.5-2-6.1(d) establishes that a purchase price of municipal assets is reasonable if it does not exceed the appraised value. This would affect our ability to find that a purchase price is not reasonable. Importantly, this section does not apply to the sale of assets of public utilities including for-profit utilities.

[3] IC § 8-1.5-2-6.1(d) provides that "the commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest. For purposes of this section, the purchase price of the municipality's nonsurplus property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of this chapter."

For the reasons given above, we conclude Chapter 30.3 intends the cost differential be quantified before it may be deemed reasonable. Indiana-American has neither quantified nor attempted to quantify the cost differential and therefore has not established a rebuttable presumption that the cost differential is reasonable.

Having found Indiana-American has not established a rebuttable presumption that the cost differential is reasonable, we next address whether, in the absence of such a determination, IC8-1-30.3-5(c) permits us to determine nonetheless that the full purchase price of Georgetown's nonsurplus property may be included in Indiana-American's rate base.

Indiana-American maintains that, with respect to municipal utilities selling nonsurplus assets, a cost differential need not be known precisely to determine whether it should be considered reasonable. We are unwilling to find municipal utilities selling their assets and public utilities buying those assets are not required to attempt to determine the cost differential. If, in the case of the sale of municipal utility assets, a "cost differential" need not absolutely be identified and quantified, that exception derives from IC § 8-1.5-2-6.1, which does not apply to the sale of assets of public utilities as defined by IC § 8-1-2-1. Under IC 8-1.5-2-6.1(d), the purchase price of municipal surplus assets is considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of Chapter 8-1.5-2.

It is crucial to draw a distinction between public utilities and municipal utilities when evaluating the criteria that must be strictly applied, not because municipal utilities traditionally have not been good at documenting their contributions and construction costs as Indiana-American has said, but because municipalities are held to a different statutory standard when determining whether a purchase price is reasonable. In the case of a public utility selling its assets we must conclude that relief cannot be granted in the absence of a quantified cost differential. Notwithstanding IC Chapter 8-1-30.3, the level of contributions may still be relevant to whether a purchase price should be considered reasonable as a threshold issue.

Again, and for reasons stated above, we are unwilling to conclude that a separately identified cost differential has no meaning in the case of even a municipal utility. But viewing the evidence as a whole, including the terms of the purchase agreement as well as the application of IC 8-1.5-2-6.1, for purposes of allowing the purchase price of Georgetown's nonsurplus assets in rate base, we do not consider it an absolute bar to a finding that the conditions set forth in IC 8-1-30.3-5(c)(5) have been satisfied.

We now discuss whether the evidence by Joint Petitioners satisfies the elements of Section 30.3-5(c).

B. <u>IC § 8-1-30.3-5(c) Requirements</u>. Pursuant to IC 8-1.5-2-6.1 (d) "The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest." Pursuant to IC 8-1.5-2-6.1 (e) (1), the proposed sale or disposition is considered to be in the public interest if "(A) the municipality's municipally owned utility petitions the commission under IC 8-1-30.3-5(d); and (B) the

commission approves the municipality's municipally owned utility's petition under IC 8-1-30.3-5(c)." Thus, before we find the proposed transaction is in the public interest for purposes of IC 8-1.5-2-6.1, we must address the criteria of IC § 8-1-30.3-5(c) subsections (1 – 8):

> (1) The utility property is used and useful in providing water service, wastewater service, or both water and wastewater service.

Mr. Prine testified (Joint Petitioners' Ex. 1, pp. 5-6, 13) and we find that the Georgetown Water System is used and useful in providing water service.

> (2) The distressed utility failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.

What may constitute inadequate, inefficient, unsafe or unreasonable service and facilities is set forth in Ind. Code § 8-1-30.3-6, any one of which would satisfy this element. Mr. Prine testified that Georgetown is a municipally owned system that serves fewer than 5,000 customers (*Id.*, p. 12). Mr. Prine explained that while it is not necessary to satisfy a second condition, the Georgetown Water System would also satisfy a second condition enumerated in Ind. Code § 8-1-30.3-6, because it is unable to furnish and maintain adequate service to its customers at rates equal to or less than those of Indiana-American (Section 30.3-6(4)). (*Id.*, p. 13). A residential customer using 5,000 gallons of water per month would see a monthly rate decrease from $78.09 to $42.52. Joint Petitioners' Ex. 2, p. 10. Mr. Prine's testimony is unrebutted, and we find that two of the conditions set forth in Ind. Code § 8-1-30.3-6 are satisfied. Accordingly, we find that the Georgetown Water System has failed to furnish or maintain adequate, efficient, safe and reasonable service and facilities for purposes of whether it qualifies as a distressed utility under Chapter 30.3.

> (3) The utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service.

Mr. Prine testified that Indiana-American has developed a 5-year capital improvements plan to include $550,000 in Year 1 for SCADA/radio system installations so as to be compatible with Indiana-American's system, as well as ongoing annual capital improvements consisting mainly of distribution infrastructure replacement. Capital improvements projected for Years 2 through 5 are estimated at $150,000 annually, again predominantly for distribution infrastructure replacement. Indiana-American will continue to operate the Georgetown Water System through its current facilities. The staff at Indiana-American's Southern Indiana Operation will provide ongoing operation and maintenance. In addition, he explained that Indiana-American will institute reasonable and prudent asset management for the Georgetown Water System by adding the Georgetown Water System to Indiana-American's ongoing prioritization model to track, plan, and implement necessary improvements to the distribution system. (Joint Petitioners' Ex. 1, pp. 15-16.) This is in keeping with the recommendations of the Indiana Finance Authority in its Report set forth as Attachment MP-4 that replacement of aging or failing water mains be prioritized and that a schedule of asset management be developed. No evidence was introduced to contradict the necessity and reasonableness of these changes. We find that Indiana-American

will make reasonable and prudent improvements to ensure that customers of the Georgetown Water System will receive adequate, efficient, safe and reasonable service.

(4) The acquisition of the utility property is the result of a mutual agreement made at arm's length.

Mr. Pullen described the process undertaken by Georgetown prior to entering the transaction. He explained that negotiations began in December, 2015. A proposed purchase agreement was provided in August, 2016. Negotiations then proceeded over the course of several months while Georgetown was undertaking the statutory process. He testified that negotiations were at arm's length. Joint Petitioners' Ex. 3, p. 2. We find the acquisition is the result of a mutual agreement made at arm's length.

(5) The actual purchase price of the utility property is reasonable.

Pursuant to IC § 8-1.5-2-6.1(d) "For purposes of this section [6.1], the purchase price of the municipality's nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of [Chapter 8-1.5-2]. The purchase price is equal to the appraisal of the property as determined by the appraisers, who were selected in accordance with IC § 8-1.5-5(a). Although the determination that the purchase price is reasonable is explicitly made for the purposes of IC § 8-1.5-2-6.1, viewing the record as a whole, we consider the appraised value to be a reasonable purchase price for the purposes of IC § 8-1-30.3-5(c).

(6) The utility company and the distressed utility are not affiliated and share no ownership interests.

We find, based upon Mr. Prine's testimony to this effect, that Georgetown and Indiana-American are not affiliated and share no ownership interests. Joint Petitioners' Ex. 1, p. 14.

(7) The rates charged by the utility company before acquiring the utility property of the distressed utility will not increase unreasonably as a result of acquiring the utility property.

Mr. VerDouw testified that given the small size of the Georgetown Water System, the rates approved for Indiana-American in future general rate cases will not increase unreasonably as a result of acquiring the system. Joint Petitioners' Ex. 2, p. 10. Mr. VerDouw testified that as of December 31, 2016, Indiana-American's capital structure included over $922 million of common equity, long-term debt and short-term debt. He added that in comparison, Indiana-American's projected investment to acquire the Georgetown Water System is $6,529,000, or less than 0.71% of its total capital structure." Joint Petitioners' Ex. 2, p. 9. Indiana-American did not provide evidence quantifying the total additional operating costs and return that would be required. However, we note that the OUCC did not assert Indiana-American's rates will increase unreasonably as a result of this acquisition and did not otherwise contest the conclusion that this criterion was met. Therefore, we find that the rates charged by Indiana-American before this acquisition will not increase unreasonably as a result of acquiring the Georgetown Water System.

(8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base.

Mr. VerDouw testified regarding the accounting and ratemaking treatment proposed by Indiana-American in connection with its acquisition of the Georgetown Water System. In its proposed order, Indiana-American proposed we find that Attachment GMV-1, which sets forth the proposed journal entry, "shows a recorded initial original cost of the Georgetown Water System assets as the full purchase price plus other costs and expenses incident to the transaction, including a 'cost differential' as that term is defined in IC 8-1-30.3-1." (Emphasis added.) We cannot make such a finding. No "cost differential" was quantified or otherwise set forth in the evidence in this case. Regrettably, the "cost differential" between the net original cost exclusive of contributions and the purchase price is unknown and unstated. Rather, both contributions and the net original cost are nonetheless embedded in the purchase price. Mr. VerDouw testified that with this proposed journal entry, the cost differential will be "amortized" and charged to expense over a reasonable period of time with corresponding reductions to rate base through depreciation expense calculated pursuant to Indiana-American's approved depreciation accrual rates. We construe Chapter 30.3 to anticipate that the cost differential will be identified and quantified before being amortized as an addition to expense. In other words, it is a separate regulatory asset that should be subject to a particular amortization rate. Notwithstanding the Joint Petitioners' failure to quantify the cost differential, we find that Indiana-American has substantially complied with subsection 30.3-5(c) for purposes of including in rate base the purchase price plus incidental expenses and other costs of acquisition, as determined herein. However, we reject at this time Indiana-American's proposal to apply its approved depreciation rate to the cost differential. Instead, we find that when Indiana-American first seeks to earn a return on the purchase price in its next base rate case, we will determine the amortization rate that should be applied to the cost differential. This will require Indiana-American to make its best effort to establish and present the "cost differential" of the assets it acquired.

We have given wide latitude in this case, considering that this is the first case to be filed under IC 8-1-30.3 and that the seller of the assets is a municipality bringing into play IC 8-1.5-2-6.1. However, in the future as a best and necessary practice we expect petitioning utilities to provide cost differentials so the OUCC or other party may rebut any presumption that the cost differential is reasonable and the Commission may determine whether that presumption should stand, giving meaning to the plain statutory language.

C. IC § 8-1-30.3-5(d) Requirements. Section 6.1(d) requires that the petition be filed pursuant to Section 30.3-5(d). A utility filing such a petition must provide:

(1) Notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility

Mr. Prine sponsored Attachment MP-7, which we find to be notice of the proposed acquisition and the change in rates and charges to customers of the Georgetown Water System.

(2) Notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount

that is greater than one percent (1%) of the utility company's base annual revenue

Pursuant to IC 8-2-30.3-5(d)(2), a utility company may petition the Commission in an independent proceeding to approve a petition under subsection (c) before the utility company acquires the utility company. Under this provision, the utility company provides notice to its customers if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue. Indiana-American gave no notice of the proposed acquisition to its customers. Further, Indiana-American provided no calculation of the ratemaking effect of the proposed acquisition under the mistaken premise that the statute only requires notice "if the purchasing petitioner is also requesting authority to increase any rates to its customers in conjunction with the acquisition by an amount that exceeds one percent of the utility's base annual revenue." (See proposed Order of Joint Petitioner.) In other words, Indiana-American asserts such notice is never required unless it is simultaneously requesting a rate increase that would be approved in the same order approving the acquisition.

We disagree. First, the statute includes no such qualification. Nothing in the statute states that the requirement under 5(d)(2) only applies if the utility company has combined its "independent proceeding" under subsection (d) with a requested rate increase. In fact, IC 8-1-30.5-1 et al neither authorizes nor makes reference to any such combined proceeding. Rather, IC 8-1-30.5-5(d) refers to an "independent proceeding."

Second, Indiana-American's interpretation effectively nullifies the notice provision under IC 8-1-30.5-5(d)(2). The situation Indiana-American described as invoking the notice requirement is one that simply does not happen. Indiana-American's witness Mr. VerDouw did not identify any instances where Indiana-American sought in the same cause both approval for the acquisition and approval to implement rates on existing customers to pay for the acquisition. Hr. Tr. 19-20. Nor are we aware of any. We must interpret the statutes in a manner that will give effect to its terms. Indiana-American's interpretation means the Indiana General Assembly has created a notice provision that will never be applied. We decline to construe subsection 5(d)(2) in such a manner.

Third, it is reasonable to interpret IC 8-2-30.3-5(d)(2) to require the utility company to evaluate the ratemaking effect of the acquisition for which it seeks approval. The utility company is otherwise already required to make a determination as to the ratemaking effect of the acquisition on its existing customers pursuant to IC 8-2-30.3-5(c)(7). In order for the utility company to secure the ratemaking relief it has requested under the statute, IC 8-2-30.3-5(c)(7) states that the Commission must find that "the rates charged by the utility company before acquiring the utility property of the distressed utility will not increase unreasonably as a result of acquiring the utility property." Thus, what Indiana-American asserts it cannot do for purposes of determining whether notice to its customers is required under IC 8-2-30.3-5(d)(2), it had to do under IC 8-2-30.3-5(c)(7) to qualify for the ratemaking treatment it requests.

In support of its argument, Indiana-American asserts it is powerless to predict the ratemaking effect of the acquisition. Indiana-American asserted that interpreting IC 8-2-30.3-5(d)(2) to require the utility company to anticipate the ratemaking effect is "an unreasonable

interpretation because it would require a purchaser to make a calculation that cannot be made." Indiana-American's proposed order, p. 19. Indiana-American argues that "In order to know the effect on future rates in a hypothetical future rate case, one would need to know the base revenue level that will be authorized in that case, the return on equity that will be approved, the capital structure that will be in place, plus a host of other variables." However, utilities can and do make assumptions about the ratemaking effects of their actions. This is the kind of information and inquiry this very statute (IC 8-2-30.3-5(c)(7)) requires to justify the relief requested.

To determine whether rates will increase unreasonably as a result of the acquisition, the utility company would need to make the same assumptions about its base revenue level, its return on equity, its capital structure and other variables that Indiana-American claims it cannot make. Thus, what Indiana-American said was impossible for purposes of determining whether notice to its customers is required, it was seemingly able to do for purposes of meeting the requirement under IC 8-2-30.3-5(c)(7).[4] A utility company cannot reasonably maintain it has complied with subsection 5(c)(7) while also maintaining it cannot and need not perform the analysis indicated by subsection 5(d)(2). Certainly, the latter requires no more precision than the former. Importantly, the purpose of the inquiry required by IC 8-2-30.3-5(d)(2) is not to set rates but to determine merely whether the utility company should provide notice to its customers of a proposed acquisition that will affect the rates they will pay. If a utility company over-estimates the ratemaking effect of its acquisition, the only harm will be that its customers will have received information they would not otherwise have received.

For the foregoing reasons, we reject the argument that the notice required by IC 8-1-30.3-5(d)(2) only applies where the utility company has combined its request under IC 8-1-30.3-1 with a rate case. We find that the notice requirements under IC 8-2-30.3-5(d)(2) should be implemented in any case where a reasonable analysis indicates the effect on the utility company's rates will be greater than one percent of the utility company's current base annual revenues. In establishing the inputs for any such analysis, we would expect the utility company to rely on reasonable projections and assumptions. Whether the utility company determines the one percent will be exceeded, we would expect the utility company to show in its case-in-chief how it determined whether the notice provision either was or was not implicated including what capital structure and rate of return it applied. In addition, the utility company should consider additional operating expenses it may reasonably anticipate will be incurred as a result of the acquisition such as additional personnel that may be needed to operate the new assets.

While we reject Indiana-American's argument that notice to its existing customers only applies "if the purchasing petitioner is also requesting authority to increase any rates to its customers in conjunction with the acquisition," we will not out of hand disqualify Indiana-American's application in this its first application under IC 8-1-30.3. All evidence before us indicates the acquisition will not result in an increase in rates to existing customers in excess of one percent of Indiana-American's base annual revenue of approximately $208 million. As

[4] These are not the only provisions that invite the sort of assumptions Indiana-American asserts cannot be made. IC 8-2-30.3-6(4) establishes that one of the bases for finding a distressed utility is not furnishing or maintaining adequate, efficient, safe and reasonable service and facilities is that "due to necessary improvements to its plant or collection system or operations, [the distressed utility] is unable to furnish and maintain adequate service to its customers at rates equal to or less than those of the public utility. This basis also requires a determination based on assumptions about of cost of equity, capital structure and other variables.

such, we find that the condition requiring the notice under subsection (d)(2) is not in place. However, we direct Indiana-American to establish fully in its next acquisition whether this notice provision applies.

(3) Notice to the Office of Utility Consumer Counselor

We find that notice was provided to the OUCC through the service of the petition and the Joint Petitioners' case-in-chief. We find that Indiana-American has met this requirement.

(4) A plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility

We found above that Indiana-American satisfied the requirement of IC 8-1-30.3(5)(c)(3) that it will make reasonable and prudent improvements to ensure that customers of the Georgetown Water System will receive adequate, efficient, safe and reasonable service. This will be in accordance with a plan, thereby satisfying this criterion.

In its proposed order, Indiana-American further requested we find that such plan is approved by this order. Although it is in the relief requested in the Joint Petition, such approval is not contemplated by and exceeds the scope of relief afforded under chapter 8-1-30.3 or more particularly IC 8-1-30.3-5(d), which is to be an independent proceeding. Moreover, such approval is not necessary to secure the ratemaking relief requested under IC 8-1-30.3. Accordingly, we decline to issue such a finding.

Having made all of the required findings under Section 30.3-5(c), we further find that Joint Petitioners have substantially satisfied the requirements of Section 30.3-5(d). We therefore approve the petition pursuant to Chapter 30.3.

D. Sale Approval and Accounting Treatment. We have determined that Joint Petitioners have sufficiently satisfied the requirements listed in Ind. Code § 8-1-30.3-5(c) and (d). Section 6.1 therefore directs and we find the proposed sale of the Georgetown Water System pursuant to the terms and conditions set forth in Attachment MP-3 is in the public interest.

Because the sale is in the public interest, we approve the sale. Section 6.1(f) directs the Commission as follows:

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

As directed by the statute, we therefore find that without regard to amounts that may be recorded on Georgetown's books and records and without regard to any grants or contributions that Georgetown may have received, Indiana-American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, plus incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts in the fashion recommended by Mr. VerDouw.

To that end we next address whether the "incidental expenses" should include the $15,223 appraisal fee paid by Indiana-American. The OUCC opposed including the costs of the appraisals in rate base noting that while Indiana-American paid for the appraisals, the appraisals were procured by Georgetown. OUCC witness Margaret Stull noted the appraisals are required under Indiana law in order for Georgetown to sell its assets, and as such, Georgetown incurred the expense and was required to pay the expense under the Asset Purchase Agreement, which stated that "All legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement and the Contemplated Transaction are to be paid by the party incurring such costs and expenses."

Mr. VerDouw explained in his rebuttal testimony that Indiana-American agreed to pay these costs of the appraisal and opined that if a reimbursement cost such as this is not an "incidental cost" within the meaning of the statute, he did not know what it would be considered. He provided in rebuttal testimony the agreement whereby Indiana-American agreed to pay those costs in return for being provided access for due diligence purposes and an exclusive negotiating period. Attachment GMV-R2, pp. 3-5. He testified on cross-examination that this agreement to pay the appraisal costs was part of the "Transaction Documents" as defined in the Asset Purchase Agreement and therefore is part of Indiana-American's closing obligations in this transaction. We do not agree.

The explanations provided by Mr. VerDouw through his rebuttal testimony and through cross-examination do not support the proposition that Indiana-American's payment of this expense is an incidental expense. There is one very important aspect of the $15,223 payment by Indiana-American that we cannot overlook. The party that received that payment was the party on the other side of the transaction. As the document attached to Mr. VerDouw's rebuttal testimony shows, the cost was incurred by Georgetown and paid for by Indiana-American in advance of the Asset Purchase Agreement to procure the Town's promise of exclusive dealing, cooperation, and exchange of confidential information. In exchange for the foregoing, Indiana-American promised to pay for the appraisals Georgetown was required to procure as a matter of law before it could sell its utility assets. The expense incurred and paid for by Indiana-American is not an expense that may be considered incidental of the sale. Rather, it is both another party's expense and an expense that is a condition precedent to any sale or agreement to sell the utility's assets.

There are two ways of viewing this expense, neither of which support the proposition that it should be recovered as an incidental expense. One is that the payment of the appraisal costs is part of the consideration given to the Town of Georgetown in exchange for the sale of assets. This view is supported by Mr. VerDouw's cross-examination testimony in which he said Indiana-American's agreement to pay the appraisal costs was part of the "Transaction Documents" as defined in the Asset Purchase Agreement and therefore is part of Indiana-American's closing obligations in this transaction. (Emphasis added.) If the $15,223 appraisal

costs paid by Indiana-American are additional consideration under the agreement, then Indiana-American has paid more than the appraised value in exchange for the assets.

The other way of viewing this $15,223 payment is that it is consideration paid by Indiana-American to the Town of Georgetown in exchange for other consideration. In other words, the March 21, 2016 letter documents a separate agreement that is not incidental to the Asset Purchase Agreement. The latter is a preferable way of viewing this $15,223 because the former means that the purchase price set forth in Indiana-American's Asset Purchase Agreement exceeds the appraised value and may no longer be considered reasonable by operation of IC 8-1.5-2-6.1(d). We prefer the latter view. Accordingly, we find that the $15,223 cost of the appraisals paid for by Indiana-American are not incidental expenses of the asset purchase, and should not be included in Indiana-American's rate base.

With that modification, we find that Indiana-American's proposed accounting and journal entries as otherwise described in Mr. VerDouw's direct testimony and Attachment GMV-1, should be approved and that the costs so reflected on the books and records of Indiana-American be used as the original cost of such properties for accounting, depreciation, and rate base valuation purposes. The journal entry should be adjusted to reflect actual (rather than estimated) incidental expenses and other costs of acquisition. We find that Indiana-American's existing depreciation accrual rates approved by the Commission in Cause No. 43081 on November 21, 2006 and as included in the calculation of rates with the approval of Indiana-American's rate case in Cause No. 43187 on October 10, 2007 should be applied on and after the closing date of the acquisition to depreciable property purchased from Georgetown pursuant to the Asset Purchase Agreement.

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

F. Encumbrances. We find that the encumbering of the properties comprising the Georgetown Water System by subjecting such properties to the lien of Indiana-American's General Mortgage as of the closing should be approved.

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

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

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

3. Subject to the findings herein, Indiana-American shall be and hereby is authorized to record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to the full purchase price, actual incidental expenses, and other costs of acquisition.

4. As part of Indiana-American's next base rate case, Indiana-American shall present its best evidence of the cost differential, as defined by IC 8-1-30.3-1, of the plant acquired for purposes of establishing the regulatory asset and the amortization rate to be applied as contemplated by IC 8-1-30.3-5(c)(8).

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

6. Indiana-American shall be and is hereby authorized to reflect the acquisition of the Georgetown Water System on its books and records as of the closing by making the accounting and journal entries described in Attachment GMV-1, as adjusted to actual incidental expenses and other costs of the acquisition as defined by this order.

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

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

9. Indiana-American shall be and is hereby authorized to encumber the properties comprising the Georgetown's Water System with the lien of Indiana-American's mortgage indenture.

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

ATTERHOLT, FREEMAN, HUSTON, WEBER AND ZIEGNER CONCUR:

APPROVED:

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

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Mary M. Becerra
Secretary to the Commission

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ***OUCC's Proposed Order*** has been served upon the following counsel of record in the captioned proceeding by electronic service on August 10, 2017.

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

Kristi L. Fox
Fox Law Offices, LLC
409 Bank Street
New Albany, Indiana 47150
kfox@aye.net

Daniel M. Le Vay
Deputy Consumer Counselor

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