

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF CITIZENS WASTEWATER)
OF WESTFIELD, LLC FOR (1) AUTHORITY TO)
INCREASE RATES AND CHARGES FOR)
WASTEWATER UTILITY SERVICE AND APPROVAL)
OF A NEW SCHEDULE OF RATES AND CHARGES;)
AND (2) APPROVAL OF CERTAIN REVISIONS TO)
ITS TERMS AND CONDITIONS APPLICABLE TO)
WASTEWATER UTILITY SERVICE)

CAUSE NO. 44835

IURC
PUBLIC'S 4
EXHIBIT NO. 3-13-17
DATE REPORTER

TESTIMONY OF

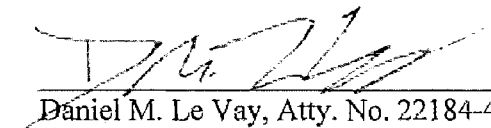
EDWARD T. RUTTER – PUBLIC'S EXHIBIT NO. 4

ON BEHALF OF THE

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

DECEMBER 5, 2016

Respectfully submitted,


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

Scott Franson, Atty. No. 27839-49
Deputy Consumer Counselor

Randall C. Helmen, Atty. No. 8275-49
Chief Deputy Consumer Counselor

**TESTIMONY OF OUCC WITNESS EDWARD T. RUTTER
CAUSE NO. 44835
CITIZENS WASTEWATER OF WESTFIELD, LLC**

I. INTRODUCTION

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

2 A: My name is Edward T. Rutter and my business address is 115 West Washington
3 St., Suite 1500 South Tower, Indianapolis, Indiana 46204. My educational
4 background and professional experience is detailed in Appendix ETR-1 attached to
5 this testimony.

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

7 A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as
8 a Chief Technical Advisor in the Resource Planning and Communications Division.

9 **Q: What is the purpose of your direct testimony?**

10 A: I address the capital structure used by Citizens Wastewater of Westfield, LLC
11 ("Petitioner" or "Company") in their filing and testified to by Ms. Sara J. Mamuska-
12 Morris.¹ I also address the testimony of Mr. Aaron D. Johnson² where he testifies
13 that the rate of return that Petitioner is seeking is based on the capital structure
14 agreed to by the OUCC and Petitioner and approved by the Indiana Utility
15 Regulatory Commission ("Commission") in Cause No. 44273.

16 I recommend that for purposes of setting the rate of return, the capital
17 structure should reflect the true nature of the capital contributions and any

¹ Petitioner's Exhibit 3, Direct Testimony of Sara J. Mamuska-Morris, p. 5, Table at top of page.

² Petitioner's Exhibit 1, Direct Testimony of Aaron D. Johnson, p. 13, lines 7 – 10.

1 additional capital invested in Petitioner's rate base during the test year. My
2 recommendation is included on Attachment ETR-1.

II. CAPITAL CONTRIBUTIONS

3 **Q: Please describe Petitioner's proposed capital structure.**

4 A: The Company proposes an end-of-test year, December 31, 2015, capital structure
5 totaling \$61,432,000. It includes \$46,162,000 in common equity (75.14% of the
6 total) and \$15,270,000, or 24.86% of the total, in long-term debt. See Mamuska-
7 Morris direct at page 5.

8 **Q. What are the OUCC's concerns with Petitioner's proposed capital structure?**

9 A. Petitioner's proposed "common equity" component of the capital structure is not
10 reflective of the capital contribution to Petitioner from its parent. Of the \$46.1M
11 "common equity," \$44.3M is contributed capital³ from Citizens Westfield Utilities,
12 LLC. This \$44.3M is subject to priority dividend payments to Citizens Westfield
13 Utilities, LLC ("Member"). The Operating Agreement requires Petitioner to make
14 priority payments to its parent in an amount "at least sufficient to allow the Member
15 to pay its obligations."⁴ Common equity does not have this type of priority for
16 dividend payments; rather it is paid only after other obligations are fulfilled. For
17 2016, Citizens Water of Westfield, LLC and Citizens Wastewater of Westfield,

³ Petitioner's Response to OUCC DR 2.21, page 20 of 80, II Capital Contributions. See Attachment ETR-3.

⁴ Amended and Restated Operating Agreement for Citizens Wastewater of Westfield, LLC, provided in response to OUCC DR 1.4 (e). See Attachment ETR-4.

1 LLC are collectively responsible for priority payments to Citizens Westfield
2 Utilities, LLC in the amount of \$4,576,763.⁵

3 **Q: How should the capital contributed by Citizens Westfield Utilities, LLC to**
4 **Citizens Wastewater of Westfield, LLC be treated?**

5 A: To acquire Citizens Wastewater of Westfield, LLC (and Citizens Water of
6 Westfield, LLC). Citizens Westfield Utilities, LLC issued \$69,090,000⁶ in debt.
7 Petitioner then classified the funds (debt) that were used to finance its purchase as
8 common equity. Citizens Westfield Utilities, LLC is required to make principle
9 and interest payments on the debt it issued to acquire the water and wastewater
10 utilities from the City of Westfield. Citizens Westfield Utilities, LLC's only source
11 of revenues is dividends from its Water, Wastewater and Gas utilities. Petitioner's
12 Amended and Restated Operating Agreement for Citizens Wastewater of
13 Westfield, LLC, Section 6.02 confirms that Petitioner is obligated to make dividend
14 payments to its Parent company. The agreement states:

15 Distributions. Cash or other property shall be distributed to the
16 Member at such time or times as the Board of Directors shall
17 determine. To the extent permitted by laws, the Company **shall pay**
18 dividends to the Member which **are at least sufficient to allow the**
19 **Member to pay its obligations.**

20 (Underline emphasis in original, bolded emphases added)

⁵ Petitioner's Response to OUCC DR 11.2 (d). See Attachment ETR-5.

⁶ Unanimous Written Consent of The Board of Directors of Citizens Westfield Utilities, LLC to Action Without a Meeting, I. Approval of Financing, effective March 11, 2014. See Attachment ETR-3.

1 A report from Fitch (Petitioner's WP 612 and Attachment ETR-6) also discusses
2 the relationship between Citizens Wastewater of Westfield, LLC and its Parent as
3 follows:

4 **Weakest Link Rating:** Fitch believes that the utility's legal
5 requirement to declare and pay dividends to the holding company
6 adds notable risk to the bondholders. The utility, Citizens Water of
7 Westfield, LLC (rated BBB' Stable Outlook by Fitch) and Citizens
8 Gas of Westfield, LLC (not rated, together, the operating
9 companies) are required to pay dividends to the holding company in
10 amounts that are sufficient to pay the obligations of the holding
11 company. Financial deterioration in any one of the operating
12 companies could result in increased dividend payments by the
13 others. Therefore, the rating on the utility considers and is limited
14 by the lowest relative credit strength of all the individual operating
15 companies.

16 (Underlined Emphasis added)

17 Petitioner has a financial obligation to pay dividends to Citizens Westfield Utilities,
18 LLC and due to that obligation, the capital Citizens Westfield Utilities, LLC
19 contributed to Petitioner is more consistent with preferred stock than common
20 stock. It should be treated as preferred stock in the capital structure, separate from
21 common equity.

22 **Q: What is preferred stock?**

23 A: Preferred stock is considered a hybrid form of capital. It shares both the
24 characteristics of equity and debt. Preferred stock is similar to equity, because the
25 payments are made after debt payments. A preferred shareholder cannot foreclose
26 on a company if it fails to make its preferred stock payment. However, preferred

1 stock is similar to debt, because it is a fixed payment and the payments must be
2 made before common dividends are paid.

3 **Q. Why should the majority of Citizens Westfield Utilities, LLC's capital**
4 **contribution to Petitioner be treated as preferred stock for ratemaking**
5 **purposes?**

6 A. My recommendation is based on the priority dividend payments required under the
7 Amended and Restated Operating Agreement for Citizens Wastewater of
8 Westfield, LLC. When these type of payments become obligations (not residual
9 payments) they cease to be performance based equity distributions to the
10 shareholders, but in fact are required payments.

11 Preferred stock is equity that has a fixed or priority dividend payout.
12 Preferred stockholders have priority over common stockholders when it comes to
13 the receipt of dividends. Petitioner's obligation to make payments to its Parent
14 company makes the capital contributed to Petitioner more consistent with preferred
15 stock than it is with common stock or debt. The OUCC's capital structure properly
16 reflects the economic reality of Petitioner's capital structure.

17 **Q. Are there any independent third party analyses that recognize Petitioner's**
18 **priority dividend payment requirement?**

19 A. Yes. Fitch Ratings report discussed earlier recognizes this requirement.

20 **Q. What capital structure is the OUCC recommending in developing the**
21 **weighted average cost of capital in this proceeding?**

22 A. The capital structure I recommend is developed on Attachment ETR-1 and consists
23 of a December 31, 2015, capital structure totaling \$61,432,000. It includes
24 \$1,862,000 in common equity (3.03% of the total), \$44,300,000 in preferred equity
25 (72.11% of the total) and \$15,270,000 in long-term debt (24.86% of the total).

III. EFFECTIVE COST OF PREFERRED STOCK

1 **Q.** What cost rate should apply to the preferred stock you have adopted for
2 ratemaking purposes?

3 **A.** The \$69,090,000 debt⁷ to fund the Westfield Water and Westfield Wastewater
4 acquisitions should be divided by the \$4,563,763 current annual obligation to
5 Citizens Westfield Utilities. LLC. The appropriate cost rate is 6.61% and is
6 developed on Attachment ETR-2. Because the Member's debt was used
7 exclusively to purchase Westfield Water and Wastewater and both the Water and
8 Wastewater utilities are collectively responsible to make dividend payments to pay
9 for the Member's repayment of its debt (interest and principal), it is appropriate to
10 use the total debt and dividend requirement to calculate the rate of Petitioner's
11 preferred stock. The total invested capital and dividend requirement are taken from
12 Petitioner's response to OUCC data request 15-6 d.

IV. RECOMMENDATIONS

13 **Q.** What is the OUCC recommending in this proceeding?

14 **A.** The OUCC recommends the Commission:

- 15 • Recognize the capital structure for ratemaking purposes contained on
16 Attachment ETR-1
- 17 • Recognize the preferred stock cost rate of 6.61% contained on
18 Attachment ETR-2.

19 **Q.** Does this conclude your testimony?

20 **A:** Yes.

⁷ Petitioners wp 120, pp. 0077-0079. See Attachment ETR-7.

APPENDIX A

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

2 **A:** I am a graduate of Drexel University in Philadelphia, PA, with a Bachelor of
3 Science degree in Business Administration. I was employed by South Jersey Gas
4 Company as an accountant responsible for coordinating annual budgets, preparing
5 preliminary monthly, quarterly, annual and historical financial statements, assisting
6 in preparation of annual reports to shareholders, all SEC filings, state and local tax
7 filings, all FPC/FERC reporting, plant accounting, accounts payable, depreciation
8 schedules and payroll. Once the public utility holding company was formed, South
9 Jersey Industries, Inc., I continued to be responsible for accounting as well as for
10 developing the consolidated financial statements and those of the various subsidiary
11 companies including South Jersey Gas Company, Southern Counties Land
12 Company, Jessie S. Morie Industrial Sand Company, and SJI LNG Company.

13 I left South Jersey Industries, Inc. and took a position with Associated
14 Utility Services Inc. (AUS), a consulting firm specializing in utility rate regulation
15 including rate of return, revenue requirement, purchased gas adjustment clauses,
16 fuel adjustment clauses, revenue requirement development and valuation of
17 regulated entities.

1 On leaving AUS, I worked as an independent consultant in the public utility
2 area as well as telecommunications including cable television (CATV). I joined
3 the OUCC in December 2012 as a utility analyst.

4 **Q: Have you previously testified before the Indiana Utility Regulatory**
5 **Commission?**

6 **A:** I have previously testified before the Indiana Utility Regulatory Commission
7 (Commission) in Cause Nos. 44311, 44331, 44339, 44363, 44370, 44418, 44429,
8 44446, 44478, 44486, 44495, 44497, 44526, 44540, 44542, 44576, 44602, 44403,
9 44634, 44645, 44688, 44794 plus 43827 and 43955 DSM dockets and several sub-
10 dockets.. I have also testified before the regulatory commissions in the states of
11 New Jersey, Delaware, Maryland, Pennsylvania, New York, Connecticut, Georgia,
12 Florida, North Carolina, Ohio, Oklahoma, Virginia and Wisconsin. In addition to
13 the states mentioned, I submitted testimony before the utility regulatory
14 commissions in the Commonwealth of Puerto Rico and the U.S. Virgin Islands. I
15 have also testified as an independent consultant on behalf of the U.S. Internal
16 Revenue Service in Federal Tax Court, New York jurisdiction.

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3 Science degree in Business Administration. I was employed by South Jersey Gas
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5 preliminary monthly, quarterly, annual and historical financial statements, assisting
6 in preparation of annual reports to shareholders, all SEC filings, state and local tax
7 filings, all FPC/FERC reporting, plant accounting, accounts payable, depreciation
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16 Revenue Service in Federal Tax Court, New York jurisdiction.

DESCRIPTION	PETITIONER'S EXHIBIT 3			PERCENT OF
	ACTUAL AT 12/31/2015	ADJUSTMENT	ADJUSTED AT 12/31/2015	TOTAL 12/31/2015
CAPITAL CONTRIBUTION:				
PAID-IN-CAPITAL (c)	\$44,622,011	(\$44,300,000)	\$322,011	
RETAINED EARNINGS (b)	<u>1,539,989</u>	<u>0</u>	<u>1,539,989</u>	
TOTAL CAPITAL CONTRIBUTION (a)	46,162,000	(44,300,000)	1,862,000	3.03%
PREFERRED/PREFERENCE STOCK CAPITAL	0	44,300,000	44,300,000	72.11%
DEBT:				
SHORT-TERM DEBT (d)	0	0	0	
LONG-TERM DEBT (a)	<u>15,270,000</u>	<u>0</u>	<u>15,270,000</u>	
TOTAL DEBT	15,270,000	0	15,270,000	<u>24.86%</u>
TOTAL INVESTED CAPITAL	<u>\$61,432,000</u>	<u>\$0</u>	<u>\$61,432,000</u>	<u>100.00%</u>
NOTES:				
(a) Petitioner's Exhibit 3, page 5 of 11.				
(b) Response to OUCC Data Request 15, No. 3				
(c) Response to OUCC Data Request 2.21 page 20 of 80				
(d) Response to OUCC Data Request 15 - 3				

**CITIZENS WASTEWATER OF WESTFIELD, LLC
DEVELOPMENT OF PREFERRED/PREFERENCE CAPITAL COST RATE**

Cause No. 44835
Attachment ETR-2
Page 1 of 1

DESCRIPTION	CAPITAL CONTRIBUTION PREFERRED/PREFERENCE CONTRIBUTION DEVELOPMENT OF EFFECTIVE COST 03/11/14
CAPITAL CONTRIBUTION TO CITIZENS WATER OF WESTFIELD AND CITIZENS WASTEWATER OF WESTFIELD (a)	\$69,090,000
OBLIGATION OF CITIZENS WATER OF WESTFIELD AND CITIZENS WASTEWATER OF WESTFIELD CALENDAR YEAR 2016 (MEMBERS) (b)	\$4,563,763
EFFECTIVE COST RATE	6.61%
NOTES: (a) Unanimous Written Consent of the Board of Directors of Westfield Utilities, LLC to Action Without a Meeting, response to OUCC DR 2.21, pages 19, 20, 21, 22 and 23 of 80. (b) Response of Petitioner to OUCC DR 11.2 (d)	

Exhibit A
to
Operating Agreement

Name, Address and Capital Contribution of Member

<u>Member</u>	<u>Capital Contribution</u>
Citizens Energy Services Company, LLC 2020 N. Meridian Indianapolis, Indiana 46202	\$1,000.00

WHEREAS, the Board has determined it is desirable and in the best interest of the Company to enter into an interest rate swap transaction (the "2014 Swap") with respect to the interest rates paid on the IFA 2014 Westfield Utilities Bonds; and

WHEREAS, the Board has determined it is desirable and in the best interest of the Company to enter each of the financing documents listed in Exhibit A attached hereto and all other agreements, documents or instruments to be executed and/or delivered in connection with the IFA 2014 Westfield Utilities Bonds, the 2014 Swap and the Continuing Covenant Agreement, including the execution and delivery of certain borrower notes to be issued by the Company (collectively, the "Financing Documents").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COMPANY THAT:

SECTION 1. The foregoing recitals are incorporated herein by reference are hereby ratified, confirmed and approved.

SECTION 2. The Board hereby approves, confirms and ratifies the execution, delivery and performance of the Financing Documents in substantially the form presented to the Board, and all other agreements, documents or instruments to be executed and/or delivered pursuant to the Financing Documents and such other documents and authorizes the officers of the Company (the "Authorized Officers"), singly or otherwise, to execute and deliver the Financing Documents and such other documents with such changes in form and/or substance as the Authorized Officers who execute the Financing Documents deem appropriate, their approval and acceptance of such changes to be evidenced by their execution and delivery thereof, and to take such other actions as may be necessary or desirable to consummate the transactions contemplated thereby.

SECTION 3. The taking of any action or the execution of any instrument by the Authorized Officers in connection with the foregoing resolutions shall be conclusive of such Authorized Officers' determination that the same was necessary to serve the best interests of the Company.

SECTION 4. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

II. Capital Contributions

WHEREAS, the Board has determined that it is desirable and in the best interest of the Company, upon receipt of the funds from the IFA 2014 Westfield Utilities Bonds as described in the foregoing resolutions, to (a) make a capital contribution in the amount of \$21,790,000 to Citizens Water of Westfield and (b) make a capital contribution in the amount of \$44,300,000 to Citizens Wastewater of Westfield (collectively, the "Capital Contributions").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COMPANY THAT:

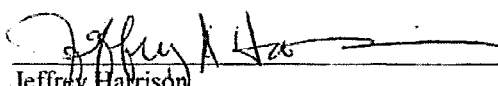
SECTION 1. The foregoing recitals are incorporated herein by reference are hereby ratified, confirmed and approved.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent as of the date first set forth above.

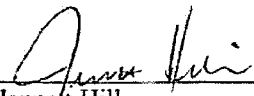
BOARD OF DIRECTORS



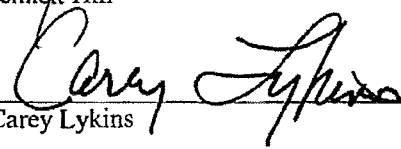
John Brehm



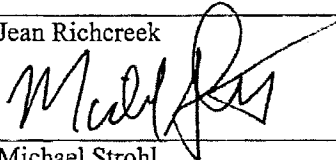
Jeffrey Harrison



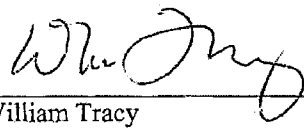
Jennett Hill



Carey Lykins

Jean Richcreek


Michael Strohl



William Tracy

**AMENDED AND RESTATED OPERATING AGREEMENT
FOR
CITIZENS WASTEWATER OF WESTFIELD, LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT ("Agreement"), is made and entered into this 3rd day of February, 2014 to be effective as of November 5, 2012 (the "Effective Date"), by and between Citizens Wastewater of Westfield, LLC, an Indiana limited liability company (the "Company"), and Citizens Westfield Utilities, LLC, an Indiana limited liability company (the "Member"), the sole member of the Company. The Member is the permitted transferee of Citizens Energy Services Company, LLC ("CESCO"), the initial sole member of the Company. The Company was organized as a limited liability company under the Indiana Business Flexibility Act, as amended, Ind. Code 23-18-1-1 et seq. (the "Act"). Certain defined terms used but not otherwise defined in this Agreement are set forth in Schedule I attached hereto and made a part hereof. In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE I

PURPOSES

As set forth in the Articles of Organization of the Company (the "Articles"), the Company was organized for the purpose of acquiring and operating a wastewater utility in Westfield, Indiana, to provide reliable, adequate and safe wastewater services to customers of the utility and to engage in and do any act in furtherance of any and all lawful businesses and activities for which limited liability companies may be formed under the Act. The Member is a separate wholly-owned subsidiary limited liability company of CESCO. CESCO is a separate wholly-owned subsidiary limited liability company of Citizens By-Products Coal Company d/b/a Citizens Resources ("Resources"), which is itself a separate wholly-owned subsidiary of the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as successor trustee for a public charitable trust d/b/a Citizens Energy Group ("Citizens Energy Group"). In furtherance of Citizens Energy Group's public charitable trust purposes, and under its authority pursuant to Ind. Code 8-1-11.1-3(c)(8) pertaining to Resources, Resources and its above-referenced direct and indirect subsidiaries have authorized the organization of the Company for the purposes set forth herein.

ARTICLE II

ORGANIZATIONAL MATTERS

Section 2.01. Principal Place of Business. The principal place of business of the Company shall be 2020 N. Meridian, Indianapolis, Indiana 46202, or such other address as may be established by the Member (the "Principal Office").

Section 2.02. Registered Office and Registered Agent. The Company's registered office shall be at its Principal Office and the name of its initial registered agent at such address shall be

Aaron D. Johnson. The Company may designate another registered office or agent at any time by following the procedures set forth in the Act.

Section 2.03. Duration. The existence of the Company shall continue in perpetuity, unless and until the Company is dissolved in accordance with Article IX or the Act.

ARTICLE III

MEMBERS AND CAPITAL STRUCTURE

Section 3.01. Name and Address of Member. The name of the Member and its last known business or mailing address is listed on Exhibit A attached hereto. The Member shall update Exhibit A from time to time as necessary to accurately reflect the information therein.

Section 3.02. Capital Contributions. The Member shall make Capital Contributions from time to time as determined by the Member.

Section 3.03. Capital Accounts.

(a) An individual capital account (the "Capital Account") shall be established and maintained on behalf of the Member. The Capital Account of the Member shall consist of (i) the amount of cash the Member has contributed to the Company, plus (ii) the fair market value of any property the Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject, plus (iii) the amount of profits or income (including tax-exempt income) of the Company, less (iv) the amount of losses and deductions of the Company, less (v) the amount of all cash distributed to the Member, less (vi) the fair market value of any property distributed to the Member, net of any liability assumed by such Member or to which such property is subject, less (vii) any other expenditures which are not deductible by the Company for federal income tax purposes or which are not allowable as additions to the basis of Company property, and (viii) subject to such other adjustments as may be required under the Code.

(b) The Member shall not have any liability or obligation to restore a negative or deficit balance in its Capital Account.

Section 3.04. Member Loans or Services. Loans or services by the Member to the Company shall not be considered Capital Contributions unless otherwise designated by the Member.

Section 3.05. Admission of Additional Members. The Member may admit Additional Members to the Company, who will be entitled to participate in the rights of Members as described herein, with admission thereof on such terms as are determined by the Member. Any such Additional Members shall be allocated net income, gains, losses, deductions and credits by such method as may be provided in this Agreement or any successor agreement hereto.

ARTICLE IV

MANAGEMENT OF THE COMPANY

Section 4.01 Management. The business and affairs of the Company shall be directed, managed and controlled by a group of managers known as the board of directors (the "Board of Directors"). Except as otherwise expressly required by this Agreement or nonwaivable provisions of applicable law, the Board of Directors shall have the authority, power and discretion to establish policies and procedures for the Company, to manage, direct and control the business, affairs and properties of the Company and to perform all other acts or activities customary or incident to the Company's business and affairs, in each case, without obtaining the approval of the Member. The Board of Directors shall act only collectively at meetings or by written consent in accordance with this Agreement. Unless authorized to do so by this Agreement or the Board of Directors, and except as may otherwise be provided in this Agreement or the Act, no single member of the Board of Directors (a "Director"), officer, employee, attorney-in-fact or other agent of the Company shall have any power or authority to bind the Company in any way, to engage in any other business, to pledge its credit for any reason or to render it liable for any purpose. Unless otherwise expressly set forth in this Agreement, the Board of Directors shall be deemed to have the same powers as a business corporation's board of directors. The Board of Directors shall be considered the "manager" of the Company as that term is defined under the Act.

Section 4.02. Number, Appointment and Tenure.

(a) Appointment. The Board of Directors shall be comprised of nine (9) directors or such other number as the Member shall prescribe from time to time. Directors need not be Members. Only an individual (and not an entity) may serve as a Director. The individuals serving on the Board of Directors on and after February 8, 2014 shall be John Brehm, Jeffrey Harrison, Jennett Hill, Carey Lykins, Jean Richcreek, Michael Strohl, and William Tracy.

(b) Tenure. Each Director shall hold office until such Director's successor shall have been appointed by the Member or until such Director's prior death, resignation or removal.

(c) Resignation. A Director may resign at any time by delivering written notice to the Members.

(d) Removal. Any or all of the Directors may be removed at any time, with or without cause, by the Member upon delivery of a written notice of removal to the applicable Director and the other Directors.

(e) Vacancies. Any vacancy occurring in the Board of Directors shall be filled by the Member.

Section 4.03. Meetings. The Board of Directors shall meet from time to time as required to carry on the business and affairs of the Company. Any Director may call a meeting of the Board of Directors. The Director(s) calling the meeting may designate any place, either

within or outside the State of Indiana, as the place of meeting for any meeting of the Board of Directors. Meetings of the Board of Directors may be held in person or by use of any means of communication by which all Directors participating in the meeting may simultaneously hear each other, such as conference telephone.

Section 4.04. Notice; Waiver. Notice of each meeting of the Board of Directors shall be given to each Director (a) not less than 48 hours prior to the meeting by giving oral or written notice to a Director in person or by telephone, facsimile or electronic transmission using the Director's business phone number, facsimile number or e-mail address or such other number or address as the Director shall have designated in writing and filed with the Company or (b) not less than three days prior to a meeting by mailing notice to the Director's business address or such other address as the Director shall have designated in writing and filed with the Company. If delivered in person or by telephone, then such notice shall be deemed delivered upon actual receipt; if delivered by facsimile or electronic transmission, then such notice shall be deemed delivered on the day of the transmission or, if the transmission is not made before 5:00 p.m., at the place of receipt, on a Business Day, the first Business Day after transmission (and sender shall bear the burden of proof of delivery); and if delivered by mail, then such notice shall be deemed to be delivered three days after deposited in the United States mail so addressed, with postage thereon prepaid. Whenever any notice is required to be given to any Director, a waiver thereof in writing signed at any time, whether before, on or after the date of the meeting, by the Director entitled to such notice shall be deemed equivalent to the giving of such notice. The attendance of a Director at a meeting of the Board of Directors shall constitute a waiver of notice of such meeting, except where a Director attends a meeting and objects thereto to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 4.05. Quorum. A majority of the Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 4.06. Conduct of Meetings. Except as otherwise expressly required by this Agreement, the affirmative vote of a majority of the Directors present shall be the act of the Board of Directors if the vote occurs at a meeting duly called and held and at which a quorum is present. For this purpose, each Director shall have one vote.

Section 4.07. Presumption of Assent. A Director who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Responsible Officer immediately after the adjournment thereof. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 4.08. Action by the Board of Directors Without a Meeting. Action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if: (a) the action is evidenced by a written consent describing the action taken; (b) the written consent is signed by a majority of the Directors then in office; and (c) the written consent is

delivered to the Company for inclusion in the records of the Company. Action taken under this Section 4.08 is effective when the Company receives a copy of the consent signed by the requisite number of Directors, unless the consent specifies a different earlier or later effective date.

Section 4.09. Applicable Duties; Exculpation. Each Director shall perform such Director's duties in good faith, in a manner that the Director reasonably believes to be in the best interests of the Company and with such care as an ordinarily prudent person in a like position would use under similar circumstances. No Director who so performs his or her duties shall be liable, in damages or otherwise, to the Company or to the Member for any loss that arises out of any act or omission of such Director pursuant to the authority granted by this Agreement unless such act or omission constituted: (a) a violation of a criminal law (unless the Director had reasonable cause to believe that the conduct was lawful or no reasonable cause to believe that the conduct was unlawful); (b) a transaction from which the Director derived an improper personal profit; or (c) willful misconduct or recklessness. In performing the Director's duties, a Director shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless the Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(i) One or more employees or other agents of the Company whom the Director reasonably believes to be reliable and competent in the matters presented;

(ii) Any attorney, public accountants, or other person as to matters with the Director reasonably believes to be within such person's professional or expert competence; or

(iii) A committee upon which the Director does not serve, duly designated in accordance with a provision of the Articles of this Agreement, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

Section 4.10. Indemnification. The Company shall, to the maximum extent permitted or required by law, indemnify, defend and hold harmless any Director or officer of the Company (each, an "Actor"), to the extent of the Company's assets, for, from and against any liability, damage, cost, expense, loss, claim or judgment incurred by the Actor arising out of any claim based upon acts performed or omitted to be performed by the Company or its Directors, officers, employees or agents in connection with the business of the Company. Notwithstanding the foregoing, no Actor shall be so indemnified, defended or held harmless from claims related to or resulting from (a) any act wherein the Actor failed to act in good faith and in a manner that the Actor reasonably believed to be in the best interests of the Company, (b) the Actor's willful failure to deal fairly with the Company or its Members in connection with a matter in which the Actor has a material conflict of interest, (c) the Actor's violation of a criminal law (unless the Actor had reasonable cause to believe that the conduct was lawful or no reasonable cause to believe that the conduct was unlawful), (d) a transaction from which the Actor derived an improper personal profit or (e) the Actor's willful misconduct; and provided, further, that indemnification under this Section 4.10 shall be recoverable only from the assets of the Company and not from any assets of the Members.

Section 4.11. Delegation of Certain Management Authority. The Company shall have the following officers: President, Vice President, Secretary and Treasurer. Each officer shall be appointed by the Board of Directors. A single individual may hold more than one office, and a Director may also serve as an officer. Officers shall serve a term of one (1) year and/or until such officer's successor has been duly appointed. In addition, the Board of Directors may, from time to time, delegate additional powers and duties to individuals who may be serving as officers, under the Board of Directors' powers and authority, which shall be separate and apart from the powers and duties held by such individuals by virtue of their office as herein provided, and any powers and duties so delegated to any officer or individual may be terminated by the Board of Directors at any time, with or without cause. Any vacancy in an officer position shall be filled by appointment of the Board of Directors. An individual appointed to fill a vacancy shall serve the unexpired term of his or her predecessor in office and/or until such officer's successor has been duly appointed. Any officer may be removed by the Board of Directors at any time, with or without cause. The officers, and their powers and duties, shall be as follows:

(a) President. The President shall be the presiding officer and is responsible for managing and supervising the affairs and personnel of the Company, including the day-to-day management and supervision of the affairs of the Company, subject to the overall general control of the Board of Directors.

(b) Vice President. The Vice President has all the powers of, and performs all the duties incumbent upon, the President during the President's absence or disability, and shall have such other duties as shall be assigned to the Vice President by the President or the Board of Directors, subject to the overall general control of the Board of Directors.

(c) Secretary. The Secretary shall attend all meetings of the Board of Directors and of the Member and record all of the proceedings of such meetings in a book to be kept for that purpose. The Secretary shall see that all notices are duly given in accordance with the provisions of this Agreement and as required by law, shall be custodian of the non-financial records of the Company. The Secretary shall be responsible for authenticating the Company's records and official documents, and shall perform all other duties and have all other power incident to the office of secretary, including without limitation such duties and power customarily vested in the secretary.

(d) Treasurer. The Treasurer shall have charge and custody of, and be responsible for the funds and financial books and records of the Company. The Treasurer shall furnish at meetings of the Board of Directors and Member, or when otherwise requested, a statement of the financial condition of the Company. The Treasurer shall perform all other duties and have all other power incident to the office of treasurer, including without limitation such duties and power customarily vested in the treasurer.

(e) Other Officers. The Board of Directors shall have the power and authority to create such other officer positions and to designate the titles, responsibilities, power and authority, method of selection and terms of office, thereof and to delegate to such officers such responsibilities and authority as it shall determine to be appropriate. Upon the exercise of such authority by the Board of Directors, this Agreement shall be deemed amended without further act or deed to reflect and incorporate the creation of any and all

such officer positions, the method of selection and terms of office, the delegation of such responsibilities and authority, and the designation of such titles, responsibilities, power and authority.

Section 4.12. Company as Separate Special Purpose Entity. The Company was created as a special purpose entity to acquire and operate a wastewater utility in Westfield, Indiana, and to provide reliable, adequate and safe wastewater services to customers of the utility. While the organizational purposes under the Act, the Articles and Article I of this Agreement further include engaging in any other lawful businesses or activities, engaging in any other businesses would require the approval of the Member. The Company was organized as an entity separate from its Member, and separate from any other Affiliate. The Company shall be solely responsible for the acquisition and operation of the wastewater utility in Westfield, Indiana and shall be solely responsible and liable for its own expenses, debts, obligations, and liabilities, whether arising in contract, tort or otherwise, and for its own acts or omissions, and payable out of its own funds, and no Member, Affiliate, Director, manager, agent or employee of the Company shall have any liability for such expenses, debts, obligations or liabilities, or for any such acts or omissions. In this regard,

(a) The Company shall conduct its business in its own name and for its own account, and shall not purport to bind or obligate the Member or any other Affiliate. The Company shall endeavor to correct any known misunderstanding concerning its separate existence and identity. The Company shall keep at its principal office the records and information required by Ind. Code 23-18-4-8(a) and its own separate minute book(s) reflecting meetings and actions taken by the Board of Directors and the Member. The Company shall maintain its own separate financial statements and books of account, and its funds shall be separately accounted for and maintained as separately identified from and not commingled with the funds of the Member or any Affiliate, and in a manner consistent with any indentured debt requirements and regulatory requirements. The financial statements and books of account shall include the amount of any cash and a statement of the agreed value of any other property or services contributed by the Member, and to the extent applicable, the times at which or events upon the happening of which any additional contributions agreed to be made by the Member are to be made.

(b) The Company's rates and charges for the provision of wastewater services and other aspects of its operations are regulated by the Indiana Utility Regulatory Commission ("IURC"). The Company shall from time to time, subject to applicable statutory and contractual obligations, seek such rates and charges as shall be necessary to provide for safe, adequate, and reliable wastewater to the customers of the Company, to properly satisfy lawfully incurred liabilities, to provide for the long term maintenance and integrity of the wastewater system, including all necessary or appropriate capital investments and expenditures, depreciation, and operating expenses, to cover any and all inherent risks in operating a water utility, and to assure a fair return on debt and equity capital, permitting the Company to meet its obligations to the Member pursuant to Section 6.02 hereof.

(c) The capital structure of the Company, upon the acquisition of the wastewater system serving the Westfield, Indiana community and the commencing of its operations, in light of the Company's projected revenue, risk management program and third party and

insurance and indemnity coverages, has been determined by the Board of Directors to be reasonable and adequate to meet the Company's anticipated obligations, liabilities and operations. Dividend and distributions by the Company to the Member shall only be made in compliance with this Agreement and applicable law.

(d) In dealings with the Member and any Affiliate, the provision of goods or services to or from the Company, including any overhead or space sharing allocations, shall be on terms and conditions that comply with applicable affiliate guidelines established by the Company and its Affiliates designed to reflect arm's-length relationships and compliance with any applicable IURC or other regulatory requirements.

(e) The requirements of this Agreement in all events shall be subject to Ind. Code 23-18-4-8(e).

ARTICLE V

ACCOUNTING AND RECORDS

Section 5.01. Records and Accounting. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods elected to be followed by the Company for federal income tax purposes. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. The fiscal year of the Company for financial reporting and for federal income tax purposes shall be the calendar year.

Section 5.02. Access to Records. The books and records of the Company, to the extent required by the Act, shall be maintained at the Company's Principal Office, and the Member and its duly authorized representatives shall have access to where they are located and have the right to inspect and copy them during ordinary business hours.

Section 5.03. Annual Tax Information. The Company shall use its best efforts to deliver to the Member within 90 days after the end of each fiscal year all information necessary for the preparation of the Member's federal and state income tax returns. The Company shall also use its best efforts to prepare, within 90 days after the end of each fiscal year, a financial report of the Company for such fiscal year containing a balance sheet as of the last day of the year then ended, an income statement for the year then ended, a statement of sources and applications of funds, and a statement of reconciliation of the Capital Account of the Member.

Section 5.04. Accounting Decisions. All decisions as to accounting matters, except as otherwise specifically set forth in this Agreement, shall be made by the Board of Directors.. The Board of Directors may rely upon the advice of its internal and external accountants as to whether such decisions are in accordance with the Act or other accounting methods followed for federal, state or local tax or other purposes.

Section 5.05. Federal Income Tax Elections. The Board of Directors shall make all elections for federal income tax purposes.

ARTICLE VI

ALLOCATIONS AND DISTRIBUTIONS

Section 6.01. Allocation of Net Income, Net Loss or Capital Gains. The net income, net loss, or capital gains of the Company for each fiscal year of the Company shall be allocated 100% to the Member.

Section 6.02. Distributions. Cash or other property shall be distributed to the Member at such time or times as the Board of Directors shall determine. To the extent permitted by law, the Company shall pay dividends to the Member which are at least sufficient to allow the Member to pay its obligations.

ARTICLE VII

TRANSFERS OF INTERESTS

The Member may Transfer all or any portion of its Interest to another Person at any time. If the Member Transfers its entire Interest to another Person and such Person is admitted as an Additional Member of the Company in accordance with **Section 3.05**, the Member shall cease to be a Member and shall not have any power to exercise any rights of a Member.

ARTICLE VIII

DISSOCIATION OF A MEMBER

The Member ceases to be a Member upon the occurrence of either of the following events: (a) the Member voluntarily withdraws from the Company; or (b) the Member Transfers its entire Interest to another Person and such Person is admitted as an Additional Member of the Company in accordance with the terms of **Section 3.05** (each, an "**Event of Dissociation**").

ARTICLE IX

DISSOLUTION AND WINDING UP

Section 9.01. Dissolution. The Company shall be dissolved and its affairs wound up on the first of the following to occur (a) a determination by the Member that the Company shall be dissolved; or (b) at such earlier time as may be required by applicable law. Notwithstanding any other provision of this Agreement or the Act, the Member hereby agrees that the business of the Company shall be continued upon the occurrence of an Event of Dissociation and that the Company shall not be dissolved upon the occurrence of an Event of Dissociation other than pursuant to the terms of **Section 9.01(a)**.

Section 9.02. Winding Up. Upon dissolution, the Member shall proceed to wind up and liquidate the business and affairs of the Company, and the Company may only carry on business that is appropriate to wind up and liquidate the business and affairs of the Company. The Member shall follow the procedure for disposing of known claims set forth in Ind. Code § 23-18-

9-8 and shall publish notice of the dissolution of the Company pursuant to Ind. Code § 23-18-9-9.

Section 9.03. Distribution of Assets. Upon the winding up of the Company, the assets shall be distributed as follows:

(a) To creditors, including the Member if it is a creditor of the Company to the extent permitted by law, in the order of priority as provided by law to satisfy the liabilities of the Company whether by payment or by the establishment of adequate reserves, excluding liabilities for distributions to the Member pursuant to Article VI;

(b) To the Member to repay any loans to the Company or to satisfy any liabilities for distributions pursuant to Article VI which remain unpaid; and

(c) To the Member in respect of its Capital Account after giving effect to all contributions, distributions and allocations for all periods.

ARTICLE X

MISCELLANEOUS

Section 10.01. Amendments. The Member and the Company may amend this Agreement from time to time by written instrument reflecting such amendment. Notwithstanding the foregoing, while the Assignment (as defined herein) is effective, Section 6.02 shall not be amended without the consent of the Trustee (as defined herein).

Section 10.02. Complete Agreement. This Agreement, the Articles and the exhibits and schedules attached hereto constitute the complete and exclusive statement of agreement between the Member and the Company with respect to its subject matter and supersede all prior written and oral statements and no representation, statement, or condition or warranty not contained in this Agreement or the Articles will be binding on the parties or have any force or effect whatsoever.

Section 10.03. Rights of Trustee. Pursuant to a Collateral Assignment Pertaining to Membership Interests dated as of March 1, 2014 (the "Assignment") by the Member in favor of Regions Bank (with its successors and assigns, the "Trustee"), which is hereby approved and consented to on behalf of the Company, the Trustee has been given (a) certain voting and management oversight rights under Sections 4.02, 6.02, 10.01 and this 10.03 of this Agreement and (b) certain rights to dividends and distributions declared or paid by the Company, in each case upon an Event of Default (as defined in the Assignment) as provided in the Assignment. Such rights upon an Event of Default shall continue hereunder so long as the Assignment is effective as provided in the Assignment.

Section 10.04. Governing Law. This Agreement and the rights of the parties under this Agreement will be governed by, interpreted, and enforced in accordance with the laws of the State of Indiana.

Section 10.05. Binding Effect; Conflicts. This Agreement will be binding upon and inure to the benefit of the parties, and their respective members, successors and assigns. This Agreement is subject to, and governed by, the Act and the Articles. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act or the provisions of the Articles, the provisions of the Act or the Articles, as the case may be, will be controlling.

Section 10.06. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

Section 10.07. Severability. If any provision of this Agreement is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, unreasonable, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, unreasonable, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable provision as may be possible and be legal, valid, reasonable, and enforceable.

Section 10.08. Additional Documents and Acts. Each party agrees to promptly execute and deliver such additional documents, statements of interest and holdings, designations, powers of attorney, and other instruments, and to perform such additional acts, as the other party may determine to be necessary, useful or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement, and to comply with all applicable laws, rules and regulations.

Section 10.09. No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the parties and their respective successors and assigns.

Section 10.10. Notices. Any notice to be given or to be served upon the Company or the Member in connection with this Agreement must be in writing and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to the Member at the address specified on Exhibit A. Any party may, at any time by giving five days' prior written notice to the other party, designate any other address in substitution of the foregoing address to which such notice will be given.

Section 10.11. Title to Company Property. Legal title to all property of the Company will be held and conveyed in the name of the Company.

Section 10.12. No Remedies Exclusive. To the extent any remedies are provided herein for a breach of this Agreement, the Articles or the Act, such remedies shall not be exclusive of any other remedies the aggrieved party may have, at law or in equity.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

"COMPANY"

CITIZENS WASTEWATER OF WESTFIELD, LLC

By: 

Name: Michael D. Stahl

Title: President

"MEMBER"

CITIZENS WESTFIELD UTILITIES, LLC

By: 

Name: Aaron Johnson

Title: President

Schedule I
to
Operating Agreement

Schedule of Definitions

The terms used in this Agreement with their initial letters capitalized shall have, unless the context otherwise requires or unless otherwise expressly provided in this Agreement, the meanings specified in this Schedule I. Any capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Act. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires. To the extent any statutory citation made in this Agreement is subsequently changed, the citation in this Agreement shall be deemed to refer to the subsequently changed citation. When used in this Agreement, the following terms shall have the meanings set forth below:

"Additional Member" means any individual or Entity admitted as a Member pursuant to Section 3.05.

"Affiliate" means any Person controlling, controlled by or under common control with the Company, and in any event shall include, in the context of an Affiliate of the Company, Citizens Water of Westfield, LLC, Citizens Gas of Westfield, LLC, Citizens Westfield Utilities, LLC, Citizens Energy Services Company, LLC, Citizens By-Products Coal Company, Inc., and the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, whether acting for itself or as trustee of any public charitable trust.

"Capital Contribution" means the total value of cash and agreed fair market value of property contributed and agreed to be contributed to the Company by the Member.

"Cash" means all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions and cash funds obtained from loans to the Company) after payment or provision for (i) all operating expenses of the Company as of such time, (ii) all outstanding and unpaid current obligations of the Company as of such time, and (iii) a reasonable working capital reserve (as determined by the Member).

"Code" means the Internal Revenue Code of 1986, as amended. All references in this Agreement to sections of the Code shall include any corresponding provision or provisions of any succeeding law.

"Entity" means any association, corporation, general partnership, limited partnership, limited liability partnership, limited liability company, joint stock association, joint venture, firm, trust, business trust, cooperative, municipal or other governmental entity, board or other body, public charitable trust, or foreign associations of like structure.

"Interest" means the entire ownership interest of the Member in the Company at any particular time, including the right of the Member to any and all benefits to which the Member

may be entitled as provided in this Agreement and under the Act, together with the obligations of the Member to comply with all of the terms and provisions of this Agreement.

"Person" means an individual or an Entity.

"Transfer" means any "assignment" as that term is used in Ind. Code 23-18-6-3.1 and - 4.1, and includes any gift, sale, exchange, assignment, conveyance, alienation or other transfer, whether voluntary or involuntary, and includes any Transfer to a receiver, bankruptcy trustee, judgment creditor, lienholder, holder of a security interest, pledge or other encumbrance, and Transfer upon judicial order or other legal process.

Exhibit A
to
Operating Agreement

Name, Address and Capital Contribution of Member

<u>Member</u>	<u>Capital Contribution</u>
Citizens Westfield Utilities, LLC 2020 N. Meridian Indianapolis, Indiana 46202	\$1,000.00

Cause No. 44835
Responses of Citizens Wastewater of Westfield
Office of Utility Consumer Counselor's
Eleventh Set of Data Requests

DATA REQUEST NO. 2:

Please reference Section 6.02 of the Operating agreement below and answer the following questions:

Section 6.02. Distributions. Cash or other property shall be distributed to the Member at such time or times as the Board of Directors shall determine. To the extent permitted by law, the Company shall pay dividends to the Member which are at least sufficient to allow the Member to pay its obligations.

- a. Section 6.02 of the Operating Agreement states the "Company shall pay dividends to the Member which are at least sufficient to allow the Member to pay its obligations"; what was the Member's obligations in calendar years 2014 and 2015?
- b. Please explain how the member's obligation is calculated.
- c. Please explain how Petitioner's portion of the member's obligation is calculated.
- d. What is the Member's obligations in calendar year 2016, 2017 and 2018?

RESPONSE:

Petitioner objects to this request on the grounds that the obligations of Citizens Westfield Utilities, LLC (the "Member" within the meaning of Section 6.02 of the Operating Agreement) are not relevant to this proceeding and the request is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection, Petitioner responds as follows.

- a. The Member's obligation in 2014 was \$2,052,419 and in 2015 was \$4,293,652.
- b. The Member's obligation is the principal amortization of its debt, interest on its debt at LIBOR X 0.74 plus a bond spread, and a fixed portion of an interest rate swap including any fees.
- c. In addition to the objection set forth above, Petitioner further objects to the extent the request mischaracterizes Petitioner as a joint obligor for the Member's obligations.
- d. The Member's obligation is dependent on LIBOR rates; at today's LIBOR it will be \$4,563,763 in calendar 2016, \$4,478,742 in calendar 2017, and \$4,285,161 in calendar 2018.

WITNESS:

Sara J. Mamuska-Morris

Cause No. 44835
Responses of Citizens Wastewater of Westfield
Office of Utility Consumer Counselor's
Eleventh Set of Data Requests

DATA REQUEST NO. 3:

How much in dividends is Citizens Wastewater of Westfield required to pay to the holding company for each calendar year during the period 2016 - 2020?

RESPONSE:

Petitioner objects to this request (a) to the extent it mischaracterizes the Amended and Restated Operating Agreement for Citizens Wastewater of Westfield, LLC; and (b) on the grounds that the amount of dividends Petitioner pays during the period 2016 – 2020 is irrelevant to this proceeding and the request is not reasonably calculated to lead to the discovery of admissible evidence.

WITNESS:

N/A



33 Whitehall Street
New York, NY 10004

T 212 908 0500 / 800 75 FITCH
www.fitchratings.com

Mr. John Brehm, Chief Financial Officer
Citizens Energy Group
2020 North Meridian Street
Indianapolis, IN 46202

February 2, 2016

Dear Mr. Brehm,

Re: Fitch rating action affecting the rating of Indiana Finance Authority, IN (Citizens Westfield Utilities, LLC) utility dividends revenue bonds, series 2014

Fitch (see definition below) has affirmed the rating described below:

--\$67 million Indiana Finance Authority, IN (Citizens Westfield Utilities, LLC) utility dividends revenue bonds, series 2014 at 'BB'. The Rating Outlook is Stable.

The rating on the bonds is based on the following Key Rating Drivers:

Structural Risks Drive the Rating: Citizens Westfield Utilities, LLC's (the holding company) rating is based primarily on the priority of payment of the dividends received, as well as the credit quality of the operating companies: Citizens Wastewater of Westfield, LLC (Wastewater, rated 'BBB' Stable Outlook by Fitch), Citizens Water of Westfield, LLC (Water, rated 'BBB' Stable Outlook by Fitch) and Citizens Gas of Westfield, LLC (not rated, together, the operating companies). Each operating company is required to pay dividends to the holding company in amounts that are sufficient to pay the obligations of the holding company, although dividend payments from Water and Wastewater are subordinate in payment to these entities' own bonds.

Bond Structure Increases Risk: While the series 2014 bonds have a stated maturity of up to 30 years, the bonds are structured with a five-year mandatory tender, which adds risk to the bondholders. Management anticipates that the debt will be refinanced. Fitch believes that low cost market access may be limited given the credit quality of the holding company's debt. The rating also considers the additional risks of the bonds having a variable interest rate and a swap in order to fix-out the rate.

Dividends Adequately Meet Debt Service: While each operating company is able to support its proportionate share of dividend payments, under certain stress scenarios dividend payments would pressure operations and capital spending of the operating companies.

Collateral Assignment Adds Bondholder Protection: The holding company's pledge of its membership interests in each operating company provides additional bondholder security.

Strong Service Area: A strong service area with high wealth levels provides some rate flexibility. Unemployment within the service area is also favorable.



The bond rating is sensitive to the following:

Additional Leverage: Additional leveraging would place pressure on the credit and could result in negative rating action by Fitch.

Deterioration in Operating Company Credit Quality: Any Significant declines in the credit quality of the operating companies could have a negative effect on the rating.

Successful Refinancing of Debt: Citizens Energy Group's ability to successfully refinance the series 2014 bonds prior to the mandatory tender date will be viewed positively by Fitch and important to the rating.

In issuing and maintaining its ratings, Fitch relies on factual information it receives from issuers and underwriters and from other sources Fitch believes to be credible. Fitch conducts a reasonable investigation of the factual information relied upon by it in accordance with its ratings methodology, and obtains reasonable verification of that information from independent sources, to the extent such sources are available for a given security or in a given jurisdiction.

The manner of Fitch's factual investigation and the scope of the third-party verification it obtains will vary depending on the nature of the rated security and its issuer, the requirements and practices in the jurisdiction in which the rated security is offered and sold and/or the issuer is located, the availability and nature of relevant public information, access to the management of the issuer and its advisers, the availability of pre-existing third-party verifications such as audit reports, agreed-upon procedures letters, appraisals, actuarial reports, engineering reports, legal opinions and other reports provided by third parties, the availability of independent and competent third-party verification sources with respect to the particular security or in the particular jurisdiction of the issuer, and a variety of other factors.

Users of Fitch's ratings should understand that neither an enhanced factual investigation nor any third-party verification can ensure that all of the information Fitch relies on in connection with a rating will be accurate and complete. Ultimately, the issuer and its advisers are responsible for the accuracy of the information they provide to Fitch and to the market in offering documents and other reports. In issuing its ratings Fitch must rely on the work of experts, including independent auditors with respect to financial statements and attorneys with respect to legal and tax matters. Further, ratings are inherently forward-looking and embody assumptions and predictions about future events that by their nature cannot be verified as facts. As a result, despite any verification of current facts, ratings can be affected by future events or conditions that were not anticipated at the time a rating was issued or affirmed.

Ratings are not a recommendation or suggestion, directly or indirectly, to buy, sell, make or hold any investment, loan or security or to undertake any investment strategy with respect to any investment, loan, security or any issuer. Ratings do not comment on the adequacy of market price, the suitability of any investment, loan or security for a particular investor (including without limitation, any accounting and/or regulatory treatment), or the tax-exempt nature or taxability of payments made in respect of any investment, loan or security. Fitch is not your advisor, nor is Fitch providing to you or any other party any financial advice, or any legal, auditing, accounting, appraisal, valuation or actuarial services. A rating should not be viewed as a replacement for such advice or services. Ratings are based on established

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Fitch will continue to monitor the credit quality of and maintain ratings on the Issuer/Securities. It is important that you promptly provide us with all information that may be material to the ratings so that our ratings continue to be appropriate. Ratings may be raised, lowered, withdrawn, or placed on Rating Watch due to changes in, additions to, accuracy of or the inadequacy of information or for any other reason Fitch deems sufficient.

Nothing in this letter is intended to or should be construed as creating a fiduciary relationship between Fitch and you or between us and any user of the ratings.

A record has been made of this rating in our permanent files, but it is our current intention that the rating will not be released publicly as the issue has been placed privately. Notwithstanding the foregoing, nothing in this letter shall limit our right to publish, disseminate or license others to publish or otherwise to disseminate the ratings or the rationale for the ratings. Investors may find Fitch's ratings to be important information, and that if you have legitimately shared the rating with a third party per the terms of the fee agreement, please note that you are responsible for communicating the contents of this letter, and any changes with respect to the rating, to any such party as well.

In this letter, "**Fitch**" means Fitch Ratings, Inc. together with any successor in interest.

We are pleased to have had the opportunity to be of service to you. If we can be of further assistance, please contact me at 212-908-0833.

Sincerely,

By: 

Michael Rinaldi
Senior Director
Fitch

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170 IAC 1-5-13 Working Papers and Data: Rate of Return and Capital Structure

Sec. 13. (a) An electing utility shall submit the following information:

(10) All relevant reports in the utility's possession by rating agencies on the utility and its parent company for the test year, and thereafter up to the date of the final hearing. The reports should be based on the debt:

- (A) used in calculations in the electing utility's filing; or
- (B) of a parent company or proxy company whose debt is rated.



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New York, NY 10004

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Mr. John Brehm, Chief Financial Officer
Citizens Energy Group
2020 North Meridian Street
Indianapolis, IN 46202

February 2, 2016

Dear Mr. Brehm:

Re: Fitch rating action affecting the rating of Indiana Finance Authority, IN (Citizens Wastewater of Westfield, LLC) sewer revenue bonds, series 2014

Fitch (see definition below) has affirmed the ratings described below:

—\$15 million Indiana Finance Authority, IN (Citizens Wastewater of Westfield, LLC) sewer revenue bonds, series 2014 at 'BBB'. The Rating Outlook is Stable.

The rating on the bonds is based on the following Key Rating Drivers:

Stable/Solid Financial Performance: The 'BBB' rating reflects Citizens Wastewater of Westfield, LLC's (the utility) stable financial profile, including solid debt service coverage (DSC) ratios and sound liquidity. Based on a 30-year amortizing schedule, Fitch estimates the utility's DSC should remain strong throughout the forecast period (2016-2020). Further, all-in DSC is expected to remain stable even when the required dividend payments to Citizens Westfield Utilities, LLC (the holding company, rated 'BB' Stable Outlook by Fitch) are included in the DSC estimate as subordinate debt. The utility's solid liquidity position is bolstered by a \$10 million line of credit with PNC Bank. Due to the moderately rapid growth in the system's service area, certain financial metrics could be pressured in the future. However, Fitch views the utility's current rates to be affordable and should be able to sustain certain necessary rate increase.

Weakest Link Rating: Fitch believes that the utility's legal requirement to declare and pay dividends to the holding company adds notable risk to the bondholders. The utility, Citizens Water of Westfield, LLC (rated 'BBB' Stable Outlook by Fitch) and Citizens Gas of Westfield, LLC (not rated, together, the operating companies) are required to pay dividends to the holding company in amounts that are sufficient to pay the obligations of the holding company. Financial deterioration in any one of the operating companies could result in increased dividend payments by the others. Therefore, the rating on the utility considers and is limited by the lowest relative credit strength of all the individual operating companies.

Bond Structure Increases Risk: While the series 2014 bonds have a stated maturity of up to 30 years, the bonds are structured with a five-year mandatory tender (2019), which adds risk to the bondholders. Management anticipates that the debt will be refinanced prior to the mandatory tender date. Fitch believes

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that market access risk is mitigated, to some extent, by the credit quality of the utility. The rating also considers the additional risks of the bonds being structured with a variable interest rate and a swap in order to fix-out the rate.

Moderately High Debt Burden: The utility's debt load is moderately high but manageable even when factoring in the subordinate obligation to make dividend payments to the holding company. Only modest amounts of additional debt is expected to be issued through the forecast period using the utility's revolving credit facility.

Increasingly Stable Rate Regulatory Environment: Citizens has maintained a good track record of achieving positive and timely outcomes of its rate cases filed with the Indiana Utility Regulatory Commission (IURC). In addition, legislation that was passed in fiscal 2013 to help mitigate the effect of regulatory lag by requiring that rate cases take no longer than 300 days.

Strong Service Area: A strong service area with high wealth levels provides some rate flexibility. Unemployment within the service area is also favorable.

The rating is sensitive to the following:

Timely Rate Relief and Sound Financial Results: Citizen's ability to sustain sound long-term financial performance for the utility (including the water and gas systems) could result in positive rating action. Fitch also expects Citizens to continue to achieve timely rate increases from the IURC.

Additional Leverage: Significant additional leveraging could place pressure on the utility taking into account its subordinate obligation to the holding company.

Successful Refinancing of Debt: Citizens Energy Group's ability to successfully refinance the series 2014 bonds prior to the mandatory tender date will be viewed positively by Fitch and important to the rating.

In issuing and maintaining its ratings, Fitch relies on factual information it receives from issuers and underwriters and from other sources Fitch believes to be credible. Fitch conducts a reasonable investigation of the factual information relied upon by it in accordance with its ratings methodology, and obtains reasonable verification of that information from independent sources, to the extent such sources are available for a given security or in a given jurisdiction.

The manner of Fitch's factual investigation and the scope of the third-party verification it obtains will vary depending on the nature of the rated security and its issuer, the requirements and practices in the jurisdiction in which the rated security is offered and sold and/or the issuer is located, the availability and nature of relevant public information, access to the management of the issuer and its advisers, the availability of pre-existing third-party verifications such as audit reports, agreed-upon procedures letters, appraisals, actuarial reports, engineering reports, legal opinions and other reports provided by third parties, the availability of independent and competent third-party verification sources with respect to the particular security or in the particular jurisdiction of the issuer, and a variety of other factors.

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Users of Fitch's ratings should understand that neither an enhanced factual investigation nor any third-party verification can ensure that all of the information Fitch relies on in connection with a rating will be accurate and complete. Ultimately, the issuer and its advisers are responsible for the accuracy of the information they provide to Fitch and to the market in offering documents and other reports. In issuing its ratings Fitch must rely on the work of experts, including independent auditors with respect to financial statements and attorneys with respect to legal and tax matters. Further, ratings are inherently forward-looking and embody assumptions and predictions about future events that by their nature cannot be verified as facts. As a result, despite any verification of current facts, ratings can be affected by future events or conditions that were not anticipated at the time a rating was issued or affirmed.

Ratings are not a recommendation or suggestion, directly or indirectly, to buy, sell, make or hold any investment, loan or security or to undertake any investment strategy with respect to any investment, loan, security or any issuer. Ratings do not comment on the adequacy of market price, the suitability of any investment, loan or security for a particular investor (including without limitation, any accounting and/or regulatory treatment), or the tax-exempt nature or taxability of payments made in respect of any investment, loan or security. Fitch is not your advisor, nor is Fitch providing to you or any other party any financial advice, or any legal, auditing, accounting, appraisal, valuation or actuarial services. A rating should not be viewed as a replacement for such advice or services.

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We are pleased to have had the opportunity to be of service to you. If we can be of further assistance, please contact me at 212-908-0833.

Sincerely,

Fitch

By: 

Michael Rinaldi
Senior Director

3. ACQUISITIONS

Westfield Water and Westfield Wastewater — On March 21, 2014, Westfield Water and Westfield Wastewater, subsidiaries of CWU, acquired the assets and operating rights to the water and wastewater utilities of the City of Westfield, Indiana, respectively. Major assets acquired included underground mains and services, treatment and production plant, wells, and the accounts receivable. Significant excluded assets include the City of Westfield's stormwater system assets (unless the assets are used jointly by the wastewater system), and the Westfield Public Works building.

Consideration Transferred — Westfield Water and Westfield Wastewater acquired the water and wastewater system assets for a cash purchase price of \$29.5 million and \$59.9 million, respectively. See also Note 4 for additional information on debt issued relating to the acquisitions. Rates and charges will be regulated by the IURC. The utilities are operated as investor-owned utilities. Westfield Water and Westfield Wastewater assumed the rate schedules in place for the systems' customers at the acquisition date which include rate increases of 5%, 3%, and 5% on January 1, 2014, 2015 and 2016, respectively, for Westfield Water and 4%, 3%, and 2% on January 1, 2014, 2015, and 2016, respectively, for Westfield Wastewater. Westfield Water and Westfield Wastewater agreed that such rates shall remain in effect through December 31, 2016 (subject to unforeseen emergency rate relief needs). The acquisitions have been accounted for as business combinations. The purchase price allocation disclosed in the September 30, 2014 financial statements was preliminary. During 2015, an appraisal of the systems was conducted which found that the fair value of the systems was equal to the consideration transferred. As a result of the finalized appraisal of the assets during the measurement period, intangibles decreased by \$16.2 million, plant in service increased by \$16.9 million, and depreciation expense increased \$0.2 million. In accordance with guidance for Business Combinations at ASC 805, these adjustments have been reflected in the September 30, 2014 consolidated financial statements.

The following table (in thousands) summarizes the purchase price allocation to assets acquired and liabilities assumed:

<u>Water</u>	Preliminary allocation as of September 30, 2014	Adjustments to finalize purchase price allocation	Final allocation as of March 31, 2015
Property, Plant, Equipment	\$ 33,022	\$ 9,195	\$ 42,217
Intangible Assets	8,375	(8,375)	-
Current Assets	575	-	575
Total Assets Acquired	41,972	820	42,792
Current Liabilities	42	41	83
Contributions in Aid of Construction	12,428	779	13,207
Total Liabilities Assumed	12,470	820	13,290
Net Assets Acquired	\$ 29,502	\$ -	\$ 29,502
<u>Wastewater</u>	Preliminary allocation as of September 30, 2014	Adjustments to finalize purchase price allocation	Final allocation as of March 31, 2015
Property, Plant, Equipment	\$ 69,239	\$ 7,749	\$ 76,988
Intangible Assets	7,805	(7,805)	-
Current Assets	1,015	-	1,015
Total Assets Acquired	78,059	(56)	78,003
Current Liabilities	163	225	388
Contributions in Aid of Construction	18,033	(281)	17,752
Total Liabilities Assumed	18,196	(56)	18,140
Net Assets Acquired	\$ 59,863	\$ -	\$ 59,863

Regulatory accounting standards require that utility plant acquired be recorded at its original cost. The difference between original cost and the estimated fair market value is the acquisition adjustment, and is reflected in Property, Plant and Equipment for financial reporting purposes. The final acquisition adjustment amounts are \$4.8 million for Westfield Water and \$8.4 million for Westfield Wastewater.

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Acquisition Costs — Acquisition costs included those incurred to bring about the acquisition transaction (transactional costs), those incurred to acquire the financing (financing costs), and those incurred to bring about the integration of the utilities into Citizens (integration costs). Transactional and integration costs of \$0.3 million were incurred in 2014 and were expensed as incurred; no such costs were incurred in 2015. Financing costs were \$2.0 million through September 30, 2014 and were recorded as deferred charges.

4. LONG-TERM DEBT

Long-term debt consisted of the following (in thousands):

	September 30, 2015	September 30, 2014
Citizens Westfield Utilities Revenue Bonds Series 2014A, 74% of 3-month LIBOR +2.20% with a swap to effectively fix 80% of bonds at 3.56% (see note 8); due 2016 to 2019	\$ 67,363	\$ 69,090
Citizens Westfield Water Revenue Bonds Series 2014A, 74% of 1-month LIBOR +1.60% with a swap to effectively fix the rate at 2.89% (see note 8); due 2019	8,365	8,365
Citizens Westfield Wastewater Revenue Bonds Series 2014A, 74% of 1-month LIBOR +1.60% with a swap to effectively fix the rate at 2.89% (see note 8); due 2019	15,270	15,270
Current Maturities	(2,303)	(1,727)
Total Long-Term Bonds Outstanding	<u>\$ 88,695</u>	<u>\$ 90,998</u>

Principal maturities of long-term debt for the next four fiscal years are as follows (in thousands):

2016	\$ 2,303
2017	2,303
2018	2,303
2019	84,089
Total principal maturities	<u>\$ 90,998</u>

The Citizens Westfield Utilities revenue bonds were issued to provide capital for investment in subsidiaries pursuant to a CWU indenture dated March 1, 2014. The bonds are secured by an assignment of certain interests in the ownership rights of the CWU subsidiaries and payable with funds from dividends of the CWU subsidiaries. The bonds were purchased by a syndicate of banks (the Lenders) under a Continuing Covenant Agreement dated March 21, 2014. PNC Bank, National Association served as administrative agent for the Lenders. The bonds amortize on a 30-year level principal amortization schedule beginning December 31, 2014 and are subject to a mandatory tender by the Lenders on March 20, 2019. Interest on the bonds is at a floating rate of 74 percent of 3-month LIBOR plus 2.2 percent; however, the interest on 80 percent of the bonds was effectively fixed at a rate of approximately 3.56% through October 1, 2018 by means of an interest rate swap with PNC Bank, National Association as the counterparty (see Note 8).

The Westfield Water revenue bonds were issued pursuant to a Westfield Water indenture dated March 1, 2014 to fund a portion of the \$29.5 million acquisition price of the assets and operating rights to the water utility of the City of Westfield, Indiana (see also Note 3), as well as to provide \$1.1 million to fund a portion of future capital expenditures for the water utility. The remainder of the acquisition price of the water utility was funded with cash proceeds from the CWU Revenue Bonds. The Westfield Water bonds are secured by and payable from the net revenues of Westfield Water. Secondly, the bonds are collateralized by certain non-operating assets of the utility. The bonds were purchased by a syndicate of banks (the Lenders) under a Continuing Covenant Agreement dated March 21, 2014. PNC Bank, National Association served as administrative agent for the Lenders. The bonds are subject to a mandatory tender by the Lenders on March 20, 2019. Interest on the bonds is a floating rate of 74 percent of 1-month LIBOR plus 1.6 percent effectively fixed at a rate of approximately 2.89% through October 1, 2018 by means of an interest rate swap with PNC Bank, National Association as the counterparty (see Note 8).

The Westfield Wastewater revenue bonds were issued pursuant to a Westfield Wastewater indenture dated March 1, 2014 to fund a portion of the \$59.9 million acquisition price of the assets and operating rights to the water utility of the City of Westfield, Indiana (see also Note 3), as well as to provide \$0.5 million to fund a portion of future

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capital expenditures for the wastewater utility. The remainder of the acquisition price of the wastewater utility was funded with cash proceeds from the Citizens Westfield Utilities Revenue Bonds. The Westfield Wastewater bonds are secured by and payable from the net revenues of Westfield Wastewater. Secondly, the bonds are collateralized by certain non-operating assets of the utility. The bonds were purchased by a syndicate of banks (the Lenders) under a Continuing Covenant Agreement dated March 21, 2014. PNC Bank, National Association served as administrative agent for the Lenders. The bonds are subject to a mandatory tender by the Lenders on March 20, 2019. Interest on the bonds is a floating rate of 74 percent of 1-month LIBOR plus 1.6 percent effectively fixed at a rate of approximately 2.89% through October 1, 2018 by means of an interest rate swap with PNC Bank, National Association as the counterparty (see Note 8).

Rate Covenants

CWU is obligated to satisfy certain covenants, including meeting certain minimum rate covenant debt service coverage requirements for each debt issue which are generally calculated as earnings before interest, taxes, depreciation and amortization, including certain adjustments, divided by the relevant debt service. CWU's rate covenant debt service coverage ratios, as defined by each indenture, are summarized as follows for 2015:

	Minimum Covenant Requirement	2015 Actual
Westfield Wastewater Utility Revenue Bonds Series 2014A	3.5	11.13
Westfield Water Utility Revenue Bonds Series 2014A	3.5	16.92
Citizens Westfield Utility LLC Revenue Bonds Series 2014A	2.25	3.53

5. SHORT-TERM AND OTHER BORROWINGS

Concurrent with the closing of the acquisition of Westfield Water and Wastewater on March 21, 2014, both utilities established lines of credit. The Westfield Water line of credit has a capacity of \$10.3 million and is intended to fund working capital and capital expenditures. Interest rate on the line of credit is LIBOR plus 2.4 percent with a commitment fee of 0.175 percent. As of September 30, 2015 and 2014, \$1.0 million was outstanding on the line, respectively. The Westfield Wastewater line of credit has a capacity of \$11.0 million and is intended to fund working capital and capital expenditures. Interest rate on the line of credit is LIBOR plus 2.4 percent with a commitment fee of 0.175 percent. As of September 30, 2015 and 2014, \$1.0 million was outstanding on the line, respectively.

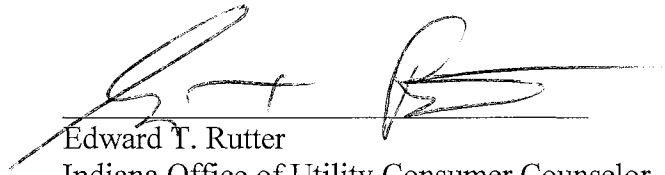
6. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses as shown in the accompanying Consolidated Statements of Financial Position are comprised of the following components at September 30, 2015 and 2014, respectively (in thousands):

	2015	2014
Accounts payable	\$ 2,666	\$ 1,641
Related party payable - Citizens	298	205
Accrued interest	139	113
Salaries and employee benefits	60	49
Total accounts payable and accrued expenses	<u>\$ 3,163</u>	<u>\$ 2,008</u>

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



Edward T. Rutter
Indiana Office of Utility Consumer Counselor

December 5, 2016
Date

Cause No. 44835
Citizens Wastewater of Westfield

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *OUCC's Testimony of Edward T. Rutter: Public's Exhibit No. 4* has been served upon the following counsel of record in the captioned proceeding by electronic service on December 5, 2016.

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