STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA AMERICAN WATER COMPANY, INC. ("INDIANA AMERICAN") AND THE CITY OF LAKE STATION, INDIANA ("LAKE STATION") FOR APPROVAL AND AUTHORIZATION OF: (A) THE ACQUISITION BY INDIANA AMERICAN OF LAKE STATION'S WATER UTILITY PROPERTIES (THE "LAKE STATION WATER SYSTEM") IN LAKE 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 LAKE STATION WATER SYSTEM ("THE LAKE STATION AREA"); (D) APPLICATION OF INDIANA AMERICAN'S DEPRECIATION ACCRUAL RATES TO SUCH ACQUIRED PROPERTIES; AND (E) THE SUBJECTION OF THE ACQUIRED PROPERTIES TO THE LIEN OF INDIANA AMERICAN'S MORTGAGE INDENTURE	**CAUSE NO. 45041**

OUCC'S BRIEF IN SUPPORT OF ITS PROPOSED ORDER

The Commission should deny the ratemaking authority as requested by and on behalf of Indiana-American water Company, Inc. (Indiana American) pursuant to IC 8-1-30.3-5 (c) and (d). The Office of Utility Consumer Counselor (OUCC) adds the following argument in response to the Brief in Support of Proposed Order, Joint Petitioners filed on April 27, 2018 and in support of the OUCC's own proposed order:

In their Brief in Support of Proposed Order, Joint Petitioners stated that "None of the OUCC witnesses offered testimony explaining how [IC 8-1.5-2-6.1] relates to this case or the OUCC's position." This characterization of the OUCC's case wrongly suggests that the OUCC is required to

make its legal arguments through its non-legal expert witnesses. Indiana American chose to express lengthy legal opinions through its non-legal witnesses. The OUCC chose not to object to that testimony. But it also chose not to follow suit. Such legal opinions and arguments as Indiana American's witnesses proffered are best expressed in the post hearing briefs authorized by the pre-hearing conference order. Joint Petitioners already recognize this ability as shown by its own post hearing Brief.

It is certainly true that IC 8-1-30.3-5(c) in particular has been the focal point of the OUCC's case. The petition Joint Petitioners filed in this case suggested it would be, as it referenced IC Chapter 8-1-30.3 no fewer than twelve times but IC 8-1.5-2-6.1 only twice. IC 8-1.5-2-6.1 itself references IC 8-1-30.3-5 no fewer than five times. (Conversely, Chapter IC 8-1-30.3 includes only one reference to section 6.1. See IC 8-1-30.3-6.) If the OUCC discusses IC 8-1-30.3-5 in its case, it is because the rate base authority Indiana American seeks depends on Joint Petitioner meeting <u>every</u> condition and requirement of IC 8-1-30.3-5(c) and (d). Section 6.1 also makes this clear.

Joint Petitioners' Brief asserted the thrust of the OUCC's arguments in this case proceeds on the notion that Section 6.1 does not exist. That statement mischaracterizes the OUCC's case. The OUCC's case proceeds on the theory that the requirements established by IC 8-1-30.3-5 are real requirements, and in particular, that the acquired utility plant must be used and useful *to the utility company that acquires the utility property and seeks authority to place the acquired property in rate base*.

Joint Petitioners deflect their obligation to prove with evidence that the application under IC 8-1-30.3-5(c) meets each of the stated requirements. Brief, pp. 6-7. Joint Petitioners seem to suggest there is a presumption it has met each such requirement and any disagreement is tantamount to an accusation of bad faith on the part of Indiana American. Brief, p. 6. Neither is the case.

Joint Petitioners assert they have "submitted sworn testimony supporting each element in

Section 30.3-5," and added "Other parties are not free to leave that testimony unchallenged and ask later that that testimony be ignored." Joint Petitioners then asserted they "met their burden of proof, through sworn testimony," and "the Commission is 'not free to simply ignore undisputed evidence." Brief, p. 6. Thus, Joint Petitioners assert they met the evidentiary requirement under IC 8-1-30.3-5(c)(1) merely with the conclusory statement from its non-engineering, governmental affairs witness that "the Lake Station Water System is used and useful in providing water service to its customers." Pub. Exhibit No. 1, p. 14, lines 9-10. Joint Petitioners' Proposed order, p. 17. Such a conclusory statement did not meet the burden. Moreover, whether Indiana American has established the plant is used and useful for purposes of IC 8-1-30.3-5(c)(1) may hardly be considered undisputed, as Joint Petitioners implied in their Brief.

But the true thrust of Joint Petitioner's argument is that the requirements of IC 8-1-30.3-5 don't really matter. In its post hearing brief, Joint Petitioners interpret the statutory scheme to deprive the Commission of any authority. Joint Petitioners construe IC 8-1.5-2-6.1 to both require the Commission to consider whether the IC 8-1-30.3-5(c) has been satisfied and then disregard any such finding. Joint Petitioners argue that even if the Commission determines the "deal" as proposed is not in the public interest, it must still authorize it. This suggestion should be rejected. Joint Petitioners applied for relief under section 6.1(e)(2). By its own terms, sub-section 6.1(e)(2) only applies if sub-division (e)(1) does not apply. Joint Petitioners applied for ratemaking authority under IC 8-1-30.3-5(d) and (c) as delineated in section 6.1(e)(1). Section 6.1(e)(1) applies to this proceeding.

But even if (e)(2) did apply, requiring the inclusion of the Lake Station treatment plant and supply wells in rate base would make the terms of the transaction not in the public interest. Under (e)(2) the Commission is required to consider whether the proposed terms and conditions require one utility's consumers to subsidize utility service to the other party's customers, and if so, whether this causes the proposed terms and conditions of the sale to not be in the public interest. As Mr. Kaufman testified, including the Lake Station treatment plant and supply wells in rate base will add another $1

million to Indiana-American's revenue requirement. If (e)(2) applies to this proceeding, the Commission is authorized to propose changes to the terms and conditions to address the subsidy and structure the acquisition so that it will be consistent with the public interest.

Joint Petitioners assert that "[b]ecause of the loan [from] the SRF, Lake Station cannot sell the system without the treatment plant and so it cannot be excluded." Joint Petitioners' Brief at 14. (See also Joint Petitioners' Exhibit No. 3-R at 8-9.) But this should not be an obstacle. The record reflects Lake Station borrowed from the SRF approximately $11.8 million through its loan program (Transcript at 103), owing approximately $10.5 million (*Id.*). The water treatment plant could be worth, in estimate, $4.5 million (Joint Petitioners' Exhibit No. GPR-1). Joint Petitioner Lake Station is proposing to sell its water utility for the appraised value, approximately $20 million. This includes its water treatment plant. Under either situation, the record reflects Lake Station could satisfy its obligations to the SRF even if the water treatment plant were excluded from the proposed transaction or if its estimated value were excluded. Accordingly, Lake Station's obligations to repay its loan would not bar the Commission from excluding the water treatment plant from the proposed acquisition if section 6.1(e)(2) applied.

Finally, Indiana American argues that even if the Commission finds that utility plant is not used and useful for the provision of water service, the statute still requires the Commission to book the full purchase price of a proposed acquisition. (In Attachment GPR-1R Mr. Roach provides a journal entry that allocates $7,366,043 across the other remaining utility plant.) Thus, Indiana American asserts any assets included in an Appraisal must be included for recovery in future rates even if the Commission does not make the finding required by IC 8-1-30.3-5(c)(1). Indiana American's interpretation -- that the entire purchase price must be allocated across remaining plant accounts even if the Commission finds plant is not used and useful in providing water service – would nullify the statutory requirement. The Commission should not accept an interpretation that renders a statutory requirement void

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ***Office of Utility Consumer Counselor OUCC's Brief In Support of Its Proposed Order*** has been served upon the following counsel of record in the captioned proceeding by electronic service on May 11, 2018.

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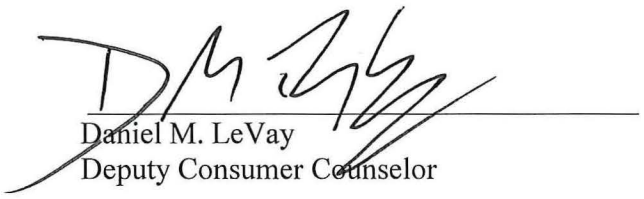

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