

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN WATER)
COMPANY, INC. ("INDIANA AMERICAN") AND THE)
TOWN OF SHERIDAN, INDIANA ("SHERIDAN") FOR)
APPROVAL AND AUTHORIZATION OF: (A) THE)
ACQUISITION BY INDIANA AMERICAN OF SHERIDAN'S)
WATER UTILITY PROPERTY (THE "SHERIDAN WATER)
SYSTEM") AND OF SHERIDAN'S SEWER UTILITY)
PROPERTY (THE "SHERIDAN SEWER SYSTEM"))
(COLLECTIVELY THE "SHERIDAN SYSTEMS") IN)
HAMILTON COUNTY, INDIANA IN ACCORDANCE WITH)
A PURCHASE AGREEMENT THEREFOR; (B) APPROVAL)
OF ACCOUNTING AND RATE BASE TREATMENT; (C))
APPROVAL OF THE RATES AND CHARGES TO BE)
APPLIED TO THE SHERIDAN WATER AND SEWER)
SYSTEMS AFTER CLOSING; (D) APPROVAL OF)
APPLICATION OF INDIANA AMERICAN'S MUNCIE)
SEWER RULES AND REGULATIONS TO THE SHERIDAN)
WASTEWATER SYSTEM, WITH CHANGES TO ALLOW)
ENFORCEMENT OF AN INDUSTRIAL PRETREATMENT)
PROGRAM ("IPP") AMONG OTHERS; (E) APPLICATION)
OF INDIANA AMERICAN'S DEPRECIATION ACCRUAL)
RATES TO SUCH ACQUIRED PROPERTIES; AND (F) THE)
SUBJECTION OF THE ACQUIRED PROPERTIES TO THE)
LIEN OF INDIANA AMERICAN'S MORTGAGE)
INDENTURE.)

CAUSE NO. 45050

APPROVED: SEP 12 2018

Presiding Officers:

Sarah E. Freeman, Commissioner

Lora L. Manion, Administrative Law Judge

On February 16, 2018, Joint Petitioners Indiana-American Water Company, Inc. ("Indiana American" or the "Company") and the Town of Sheridan, Indiana ("Sheridan") filed their *Joint Petition* with the Indiana Utility Regulatory Commission ("Commission") in this matter.

On April 5, 2018, the Commission issued a docket entry vacating the prehearing conference and requesting Joint Petitioners and the Office of Utility Consumer Counselor ("OUCC") to file an agreed procedural schedule. On April 6, 2018, the parties filed a *Stipulation as to Procedural Matters*, and on April 11, 2018, the Commission issued a docket entry establishing the procedural schedule in this Cause.

On April 13, 2018, Joint Petitioners filed the prepared testimony and exhibits of Mr. Matthew Prine, Director of Community and Government Affairs for Indiana American; Mr.

Gregory Roach, Senior Manager, Revenue Analytics for American Water Works Service Company; Mr. David Kinkead, President of the Sheridan Town Council; and Mr. Stacy Hoffman, Director of Engineering for Indiana American. The filings constitute Joint Petitioners' case-in-chief.

On June 29, 2018, the OUCC filed the prepared testimony and exhibits of Mr. Carl N. Seals, Utility Analyst, and Ms. Margaret A. Stull, Chief Technical Adviser, constituting the OUCC's case-in-chief.

On July 12, 2018, Joint Petitioners advised in a filing that Joint Petitioners reached an agreement in principle with the OUCC with respect to all issues in this Cause. Joint Petitioners requested a modification to the schedule in light of their preparation of a settlement, and the request was granted by the Presiding Officers in a docket entry on July 13, 2018. On July 20, 2018, Joint Petitioners and the OUCC (the "Settling Parties") jointly filed a Stipulation and Settlement Agreement ("Settlement") along with testimony in support thereof, which Settlement presented the Settling Parties' proposed resolution of all issues raised between them in this proceeding. The Settlement was supported by testimony from Mr. Roach, on behalf of Indiana American, and Mr. Scott Bell, Director of the Water and Wastewater Division of the OUCC.

On July 26, 2018, the Presiding Officers in a docket entry requested additional information from Indiana American, and on July 31, 2018, Indiana American filed a response.

A settlement hearing in this Cause was held commencing at 9:30 am on August 1, 2018, in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. The Settling Parties' prefiled evidence, including the Settlement and the pre-settlement and settlement testimony in support thereof, was admitted into the record.

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

1. **Notice and Jurisdiction.** Notice of the evidentiary hearing was given as required by law. Indiana American is a public utility as defined in Ind. Code § 8-1-2-1 and, as such, is subject to the Commission's jurisdiction. The Sheridan Water System and the Sheridan Wastewater System are municipally owned utilities as defined in Ind. Code § 8-1-2-1(h). Under Ind. Code ch. 8-1-30.3 and Ind. Code § 8-1.5-2-6.1 the Commission has jurisdiction over Indiana American's proposed purchase of a municipally owned utility; therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. **Joint Petitioners' Characteristics.** Indiana American is an Indiana corporation engaged in the provision of water utility service to the public in and around numerous communities throughout Indiana for residential, commercial, industrial, public authority, sale for resale, and public and private fire protection purposes. Indiana American provides residential, commercial, industrial, and municipal water utility service, including sale for resale, and public and private fire service to approximately 302,000 customers in Indiana. Indiana American also provides wastewater utility service in Wabash and Delaware Counties.

Sheridan is a municipality located in Hamilton County, Indiana. Sheridan owns and operates a water distribution system ("Water System") serving approximately 1,261 individually metered customers and a wastewater treatment plant and collection system ("Wastewater System") serving approximately 1,233 customers (together, the "Sheridan Systems"). Sheridan's storm water system is excluded from the Sheridan Systems that Indiana American seeks to acquire. Sheridan withdrew from the jurisdiction of the Commission for purposes of its water rates, charges, and financing in December 1988. The Sheridan Systems are in the vicinity of Indiana American's existing Noblesville operation in Hamilton County.

3. **Relief Requested by Joint Petitioners.** Joint Petitioners filed their Joint Petition pursuant to Ind. Code §§ 8-1-30.3-5 ("Section 30.3-5") and 8-1.5-2-6.1 ("Section 6.1"). Joint Petitioners request approval and authorization of: (A) the acquisition by Indiana American of Sheridan's Water System and Wastewater System in Hamilton County, Indiana in accordance with their Asset Purchase Agreement ("APA"); (B) accounting and rate base treatment; (C) rates and charges to be applied to the Sheridan Systems after closing of Indiana American's acquisition; (D) application of Indiana American's Muncie wastewater rules and regulations to the Sheridan Sewer System, with modifications, including enforcement of an industrial pretreatment program ("IPP"); (E) application of Indiana American's depreciation accrual rates approved by the Commission in Cause No. 44992 on May 30, 2018; and (F) the subjection of the acquired properties to the lien of Indiana American's mortgage indenture.

4. **Pre-Settlement Testimony.**

A. **Joint Petitioners' Pre-Settlement Case-in-Chief.** Joint Petitioners presented direct testimony from Mr. Matthew Prine, Director of Community and Government Affairs for Indiana American; Mr. Gregory Roach, Senior Manager, Revenue Analytics for American Water Works Service Company; Mr. David Kinkead, President of the Sheridan Town

Council; and Mr. Stacy S. Hoffman, Director of Engineering for Indiana American. Mr. Prine provided the APA as Jt. Pet. Ex. 1, Attach. MP-2.

(i). **Ind. Code ch. 8-1-30.3 and § 8-1.5-2-6.1.** Mr. Prine testified that during the 2015 legislative session of the Indiana General Assembly, a new chapter was established (Ind. Code § 8-1-30.3, referred to herein as “Chapter 30.3”) providing that a public water or wastewater utility that acquires the utility property of a “distressed utility” (as defined in Ind. Code § 8-1-30.3-2) may petition the Commission to include the “cost differential” (as defined in Ind. Code § 8-1-30.3-1) associated with the acquisition as part of its rate base. The new law established certain circumstances under which this ratemaking treatment is required. During the 2016 legislative session, a new section (Ind. Code § 8-1.5-2-6.1) of the law governing municipal utilities was adopted and Chapter 30.3 was amended, both with respect to the sale or disposition of non-surplus municipal utility property. Mr. Prine testified that the new laws encourage the consideration of regionalization as a strategy in addressing Indiana’s ongoing infrastructure needs.

Mr. Prine testified that in November 2016, the Indiana Finance Authority (“IFA”) issued its report on water utility infrastructure needs throughout Indiana. The IFA Report discussed the need for regionalization. Mr. Prine quoted from the IFA Report as follows:

[L]arger systems improve the economic performance for customers. In spite of this, new small systems continue to be formed instead of combining assets with existing utilities where value could be added. With larger size and capacity, regional utilities add efficiencies while being more reliable and sustainable than individual community water systems.

Jt. Pet. Ex. 1, Attach. MP-3, at 8.

Mr. Prine also testified that the IFA Report emphasizes the need for (i) prioritization of replacement of aging or failing water mains; and (ii) development of a schedule of asset management that organizes the construction needed to maintain and extend the life of a utility system. *Id.* at 7. Mr. Prine further testified that Sheridan Systems face some of the same challenges discussed in the IFA Report.

Mr. Prine testified Ind. Code § 8-1-30.3-6 (“Section 30.3-6”) enumerates a list of conditions that, if any one of these conditions is found by the Commission to exist, would satisfy the distressed requirement. Section 30.3-6 is as follows:

For purposes of section 5(c)(2) of this chapter, a distressed utility is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities if the commission finds one (1) or more of the following:

- (1) The distressed utility violated one (1) or more state or federal statutory or regulatory requirements in a manner that the commission determines affects the safety, adequacy, efficiency, or reasonableness of its services or facilities.
- (2) The distressed utility has inadequate financial, managerial, or technical ability or expertise.

- (3) The distressed utility fails to provide water in sufficient amounts, that is palatable, or at adequate volume or pressure.
- (4) The distressed utility, due to necessary improvements to its plant or distribution or collection system or operations, is unable to furnish and maintain adequate service to its customers at rates equal to or less than those of the acquiring utility company.
- (5) The distressed utility:
 - (A) is municipally owned utility property of a municipally owned utility that serves fewer than five thousand (5,000) customers; and
 - (B) is being sold under IC 8-1.5-2-6.1.
- (6) Any other facts that the commission determines demonstrate the distressed utility's inability to furnish or maintain adequate, efficient, safe, or reasonable service or facilities.

Ind. Code § 8-1-30.3-6.

Mr. Prine testified Sheridan Systems meet the requirements of Section 30.3-6(5). They are municipally owned, serve fewer than 5,000 customers, and are being sold pursuant to Section 6.1. Therefore, Sheridan Systems qualify as distressed. Mr. Prine testified while it is not necessary to satisfy a second condition, Sheridan Systems also satisfy Section 30.3-6(4). Due to necessary improvements to the plant or distribution or collection system or operations, Sheridan Systems are unable to furnish and maintain adequate service to customers at rates equal to or less than those of Indiana American. Mr. Prine also confirmed that Sheridan and Indiana American are not affiliated and share no common ownership interests.

Mr. Prine testified about the statutory process for a municipality to sell its water or wastewater utility. Mr. Prine explained a municipality must direct the appointment of three appraisers to appraise the value. The purchase price is deemed to be reasonable if it does not exceed the statutory appraised value. Upon return of the appraisal, the municipality must hold a public hearing on the proposed acquisition. If the municipality decides to sell, it must adopt an ordinance approving the proposed acquisition. For an ordinance adopted pursuant to this process after March 28, 2016, Commission approval is required under Section 6.1. The standard for approval is whether the sale according to the proposed terms and conditions is in the public interest. If the Commission makes the required findings set forth in Section 30.3-5(c), then Section 6.1 directs that the proposed sale according to the proposed terms and conditions is in the public interest.

Mr. Prine testified that the proposed purchase price for Sheridan Systems is \$10,750,000, with \$6,200,000 of that purchase price allocated to the Water System and \$4,550,000 to the Wastewater System. While Sheridan's appointed appraisers determined the appraised value of Sheridan Systems to be \$12,637,000, Mr. Prine testified to produce lower utility rates for customers, Sheridan Town Council determined to sell Sheridan Systems for less than the full appraised value set forth in the appraisal. *Jt. Pet. Ex. 3, Attach. DK-2*. Therefore, the purchase price does not exceed the appraised value of Sheridan System. Mr. Prine testified that the original cost rate base for Sheridan Systems would be \$10,950,000, assuming \$200,000 of

incidental expenses and other costs of acquisition. Mr. Prine further testified that Sheridan Systems are used and useful in providing water and wastewater service to customers.

(ii). **Proposed Acquisition and Asset Purchase Agreement.** David Kinkead, President of Sheridan Town Council, testified regarding the proposed acquisition of Sheridan Systems by Indiana American. Mr. Kinkead provided an overview of the Wastewater System and its history of environmental regulatory issues. Mr. Kinkead testified selling the Wastewater System would allow a company with greater expertise to take over investment, operation, and maintenance. The sale would also enable Sheridan to invest in elimination of the storm water source of the notices of violations (“NOVs”). Mr. Kinkead stated the Water System is aged and in need of certain infrastructure improvements. Sheridan commissioned a rate study from O.W. Krohn and Associates to assist with its decision process. The result of that study made it clear the costs to Sheridan’s citizens would be much greater just to address the deferred maintenance and bring the Sheridan Systems up to standards, not including future improvements, than a transfer to a private entity subject to Commission review.

Mr. Kinkead testified regarding the chronology of events. In September 2016, Sheridan Town Council approved the issuance of a Request for Proposals (“RFP”). Indiana American was the successful bidder. Indiana American provided Sheridan with a proposed purchase agreement.

On February 27, 2017, Sheridan Town Council voted to appoint official appraisers of Sheridan Systems. The appraisers were: (1) Judith M. Cleland, P.E., an Indiana Registered Professional Engineer; (2) Thomas T. Nitza, P.E., an Indiana Registered Professional Engineer; and (3) Joseph C. Traynor, MRICS, GAA, an Indiana Certified General Appraiser. Jt. Pet. Ex. 3, Attach. DK-2, at 2. In early June 2017, Sheridan received the Return of Appraisal certifying the appraisal. Jt. Pet. Ex. 3, Attach. DK-2.

On July 26, 2017, the public hearing required by statute was held, as indicated in Sheridan’s Ordinance No. 2017-8. Jt. Pet. 3, Attach. DK-3, at 2. On July 31, 2017, Sheridan enacted that Ordinance, and it recites the following: “Whereas, pursuant to Ind. Code § 8-1.5-2-6(e), the Town Council has determined that the sale price for the [Sheridan Systems] shall be less than full appraised value so as to result in lower utility rates to be charged to the customers of the [Sheridan Systems].” Jt. Pet. Ex. 3, Attach. DK-3, at 2-3.

Mr. Kinkead further testified that Sheridan followed the statutory process necessary to sell Sheridan Systems and conducted negotiations with Indiana American which resulted in the APA being finalized and signed on January 17, 2018. He testified that the negotiations leading up to the execution of the APA were conducted at arm’s length.

Mr. Kinkead testified regarding communications with Sheridan’s customers about the sale. He explained that Mr. Prine and other officials from Indiana American attended Sheridan’s Town Council meetings to provide customers the opportunity to get answers directly from Indiana American. He further testified Sheridan held several additional meetings to determine public opinion and to receive input regarding the proposed sale. Mr. Kinkead testified the response was clear that citizens were overwhelmingly in favor of the proposed transaction. He further testified no Sheridan customers have expressed opposition to the proposed sale.

Mr. Prine testified regarding Indiana American's proposal to acquire the Sheridan Systems. Mr. Prine stated that consummation of the transaction is conditioned on obtaining certain approvals from the Commission as follows: (1) the contemplated transaction and the transfer of the Systems; (2) the proposed accounting and rate base treatment, including recognition of the full purchase price plus incidental expenses and other costs of acquisition in net original cost rate base; (3) the application of the Company's depreciation accrual rates to the Sheridan Systems; (4) the application of the rates and charges set forth in the APA; and (5) the inclusion of the acquired assets in the Company's mortgage indenture.

Mr. Prine also testified that Indiana American's acquisition of Sheridan Systems will benefit customers currently served by Sheridan Systems. Under Indiana American's ownership, the customers will see lower rates than would ultimately be implemented if Sheridan were to continue to own and operate the systems, due to the cost of necessary improvements. Mr. Prine testified any change in Indiana American's rates is subject to the jurisdiction of the Commission. Under Indiana American's ownership, Sheridan's customers will benefit from long-term asset management and investment. Sheridan customers will gain full-time management of Sheridan Systems, including a full-time operations staff, 24/7 customer service and emergency response, enhanced security measures, and full-time functional specialists in the areas of engineering and water quality. The Sheridan Systems will also be included in Indiana American's prioritization model, allowing planning and asset management needs like those identified by the 2016 IFA Report to be met. Most importantly, Indiana American is prepared to make the necessary improvements to Sheridan Systems as required by the Indiana Department of Environmental Management ("IDEM").

With respect to the notice requirements in Section 30.3-5(d), Mr. Prine testified that Indiana American provided notices to current customers of Sheridan and the existing customers of Indiana American. Mr. Prine testified that the acquisition will not increase Indiana American's rates by more than one percent of Indiana American's base annual revenues. Mr. Prine testified that all Sheridan customers were notified of the proposed transaction and the rates that would be charged by Indiana American after closing. Separately, Mr. Roach testified that Indiana American gave notice of the proposed transaction to the customers of Indiana American; however, he said that he thinks that this notice was not required. The calculation performed by Mr. Roach is included as *Jt. Pet. Ex. 2, Attach. GPR-2*. Mr. Roach testified that his calculation followed the methodology approved by the Commission's March 14, 2018 Order in Cause Nos. 44976 and 44964.

Mr. Prine summarized how Section 6.1 interacts with Chapter 30.3. He explained that if the purchase price of the proposed acquisition does not exceed the appraised value, and the elements of Sections 30.3-5(c) and 30.3-5(d) are met, Section 6.1(e) directs the issuance of a final order not later than 210 days after the filing of Joint Petitioners' case-in-chief that authorizes the acquiring utility company to record: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition. The net original cost of the utility plant in service assets being acquired should be allocated in a reasonable manner among appropriate utility plant in service accounts.

(iii). Aging Infrastructure, Violations, and Indiana American's Plan for Improvements. Mr. Prine and Mr. Hoffman testified regarding the improvements that are

needed to Sheridan Systems to address environmental concerns and aging or failing infrastructure issues.

Mr. Prine explained that under municipal ownership, Sheridan Systems face rising costs for necessary improvements to facilities and operations. He stated that in the last five years, the Wastewater System was issued NOVs for bypass and overflow events and IDEM cited Sheridan for an inadequate preventative maintenance program. Additionally, Mr. Prine explained the Wastewater System has suffered from inflow and infiltration ("I/I") from Sheridan's storm water system. Mr. Prine further testified that Sheridan does not have a plan for replacement of aging or failing water distribution infrastructure.

Mr. Prine testified that due to significant improvements needed to the Wastewater System to comply with IDEM requirements and to the Water System to address aging infrastructure concerns, continuation of current ownership by Sheridan could lead to a troubled future for Sheridan Systems. He echoed Mr. Kinhead's testimony that Indiana American is in a better position than Sheridan to address these issues.

Mr. Prine testified that Sheridan had a rate study performed by O.W. Krohn and Associates that predicted the necessary increases in rates if Sheridan were to continue to own and operate the Sheridan Systems [and fund the improvements]. Mr. Prine stated that the projected wastewater rates [if Sheridan continued to own the Wastewater System and fund the improvements] are higher than the wastewater rates Indiana American proposes to charge. He testified Sheridan has committed to adopt a 30% across-the-board rate increase for its wastewater customers as of closing, and Indiana American has committed to charging those same wastewater rates until 2021.

Mr. Hoffman further described the challenges facing the Wastewater System. As described in the Agreed Order with IDEM attached to the APA, IDEM issued NOVs with respect to Sheridan's National Pollutant Discharge Elimination System permit. IDEM identified 25 bypass events and 12 overflow events related to the Wastewater System during May 26, 2013, through May 26, 2016. *Jt. Ex. 1, Attach. MP-2, at 71 of 86.* IDEM found that excessive I/I continues to contribute to hydraulic overloading of Sheridan's wastewater treatment plant ("WWTP") and Sheridan did not have an ongoing preventative maintenance program for the Wastewater System.

Mr. Hoffman testified that Sheridan negotiated an Agreed Order with IDEM to address the NOVs. Mr. Hoffman testified under the Agreed Order, Sheridan is required to implement an IDEM-approved storm water compliance plan. That plan requires Sheridan to meet certain milestones related to its storm water improvement project to address cross connections and infiltration points, which are considered to be a significant source of the issues resulting in the NOVs. Mr. Hoffman testified the Agreed Order also contemplates that improvements to the Wastewater System will be needed to improve permit compliance.

Mr. Hoffman testified about Indiana American's plan for the Wastewater System. Mr. Hoffman said IDEM informally indicated the plan outlined in his testimony in this Cause was acceptable. Indiana American's plan for improvements to the Wastewater System follows: (1) gather direct operational experience and data from operating the Wastewater System; (2) conduct

engineering evaluation of improvement alternatives; (3) construct new influent equalization basin for wet weather storage; (4) construct new influent pump station and head works, and remove influent grinder; (5) replace aging unreliable equipment as necessary; (6) install Supervisory Control and Data Acquisition (“SCADA”) and control improvements; (7) evaluate options for solids management improvements; (8) evaluate condition of manholes, sewers, and lift station equipment; (9) rehabilitate or replace manholes, sewers, and lift station equipment in poor condition in a systematic approach; (10) implement a wastewater treatment plant and the sanitary sewer collection system maintenance program; and (11) implement an asset management strategy and plan including prioritization models for prioritizing recommended improvements for the WWTP and the sanitary sewer collection system. Mr. Hoffman explained that the improvement plans ultimately approved by IDEM will guide much of what Indiana American plans to undertake with respect to the Wastewater System. Mr. Hoffman testified that based on the preliminary estimate ranges prepared by Wessler Engineering in their Preliminary Study for Wastewater System Needs (February 2014), improvements to the Wastewater System over a five-year period after the close of acquisition could cost between \$2,000,000 and \$5,000,000, depending on the alternatives implemented.

Mr. Hoffman further explained that Indiana American is committed to developing a sanitary sewer plan that will be implemented following closing. The plan will address I/I into the sanitary collection system. Indiana American will also develop and implement a preventative maintenance plan for the Wastewater System and document all maintenance (preventative and repair) in a permanent record.

Mr. Hoffman addressed Indiana American’s proposed changes to its rules and regulations applicable to wastewater utility service, specifically to address IPP. Mr. Hoffman explained that Indiana American must get IDEM approval for any IPP it wishes to implement. Indiana American proposes to add a provision to its rules that requires, after closing of the acquisition, any customer that pre-treats discharge into the Wastewater System must comply with the IDEM-approved IPP. Mr. Hoffman further testified that Indiana American’s current wastewater rules and regulations do not include typical wastewater utility service policy restrictions; he stated that Indiana American proposes to adopt specific portions of Sheridan’s existing wastewater ordinance that restrict what can be disposed in sewers.

Next, Mr. Hoffman described the challenges facing the Water System. Sheridan does not currently have an asset management plan for replacing infrastructure. The water treatment plant is over 50 years old. Filters, filter control valves, the aerator, and other equipment could need rehabilitation or replacement within the next 10 years. The plant is not fully automated, and that requires more employee time to conduct direct manual daily operation of the plant. Some of the monthly reports of operations submitted to IDEM identify chlorine residual concentrations below what IDEM considers detectable. Other potential challenges with respect to the wells, plant, and distribution system are not fully known at this time. In addition, Sheridan is a small system and cannot achieve economies of scale.

Mr. Hoffman discussed Indiana American’s plan for improvements to the Water System as follows: (1) reap benefits from Indiana American’s economies of scale; (2) gather direct operational experience and data from operating the Water System; (3) conduct operational and

engineering evaluations; (4) implement an asset management strategy and plan, including models for prioritizing recommended improvements; (5) replace meters with automated meter reading / advanced metering infrastructure; (6) determine the causes of the low chlorine residual concentration reports in the distribution system; (7) implement operational and or capital improvements to increase the low chlorine residual concentrations to acceptable levels; (8) install SCADA system for control and monitoring; and (9) determine other improvement needs and prioritize them as part of Indiana American's asset management plan. He further testified improvements to the Water System over a five-year period after the close of the acquisition could cost between \$1,500,000 and \$3,000,000, depending on improvements implemented.

(iv). **Accounting and Ratemaking Treatment.** Mr. Roach testified Indiana American proposes accounting and ratemaking treatment for its acquisition. Mr. Roach sponsored the journal entry proposed for the acquisition. Jt. Pet. Ex. 2, Attach. GPR-1. Mr. Roach testified that the purchase price is \$10,750,000 for Sheridan Systems, of which \$6,200,000 is for the Water System, and \$4,550,000 is for the Wastewater System. Assuming \$200,000 of incidental expenses and other costs of acquisition, the original cost rate base for the Sheridan Systems would be \$10,950,000. Mr. Roach explained that the purchase price includes a cost differential as defined in Ind. Code § 8-1-30.3-1. The cost differential is \$200,000 of incidental expenses and other costs of acquisition, and the cost differential is not included in the purchase price of \$10,750,000. Jt. Pet. Ex. 2, at 5.

(v). **Impact of Acquisition on Customer Rates.** Regarding wastewater rates, Sheridan's Wastewater System rate is currently computed at \$45.49 per month for a residential customer using 4,000 gallons (a "Typical Customer"). But current rates are insufficient to fund the necessary improvements to Sheridan's Wastewater System. Mr. Prine testified that if Sheridan continued to own the Wastewater System and funded the needed improvements, a Typical Customer would have his monthly rate increase 21.33% to 103.11% for a computed increase ranging from \$9.70 to \$46.90 per month with a total monthly bill ranging from \$55.19 to \$92.39. Jt. Pet. Ex. 1, at 26-27. However, Mr. Prine testified that upon completion of the acquisition, a Typical Customer under Indiana American's proposed rates would have his monthly rate increase 30% for an increase of \$13.65 per month and a total monthly bill of \$59.14. Jt. Pet. Ex. 1, Attach MP-5. Sheridan is going to increase the residential rate to \$59.14, and Indiana American will continue charging that rate after closing and until 2021.

Regarding water rates, Mr. Prine testified Sheridan's water rate is currently \$41.11 per month for a Typical Customer. Jt. Pet. Ex. 1, at 16. Mr. Kinkead testified that if Sheridan continued to own the Water System and addressed the maintenance issues and standards, a Typical Customer would have his monthly rate increase 19.93% to 46.40% for an increase ranging from \$6.57 to \$15.29 per month with a total monthly bill ranging from \$47.68 to \$56.40. Jt. Pet. Ex. 3, Attach. DK-1, at 9 and 16. However, Mr. Prine testified that upon completion of the acquisition, a Typical Customer under Indiana American's Area One Rate would have an increase of \$0.19 per month and a total monthly bill of \$41.30. Jt. Pet. Ex. 1, at 16.

B. OUCC's Pre-Settlement Case-in-Chief. Ms. Margaret A. Stull, Chief Technical Adviser in the Water and Wastewater Division, and Mr. Carl N. Seals, Utility Analyst, testified on behalf of the OUCC.

(i). **Proposed Acquisition and Asset Purchase Agreement.** Ms. Stull testified Indiana American proposes to acquire all of the property that is the subject of Sheridan's appraisal, which corresponds to Section 2.01 of the Agreement. The acquired assets are listed in the return of appraisal sponsored by Mr. Kinkead as Jt. Pet. Ex. 3, Attach. DK-2. The proposed acquisition excludes Sheridan's storm water system. The total agreed purchase price is \$10,750,000, consisting of \$6,200,000 for the Water System and \$4,550,000 for the Wastewater System.

(ii). **Aging Infrastructure, Violation Issues, and Indiana American's Plan for Improvements.** Mr. Seals testified regarding Indiana American's plan for reasonable improvements to comply with IDEM's Agreed Order. Mr. Seals acknowledged that Indiana American has committed under the APA to negotiate in good faith with IDEM to enter into a compliance plan to improve the Wastewater System upon Indiana American's acquisition of that system. Mr. Seals recommended Indiana American be required to file the compliance plan between IDEM and Indiana American with the Commission within 30 days of its approval by IDEM. The filing would allow the OUCC and the Commission to be informed of the final terms of the Agreed Order.

(iii). **Accounting and Ratemaking Treatment.** Ms. Stull testified Joint Petitioners request approval of accounting and rate base treatments that will allow Indiana American to reflect as net original cost rate base the full purchase price plus transaction costs, including approval of Indiana American's proposed accounting entry. The total amount Indiana American proposes to record and include in its rate base is \$10,950,000, which includes an additional \$200,000 of transaction costs. The purchase price to be recorded is \$6,315,349 for Water System and \$4,634,651 for Wastewater System.

Ms. Stull recommended that in addition to excluding Indiana American's payment of Sheridan's appraisal fees from the net original cost rate base, the transaction costs should be further limited to the qualified amounts actually incurred. Ms. Stull explained that the OUCC recommends that if the Commission authorizes the transfer, the Commission not allow Indiana American to include in rate base \$16,062.35 of appraisal costs. The amount of transaction costs to be included in rate base should be limited to the amounts actually incurred not to exceed \$183,938 (\$200,000 - \$16,062.35).

(iv). **Impact of Acquisition on Customer Rates.** Ms. Stull expressed concern regarding the methodology Indiana American used to calculate the rate impact. Ms. Stull said that the calculation presented by Mr. Roach is a single calculation based on total water and wastewater costs. Ms. Stull explained that although Indiana American has separate rates for its water and wastewater operations, Mr. Roach did not provide separate calculations for the impact on water and wastewater rates. This may suggest Indiana American plans to spread its investment in Sheridan's wastewater assets across Indiana American's entire water and wastewater operations. Otherwise, Indiana American's proposed acquisition would have a different impact on Indiana American's wastewater customers than it will have on its water

customers. While the rate impact on Indiana American's existing water customers will be relatively small, if the cost of the acquisition of the wastewater assets are solely attributed to Indiana American's wastewater customers, the rate impact for Indiana American's existing wastewater customers would be significant.

5. **Settlement Testimony.** The Settlement filed in this Cause was supported by testimony from Mr. Roach, on behalf of Indiana American, and Mr. Scott Bell, Director of the Water and Wastewater Division of the OUCC.

A. **Proposed Acquisition and Asset Purchase Agreement.** Mr. Roach testified Indiana American and the OUCC entered into good faith discussions regarding the issues related to the proposed acquisition and were able to independently conclude that the terms and conditions set forth in the Settlement represent a fair, reasonable, and just resolution of the issues in this Cause, subject to their incorporation into a final Commission Order which is no longer subject to appeal. Joint Petitioners and the OUCC stipulated that the relief requested by Joint Petitioners should be granted, subject to the conditions stated in the Settlement, and Indiana American should be authorized to consummate the acquisition of the Sheridan Systems. In addition, the Settling Parties stipulated that the notice requirement in Section 30.3-5(d)(2) was not triggered.

Mr. Bell testified regarding the terms of the Settlement. The OUCC recommends that Indiana American be authorized as follows: (1) to consummate the acquisition by Indiana American of the Water System and Wastewater System; (2) to apply the rules and regulations and rates and charges generally applicable to Indiana American's Area One rate group, as may be changed from time to time, for service to be provided by Indiana American in the areas currently served by the Sheridan Water System; (3) to apply the metered wastewater rates adopted by the Sheridan Town Council as of the closing date, for service to be provided by Indiana American in the areas currently served by the Sheridan Wastewater System; (4) to apply the rules and regulations for wastewater service applicable to Indiana American's Muncie Sewer Operation to the Sheridan Wastewater System, with the modifications described in Joint Petitioners' case-in-chief; (5) to apply Indiana American's depreciation accrual rates approved by the Commission in Cause No. 44992 to the properties comprising the Sheridan Systems; and (6) to encumber the properties comprising the Sheridan Systems with the lien of Indiana American's mortgage indenture.

Mr. Bell testified Joint Petitioners and the OUCC stipulated in the Settlement that all evidence filed in this Cause with respect to the relief constitutes a sufficient evidentiary basis for a Commission Order approving this stipulation. Mr. Bell testified that the Settlement is a reasonable compromise that appropriately addresses the issues raised by the OUCC.

B. **Aging Infrastructure, Violations, and Indiana American's Plan for Improvements.** Mr. Roach testified regarding the recommendation by Mr. Seals for Indiana American to file Indiana American's sanitary sewer compliance plan after it is approved by IDEM. Indiana American is not currently and will not necessarily become a party to [the Town's] Agreed Order with IDEM [because Indiana American was not the owner of the Wastewater System when the NOV's occurred.] Separately, when an agreement is reached in the future between Indiana American and IDEM with respect to improvements needed to the

Wastewater System, that plan will not be a “compliance plan,” as that term is typically used by IDEM. Indiana American has agreed to provide the OUCC and the Commission the ultimate agreement between Indiana American and IDEM with respect to improvements.

C. Accounting and Ratemaking Treatment. Mr. Roach testified about resolution of the concerns raised by Mr. Seals and Ms. Stull in the OUCC’s pre-filed testimony. The first concern is whether Indiana American can include \$16,062.35 of appraisal costs Indiana American reimbursed to Sheridan. Mr. Bell further testified that based upon the particular facts of this Cause, and for purposes of settlement only, the Settling Parties agreed that upon closing of the acquisition, Indiana American will book as net original cost rate base an amount equal to the full purchase price, plus incidental expenses and other costs of acquisition, excluding appraisal costs of \$16,062.35. For settlement purposes only, Indiana American agreed it will remove the \$16,062.35 for appraisal costs from the amount to be included in rate base. The journal entry shall be as reflected in Jt. Pet. Ex. 2, Attach. GPR-1, as modified by the terms of the Settlement.

D. Impact of Acquisition on Customer Rates. Mr. Roach testified regarding resolution of Ms. Stull’s concern about the impact of the acquisition on Indiana American’s existing wastewater customers. It became clear that the OUCC’s concern was that the existing Muncie and Somerset wastewater customers, both very small systems, should not be required to bear the cost of the acquisition of the Wastewater System. Mr. Roach testified Indiana American proposed to place Sheridan in its own rate classification for wastewater service. Sheridan’s existing rates for wastewater service are volumetric, but Indiana American’s rates in existing operations are flat. It is not proposed or contemplated that Indiana American would move to a consolidated wastewater rate at this point. Additionally, Indiana American stipulated in the Settlement its commitment that the Muncie and Somerset wastewater customers would not have their rates increased in Indiana American’s upcoming general rate case as a result of the acquisition.

Mr. Bell testified that while the Settling Parties disagreed over the methodology for calculating the one percent threshold for the notice requirement in Section 30.3-5(d)(2), in light of the ratemaking commitments, the Settling Parties stipulated that that notice requirement was not triggered in this proceeding.

6. Commission Discussion and Findings on Joint Petition and Settlement. Indiana American and Sheridan seek approval of Indiana American’s prospective acquisition of the Sheridan Systems. More specifically, their Joint Petition seeks approval under Section 30.3-5(d) and asserts the proposed transaction also satisfies the requirements of Section 30.3-5(c). As such, Joint Petitioners request the Commission approve the transaction under the terms and conditions of the APA, finding the transaction proposed is in the public interest in accordance with Section 6.1(e)(1) and that Indiana American should be authorized to include the cost differential in its rate base.

As the Commission explained in the *Georgetown* and *Lake Station* Orders, Section 6.1 applies to a municipality that adopts an ordinance under Ind. Code § 8-1.5-2-5(d) after March 28, 2016, that addresses the sale or disposition of nonsurplus utility property. *Indiana-Am. and Georgetown*, Cause No. 44915, 2017 WL 4604649 (Oct. 11, 2017) (“*Georgetown*”). *Indiana-*

Am. and Lake Station, Cause No. 45041, 2018 WL 4006723 (Aug. 15, 2018). Section 6.1(b) requires a municipality adopting such an ordinance to obtain Commission approval before the transaction occurs. Sheridan's Town Council President David Kinkead testified that Sheridan adopted an ordinance approving the proposed acquisition of the Sheridan Systems by Indiana American on July 31, 2017. Thereafter, Sheridan and Indiana American entered into the APA on January 17, 2018 (Jt. Pet. Ex. 1, Attach. MP-2), of which they now seek Commission approval.

Under Section 6.1, the ultimate question the Commission must answer is whether "the sale or disposition according to the terms and conditions proposed is in the public interest." In evaluating whether the proposed transaction is in the public interest, Section 6.1(e) provides two avenues. First, under Section 6.1(e)(1), if a municipally owned utility files a petition under Section 30.3-5(d) and the Commission approves this petition under Section 30.3-5(c), then "the proposed sale or disposition is considered to be in the public interest." Alternatively, if Section 6.1(e)(1) does not apply, Section 6.1(e)(2) requires the Commission to consider the degree to which the acquisition will require one utility's customers to subsidize service to customers of the other utility and whether that subsidy causes the transaction not to be in the public interest. For purposes of this proceeding, the relevant inquiry is under Section 6.1(e)(1) because the Joint Petition was filed under Section 30.3-5(d) and Joint Petitioners seek approval under Section 30.3-5(c).

Indiana American and Sheridan also seek approval under Chapter 30.3, which applies if: (1) a utility company¹ is acquiring property from another utility company in a transaction involving a willing buyer and willing seller at a cost differential; and (2) at least one of the two utility companies is subject to the Commission's regulation. It is not disputed that Indiana American is subject to our regulation. There is also no dispute that with respect to the proposed transaction, Sheridan is a willing seller, and Indiana American is a willing buyer. Mr. Roach testified that the purchase price for the proposed acquisition includes a cost differential. Accordingly, the Commission finds that because Joint Petitioners seek Commission approval under Chapter 30.3 to include this cost differential in Indiana American's rate base, we will initially determine below whether Sections 30.3-5(d) and (c) have been satisfied. But a proposed sale cannot be consummated under Section 6.1 until the Commission also determines the proposed sale is in the public interest.

A. Ind. Code § 8-1-30.3-5(d) Requirements. This statute provides the threshold upon what a utility seeking the Commission's approval of an acquisition before the utility property is acquired must preliminarily provide, stating:

(d) A utility company may petition the commission in an independent proceeding to approve a petition under subsection (c) [Section 30.3-5(c)] before the utility company acquires the utility property if the utility company provides:

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

¹ A utility company for this purpose is defined as a public utility, municipally owned utility, or not-for-profit utility that provides water or wastewater service. Section 30.3-3(1).

- (2) notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue;
- (3) notice to the office of the utility consumer counselor; and
- (4) a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

Ind. Code § 8-1-30.3-5(d).

Each element in Section 30.3-5(d) is addressed below, and we find each element is satisfied.

(1) Notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility. Mr. Prine sponsored Jt. Pet. Ex. 1, Attach. MP-5, a letter notifying Sheridan customers of the proposed acquisition. The letter explains the rates that will be charged to Sheridan customers after the closing and the total bill for a residential customer using 4,000 gallons. The letter was mailed on March 21, 2018, which is prior to the filing of Joint Petitioners' case-in-chief. The notice that was mailed is sufficient on its face because it was mailed early enough in the proceeding to afford customers an opportunity to participate in this proceeding if desired. It was mailed to all Sheridan customers. We find Joint Petitioners satisfied Section 30.3-5(d)(1).

(2) Notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent of the utility company's base annual revenue. There was some disagreement between Indiana American and the OUCC regarding the one percent calculation method. For purposes of the Settlement, the Settling Parties stipulated that the acquisition of Sheridan Systems will not increase Indiana American's rates by an amount greater than one percent. Therefore, we find the notice requirement in Section 30.3-5(d)(2) is not triggered by the proposed acquisition.

(3) Notice to the Indiana Office of Utility Consumer Counselor. Regarding Section 30.3-5(d)(3) we find that notice was provided to the OUCC through the service of the Joint Petition and Joint Petitioners' case-in-chief.

(4) A plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility. In determining whether Indiana American has satisfied Section 30.3-5(d)(4) by presenting "a plan for reasonable and prudent improvements," we note that Sheridan qualifies as a distressed utility under Section 30.3-6 for purposes of Section 30.3-5(c) because it serves fewer than 5,000 customers.

In Section 4A(iii) of this Order, Mr. Hoffman's testimony sets forth an eleven-point plan for reasonable improvements to the Wastewater System to address the violations that are the subject of IDEM's Agreed Order with Sheridan. Mr. Hoffman testified that Wessler Engineering estimated a cost for improvements to the Wastewater System of \$2,000,000 to \$5,000,000 over a five-year period, depending upon the alternatives implemented. We also understand that the specific components of the proposed sanitary sewer compliance plan are subject to negotiations and ultimate approval of IDEM, and this is an acceptable process. Mr. Hoffman's testimony also set forth a nine-point plan for reasonable improvements to the Water System. Mr. Hoffman

testified that the estimated costs for improvements to the Water System are \$1,500,000 to \$3,000,000 over a five-year period, depending upon the alternatives implemented.

No party disputed Indiana American's satisfaction of Section 30.3-5(d)(4). We find Indiana American's plans to incorporate both of the systems into their asset management strategy and plans, which include maintenance programs, and to install SCADA programs should be beneficial to the systems. These activities will take advantage of Indiana American's expertise and economies of scale and promote the regional benefits contemplated by the Indiana General Assembly. We find that Indiana American has presented a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

B. Ind. Code § 8-1-30.3-5(c) Requirements. Section 30.3-5 applies when a utility company acquires property from another utility company at a cost differential in a transaction involving a willing buyer and a willing seller, and at least one of the utility companies is subject to the jurisdiction of the Commission. Under Section 30.3-5(b), there is a rebuttable presumption that a cost differential is reasonable. The utility company that acquires the utility property may petition the Commission to include the cost differential as part of its rate base. Pursuant to Section 30.3-5(c):

The utility company that acquires the utility property may petition the commission to include the cost differentials as part of its rate base. The commission shall approve the petition if the commission finds the following:

- (1) The utility property is used and useful in providing water service, wastewater service, or both water and wastewater service.
- (2) The distressed utility failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.
- (3) The utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service.
- (4) The acquisition of the utility property is the result of a mutual agreement made at arms length.
- (5) The actual purchase price of the utility property is reasonable.
- (6) The utility company and the distressed utility are not affiliated and share no ownership interests.
- (7) The rates charged by the utility company before acquiring the utility property of the distressed utility will not increase unreasonably as a result of acquiring the utility property.
- (8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base.

Ind. Code § 8-1-30.3-5(c)(1)-(8).

Each element in Section 30.3-5(c) is addressed below, and we find that each element is satisfied.

(1) The utility property is used and useful in providing water service, wastewater service, or both water and wastewater service. Mr. Prine testified that Sheridan Systems are used and useful in providing water and wastewater service to its customers. Joint Petitioners asserted in their Joint Petition that following the closing of the proposed acquisition, day-to-day operation of the Sheridan Systems will be assumed by Indiana American's water and wastewater utility professionals. The evidence indicates that Indiana American will continue to operate the acquired water and wastewater assets to provide water and wastewater service, and no evidence was presented to the contrary. We find the utility property is used and useful in providing water and wastewater service.

(2) The distressed utility failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities. Mr. Prine testified that Sheridan Systems are municipally owned systems that serve fewer than 5,000 customers therefore satisfying the "distressed" requirement. Mr. Prine explained further that while it is not necessary to satisfy a second condition, Sheridan Systems would also satisfy the definitional requirement of "distressed" by meeting one of the conditions enumerated in Section 30.3-6. Due to the necessary improvements required to the Sheridan Systems, Sheridan is unable to furnish and maintain adequate service to customers at rates equal to or less than those of Indiana American. Mr. Prine and Mr. Hoffman identified the threshold, initial improvements that would be needed to bring the Wastewater System into compliance with IDEM's Agreed Order, and Mr. Kinkead sponsored the O.W. Krohn and Associates rate study which showed that making those improvements, as well as needed improvements to the Water System (with the costs spread over Sheridan's small customer base), would cause rates to be higher than Indiana American's rates. Therefore, we find the conditions set forth in Section 30.3-6 are satisfied. Accordingly, we find that Sheridan Systems have failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.

(3) The utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service. Pursuant to Section 30.3-5(c)(3), Mr. Hoffman testified regarding Indiana American's proposed plan for reasonable and prudent improvements to the Sheridan Systems. Mr. Hoffman's testimony set forth a plan to bring the Wastewater System into compliance with IDEM's contemplated Agreed Order with Sheridan and address the aging infrastructure concerns related to the Water System. After reviewing the financial, managerial, and technical ability of Indiana American to provide the utility service required and make improvements following closing, we find that Indiana American has provided evidence that it will make reasonable and prudent improvements to ensure that customers will receive adequate, efficient, safe, and reasonable service.

(4) The acquisition of the utility property is the result of a mutual agreement made at arm's length. Satisfying Section 30.3-5(c)(4), Mr. Kinkead described the process undertaken by Sheridan prior to entering the transaction. Mr. Kinkead testified that Sheridan issued a RFP to sell Sheridan Systems, and Indiana American was the successful bidder. He further testified that the negotiations proceeded while Sheridan was undergoing the statutory process and such negotiations were conducted at arm's length. Mr. Prine and Mr. Roach echoed Mr. Kinkead's testimony and testified that the negotiations leading up to the execution of the APA were conducted at arm's length. Based on our consideration of this

testimonial evidence, we find the acquisition is the result of a mutual agreement made at arm's length.

(5) The actual purchase price of the utility property is reasonable. Pursuant to Section 30.3-5(c)(5), the actual purchase price of \$10,750,000 does not exceed the value of \$12,637,000 determined by the statutory appraisers. The appraisal was sponsored by Mr. Kinhead as Jt. Pet. Ex. 3, Attach. DK-2. Mr. Kinhead testified the Sheridan Town Council determined that the sale price for the Sheridan Systems should be less than the appraised full value, as such is in the best interest of Sheridan so as to result in lower utility rates to be charged to customers of Sheridan Systems. The purchase price is deemed reasonable under Section 6.1 to the extent it does not exceed the appraised value. Because the purchase price does not exceed the appraised value, we find that the purchase price is reasonable.

(6) The utility company and the distressed utility are not affiliated and share no ownership interests. The utility company and the distressed utility are not affiliated and share no ownership interests. We find, based upon Mr. Prine's testimony to the effect, that Sheridan and Indiana American are not affiliated and share no ownership interests. Jt. Pet. Ex. 1, at 17.

(7) The rates charged by the utility company before acquiring the utility property of the distressed utility will not increase unreasonably as a result of acquiring the utility property. Pursuant to Section 30.3-5(c)(7), Mr. Roach testified that Indiana American's rates will not increase directly as a result of this Cause. Jt. Pet. Ex. 2, at 7-8. The Settling Parties stipulated that the acquisition of the Sheridan Systems will not increase Indiana American's rates by an amount greater than one percent. In addition, Indiana American will place Sheridan in its own rate classification for wastewater. The potential effect on rates for Indiana American's existing customers is expected to be nominal. We find the rates charged by Indiana American will not increase unreasonably as a result of this acquisition.

(8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base. Pursuant to Section 30.3-5(c)(8), Mr. Roach testified that his proposed journal entry allocates the entire purchase price reasonably among utility plant in service accounts. In this fashion, the cost differential will be amortized and charged to expense over a reasonable period of time through depreciation expense. Jt. Pet. Ex. 2, at 7. We approved a similar approach in *Georgetown*, and we find it to be appropriate here as well.

C. Ind. Code § 8-1.5-2-6.1(d) Purchase Price Presumption and Compliance with Ind. Code § 8-1.5-2-4. Before a municipality may sell its nonsurplus utility property under an ordinance adopted under Ind. Code § 8-1.5-2-5(d), the Commission must determine if the sale is in the public interest. More specifically, Section 6.1(d) provides:

(d) The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the *public interest*. For

purposes of this section [Section 6.1], the purchase price of the municipality's nonsurplus utility property shall be considered *reasonable* if it does not exceed the appraised value set forth in the appraisal required under section 5 [Ind. Code § 8-1.5-2-5] of this chapter.

Ind. Code § 8-1.5-2-6.1(d) (emphasis added).

Section 6.1(e) is to be applied for purposes of determining public interest under Section 6.1(d). Under Section 6.1(e)(1), which is the subdivision of (e) applicable to the Joint Petition, the proposed sale is considered to be in the public interest if the municipally owned utility petitions the Commission under Section 30.3-5(d) and the Commission approves the petition under Section 30.3-5(c). We discussed the elements of Section 30.3-5(d) in this Order in Section 6A, and we found that each element was satisfied. We discussed the elements of Section 30.3-5(c) in this Order in Section 6B, and we found that each element was satisfied. Therefore, the sale is considered to be in the public interest.

Section 6.1(d) establishes a test to determine whether the purchase price is reasonable. The purchase price is considered reasonable if it does not exceed the appraised value set by the required appraisal under Ind. Code § 8-1.5-2-5. Under Ind. Code § 8-1.5-2-5(a), each appraiser must be appointed as provided by Section 4. For the Commission to determine whether the reasonableness presumption in Section 6.1(d) is applicable, the appraised value we are presented with must be the product of an appraisal performed consistent with Section 5. No evidence was presented that Indiana American failed to comply with the requirements of Ind. Code § 8-1.5-2-4 in this Cause. We find that Indiana American complied with the requirements of Ind. Code § 8-1.5-2-4. The total agreed purchase price of \$10,750,000 for the Water and Wastewater Systems is less than the appraised value of \$12,637,000. *See* Jt. Pet. Ex. 3, Attach. DK-2, at 1. Therefore, pursuant to Section 6.1(d), the Commission finds that the total agreed purchase price of \$10,750,000 for Sheridan Systems (municipal nonsurplus utility property) is considered reasonable because it does not exceed the appraised value of \$12,637,000 set forth in the appraisal required under Ind. Code § 8-1.5-2-5.

D. Ind. Code § 8-1.5-2-6.1(e)(3) Ability of Purchaser. Section 6.1(e)(3) states that in reviewing the proposed terms and conditions of the proposed sale, the Commission shall consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required after the proposed sale. Therefore, in reviewing the APA, we are required to consider the financial, managerial, and technical ability of Indiana American to provide the required water and wastewater utility services. Mr. Prine testified that Indiana American currently provides residential, commercial, industrial, and municipal water service, including sale for resale and public and private fire protection service, to approximately 302,000 customers. This demonstrates Indiana American's financial, managerial, and technical ability to serve a large customer base. Mr. Prine stated that upon the acquisition by Indiana American, Sheridan customers will gain full-time management of Sheridan Systems, including a full-time operations staff, 24/7 customer service and emergency response, enhanced security measures, and full-time functional specialists in the areas of engineering and water quality. This demonstrates Indiana American's technical ability to perform operations full-time and to respond to customers' needs 24/7. Mr. Prine and Mr. Hoffman testified that Indiana American will

institute reasonable and prudent asset management by adding the Sheridan Systems to Indiana American's ongoing prioritization model. Mr. Hoffman's testimony regarding Indiana American's 11-point plan for the Wastewater System and 9-point plan for the Water System explained how Indiana American will utilize its managerial and technical skills to improve the operation and management of Sheridan Systems and to improve regulatory compliance of the Wastewater System. The OUCC did not contest Indiana American's financial, managerial, or technical ability to provide water and wastewater utility services. Therefore, we find that Indiana American possesses the financial, managerial, and technical ability to provide the required utility services after the sale.

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

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

We note that the Settlement includes provisions indicating it will be deemed withdrawn if not accepted by the Commission in its entirety unless otherwise agreed to by the Settling Parties and that the terms of the Settlement represent a fair, just, and reasonable resolution and compromise. We have made specific findings above with respect to the factors this Commission is to consider in deciding a case brought under Section 6.1 and Section 30.3-5, noting the effect of the Settlement on such factors.

Based on our foregoing discussion and findings, we find that the Settlement is reasonable and in the public interest. Therefore, the authority and obligations proposed therein are approved. With regard to future citation of this Order, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1996 WL 34880849, at 7-8 (IURC March 19, 1997).

F. Accounting Treatment. Mr. Bell further testified that the Settling Parties agreed that upon closing of the acquisition, Indiana American will book as net original cost rate base an amount equal to the full purchase price, plus incidental expenses and other costs of acquisition, excluding appraisal costs of \$16,062.35. The journal entry shall be as reflected in Jt.

Pet. Ex. 2, Attach. GPR-1, as modified by the terms of the Settlement. Section 6.1(f) directs the Commission as follows:

As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:

- (1) the full purchase price;
 - (2) incidental expenses; and
 - (3) other costs of acquisition;
- allocated in a reasonable manner among appropriate utility plant in service accounts.

Ind. Code § 8-1.5-2-6.1(f).

We find that Indiana American's proposed accounting and journal entries as presented in Jt. Pet. Ex. 2, Attach. GPR-1, as modified by the Settlement, should be approved and that the costs so reflected on the books and records of Indiana American be used as the original cost of such properties for accounting, depreciation, and rate base valuation purposes. The journal entry should be adjusted to reflect actual (rather than estimated) incidental expenses and other costs of acquisition. We find that the Settling Parties' stipulation regarding exclusion of the \$16,062.35 in appraisal costs is a reasonable resolution of the dispute between the parties with respect to that issue. We find that Indiana American's existing depreciation accrual rates approved by the Commission in Cause No. 44992 on May 30, 2018, should be applied on and after the closing date of the acquisition to depreciable property purchased from Sheridan pursuant to the APA.

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

Pursuant to the terms of the APA, Sheridan has agreed to increase its wastewater rates by 30% across-the-board effective as of the closing. The Settling Parties have agreed in settlement, and we now find, that on and after closing, those metered wastewater rates adopted by the Sheridan Town Council will apply for service to be provided by Indiana American in the areas currently served by the Wastewater System.

The Settling Parties further stipulated, and we now find, that Indiana American's rules and regulations for wastewater service applicable to its Muncie Sewer Operation shall apply to the Wastewater System, with modifications (as described in Mr. Prine's and Mr. Hoffman's testimony) to: (1) incorporate the provisions of the Sheridan Sewer Use Ordinance governing

what substances shall and shall not be permitted to be discharged into the system; (2) require compliance by any user that pre-treats discharge into the wastewater system with the IPP approved by IDEM; and (3) permit Indiana American to pro-rate a user's partial payments for water and wastewater service except where a customer has followed Indiana American's existing complaint process as set forth in Rule 4.2(d) of its Rules and Regulations Applicable To Water Service.

H. Encumbrances. We find that the encumbering of the properties comprising the Water System and Wastewater System by subjecting such properties to the lien of Indiana American's General Mortgage as of the closing is approved.

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

1. The Stipulation and Settlement Agreement attached hereto is approved in its entirety.
2. Joint Petitioners are authorized to consummate the acquisition of Sheridan's water and wastewater by Indiana American on the terms described in the Asset Purchase Agreement and the Stipulation and Settlement Agreement entered into between the Settling Parties and discussed herein. Sheridan's storm water system is not included in the acquisition.
3. The acquisition of Sheridan Systems by Indiana American on the terms and conditions described in the Asset Purchase Agreement and the Stipulation and Settlement Agreement is in the "public interest" as defined in Ind. Code § 8-1.5-2-6.1(d) and (e) and the same is approved.
4. Indiana American is authorized to record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to the full purchase price, actual incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as stipulated in the Stipulation and Settlement Agreement and reflected in Jt. Pet. Ex. 2, Attach. GPR-1, as the same is modified by the Stipulation and Settlement Agreement.
5. Indiana American is authorized to charge customers currently served by the Sheridan Water System the current rates and charges and apply the same rules and regulations for water service applicable in Indiana American's Area One rate group on file with and approved by the Commission, as the same are in effect from time to time. Such rates and charges and rules and regulations shall be effective subject to the Water and Wastewater Division's review and approval.
6. Indiana American is authorized to charge customers currently served by the Sheridan Wastewater System the rates and charges as the same have been adopted by the Sheridan Town Council as of the closing date. Prior to placing into effect the foregoing wastewater rates, Indiana American shall file with the Water and Wastewater Division of the Commission its revised Schedule of Charges for Sewer Service (IURC No. S-20-A) reflecting the metered wastewater rates authorized herein. Such rates and charges shall be effective subject to the Water and Wastewater Division's review and approval.

7. Indiana American is authorized to apply the rules and regulations for wastewater service applicable to Indiana American's Muncie Sewer Operation to the Sheridan Wastewater System, with the modifications described above. Prior to placing into effect the foregoing rules and regulation for wastewater service for customers of the Sheridan Wastewater System, Indiana American shall file with the Water and Wastewater Division of the Commission its proposed rules, as presented in Jt. Pet. Ex. 1, Attach. MP-8. Such rules and regulations shall be effective subject to the Water and Wastewater Division's review and approval.

8. Indiana American is authorized to reflect the acquisition of Sheridan Systems on its books and records as of the closing by making the accounting and journal entries described in Jt. Pet. Ex. 2, Attach. GPR-1, as modified by the terms of the Stipulation and Settlement Agreement and as adjusted to actual incidental expenses and other costs of the acquisition.

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

10. Indiana American is authorized to apply its depreciation accrual rates on and after the closing date of the acquisition to depreciable property purchased from Sheridan pursuant to the Asset Purchase Agreement.

11. Indiana American is authorized to encumber the properties comprising Sheridan Systems with the lien of Indiana American's mortgage indenture.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: SEP 12 2018

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



Mary M. Becerra
Secretary of the Commission

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN)
WATER COMPANY, INC. ("INDIANA)
AMERICAN") AND THE TOWN OF)
SHERIDAN, INDIANA ("SHERIDAN") FOR)
APPROVAL AND AUTHORIZATION OF: (A))
THE ACQUISITION BY INDIANA AMERICAN)
OF SHERIDAN'S WATER UTILITY)
PROPERTY (THE "SHERIDAN WATER)
SYSTEM") AND OF SHERIDAN'S SEWER)
UTILITY PROPERTY (THE "SHERIDAN)
SEWER SYSTEM") (COLLECTIVELY THE)
"SHERIDAN SYSTEMS") IN HAMILTON)
COUNTY, INDIANA IN ACCORDANCE WITH)
A PURCHASE AGREEMENT THEREFOR; (B))
APPROVAL OF ACCOUNTING AND RATE)
BASE TREATMENT; (C) APPROVAL OF THE)
RATES AND CHARGES TO BE APPLIED TO)
THE SHERIDAN WATER AND SEWER)
SYSTEMS AFTER CLOSING; (D) APPROVAL)
OF APPLICATION OF INDIANA)
AMERICAN'S MUNCIE SEWER RULES AND)
REGULATIONS TO THE SHERIDAN)
WASTEWATER SYSTEM, WITH CHANGES)
TO ALLOW ENFORCEMENT OF AN)
INDUSTRIAL PRETREATMENT PROGRAM)
("IPP") AMONG OTHERS; (E))
APPLICATION OF INDIANA AMERICAN'S)
DEPRECIATION ACCRUAL RATES TO SUCH)
ACQUIRED PROPERTIES; AND (F) THE)
SUBJECTION OF THE ACQUIRED)
PROPERTIES TO THE LIEN OF INDIANA)
AMERICAN'S MORTGAGE INDENTURE.)

CAUSE NO. 45050

STIPULATION AND SETTLEMENT AGREEMENT

Joint Petitioners Indiana-American Water Company, Inc. ("Indiana American") and Town of Sheridan, Indiana ("Sheridan" and together with Indiana American, the "Joint Petitioners"), and the Office of Consumer Counselor ("OUCC") enter into this Stipulation and Settlement Agreement. Joint Petitioners and the OUCC agree that the terms and conditions set

forth below represent a fair and reasonable resolution of all issues, subject to incorporation into a final order of the Indiana Utility Regulatory Commission ("Commission") without any modification or condition that is not acceptable to Indiana American, Sheridan or the OUCC. Joint Petitioners and the OUCC stipulate as follows:

1. The relief requested by Joint Petitioners should be granted subject to the conditions stated herein. Joint Petitioners and the OUCC stipulate to the issuance by the Commission of a final order in the form attached hereto as Attachment A. To the extent Attachment A states that the parties have stipulated to a fact, then Joint Petitioners and the OUCC hereby so stipulate.

2. Indiana American should be authorized to consummate the acquisition by Indiana American of the water and wastewater utility properties owned by Sheridan (the "Sheridan Water System" and "Sheridan Wastewater System," respectively).

3. On and after the closing, Indiana American should be permitted to, and will, apply the rules and regulations and rates and charges generally applicable to Indiana American's Area One rate group, as the same may be changed from time to time, for service to be provided by Indiana American in the areas currently served by the Sheridan Water System.

4. On and after the closing, Indiana American should be permitted to, and will, apply the metered sewer rates as the same have been adopted by the Sheridan Town Council as of the Closing Date, for service to be provided by Indiana American in the areas currently served by the Sheridan Wastewater System. Indiana American will apply the rules and regulations for wastewater service applicable to Indiana American's Muncie Sewer Operation to the Sheridan Wastewater System, with the modifications described in Joint Petitioners' case-in-chief. Indiana

American agrees that its Muncie and Somerset sewer rates will not be increased in Indiana American's next upcoming general rate case to bear the costs of the Sheridan Wastewater System or otherwise as a result of Indiana-American's acquisition of Sheridan's wastewater system.

5. While the parties disagreed over the methodology for calculating the 1% threshold for the notice requirement in Section 30.3-5(d)(2), in light of the ratemaking commitments made in this stipulation, all parties stipulate that that notice requirement was not triggered in this proceeding.

6. Based upon the particular facts of this Cause, and for purposes of settlement only, the parties agree that upon closing of the acquisition, Indiana American will book as net original cost rate base an amount equal to the full purchase price, plus incidental expenses and other costs of acquisition, excluding appraisal costs in the amount of \$16,062.35. For settlement purposes only, Indiana American agrees it will remove the \$16,062.35 for appraisal costs from the amount to be included in rate base. The journal entry shall be as reflected in Attachment GPR-1, as modified by the terms of this Stipulation and Settlement Agreement. . .

7. Indiana American agrees to file with the Commission whatever agreement is ultimately reached with the Indiana Department of Environmental Management ("IDEM") post-closing with respect to necessary improvements to the Sheridan Wastewater System.

8. Following the closing, Indiana American should be permitted to, and will, apply its depreciation accrual rates approved by the Commission in Cause No. 44992 to the properties comprising the Sheridan Water and Wastewater Systems and to encumber the properties

comprising the Sheridan Water and Wastewater Systems with the lien of Indiana American's mortgage indenture.

9. Joint Petitioners and the OUCC stipulate that all evidence that has been filed in this Cause with respect to the relief provided herein is admissible in evidence and that such evidence constitutes a sufficient evidentiary basis for a Commission Order approving this Stipulation. The parties waive cross-examination of each other's witnesses.

10. If this Stipulation is not approved in its entirety by the Commission, the parties stipulate that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding. Moreover, the concurrence of the parties with the terms of this Stipulation is expressly predicated upon the Commission's approval of this Stipulation in its entirety by issuance of the Order in the form set forth in Attachment A without any material modification or any material condition deemed unacceptable by any of them. If the Commission does not approve the Stipulation in its entirety or if the Commission makes modifications to the final order that are unacceptable to any party, the Stipulation shall be null and void and shall be deemed withdrawn upon notice made in writing by any party within 15 days after the date of the final order and stating that a modification made by the Commission is unacceptable to the party. In the event the Stipulation is withdrawn, any party may request, and no other party shall oppose, the convening of an attorneys' conference to establish a procedural schedule for the continued litigation of this proceeding.

11. Joint Petitioners and the OUCC stipulate that this Stipulation reflects a fair, just and reasonable resolution, and is agreed upon without prejudice and the ability of any party to propose a different term in future proceedings.

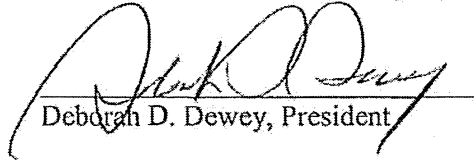
12. The parties agree that whether this stipulation is approved or rejected, none of the terms herein shall be considered an admission by any party. No party hereto shall cite as binding or persuasive precedent the resulting final order. As set forth in the Order in *Re Petition of Richmond Power & Light*, Cause No. 40434, p. 10, Joint Petitioners and the OUCC stipulate and request the Commission to incorporate as part of its final order that this Stipulation, or the order approving it, not be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission or court of competent jurisdiction.

13. The undersigned represent and stipulate that they are fully authorized to execute this Stipulation on behalf of the respective parties who will be bound thereby.

(signature page follows)

Indiana-American Water Company, Inc.

Date: 7/19/18


Deborah D. Dewey, President

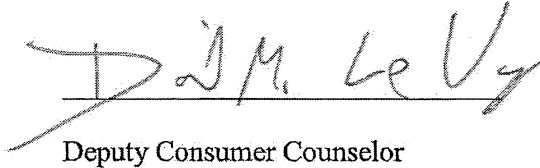
Town of Sheridan, Indiana

Date: _____

David Kinkad, President of Town Council

Indiana Office of Utility Consumer
Counselor

Date: 7/20/18


Deputy Consumer Counselor
Daniel M. LeVay

Indiana-American Water Company, Inc.

Date: _____

Deborah D. Dewey, President

Town of Sheridan, Indiana

Date: 7/20/2018

David W. Kinkead
David Kinkead, President of Town Council

Indiana Office of Utility Consumer
Counselor

Date: _____

Deputy Consumer Counselor

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**JOINT PETITION OF INDIANA-AMERICAN)
WATER COMPANY, INC. ("INDIANA)
AMERICAN") AND THE TOWN OF)
SHERIDAN, INDIANA ("SHERIDAN") FOR)
APPROVAL AND AUTHORIZATION OF: (A))
THE ACQUISITION BY INDIANA AMERICAN)
OF SHERIDAN'S WATER UTILITY)
PROPERTY (THE "SHERIDAN WATER)
SYSTEM") AND OF SHERIDAN'S SEWER)
UTILITY PROPERTY (THE "SHERIDAN)
SEWER SYSTEM") (COLLECTIVELY THE)
"SHERIDAN SYSTEMS") IN HAMILTON)
COUNTY, INDIANA IN ACCORDANCE WITH)
A PURCHASE AGREEMENT THEREFOR; (B))
APPROVAL OF ACCOUNTING AND RATE)
BASE TREATMENT; (C) APPROVAL OF THE)
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THE SHERIDAN WATER AND SEWER)
SYSTEMS AFTER CLOSING; (D) APPROVAL)
OF APPLICATION OF INDIANA)
AMERICAN'S MUNCIE SEWER RULES AND)
REGULATIONS TO THE SHERIDAN)
WASTEWATER SYSTEM, WITH CHANGES)
TO ALLOW ENFORCEMENT OF AN)
INDUSTRIAL PRETREATMENT PROGRAM)
("IPP") AMONG OTHERS; (E))
APPLICATION OF INDIANA AMERICAN'S)
DEPRECIATION ACCRUAL RATES TO SUCH)
ACQUIRED PROPERTIES; AND (F) THE)
SUBJECTION OF THE ACQUIRED)
PROPERTIES TO THE LIEN OF INDIANA)
AMERICAN'S MORTGAGE INDENTURE.)**

CAUSE NO. 45050

Presiding Officers:

Sarah Freeman, Commissioner

Lora Manion, Administrative Law Judge

On February 16, 2018, Joint Petitioners Indiana-American Water Company, Inc. ("Indiana American" or the "Company") and Town of Sheridan, Indiana ("Sheridan" or the "Town") filed their joint petition with the Indiana Utility Regulatory Commission ("Commission" or "IURC") in this matter.

On April 5, 2018, the Commission issued a Docket Entry vacating the prehearing conference and requesting Joint Petitioners and the Office of Utility Consumer Counselor ("OUCC") to file an agreed procedural schedule. On April 6, 2018, the parties filed a Stipulation as to Procedural Matters and on April 11, 2018, the Commission issued a Docket Entry establishing the procedural schedule in this Cause.

On April 13, 2018, Joint Petitioners filed the prepared testimony and exhibits of Mr. Matthew Prine, Mr. Gregory Roach, Mr. David Kinhead and Mr. Stacy Hoffman constituting their case-in-chief.

On June 29, 2018, the OUCC filed the prepared testimony and exhibits of Carl N. Seals and Margaret A. Stull.

On July 20, 2018, Joint Petitioners and the OUCC (the "Settling Parties") jointly filed a Stipulation and Settlement Agreement (the "Settlement") along with testimony in support thereof, which settlement presented the Settling Parties' proposed resolution of all issues raised between them in this proceeding.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a settlement hearing in this Cause was held commencing at 9:30am on August 1, 2018 in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana at which the parties' prefiled evidence, including the Settlement and testimony in support thereof, was admitted into the record. No members of the general public appeared.

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

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

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

Sheridan is a municipality located in Hamilton County, Indiana. Sheridan owns and operates a water distribution system serving approximately 1,261 individually metered customers and a wastewater treatment plant serving approximately 1,233 customers. Sheridan withdrew from the jurisdiction of the Commission for purposes of its water rates and charges and financing on December 4, 1988. The Sheridan systems are in the vicinity of Indiana American's existing Noblesville Operation.

3. **Relief Requested.** Joint Petitioners filed this case pursuant to Ind. Code § 8-1-30.3-5 (“Section 30.3-5”) and § 8-1.5-2-6.1 (“Section 6.1”) and requested that the Commission (1) grant such approvals as may be necessary to consummate the acquisition of the assets comprising the water distribution system owned by Sheridan (the “Sheridan Water System”) and the assets comprising the wastewater treatment system owned by Sheridan (the “Sheridan Wastewater System”) (collectively the “Sheridan Systems”) by Indiana American on the terms described in the Joint Petition and the Asset Purchase Agreement between Indiana American and Sheridan (Attachment MP-2); (2) approve that without regard to amounts that may be recorded on Sheridan’s books and records and without regard to any grants or contributions that Sheridan may have received, Indiana American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed in Joint Petitioners’ evidence; (3) authorize Indiana American to apply the rules and regulations and rates and charges generally applicable to Indiana American’s Area One rate group, as the same may be changed from time to time, for service to be provided by Indiana American in the areas currently served by the Sheridan Water System; (4) approve the application of the metered sewer rates as the same have been adopted by the Sheridan Town Council as of the Closing Date, for service to be provided by Indiana American in the areas currently served by the Sheridan Wastewater System; (5) authorize Indiana American to apply the rules and regulations for wastewater service applicable to Indiana American’s Muncie Sewer Operation to the Sheridan Wastewater System, with the three modifications as described in Joint Petitioners’ Case-in-Chief; (6) authorize Indiana American to apply its existing depreciation accrual rates to the Sheridan Systems; and (7) approve the encumbering of the properties comprising the Sheridan Systems with the lien of Indiana American’s Mortgage Indenture. The Settling Parties request Commission approval of Indiana American’s acquisition of the Sheridan Systems on the terms set forth in the Settlement Agreement.

4. **Pre-Settlement Positions of the Parties.**

A. **Joint Petitioners’ Direct Evidence.** Joint Petitioners presented direct testimony from Matthew Prine, Director of Community and Government Affairs for Indiana American, Gregory Roach, Senior Manager, Revenue Analytics for American Water Works Service Company, David Kinkead, President of the Sheridan Town Council, and Stacy S. Hoffman, Director of Engineering for Indiana American.

(1) **Indiana Code § 8-1.5-2-6.1 and Distressed Utility.** Mr. Prine testified regarding Section 6.1, the Indiana Code section which governs the relief sought in this Cause. He explained that, prior to the passage of Section 6.1, Ind. Code ch. 8-1-30.3 (“Chapter 30.3”) was established as a new chapter during the 2015 legislative session governing the process and standards to be applied in the sale of municipal utility property. Mr. Prine further explained that during the 2016 legislative session, Section 6.1 was passed as a new section in the Code and Chapter 30.3 was amended. Together these changes redefined the Commission’s role and the standards to be applied in approving the sale or disposition of non-surplus municipal utility property.

Mr. Prine explained that one of the results of these legislative changes was to encourage regionalization as a strategy in addressing the State’s ongoing infrastructure needs, by allowing a

public water or wastewater utility that acquires the utility property of a “distressed utility” to petition the Commission to include the “cost differential” associated with the acquisition as part of its rate base. He stated that the term “distressed utility” is defined by statute (Ind. Code §§ 8-1-30.3-2 and -5(a)). Mr. Prine noted that in addition to these legislative changes, an Indiana Finance Authority report on water utility infrastructure needs throughout the State of Indiana (the “2016 IFA Report”) also encouraged system regionalization and emphasized the need for (i) prioritization of replacement of aging or failing water mains and (ii) development of a schedule of asset management that organizes the construction needed to maintain and extend the life of a utility system. Attachment MP-3, pages 7-8 of 79. Mr. Prine testified that the Sheridan Systems face challenges in many of the areas highlighted in the 2016 IFA Report.

Mr. Prine further testified that due to these legislative changes, the process for the sale of a municipally owned water or sewer utility has changed. He explained that a municipality must now obtain the approval of this Commission to sell its water or sewer utility, with this grant of approval determined under either Section 6.1 or Section 30.3-5, as applicable.

Mr. Prine explained that under the new process, the Mayor/Council President or Council of a city or town considering an acquisition must appoint three appraisers to appraise the system's value. Upon return of the appraisal, the municipality must hold a public hearing on the proposed acquisition. If the municipality decides to sell, it must adopt an ordinance approving the proposed acquisition. For an ordinance adopted pursuant to this process after March 28, 2016, Commission approval is required under Section 6.1. The standard for approval is whether the sale according to the proposed terms and conditions is in the public interest. If a petition is filed pursuant to Section 30.3-5(d), and the Commission makes the required findings set forth in Section 30.3-5(c), then Section 6.1 directs that the proposed sale according to the proposed terms and conditions is in the public interest. Mr. Prine noted that under Section 6.1, the purchase price is deemed to be reasonable if it does not exceed the statutory appraised value. Mr. Prine described how the proposed acquisition of the Sheridan Systems followed this process. Mr. Prine testified that because the Sheridan Systems are each considered a “distressed utility,” the Joint Petitioners in this Cause have filed a petition under Section 30.3-5. He outlined the various requirements of Section 30.3-5(c) and (d), which we will further describe as we undertake our required findings thereunder.

Mr. Prine testified that the proposed purchase price for the Sheridan Systems is \$10,750,000, with \$6,200,000 of that purchase price allocated to the Water System, and \$4,550,000 for the Wastewater System. While the Sheridan appointed appraisers determined the appraised value of the Sheridan Systems to be \$12,637,000, Mr. Prine testified that in order to produce lower utility rates to be charged the customers of the Systems, the Sheridan Town Council determined to sell the Systems for less than the full appraised value set forth in the Appraisal (Attachment DK-2 to Mr. Kinkead’s direct testimony). Therefore, the purchase price does not exceed the appraised value of the system. Mr. Prine testified that the original cost rate base for the Sheridan Systems would be \$10,950,000, assuming \$200,000 of incidental expenses and other costs of acquisition. Mr. Prine further testified that the Sheridan Systems are used and useful in providing water and wastewater service to their customers.

With respect to the requirements in Section 30.3-5(d), Mr. Prine testified that Indiana American has provided the required notices and, as further explained in the testimony of Mr. Roach, the acquisition will not increase Indiana American rates by more than one percent (1%)

of Indiana American's base annual revenues. Mr. Prine further testified that, as more fully discussed in Mr. Hoffman's direct testimony, Indiana American has plans to make reasonable and prudent improvements to ensure the customers of the Sheridan Systems will receive adequate, efficient, safe, and reasonable service.

After describing how Indiana American satisfied each of the requirements listed under Sections 30.3-5(c) and 30.3-5(d), Mr. Prine summarized how Section 6.1 interacts with Chapter 30.3. He explained that if the purchase price of the proposed acquisition does not exceed the appraised value, and the elements of Sections 30.3-5(c) and 30.3-5(d) are met, Section 6.1 directs the issuance of a final order not later than 210 days after the filing of the case in chief authorizing the acquiring utility company to record: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition; as the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

(2) **Plan for Improvements to Sheridan's Systems.** Mr. Prine and Mr. Hoffman testified regarding the necessary improvements needed to the Sheridan Systems to address environmental and aging or failing infrastructure issues. Mr. Prine explained that under municipal ownership, the Systems face rising costs for necessary improvements to facilities and operations. He stated that in the last five years, the wastewater system has been issued notices of violations ("NOVs") for twenty-five (25) bypass and twelve (12) overflow events and the Indiana Department of Environmental Management ("IDEM") has cited the Town for an inadequate preventative maintenance program. Additionally, Mr. Prine explained the system has suffered from inflow and infiltration from the Sheridan's stormwater system. Mr. Prine further testified that Sheridan does not have a plan for replacement of aging or failing distribution infrastructure.

Mr. Prine testified that these necessary improvements will cause rates to continue to rise as improvements to the Systems are made. He further testified that Sheridan had a rate study performed by O.W. Krohn & Associates that predicted the necessary increases in rates if Sheridan were to continue to own and operate the Systems (Attachment DK-1 to Mr. Kinkead's Direct Testimony). Mr. Prine stated that the projected sewer rates (and in the case of the water system, the existing rates) are higher than the rates Indiana American proposes to charge the customers of the Sheridan Systems. He testified Sheridan has committed to adopt a 30% across-the-board rate increase for its wastewater customers as of closing, and Indiana American has committed to charging those wastewater rates until 2021.

Mr. Hoffman testified regarding Indiana American's plan for improvements to the Sheridan Systems and operations, as well as the costs of those improvements. Mr. Hoffman described the challenges faced by both Systems and the approaches Indiana American will likely take to address those challenges. Mr. Hoffman testified regarding the regulatory issues related to Sheridan's Wastewater System and explained that Sheridan negotiated an Agreed Order with IDEM to address the NOVs resulting from 25 bypass events and 12 overflow events related to the system. He further explained the Agreed Order requires Sheridan to implement an IDEM-approved stormwater compliance plan and to make improvements to the WWTP and wastewater system to improve permit compliance. Mr. Hoffman outlined Indiana American's proposed improvement plan to satisfy the Agreed Order. Mr. Hoffman testified that IDEM informally indicated the plan outlined in his testimony was acceptable. Mr. Hoffman further testified that

based on the preliminary estimate ranges prepared by Wessler Engineering in their Preliminary Study for Wastewater System Needs (February 2014), improvements to the wastewater system over a five year period after the close of acquisition could cost \$2M to \$5M.

Mr. Hoffman also described the challenges facing Sheridan's Water System, including the needed replacement of aging or failing infrastructure. Mr. Hoffman described Indiana American's plan to address the needed improvements. He testified the plan is to include the Sheridan Water System in Indiana American's prioritization model for the distribution system. He further testified improvements to the water system over a five year period after the close of the acquisition could cost \$1.5M to \$3M, depending on improvements implemented.

Mr. Hoffman also addressed Indiana American's proposed changes to its rules and regulations applicable to wastewater utility service, specifically to address industrial pre-treatment. Mr. Hoffman explained that Indiana American must get IDEM approval for any industrial pre-treatment program ("IPP") it wishes to implement. He testified Indiana American proposes to add a provision to its rules that requires, after closing of the acquisition, any customer that pre-treats discharge into the wastewater system to comply with the IDEM-approved IPP. A copy of the proposed change is contained in Attachment MP-8 to Mr. Prine's direct testimony. Mr. Hoffman further testified that Indiana American's current sewer rules and regulations do not include typical sewer USP restrictions; he stated that Indiana American proposes to adopt specific portions of Sheridan's existing sewer ordinance that restrict what can be placed in the sewers.

(3) **Proposed Acquisition and Asset Purchase Agreement.** David Kinkead, President of the Sheridan Town Council, testified regarding the purpose for the proposed acquisition of Sheridan's Systems by Indiana American. Mr. Kinkead provided an overview of Sheridan's Wastewater System and its history of environmental regulatory issues. He reiterated Mr. Prine's testimony regarding the IDEM NOV's and the inflow and infiltration issues related to the Town's stormwater system. Mr. Kinkead testified that selling the wastewater system would allow a company with greater expertise to take over investment, operation and maintenance of the system and enable the Town to invest in elimination of the stormwater source of the NOV's. He further testified that the Town's water system is also aged and in need of certain infrastructure improvements. Mr. Kinkead testified that Sheridan commissioned a rate study from O.W. Krohn and Associates (Attachment DK-1) and the results of the study made it clear the costs to Sheridan's citizens would be much greater if the Town continued to own and manage the utilities, than with a transfer to a private entity subject to IURC review.

Mr. Kinkead testified that the Town Council approved the issuance of a Request for Proposals ("RFP") in September 2016, to which Indiana American was the successful bidder. In response to the RFP, Indiana American also provided the Town a proposed purchase agreement. Mr. Kinkead further testified that the Town followed the statutory process necessary to sell its water and wastewater assets (described below) and conducted negotiations with Indiana American which resulted in a purchase agreement (the "Agreement") being finalized and signed on January 17, 2018. He testified that the negotiations leading up to the execution of the Agreement were conducted at arm's length.

Mr. Kinkead testified that the Town followed the statutory process necessary to sell its water and sewer utility assets and appointed three appraisers to appraise the Systems. He further testified the Sheridan Town Council voted on February 27, 2017 to appoint official appraisers of the Sheridan Systems. Mr. Kinkead testified Sheridan received the Return of Appraisement certifying the appraisal on June 8, 2017 (a copy of the appraisal is attached as Attachment DK-2 to Mr. Kinkead's direct testimony). He further testified that the statutory required public hearing was held on July 26, 2017. Mr. Kinkead testified that on July 31, 2017, the Town enacted the ordinance attached as Attachment DK-3, which ordinance explained the Town Council determined that the sale price for the Systems should be less than the full appraised value so as to result in lower utility rates to be charged to the customers of the Systems.

Mr. Kinkead further testified regarding other communications he has had with Sheridan customers regarding the sale. He explained that Mr. Prine and other officials from Indiana American attended numerous town council meetings to provide customers the opportunity to get answers directly from Indiana American. He further testified the Town also held several additional meetings, in excess of statutory requirements, to determine public opinion and receive input regarding the proposed sale. Mr. Kinkead testified the response was clear that citizens were overwhelmingly in favor of the proposed transaction. He further testified no Sheridan customers have expressed opposition to the proposed sale.

The Asset Purchase Agreement was filed as Attachment MP-2. Mr. Prine testified that Indiana American proposes to acquire all of the property that is subject to the appraisal. He testified the Sheridan Town Council determined to sell the Systems for a purchase price of less than the appraised value in order to produce lower utility rates for Sheridan's customers. Mr. Prine stated that consummation of the transaction is conditioned on obtaining certain approvals from the Commission, including with respect to recognition of the full purchase price plus transaction costs in net original cost rate base, the application of Indiana American's Area One rates to Sheridan water customers, and approval of Sheridan's wastewater rates and charges, as adopted by the Town Council at closing, as well as Indiana American's application of those rates and charges to Sheridan wastewater utility customers.

Mr. Prine testified that the customers of the Sheridan Systems and Indiana American's existing customers will benefit from the acquisition. First and foremost, Sheridan customers will benefit from Indiana American making the necessary and IDEM-required improvements to Sheridan's wastewater system, as well as needed improvements to the water system. Further, Sheridan customers will benefit from full time management of their Systems, including, but not limited to, a full-time operations staff, 24/7 customer service and emergency response, enhanced security measures, along with full-time functional specialists in the areas of engineering and water quality. He further testified that customers will benefit from the acquisition, as the Systems will be included in Indiana American's prioritization model, allowing planning and asset management needs like those identified by the 2016 IFA Report to be met.

Mr. Prine testified that due to significant improvements needed to the Sheridan Wastewater System in order to comply with IDEM requirements, as well as the Sheridan Water System to address aging infrastructure concerns, continuation of current ownership could lead to a troubled future for the Systems. He echoed Mr. Kinkead's testimony that Indiana American is in a better position than the Town to address these issues. While both Mr. Prine and Mr. Roach

testified that the statute did not require Indiana American to provide notice to its existing customers because the proposed acquisition will not increase Indiana American rates in an amount greater than 1%, Mr. Roach described in his testimony the notice Indiana American provided to its existing customers. Mr. Prine testified that all Sheridan customers were notified of the proposed transaction and the rates that would be charged after closing.

(4) Accounting and Ratemaking Treatment.

Mr. Roach testified that the accounting and ratemaking treatment reflected in the proposed journal entry conforms with the treatment to be granted under Section 30.3-5(c), where all of the factors set forth in that section are met. Mr. Roach further testified that the purchase price for the acquisition includes a “cost differential” as that term is defined in Ind. Code § 8-1-30.3-1. Mr. Prine testified that pursuant to Section 30.3-5(e), if this Commission makes the required findings, the resulting Order is to authorize Indiana American “to make accounting entries recording the acquisition that reflect: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition; as the original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.” *Id.* Mr. Roach testified that as a result, Indiana American is proposing to record the net original cost of the Sheridan Systems in the manner reflected in the proposed journal entry shown on Attachment GPR-1. Mr. Prine testified that the depreciation accrual rates to be applied to the Sheridan Systems assets would be the rates approved by the Commission in Cause No. 44992 on May 30, 2018.

Mr. Roach further testified that notice of the acquisition to Indiana American’s customers is not required because customer rates will not increase in future rate cases by more than one percent (1%) due to this acquisition. The calculation performed by Mr. Roach in accordance with the methodology approved by the Commission’s March 14, 2018 Order in Cause Nos. 44976 and 44064 was included as Attachment GPR-2 to his direct testimony. Mr. Roach testified that despite the statute not requiring Indiana American to provide notice to existing customers, notice has been provided.

B. OUCC’s Evidence. Ms. Margaret Stull, Chief Technical Adviser in the Water/Wastewater Division with the OUCC, testified regarding Indiana American’s proposed accounting transaction. Ms. Stull expressed concerns regarding the methodology Indiana American used to calculate the rate impact on its current customers and the potential impact of the acquisition on Indiana American’s existing wastewater customers. Ms. Stull testified that because the calculation presented by Mr. Roach and included on Attachment GPR-2 is a single calculation based on total water and wastewater costs, this may suggest Indiana American plans to spread its investment in Sheridan’s wastewater assets across its entire water and wastewater operations. Ms. Stull stated that if the cost of the acquisition of the wastewater assets is solely attributed to Indiana American’s wastewater customers, the rate impact for Indiana American’s existing wastewater customers would be significant. Ms. Stull further testified she disagreed with including the \$16,062.35 of appraisal costs in rate base. She recommended that the Commission not allow Indiana American to include in rate base the \$16,062 of appraisal costs reimbursed to Sheridan. She further recommended that the amount of transaction costs to be included in rate base should be limited to amounts actually incurred not to exceed \$183,938 (\$200,000-\$16,062).

Mr. Carl N. Seals, Utility Analyst with the OUCC, testified regarding Indiana American's plan for reasonable improvements to comply with IDEM's Agreed Order. Mr. Seals acknowledged that Indiana American has committed under the Purchase Agreement to negotiate in good faith with IDEM to enter into a compliance plan to improve the Sheridan Wastewater System upon Indiana American's acquisition of that system. Mr. Seals recommended that Indiana American be required to file the compliance plan between IDEM and Indiana American with the Commission within 30 days of its approval by IDEM, so that both the OUCC and the Commission will be informed of the final terms of the Agreed Order.

5. Settlement.

The Settlement Agreement filed in this Cause was supported by testimony from Mr. Roach and Scott Bell. Mr. Roach described the key terms of the Settlement, explaining that the parties agreed that the relief requested by Joint Petitioners should be granted, subject to stipulated conditions intended to address the concerns raised by OUCC witnesses Seals and Stull. The parties agreed that, for purposes of settlement only, the amount Indiana American should be allowed to record as net original cost rate base of the assets being acquired will exclude the appraisal costs in the amount of \$16,062.35. The parties also agreed that the amount of incidental expenses and other costs to be included in rate base should be limited to amounts actually incurred.

The Settlement Agreement also sets forth Indiana American's commitment that its existing Muncie and Somerset sewer rates will not be increased in Indiana American's upcoming general rate case to bear the costs of the Sheridan Wastewater System. The parties also stipulated that Indiana American will file with the Commission the agreement ultimately reached with IDEM with respect to necessary improvements to the Sheridan Wastewater System.

The Settlement Agreement contains customary language establishing the parties' understanding regarding admissibility of evidence filed in the case and waiving cross-examination of each other's witnesses. If the Settlement Agreement is not approved in its entirety without material modification or material condition, the terms provide that a party may provide written notice within 15 days after the Commission's final order in this Cause that a modification of the settlement contained in that order is unacceptable to the party. Upon such notice, the Settlement Agreement is null and void and deemed withdrawn. The parties have stipulated that the Settlement Agreement and this Order may not be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission or court of competent jurisdiction.

The parties stipulated, and supporting witnesses affirmed, that the Settlement Agreement reflects a fair, just and reasonable resolution of this proceeding.

6. Commission Discussion and Findings on Joint Petition and Settlement. This acquisition is proceeding pursuant to Section 6.1 and Section 30.3-5. Under Section 6.1, we must determine whether "the sale or disposition according to the terms and conditions proposed is in the public interest." (d). If we so find, then we are to authorize the transfer and the purchaser to record as net original cost rate base an amount equal to the full purchase price plus incidental expenses and other costs of acquisition "without regard to amounts that may be recorded on the

books and records of the municipality and without regard to any grants or contributions previously received by the municipality.” (f).

Section 6.1 also provides us guidance as to how we are to approach this question of the public interest. If the petition is also filed under Section 30.3-5(d) (as it is here) and we approve the petition under Section 30.3-5(c), then Section 6.1 directs “the proposed sale or disposition is considered to be in the public interest.” In order for Section 30.3-5 to apply, two things are required: first the utility is being acquired in a transaction involving a willing buyer and willing seller at a cost differential; and second, that one of the two utility companies is subject to our regulation. Both of these conditions are satisfied. There is no dispute that Indiana American is subject to our regulation, and there is no dispute that this transaction involves a willing buyer and a willing seller. Mr. Roach testified “the purchase price for the acquisition includes a ‘cost differential’ as that term is defined in Ind. Code § 8-1-30.3-1,” and he went on to explain the basis for that conclusion. Joint Petitioners’ Exhibit 2, pp. 5-7. No party disputed that statement, and we find there is a cost differential.

A. **IC § 8-1-30.3-5(c) Requirements.** For purposes of determining whether the proposed sale or disposition is in the public interest as required by Section 6.1, “the proposed sale is considered to be in the public interest [if it meets the requirements of Sections 30.3-5(c) and 30.3-5(d)].” Section 6.1(e). Section 30.3-5(c) provides that “the utility company that acquires the utility property may petition the commission to include the cost differentials as part of its rate base,” and that the Commission shall approve the petition if it finds the following:

- (1) The utility property is used and useful in providing water service, wastewater service, or both water and wastewater service.
- (2) The distressed utility failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.
- (3) The utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service.
- (4) The acquisition of the utility property is the result of a mutual agreement made at arm’s length.
- (5) The actual purchase price of the utility property is reasonable.
- (6) The utility company and the distressed utility are not affiliated and share no ownership interests.

- (7) The rates charged by the utility company before acquiring the utility property of the distressed utility will not increase unreasonably as a result of acquiring the utility property.
- (8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base.

The parties have stipulated that the criteria under Section 30.3-5 (d) have been met, which we address below, and therefore the relief afforded under Section 30.3-5(c) should be addressed:

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

Mr. Prine testified that the Sheridan Systems are used and useful in providing water and wastewater service to its customers. Joint Petitioners asserted in their Petition that following the closing of the proposed acquisition, day to day operations of the Sheridan System will be assumed be assumed by Indiana-American's water and sewer utility professionals. The evidence indicates that Indiana-American will continue to operate the acquired water and wastewater assets to provide water and wastewater service respectively. No evidence was presented to the contrary. We find the utility property is used and useful in providing water and wastewater service.

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

Mr. Prine testified that the Sheridan Systems are municipally owned systems that serve fewer than 5,000 customers and therefore would satisfy the "distressed" requirement. Mr. Prine explained further that while it is not necessary to satisfy a second condition, the Sheridan Systems would also satisfy the definitional requirement of "distressed" as defined by meeting one of the conditions enumerated in Ind. Code § 8-1-30.3-6, because due to the necessary improvements required to the Systems, Sheridan is unable to furnish and maintain adequate service to their customers at rates equal to or less than those of Indiana American. Mr. Prine and Mr. Hoffman identified the minimal initial improvements that would be needed to bring the Wastewater System into compliance with IDEM's Agreed Order, and Mr. Kinkead sponsored the O.W. Krohn and Associates rate study which showed that making those improvements, as well as needed improvements to the Water System (with the costs spread over Sheridan's small customer base) would cause rates to be higher than Indiana American's rates.

Therefore, we find the conditions set forth in IC 8-1-30.3-6 are satisfied. Accordingly, we find that the Sheridan Systems have failed to furnish or maintain adequate, efficient, safe and reasonable service and facilities.

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

Mr. Hoffman testified regarding Indiana American's proposed plan for reasonable improvements to the Systems. Mr. Hoffman's testimony set forth a plan to bring the Wastewater System into compliance with IDEM's Agreed Order and address the aging infrastructure concerns related to the Water System. We have considered the financial, managerial and technical ability of Indiana American to provide the utility service required following closing. We find that Indiana American will make reasonable and prudent improvements to ensure that Sheridan customers will receive adequate, efficient, safe and reasonable service.

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

Mr. Kinkead described the process undertaken by Sheridan prior to entering the transaction. Mr. Kinkead testified that Sheridan issued an RFP to sell its Systems to which Indiana American was the successful bidder. He further testified that the negotiations proceeded while Sheridan was undergoing the statutory process and such negotiations were conducted at arm's length. Mr. Prine and Mr. Roach echoed Mr. Kinkead's testimony and testified that the negotiations leading up to the execution of the Asset Purchase Agreement were conducted at arm's length. We find the acquisition is the result of a mutual agreement made at arm's length.

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

The actual purchase price does not exceed the just and true value determined by the statutory appraisers. The appraisal was sponsored by Mr. Kinkead as Attachment DK-2. Mr. Kinkead testified the Sheridan Town Council determined that the sale price for the Systems should be less than the full appraised value, as such is in the best interest of the Town so as to result in lower utility rates to be charged to the customers of the Systems. The purchase price is deemed reasonable under Section 6.1 to the extent it does not exceed the appraised value. The purchase price does not exceed the appraised value, and so the purchase price is reasonable.

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

We find, based upon Mr. Prine's testimony to the effect, that Sheridan and Indiana American are not affiliated and share no ownership interests.

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

The Indiana American rates will not increase directly as a result of this Cause. In future cases, the potential effect on rates is nominal, as we will explain further in addressing Section 30.3-5(d)(2). We find the rates charged by Indiana American will not increase unreasonably as a result of this acquisition.

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

Mr. Roach testified that his proposed journal entry allocates the entire purchase price reasonably among utility plant in service accounts. In this fashion, the cost differential will be amortized and charged to expense over a reasonable period of time through depreciation expense. We approved a similar approach in Cause No. 44915 ("*Georgetown*") and we find it to be appropriate here as well.

B. IC § 8-1-30.3-5(d) Requirements. We must determine that the requirements of IC 8-1-30.3-5(d) have been met. The parties have stipulated the criteria has been met and we address each criteria below:

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

Mr. Prine sponsored as Attachment MP-5 a letter which notifies of the proposed acquisition and explains what rates will be charged to Sheridan customers after the closing, and the total bill for a residential customer using 4,000 gallons. It appears the letter was mailed on March 21, 2018, which is prior to the time of the filing of Joint Petitioners' case-in-chief. The notice that was mailed is sufficient on its face, it was mailed early enough in the proceeding to afford customers an opportunity to participate if they chose to do so, and it was mailed to all Sheridan's customers. We find Joint Petitioners satisfied Section 30.3-5(d)(1).

- (2) Notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue.

While there was some disagreement between Indiana American and the OUCC regarding the 1% calculation, for purposes of the Settlement, the parties stipulated that the acquisition of the Sheridan Systems will not increase Indiana American's rates by an amount greater than 1%. and therefore no notice to existing customers of Indiana American was required in this Cause.

Accordingly, we find the notice requirement in Section 30.3-5(d)(2) is not triggered by the proposed acquisition.

(3) Notice to the office of the utility consumer counselor.

We find that notice was provided to the OUCC through the service of the petition and the Joint Petitioners' case-in-chief.

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

Section 30.3-5(d)(4) requires that a purchasing utility must provide a "plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility." Mr. Hoffman's testimony set forth a plan for reasonable improvements to the Sheridan Wastewater System to address the NOV's and bring the system into compliance with IDEM's Agreed Order. He further testified that Indiana American's plan for improvements includes including the Sheridan Systems in Indiana American's prioritization models for distribution system replacements so that commencement on an infrastructure improvement plan as contemplated in Attachment MP-3 can begin.

We find that Indiana American has presented a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

C. Settlement.

We have previously discussed our policy with respect to settlements:

Indiana law strongly favors settlement as a means of resolving contested proceedings. *See, e.g., Manns v. State Department of Highways*, (1989) Ind., 541 N.E.2d 929, 932; *Klebes v. Forest Lake Corp.*, (1993), Ind. App. 607 N.E.2d 978, 982; *Harding v. State*, (1992), Ind. App., 603 N.E.2d 176, 179. A settlement agreement "may be adopted as a resolution on the merits if [the Commission] makes an independent finding, supported by substantial evidence on the record as a whole, that the proposal will establish 'just and reasonable' rates." *Mobil Oil Corp. v. FPC*, (1974), 417 U.S. 283, 314 (emphasis in original).

Indianapolis Power & Light Co., Cause No. 39938, p. 7 (IURC 8/24/95); *see also Commission Investigation of Northern Ind. Pub. Serv. Co.*, Cause No. 41746, p. 23 (IURC 9/23/02). This policy is consistent with expressions to the same effect by the Supreme Court of Indiana. *See, e.g., Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) ("The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes"); *In re Assignment of Courtrooms, Judge's Offices and Other Facilities of St. Joseph Superior*

Court, 715 N.E.2d 372, 376 (Ind. 1999) (“Without question, state judicial policy strongly favors settlement of disputes over litigation”).

Nevertheless, a settlement agreement will not be approved by the Commission unless it is supported by probative evidence. 170 IAC 1-1.1-1 7. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). Any settlement agreement that is approved by the Commission “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406. Furthermore, any Commission decision, ruling or order — including the approval of a settlement — must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2-1 *et seq.*, and that the agreement serves the public interest.

We note that the Settlement Agreement includes provisions indicating it will be deemed withdrawn if not accepted by the Commission in its entirety unless otherwise agreed to by the Settling Parties and that the terms of the Settlement represent a fair, just and reasonable resolution and compromise. We have made specific findings above with respect to the factors this Commission is to consider in deciding a case brought under Section 6.1 and Section 30.3-5, noting the effect of the settlement on such factors.

Based on our foregoing discussion and findings, we find that the Settlement Agreement is reasonable and in the public interest and the authority and obligations proposed therein should be approved. With regard to future citation of this Order, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 (IURC March 19, 1997).

D. Sale Approval and Accounting Treatment.

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

Because we determined that Joint Petitioners have satisfied all of the requirements listed in Chapter 30.3 in order for a sale or disposition to be deemed in the public interest, we find, pursuant to Section 6.1(d), that the proposed acquisition of the Sheridan Systems is in the public interest and the sale is approved on the terms set forth in the Asset Purchase Agreement and the Settlement Agreement discussed herein.

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

“As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:

- (1) the full purchase price;
 - (2) incidental expenses; and
 - (3) other costs of acquisition;
- allocated in a reasonable manner among appropriate utility plant in service accounts.”

As directed by the statute, we therefore find that without regard to amounts that may be recorded on Sheridan’s books and records and without regard to any grants or contributions that Sheridan may have received, Indiana-American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, plus incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts in the fashion recommended by Mr. Roach and as shown on the journal entry attached to his direct testimony as Attachment GPR-1, as modified by the terms of the Settlement agreement, whereby Indiana American agreed to exclude from rate base the costs of the appraisal. We find that the parties’ stipulation regarding exclusion of the \$16,062.35 in appraisal costs is a reasonable resolution of the dispute between the parties with respect to that issue. We also find that total incidental expenses and other costs of the acquisition should be limited to the actual such expenses and costs incurred.

We further find that Indiana-American’s proposed accounting and journal entries as presented in Attachment GPR-1, as modified by the Settlement, should be approved and that the costs so reflected on the books and records of Indiana-American be used as the original cost of such properties for accounting, depreciation, and rate base valuation purposes. The journal entry should be adjusted to reflect actual (rather than estimated) incidental expenses and other costs of acquisition. We find that Indiana-American’s existing depreciation accrual rates approved by the Commission in Cause No. 44992 on May 30, 2018 should be applied on and after the closing date of the acquisition to depreciable property purchased from Sheridan pursuant to the Asset Purchase Agreement.

E. Rates and Rules.

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

Pursuant to the terms of the Asset Purchase Agreement, Sheridan has agreed to increase its sewer rates by 30% across-the-board effective as of the closing. The parties have agreed in settlement, and we now find, that on and after closing, those metered sewer rates adopted by the Sheridan Town Council will apply for service to be provided by Indiana American in the areas currently served by the Sheridan Wastewater System.

The parties have further stipulated, and we now find, that Indiana American's rules and regulations for wastewater service applicable to its Muncie Sewer Operation shall apply to the Sheridan Wastewater System, with modifications (as described in Mr. Prine's and Mr. Hoffman's testimony) to (1) incorporate the provisions of the Sheridan Sewer Use Ordinance governing what substances shall and shall not be permitted to be discharged into the system, (2) require compliance by any user that pre-treats discharge into the wastewater system with the Industrial Pretreatment Program approved by IDEM, and (3) permit Indiana American to prorate a user's partial payments for water and wastewater service except where a customer has followed Indiana American's existing complaint process as set forth in Rule 4.2(d) of its Rules and Regulations Applicable To Water Service.

F. Encumbrances.

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

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

1. The Settlement Agreement shall be and hereby is approved in its entirety.
2. Joint Petitioners are hereby authorized to consummate the acquisition of the Sheridan Systems by Indiana American on the terms described in the Asset Purchase Agreement and the Settlement Agreement entered into between the Parties and discussed herein.
3. The acquisition of the Sheridan Systems by Indiana-American on the terms and conditions described in the Asset Purchase Agreement and the Settlement Agreement is in the "public interest" as defined in Indiana Code § 8-1.5-2-6.1(d) and (e) and the same shall be and is hereby approved.
4. Indiana-American shall be and hereby is authorized to record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to the full purchase price, actual incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as stipulated in the Settlement Agreement and reflected in Attachment GPR-1, as the same is modified by the Settlement Agreement.
5. Indiana-American shall be and is hereby authorized to charge customers currently served by the Sheridan Water System the current rates and charges and apply the same rules and

regulations for water service applicable in Indiana-American's Area One rate group on file with and approved by the Commission, as the same are in effect from time to time.

6. Indiana American shall be and is hereby authorized to charge customers currently served by the Sheridan Wastewater System the rates and charges as the same have been adopted by the Sheridan Town Council as of the Closing Date. Prior to placing into effect the foregoing wastewater rates, Indiana American shall file with the Water/Wastewater Division of the Commission its revised Schedule of Charges for Sewer Service (IURC No. S-20-A) reflecting the metered sewer rates authorized herein.

7. Indiana American shall be and is hereby authorized to apply the rules and regulations for wastewater service applicable to Indiana American's Muncie Sewer Operation to the Sheridan Wastewater System, with the modifications described in Finding Paragraph No. 6.E above. Prior to placing into effect the foregoing rules and regulation for wastewater service for customers of the Sheridan Wastewater System, Indiana American shall file with the Water/Wastewater Division of the Commission its proposed rules, as presented in Attachment MP-8.

8. Indiana-American shall be and is hereby authorized to reflect the acquisition of the Sheridan Systems on its books and records as of the closing by making the accounting and journal entries described in Attachment GPR-1, as modified by the terms of the Settlement and as adjusted to actual incidental expenses and other costs of the acquisition.

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

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

11. Indiana-American shall be and is hereby authorized to encumber the properties comprising the Sheridan Systems with the lien of Indiana-American's mortgage indenture.

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

APPROVED:

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

Mary M. Becerra, Secretary to the Commission
DMS 12772356v1