

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

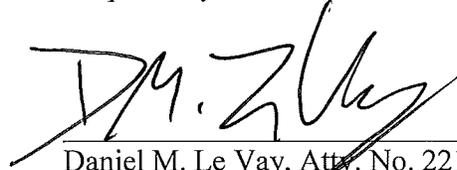
JOINT PETITION OF INDIANA AMERICAN)
WATER COMPANY, INC. ("INDIANA)
AMERICAN") AND THE CITY OF LAKE)
STATION, INDIANA ("LAKE STATION") FOR)
APPROVAL AND AUTHORIZATION OF: (A))
THE ACQUISITION BY INDIANA AMERICAN)
OF LAKE STATION'S WATER UTILITY)
PROPERTIES (THE "LAKE STATION WATER)
SYSTEM") IN LAKE COUNTY, INDIANA IN)
ACCORDANCE WITH A PURCHASE)
AGREEMENT THEREFOR; (B) APPROVAL OF)
ACCOUNTING AND RATE BASE)
TREATMENT; (C) APPLICATION OF INDIANA)
AMERICAN'S AREA ONE RATES AND)
CHARGES TO WATER SERVICE RENDERED)
BY INDIANA AMERICAN IN THE AREA)
SERVED BY THE LAKE STATION WATER)
SYSTEM ("THE LAKE STATION AREA"); (D))
APPLICATION OF INDIANA AMERICAN'S)
DEPRECIATION ACCRUAL RATES TO SUCH)
ACQUIRED PROPERTIES; AND (E) THE)
SUBJECTION OF THE ACQUIRED)
PROPERTIES TO THE LIEN OF INDIANA)
AMERICAN'S MORTGAGE INDENTURE)

CAUSE NO. 45041

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S
PROPOSED ORDER

The Indiana Office of Utility Consumer Counselor ("OUCC") submits the attached Proposed Order.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

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

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

Michael L. Deppe
Benjamin D. Waite
DEPPE LAW CENTER
3940 W. 37th Avenue
Hobart, Indiana 46342
Email: esquire22210@yahoo.com
beniamin.waite@outlook.com

J. Christopher Janak
Kristina Wheeler
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
Email: jjanak@boselaw.com
kwheeler@boselaw.com

Robert M. Glennon
3697 North C.R. 500 East
Danville, Indiana 46122
Email: robertglennonlaw@gmail.com



Daniel M. Le Vay
Deputy Consumer Counselor

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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA AMERICAN)
WATER COMPANY, INC. ("INDIANA)
AMERICAN") AND THE CITY OF LAKE)
STATION, INDIANA ("LAKE STATION") FOR)
APPROVAL AND AUTHORIZATION OF: (A))
THE ACQUISITION BY INDIANA AMERICAN)
OF LAKE STATION'S WATER UTILITY)
PROPERTIES (THE "LAKE STATION WATER)
SYSTEM") IN LAKE COUNTY, INDIANA IN)
ACCORDANCE WITH A PURCHASE)
AGREEMENT THEREFOR; (B) APPROVAL)
OF ACCOUNTING AND RATE BASE)
TREATMENT; (C) APPLICATION OF)
INDIANA AMERICAN'S AREA ONE RATES)
AND CHARGES TO WATER SERVICE)
RENDERED BY INDIANA AMERICAN IN THE)
AREA SERVED BY THE LAKE STATION)
WATER SYSTEM ("THE LAKE STATION)
AREA"); (D) APPLICATION OF INDIANA)
AMERICAN'S DEPRECIATION ACCRUAL)
RATES TO SUCH ACQUIRED PROPERTIES;)
AND (E) THE SUBJECTION OF THE)
ACQUIRED PROPERTIES TO THE LIEN OF)
INDIANA AMERICAN'S MORTGAGE)
INDENTURE.)

CAUSE NO. 45041

ORDER OF THE COMMISSION

Presiding Officers:

Sarah Freeman, Commissioner

Carol Sparks Drake, Administrative Law Judge

On January 19, 2018, Indiana American Water Company, Inc. ("Indiana American") and the City of Lake Station, Indiana ("Lake Station" or the "City") (collectively, "Joint Petitioners") filed their Petition in Cause No. 45041 seeking certain approvals relating to the proposed acquisition by Indiana American of Lake Station's water utility properties (the "Lake Station Water System"). On February 22, 2018, the Town of Schererville ("Schererville") filed its Petition to Intervene, which was granted by Commission docket entry issued March 7, 2018. On February 28, 2018, the City of Crown Point ("Crown Point") filed its Petition to Intervene, which was granted by Commission docket entry issued March 7, 2018.

On March 29, 2018, the Office of Utility Consumer Counselor (“OUCC”), Crown Point, and Schererville filed their respective cases-in-chief and exhibits. On April 9, 2018, Joint Petitioners filed their Rebuttal Testimony and Attachments in this Cause. On April 20, 2018, the Commission issued a docket entry requesting additional information from Indiana American, to which Indiana American responded on April 22, 2018.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in Cause No. 45041 was held commencing at 9:00 a.m. on April 23, 2018 in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. The hearing continued for one additional day and ultimately concluded on April 24, 2018. Joint Petitioners, Crown Point, Schererville and the OUCC appeared and participated in the hearing.

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 Lake Station water system is a municipally owned utility as that term is defined in Ind. Code § 8-1-2-1. Pursuant to Ind. Code ch. 8-1-30.3 and Ind. Code § 8-1.5-2-6.1, the Commission has jurisdiction over the proposed sale of a municipally owned utility. The Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. Characteristics of Joint Petitioners.

A. Indiana American’s 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 County and Delaware County.

B. Lake Station’s Characteristics. Lake Station is a municipality located in Lake County, Indiana. Lake Station owns and operates a water system serving 3,443 individually metered customers. Lake Station withdrew from the Commission’s jurisdiction for purposes of rates and charges and financing on February 13, 1989. The Lake Station Water System is near Indiana American’s existing Northwest Indiana Operation.

3. Relief Requested. Joint Petitioners filed Cause No. 45041 seeking approval of the sale of the Lake Station water utility system pursuant to the terms and conditions set forth in the purchase agreement. Joint Petitioners’ petition asserted the acquisition is in the public interest because the elements of Ind. Code § 8-1-30.3-5(c) have been satisfied and Joint Petitioners are seeking approval pursuant to Ind. Code. § 8-1-30.3-5(d). Joint Petitioners asserted that Indiana Code §§ 8-1-2-6, -12, -19, -38, -39, -83, -84, ch. 8-1-30.3, and § 8-1.5-2-6.1 among others may be applicable to this petition. Joint Petitioners request 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 Lake Station (the “Lake Station Water System”) by Indiana American on the terms described in the Joint Petition and the Asset Purchase Agreement between Indiana American

and Lake Station (Attachment MP-3); (2) approve that without regard to amounts that may be recorded on Lake Station's books and records and without regard to any grants or contributions that Lake Station 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 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 Lake Station Water System; (4) authorize Indiana American to apply its existing depreciation accrual rates to the Lake Station Water System; and (5) approve the encumbering of the properties comprising the Lake Station Water System with the lien of Indiana American's Mortgage Indenture.

4. Joint Petitioners' Direct Evidence. Joint Petitioners presented direct testimony from Christopher Anderson, Mayor of the City of Lake Station, Matthew Prine, Director of Community and Government Affairs for Indiana American and Gregory P. Roach, Senior Manager of Revenue Analytics with American Water Works Service Company.

A. Requested Relief and Asset Purchase Agreement. Mr. Prine testified as to the assets to be included in the purchase, the reasons for the transaction, the terms of the asset purchase agreement and the approvals requested by the Joint Petitioners. Mr. Prine also described how Joint Petitioners have complied with various statutory requirements. Mr. Prine explained 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 distressed utility property. Mr. Prine further explained that during the 2016 legislative session, Section 6.1 was passed as a new section in the Code to change the process for sale of municipally owned utilities 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 said 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-4, pages 7-8 of 79. Mr. Prine testified that the Lake Station Water System faces challenges in all of these areas highlighted in the 2016 IFA Report.

Mr. Prine 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 Section 6.1 and 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 Lake Station Water System followed this process. Mr. Prine testified that because the Lake Station Water System is 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 system is \$20,680,000. The appraised value of the Lake Station system as determined pursuant to the Indiana statute is \$20,380,600, of which \$20,200,000 was for the water infrastructure assets and \$180,600 was for the value of the land. The purchase price of \$20,680,000 is \$299,400 more than the appraised value; however, he went on to explain that the purchase price exceeds the appraised value of the assets being acquired by a greater amount. One of the terms of the Purchase Agreement requires that, following the closing, Indiana American remove from service and demolish the 400,000 gallon elevated storage tank and then convey the land back to Lake Station to be used for development purposes. Mr. Prine testified that Indiana American is proposing to exclude the value of that tank (\$177,130) and the land (\$4,000) from the appraised value and to add to the purchase price for purposes of computing the resulting amount in excess of appraised value the anticipated costs of demolition (\$50,000). This makes an adjusted purchase price of \$20,730,000 and an adjusted appraised value of \$20,199,470, resulting in a total amount in excess of appraised value of \$530,530. To minimize issues in this case, Indiana American is proposing that this amount of the purchase price in excess of appraised value will not be included in net original cost rate base. Mr. Prine testified that the original cost rate base for the Lake Station Water System would be \$20,339,470, assuming \$140,000 of incidental expenses and other costs of acquisition, and an adjusted appraised value of \$20,199,470.

With respect to the requirements in Section 30.3-5(d), Mr. Prine testified that Indiana American has provided the required notices and the acquisition will not increase Indiana American rates by more than one percent (1%) of Indiana American’s base annual revenues. He further testified that Indiana American has a plan for reasonable and prudent improvements to the Lake Station Water System. Mr. Prine explained that the plan is to include the Lake Station Water System in Indiana American’s prioritization model for the distribution system so that Indiana American can commence the infrastructure replacement plan that Attachment MP-4 contemplates for all water utilities in the state. He further testified that Indiana American has maintained an existing system interconnection with the Lake Station Water System, which enables the provision of service reliability in Lake Station from Indiana American’s existing Northwest Indiana District. Mr. Prine testified that through this connection Indiana American will be able to provide daily water service at a lower operation cost than to operate the existing Lake Station treatment and softening plant as the primary source of system delivery. He explained that it is anticipated that the existing Lake Station treatment facility will be maintained and regularly placed into operation to ensure rapid reliability, but due to high costs to operate the Lake Station water treatment plant, Indiana American intends to only use the plant during peak demand days or as emergency supply.

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 to the extent the purchase price of the proposed acquisition does not exceed the appraised value of the assets being acquired, 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 of the assets being acquired; (2) incidental expenses; and (3) other costs of acquisition; as the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

B. Proposed Acquisition and Statutory Process. Christopher Anderson, Mayor of the City of Lake Station, testified regarding the proposed acquisition of Lake Station's Water System by Indiana American. Mayor Anderson provided a brief overview of Lake Station's water utility and the City's lack of time and resources in managing its water utility. Mr. Anderson explained the operation of the utility is controlled by the Public Works Department of the City. He testified that, both historically and in the present day, the Public Works Department of the City has lacked the time, technical expertise and resources to manage a water utility in today's age of drinking water regulations. Mayor Anderson testified the City's constituents, who are also customers, deserve a level of service the City is not capable of providing. Additionally, he testified the cost to customers under the City owning and managing the utility is much greater than it will be with Indiana American operating the utility. Mayor Anderson testified the City does not have the funds for the repair or replacement of any catastrophic loss that may occur to an aging water system. He testified that because of the size differential, every repair or infrastructure replacement that is needed would produce higher costs to customers for Lake Station to continue to own the system than if it is sold to Indiana American. Joint Petitioners' Exhibit 3, p. 2, lines 8-12.

Mayor Anderson testified that the City followed the statutory process necessary to sell its water assets and appointed three appraisers to appraise the water system. He testified that on February 23, 2017 the City Council adopted a resolution providing for the appointment of three appraisers, and the appraisals were timely received on March 13, 2017, as set forth as Attachment CA-1. He further testified that the statutory required public hearing was held on April 24, 2017, following notice published on March 22, 2017. Mayor Anderson testified that the City enacted the ordinance attached as Attachment CA-2 on June 8, 2017. Additionally, Mayor Anderson testified that the City and Indiana American began discussions in March 2016 and the City received a proposed purchase agreement from Indiana American in July 2017. Mayor Anderson explained that the negotiations resulted in a purchase agreement (the "Agreement") being finalized and signed on September 27, 2017. He testified that the negotiations leading up to the execution of the Agreement were conducted at arm's length.

Mayor Anderson further testified regarding other communications he has had with Lake Station customers regarding the sale. He explained that Mr. Prine and other officials from Indiana American attended numerous city council meetings to provide customers the opportunity to get answers directly from Indiana American. He further testified that the City has also held several additional meetings, in excess of statutory requirements, to determine public opinion and receive input regarding the proposed sale. Mayor Anderson testified that the response was clear that citizens were overwhelmingly in favor of the proposed transaction. Mayor Anderson explained that there has been some opposition to the proposed sale, but the large majority of customer opinion has been favorable towards the sale.

The Asset Purchase Agreement was filed as Attachment MP-3. With the exception of the storage tower that is to be removed as addressed elsewhere in his testimony, Mr. Prine testified that Indiana American proposes to acquire all of the property that is subject to the City's appraisal sponsored by Mayor Anderson as Attachment CA-1, at a purchase price of \$20,680,000. He testified that the purchase price was determined using the appraised value of the Lake Station Water System as determined by the statutorily appointed appraisers; however, Indiana American is agreeing to pay greater than appraised value. As noted previously, Indiana American is not seeking to include in rate base the amount of the purchase price in excess of the appraised value of the assets Indiana American is purchasing. Mr. Prine stated that consummation of the transaction is conditioned on obtaining certain approvals from the Commission, including recognition of the purchase price to the extent it does not exceed the value of the assets being acquired plus transaction costs in net original cost rate base, and the application of Indiana American Area One rates to Lake Station customers.

Mr. Prine testified that the customers of the Lake Station Water System and Indiana American's existing customers will benefit from the acquisition. Lake Station customers will see lower rates, long-term asset management and investment, and access to lower water production cost through the existing system interconnection that enables delivery of high quality treated Lake Michigan water, which has naturally low hardness. He further testified that Lake Station customers will gain full-time management of their water system including, but not limited to, a full-time operations staff, 24/7 customer service and emergency response, enhanced security measures, along with full-time functional specialist in the areas of engineering and water quality. He also testified that customers will benefit from the acquisition, as the system will be included in Indiana American's prioritization model, allowing planning and asset management needs like those identified by the 2016 IFA Report to be met.

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

C. 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. 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 for purposes of this journal entry, Indiana American has voluntarily excluded from the purchase price to be included in rate base the amount in excess of the appraised value of the assets being acquired. This is done by separating the full purchase price into two amounts: (1) purchase price and (2) an Amount in Excess of Appraised Value. As a result, Indiana American is proposing to record the net original cost of the Lake Station Water System in the manner reflected in the proposed journal entry shown on Attachment GMV-1. The Amount in Excess of

Appraised Value is to be recorded in NARUC Account 114 and not included in net original cost rate base.

Mr. Roach explained the calculation of the Amount in Excess of Appraised Value. The actual cash outlay at closing is \$20,680,000. In addition to that and as explained by Mr. Prine, Indiana American must demolish and remove from service the 400,000 gallon elevated storage tower at an estimated cost of \$50,000, which is a liability undertaken as of the closing and is therefore treated as additional purchase price. This amount will be recorded as an asset retirement obligation at the closing and is additional consideration that Indiana American is paying, hence additional purchase price. Attachment GPR-1, p. 8. That makes a total purchase price of \$20,730,000. Given the obligation in the Asset Purchase Agreement, Indiana American is not actually acquiring the 400,000 gallon elevated storage tower but instead must demolish it and return ownership of the clean site to Lake Station. As such, he excluded the value of the storage tower and its underlying real estate from the value of the assets that Indiana American is acquiring for purposes of comparing the purchase price to the appraised value. That results in a final purchase price that exceeds the appraised value of the assets being acquired by \$530,530. He explained the purchase price is reasonable even when this amount in excess of the appraised value is considered. Nevertheless, to minimize issues, this amount would not be included in net original cost rate base under Indiana American's proposal. The amount of the purchase price proposed to be included in net original cost rate base is \$20,199,470. Mr. Prine further testified that the depreciation accrual rates to be applied to the Lake Station Water System assets would be the rates approved by the Commission in Cause No. 43081 on November 21, 2006, as included in the calculation of rates with the approval of Indiana American rate case in Cause No. 43187 on October 10, 2007, as the same may be changed in Indiana American's depreciation case, Cause No. 44992.

Mr. Roach testified that Indiana American has access to all of the necessary funds to support the acquisition, with those funds coming initially from internally generated funds. He stated that the projected investment to acquire the Lake Station Water System is equal to approximately 1.2% of Indiana American's total capital structure as of June 2017, and, thus, Indiana American does not believe the acquisition would impair its ability to raise necessary capital on reasonable terms while maintaining a reasonable capital structure. Mr. Prine also described the encumbrance that would be placed on the Lake Station Water System assets as a result of the acquisition under Indiana American's General Mortgage Indenture, which secures most of Indiana American's utility property for the benefit of Indiana American bond holders.

Mr. Roach further testified regarding Indiana American's intention to apply Indiana American Area One tariff rates for water service and private and public fire service on file from time to time to the customers of the Lake Station Water System. Support offered by Joint Petitioners for application of the Area One rates includes the fact that Lake Station is in close proximity to Indiana American Northwest Indiana Operations. Mr. Prine testified that the monthly bill for a residential customer using 5,000 gallons would decrease from \$46.35 to \$45.71 for customers with fire protection, based on the current tariff in effect for both utilities; however, Mr. Prine reiterated that Lake Station is and has been unable to undertake the necessary improvements to its system in order to furnish and maintain adequate service to its customers. Mr. Prine further testified that given the small size of the Lake Station system, the rates charged by Indiana American are not expected to increase unreasonably as a result of acquiring the Lake Station System.

5. OUCC's Evidence. Mr. Edward R. Kaufman, CRRA, Water-Wastewater Division Assistant Director, testified on behalf of the OUCC. Mr. Kaufman testified that several of the assets Indiana American proposes to acquire will not be used and useful in providing service. He explained the proposed acquisition does not meet the requirements of Ind. Code § 8-1-30.3-5(c)(1). Mr. Kaufman testified Indiana American has not provided evidence to support a finding that Lake Station's water treatment facility and supply water wells should be considered "used and useful" in providing water service. Mr. Kaufman explained that Indiana American did not provide sufficient testimony for the Commission to conclude Lake Station's water treatment facility and supply wells are reasonably necessary for the provision of water service. Mr. Kaufman identified that a few sentences on pages 16 and 17 of Mr. Prine's direct testimony represent the totality of Indiana American's evidence on this issue. Mr. Kaufman testified that even if Indiana American chooses to maintain Lake Station's water treatment facility and supply water wells for peak demand and emergency supply, that choice should not qualify Lake Station's water treatment facility and water supply wells as a plant whose utilization is reasonably necessary for the provision of utility service. Further, Mr. Kaufman explained that the cost that would be imposed on Indiana American's ratepayers related to such plant is more than \$1 million per year. He testified that this amount does not include any operational costs that Indiana American would incur to maintain this plant.

Mr. Kaufman testified Indiana American does not own or operate treatment plants that are used exclusively for peak-day or emergency supply. Additionally, Mr. Kaufman explained Indiana American has provided no analysis to demonstrate that maintaining the Lake Station treatment plant and water supply wells for peaking and emergency supply is more cost effective than other potential solutions. Mr. Kaufman testified provided no evidence that it is even feasible to use the plant for peaking and emergency supply. Mr. Kaufman explained Indiana American has not determined what operational steps are necessary to run the Lake Station plant on a temporary basis. Mr. Kaufman testified that Indiana American has the burden to provide credible evidence to demonstrate that the assets it proposes to acquire, including Lake Station's water treatment facility and supply water wells, are reasonably necessary for the provision of utility service. Mr. Kaufman recommended the Commission deny Indiana American's request to include the cost differential in its rate base because assets included in the proposed acquisition are not used and useful.

Mr. Kaufman testified that based on the OUCC's review, Lake Station did not satisfy Ind. Code § 8-1.5-2-4, which requires a municipality to provide "a written document that shall be made available for inspection and copying at the offices of the municipality's municipally owned utility...." Mr. Kaufman identified that the written document must contain three items: (1) the appointment of three Indiana residents to serve as appraisers (a combination of licensed engineers and appraisers), (2) the appraisal of the property, and (3) the time that the appraisal is due. First, Mr. Kaufman addressed, while Lake Station's resolutions describe the property to be appraised (the City's water utility), these documents do not list three Indiana residents to serve as appraisers as required by statute. Rather, Mr. Kaufman testified, the resolutions merely list the name of the firms that employ the appraisers. He testified a reason to list the names of the appraisers is to ensure the appraisal does not violate Ind. Code § 8-1.5-2-5, which states that the appraisers must not be a resident or taxpayer of the municipality. Mr. Kaufman also stated Lake Station's resolutions do not disclose the date the appraisal is due, which is required by the statute. He identified the resolutions have placeholders for dates to be inserted instead of affixed dates. Mr. Kaufman asserted a lack of compliance with these requirements may implicate whether Joint Petitioners are entitled to the ratemaking relief requested in this Cause.

Mr. Kaufman also testified that he did not agree with Mr. VerDouw's calculation of the rate impact the Lake Station acquisition would have on Indiana American's future rates. Mr. Kaufman explained, under his analysis, Indiana American's proposed acquisition would cause its revenue requirements to increase by 0.98% and not by 0.55% as Mr. VerDouw calculated. While Mr. Kaufman noted the differences between his and Mr. VerDouw's calculation, he recognized his calculation is under the 1.0% threshold to trigger notice to Indiana American's current customers. Mr. Kaufman also expressed concerns about the cumulative impact that Indiana American's acquisitions were having on its revenue requirements.

Mr. Kaufman explained concerns he had with the appraisal process and the appraisal provided in this Cause. Mr. Kaufman noted the Appraisal was stale and may overstate the estimated value by \$2,000,000. Mr. Kaufman further noted that the Appraisal included hypothetical soft costs that could further overstate the Appraisal by \$1,836,287. Mr. Kaufman also testified the Appraisal failed to recognize the impact of negative net salvage value.

Mr. Kaufman then expressed concerns that the Commission has no authority to review an Appraisal, and that the Commission's lack of authority could lead to artificially higher appraised values. Mr. Kaufman then illustrated that the cost per customer of Indiana American's recent acquisitions has increased. Mr. Kaufman then testified that by maintaining the Lake Station property, Indiana American would not capture the economies of scale it has promoted through the acquisition of smaller systems. Finally, Mr. Kaufman provided a journal transaction that Indiana American should employ if the Commission accepted the OUCC's position to exclude plant that is not used and useful.

Mr. James T. Parks, Utility Analyst II in the Water/Wastewater Division, and professional engineer with experience as a Project Engineer and Project Manager, testified the Lake Station treatment plant and wells should not be included in Indiana American's rate base. Mr. Parks noted that IC 8-1-30.3-5(c) provides that "a utility company that acquires the utility property may petition the Commission to include the cost differentials as part of its rate base." As a condition of the relief Indiana American has requested, the Commission must find the "utility property is used and useful in providing water service." IC 8-1-30.3-5(c)(1). Mr. Parks noted that Indiana American proposes to include in its rate base \$7,366,043 for a treatment plant, wells and related assets that it will no longer use for the provision of water service and keep only for emergencies. He said such assets are not reasonably necessary for Indiana American to provide water service. Mr. Parks explained that IAWC's Northwest District has a robust water system with substantial reserve capacity already in its treatment, storage, and distribution facilities and redundant plant and equipment to supply water in the event of an emergency treatment plant outage. Mr. Parks concurred with Indiana American's decision not to use the Lake Station groundwater wells and water softening / filtration plant for daily flows, but he disagreed with IAWC's suggestion that these assets will be used as an emergency back-up system or for peak day demand. Mr. Parks explains why these assets are not reasonably necessary for Indiana American to provide water utility service as a back-up treatment plant and therefore should not be considered used and useful for Indiana American to provide water service.

Mr. Parks described the characteristics of Lake Station and its water facilities. He explained that according to the 2010 U.S. Census, Lake Station is a City of 12,572 people in 4,577 households on the eastern edge of Lake County south of the Indiana Toll Road and Interstate 80/94. Mr. Parks said the City provides water utility services to 3,443 residential and commercial customers in the eastern two-thirds of the city while the Town of New Chicago's Water Utility supplies the rest of

the Lake Station's west side residents with drinking water purchased from Indiana American. Mr. Parks noted Lake Station opted out of Indiana Utility Regulatory Commission jurisdiction for purposes of rates, charges and financing on February 13, 1989. Mr. Parks noted Lake Station's water utility treats groundwater using softening, filtration, fluoridation, disinfection, and corrosion control and provides water storage, pumping and distribution services. He noted the new water softening / filtration plant, which has a 1 MG firm capacity was funded through a Drinking Water State Revolving Fund ("DWSRF") loan from the Indiana Finance Authority ("IFA") and placed in service in 2015. Based on his review of 2016 and 2017 Monthly Reports of Operation (MROs"), Mr. Parks concluded Lake Station currently produces less than 700,000 gallons per day on average with a maximum day flow of 1.084 MGD. Mr. Parks noted Lake Station was unable to provide production, usage, and lost water data.

Mr. Parks described IAWC's characteristics and facilities in its Northwest District. Mr. Parks explained the Northwest District treats high quality water from Lake Michigan using its two treatment plants, the 54 MGD ("million gallons per day") Borman Park WTP and the 24 MGD Ogden Dunes WTP as reported by IAWC in its IURC Annual reports. He explained Indiana American does not soften the water or employ special processes to remove iron and manganese from the Lake Michigan water, which is naturally low in hardness, iron and manganese. Mr. Parks explained that Indiana American did not provide water usage information in its case-in-chief such as average daily flows or peak usage. But based on his review of Monthly Reports of Operation submitted to IDEM and Indiana American's response to OUCC DR 16-1, he determined that Indiana American produced an average of 38.1 MGD in 2017.

Mr. Parks testified that IAWC's two water treatment plants can meet all of Lake Station's average day and peak day water demands in the Northwest District. He explained the Northwest District currently has 40 MGD of excess daily average production capacity at its two treatment plants. He asserted IAWC's existing WTPs are sufficient for both current and forecasted production needs and can easily supply Lake Station. Mr. Parks said no additional treatment facilities are needed to serve Lake Station.

Mr. Parks noted that, based on annual average flows, IAWC's Borman Park and Ogden Dunes WTPs operate at less than 50% of their design capacities. Mr. Parks stated the Borman Park WTP can and has supplied all the water needed in the Northwest District without the Ogden Dunes plant in service. Mr. Parks added that Indiana American had not identified the need to build a third water treatment plant to supply water demand or to serve as a back-up plant during emergencies. Mr. Parks explained he had reviewed IAWC's *Summary of Recommended Improvements for the Northwest System* submitted annually to the IURC since 2009,¹ and IAWC had never recommended a third WTP to serve the Northwest District. He added IAWC had also never recommended supplementing its source of supply in the Northwest District with ground water.

Mr. Parks noted that previously, beginning in its 2009 IURC Annual Report, IAWC had recommended projects to increase production capacities at its existing treatment plants. These projects included filter improvements at the Ogden Dunes WTP (CPS Project No. 2010 A-5), performing filter demonstration tests to achieve higher capacity ratings at the Borman Park and

¹ 2009 to 2016 Annual Reports to the IURC.

Ogden Dunes WTPs (CPS Project No. 2010 A-6), and an Ogden Dunes WTP capacity expansion from 24 MGD to 36 MGD (CPS Project No. 2010 A-8). Mr. Parks noted IAWC did not expand the Ogden Dunes plant. Mr. Parks testified that IAWC no longer deems these capacity expansion projects necessary due to IAWC's lower demand projections. He advised that the three improvements or expansion projects listed previously in the IURC Annual reports are no longer shown on the *Summary of Recommended Improvements for the Northwest System included in IAWC's 2016 IURC Annual Report*.

Mr. Parks noted that the Lake Station water system is already interconnected with IAWC's water system and has been since 1965. Mr. Parks explained that in order to supplement its well supply, Lake Station (previously called East Gary) purchased water from IAWC or its predecessor, Gary-Hobart Water Corporation, over many decades. However, the valves at the meter vault are currently closed, as the 25 year Water Supply Agreement between Lake Station and IAWC expired in 2015 and was not renewed. Mr. Parks noted the 1990 Water Supply Agreement gave Lake Station the right to receive 750,000 gallons per day and a peak flowrate of 700 gpm or 1.0 MGD. He added Lake Station's minimum monthly purchase obligation was 8,000,000 gallons per month. The original 1965 Water Supply Agreement required Gary-Hobart to supply up to 1,584,000 gallons per day and a maximum instantaneous rate below 1,400 gpm or 2.016 MGD before July 1, 1969.

Mr. Parks stated that after the acquisition, Indiana American indicated daily water service will be provided through the existing interconnection.² He explained IAWC will supply all flow demands through its interconnection and Lake Station's existing 2.0 MG ground storage tank and booster station,³ and Lake Station's WTP will not provide water service to customers. Mr. Parks testified he made his own assessment of the upper flow capacity and concluded the 6-inch meter should be able to pass 1,250 gallons per minute ("gpm") equivalent to 1.8 MGD, which is more than adequate to supply all Lake Station's current average usage of 0.7 MGD. He added that without the meter, the water mains can conservatively pass more than 1,750 gpm equivalent to 2.5 MGD. Mr. Parks added that everything IAWC needs to serve Lake Station is already constructed and in place. Mr. Parks noted IAWC will not need to construct anything to regionalize and serve Lake Station.

Mr. Parks testified that service reliability could be further enhanced with other interconnections. He suggested IAWC could identify and construct other interconnections between its existing water mains in Gary, Hobart, and Portage Indiana and the Lake Station water mains. He noted several candidate water main connection locations exist where existing mains could be interconnected easily with short segments of new mains less than 40 feet in length. He added that such interconnections may also eliminate dead ends and provide looping benefits for water quality improvements.

Mr. Parks noted that IAWC will not operate the Lake Station wells and treatment plant to provide daily water service. IAWC stated that it will instead supply high quality treated Lake Michigan water to Lake Station from its existing water treatment plant and will only use the LS

² See Prine Direct Testimony at page 16, beginning at line 18.

³ It appears that the 1.5 MG storage capacity of the GST listed in the Appraisal is incorrect.

WTP “during peak demand days, or as emergency supply.”⁴ However, Mr. Parks noted that according to its response to discovery, IAWC does not currently anticipate any peak days.⁵ He said this means that IAWC will not operate the Lake Station WTP for daily service or for peak demand days.

Mr. Parks noted IAWC did not provide any studies in its case-in-chief or in response to discovery to identify levels of peak use (peak demand days) that would require the use of the wells and Lake Station WTP or how they would be operated. Mr. Parks noted that in his testimony, Mr. Prine said “It is anticipated that the existing Lake Station treatment facility will be maintained and regularly placed into operation to ensure rapid reliability.”⁶ But Indiana American provided no specific discussion in its case-in-chief as to how often the Lake Station wells/WTP might be called on to operate. Mr. Parks added that in response to OUCC DR 4-5, IAWC provided no study or report on how it plans to operate the plant. Furthermore, he noted IAWC provided no testimony or evidence showing it would use the plant to produce water even during peak periods. When asked for any study or report to support such use for peak flows and to describe the level of demand that would necessitate using the Lake Station wells and WTP, IAWC provided a confidential draft “Criticality Analysis”.⁷ Moreover, IAWC did not know what it would have to spend as part of its operations and maintenance budgets to keep the wells and softening plant in reserve status.⁸

Mr. Parks characterized IAWC’s intended use of the Lake Station softening/filtration plant as an unnecessary emergency back-up treatment plant, and he recommended the Commission reject including these plant costs in rate base because these assets will not be used and will no longer be reasonably necessary to provide water utility service. Mr. Parks testified that neither IDEM nor by Ten States Standards call for separate back-up water treatment plants.⁹ He explained that redundancy is provided at water plants by requiring a minimum of at least two units such as tanks, pumps, filters etc. sized to produce the maximum day flow with the largest unit or pump out of service. This accounts for maintenance activities or unplanned breakdowns that may take part of the treatment plant off-line. Separate stand-alone back-up treatment plants are not required. He said he did not know of any water utility with a separate back-up water plant that is kept out of service to be used only during emergencies.

Mr. Parks explained that the OUCC asked about the higher costs to soften water. However, Lake Station stated it did not know the softening plant’s operational cost, while IAWC stated it has not estimated its prospective cost of operating the Lake Station WTP and did not provide any study, analysis or report estimating what these costs might be. He added IAWC said it has not

⁴ Direct Testimony of Matthew Prine, page 17, lines 6-8. “However, due to the high cost to operate the Lake Station water treatment plant, Indiana American intends to only use the plant during peak demand days, or as emergency supply.”

⁵ OUCC Data Request 4-5 (d) How many “peak” days (each year) does Indiana American anticipate will occur requiring it to operate the Lake Station Treatment facility? Indiana American response to OUCC DR 4-5 (d) “Currently none; however, demands resulting from new customers, future sale-for resale agreements, or acquisitions could also require use of the Lake Station plant.” See Attachment JTP-3.

⁶ Direct testimony of Matthew Prine, page 17.

⁷ Indiana American provided a draft Criticality Analysis in response to OUCC Data Request 3-2. See confidential Attachment JTP-6.

⁸ See Attachment JTP-7, Indiana American response to OUCC Data Request 3-3.

⁹ Ten States Standards refers to the *Recommended Standards for Water Works* published by the Great Lakes – Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.

determined the amount of time required to bring the plant into use in the event of an emergency.¹⁰ Mr. Parks noted Indiana American was also unable to provide an estimate of its marginal cost to produce an additional 1 million gallons per day of finished water at either the Borman Park or Ogden Dunes WTPs above their current typical production.¹¹ Nonetheless, Mr. Parks agreed it should be significantly less expensive to treat higher quality lake water than to soften groundwater. He said this is especially true in comparing a small capacity softening plant to larger surface water plants. He concluded it not only makes economic sense, but also it makes engineering and operational sense to permanently shut down the softening plant. This simplifies operations and achieves the financial and operational benefits of economy of scale through regionalization.

Mr. Parks testified IAWC should be able to rely on water from the Borman Park and Ogden Dunes WTPs the same day IAWC acquires the utility. Mr. Parks testified that Indiana American's delay in establishing a plan to remove from service an unnecessary asset should not be a basis to require its rate payers to pay more than \$1 million per year in capital costs as Mr. Kaufman discusses in his testimony. He added that in its testimony, IAWC asserted it can supply all water through the existing interconnection. Mr. Parks testified that the wells and softening plant can be shut down immediately. Mr. Parks noted IAWC stated it has a hydraulic model of its system and has modeled supplying Lake Station without the softening plant in service.¹² IAWC has also stated that Lake Station's existing 400,000 gallon storage tower is not needed for proper functioning of the system.¹³ Joint Petitioners have no testimony indicating IAWC's plan to provide treated lake water cannot occur on Day One.

Mr. Parks testified Lake Station has a 2.0 MG ground storage tank (Riverside GST) and booster station which feeds the distribution system. The GST is filled from the softening plant now but will be filled by the main from the existing interconnection after converting to 100% supply from IAWC's system. Mr. Parks calculated the GST and the water storage tower provide 2.4 MG of water storage, which is sufficient to supply Lake Station's needs for over three days. He indicated this should be a more than adequate buffer to allow IAWC's operations personnel to switchover to 100% supply by IAWC's system and stated that he believed actions required to start full supply may be as simple as opening the meter vault valves and turning off Lake Station's wells and treatment plant. Absent a valid reason from IAWC why the switchover is more complicated than he discussed and why it cannot proceed on Day One, Mr. Parks stated there is no reason to keep the Lake Station wells and softening plant in service after the acquisition date.

Mr. Parks summarized his reasons why IAWC should not use the Lake Station WTP. First, he opined that IAWC's two large water treatment plants, the Borman Park and Ogden Dunes plants, have significant excess capacities to readily supply Lake Station. Based on his review of Monthly Reports of Operation, Mr. Parks concluded IAWC's treatment plants are operating at approximately half of their design average capacity. Second, Mr. Parks noted IAWC's source of supply for the Northwest District is naturally soft, so it does not need softening. IAWC will be able to supply better quality water at a much lower operational cost. Finally, Mr. Parks explained that operating the Lake Station WTP would negate the benefits of regionalization and economies

¹⁰ Joint Petitioners responses to OUCC Data Request 3-3. See Attachment JTP-7.

¹¹ Indiana American response to OUCC Data Request 16-5. See Attachment JTP-7.

¹² Indiana American responses to OUCC Data Requests 6-10 and 6-11. See Attachment JTP-3.

¹³ Prine Direct Testimony at 7, line 21.

of scale available through integration of Lake Station into IAWC's system. He noted The Indiana Finance Authority's 2016 *Evaluation of Indiana's Water Utilities* report noted the benefits of regionalization as follows: "With larger size and capacity, regional utilities add efficiencies while being more reliable and sustainable than individual community water systems."¹⁴

Mr. Parks testified there are no benefits to the Northwest District system or to IAWC's ratepayers of keeping the Lake Station wells and softening plant in service. He explained the wells, well pumps, and the softening/filtration plant are not needed from a technical, operational, or economic standpoint. Mr. Parks testified the softening/filtration plant's main building, clearwell, filter backwash tank, pumps/motors/electrical equipment, plant piping and valves, chemical feed systems, SCADA, and emergency power should not be operated by IAWC and if acquired, should not be allowed in rate base. He suggested all salvageable equipment such as pumps, treatment tanks, motors, etc. should be removed, sold and the building repurposed for some other city function or sold to a third party.

Mr. Parks opined that Joint Petitioners provide no evidence to support keeping the Lake Station plant as a back-up plant and noted that Joint Petitioners provided no technical or engineering witness testimony at all. Mr. Parks explained that IAWC's confidential draft "Criticality Analysis was provided in response to discovery asking for any study, analysis, communication or report on which Mr. Prine based his statement that "the existing Lake Station water treatment facility provides value to supplementing overall system treatment capacity and service reliability." Mr. Parks stated that analysis does not justify putting a back-up treatment plant and wells in rate base.

Mr. Parks asserted Lake Station WTP will not be used and useful after IAWC has acquired it. Mr. Parks said IAWC does not need the Lake Station WTP to provide water service to any of its customers. Mr. Parks added that IAWC's own testimony and discovery response, indicating it will not use the plant to provide daily service or meet current peak demand, shows the existing utility plant will not continue to be actually employed to provide water service. Mr. Parks testified that IAWC has not provided any evidence the plant's use is reasonably necessary for the provision of utility service. He concluded Lake Station wells and softening/filtration plant are not "reasonably necessary" to provide water utility services to IAWC's customers.

6. Schererville's Direct Evidence. Mr. Theodore J. Sommer, provided testimony on behalf of Intervenor Schererville. Mr. Sommer testified regarding the proposed sale of the Lake Station water utility. He expressed concerns about Indiana American's acquisition of the Lake Station water utility due to the potential rate impact of that acquisition and the related cost allocation issues. Mr. Sommer testified that Indiana American has emphasized that the rate impact of the Lake Station acquisition on Indiana American's overall revenue requirement is only 0.551%. He explained that even if we assume that calculation is accurate, it fails to take into consideration that Indiana American has made multiple acquisitions under the distressed utility statute, which, in the aggregate, are not insignificant. Mr. Sommer testified that Indiana American has filed four distressed utility acquisition cases since July 1, 2017. He further testified that we have no way of knowing how many other acquisitions may be on Indiana American's horizon and how much

¹⁴ *Evaluation of Indiana's Water Utilities, An analysis of the State's aging infrastructure*, Indiana Finance Authority, November 2016, page 32. See Joint Petitioners Exhibit No. 1, Attachment MP-4.

higher this percentage could go. He also testified that Indiana American's direct testimony also ignores future base rate increases, and the increased distribution system improvement costs that will be necessary to serve these newly acquired utilities over the long term.

Mr. Sommer testified that the cumulative rate impact of these acquisitions could result in an unreasonable rate increase for Schererville. He explained that in order to make Lake Station whole, Indiana American's other customers, including Schererville, must bear the cost of a water treatment plant that will sit mostly unused. Mr. Sommer testified that Lake Station is basically double dipping because it is being reimbursed in full for the cost of the new water treatment plant while benefiting from Indiana American's lower residential rates. Mr. Sommer recommends that if the Commission determines that the costs related to Indiana American's acquisition of Lake Station should go into base rates, given the serial nature of these acquisitions, the Commission should require that a separate rate structure be created for these distressed utilities, or their rate impact should be phased in over time. He testified that multiple acquisitions by Indiana American will result in rate shock and Schererville did not cause these acquisition costs, does not benefit from these acquisitions, nor should it bear the cost of these acquisitions through rates.

7. Crown Point's Direct Evidence. Mr. Gregory T. Guerrettaz provided testimony on behalf of Crown Point. Mr. Guerrettaz testified that Crown Point's municipal water utility is one of Indiana American's largest volume "sale for resale" bulk wholesale purchasers of water. He explained that eventually the cumulative wholesale water increases from Indiana American serve to increase the rates charged to Crown Point's water customers, and decrease revenue otherwise available for system improvements. Mr. Guerrettaz testified that the price Indiana American pays for acquisition of distressed utilities may become reflected as increases in Indiana American's rate base for purposes of return and depreciation, thus potentially increasing revenue requirements and rates. He explained that the purchase of "distressed" utilities results in Indiana American making substantial additional investment to recondition the purchased water utility's plant and perform maintenance, replacements and catch up on what may have been deferred by the prior owner. Mr. Guerrettaz testified that the more "distressed" utility acquisitions, the larger the potential rate impact.

Mr. Guerrettaz testified that Crown Point and wholesale customers should not be forced to pay for the historic disrepair, poor condition or just plain bad luck of "distressed" utility systems. He explained that it positions Crown Point to help pay the maintenance and capital investment costs of distant small utility systems while at the same time Crown Point must pay its own capital and maintenance expenses. Mr. Guerrettaz testified that in his opinion that is unacceptably unfair and not in the public interest. Moreover, he testified that he is not convinced Indiana American needs Lake Station's ground water supply assets. He expressed concern that those assets will not be used and useful to Indiana American and will represent unneeded water supply and ground water treatment capacity. Mr. Guerrettaz testified that Crown Point should not be called upon to pay a subsidy for the acquisition, restoration and unneeded assets of a distressed utility.

8. Joint Petitioners' Rebuttal Testimony. Mayor Anderson provided rebuttal testimony regarding the "used and useful" nature of Lake Station's treatment plant and water supply wells. He explained that at the local and state level a determination of the need for the plant was made before Lake Station built it. Lake Station borrowed millions of dollars from the State of Indiana to build this plant and related facilities. He further testified that to qualify for that loan, Lake Station went through detailed engineering review both at the local level and at the State level. Mayor Anderson testified that it would strike him strange for the State to conduct such a review

and agree to finance a project that, as Mr. Kaufman contends, is not “reasonably necessary to the provision of utility service.” Mayor Anderson testified that the use of the plant has not changed materially since it was financed.

He further testified that there is no deal or even a possibility of a deal on the table which contemplates a sale to Indiana American without the treatment plant. Mayor Anderson explained that in addition to wanting to exit the water business because Lake Station does not have the size to be able to provide reliable and adequate service to its customers, the primary reason for Lake Station agreeing to the sale at this time was because of the dire financial crisis the City is currently experiencing. Lake Station is struggling to make payroll and meet other basic financial needs of the City and its citizens. Mayor Anderson testified that Lake Station owes millions of dollars to the State of Indiana Drinking Water State Revolving Fund (“SRF”). He testified that Lake Station cannot sell the water utility along with the plant but not receive the full appraised value purchase price because Lake Station must repay the loan to the State at closing. Mayor Anderson testified that the result Mr. Kaufman and Mr. Parks seek would be unfair to Lake Station. Simply because the selected purchaser has an interconnection and a pipeline to Lake Michigan, Messrs. Kaufman and Parks believe this plant is not necessary to continued service by the purchaser after closing. However, there could only be one bidder who fits that description, and it is because Lake Station selected that bidder that these arguments are made. Mayor Anderson testified that the appraisers have defined what the system is worth, and it should not matter to the sale who the purchaser is. Mayor Anderson explained that while the treatment plant may not service the day-to-day needs of Lake Station’s citizens as it does today, once Indiana American takes over the system, it does retain its value as an available source of ground water in the most industrialized portion of the State which otherwise relies on vulnerable surface water sources. Additionally, it would also help service surrounding communities served by Indiana American.

Mr. Prine also provided rebuttal testimony in response to the “used and useful” nature of Lake Station’s treatment plant and water supply wells. Mr. Prine testified that Mr. Kaufman’s proposal to not include the cost differential in rate base does not follow from Mr. Parks’ opinion and the OUCC’s ultimate position is inconsistent with Ind. Code §8-1.5-2-6.1(f). Mr. Prine testified that he does not see anywhere that Mr. Parks testifies that the Lake Station plant is not used and useful. Mr. Prine explains that it is currently serving customers today, and as Mayor Anderson testified, it underwent detailed engineering review by the State of Indiana Drinking Water State Revolving Fund before the State of Indiana agreed to loan Lake Station the money to build it. Mr. Parks testifies instead that the assets “will not be” used and useful rather than they “are not” used and useful. Therefore, Mr. Kaufman’s recommendation that the cost differential should not be included in rate base does not follow from Mr. Park’s opinion.

Mr. Prine further testified that the treatment plant should not and cannot be excluded from the sale of the water system. Mr. Prine echoed Mayor Anderson’s testimony that the purchase price would not change regardless of what Indiana American does with the treatment plant after closing. This is because there is an outstanding debt owed by Lake Station to the State of Indiana through the SRF which financed that treatment plant. Mr. Prine further explained that once Lake Station sells its water system it will no longer have a revenue stream to pay off the loan, therefore the sale of the system without the plant is simply not possible. Mr. Prine stated that the sale will not proceed without the treatment plant. Mr. Prine testified that Indiana American is purchasing the entire Lake Station Water System, not simply buying assets. Thus, even if the Commission accepted Mr. Parks’ unreasonable assumption to conclude that the treatment plant should be

removed from service upon closing, the statute directs that the full purchase price be included in net original cost rate base. Mr. Prine explained that Ind. Code § 8-1.5-2-6.1(f) provides that the purchase price simply must be reallocated among the remaining utility plant in service accounts in a manner different from that proposed in Petitioner's Attachment GMV-1.

Mr. Prine testified that that for clarity he asked Indiana American witness Mr. Roach to reallocate and present the proposed journal entry on the assumption that Mr. Parks is correct that the treatment plant should not be considered used and useful following the closing. Mr. Prine stated that the Commission should approve the journal entry Indiana American originally submitted, but if the Commission agrees with Mr. Parks that the plant will be or should be no longer used and useful after closing, then it should approve the journal entry sponsored by Mr. Roach showing the appraised value for the Lake Station wells, treatment plant, and related assets redistributed over the remaining assets.

Mr. Prine further testified regarding Schererville witness Sommer's recommendations that the Commission require a separate rate structure be created or that the rate impact of the acquisition be phased in over time. Mr. Prine characterized Mr. Sommer's testimony as beyond the scope of this proceeding or at the very least, premature.

Mr. Stacy Hoffman, Director of Engineering for Indiana American, also provided rebuttal testimony in response to the OUCC's expressed concerns about the Lake Station supply and treatment plant providing useful service in the future. Mr. Hoffman testified he did not see Indiana American's use of the plant as one of the elements the Commission is to consider under Ind. Code § 8-1-30.3-5. Mr. Hoffman stated that the element in that statute is whether the plant *is* "used and useful." He explained that he does not see an element that asks whether the plant "will be used and useful after it is acquired." Mr. Hoffman said there appears to be no dispute that the plant is currently used and useful. Mr. Hoffman echoed Mayor Anderson in testifying that the treatment plant and water supply wells are operational and currently satisfy the water supply needs of Lake Station. Mr. Hoffman testified that the issue raised by the other parties is not whether the plant is used and useful but whether and how it will be used and useful in the future.

Mr. Hoffman testified regarding Indiana American's plant capacities and customer demands. He testified that Mr. Parks states a few times that the Indiana American Borman Park and Ogden Dunes plants have treatment capacities of 54 MGD and 24 MGD respectively. The total capacity of the plants from this reporting perspective would be a total figure of 78 MGD. Mr. Hoffman testified that these are the respective filter capacities without the largest filter out of service, without considering hydraulic limitations of transmission mains leaving the plant. He testified that the plant capacities for the Borman Park and Ogden Dunes plants considering their largest respective filter unit out of service, are 45 MGD and 18 MGD, respectively. Mr. Hoffman explained together the combined plant capacity of both plants with their largest respective filter unit out of service is 63 MGD. Mr. Hoffman explained that considering plant capacities with their largest filter out of service is a design element of the Ten States Standards to which IDEM refers for facility design.

Mr. Hoffman testified that water utilities do not design facilities for just average daily demands. He explained that customer demands vary throughout each day, throughout each year, and into the future. Mr. Hoffman testified that this is why utilities must design facilities to meet projected peak hourly demands over a projected future period. Thus, for purposes of assessing plant facility adequacy one should not compare a plant's capacity to average daily system

demands, as Mr. Parks has done, but rather to projected peak demand. Mr. Hoffman testified that Indiana American's projected base maximum day demand for 2020 at a 95% confidence interval for the maximum to average day ratio is 61.5 MGD, which does not include Lake Station's recent maximum day demand of at least 1.1 MGD, as referenced by Mr. Parks. He testified that adding Lake Station's maximum day demand to Indiana American's maximum day demand projection results in a maximum day demand projection of 62.6 MGD, which is nearly identical to the combined reliable capacity of Indiana American's plants with the largest respective filter unit out of service, 63 MGD. Mr. Hoffman explained that this perspective of system capacity for meeting system demands is more appropriate than the perspective Mr. Parks presented. Mr. Hoffman further testified that given the very thin margin between Indiana American's combined reliable plant capacity with the largest respective filter unit out of service, and the projected base maximum day demand along with Lake Station's maximum day demand, Indiana American finds significant value in the new Lake Station softening plant for supplementing the regional supply during peak demand days, or as emergency supply. Mr. Hoffman explained that this use by no means should imply that the new Lake Station softening plant is not valuable or should not be considered used and useful.

Mr. Hoffman further testified that another step in assessing a system's capacity is to evaluate the system resiliency for meeting customer demands during failures of critical assets. He referred to this as a criticality analysis. He testified that a criticality analysis evaluates impacts to customer service from failure of critical assets that the Ten States Standards do not address. Mr. Hoffman testified that during an event contemplated in the Criticality Analysis it would make perfect sense to use the Lake Station plant and wells to supply the Lake Station service area, and potentially to supply an additional 1 MGD to other customers in the vicinity of Lake Station. He testified that by not sharing the same source of supply as Borman Park and neighboring utilities, the Lake Station plant is more insulated, due to it being ground water supply, from whatever event it is that causes Indiana American to lose production from Borman Park. Mr. Hoffman testified that the Lake Station plant and wells are essentially brand new. They produce quality water and are located in Lake Station. He testified that not only does that Lake Station supply provide valuable supply in a critical event, the nature of the supply being ground water also contributes to system resiliency.

Mr. Gregory Roach testified in response to Attachment ERK-3, which is Mr. Kaufman's proposed revised journal entry to reflect the OUCC's ultimate position in this case. Mr. Roach provided a revised journal entry as set forth in Attachment GPR-1R. Mr. Roach explained that the difference between Attachment GMV-1 and Attachment ERK-3 is that Mr. Kaufman's amount for "distribute utility plant to detail" is \$7,366,042 less than that reflected in Attachment GMV-1. He testified that his new Attachment GPR-1R allocates that difference among the remaining utility plant in service accounts. Similar to the original journal entry, Mr. Roach allocated this amount among the related utility plant in service accounts proportionally based upon the asset values determined by the appraisers, excluding the water treatment plant. He testified that in this fashion, he has allocated the purchase price plus incidental costs and expenses of the acquisition among utility plant in service accounts in a reasonable manner if it is determined that the treatment plant would not be considered used and useful and therefore not be included in net original cost rate base following closing.

Mr. Roach testified in response to Mr. Kaufman's calculation of the effect on the rates to be charged to Indiana American's customers in future cases as a result of this acquisition. He

testified that the calculation that was presented in Attachment GMV-2 (Revised) in consolidated Cause Nos. 44964/44976 is the same methodology that was specifically approved by the Commission in its recent Order in that Cause, approving Indiana American's acquisition of the water system owned by the City of Charlestown. Mr. Roach testified that the revised version of Attachment GMV-2 in that Cause makes the correction to Indiana American's calculation that the Commission found was needed. He testified that Mr. Kaufman is proposing to change that calculation by changing the calculation of incremental depreciation expense and property tax expense as well as changing the proposed return percentage. Mr. Roach testified that the OUCC proposed the same adjustments to the Company's calculation in Charlestown, Cause No. 44964/44976. The Commission approved Indiana American's calculation with one correction to the interest synchronization calculation, which has been reflected in the Company's calculation in this case. Mr. Roach also added that even with Mr. Kaufman's modifications, he still shows an effect of less than 1%.

9. Commission Discussion and Findings. Indiana American and Lake Station seek approval of the proposed acquisition pursuant to Ind. Code § 8-1.5-2-6.1 and Chapter 8-1-30.3. More specifically, as the utility company that will acquire the utility property, Indiana American may petition the Commission under Ind. Code § 8-1-30.3-5(c) and (d) to include the cost differential as part of its rate base. Similarly, a municipal utility that seeks to sell its non-surplus property must receive authority to do so from the Commission pursuant to Ind. Code § 8-1.5-2-6.1.

For purposes of determining whether Indiana American shall be authorized to include the cost differential, as defined in Ind. Code § 8-1-30.3-1, as part of its rate base, the Commission must find that each of the criteria set forth in Ind. Code § 8-1-30.3-5(c) are met. Because Indiana American is not yet the owner of the utility property at issue, requirements set forth in Ind. Code § 8-1-30.3-5(d) also apply. Finally, a proposed sale cannot be consummated under Ind. Code § 8-1.5-2-6.1 until the Commission has determined that the proposed sale or disposition is in the public interest. As set forth 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). The requirements under Section 30.3-5(c) are addressed immediately below.

A. Ind. Code § 8-1-30.3-5(d) Requirements. A utility company may petition the Commission in an independent proceeding under Ind. Code § 8-1-30.3-5(c) before the utility company acquires the utility property if the utility company meets the requirements of Ind. Code § 8-1-30.3-5(d). Section 6.1(d) also requires that the petition be filed pursuant to Section 30.3-5(d). Section 30.3-5(d) sets forth what such a utility must provide:

- (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-6 a notice of the proposed acquisition and explains what rates will be charged to Lake Station customers after the closing and the total bill for a residential customer using 4,000 gallons. It appears the notice was mailed to Lake Station customers at or near the time of the filing of this case.¹⁵ The notice mailed is sufficient on its face, it was mailed early enough in the proceeding to afford customers an opportunity to participate if

¹⁵ The date printed on the letter is "January 19, 2017," but Mr. Prine testified that "2017" is a typographical error and was actually sent on or about January 19, 2018.

they chose to do so, and it was mailed to all Lake Station'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.

Using the calculation methodology based on the calculations provided by Joint Petitioners and the OUCC, it is undisputed that the Lake Station acquisition will not increase Indiana American's rates by an amount greater than 1% and we therefore find notice to existing customers was not required in this Cause.

- (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. Prine testified that Indiana American's plan for improvements includes the Lake Station System in Indiana American's prioritization models for distribution system replacements so that commencement of an infrastructure improvement plan as contemplated in Attachment MP-4 can begin. He testified that it is estimated \$2,800,000 will be invested over the next five years in system improvements. In addition, he stated the plan includes opening the interconnection between Lake Station and Indiana American and supplying Lake Station customers with treated water from Lake Michigan. Finally, he testified that service will be enhanced through the capturing of economies of scale from Lake Station being part of a much larger system. Joint Petitioners' Exhibit 1, p. 16 line 15 through p. 17 line 13.

We find that Joint Petitioners have satisfied the requirements of Section 30.3-5(d). Joint Petitioners met the statutory criteria required to present its petition under IC 8-1-30.3-5(c).

B. Ind. Code § 8-1-30.3-5(c) Requirements.

A utility company that acquires utility property from another utility company may petition the commission to include the cost differential as part of its rate base. The Commission shall approve the petition if the Commission finds the eight requirements of Ind. Code § 8-1-30.3-5(c) have been met. The first of these required findings is that "the utility property is used and useful in providing water service." Ind. Code § 8-1-30.3-5(c)(1).

(1) The utility property is used and useful in providing water service

Of the more than \$20 million purchase price Indiana American asks authority to add to its rate base, \$7,366,043 is for a treatment plant, wells and related assets that Indiana American indicated it will not use to provide water service. Joint Petitioners' Exhibit No. 1, p. 17. Instead, Indiana American's Community and Government Affairs witness testified that the company intends to only use the plant during peak demand days or as emergency supply.¹⁶ The consumer parties considered this to raise a question as to whether such plant should be considered used and useful.

Indiana American did not present any engineering witnesses in its case-in-chief to address whether the plant or equipment to be conveyed should be considered used and useful for the provision of water service by Indiana American. In Joint Petitioners' rebuttal case, Stacy Hoffman, Director of Engineering for Indiana American, explained why he did not provide testimony on the issue in Indiana American's case in chief. He said "we don't see that Indiana American's use of this plant in the future is one of the elements the Commission is to consider under Ind. Code s. 8-1-30.3-5." Hoffman rebuttal, p. 5. Thus, as a threshold matter we must address whether a finding that the utility property is used and useful for the provision of water service by Indiana American is a required element of Joint Petitioners' case.

Indiana American maintains it is irrelevant whether in the provision of water service the plant will be used by and useful to Indiana American, the entity that will have the plant in its rate base in the coming decades. Rather, Indiana American maintains the Commission must consider whether the plant is used and useful to the entity that will no longer own it – in this case – Lake Station.

Indiana American's argues that "is used and useful" applies to the seller, not the acquiring utility. Indiana American bases this argument solely on the fact that "is" is a present tense verb. Indiana American's interpretation of this requirement is flawed, as it assumes Section 30.3-5(c) *only* applies to acquisitions that have not yet occurred. For purposes of construing the statute, it must be remembered that Section 30.3-5(c) applies to acquisitions that *have already happened*. It is only done *before* the acquisition if the acquiring utility has also met the requirements of subsection 5(d).

Under subsection 5(c), the utility company that acquires the utility property that petitions for the cost differential, which is consistent with the seller no longer owning the asset:

Ind. Code § 8-1-30.3-5

(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:

¹⁶ Indiana American case in chief established that due to the high cost to operate the Lake Station water treatment plant, Indiana American will not use the Lake Station Treatment Plant, supply wells and relate equipment to produce and supply water on a daily basis. Instead, Indiana American asserted in its case that "intends to only use the plant during peak demand days, or as emergency supply." Prine at p. 17. Mr. Prine also said "It is anticipated that the existing Lake Station treatment facility will be maintained and regularly placed in operation to ensure rapid reliability." Id.

(1) the utility property is used and useful in providing water service

Other provisions of subsection 5(c) are also structured as if the transaction as already been completed. For instance, Section 5(c)(2) requires a finding that the “distressed utility failed to furnish” adequate service, not that it is “failing.” Joint Petitioners’ interpretation of Section 5(c)(1), that the utility property must be “used and useful in providing water service” *by the distressed utility* is not supported by a reading of the statute as a whole.

Moreover, Indiana American’s interpretation contradicts the well-established ratemaking principles embedded in Title 8 and ratemaking in Indiana. The concept that an asset is both used and useful is inextricably tied to the concept of rate base. The used and useful standard applies to the entity seeking to earn a return on rate base. For instance, the Indiana rate base statute (Ind. Code § 8-1-2-6) begins “The Commission shall value all property of every public utility actually used and useful for the convenience of the public at its fair value, giving such consideration as it deems appropriate in each case to all bases of valuation which may be presented or which the Commission is authorized to consider by the following provision of this section.” Ind. Code § 8-1-2-6(a) (emphasis added.) It must follow that the focus of “used and useful” in Section 5(c)(1) would be the acquiring utility’s use of the utility property. A utility applies for relief under Ind. Code § 8-1-30.3-5 because *its* rates will be based on used and useful plant. Conversely, how plant was used by a former owner has no application in ratemaking. For a municipal utility, which typically does not earn a return, the concepts of used and useful has no application. It makes little sense that the first statutory criteria for the Commission to consider would apply a term to the distressed utility that is foreign to its operations. The concept of “used and useful” has had and will continue to have no application to municipal utilities like Lake Station. It will also have no application to any former owner of a utility regardless of whether it ever earned a return on rate base. But as to Indiana American or any other public utility that may seek to earn a return on the purchase price paid to acquire a utility under Ind. Code Chapter 8-1-30.3, the concept of used and useful *will* apply. For Indiana American to qualify for the return on the purchase price under Ind. Code § 8-1-30.3-5(c), the treatment plant, supply wells, and related assets must be used and useful for the provision of water service *by Indiana American*.

Joint Petitioners’ interpretation of the inquiry required by Section 5(c)(1), that “the utility property is used and useful in providing water service” *by the seller* runs afoul of how ratemaking has long worked in Indiana. An affirmative finding would permit Indiana American to put the purchase price in rate base, on which it would earn a return. But instead of determining whether the plant is used and useful to Indiana American, Indiana American argues the General Assembly intended that we look only at whether the plant “is used and useful” to the entity that no longer owns the plant – an entity that, as a matter of law has failed to furnish adequate, efficient, safe, and reasonable service. Ultimately, we must determine whether the Indiana General Assembly intended us to apply the used and useful standard to the entity that will not earn a return on the rate base. We reject that interpretation as illogical and unwarranted.

To qualify for the return on the purchase price under IC 8-1-30.3-5(c), Lake Station’s supply wells, softening/filtration plant, and related assets must be used and useful for the provision of water service by the entity that would have the value of the plant on its rate base and earn a return on and of that value - Indiana American.

The Lake Station Treatment Plant, Supply Wells, and related equipment are not used and useful for the provision of water service.

The relief Indiana American requested in this Cause depends on the Commission finding that the utility property is used by Indiana American and useful to Indiana American in providing water service. This means that (1) the utility plant will be actually devoted to providing utility service, and (2) that the plant's utilization be reasonably necessary to the provision of utility service. *City of Evansville v. Southern Indiana Gas & Electric Co.*, 339 N.E.2d 562, 589 (Ind. Ct. App., 1975).

Indiana American's case-in-chief disclosed its intention to continue relying entirely on its existing higher quality and lower cost Lake Michigan source of supply to provide water service to the Northwest District and to its new Lake Station customers. According to Indiana American, it would only use the Lake Station treatment plant and supply wells during peak day demands or as emergency supply. Prine at p. 17.

Indiana American did not provide any studies in its case-in-chief to identify levels of peak use (peak demand days) that would require the use of the wells and Lake Station WTP. Indiana American provided no discussion in its case-in-chief specifying how often the Lake Station wells/WTP might be called on to operate. In fact, according to responses to discovery by the OUCC, Indiana American does not currently anticipate any peak days.¹⁷ OUCC's witness Parks said this means that Indiana American will not operate the Lake Station WTP for daily service or for peak demand days.

The OUCC disputed Mr. Prine's statement that Indiana American will use the Lake Station treatment plant to meet peak day demand. The OUCC also disputed whether Indiana American will or should rely on the Lake Station treatment plant, supply wells and related equipment in the event of emergencies, as Mr. Prine had indicated in his case-in-chief testimony. OUCC's witness Parks characterized Indiana American's intended use of the Lake Station softening/filtration plant as an unnecessary emergency back-up treatment plant. Mr. Parks recommended the Commission reject including these plant costs in rate base because these assets will not be used and will not be reasonably necessary to provide water utility service.

We will address Indiana American's intended use to meet peak day demand and as an emergency back-up treatment plant separately.

The Lake Station Treatment Plant, Supply Wells, and related equipment will not be used and useful to meet peak day demand.

As the OUCC noted, Indiana American did not provide any studies in its case-in-chief or in response to discovery to identify levels of peak use (peak demand days) that would require the use of the wells and Lake Station WTP or how they would be operated. Indiana American provided

¹⁷ OUCC Data Request 4-5 (d) How many "peak" days (each year) does Indiana American anticipate will occur requiring it to operate the Lake Station Treatment facility? Indiana American response to OUCC DR 4-5 (d) "Currently none; however, demands resulting from new customers, future sale-for resale agreements, or acquisitions could also require use of the Lake Station plant." See Attachment JTP-3.

no specific discussion in its case-in-chief as to how often the Lake Station wells/WTP might be called on to operate. In fact, Indiana American provided no technical or engineering witness testimony at all. Although asked in discovery, Indiana American provided no study or report on how it plans to operate the plant. Furthermore, Indiana American provided no testimony or evidence showing it would use the plant to produce water even during peak periods or that it could deliver the water to Indiana American customers. Therefore, it appears Lake Station's system may not be capable of currently delivering water beyond the Lake Station system. Moreover, Indiana American indicated it did not know what it would have to spend as part of its operations and maintenance budgets to keep the wells and softening plant in reserve status. Moreover, Indiana American indicated it did not know what it would have to spend as part of its operations and maintenance budgets to keep the wells and softening plant in reserve status.

Indiana American's Northwest Indiana District is the largest of Indiana American's 21 operating units. The Northwest District treats high quality water from Lake Michigan using two treatment plants, the 54 MGD ("million gallons per day") Borman Park WTP and the 24 MGD Ogden Dunes WTP. Each plant provides conventional surface water treatment, which includes coagulation, flocculation, sedimentation, rapid rate gravity filtration, chloramination disinfection, fluoridation and corrosion control for control of lead and copper.¹⁸ Indiana American does not soften the water or employ special processes to remove iron and manganese from the Lake Michigan water, which is naturally low in hardness, iron and manganese. Monthly Reports of Operation submitted to IDEM indicate that in 2017 Indiana American produced an average of 38.1 MGD.

The OUCC maintains that Indiana American's two water treatment plants can meet all of Lake Station's average day and peak day water demands in the Northwest District with 40 MGD of excess daily average production capacity. The OUCC asserted Indiana American's existing WTPs are sufficient for both current and forecasted production needs and can easily supply Lake Station. No additional treatment facilities are needed to serve Lake Station.

The OUCC noted Indiana American had not identified any need to build a third water treatment plant to supply water demand or to serve as a back-up plant during emergencies. OUCC witness Parks explained he had reviewed IAWC's *Summary of Recommended Improvements for the Northwest System* submitted annually to the IURC since 2009,¹⁹ and Indiana American had never recommended a third WTP to serve the Northwest District. He added Indiana American had also never recommended supplementing its source of supply in the Northwest District with ground water. Mr. Parks also noted Indiana American had previously recommended increasing capacities at its existing treatment plants, but no longer was considering such expansions.

Indiana American did not supply engineering or technical testimony to address use of the Lake Station treatment plant to meet Indiana American's peak day demand until its rebuttal case. Mr. Stacy Hoffman, Director of Engineering for Indiana American, testified he disagreed with Mr. Parks' statements that the Borman Park and Ogden Dunes plants have treatment capacities of 54 MGD and 24 MGD respectively - a total of 78 MGD. Mr. Hoffman testified that these are the respective filter capacities without the largest filter out of service, without considering hydraulic limitations of transmission mains leaving the plant. He testified that the plant capacities for the

¹⁸ 2016 Annual Report to the IURC, page W-8.

¹⁹ 2009 to 2016 Annual Reports to the IURC.

Borman Park and Ogden Dunes plants considering their largest respective filter unit out of service, are 45 MGD and 18 MGD, respectively. Mr. Hoffman stated that together the combined plant capacity of both plants each with their largest respective filter unit out of service is 63 MGD. Mr. Hoffman suggested that for purposes of determining capacity needs for meeting peak day demand Indiana American's Northwest System should be considered to have a reliable capacity of 63 MGD. (Mr. Hoffman asserted that considering plant capacities with their largest filter out of service is a design element of the Ten States Standards to which IDEM refers for facility design.)

Mr. Hoffman then noted Indiana American's 2020 projected base maximum day demand at a 95% confidence interval is 61.5 MGD. He testified that adding Lake Station's 1.1 MGD maximum day demand as referenced by Mr. Parks increases the maximum demand to 62.6 MGD, nearly identical to his asserted 63 MGD capacity, which he argued results in a very thin margin between Indiana American's combined reliable plant capacity with the largest respective filter unit out of service, and the projected base maximum day demand.

Mr. Hoffman's stated 63 MGD combined capacity of Indiana American's treatment plants is substantially below capacities reported previously by Indiana American. Mr. Prine testified that the Northwest Indiana District existing treatment capacity is nearly 80 MGD. Prine Direct, page 16, lines 22-23. On cross examination, the OUCC presented pages from IAWC's confidential 2010 and 2017 Comprehensive Planning Studies showing the Northwest District's reliable or firm production capacity. OUCC Cross Exhibit Nos. 11C and 12C. Mr. Hoffman acknowledged page 4-1 of the 2017 Comprehensive Planning Study (OUCC CX11C) showed the reliable capacity for the system is 70 MGD. The OUCC also submitted Public Exhibit No. CX8 which was IAWC's response to OUCC Data Requests 21-27 stating the Northwest system's reliable capacity is 70 MGD. Hr.Tr. B-61. Finally, Indiana American has routinely reported in its Annual Reports, treatment capacities of 54 MGD and 24 MGD for the Borman Park and Ogden Dunes treatment plants respectively. The OUCC's Mr. Parks presented IAWC's 2020 to 2030 demand projections from its 2017 Comprehensive Planning Study as Confidential Attachment 4 where IAWC projects further decreases in its maximum day demands below the 61.5 MGD referenced by Mr. Hoffman.

Based on the foregoing evidence, we agree with the OUCC that Indiana American's existing Northwest District system has sufficient capacity not only to meet daily average flows but also maximum day demands, and that the Lake Station treatment plant, supply wells and related assets are not reasonably necessary to provide water service going forward, and that those assets will not be used and useful to meet peak day demand for purposes of IC 8-1-30.3-5(c)(1).

Indiana American acknowledged through its response to discovery that it does not anticipate relying on the Lake Station treatment plant to meet peak day demand. Mr. Parks testified that when asked how many peak days each year Indiana American anticipates will occur requiring it to operate the Lake Station Treatment facility, Indiana American responded "Currently none; however, demands resulting from new customers, future sale-for resale agreements, or acquisitions could also require use of the Lake Station plant." See Attachment JTP-3. Thus, except for events not expected to occur, Indiana American itself believes it will not use the Lake Station treatment plant to meet peak day demand.

Moreover, Indiana American's "very thin margin," which it presented for the first time in its rebuttal case, relies on thin argument. Mr. Hoffman insists that for purposes of justifying its need of the Lake Station treatment plant to meet peak day demand, the reliable capacity of the Northwest system is only 63MGD. But Cross-examination Exhibit OUCC CX8 established that

according to the 2017 Northwest Service Area Comprehensive Planning Study (page 4-1) the reliable capacity of the Northwest system is 70 MGD. For purposes of its comprehensive planning study, Indiana American treats the Northwest District as one system and to determine its reliable capacity it assumes one filter, its largest, is out of service. But for the purpose of Indiana American's rebuttal in this cause, in which Indiana American asserts it has only a thin margin of excess capacity, Indiana American applies a different method. It assumes two filters are out of service. Mr. Hoffman's reliable capacity of 63 MGD only appears as the Northwest system's reliable capacity in his rebuttal testimony. Mr. Hoffman acknowledges 63MGD does not appear as a conclusion in the 2017 Northwest Comprehensive Planning Study. (Hr. Tr. B-66, lines 9-12) Rather, it must be constructed by adding the reliable capacity of the system's two plants. The manifest purpose of the Northwest Comprehensive Planning Study is to allow Indiana American to assess its system needs, and that document indicates the system's reliable system capacity is 70 MGD, not 63 MGD.

In addition, the margin Indiana American describes as "very thin" is the margin between its reliable system capacity and the upper limits of its confidence interval, not its expected peak. According to Mr. Hoffman, 61.5 MGD is the projected base maximum day demand for 2020 at a 95% confidence interval for the maximum to average day ratio. It is not accurate to describe 61.5 MGD as a projection of peak day demand. The average relationship between the peak day and the average days for the ten year period used is 1.450. Extending that relationship to an average day of 38 MGD would result in a maximum day demand of 55.1 MGD. 61.5 MGD is not the expected peak, but the upper limit at the 95% confidence interval. Indiana American selected 61.5 MGD as its threshold. And even assuming Indiana American's reliable capacity is 63 MGD, Indiana American's Northwest system passes this test. 63 MGD is higher than 62.6 MGD.

Indiana American contends it is reasonably necessary for it to spend more than \$7 million to acquire Lake Station's treatment plant and wells because it now asserts its near term 2020 projected maximum day demand has nearly reached its reliable capacity. If that were the case, Indiana American should be actively pursuing projects to expand production, negotiating supply contracts with adjacent utilities and making strides to reduce non-revenue water losses. The evidence suggests the opposite. None of Indiana American's recent actions are consistent with its suggestion that its capacity is lacking. Through a docket entry, the Commission asked Indiana American if its most recent Comprehensive Planning Study for the Northwest District identified any need for expansion of Indiana American's water supply capacity. Indiana-American responded that the most recent Comprehensive Planning Study did not identify any current need for expansion of water supply capacity for the Northwest District. Indiana American noted it did not include a supply expansion project in its most recent Comprehensive Planning Study. Indiana American added it does not anticipate needing the Lake Station water supply to supplement capacity to meet the combined base projected maximum day demand with the largest filters out of service at the Borman Park and Ogden Dunes plants. (Schererville Administrative Notice Exhibit 1) In fact, due to lowering demand, Indiana American *eliminated* projects to expand capacity and *elected* not to renew the 2 MGD water supply agreement from East Chicago. Also, Indiana American has not resolved its long standing hydraulic limitations, and does not propose to keep Lake Station's 400,000 gallon elevated water tower that is in good condition. Any of these actions would help address Indiana American's alleged supply deficiency and do so at a far less expensive cost.

Moreover, Indiana's Northwest District suffers from a significant lost water issue. Its non-revenue water makes up about 30% of its total supply. (Hr. Tr. B-54, line 9). Addressing its non-

revenue water issue would help Indiana American meet its alleged supply concerns. Importantly, the Lake Station treatment plant has never produced more than 1.1 million gallons and has a design of only 2 MGD but only with all units in service. By comparison, in 2000 Indiana American's non-revenue water was 4.39 MGD (Hr. Tr. B-44, lines 3-4) peaking at 12.42 MGD in 2016 (OUCC Exhibit CX 7). In 2020, Indiana American forecasts non-revenue water will drop to 9.91 MGD (Hr. Tr. B-44, lines 18 -19), nearly ten times the amount of water the Lake Station treatment plant was designed to produce.

The Lake Station treatment plant is not reasonably necessary to meet peak day demand. We find that the evidence does not support Indiana American's contention that the Lake Station treatment plant will be used and useful by Indiana American to meet peak day demand.

The Lake Station Treatment Plant, Supply Wells, and related equipment will not be used and useful to as emergency supply.

While we find that the plant will not be used and useful to meet Indiana American's peak day demand, we must also address Indiana American's claim that the plant will be used and useful as an emergency supply. As we noted above, used and useful in providing water service means (1) that the utility plant will be actually devoted to providing utility service, and (2) that the plant's utilization be reasonably necessary to the provision of utility service. *City of Evansville v. Southern Indiana Gas & Electric Co.*, 339 N.E.2d 562, 589 (Ind. Ct. App., 1975).

Water utilities procure onsite power generation to use on an emergency basis. But the concept of an entire treatment plant being used and useful as emergency supply is unusual for Indiana. Whether a treatment plant that is standing by for such an event can be considered "actually devoted to providing utility service" is one question. Another is whether "the plant's utilization be reasonably necessary to the provision of utility service."

Again, Indiana American did not present any engineering witnesses in its case-in-chief to address whether the plant or equipment to be conveyed should be considered used and useful for the provision of water service. While Indiana American witness Prine testified that "the existing Lake Station water treatment facility provides value to supplementing overall system treatment capacity and service reliability," Indiana American did not supply engineering or technical testimony to address use of the Lake Station treatment plant as an emergency supply until its rebuttal case.

In response to Mr. Prine's suggestion in his case-in-chief that the plant will be used in the event of an emergency, Mr. Parks noted Indiana American's Northwest District has a robust water system with substantial reserve capacity already in its treatment, storage, and distribution facilities and redundant plant and equipment to supply water in the event of an emergency treatment plant outage. Mr. Parks said the Northwest District treats high quality water from Lake Michigan using its two treatment plants, the 54 MGD ("million gallons per day") Borman Park WTP and the 24 MGD Ogden Dunes WTP. Indiana American does not soften the water or employ special processes to remove iron and manganese from the Lake Michigan water, which is naturally low in hardness, iron and manganese. Mr. Parks noted that, based on annual average flows, Indiana American's Borman Park and Ogden Dunes WTPs operate at less than 50% of their design

capacities. Mr. Parks noted the Borman Park WTP can and has supplied all the water needed in the Northwest District without the Ogden Dunes plant in service.

Mr. Parks noted Indiana American had not previously identified the need to build a third water treatment plant to supply water demand or to serve as a back-up plant during emergencies. Mr. Parks explained IAWC's *Summary of Recommended Improvements for the Northwest System* submitted annually to the IURC since 2009,²⁰ had never included a third WTP to serve the Northwest District. Likewise, Indiana American had also never recommended supplementing its source of supply in the Northwest District with ground water. While Indiana American had previously recommended expanding its existing treatment plant, the three improvements or expansion projects listed previously in the IURC Annual reports are no longer shown on the *Summary of Recommended Improvements for the Northwest System included in IAWC's 2016 IURC Annual Report*.²¹

As the OUCC noted in its case, neither IDEM nor the Ten States Standards call for separate back-up water treatment plants.²² Redundancy is provided at water plants by requiring a minimum of at least two units such as tanks, pumps, filters etc. sized to produce the maximum day flow with the largest unit or pump out of service. This accounts for maintenance activities or unplanned breakdowns that may take part of the treatment plant off-line. Separate stand-alone back-up treatment plants are not required. OUCC's witness Parks testified he did not know of any water utility with a separate back-up water plant that is kept out of service to be used only during emergencies.

In his rebuttal testimony, to support the Lake Station treatment plant as an emergency supply, Mr. Hoffman focused on the draft criticality analysis. Mr. Hoffman said that the draft analysis showed that if the Borman Park intake were to be out of service for a 72 hour period, Indiana American would need an additional 6.26 MG of water per day. Mr. Hoffman assumed for purposes of this analysis Indiana American's usable storage facilities in the Northwest District were 75% at the time of the event and Ogden Dunes was operating at full use. Mr. Hoffman suggested this indicated it was appropriate to acquire the additional 1 to 2 MGD the Lake Station treatment plant could potentially supply.

During cross-examination about the draft criticality analysis, Mr. Hoffman acknowledged the analysis did not include water that might be available in storage tanks not owned by Indiana American such as its sale for resale customers, Crown Point and Schererville, and Lake Station. Mr. Hoffman did not know how much capacity would be available in the tanks of those customers, but he would be interested in that. Mr. Hoffman acknowledged "we haven't completed this report."

²⁰ 2009 to 2016 Annual Reports to the IURC.

²¹ Indiana American's 2009 IURC Annual Report identified future improvement or expansion projects to increase water production at its Ogden Dunes WTP. These included filter improvements at the Ogden Dunes WTP (CPS Project No. 2010 A-5), performing filter demonstration tests to achieve higher capacity ratings at the Borman Park and Ogden Dunes WTPs (CPS Project No. 2010 A-6), and an Ogden Dunes WTP capacity expansion from 24 MGD to 36 MGD (CPS Project No. 2010 A-8). Mr. Parks noted IAWC did not expand the Ogden Dunes plant. He said CPS Project No. 2010-A-8 to expand Ogden Dunes to 36 MGD was not completed and he added that IAWC no longer proposes to rerate Ogden Dunes' filter capacity.

²² Ten States Standards refers to the *Recommended Standards for Water Works* published by the Great Lakes – Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.

(Hr. Tr. B-83). Mr. Hoffman said that potentially Indiana American could rely on storage provided by Crown Point and Schererville and that “as we complete this report, this could be useful information.” (Hr. Tr. B-85). Mr. Hoffman was unaware of the water that could be available in Crown Point’s and Schererville’s tanks. However, he acknowledged portions of that storage may be useful. (Hr. Tr. B-85-86). Mr. Hoffman indicated that as he completed his study, he would need to evaluate whether the available storage from Crown Point and Schererville could cause the 6.26 MG per day shortfall to be zero or less. (Hr. Tr. B-87).

Furthermore, while Mr. Hoffman claimed that Indiana American contemplated interconnections with other utilities that could provide more resiliency for all regional utilities that interconnect, Mr. Hoffman’s rebuttal testimony and answers to cross-examination bespoke the need for Indiana American to complete its investigation of alternative sources through interconnections with other utilities and to secure or revive interconnection agreements. In his rebuttal testimony, Mr. Hoffman testified about the importance of criticality analyses, but as of the hearing conducted in 2018, Indiana American has not completed a criticality analysis commenced in 2015 or 2016.

The only study, report, or analysis that Indiana American has offered to support the use of Lake Station treatment plant and supply wells in an emergency, is a table from the Northwest District’s draft criticality analysis – a study that Indiana American’s witness acknowledges is not complete and lacks information that admittedly would affect the results. More specifically, it estimates a shortfall of water without identifying, quantifying, and otherwise considering the storage supplied by whole sale customers, who are parties to this proceeding.

The Lake Station treatment plant is designed to produce at best 2 MGD and it has a reliable capacity of only 1 MGD. In his rebuttal testimony, Mr. Hoffman noted all the facilities including the pumps were specifically designed to provide service and pressure to the Lake Station service area. Hoffman rebuttal, p. 15. He added that “No other improvements would be necessary for serving these customers.” Hoffman rebuttal, p. 15 (emphasis added). But Indiana American has not identified what improvements would be needed in order for the Lake Station treatment plant to provide water to Indiana American’s existing customers in the Northwest area. There is no evidence Indiana American could successfully extend water produced by the Lake Station treatment plant to Indiana American’s existing customers in the event of an emergency.

Yet Mr. Hoffman suggested the Lake Station treatment plant could “manage 1 to 2 MGD of the minimum needed.” Hoffman rebuttal, p. 15 However, Indiana American has not established the Lake Station treatment plant can produce more than what Lake Station’s existing customers need. Notably, Mr. Hoffman suggested Mr. Park’s 1.1 million gallon peak day for Lake Station may be understated because it may not have included water that may have been supplied by Indiana American. (Hr. Tr. B-21-24.) Mr. Hoffman explained that he was aware of Indiana American supplying additional water because of recent fire in Lake Station. Hr. Tr. B-24. If Lake Station has not produced more water than 1.1 MGD and yet needed additional flow from Indiana American to address its own emergency, this at least calls into question Mr. Hoffman’s suggestion that the Lake Station treatment plant could produce up to 2 MGD in the event of an emergent need for water in the Northwest District. There is no reliable proof the Lake Station treatment plant and supply wells could reasonably assist the rest of the Northwest system.

Indiana American insists that it needs additional treatment capacity in the event of an emergency. But other than seek to purchase the Lake Station treatment plant and wells at a cost of more than \$7 million dollars, a plant that at best can produce only 2 MGD if all units are in service, with no understanding of what would be required to distribute the water away from Lake Station, Indiana American has done little or nothing to address the shortfall of water its draft criticality analysis indicates. In fact, Indiana American has eliminated projects that would expand treatment capacity in the Northwest District. Also, Indiana American has not had the discussions it could have and should have to secure water from its neighbors at less cost. In short, Indiana American has failed to engage in regionalization. The acquisition of the Lake Station treatment plant is an expensive solution that Indiana American's own draft criticality analysis indicates will not solve the 6.26 MGD shortfall it projects. Indiana American should complete its criticality analysis taking into account all relevant factors such as the storage of its wholesale customers such as Crown Point and Schererville. Indiana American should also evaluate the cost and effectiveness of other options to prevent spending \$7 million on equipment it may never use.

The Lake Station treatment plant and supply wells will not be actually devoted to providing utility service. Nor can we find that the treatment plant and supply wells are reasonably necessary to the provision of utility service as an emergency supply.

For the forgoing reasons, we cannot find that the Lake Station treatment plant, supply wells and related equipment are used and useful for purposes of the finding required by Ind. Code § 8-1-30.3-5(c)(1). We hereby find Indiana American does not qualify for the ratemaking relief it has requested under Ind. Code § 8-1-30.3-5(c).

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

Mr. Prine testified that Lake Station's system is a municipally owned system that serves fewer than 5,000 customers and therefore satisfies the "distressed" requirement. He testified to other ways in which he believes Lake Station qualifies as distressed, but for our purposes only one element is needed. Joint Petitioners' Exhibit 1, p. 13. We find the Lake Station system is municipally owned utility property that serves fewer than 5,000 customers. Pursuant to Section 30.3-6(5), that means the Lake Station System "is not furnishing or maintain adequate, efficient, safe and reasonable service and facilities," and we so find.

- (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.

We have considered the financial, managerial and technical ability of Indiana American to provide the utility service required following closing. Indeed, Mr. Parks testified extensively about Indiana American's Northwest Operation and that the only act needed to supply Lake Station with Lake Michigan water is to open the valve at the interconnection. There is no dispute regarding Indiana American's ability in this regard.

Several times in the statute, the phrase “adequate, efficient, safe, and reasonable service” is used. Section 30.3-5(2) and (3) and (d)(4) and Section 30.3-6. Given that the phrase is continually repeated, we must read them together. Section 30.3-6 defines the ways in which a utility “is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities,” and so if a purchasing utility will address the issue that causes that finding, then, by definition, the purchasing utility “will make reasonable and necessary improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service” and therefore has a plan to do so. Here, we have found that what causes Lake Station not to render the requisite level of service and facilities is its small size. Indiana American is not a small utility. So what may be considered to have qualified Lake Station as a utility that is “not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities,” – is cured by Indiana American’s ownership. Moreover, Mr. Prine testified that Lake Station will be placed on Indiana American’s prioritization model and asset management system. Accordingly, we find that Indiana American will make reasonable and prudent improvements to ensure that Lake Station customers will receive adequate, efficient, safe and reasonable service.

This requirement, -- that the acquiring utility “will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service” -- is stated in the future tense. Thus, this requirement may be more than simply an assessment of future behavior by the utility company, it may also be considered a directive. Accordingly, we find that Indiana American will and should make reasonable and prudent improvements to ensure that Lake Station 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.

Mayor Anderson described the process undertaken by Lake Station prior to entering the transaction. Mayor Anderson testified that negotiations proceeded over the course of several months while Lake Station was undergoing the statutory process and such negotiations were conducted at arm’s length. Joint Petitioners’ Exhibit 3, p. 3. Mr. Prine echoed Mayor Anderson’s testimony and testified that the negotiations leading up to the executions 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.

Mr. Roach testified the purchase price exceeds the appraised value by \$530,530. He stated the Asset Purchase Agreement requires Indiana American to remove the Lake Station 400,000-gallon elevated storage tower (Joint Petitioners’ Exhibit No. 2, Attachment MP-3, at 10.) Mr. Roach provided that Indiana American determined the value assigned to the tower should not be considered part of the appraised value for purposes of determining the reasonableness of the purchase price because Indiana American is not “purchasing” the tower. Considering this, the

purchase price exceeds the appraised value of the assets being acquired by \$530,530. Indiana American’s proposal would exclude this amount in the net original cost rate base. Mayor Anderson sponsored a copy of the appraisal (Joint Petitioners’ Exhibit No. 1, Attachment CA-1), and the OUCC raised two issues related to it.

Specifically, the OUCC questioned whether Lake Station complied with Ind. Code § 8-1.5-2-4 (“Section 4”), alleging Lake Station did not comply with Ind. Code §§ 8-1.5-2-4(1) and (3). Lake Station has asserted its actions were not inconsistent. While the OUCC and Joint Petitioners contest whether the requirements of Section 4 were satisfied, no party contested its applicability to this proceeding. Further, it is uncontested that Lake Station determined to sell its municipally-owned utility property,²³ and it is uncontested that Lake Station provided for a “written document” pursuant to Section 4.²⁴ The subject of our immediate inquiry is whether the written document contained the items Ind. Code § 8-1.5-2-4 expressly requires.²⁵

Ind. Code § 8-1.5-2-4 clearly states the items that the “written document” must contain. It must have the appointment of three Indiana residents to serve as appraisers (Ind. Code § 8-1.5-2-4(1)). It must identify the property to be appraised (Ind. Code § 8-1.5-2-4(2)). It must state the time the appraisal is due (Ind. Code § 8-1.5-2-4(3)).

Lake Station initially appointed the appraisers on March 17, 2016, through Resolution No. 10, and later on February 23, 2017, through Resolution No. 2017-04. The appraisers returned their appraisal first on June 24, 2016, and again on March 13, 2017 (referenced in this proceeding as a “recertification”). Lake Station then accepted the appraisal for the sale of its municipal water utility when it enacted Ordinance No. 2017-3 on June 8, 2017 (Joint Petitioners’ Attachment CA-2).

Based on its review, the OUCC asserted that neither resolution provides a date the appraisal was due (Ind. Code § 8-1.5-2-4(3)). Joint Petitioners contend the act of ratifying the appointing resolutions fixes Lake Station’s failure to state a due date for the appraisals. It does not. The appraisers returned the appraisal, first, on June 24, 2016, and again on March 13, 2017. In neither resolution did the city provide a due date for the appraisal,²⁶ and instead included placeholders for their insertion (*see* Public’s Exhibit No. 2, Attachment ERK-9 at 3 and 8). Joint Petitioners’ arguments are unpersuasive insofar as the date the appraisers returned the appraisal happened at their discretion, not pursuant to a date provided through Resolution No. 10 or Resolution No. 2017-14. The dates the city received the appraisals were not dates the city had established as the due date (Hr. Tr. At A-105). In fact, based on the record, the city provided no documents to the appraisers that tell them the date it expected the appraisal to be returned (*Id.* at A-106). The date the city received the appraisal (and its recertification) just happen to be dates the appraisers

²³ Lake Station enacted an ordinance, on June 8, 2017, to sell its municipal water utility to Indiana American after having received a recertified return of appraisement dated March 17, 2017 (Joint Petitioners’ Attachments CA-1, CA-2).

²⁴ We stated in our Order in Cause No. 44976 that “Ind. Code § 8-1.5-2-4 contemplates the information listed being in a single written document....” (at 39)

²⁵ In our Order in Cause No. 44976, we stated, “Certainly, adherence to the statute should be effectuated by making the appointment in a document, such as an ordinance or resolution consistent with the title of this statute....”

²⁶ Hr. Tr. at A-105.

returned it, not on or behalf a due date mandated by Lake Station in the resolutions appointing the appraisers.

While Lake Station may have ratified the resolutions appointing the appraisers, the statutorily required due date is not immaterial, as Joint Petitioners claim. Claiming now that the city could have inserted the date it knows today (but did not previously know or expect), does not provide sufficient remedy for the non-compliance. The public loses the opportunity to plan actions at the earliest of the disposition process. Absent a clear due date, the municipality's interested public, and owners of the municipal utility, are deprived of the opportunity to become informed and plan actions based on a fixed, publicly-known date. The City's non-compliance deprived the public of the opportunity Section 4 provides.

In the document appointing the appraisers, Ind. Code § 8-1.5-2-4(1) requires it contain "[t]he appointment, as follows, of three (3) residents of Indiana to serve as appraisers...." Lake Station's non-compliance with Ind. Code § 8-1.5-2-4(1), the OUCC claimed merely listing a firm name or company name did not sufficiently satisfy Section 4. Joint Petitioner argued Section 4 only requires it to "provide for" the appointment of three Indiana residents, which listing the firm names achieved. In response to cross-examination by the OUCC, Indiana American witness Mr. Roach stated he did not take any steps to check the appraisers' qualifications (Hr. Tr. A-14). In fact, he expressed his presumption that their status as licensed professionals would make them disinterested (*Id.*). Similarly, when he was questioned on this topic, Mayor Anderson answered the city "[did not] do much" to confirm whether the appraisers' appointment complied with Ind. Code § 8-1.5-2-4. He further stated there is a presumption the appraisers' professional conduct requires them to disclose conflicts (Hr. Tr. A-20). Joint Petitioners' reiterated that simply providing for the firm names is sufficient to comply with Ind. Code § 8-1.5-2-4(1). As such, there is a lack of evidence of compliance with this requirement.

We find simply listing a firm or company name does not satisfy Ind. Code § 8-1.5-2-4(1). With just a firm name, a member of the public would have to anticipate what member or staff member of the engineering or appraisal firm could render the appraisal. They would be foreclosed the opportunity to research or otherwise investigate each appraisers' appointment (and her or his qualifications) up until those persons individually sign a document attesting to the truthfulness of their valuation. Again, this unfairly limits the public's opportunities to participate in the process, as Chapter 2 clearly provides.

Accordingly, we find that neither the March 17, 2017 resolution nor the March 16, 2017 resolution satisfy all requirements of Ind. Code § 8.1.5-2-4. Ultimately, the rights and the presumptions on which Joint Petitioners rely for the relief requested in this Cause depend on satisfaction of the conditions precedent established by Ind. Code § 8.1.5-2-4 and 5. As a result, Joint Petitioners' presumption that the purchase price is reasonable is not well founded. We cannot find the purchase price is reasonable for the reasons on which Joint Petitioners rely.

- (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 (Joint Petitioners' Exhibit 1, p. 15), that Lake Station 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.

Our finding with respect to the Section 5(c)(1) implicates this requirement. Indiana American proposes to put into its rate base, which it will earn a return on and depreciation expense, more than \$7 million for a treatment plant and supply wells that is not used and useful for the provision of water service. OUCC's witness Kaufman testified the cost to Indiana American's ratepayers associated with those unused and not useful assets would be about \$1 million per year. Looking only at this requirement, we must determine whether the effect on rates of the acquisition as proposed would cause an unreasonable increase to the rates of Indiana American's customers. Indiana American's customer rates will increase as a result of this acquisition, and to the extent the increase is as a result of Indiana American's purchase of treatment plant and supply wells it will not use or should not reasonably rely on, the increase is unreasonable.

- (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. Attachment GPR-1, p. 7. We would find such an approach to be appropriate. However, in light of our finding that the requirements of section 5(c) have not been met, this finding or directive is not required.

C. Approval Under Ind. Code §§ 8-1.5-2-6.1(d) and (e)(2)

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 that the sale according to the terms and conditions is in the public interest. Ind. Code § 8-1.5-2-6.1 (b) and (d). Pursuant to Ind. Code § 8-1.5-2-6.1(e)(2), which apply to Indiana American's and Lake Station's application, the sale according to the terms and conditions is in the public interest if the municipally owned utility petitions the Commission under Ind. Code § 8-1-30.3-5(d) and the Commission approves the petition under Ind. Code § 8-1-30.3-5(c).

Having found the acquiring utility has not met all requirements of Ind. Code § 8-1-30.3-5(c), as a matter of law, we cannot find the proposed sale is in the public interest.

D. Rates and Rules. Indiana American currently has on file with the Commission a schedule of rates and charges and rules and regulations applicable to water utility service provided by Indiana American in its Area One rate group. Consistent with the Asset Purchase Agreement, we would find that, on and after the closing, Indiana American's generally applicable rates and charges and rules and regulations for water service and private and public fire service applicable in Indiana American Area One rate group on file with and approved by the

Commission should apply to services provided by Indiana American through the Lake Station Water System, as the same are in effect from time to time. However, we found that Joint Petitioners have not met all the criteria of Ind. Code § 8-1.5-2-5(d) and therefore Indiana American is not authorized to include the entire cost differential in rate base. Further, under Section 6.1 we cannot make the required finding that the proposed transaction is in the public interest. Accordingly, this request is denied as moot.

E. Encumbrances. We would find that the encumbering of the properties comprising the Lake Station Water System by subjecting such properties to the lien of Indiana American's General Mortgage as of the closing should be approved. However, we found that Joint Petitioners have not met all the criteria of Ind. Code § 8-1-30.3-5(c), and Indiana American is therefore not authorized to include the entire cost differential in rate base. Further, under Section 6.1 we cannot make the required finding that the proposed transaction is in the public interest. Accordingly, this request is denied as moot.

F. Confidentiality. Indiana American filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information on April 13, 2018, which was supported by the Affidavit of Stacy S. Hoffman showing the information to be submitted to the Commission was confidential due to Homeland Security concerns and due to the confidential, proprietary, competitively sensitive and trade secret nature of the information. The Presiding Officers issued a Docket Entry on April 20, 2018, finding such information to be preliminarily confidential, after which such information was submitted by the OUCC under seal. No party objected to the confidential and proprietary nature of the information submitted under seal in this proceeding. We find all the information is confidential pursuant to Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3, is exempt from public access and disclosure by Indiana law, and shall continue to be held confidential and protected from public access and disclosure by the Commission.

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

1. Joint Petitioners' request to consummate the acquisition of the Lake Station Water System by Indiana American on the terms described in the Asset Purchase Agreement and in the evidence as discussed herein, is hereby denied.

2. We decline to find that the acquisition of the Lake Station Water System by Indiana American on the terms and conditions described in the Asset Purchase Agreement and in the evidence herein is in the "public interest" as defined in Indiana Code § 8-1.5-2-6.1(d) and -(e).

3. Indiana American's request to record for ratemaking purposes the net original cost rate base of the assets in an amount equal to \$20,199,470, plus actual incidental expenses, and other costs of acquisition, allocated among utility plan in service accounts as proposed by Joint Petitioners in Attachment GMV-1, is hereby denied.

4. Indiana American's request to charge customers currently served by the Lake Station Water System the current rates and charges and apply the same rules and regulations for water service and private and public fire service applicable in Indiana American Area One rate group on file with and approved by the Commission is hereby denied.

5. Indiana American's request to reflect the acquisition of the Lake Station Water System on its books and records as of the closing by making the accounting and journal entries described in Attachment GMV-1, as adjusted to actual incidental expenses and costs of the acquisition, is hereby denied.

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

HUSTON, FREEMAN, 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