

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN )  
WATER COMPANY INC. (“INDIANA )  
AMERICAN”) AND SILVER CREEK WATER )  
CORPORATION (“SILVER CREEK”) FOR )  
APPROVAL AND AUTHORIZATION OF: (A) )  
THE ACQUISITION BY INDIANA AMERICAN )  
OF SILVER CREEK’S UTILITY PROPERTY )  
(THE “SILVER CREEK WATER SYSTEM”) IN )  
CLARK AND FLOYD COUNTIES IN INDIANA )  
IN ACCORDANCE WITH A PURCHASE )  
AGREEMENT THEREFOR; (B) APPROVAL )  
OF ACCOUNTING AND RATE BASE )  
TREATMENT; (C) APPROVAL OF THE )  
RATES AND CHARGES TO BE APPLIED TO )  
THE SILVER CREEK WATER SYSTEM )  
AFTER CLOSING; (D) APPROVAL OF )  
APPLICATION OF INDIANA AMERICAN’S )  
RULES AND REGULATIONS FOR WATER )  
SERVICE TO THE SILVER CREEK WATER )  
SYSTEM; (E) APPLICATION OF INDIANA )  
AMERICAN’S DEPRECIATION ACCRUAL )  
RATES TO SUCH ACQUIRED PROPERTIES; )  
AND (F) THE SUBJECTION OF THE )  
ACQUIRED PROPERTIES TO THE LIEN OF )  
INDIANA-AMERICAN’S MORTGAGE )  
INDENTURE. )

CAUSE NO. 46023

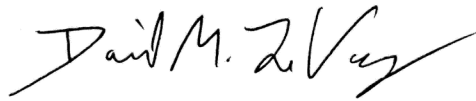
**OUCC’s PROPOSED ORDER**

The Indiana Office of Utility Consumer Counselor (“OUCC”), by counsel, hereby submits its Proposed Order. The OUCC’s proposed order largely incorporates Petitioner’s proposed order with the OUCC’s recommended changes as redlined. The OUCC asks that the Commission adopt the OUCC’s findings with respect to summarizing of the OUCC’s case and proposed findings with respect to application of rates and charges to be applied to the Silver Creek customers. Word versions (clean and redlined) shall be proved to the presiding offer and opposing counsel through email.

Although the OUCC considers Petitioner's summary of Margaret Stull's testimony to be substantially accurate, it takes exception to the statement included therein that Ms. Stull "testified Indiana American wishes to acquire the Silver Creek System through the procedures laid out in Ind. Code § 8-1-30.3-5." The foregoing statement inaccurately suggests Ms. Stull indicated § 8-1-30.3-5 authorizes the transfer of utilities. Ms. Stull did not suggest the forgoing and rather indicated that Indiana American relies on Ind. Code § 8-1-30.3-5 to seek *favorable ratemaking treatment*.

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



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Daniel M. Le Vay, Attorney No. 22184-49

Deputy Consumer Counselor

Victor Peters, Attorney No. 38310-53

Deputy Consumer Counselor

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

115 West Washington Street

Suite 1500 South

Indianapolis, IN 46204

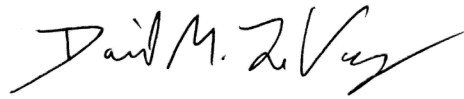
Email: [dlevay@oucc.in.gov](mailto:dlevay@oucc.in.gov)

[vipeters@oucc.in.gov](mailto:vipeters@oucc.in.gov)

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the *OUCC's Proposed Order* has been served upon the following counsel of record in the captioned proceeding by electronic service on July 26, 2024.

Nicholas K. Kile  
Lauren Aguilar  
**BARNES & THORNBURG LLP**  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Email: [Nicholas.kile@btlaw.com](mailto:Nicholas.kile@btlaw.com)  
[lauren.aguilar@btlaw.com](mailto:lauren.aguilar@btlaw.com)



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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](mailto: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 )  
SILVER CREEK WATER CORPORATION (“SILVER )  
CREEK”) FOR APPROVAL AND AUTHORIZATION )  
OF: (A) THE ACQUISITION BY INDIANA AMERICAN )  
OF SILVER CREEK’S UTILITY PROPERTY (THE )  
“SILVER CREEK WATER SYSTEM”) IN CLARK AND )  
FLOYD COUNTIES IN INDIANA IN ACCORDANCE )  
WITH A PURCHASE AGREEMENT THEREFOR; (B) )  
APPROVAL OF ACCOUNTING AND RATE BASE )  
TREATMENT; (C) APPROVAL OF THE RATES AND )  
CHARGES TO BE APPLIED TO THE SILVER CREEK )  
WATER SYSTEM AFTER CLOSING; (D) APPROVAL )  
OF APPLICATION OF INDIANA AMERICAN’S )  
RULES AND REGULATIONS FOR WATER SERVICE )  
TO THE SILVER CREEK WATER SYSTEM; (E) )  
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DEPRECIATION ACCRUAL RATES TO SUCH )  
ACQUIRED PROPERTIES; AND (F) THE )  
SUBJECTION OF THE ACQUIRED PROPERTIES TO )  
THE LIEN OF INDIANA-AMERICAN’S MORTGAGE )  
INDENTURE. )  
)**

**CAUSE NO. 46023**

**APPROVED:**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**Sarah E. Freeman, Commissioner**

**Kehinde Akinro, Administrative Law Judge**

On March 12, 2024, Indiana-American Water Company, Inc. (“Indiana American”) and the Silver Creek Water Corporation (“Silver Creek”) (collectively “Joint Petitioners”) filed a Joint Petition with the Indiana Utility Regulatory Commission (“Commission”) along with their case-in-chief seeking certain approvals related to the proposed acquisition by Indiana American of Silver Creek’s water utility assets (the “Silver Creek System” or “System”), consisting of the prefiled direct testimony and attachments of the following witnesses:

- Christopher Adam Snyder, Vice President of the Board for Silver Creek (Joint Petitioners’ Exhibit No. 1);
- Justin Schneider, Director of Consumer Affairs for Indiana American (Joint Petitioners’ Exhibit No. 2);

- Matthew H. Hobbs, II, Director of Engineering for Indiana American (Joint Petitioners' Exhibit No. 3); and
- Jared Deason, Director for Rates and Regulatory for American Water Works Service Company, Inc. (Joint Petitioners' Exhibit No. 4).<sup>1</sup>

On May 28, 2024, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed its case-in-chief. On June 11, 2024, Indiana American filed the Verified Rebuttal Testimony of Justin Schneider.

The Commission held an evidentiary hearing in this matter on June 28, 2024, at 2:00 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared and participated, by counsel. At the hearing, the prefiled evidence of the Joint Petitioners and OUCC were admitted into the record without objection, as well as certain stipulated responses of Joint Petitioners to data requests issued by the OUCC, in lieu of cross-examination (Public’s Exhibit CX-1).

Having considered the evidence presented and being duly advised, the Commission now finds:

### **1. Notice and Jurisdiction.**

Due, legal and timely notice of the Petition filed in this Cause was given and published by Petitioner as required by law. Indiana American is a “public utility” as that term is defined in Ind. Code § 8-1-2-1 and a “utility company” within the meaning of that term in Ind. Code § 8-1-30.3-3. Indiana American is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. Silver Creek is a not-for-profit utility within the meaning of Ind. Code § 8-1-30.3-2.5 and 8-1-2-125(a) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. The Silver Creek System is “utility property” as that term is defined in Ind. Code § 8-1-30.3-4. Under Ind. Code § 8-1-30.3, the Commission has jurisdiction over Indiana American and Silver Creek and the subject matter of this proceeding.

### **2. Characteristics of the Joint Petitioners.**

**A. Indiana American’s Characteristics.** Indiana American is a water and wastewater public utility, incorporated under the laws of the State of Indiana, serving approximately 330,000 customers with its principal office and place of business at 153 North Emerson Avenue, Greenwood, Indiana. Indiana American is subject to regulation by the Commission in the manner and to the extent provided by the laws of the State of Indiana, including Ind. Code § 8-1-2-1 et seq. Indiana American is primarily engaged in the provision of water utility service to the public in and around numerous communities throughout the State of Indiana, including Clark and Floyd Counties. Indiana American also provides wastewater utility service to approximately 2,400 customers throughout Clark, Delaware, Hamilton, Wabash, and Vigo Counties. Indiana American has charter power and authority to engage in the business of providing such water and wastewater utility service under indeterminate permits and franchises, licenses, and permits heretofore duly acquired. Indiana American owns, operates, manages, and controls, plant, property, equipment,

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<sup>1</sup> On June 21, 2024, Mr. Deason was substituted for and adopted the prefiled direct testimony of Joint Petitioners’ Witness Gregory D. Shimansky.

and facilities for the production, treatment, transmission, distribution, and sale of water for residential, commercial, industrial, other public authority, and sale for resale purposes, for the provision of public and private fire protection service and for the provision of sewer service. Jt. Pet. Ex. 2 at 2-3 and Attachment JS-3.

**B. Silver Creek's Characteristics.** Silver Creek is a not-for-profit corporation which owns and operates a water utility. Silver Creek is a not-for-profit utility within the meaning of Ind. Code § 8-1-30.3-2.5 and § 8-1- 2-125(a). Its service area is localized exclusively in southern Indiana and runs through Silver Creek and Carr Townships within Clark County and through New Albany Township within Floyd County. The service area is located approximately ten miles north of Louisville, Kentucky, and runs approximately five miles wide and twelve miles long. Silver Creek's water system consists of approximately 742,430 linear feet of water mains that range in size from 3/4- inch to sixteen (16) inches in diameter and range in age from zero (0) to fifty-nine (59) years. Regarding its transmission and distribution system, Silver Creek has approximately 2,148 valves, 8,451 meters, and 877 fire hydrants. Silver Creek owns 368 separate and distinct easements which contain a number of its water lines and its headquarters is comprised of a main office building, storage yard, and four (4) pump stations. In terms of storage, Silver Creek has five water tanks. The Deam Lake Tank and the Highway 60 Tank are elevated storage tanks while the remaining three tanks (the Lake Division Tank, St. Joe Tank, and Fairview Knob Tank) are ground storage tanks. Storage volume within the tanks ranges from .15 to 2.25 million gallons. Jt. Pet. Ex. 1 at 2-3.

As of July 28, 2023, the date used to certify the number of Silver Creek members eligible to vote on the proposed acquisition, the Silver Creek System had less than 8,000 unique customers. Silver Creek currently buys all of its water from Indiana American on a wholesale basis and, in turn, distributes the purchased water to its primarily residential customer base. Silver Creek is subject to the jurisdiction of the Commission for purposes of its water rates and charges and financing. Jt. Pet. Ex. 2, Attachment JS-3 at 2.

### **3. Relief Requested.**

Joint Petitioners have filed their Joint Petition in this Cause pursuant to Ind. Code § 8-1-30.3-5 ("Section 30.3-5") and request that this Commission (1) approve that without regard to amounts that may be recorded on Silver Creek's books and records and without regard to any grants or contributions that Silver Creek may have received, Indiana American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed in Joint Petitioners' evidence; (2) grant such approvals as may be necessary to consummate the acquisition of the Silver Creek System by Indiana American on the terms described in the Joint Petition and the Asset Purchase Agreement ("Agreement") between Indiana American and Silver Creek (Jt. Pet. Ex. 2, Attachment JS-2); (3) authorize the application of Indiana American's rules and regulations and the rates and charges generally applicable to the customers of Indiana American's Area One rate group, as the same may be changed from time to time, to service provided by Indiana American to customers of the Silver Creek System, from and after closing of the acquisition; (4) authorize Indiana American to apply its existing depreciation accrual rates to the Silver Creek System; and (5) approve the encumbering

of the properties comprising the Silver Creek System by subjecting such properties to the lien of Indiana American's Mortgage Indenture, as the same may be changed from time to time.

#### **4. Joint Petitioners' Direct Evidence.**

**A. Acquisition Background and Benefits.** Mr. Schneider described how the proposed acquisition of the Silver Creek System fits within the statute. Jt. Pet. Ex. 2 at 8. He described how Ind. Code § 8-1-30.3-5(d) details the circumstances in which a public water or wastewater utility that acquires the utility property of an "offered utility" (formally a "distressed utility") may petition the Commission to include any "cost differential" associated with the acquisition as a part of its rate base. *Id.* at 8-9. He further explained that an "offered utility" is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities if the Commission finds any of the six (6) conditions listed in Ind. Code § 8-1-30.3-6 are present. *Id.*

He testified multiple conditions from Ind. Code § 8-1-30.3-6 were present regarding the Silver Creek System. *Id.* at 10. He stated as of the date the Asset Purchase Agreement for the Silver Creek System was executed, which was July 28, 2023, the Silver Creek System served fewer than 8,000 customers *Id.* He further stated Silver Creek was expecting a loss of managerial and technical expertise that would satisfy Ind. Code § 8-1-30.3-6(2). *Id.* In addition to those conditions he added the facts surround the acquisition weighed in favor of the Commission determining Silver Creek was too small to capture economies of scale for purposes of Ind. Code § 8-1-30.3-5(d)(2). *Id.* Under Ind. Code § 8-1-30.3-6(6), this Commission may consider "any other facts that the commission determines demonstrate the offered utility's inability to capture economies of scale or to furnish or maintain adequate, efficient, safe, or reasonable service or facilities" for the purposes of finding an offered utility is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities". *Id.*

Silver Creek anticipates a significant portion of its existing management and workforce will retire in the near future. Jt. Pet. Ex. 2, Attachment JS-3 (Joint Petition) at 8. As stated by Mr. Schneider, Silver Creek has employed its manager for thirty-five years, its office manager for forty years (both of whom have indicated they will retire in the next few years), its superintendent for thirty years, and its meter specialist/foreman for nearly thirty years. Jt. Pet. Ex. 2 at 11. Silver Creek is concerned about the ability to replace these employees upon retirement and anticipates in that event, it will possess insufficient financial, managerial, and technical expertise, which will be needed to serve its customers moving forward. Jt. Pet. Ex. 2, Attachment JS-3 (Joint Petition) at 8. Vice President of the Board for Silver Creek, Mr. Christopher Snyder, has stated Silver Creek had no guarantee that it could replace its staff with qualified individuals and was particularly concerned about this when Silver Creek's Board sent the acquisition proposal to its members for a vote. Jt. Pet. Ex. 1 at 4. Mr. Schneider testified that there is a concern that in the near-future, Silver Creek will have inadequate financial, managerial, or technical ability or expertise to operate the utility moving forward. Jt. Pet. Ex. 2 at 11. While this loss of this managerial and technical expertise would technically satisfy the factor in Ind. Code § 8-1-30.3-6(2), he also explained how Indiana American's acquisition of Silver Creek will lead to economies of scale relative to headcount and managerial expertise, and will improve the financial, managerial, and technical ability and expertise of Silver Creek moving forward. *Id.*

Mr. Schneider explained economies of scale under Ind. Code § 8-1-30.3-6 are generally understood to describe operational savings from larger size. He further explained in the utility industry, savings from economies of scale are typically expressed in terms of costs per customer. Jt. Pet. Ex. 2 at 9. He stated that it is too simplistic, however, to simply compare Silver Creek's cost structure or rates to Indiana American's as doing so suggests an expectation of the status quo in terms of service. He said it is in the best interest of Silver Creek's customers to become part of the larger Indiana American customer base as the combined size will allow the customers to be served in a more cost-effective manner than Silver Creek can operate today as a stand-alone utility. *Id.* He added being included ~~into~~in a larger customer base will also benefit Silver Creek's customers by helping mitigate future rate increases due to the operational efficiencies. *Id.* He further explained that Silver Creek customers will directly see these efficiencies through a reallocation and optimization of headcount and reduced managerial overhead expense, the elimination of administrative services costs associated with operating a water utility, the addition of Indiana American's engineering expertise, and inclusion as part of Indiana American's prioritization program for infrastructure replacement and planning purposes, among many others. *Id.* at 10. Mr. Schneider testified that through the acquisition, Indiana American will reallocate employees from Silver Creek to optimize operation of the existing Silver Creek System and the larger Indiana American System. After the acquisition, all of the Silver Creek employees will fill roles that serve the larger Indiana American customer base, thus achieving a higher level of efficiency for the service provided to the customers of the Silver Creek System and Indiana American. There will also be lower payroll expenses and overall lower insurance costs borne by the customers of Silver Creek. Additionally, the Board of Directors positions and any associated expenses and compensation paid to them will be eliminated. *Id.* at 12.

Mr. Schneider explained how Silver Creek customers will benefit from a reduction in administrative services costs and regulatory compliance through the acquisition given that the administrative costs associated with operating the Silver Creek System as a separate utility will be eliminated through the acquisition. Jt. Pet. Ex. 2 at 12. He explained there will no longer be a need for Silver Creek to hire outside consultants or employ internal people to provide tax, accounting, human resources, IT and regulatory compliance services, as all of these services moving forward will be provided by current Indiana American employees. Mr. Schneider described additional economies of scale to be achieved in the area of regulatory compliance, because currently, Silver Creek must complete its own sampling and submit compliance reports to the Indiana Department of Environmental Management ("IDEM"). While Indiana American will continue to perform sampling as required by IDEM, Mr. Schneider explained there will not be the need for separate compliance filings, as the Silver Creek System will be reported as part of the Indiana American Southern Indiana Operations. *Id.* at 12-13.

Mr. Schneider described the benefits to the Silver Creek System and Silver Creek customers of management of the system by Indiana American's engineering team. He said Indiana American's engineering team will include the Silver Creek assets in the prioritization program for infrastructure replacement and planning purposes. This program includes a set of standardized practices and tools, replacement, and future system enhancements in an efficient and deliberate manner. *Id.* at 13-14. He testified Indiana American has 104 employees with distribution licenses, 90 employees with water licenses, and 18 licensed wastewater operators. *Id.* at 16. He explained that the Silver Creek System would be incorporated into Indiana American's asset management

plan to establish and sustain a more cost-effective level of service. *Id.* In addition, after acquisition the Silver Creek customers will have the benefit of leveraging Indiana American's ability to purchase materials and services at more effective costs due to the size of the company. Mr. Schneider said that beyond bulk pricing, from which customers benefit, Indiana American makes purchasing and contracting decisions based on the experience of an industry leader which stays ahead or abreast of industry trends such as identifying manufacturing defects or shortcomings of materials before they become (bigger) problems. *Id.* at 17.

Mr. Schneider testified that by being acquired by a subsidiary of American Water, Silver Creek customers would benefit from the resources a nation-wide utility possessed, which was not something a system the size of Silver Creek's could offer. Jt. Pet. Ex. 2 at 18. He explained American Water's research and development program, supported by its lab in Belleville, Illinois, has a leading water-related research program. *Id.* He added, the lab has a history of being on the forefront of water-related research and is regularly tapped by the United States Environmental Protection Agency to help develop federal drinking water standards and regulations. *Id.* He stated this is the kind of quality of service that could not be offered by a system the size of ~~Silver Creek,~~ but Silver Creek but would be available to Silver Creek's customers following the acquisition by American Water. *Id.* He described the additional benefits to Silver Creek customers of gaining access to Indiana American's technology and information ~~systems, and~~ systems and listed various tools and technology Indiana American employs to strengthen the fundamentals of its business to improve customers' experience and operational effectiveness. *Id.* at 19-20.

Mr. Schneider explained that as a stand-alone utility, Silver Creek's geographic limitations on customer growth also poses a financial burden to its current customer base. *Id.* at 14-15. He explained the Silver Creek System is almost entirely surrounded by other water utilities which would limit its customer growth potential. *Id.* at 15. With expenses of running the utility continuing to increase and a limited pool of potential customers to add to its system in the future, Silver Creek is facing an inability to grow its customer base to spread out its future rate increases, he added. *Id.*

Mr. Snyder further stated Silver Creek also anticipated needing to increase rates in the near future and the sale of the Silver Creek System to Indiana American would save Silver Creek's customers the expense of preparing, filing, and prosecuting a rate case, provide stable rates over the long-term for its customers through economies of scale, and issue a material cash payment to its members. Jt. Pet. Ex. 1 at 4. Mr. Snyder explained selling the Silver Creek System to Indiana American made sense from a financial and technical perspective. *Id.*

Mr. Hobbs testified to the storage in the Silver Creek system that can be incorporated into future comprehensive planning efforts, utilizing Indiana American's hydraulic modeling capabilities to maximize the potential benefit of the System's existing finished water storage for the benefit of the combined customer base. Jt. Pet. Ex. 3 at 5. He stated that Silver Creek's geographic location and existing infrastructure connections to Indiana American's system will allow for additional water transmission pathways between Indiana American's Jeffersonville and New Albany service areas in its Southern District. Integrating the Silver Creek System into the broader Indiana American System will result in greater resiliency and redundancy within a broader connected system, benefiting both Silver Creek and Indiana American customers. *Id.* at 6.

Mr. Hobbs testified that the acquisition will also provide Silver Creek customers the benefits of a comprehensive nationwide cybersecurity program. *Id.* at 6. He stated American Water's cybersecurity program is applied to all subsidiaries, including Indiana American, and secures all enterprise-wide information assets, includes a comprehensive data privacy program which protects the personal identifiable information of all American Water employees, customers, vendors, and contractors, against unauthorized use and disclosure, and includes numerous cybersecurity practices and procedures regarding appropriate access control, application security, asset management, data encryption, incident management, risk management, and many other components of the cybersecurity program. *Id.* Mr. Hobbs described other safety and operational process improvements Indiana American will bring to the Silver Creek System upon acquisition, including development and implementation of improved procedures consistent with Indiana American practices for working in confined spaces, working with hazardous chemicals, working with electrical equipment and other job functions. *Id.* at 8. He stated Indiana American's teams will standardize the use of technology for data and asset management. He described how Indiana American will locate, GPS, and map the assets of the Silver Creek System as necessary to allow for more efficient operation and response to main breaks or other maintenance concerns. *Id.* In addition, all maintenance and operation records will be maintained in electronic systems using the technology that has been developed by the American Water Technology and Innovation (T&I) team. *Id.*

Mr. Schneider testified the acquisition satisfied the remaining elements of Ind. Code § 8-1-30.3-5(d). He stated Silver Creek and Indiana American were not affiliated and shared no common ownership interests and the acquisition were mutually agreed upon and the product of arm's-length negotiations; three appraisal firms were engaged and they agreed upon an appraisal value for the utility property; and because the purchase price was lower than the statutory appraised value of the property under Ind. Code § 8-1-30.3-5(c)(2), the purchase price of the utility property was reasonable for purposes of Ind. Code § 8-1-30.3-5(d)(5). *Id.* at 20-21. He stated the utility property is used and useful to Silver Creek in providing water service to its customers. *Id.* at 15. He stated Silver Creek qualifies as an "offered utility" in that it "is too small to capture economies of scale or has failed to furnish or maintain, adequate, efficient, safe, and reasonable service and facilities" within the meaning of Ind. Code § 8-1-30.3-6. *Id.* He testified Indiana American would improve the economies of scale and operations of the Silver Creek System. *Id.* at 16. He referred to Mr. Deason's direct testimony for support that Indiana American's rates and charges will not increase unreasonably in future general rate case as a result of the acquisition and a description of the amortization of any cost differential that will be added to Indiana American's rate base. *Id.* at 21.

Mr. Schneider further described Indiana American's provision of timely notice of the proposed acquisition to customers of Indiana American and the OUCC. *Id.* at 21 and Jt. Pet. Ex. 4, Attachment JD-3. Mr. Hobbs provided the required statements of any known infrastructure, environment, or other issues affecting Silver Creek and the process for determining reasonable and prudent improvements upon completion of the merger to Silver Creek's customers and the OUCC, as required Ind. Code § 8-1-30.3-5(e). Jt. Pet. Ex. 3 at 7. He explained that after the acquisition closes, Indiana American will conduct operational and engineering evaluations of the Silver Creek System and implement an asset management strategy and plan, including prioritization models for prioritizing recommended improvements to the system. *Id.* Mr. Hobbs testified that Indiana

American's evaluation and improvement actions may include: (1) evaluating existing Supervisory Control and Data Acquisition (SCADA) and making any improvements necessary to integrate into Indiana American's system to allow for remote monitoring and control of the system; (2) assessing pipeline replacement needs by utilizing Indiana American's GIS based pipeline replacement prioritization model which prioritizes pipeline replacements through identification of service risks associated with pipe failure risks; and (3) preparing a future Comprehensive Planning Study to evaluate existing assets and to identify and prioritize improvements in the Water System. *Id.*

**B. Proposed Acquisition and Asset Purchase Agreement.** Mr. Christopher Snyder testified that Indiana American has over the years periodically expressed interest about acquiring the utility, most recently approaching the Silver Creek Board in July of 2022. Jt. Pet. Ex. 1 at 5. He testified after the July 2022 proposal, the Board, after much deliberation, decided to conduct an appraisal of the property. *Id.* at 6. A copy of the appraisal was provided in Attachment CAS-2. He explained that after the Board received the appraisal, negotiations between the parties occurred over several months. *Id.* He stated a tentative agreement on general terms including purchase price was ultimately reached and the terms of the agreement were memorialized in the Asset Purchase Agreement (Jt. Pet. Ex. 2, Attachment JS-2). Jt. Pet. Ex. 1 at 6. He testified the negotiations were conducted at arm's-length and Silver Creek is not affiliated with Indiana American in any way and shares no ownership interest with Indiana American. *Id.* He stated the Board approved and executed the Asset Purchase Agreement on July 28, 2023, and a copy of that meeting's minutes was filed as Attachment CAS-3. Jt. Pet. Ex. 1 at 7. He testified July 28, 2023, was also the date the Board used to certify the number of members eligible to vote on the acquisition, which on that date equaled 7,938 unique customers. *Id.* at 2, 7.

Mr. Snyder explained the terms of the Asset Purchase Agreement provided that the acquisition was contingent on approval by the members of Silver Creek and the Commission. *Id.* Mr. Snyder said after the Asset Purchase Agreement was approved and executed by Indiana American, Silver Creek's Board began notifying its members of the proposed deal. *Id.* He stated that on August 9, 2023, the Board sent a letter to each member summarizing the acquisition (Attachment CAS-4) and provided a list of frequently asked questions (Attachment CAS-5). *Id.* He explained the letter stated the Board would send out a ballot regarding the purchase and requested members either vote against or in favor of the acquisition. *Id.* at 7-8. He further explained the Board put the member letter and list of frequently asked questions on its website and set up a dedicated phone line for members to call with any questions. *Id.* at 8. The Board received emails and written questions regarding the transaction and made an attempt to respond to every inquiry. *Id.*

He testified the Board mailed the ballots on approximately August 14, 2023, and it was decided individual Board members would have no role in receiving or counting the votes. *Id.* The Board engaged an independent accounting firm, Sherman, Barber & Mullikin, and requested members send ballots directly to the accounting firm to be tabulated, he explained. *Id.* He stated ballots were held in locked containers until the votes were counted and recorded on September 26, 2023, and October 3, 2023, at Sherman Barber & Mullikin's Madison, Indiana office. *Id.* at 9. He added the attorney for Silver Creek was present for the entirety of the proceeding and once votes were counted, the accounting firm prepared a memorandum detailing the voting and vote counting procedures (Attachment CAS-7). *Id.*

Mr. Snyder stated that although Silver Creek requires participation from 10% of its membership to constitute a quorum for an official action, it received 3,691 votes with 2,719 members voting “yes” and 977 members voting “no” to the acquisition. *Id.* He explained 73.67% of the votes approved the acquisition while 26.33% did not and because the “yes” votes were well in excess of 50% the Board determined the members had voted in favor of and approved the acquisition. *Id.* Mr. Snyder stated a letter informing members of the results of the vote was sent on October 12, 2023 (Attachment CAS-8). *Id.* 9-10.

He explained the terms of the acquisition included several benefits for Silver Creek customers such as: Silver Creek members receiving a cash distribution with each member receiving approximately \$5,450 and a refund for any membership fees previously paid to Silver Creek; long-term stability due to Indiana American’s larger customer base, access to capital, commitment to operating efficiently and the ability to leverage Indiana American’s buying power to procure goods and services less expensively; access to industry-leading expertise and resources from Indiana American; access to full-time capital asset management and operations professionals; access to 24-7 award winning customer service and several convenient billing, paying, and online customer service options; among other benefits. *Id.* He testified that in his opinion the acquisition was in the best interest of Silver Creek’s members and that Silver Creek members shared his opinion as evidenced by the overwhelming “yes” vote. *Id.* at 12-13.

Mr. Schneider testified regarding Indiana American’s side of the negotiations. He stated Indiana American’s interest in acquiring the Silver Creek System was due to its proximity to Indiana American’s Southern Indiana Operations based out of Jeffersonville and its interconnections to the Indiana American service area and sale for resale customers. *Jt. Pet. Ex. 2* at 3-4. He explained the Silver Creek System’s transmission and distribution assets are effectively an extension of the Indiana American system and acquiring the Silver Creek System provides an opportunity to improve efficiency and service quality in both systems and better serve other sale for resale customers, who are growing and need additional sources of supply to meet their system needs. *Id.* at 4. He stated the Asset Purchase Agreement was the result of arm’s-length negotiations and the Silver Creek Water Corporation members ratified the Agreement through a vote. *Id.*

Mr. Schneider briefly discussed the purchase price and appraisal of the Silver Creek System. He stated the total purchase price paid by Indiana American for the Silver Creek System would be \$45,000,000, plus an estimated \$159,000 of incidental expenses and other costs of acquisition, for an original cost rate base to be recorded for the acquisition of \$45,159,000 as explained in more detail by Mr. Deason. *Jt. Pet. Ex. 2* at 4-5. Mr. Schneider stated that pursuant to Ind. Code. § 8-1-30.3-5.5, Silver Creek received appraisals of the property from three qualified and disinterested firms, Beam Longest & Neff (“BLN”), Banning Engineering (“Banning”), and BLN Right of Way Services (“BLN Services”). *Id.* at 5. The appraisals were completed in 2022 and all three firms agreed upon an appraised value of the Silver Creek System which was determined to be \$48,657,600. *Id.*; *see also Jt. Pet. Ex. 1, Attachment CAS-2*. A team of operations and engineering professionals from Indiana American also conducted a site visit in September 2022 and visually assessed the condition of the assets. *Jt. Pet. Ex. 2* at 5. The appraisal valuation was also reviewed by those team members. Mr. Schneider stated this was a reasonable purchase price, since the purchase price of the Silver Creek System was less than its appraised value. *Id.*

Mr. Hobbs described what assets Indiana American would acquire from Silver Creek. The Silver Creek System comprises approximately 742,430 linear feet of water mains, 2,148 valves, 8,451 meters, 877 hydrants, five (5) storage tanks, four (4) booster pump stations, two (2) permanent generators and one (1) mobile generator. Jt. Pet. Ex. 3 at 3. In addition to these assets, Silver Creek's system would interconnect with the existing Indiana American system at two locations. *Id.* at 4. Mr. Hobbs testified that there are improvement projects either proposed or in process for the Silver Creek System, including water main and hydrant replacements, pipeline reinforcements or extensions, and three known water main relocations associated with bridge replacement projects. In addition, chlorine analyzers and pressure transmitters are planned to be installed at existing storage tanks and booster stations. *Id.* Mr. Hobbs described the Silver Creek System as well maintained and he noted some recent investments made by Silver Creek in its system. *Id.*

Mr. Hobbs stated Silver Creek does not currently have any water quality or environmental challenges that Indiana American is aware of. *Id.* at 5. However, he added, Silver Creek could potentially see water quality issues due to loss of residual chlorine levels due to the amount of storage in the system. *Id.*

Mr. Hobbs testified that the utility property is "used and useful" to the Silver Creek System for the purposes of Ind. Code § 8-1-30.3-5(d) because Silver Creek is currently operating the system and using the utility property to provide water service to its customers. Jt. Pet. Ex 3 at 2.

**C. Accounting and Ratemaking Treatment.** Mr. Deason testified that based on the purchase price in the Asset Purchase Agreement of \$45,000,000, assuming \$159,000 of incidental expenses and other costs of acquisition, the original cost rate base for the Silver Creek System would be \$45,159,000. Jt. Pet. Ex. 4 at 3. He further explained the \$159,000 figure may be adjusted when recorded as a final journal entry to reflect the actual incidental expenses and costs of acquisition. *Id.* at 3-4. Based on the arrangement with Indiana American's legal counsel, the \$159,000 encompassed the cost of representation in a fully litigated case. *Id.* at 4. He testified that because the purchase price of \$45,000,000 does not exceed the appraised value of the property of \$48,657,600 as agreed upon by the statutorily appointed appraisers, the purchase price is reasonable. *Id.* at 4-5.

Mr. Deason stated that the purchase price included a "cost differential" as defined in Ind. Code § 8-1-30.3-5(c). *Id.* at 5. He explained a "cost differential" will almost always be present when the purchase price is derived from something other than the original cost, as is the case with this acquisition. *Id.* He testified Indiana American is proposing to reflect a total original cost rate base of \$45,159,000, which would be adjusted to reflect the \$45,000,000 purchase price plus the actual incidental and acquisition costs. *Id.* at 6. He explained the assumption will be that the "cost differential" would be included as a part of each asset category in the journal entry proposed in Attachment JD-1 on a pro-rated basis. *Id.* He further explained the cost differential will be "amortized" and charged to expense over a reasonable period of time with corresponding changes to rate base through depreciation expense calculated pursuant to Indiana American's approved depreciation accrual rates.<sup>2</sup> *Id.* Mr. Deason testified that the journal entry in Attachment JD-1

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<sup>2</sup> Indiana American proposes the Silver Creek System assets be subject to the depreciation accrual rates approved

proposes a reasonable manner for allocating the full purchase price plus expenses and other incidental costs of the acquisition. *Id.* at 6-7.

Mr. Deason testified that Indiana American proposes to move the customers of the Silver Creek system to the existing Indiana American Area 1 rates, including routine monthly billing rates, including volumetric rates, fixed meter charges, and Public Fire charges. *Id.* at 7. At the time of his adopted direct testimony, Mr. Deason stated an average residential customer of the Silver Creek System could expect to pay \$51.34 per month for water service, including fire protection charges based on the Step 1 rates implemented on February 21, 2024 under Cause No. 45870. Mr. Deason's testimony indicated this does not include the effect of the Step 2 rates to be implemented in May 2024 under Cause No. 45870. *Id.* at 7-8. Mr. Deason stated Indiana American is not requesting any changes to the current water rates and charges of its customers as a result of the acquisition, and overall existing customers should see a decrease in their rates from the acquisition. *Id.* at 7, 9.

Mr. Deason described the "safe harbor" set forth in Ind. Code § 8-1-30.3-5(d)(7) for determining if rates will unreasonably increase solely from an acquisition. *Id.* at 9. For purposes of subsection (d), rates will not unreasonably increase in future general rate cases as a result of an acquisition, if the net original cost proposed to be recorded under subsection (f) of Section 5 is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in its most recent general rate case, plus any adjustments that have occurred. Ind. Code § 8-1-30.3-5(d)(7). Conversely, if the net original cost is above two percent (2%), the Commission shall make a determination on whether the sole result of the acquisition will unreasonably increase rates in future general rate cases and may consider (1) the anticipated dollar value increase and (2) the increase as a percentage of the average bill as evidence. *Id.* He testified the Silver Creek acquisition is slightly above the 2% safe harbor at 2.46%. However, Mr. Deason explained, rates in future general rates cases will not unreasonably increase solely from the acquisition and overall rates and charges of existing Indiana American customers should in fact be lower than they otherwise would be due to the acquisition, all else being equal. *Jt. Pet. Ex. 4* at 9. He explained Indiana American knows rates and charges will not increase unreasonably solely as a result of the acquisition due to the calculated revenue requirement effect of the acquisition in Attachment JD-2's "Rev Impact Calc – Silver Creek" worksheet which shows a .153% decrease in their revenue requirement as a result of adding in Silver Creek's 7,938 unique customers.<sup>3</sup> *Id.* at 10.

**D. Rules and Regulations.** Indiana American is proposing to apply the same rules and regulations of its existing water customers to customers of the Silver Creek System. *Jt. Pet. Ex. 2* at 7 and Attachment JS-3 (Joint Petition) at 3.

**E. Depreciation.** Mr. Deason stated Indiana American proposes subjecting the Silver Creek assets to Indiana American's depreciation accrual rates approved by the Commission in Cause No. 45870 to be implemented upon close of the transaction. *Jt. Pet. Ex. 4* at 7. He stated these were approved in Cause No. 45870 and implemented in February 2024.

**F. Liens of Mortgage Indenture.** Mr. Deason stated Indiana American is subject to

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from Cause No. 45870 in February 2024, which was Indiana American's most recent rate case.

<sup>3</sup> The calculation showing the 2.46% is on Line 14 of "Rev Impact Calc – Silver Creek" of Attachment JD-2.

an Indenture of Mortgage dated May 1, 1968, as supplemented and amended (the “General Mortgage”) which secures most of its utility property for the benefit of the holders of Indiana American’s bonds and after the acquisition, the Silver Creek System will become subject to the lien of the General Mortgage, if approved by this Commission. *Id.* at 10-11.

## **5. OUCC’s Testimony.**

Margaret A. Stull, Chief Technical Advisor in the OUCC’s Water/Wastewater Division, discussed the favorable ratemaking treatment Indiana American seeks pursuant to Ind. Code § 8-1-30.3-5. Ms. Stull explained that Joint Petitioners (Indiana American and Silver Creek) propose Indiana American be permitted to include in its rate base the proposed acquisition price plus actual incidental costs. Public’s Ex. 1 at 5. Ms. Stull explained that the total purchase price Indiana American proposes to record is \$45,159,000, which includes the \$45,000,000 purchase price set forth in the Agreement and an additional \$159,000 of transaction costs. Public’s Ex. 1 at 4-5.

Ms. Stull noted Joint Petitioners also seek authority for Indiana American to apply Indiana American’s existing depreciation accrual rates to the water utility assets being acquired from Silver Creek and to encumber these assets, subjecting them to the lien of Indiana American’s Mortgage Indenture. Public’s Ex. 1 at 2. Additionally, Joint Petitioners request approval for Indiana American to apply the rules and regulations applicable to Indiana American’s existing water customers to the former Silver Creek customers. Finally, Ms. Stull noted the Commission is also being asked to authorize Indiana American to apply its Area One rates and charges to the customers to be acquired from Silver Creek. Of these requests, Ms. Stull recommended the Commission deny Indiana American’s request to apply its Area One rates to the former Silver Creek customers at this time. She recommended, instead, that the Commission direct Indiana American to continue to apply Silver Creek’s rates as it has done in several other cases where Indiana American acquired other utilities.

Ms. Stull explained that authorizing favorable ratemaking treatment through acquisition adjustments was a long-standing role of the Commission, which required the Commission to consider whether benefits such as the procurement of economies of scale and other customer benefits are present, but as a result of Ind. Code § 8-1-30.3-5, the Commission no longer has the discretion to determine that favorable ratemaking treatment is not justified. Public’s Ex. 1 at 7. Such benefits are now presumed based on basic factors such as the size of the offered utility. *Id.*

Ms. Stull explained that the favorable ratemaking treatment Indiana American seeks under Ind. Code § 8-1-30.3-5 requires the Commission to find, “The offered utility is too small to capture economies of scale. . . .”<sup>4</sup> Ms. Stull noted the Cambridge Dictionary defines economies of scale

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<sup>4</sup> Ms. Stull noted Ind. Code § 8-1-30.3-5 requires a finding that “The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.” Ind. Code § 8-1-30.3-5(d)(2). Ms. Stull testified Silver Creek has not failed to furnish or maintain adequate, efficient, safe, and reasonable services and facilities, adding that Silver Creek has provided and continues to provide safe, reliable water service and facilities to its customers. Ms. Stull noted that Silver Creek indicated, “SCWC is in good financial health” and that “SCWC and its water system are not, in any way, financially troubled or in a state of technical or operational distress.” Joint Petitioners’ Exhibit No. 1, Testimony of Christopher Adam Snyder, Attachment CAS-5, p. 4.

as “the reduction of production costs that is a result of making and selling goods in large quantities, for example, the ability to buy large amounts of materials at reduced prices.” Public’s Ex. 1 at 7. She stated that *capturing economies of scale*<sup>5</sup> typically suggests lower costs and, therefore, prices of services. In this case, under Indiana American’s proposal, Silver Creek customers will experience a significant increase in rates by being switched to a provider with presumed economies of scale (larger than 8,000 customers).

Ms. Stull explained how the proposed application of Indiana American’s rates will affect the Silver Creek customers. She noted that, according to the IURC’s 2024 Water Billing Survey, Silver Creek residential customers using 4,000 gallons of water are currently charged \$26.95. Public’s Ex. 1 at 9. After the acquisition is finalized, if Indiana American’s Area One rates are applicable, these customers will be charged \$55.46<sup>6</sup> based on tariffs provided in Indiana American’s “Submission of Revised Step 2 Compliance Filing” in Cause No. 45870. She testified this represents a \$28.51 increase per month or a nearly 106% rate increase. *Id.*

Ms. Stull asserted Silver Creek customers should not be charged according to Indiana American’s Area One rates until after Indiana American’s next base rate order. Public’s Ex. 1 at 9. She pointed out that nothing in Ind. Code § 8-1-30.3-5 establishes that the Commission *must* authorize the imposition of the acquiring utility’s rate structures. *Id.* Ms. Stull noted that in several recent acquisitions the Commission authorized Indiana American to continue to charge the customers it acquired according to the selling utility’s rate schedule. For example, in Cause No. 45550, Indiana American was authorized to continue to charge the Town of Lowell’s higher water rate. In Cause No. 45461, Indiana American was authorized to continue to charge the River’s Edge Water System rate, and in Cause No. 45290, Indiana American received permission to continue to charge the Town of Riley’s rate, which was lower than the rate Indiana American charged its existing customers. Public’s Ex. 1 at 9.

Ms. Stull explained that as in Cause No. 45290, Silver Creek currently provides water service at a lower cost. Indiana American already provides water service indirectly to Silver Creek’s customers. She noted Indiana-American has not evidenced what additional marginal costs it will experience as a result of adding Silver Creek’s customers directly to its operations. Public’s Ex. 1 at 9-10. Ms. Stull stated that Indiana American has not shown why it cannot provide the same basic service to this set of customers at the rates those customers are currently paying to a utility, which, as a matter of law, is too small to capture economies of scale. In this case, Indiana American should be required to follow the same practice established in the other acquisition cases Ms. Stull referenced. *Id.*

Ms. Stull pointed out that not imposing Area One rates until the next rate case will not cause Indiana American’s existing customers to subsidize Silver Creek’s customer’s services. Public’s Ex. 1 at 10. She noted no level of subsidization has been established, and moreover, what Indiana American’s existing customers pay Indiana American for water service will not be affected during the life of these rates by what Indiana American charges former customers of Silver Creek. (Indiana American’s current rates were recently established in Cause No. 45870.) *Id.* Ms. Stull

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<sup>5</sup> <https://dictionary.cambridge.org/us/dictionary/english/economies-of-scale>.

<sup>6</sup> Consisting of a fixed charge of \$20; a volumetric charge of \$30.69 (2.5 x \$12.2775); and a fire protection charge of \$4.77. The \$20 fixed charge includes 1,500 gallons of water.

added that if Silver Creek's customers continue paying lower rates consistent with Silver Creek's existing schedules, it would be appropriate for those customers to be subject to any capital tracker charges Indiana American may be authorized to collect, including distribution system improvement charges and system enhancement improvement charges. *Id.*

Ms. Stull concluded by recommending that Silver Creek customers continue to be charged their currently approved tariff rates until Indiana American's next base rate case, whereupon Area One rates would be applied.

~~Ms. Margaret A. Stull, Chief Technical Advisor in the OUCC's Water/Wastewater Division testified Indiana American wishes to acquire the Silver Creek System through the procedures laid out in Ind. Code § 8-1-30.3-5. She stated Ind. Code § 8-1-30.3-5 requires a finding from the Commission that "The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities." Ind. Code § 8-1-30.3-5(d)(2). She testified Silver Creek is providing safe and reliable water service. Public's Ex. 1, at 5. She further stated that under the statute if a utility served less than 8,000 customers, then it was deemed as too small to capture economies of scale. *Id.* She testified, according to Joint Petitioners, Silver Creek is too small to capture economies of scale because as of July 28, 2023, it had less than 8,000 customers. *Id.* at 5-6. She stated in Silver Creek's 2022 IURC Annual Report, the utility listed serving 8,041 customers which would appear to exceed the 8,000 threshold. *Id.* When asked whether the OUCC looked further into verifying the actual customer count, she testified that the OUCC did inquire further and suggested that the 8,041 customers listed in the annual report may be incorrectly inflated. *Id.* at 6. She stated Silver Creek does not report unique customers but reports "memberships" in its annual reports. *Id.* Silver Creek requires a "membership" for each metered connection and if a customer has multiple meters at their premises then that customer would have a "membership" for each meter, she explained. For the purposes of the statute, she testified the OUCC was satisfied Silver Creek had less than 8,000 customers. *Id.*~~

~~—— Ms. Stull testified that as a result of Ind. Code § 8-1-30.3-5, the Commission does not have the discretion to determine whether an offered utility is, as a matter of fact, better or worse than the acquiring utility at capturing economies of scale, as the statute does not permit such an evaluation if the offered utility has fewer than 8,000 customers. Pub. Ex. 1 at 6-7. She opined that "capturing economies of scale" typically suggests lower costs and therefore prices of services whereas in this case, Silver Creek customers will experience a significant increase in rates by switching to a provider with presumed economies of scale (larger than 8,000 customers). *Id.* at 7.~~

~~—— Ms. Stull stated the OUCC recommends the Commission deny Indiana American's request to apply its Area One rates to the Silver Creek customers at the present moment and instead direct Indiana American to continue to apply the existing Silver Creek rate for the Silver Creek customers until Indiana American's next rate case. Public's Ex. 1, at 1, 9. She explained that, in previous Indiana American acquisitions, the Commission has authorized Indiana American to continue charging customers of the acquired utility according to the acquired utility's rate schedule. *Id.* at 9. She stated Indiana American has not demonstrated why it should apply the Area One rates over the Silver Creek customer's existing rates at this time nor demonstrated what marginal costs it would incur by adding the Silver Creek customers to its operations. *Id.* at 9-10. She testified Indiana American should be required to follow the same practice established in certain prior acquisitions she cited. *Id.* at 9-10. She recommended the Silver Creek rates continue to be applied until Indiana American's next rate case, after which the Area One rates should be applied and that the Silver Creek customers be subject to any capital tracker charges Indiana American is authorized~~

~~to collect, including distribution system improvement charges and system enhancement improvement charges. *Id.* at 10. Ms. Stull testified that no level of subsidization by Indiana American's existing customers in favor of Silver Creek customers has been established if Area One rates are not imposed on Silver Creek customers until Indiana American's next rate case. *Id.* She agreed that under the OUCC's recommendation, if Silver Creek customers are paying lower rates under its existing schedules, it would be appropriate for those customers to be subject to any capital tracker charges Indiana American may be authorized to collect, including distribution system improvement charges and system enhancement improvement charges. *Id.*~~

~~Ms. Stull testified that, assuming the Commission finds that all criteria under Ind. Code § 8-1-30.3-5 have been met, the OUCC accepts Indiana American's proposed journal entry as reflected in Attachment JD-1 to the direct testimony of Jared Deason (Jt. Pet. Ex. 4). *Id.* at 8, 10. She stated Indiana American intends to record the acquisition in a journal entry proposed in Joint Petitioners' Attachment JD-1 by reflecting the asset values by asset category reduced on a pro-rata basis to reflect the reduced purchase price plus the estimated transaction costs. *Id.* at 8. She explained the "cost differential" will be included as a part of each asset category reflected in the journal entry proposed in Joint Petitioners' Attachment JD-1 on a pro-rated basis. *Id.*~~

## **6. Joint Petitioners' Rebuttal Testimony.**

On rebuttal, Mr. Schneider stated the OUCC did not oppose the acquisition but did request different rates than what Indiana American proposed. Jt. Pet. Ex. 2-R at 2. He stated the OUCC's new rates would be an issue as the Asset Purchase Agreement was conditioned upon approval of Indiana American's proposed rates. *Id.* Silver Creek customers were made aware of the terms of the Asset Purchase Agreement and Indiana American's proposed rates and voted in favor of the acquisition, he explained. *Id.* at 2-3. Silver Creek is a sale for resale customer of Indiana American and passes on any increases in costs it experiences from Indiana American onto its customers. *Id.* at 3. He explained that prior rate adjustments have been made by the Silver Creek Board through 30-Day Filings submitted to the Commission to which the OUCC apparently acquiesced. *Id.* He stated at the time OUCC witness Stull submitted her testimony, the costs from the recent rate case were not yet reflected in Silver Creek rates. *Id.*

While Ms. Stull argued in her testimony that Indiana American has not provided evidence of what additional marginal costs exist or why service cannot be provided at the rates Silver Creek members are currently paying, Mr. Schneider pointed out that Indiana American's Area One rates have been approved by the Commission to recover the cost of serving customers in Area One, and Ms. Stull has presented no analysis demonstrating that Indiana American's costs of serving the Silver Creek customers will be any different from the costs of serving other Area One customers. *Id.* at 3-4. He stated that as a matter of law under Ind. Code § 8-1-30.3-6(5), Silver Creek is too small to capture economies of scale and it is necessary to look at the level of service provided. *Id.* at 4. He stated one way Silver Creek customers would benefit immediately from the acquisition is they would now be able to utilize Indiana American's engineering infrastructure, expertise, and technical capabilities and Indiana American's robust cybersecurity protection. *Id.* He also stated a significant factor for Silver Creek's management leading to the sale was the risk of losing operational expertise from upcoming retirements from Silver Creek employees. *Id.* at 5. He explained many Silver Creek operational and managerial employees were with the utility for many decades and there was a real fear of not being able to replace them with qualified individuals. *Id.*

By selling the utility to Indiana American, that problem is averted as Indiana American employees are able to supplement the existing Silver Creek team with an additional twenty-five employees who have the necessary certifications and qualifications to serve the customers of Silver Creek efficiently. *Id.*

Mr. Schneider also testified that the summary of the proposed terms of the Asset Purchase Agreement included that the rates of Silver Creek members would increase by nearly 70% for a typical monthly customer using 5,000 gallons per month as well as a table showing various monthly bill comparisons at the then existing rates. That same notice to members also indicated that if the Silver Creek system is not acquired by Indiana American, that the Silver Creek rates would increase. Jt. Pet. Ex. 2-R at 2. The customers were also made aware in the customer notice included as Attachment CAS-4 to Joint Petitioners' Exhibit No. 1 that they would be reimbursed their membership fee and also receive an estimated payment of approximately \$4,500-\$4,800 per membership from the proceeds of the sale and any remaining cash on hand. With this information provided to them, the members of Silver Creek voted in favor of the transaction, including moving to Indiana American's Area One rates. *Id.* at 2-3.

## **7. Commission Discussion and Findings.**

**A. Applicability of Statute.** Pursuant to Ind. Code §§ 8-1-2-83(a) and 8-1-2-84(c) we are required to approve the transfer by one public utility to another of its franchise, works, and system. If Ind. Code § 8-1-30.3-5 applies in such a transaction, we are directed to include as a part of our order certain approvals with respect to the recording of the transaction. In order for the latter section to apply to the acquisition of a water or wastewater utility, two criteria must be met: first, the utility is being acquired in a transaction involving a willing buyer and seller; and, second, one of the two utility companies must be subject to Commission jurisdiction. We find that both of these conditions are satisfied in this case. Indiana American and Silver Creek are public utilities subject to our jurisdiction, and no party has disputed the fact that this transaction involves a willing buyer and a willing seller.

**B. Sale Approval and Public Interest.** A proposed sale is considered to be in the public interest if it meets the requirements of Ind. Code § 8-1-30.3-5(d), which are the following:

- (1) The utility property is used and useful to the offered utility in providing water service, wastewater service, or both.
- (2) The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.
- (3) The utility company will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility's plant, the offered utility's operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service.
- (4) The acquisition of the utility property is the result of a mutual agreement made at arm's length.
- (5) The actual purchase price of the utility property is reasonable.
- (6) The utility company and the offered utility are not affiliated and share no

ownership interests.

- (7) The rates charged by the utility company will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility. For purposes of this subdivision, the rates and charges will not increase unreasonably in future general rate cases so long as the net original cost proposed to be recorded under [Ind. Code § 8-1-30.3-5(f)] is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate case. If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate case, the commission shall proceed to determine whether the rates charged by the utility company will increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility and, in making the determination, may consider evidence of:
  - (A) the anticipated dollar value increase; and
  - (B) the increase as a percentage of the average bill.
- (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.

Certain requirements were uncontested. However, as Section Ind. Code § 8-1-30.3-5 directs us to consider each requirement, our analysis of each statutory requirement is below.

i. **Used and Useful Property.** Mr. Hobbs and Mr. Schneider testified that the utility property to be acquired is used and useful to the Silver Creek System, as Silver Creek is currently operating the system and using the property to provide water service to its customers. No party disputed this, and therefore, we find this requirement is met.

ii. **Offered Utility Too Small to Capture Economies of Scale.** Mr. Snyder and Mr. Schneider testified the Silver Creek System serves fewer than 8,000 customers, which is one of the findings the Commission may make under Ind. Code § 8-1-30.3-6 to demonstrate that the offered utility is too small to capture economies of scale. Mr. Snyder testified that on July 28, 2023, the date the Board used to certify the number of members eligible to vote on the acquisition, Silver Creek had 7,938 unique customers. Ms. Stull testified Silver Creek listed 8,041 customers in its 2022 IURC Annual Report but explained upon further investigation by the OUCC and looking at the facts of Silver Creek's operations Silver Creek did not report unique customers in its annual reports but reports "memberships." She stated a "membership" is required for each metered connection and one customer may have multiple "memberships". Accordingly, the OUCC was satisfied that Silver Creek should be considered to have fewer than 8,000 customers for purposes of qualifying for the determination that it is too small to capture economies of scale as a matter of law. Pub. Ex. 1 at 6.

Under Ind. Code § 8-1-30.3-6(6), this Commission may also consider “any other facts that the commission determines demonstrate the offered utility's inability to capture economies of scale or to furnish or maintain adequate, efficient, safe, or reasonable service or facilities” for the purposes of finding an offered utility is “too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities” under Ind. Code § 8-1-30.3-5(d)(2). The evidence of record reveals that Silver Creek anticipates a significant portion of its existing management and workforce will retire in the near future. Jt. Pet. Ex. 2, Attachment JS-3 (Joint Petition), at 8; Jt. Pet. Ex. 1 at 4. In addition, the record shows that as a stand-alone utility, Silver Creek’s geographic limitations on customer growth also poses a financial burden to its current customer base. Jt. Pet. Ex. 1 at 14-15.

After considering the evidence of record, we find that, pursuant to Ind. Code § 8-1-30.3-6(2), (5) and (6), the Silver Creek Systems “is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities.”

**iii. Purchaser Will Improve Economies of Scale.** Mr. Schneider and Mr. Hobbs testified how Indiana American’s ownership of the Silver Creek System will improve economies of scale and gave numerous examples. Their testimony supports a finding that it is in the best interest of Silver Creek’s customers to become part of the larger Indiana American customer base as the combined size will allow the customers to be served in a more efficient manner than if they were to be continued to be served by Silver Creek alone. The record shows that being included into a larger customer base will benefit Silver Creek’s customers by helping mitigate future rate increases due to the operational efficiencies. In particular these operational efficiencies include: a reallocation and optimization of headcount and reduced managerial overhead expense, the elimination of administrative services costs associated with operating a water utility, the addition of Indiana American’s engineering expertise and inclusion as part of Indiana American’s prioritization program for infrastructure replacement and planning purposes, the being protected by a comprehensive cybersecurity program. The evidence demonstrates that Silver Creek customers would see these benefits immediately. We find that the evidence of record demonstrates that Indiana American will improve economies of scale of the Silver Creek System and will make reasonable and prudent improvements to the offered utility’s plant and operations if needed.

**iv. Arm’s-Length Negotiations.** Mr. Snyder and Mr. Schneider both testified that the Asset Purchase Agreement was the result of arm’s length negotiations between Silver Creek and Indiana American. Thus, we find that this requirement is met.

**v. Reasonable Price.** Both Mr. Deason and Mr. Schneider testified that the purchase price for the Silver Creek System was less than the appraised value, as determined by appraisals that meet the requirements of Ind. Code § 8-1-30.3-5.5. Jt. Pet. Ex. 4 at 4-5; Jt. Pet. Ex. 2 at 5; Jt. Pet. Ex. 1, Attachment CAS-2. Therefore, pursuant to Ind. Code § 8-1-30.3-5(c)(2), we find that the purchase price is considered reasonable for purposes of Ind. Code § 8-1-30.3-5(d).

**vi. Buyer and Seller Are Unaffiliated.** Based on Mr. Snyder’s and Mr. Schneider’s undisputed testimony, Silver Creek and Indiana American are not affiliated and share no ownership interests, and therefore, this requirement is met.

**vii. Rates Will Not Increase Unreasonably.** Mr. Deason and Mr. Schneider testified rates would not increase unreasonably as a result of the acquisition. Mr. Deason stated that under the provisions of Ind. Code § 8-1-30.3-5(d)(7) the Silver Creek acquisition is slightly above the 2% safe harbor at 2.46%. However, he testified that the acquisition would not unreasonably increase rates in future general rate cases and overall rates and charges for Indiana American customers should be lower due to the acquisition. He testified Indiana American knows rates and charges will not increase unreasonably solely as a result of the acquisition due to the calculated revenue requirement effect of the acquisition in Attachment JD-2's "Rev Impact Calc – Silver Creek". Mr. Deason's calculation assumes that the cost of providing service to the customers of the Silver Creek System will be equal to Indiana American's average cost of serving existing customers except for rate base (and associated after-tax return, depreciation and property tax). Jt. Pet. Ex. 4 at 10. He then computed how much more the incremental after-tax return, depreciation, and property taxes will be per customer for the acquisition compared to Indiana American's existing system and customer base. Line 45 of the worksheet from this Attachment JD-2 calculates that the incremental revenue requirement from adding these 7,938 customers under our proposed journal entry is equal to (\$536,690) or a decrease of 0.153% (Line 47) in Indiana American's revenue requirement as authorized in its most recent rate case. In other words, rates will be lower for existing customers than they otherwise would be, all else being equal.

Therefore, based on the evidence of record, we find that rates charged by Indiana American will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from Silver Creek.

**viii. Cost Differential Amortization.** Mr. Deason stated the purchase price in the Asset Purchase Agreement was \$45,000,000, with an assumed additional \$159,000 of incidental expenses and other costs of acquisition. He testified that the purchase price included a "cost differential" as defined in Ind. Code § 8-1-30.3-5(c). He testified the "cost differential" would be included as a part of each asset category in the journal entry proposed in Attachment JD-1 on a pro-rated basis. The cost differential will be "amortized" and charged to expense over a reasonable period of time with corresponding changes to rate base through depreciation expense calculated pursuant to Indiana American's approved depreciation accrual rates. He testified, the journal entry in Attachment JD-1 proposes a reasonable manner for allocating the full purchase price plus expenses and other incidental costs of the acquisition.

Ms. Stull testified the OUCC accepts Indiana America's proposed journal entry.

Based on the evidence in the record and as there is no controversy between the parties, we find the cost differential will be amortized and charged to expense over a reasonable period of time through depreciation expense.

**ix. Conclusion.** Because we find the evidence of record demonstrates that all of the requirements of Ind. Code § 8-1-30.3-5(d) are met, we find the proposed sale of the Silver Creek System to Indiana American through the Asset Purchase Agreement is in the public interest.

**C. Ind. Code § 8-1-30.3-5(e) Requirements.** Under Ind. Code § 8-1-30.3-5(e), Indiana American, as the acquiring utility, is required to provide the following:

- (1) Notice to customers of the acquiring utility company that a petition has been filed with

the commission under this chapter. The notice provided under this subdivision must include the cause number assigned to the petition. Notice under this subdivision may be provided to customers in a billing insert.

- (2) Notice to the office of the utility consumer counselor.
- (3) A statement of known infrastructure, environmental, or other issues affecting the offered utility, and the process for determining reasonable and prudent improvements upon completing the acquisition.

Based on the evidence of record, we find that Indiana American has satisfied all three of these requirements. Mr. Deason sponsored as Attachment JD-3 the statutory notice including the Cause number that was provided to customers via bill insert and filed in this Cause on April 17, 2024. Notice was provided to the OUCC through service of the Petition and Joint Petitioners' case-in-chief. Mr. Hobbs testified there were no known water quality or environmental issues affecting Silver Creek's System but potential future environmental challenges may occur due to loss of residual chlorine levels from existing water supply and explained how Indiana American's hydraulic modeling capabilities would best maximize Silver Creek's current storage capacity for the benefit of the now larger Indiana American customer base while also mitigating future potential water issues from Silver Creek's available storage. Mr. Hobbs explained the process Indiana American will undertake after closing to determine what improvements need to be made to the system.

**D. Sale Approval and Accounting Treatment.** Because we have determined that Joint Petitioners have satisfied all of the requirements listed in Section 30.3-5(d) and (e), we find that Joint Petitioners' petition should be granted and thus the provisions of Section 30.3-5(f) directs the Commission as follows:

In a proceeding under subsection (d), the commission shall issue its final order not later than two hundred ten (210) days after the filing of petitioner's case in chief. If the commission grants the petition, the commission's order shall authorize the acquiring utility company to make accounting entries recording the acquisition and that reflect:

- (1) the full purchase price;
- (2) incidental expenses; and
- (3) other costs of acquisition;

As the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

The amount Indiana American seeks to record in net original cost rate base is equal to the purchase price of \$45,000,000 plus approximately \$159,000 in estimated incidental expenses and other costs of acquisition for a total original cost rate base of approximately \$45,159,000, as set forth in Attachment JD-1 to Joint Petitioners' Exhibit No. 4. The OUCC took no issue with the proposed purchase price or journal entry.

In this proceeding, we are to decide whether the Section 30.3-5(d) and (e) factors have been met (and we have found above that they have) and then we “shall” authorize the accounting and ratemaking treatment directed by Section 30.3-5(f). Based on the evidence in the record and as the OUCC did not contest the proposed journal entry, we approve Indiana American’s proposed accounting and journal entries as described by Mr. Deason’s direct testimony and Attachment JD-1. Therefore, we find Indiana American is authorized to 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 Attachment JD-1. As acknowledged by Mr. Deason, the journal entry should be adjusted to reflect actual (rather than estimated) incidental expenses and other costs of acquisition.

We find that Indiana American’s existing depreciation accrual rates approved by the Commission in Cause No. 45870 and included in the calculation of rates implemented on February 21, 2024, should be applied on and after the closing date of the acquisition to depreciable property purchased from Silver Creek pursuant to the Asset Purchase Agreement.

**E. Rates and Rules.** In the Joint Petition, Indiana American proposed to apply the rules, regulations, and rates and charges generally applicable to its Area One customers to the Silver Creek customers. (Petition, p. 11) The OUCC did not oppose applying Indiana American’s rules and regulations. Accordingly, the Commission finds those rules and regulations should be applied as proposed.

The OUCC took issue, however, with Indiana American’s proposal to apply its Area One rates to the customers Silver Creek had served. The OUCC opposed this request and asked the Commission to find that Silver Creek’s former customers should continue to be charged their currently approved tariff rates until Indiana American’s next base rate case, whereupon Area One rates would be applied.

To qualify for ratemaking treatment under Ind Code § 8-1-30.3-5, among other things the Commission must find the offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities. See Subsection 5(d)(2). There is no suggestion in this case that Silver Creek is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities. As such, the relief Indiana American seeks in this Cause is tied to the premise that the utility it is acquiring is too small to capture economies of scale.

The Commission must also find that the utility company (i.e., Indiana American) “will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility’s plant, the offered utility’s operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service.” See Subsection 5(d)(3). Again, there is no assertion that Indiana American needs to make improvements so Silver Creek’s customers will begin to receive adequate, efficient, safe, and reasonable service. The Commission, having found both of these criteria have been met, finds it illogical that Indiana American cannot provide service directly to these customers without incurring greater cost than Silver Creek, which lacks economies of scale by virtue of its small size, or that the evidence supports this premise.

As Ms. Stull noted, capturing economies of scale typically suggests lower costs and,

therefore, lower prices of services. Public's Ex. 1 at 7. We have elsewhere found that Silver Creek lacks the economies of scale that Indiana American has and is required to bring into play. This belies the need and justification for any immediate rate increase for Silver Creek's customers. Yet, Indiana American proposes to immediately charge nearly twice what Silver Creek currently charges for essentially the same service.

While Mr. Schneider testified that because of the acquisition Silver Creek customers will be receiving the benefits of a comprehensive nationwide cybersecurity program, we are not persuaded the per customer cost of that program is equal to the significant difference between Silver Creek's rates and Indiana American's Area One rates. Additionally, there is no evidence improvements are needed to allow Silver Creek's customers to begin receiving adequate, efficient, safe, and reasonable service as described in Subsection 5(d)(3). In fact, the evidence demonstrates otherwise.

In light of our findings that Indiana American will improve economies of scale and Silver Creek cannot capture economies of scale as a matter of law, it was incumbent upon Indiana American to establish with proof why the rates of these customers—customers Indiana American has indirectly been serving but will now serve directly—should be so significantly increased. Indiana American suggests it is the OUCC's burden to establish that the Area One rates Indiana American proposes to apply to these customers are not cost based. This suggestion, however, ignores key facts. Most importantly, Indiana American is the party seeking relief in the form of its request to establish the rates and charges that will prospectively apply to the customers Silver Creek served. Indiana American proposes to apply its Area One rates, but in other acquisition cases, Indiana American opposed that result, asking that the offered utility's existing rates continue to apply. As the party seeking approval to apply the Area One rates, Indiana American has the initial burden of proof. Indiana American has done nothing to shift that burden. Indiana American presented no evidence demonstrating marginally higher costs to provide water directly to Silver Creek's customers instead of on a wholesale basis, and based on the record, we are unable to conclude that it will cost Indiana American any more than what is already in its revenue requirement to serve Silver Creek on a wholesale basis. Indiana American seeks a significant rate increase for the customers Silver Creek served without cost or other justification the Commission finds persuasive.

Presumably, the addition of the Silver Creek customers will have a positive effect on Indiana American's prospective rates through the economies of scale that adding nearly 8,000 customers will capture. But until Indiana American's next rate case, there is no mechanism by which the addition of these customers can benefit Indiana American's customers, including those acquired from Silver Creek. Meanwhile, Indiana American seeks to benefit from the projected economies of scale it will gain as a result of this transaction before any of its existing customers, whose rates were established in Cause No. 45870, may benefit from the additional economies of scale captured through the acquisition of Silver Creek's customer base.

Indiana American had an opportunity to demonstrate how its marginal costs will increase as a result of Silver Creek's customers being added. Instead of affirmatively doing so, Indiana American implied it was the OUCC's burden to demonstrate the rate structure Indiana American requested should not apply. Mr. Schneider merely opined that Ms. Stull presented "no analysis demonstrating that Indiana American's costs of serving the Silver Creek customers will be any different from the costs of serving other Area One customers." *Schneider Rebuttal* at 3-4. In its

prayer for relief in the Joint Petition, Indiana American requests our authority to charge its Area One rates; consequently, it was Indiana American's evidentiary burden to prove the application of those rates is reasonable. While burdens may shift in response to a prima facie case, we find Indiana American made no such prima facie case.

The suggestion in Joint Petitioner's proposed order<sup>7</sup> that the OUCC had the burden to demonstrate "that Indiana American's costs of serving the Silver Creek customers will be any different from the costs of serving other Area One customers" is further unreasonable because it is Indiana American that possesses and maintains the information that could be used to establish how the acquisition would affect Indiana American's marginal costs, not the OUCC. Nonetheless, the OUCC provided evidence upon this issue, including Indiana American's response to a data request confirming Indiana American had no plan to hire individuals to provide service to the Silver Creek area. In response to OUCC DR Q 4-2 asking Indiana American to "identify any positions that will need to be created to run Silver Creek's assets or serve Silver Creek's customers following acquisition," Indiana American responded that "No job position is expected to be created for the purposes of running Silver Creek's assets or serving Silver Creek's customers following acquisition." Public's Exhibit CX-1.

While there was, arguably, an inference that the Silver Creek customers received a pretty nice payout in connection with the acquisition and knew what rate they were signing up for, so they have little cause to complain about the proposed significant rate increase (Joint Petitioner's proposed order at pages 16 and 19), such an argument disregards the fact that the value these customers received was by virtue of their status as beneficial owners of the utility, not as customers. The value they received was presumably fair, and it should not be eroded by potentially unreasonable rates. Such a sentiment also ignores that customers come and go, and in a short time there may be a growing number of individuals receiving water service in the Silver Creek customer area that did not participate in the sale. Yet, under Indiana American's proposal, they would be paying rates significantly higher than what they would have paid under Silver Creek's ownership, without an acceptable justification for these higher rates having been shown. Indiana American's burden is not met by customer consent to the acquisition, but rather, by evidence that the proposed rates are necessary for Indiana American to meet its marginal cost.

Viewing the evidence as a whole, the Commission finds Indiana American has not established that we should approve its request to charge the nearly 8,000 Silver Creek customers its Area One rates. The factors we considered include our findings that Indiana American will improve economies of scale, that Silver Creek is too small to capture economies of scale as a matter of law, that Indiana American is already the ultimate provider of water service to the Silver Creek customers, that the rates charged to the former Silver Creek customers will not affect the rates charged to Indiana American's other customers until its next rate order, and most importantly, the lack of evidence showing any marginal increase in costs to Indiana American as a result of providing water service directly to the Silver Creek customers.

Consequently, the Commission finds that we agree with the OUCC's recommendation that Silver Creek's current tariffed rates shall continue to apply, subject to water trackers or other rate adjustment mechanisms such as the distribution system improvement charge; therefore, we further

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<sup>7</sup> Pages 13 and 19 of Joint Petitioner's proposed order.

find Indiana American should be ordered to continue charging the customers Silver Creek served the same rates and charges as Silver Creek billed these customers until approval of Indiana American's next base rate case order.

**Rates and Rules.** In its Joint Petition Indiana American is proposing to apply its rules, regulations, and rates and charges generally applicable to its Area One rates to the Silver Creek customers. Ms. Stull testified the OUCC recommends continuing to charge the Silver Creek customers according to the rates in Silver Creek's current tariff and moving to Indiana American's Area One rates in its next rate case; provided that the Silver Creek customers also would be subject to Indiana American's distribution system improvement charges and service enhancement improvement charges. Mr. Schneider stated in rebuttal the Area One rates are approved by the Commission to recover the costs of serving customers in Indiana American's Area One operations. Moreover, Silver Creek's customers had been provided a summary of the proposed terms of the Asset Purchase Agreement prior to voting of the transition to Area One rates and voted in favor of doing so.

The record contains no evidence that the costs to serve Silver Creek will be different from Indiana American's costs to serve other Area One customers. The evidence also demonstrates that the Silver Creek members voted in favor of the acquisition with awareness of the proposed application of Indiana American's Area One rates following closing. While OUCC witness Stull cites (Pub. Ex. 1 at 9) three exceptions where the acquired utility's rates were applied instead of Indiana American's existing rates, they involved two cases where the acquired utility's rates were higher than Indiana American's at the time of acquisition (Cause Nos. 45550 and 45461) and one sewer acquisition where the parties' negotiation contemplated different treatment, including a negotiated commitment that the acquired utility would increase its rates prior to acquisition and an indication that the acquired utility accepted a purchase price less than appraised value to lower the sewer rates to be charged by Indiana American. *Joint Petition of Indiana American Water Co., Inc. and Town of Riley, Indiana*, Cause No. 45290 (IURC 3/31/2020) at 4-5. In other words, the application of different rates was a particular point of negotiation and required by one of the parties to the purchase agreement in each of the instances referenced by the OUCC. There has been no evidence offered that such circumstances are present here and the terms of the negotiated agreement specifically contemplate the application of Indiana American's Area One rates. Accordingly, we find it reasonable to apply the Area One rates to the Silver Creek customers upon closing of the acquisition. Therefore, we approve and find Indiana American's rules and regulations and rates and charges generally applicable to its Area One customers should apply to the Silver Creek customer upon closing.

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

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

1. Joint Petitioners are authorized to consummate the acquisition of the Silver Creek System by Indiana American on the terms described in the Asset Purchase Agreement and in the evidence as discussed in this order.

2. In accordance with our findings above, Indiana American is authorized to reflect the acquisition of the Silver Creek System on its books and records as of the closing date by making the accounting and journal entries described in Joint Petitioners' Exhibit No. 4, Attachment JD-1, as adjusted to actual incidental expenses and costs of the acquisition. Indiana American may record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to \$45,000,000, plus actual incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as shown in Joint Petitioners' Exhibit No. 4, Attachment JD-1. The net original cost, as defined in this order, of the acquired property shall be used for accounting, depreciation, and rate base valuation purposes after closing.

3. Indiana American is authorized to apply its non-recurring ~~the rates and~~ charges and ~~the rules~~ and regulations generally applicable to its Area One customers to the customers currently served by the Silver Creek System.

4. Indiana American's request to apply its Area One rates to the customers connected to the acquired assets is denied. Subject to any approved trackers, the rates Silver Creek was charging shall continue to apply to the customers Silver Creek formerly served until Indiana American's next general base rate case order.

~~45.~~ Indiana American is authorized to apply its depreciation accrual rates on and after the closing date of the acquisition to depreciable property purchased from Silver Creek pursuant to its Asset Purchase Agreement

~~56.~~ Indiana American is authorized to encumber the properties comprising the Silver Creek System with the lien of Indiana American's mortgage indenture.

~~67.~~ This Order shall be effective on and after the date of its approval.

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED:**

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

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Dana Kosco  
Secretary to the Commission

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**JOINT PETITION OF INDIANA-AMERICAN WATER )  
COMPANY INC. (“INDIANA AMERICAN”) AND )  
SILVER CREEK WATER CORPORATION (“SILVER )  
CREEK”) FOR APPROVAL AND AUTHORIZATION )  
OF: (A) THE ACQUISITION BY INDIANA AMERICAN )  
OF SILVER CREEK’S UTILITY PROPERTY (THE )  
“SILVER CREEK WATER SYSTEM”) IN CLARK AND )  
FLOYD COUNTIES IN INDIANA IN ACCORDANCE )  
WITH A PURCHASE AGREEMENT THEREFOR; (B) )  
APPROVAL OF ACCOUNTING AND RATE BASE )  
TREATMENT; (C) APPROVAL OF THE RATES AND )  
CHARGES TO BE APPLIED TO THE SILVER CREEK )  
WATER SYSTEM AFTER CLOSING; (D) APPROVAL )  
OF APPLICATION OF INDIANA AMERICAN’S )  
RULES AND REGULATIONS FOR WATER SERVICE )  
TO THE SILVER CREEK WATER SYSTEM; (E) )  
APPLICATION OF INDIANA AMERICAN’S )  
DEPRECIATION ACCRUAL RATES TO SUCH )  
ACQUIRED PROPERTIES; AND (F) THE )  
SUBJECTION OF THE ACQUIRED PROPERTIES TO )  
THE LIEN OF INDIANA-AMERICAN’S MORTGAGE )  
INDENTURE. )**

**CAUSE NO. 46023**

**APPROVED:**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**Sarah E. Freeman, Commissioner**

**Kehinde Akinro, Administrative Law Judge**

On March 12, 2024, Indiana-American Water Company, Inc. (“Indiana American”) and the Silver Creek Water Corporation (“Silver Creek”) (collectively “Joint Petitioners”) filed a Joint Petition with the Indiana Utility Regulatory Commission (“Commission”) along with their case-in-chief seeking certain approvals related to the proposed acquisition by Indiana American of Silver Creek’s water utility assets (the “Silver Creek System” or “System”), consisting of the prefiled direct testimony and attachments of the following witnesses:

- Christopher Adam Snyder, Vice President of the Board for Silver Creek (Joint Petitioners’ Exhibit No. 1);
- Justin Schneider, Director of Consumer Affairs for Indiana American (Joint Petitioners’ Exhibit No. 2);

- Matthew H. Hobbs, II, Director of Engineering for Indiana American (Joint Petitioners' Exhibit No. 3); and
- Jared Deason, Director for Rates and Regulatory for American Water Works Service Company, Inc. (Joint Petitioners' Exhibit No. 4).<sup>1</sup>

On May 28, 2024, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed its case-in-chief. On June 11, 2024, Indiana American filed the Verified Rebuttal Testimony of Justin Schneider.

The Commission held an evidentiary hearing in this matter on June 28, 2024, at 2:00 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared and participated, by counsel. At the hearing, the prefiled evidence of the Joint Petitioners and OUCC were admitted into the record without objection, as well as certain stipulated responses of Joint Petitioners to data requests issued by the OUCC, in lieu of cross-examination (Public’s Exhibit CX-1).

Having considered the evidence presented and being duly advised, the Commission now finds:

### **1. Notice and Jurisdiction.**

Due, legal and timely notice of the Petition filed in this Cause was given and published by Petitioner as required by law. Indiana American is a “public utility” as that term is defined in Ind. Code § 8-1-2-1 and a “utility company” within the meaning of that term in Ind. Code § 8-1-30.3-3. Indiana American is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. Silver Creek is a not-for-profit utility within the meaning of Ind. Code § 8-1-30.3-2.5 and 8-1-2-125(a) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. The Silver Creek System is “utility property” as that term is defined in Ind. Code § 8-1-30.3-4. Under Ind. Code § 8-1-30.3, the Commission has jurisdiction over Indiana American and Silver Creek and the subject matter of this proceeding.

### **2. Characteristics of the Joint Petitioners.**

**A. Indiana American’s Characteristics.** Indiana American is a water and wastewater public utility, incorporated under the laws of the State of Indiana, serving approximately 330,000 customers with its principal office and place of business at 153 North Emerson Avenue, Greenwood, Indiana. Indiana American is subject to regulation by the Commission in the manner and to the extent provided by the laws of the State of Indiana, including Ind. Code § 8-1-2-1 et seq. Indiana American is primarily engaged in the provision of water utility service to the public in and around numerous communities throughout the State of Indiana, including Clark and Floyd Counties. Indiana American also provides wastewater utility service to approximately 2,400 customers throughout Clark, Delaware, Hamilton, Wabash, and Vigo Counties. Indiana American has charter power and authority to engage in the business of providing such water and wastewater utility service under indeterminate permits and franchises, licenses, and permits heretofore duly acquired. Indiana American owns, operates, manages, and controls, plant, property, equipment,

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<sup>1</sup> On June 21, 2024, Mr. Deason was substituted for and adopted the prefiled direct testimony of Joint Petitioners’ Witness Gregory D. Shimansky.

and facilities for the production, treatment, transmission, distribution, and sale of water for residential, commercial, industrial, other public authority, and sale for resale purposes, for the provision of public and private fire protection service and for the provision of sewer service. Jt. Pet. Ex. 2 at 2-3 and Attachment JS-3.

**B. Silver Creek's Characteristics.** Silver Creek is a not-for-profit corporation which owns and operates a water utility. Silver Creek is a not-for-profit utility within the meaning of Ind. Code § 8-1-30.3-2.5 and § 8-1- 2-125(a). Its service area is localized exclusively in southern Indiana and runs through Silver Creek and Carr Townships within Clark County and through New Albany Township within Floyd County. The service area is located approximately ten miles north of Louisville, Kentucky, and runs approximately five miles wide and twelve miles long. Silver Creek's water system consists of approximately 742,430 linear feet of water mains that range in size from 3/4- inch to sixteen (16) inches in diameter and range in age from zero (0) to fifty-nine (59) years. Regarding its transmission and distribution system, Silver Creek has approximately 2,148 valves, 8,451 meters, and 877 fire hydrants. Silver Creek owns 368 separate and distinct easements which contain a number of its water lines and its headquarters is comprised of a main office building, storage yard, and four (4) pump stations. In terms of storage, Silver Creek has five water tanks. The Deam Lake Tank and the Highway 60 Tank are elevated storage tanks while the remaining three tanks (the Lake Division Tank, St. Joe Tank, and Fairview Knob Tank) are ground storage tanks. Storage volume within the tanks ranges from .15 to 2.25 million gallons. Jt. Pet. Ex. 1 at 2-3.

As of July 28, 2023, the date used to certify the number of Silver Creek members eligible to vote on the proposed acquisition, the Silver Creek System had less than 8,000 unique customers. Silver Creek currently buys all of its water from Indiana American on a wholesale basis and, in turn, distributes the purchased water to its primarily residential customer base. Silver Creek is subject to the jurisdiction of the Commission for purposes of its water rates and charges and financing. Jt. Pet. Ex. 2, Attachment JS-3 at 2.

### **3. Relief Requested.**

Joint Petitioners have filed their Joint Petition in this Cause pursuant to Ind. Code § 8-1-30.3-5 ("Section 30.3-5") and request that this Commission (1) approve that without regard to amounts that may be recorded on Silver Creek's books and records and without regard to any grants or contributions that Silver Creek may have received, Indiana American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed in Joint Petitioners' evidence; (2) grant such approvals as may be necessary to consummate the acquisition of the Silver Creek System by Indiana American on the terms described in the Joint Petition and the Asset Purchase Agreement ("Agreement") between Indiana American and Silver Creek (Jt. Pet. Ex. 2, Attachment JS-2); (3) authorize the application of Indiana American's rules and regulations and the rates and charges generally applicable to the customers of Indiana American's Area One rate group, as the same may be changed from time to time, to service provided by Indiana American to customers of the Silver Creek System, from and after closing of the acquisition; (4) authorize Indiana American to apply its existing depreciation accrual rates to the Silver Creek System; and (5) approve the encumbering

of the properties comprising the Silver Creek System by subjecting such properties to the lien of Indiana American's Mortgage Indenture, as the same may be changed from time to time.

#### **4. Joint Petitioners' Direct Evidence.**

**A. Acquisition Background and Benefits.** Mr. Schneider described how the proposed acquisition of the Silver Creek System fits within the statute. Jt. Pet. Ex. 2 at 8. He described how Ind. Code § 8-1-30.3-5(d) details the circumstances in which a public water or wastewater utility that acquires the utility property of an "offered utility" (formally a "distressed utility") may petition the Commission to include any "cost differential" associated with the acquisition as a part of its rate base. *Id.* at 8-9. He further explained that an "offered utility" is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities if the Commission finds any of the six (6) conditions listed in Ind. Code § 8-1-30.3-6 are present. *Id.*

He testified multiple conditions from Ind. Code § 8-1-30.3-6 were present regarding the Silver Creek System. *Id.* at 10. He stated as of the date the Asset Purchase Agreement for the Silver Creek System was executed, which was July 28, 2023, the Silver Creek System served fewer than 8,000 customers *Id.* He further stated Silver Creek was expecting a loss of managerial and technical expertise that would satisfy Ind. Code § 8-1-30.3-6(2). *Id.* In addition to those conditions he added the facts surround the acquisition weighed in favor of the Commission determining Silver Creek was too small to capture economies of scale for purposes of Ind. Code § 8-1-30.3-5(d)(2). *Id.* Under Ind. Code § 8-1-30.3-6(6), this Commission may consider "any other facts that the commission determines demonstrate the offered utility's inability to capture economies of scale or to furnish or maintain adequate, efficient, safe, or reasonable service or facilities" for the purposes of finding an offered utility is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities". *Id.*

Silver Creek anticipates a significant portion of its existing management and workforce will retire in the near future. Jt. Pet. Ex. 2, Attachment JS-3 (Joint Petition) at 8. As stated by Mr. Schneider, Silver Creek has employed its manager for thirty-five years, its office manager for forty years (both of whom have indicated they will retire in the next few years), its superintendent for thirty years, and its meter specialist/foreman for nearly thirty years. Jt. Pet. Ex. 2 at 11. Silver Creek is concerned about the ability to replace these employees upon retirement and anticipates in that event, it will possess insufficient financial, managerial, and technical expertise, which will be needed to serve its customers moving forward. Jt. Pet. Ex. 2, Attachment JS-3 (Joint Petition) at 8. Vice President of the Board for Silver Creek, Mr. Christopher Snyder, has stated Silver Creek had no guarantee that it could replace its staff with qualified individuals and was particularly concerned about this when Silver Creek's Board sent the acquisition proposal to its members for a vote. Jt. Pet. Ex. 1 at 4. Mr. Schneider testified that there is a concern that in the near-future, Silver Creek will have inadequate financial, managerial, or technical ability or expertise to operate the utility moving forward. Jt. Pet. Ex. 2 at 11. While this loss of this managerial and technical expertise would technically satisfy the factor in Ind. Code § 8-1-30.3-6(2), he also explained how Indiana American's acquisition of Silver Creek will lead to economies of scale relative to headcount and managerial expertise, and will improve the financial, managerial, and technical ability and expertise of Silver Creek moving forward. *Id.*

Mr. Schneider explained economies of scale under Ind. Code § 8-1-30.3-6 are generally understood to describe operational savings from larger size. He further explained in the utility industry, savings from economies of scale are typically expressed in terms of costs per customer. Jt. Pet. Ex. 2 at 9. He stated that it is too simplistic, however, to simply compare Silver Creek's cost structure or rates to Indiana American's as doing so suggests an expectation of the status quo in terms of service. He said it is in the best interest of Silver Creek's customers to become part of the larger Indiana American customer base as the combined size will allow the customers to be served in a more cost-effective manner than Silver Creek can operate today as a stand-alone utility. *Id.* He added being included in a larger customer base will also benefit Silver Creek's customers by helping mitigate future rate increases due to the operational efficiencies. *Id.* He further explained that Silver Creek customers will directly see these efficiencies through a reallocation and optimization of headcount and reduced managerial overhead expense, the elimination of administrative services costs associated with operating a water utility, the addition of Indiana American's engineering expertise, and inclusion as part of Indiana American's prioritization program for infrastructure replacement and planning purposes, among many others. *Id.* at 10. Mr. Schneider testified that through the acquisition, Indiana American will reallocate employees from Silver Creek to optimize operation of the existing Silver Creek System and the larger Indiana American System. After the acquisition, all of the Silver Creek employees will fill roles that serve the larger Indiana American customer base, thus achieving a higher level of efficiency for the service provided to the customers of the Silver Creek System and Indiana American. There will also be lower payroll expenses and overall lower insurance costs borne by the customers of Silver Creek. Additionally, the Board of Directors positions and any associated expenses and compensation paid to them will be eliminated. *Id.* at 12.

Mr. Schneider explained how Silver Creek customers will benefit from a reduction in administrative services costs and regulatory compliance through the acquisition given that the administrative costs associated with operating the Silver Creek System as a separate utility will be eliminated through the acquisition. Jt. Pet. Ex. 2 at 12. He explained there will no longer be a need for Silver Creek to hire outside consultants or employ internal people to provide tax, accounting, human resources, IT and regulatory compliance services, as all of these services moving forward will be provided by current Indiana American employees. Mr. Schneider described additional economies of scale to be achieved in the area of regulatory compliance, because currently, Silver Creek must complete its own sampling and submit compliance reports to the Indiana Department of Environmental Management ("IDEM"). While Indiana American will continue to perform sampling as required by IDEM, Mr. Schneider explained there will not be the need for separate compliance filings, as the Silver Creek System will be reported as part of the Indiana American Southern Indiana Operations. *Id.* at 12-13.

Mr. Schneider described the benefits to the Silver Creek System and Silver Creek customers of management of the system by Indiana American's engineering team. He said Indiana American's engineering team will include the Silver Creek assets in the prioritization program for infrastructure replacement and planning purposes. This program includes a set of standardized practices and tools, replacement, and future system enhancements in an efficient and deliberate manner. *Id.* at 13-14. He testified Indiana American has 104 employees with distribution licenses, 90 employees with water licenses, and 18 licensed wastewater operators. *Id.* at 16. He explained that the Silver Creek System would be incorporated into Indiana American's asset management

plan to establish and sustain a more cost-effective level of service. *Id.* In addition, after acquisition the Silver Creek customers will have the benefit of leveraging Indiana American's ability to purchase materials and services at more effective costs due to the size of the company. Mr. Schneider said that beyond bulk pricing, from which customers benefit, Indiana American makes purchasing and contracting decisions based on the experience of an industry leader which stays ahead or abreast of industry trends such as identifying manufacturing defects or shortcomings of materials before they become (bigger) problems. *Id.* at 17.

Mr. Schneider testified that by being acquired by a subsidiary of American Water, Silver Creek customers would benefit from the resources a nation-wide utility possessed, which was not something a system the size of Silver Creek's could offer. Jt. Pet. Ex. 2 at 18. He explained American Water's research and development program, supported by its lab in Belleville, Illinois, has a leading water-related research program. *Id.* He added, the lab has a history of being on the forefront of water-related research and is regularly tapped by the United States Environmental Protection Agency to help develop federal drinking water standards and regulations. *Id.* He stated this is the kind of quality of service that could not be offered by a system the size of Silver Creek but would be available to Silver Creek's customers following the acquisition by American Water. *Id.* He described the additional benefits to Silver Creek customers of gaining access to Indiana American's technology and information systems and listed various tools and technology Indiana American employs to strengthen the fundamentals of its business to improve customers' experience and operational effectiveness. *Id.* at 19-20.

Mr. Schneider explained that as a stand-alone utility, Silver Creek's geographic limitations on customer growth also poses a financial burden to its current customer base. *Id.* at 14-15. He explained the Silver Creek System is almost entirely surrounded by other water utilities which would limit its customer growth potential. *Id.* at 15. With expenses of running the utility continuing to increase and a limited pool of potential customers to add to its system in the future, Silver Creek is facing an inability to grow its customer base to spread out its future rate increases, he added. *Id.*

Mr. Snyder further stated Silver Creek also anticipated needing to increase rates in the near future and the sale of the Silver Creek System to Indiana American would save Silver Creek's customers the expense of preparing, filing, and prosecuting a rate case, provide stable rates over the long-term for its customers through economies of scale, and issue a material cash payment to its members. Jt. Pet. Ex. 1 at 4. Mr. Snyder explained selling the Silver Creek System to Indiana American made sense from a financial and technical perspective. *Id.*

Mr. Hobbs testified to the storage in the Silver Creek system that can be incorporated into future comprehensive planning efforts, utilizing Indiana American's hydraulic modeling capabilities to maximize the potential benefit of the System's existing finished water storage for the benefit of the combined customer base. Jt. Pet. Ex. 3 at 5. He stated that Silver Creek's geographic location and existing infrastructure connections to Indiana American's system will allow for additional water transmission pathways between Indiana American's Jeffersonville and New Albany service areas in its Southern District. Integrating the Silver Creek System into the broader Indiana American System will result in greater resiliency and redundancy within a broader connected system, benefiting both Silver Creek and Indiana American customers. *Id.* at 6.

Mr. Hobbs testified that the acquisition will also provide Silver Creek customers the benefits of a comprehensive nationwide cybersecurity program. *Id.* at 6. He stated American Water's cybersecurity program is applied to all subsidiaries, including Indiana American, and secures all enterprise-wide information assets, includes a comprehensive data privacy program which protects the personal identifiable information of all American Water employees, customers, vendors, and contractors, against unauthorized use and disclosure, and includes numerous cybersecurity practices and procedures regarding appropriate access control, application security, asset management, data encryption, incident management, risk management, and many other components of the cybersecurity program. *Id.* Mr. Hobbs described other safety and operational process improvements Indiana American will bring to the Silver Creek System upon acquisition, including development and implementation of improved procedures consistent with Indiana American practices for working in confined spaces, working with hazardous chemicals, working with electrical equipment and other job functions. *Id.* at 8. He stated Indiana American's teams will standardize the use of technology for data and asset management. He described how Indiana American will locate, GPS, and map the assets of the Silver Creek System as necessary to allow for more efficient operation and response to main breaks or other maintenance concerns. *Id.* In addition, all maintenance and operation records will be maintained in electronic systems using the technology that has been developed by the American Water Technology and Innovation (T&I) team. *Id.*

Mr. Schneider testified the acquisition satisfied the remaining elements of Ind. Code § 8-1-30.3-5(d). He stated Silver Creek and Indiana American were not affiliated and shared no common ownership interests and the acquisition were mutually agreed upon and the product of arm's-length negotiations; three appraisal firms were engaged and they agreed upon an appraisal value for the utility property; and because the purchase price was lower than the statutory appraised value of the property under Ind. Code § 8-1-30.3-5(c)(2), the purchase price of the utility property was reasonable for purposes of Ind. Code § 8-1-30.3-5(d)(5). *Id.* at 20-21. He stated the utility property is used and useful to Silver Creek in providing water service to its customers. *Id.* at 15. He stated Silver Creek qualifies as an "offered utility" in that it "is too small to capture economies of scale or has failed to furnish or maintain, adequate, efficient, safe, and reasonable service and facilities" within the meaning of Ind. Code § 8-1-30.3-6. *Id.* He testified Indiana American would improve the economies of scale and operations of the Silver Creek System. *Id.* at 16. He referred to Mr. Deason's direct testimony for support that Indiana American's rates and charges will not increase unreasonably in future general rate case as a result of the acquisition and a description of the amortization of any cost differential that will be added to Indiana American's rate base. *Id.* at 21.

Mr. Schneider further described Indiana American's provision of timely notice of the proposed acquisition to customers of Indiana American and the OUCC. *Id.* at 21 and Jt. Pet. Ex. 4, Attachment JD-3. Mr. Hobbs provided the required statements of any known infrastructure, environment, or other issues affecting Silver Creek and the process for determining reasonable and prudent improvements upon completion of the merger to Silver Creek's customers and the OUCC, as required Ind. Code § 8-1-30.3-5(e). Jt. Pet. Ex. 3 at 7. He explained that after the acquisition closes, Indiana American will conduct operational and engineering evaluations of the Silver Creek System and implement an asset management strategy and plan, including prioritization models for prioritizing recommended improvements to the system. *Id.* Mr. Hobbs testified that Indiana

American's evaluation and improvement actions may include: (1) evaluating existing Supervisory Control and Data Acquisition (SCADA) and making any improvements necessary to integrate into Indiana American's system to allow for remote monitoring and control of the system; (2) assessing pipeline replacement needs by utilizing Indiana American's GIS based pipeline replacement prioritization model which prioritizes pipeline replacements through identification of service risks associated with pipe failure risks; and (3) preparing a future Comprehensive Planning Study to evaluate existing assets and to identify and prioritize improvements in the Water System. *Id.*

**B. Proposed Acquisition and Asset Purchase Agreement.** Mr. Christopher Snyder testified that Indiana American has over the years periodically expressed interest about acquiring the utility, most recently approaching the Silver Creek Board in July of 2022. Jt. Pet. Ex. 1 at 5. He testified after the July 2022 proposal, the Board, after much deliberation, decided to conduct an appraisal of the property. *Id.* at 6. A copy of the appraisal was provided in Attachment CAS-2. He explained that after the Board received the appraisal, negotiations between the parties occurred over several months. *Id.* He stated a tentative agreement on general terms including purchase price was ultimately reached and the terms of the agreement were memorialized in the Asset Purchase Agreement (Jt. Pet. Ex. 2, Attachment JS-2). Jt. Pet. Ex. 1 at 6. He testified the negotiations were conducted at arm's-length and Silver Creek is not affiliated with Indiana American in any way and shares no ownership interest with Indiana American. *Id.* He stated the Board approved and executed the Asset Purchase Agreement on July 28, 2023, and a copy of that meeting's minutes was filed as Attachment CAS-3. Jt. Pet. Ex. 1 at 7. He testified July 28, 2023, was also the date the Board used to certify the number of members eligible to vote on the acquisition, which on that date equaled 7,938 unique customers. *Id.* at 2, 7.

Mr. Snyder explained the terms of the Asset Purchase Agreement provided that the acquisition was contingent on approval by the members of Silver Creek and the Commission. *Id.* Mr. Snyder said after the Asset Purchase Agreement was approved and executed by Indiana American, Silver Creek's Board began notifying its members of the proposed deal. *Id.* He stated that on August 9, 2023, the Board sent a letter to each member summarizing the acquisition (Attachment CAS-4) and provided a list of frequently asked questions (Attachment CAS-5). *Id.* He explained the letter stated the Board would send out a ballot regarding the purchase and requested members either vote against or in favor of the acquisition. *Id.* at 7-8. He further explained the Board put the member letter and list of frequently asked questions on its website and set up a dedicated phone line for members to call with any questions. *Id.* at 8. The Board received emails and written questions regarding the transaction and made an attempt to respond to every inquiry. *Id.*

He testified the Board mailed the ballots on approximately August 14, 2023, and it was decided individual Board members would have no role in receiving or counting the votes. *Id.* The Board engaged an independent accounting firm, Sherman, Barber & Mullikin, and requested members send ballots directly to the accounting firm to be tabulated, he explained. *Id.* He stated ballots were held in locked containers until the votes were counted and recorded on September 26, 2023, and October 3, 2023, at Sherman Barber & Mullikin's Madison, Indiana office. *Id.* at 9. He added the attorney for Silver Creek was present for the entirety of the proceeding and once votes were counted, the accounting firm prepared a memorandum detailing the voting and vote counting procedures (Attachment CAS-7). *Id.*

Mr. Snyder stated that although Silver Creek requires participation from 10% of its membership to constitute a quorum for an official action, it received 3,691 votes with 2,719 members voting “yes” and 977 members voting “no” to the acquisition. *Id.* He explained 73.67% of the votes approved the acquisition while 26.33% did not and because the “yes” votes were well in excess of 50% the Board determined the members had voted in favor of and approved the acquisition. *Id.* Mr. Snyder stated a letter informing members of the results of the vote was sent on October 12, 2023 (Attachment CAS-8). *Id.* 9-10.

He explained the terms of the acquisition included several benefits for Silver Creek customers such as: Silver Creek members receiving a cash distribution with each member receiving approximately \$5,450 and a refund for any membership fees previously paid to Silver Creek; long-term stability due to Indiana American’s larger customer base, access to capital, commitment to operating efficiently and the ability to leverage Indiana American’s buying power to procure goods and services less expensively; access to industry-leading expertise and resources from Indiana American; access to full-time capital asset management and operations professionals; access to 24-7 award winning customer service and several convenient billing, paying, and online customer service options; among other benefits. *Id.* He testified that in his opinion the acquisition was in the best interest of Silver Creek’s members and that Silver Creek members shared his opinion as evidenced by the overwhelming “yes” vote. *Id.* at 12-13.

Mr. Schneider testified regarding Indiana American’s side of the negotiations. He stated Indiana American’s interest in acquiring the Silver Creek System was due to its proximity to Indiana American’s Southern Indiana Operations based out of Jeffersonville and its interconnections to the Indiana American service area and sale for resale customers. *Jt. Pet. Ex. 2* at 3-4. He explained the Silver Creek System’s transmission and distribution assets are effectively an extension of the Indiana American system and acquiring the Silver Creek System provides an opportunity to improve efficiency and service quality in both systems and better serve other sale for resale customers, who are growing and need additional sources of supply to meet their system needs. *Id.* at 4. He stated the Asset Purchase Agreement was the result of arm’s-length negotiations and the Silver Creek Water Corporation members ratified the Agreement through a vote. *Id.*

Mr. Schneider briefly discussed the purchase price and appraisal of the Silver Creek System. He stated the total purchase price paid by Indiana American for the Silver Creek System would be \$45,000,000, plus an estimated \$159,000 of incidental expenses and other costs of acquisition, for an original cost rate base to be recorded for the acquisition of \$45,159,000 as explained in more detail by Mr. Deason. *Jt. Pet. Ex. 2* at 4-5. Mr. Schneider stated that pursuant to Ind. Code. § 8-1-30.3-5.5, Silver Creek received appraisals of the property from three qualified and disinterested firms, Beam Longest & Neff (“BLN”), Banning Engineering (“Banning”), and BLN Right of Way Services (“BLN Services”). *Id.* at 5. The appraisals were completed in 2022 and all three firms agreed upon an appraised value of the Silver Creek System which was determined to be \$48,657,600. *Id.*; *see also Jt. Pet. Ex. 1, Attachment CAS-2*. A team of operations and engineering professionals from Indiana American also conducted a site visit in September 2022 and visually assessed the condition of the assets. *Jt. Pet. Ex. 2* at 5. The appraisal valuation was also reviewed by those team members. Mr. Schneider stated this was a reasonable purchase price, since the purchase price of the Silver Creek System was less than its appraised value. *Id.*

Mr. Hobbs described what assets Indiana American would acquire from Silver Creek. The Silver Creek System comprises approximately 742,430 linear feet of water mains, 2,148 valves, 8,451 meters, 877 hydrants, five (5) storage tanks, four (4) booster pump stations, two (2) permanent generators and one (1) mobile generator. Jt. Pet. Ex. 3 at 3. In addition to these assets, Silver Creek's system would interconnect with the existing Indiana American system at two locations. *Id.* at 4. Mr. Hobbs testified that there are improvement projects either proposed or in process for the Silver Creek System, including water main and hydrant replacements, pipeline reinforcements or extensions, and three known water main relocations associated with bridge replacement projects. In addition, chlorine analyzers and pressure transmitters are planned to be installed at existing storage tanks and booster stations. *Id.* Mr. Hobbs described the Silver Creek System as well maintained and he noted some recent investments made by Silver Creek in its system. *Id.*

Mr. Hobbs stated Silver Creek does not currently have any water quality or environmental challenges that Indiana American is aware of. *Id.* at 5. However, he added, Silver Creek could potentially see water quality issues due to loss of residual chlorine levels due to the amount of storage in the system. *Id.*

Mr. Hobbs testified that the utility property is "used and useful" to the Silver Creek System for the purposes of Ind. Code § 8-1-30.3-5(d) because Silver Creek is currently operating the system and using the utility property to provide water service to its customers. Jt. Pet. Ex 3 at 2.

**C. Accounting and Ratemaking Treatment.** Mr. Deason testified that based on the purchase price in the Asset Purchase Agreement of \$45,000,000, assuming \$159,000 of incidental expenses and other costs of acquisition, the original cost rate base for the Silver Creek System would be \$45,159,000. Jt. Pet. Ex. 4 at 3. He further explained the \$159,000 figure may be adjusted when recorded as a final journal entry to reflect the actual incidental expenses and costs of acquisition. *Id.* at 3-4. Based on the arrangement with Indiana American's legal counsel, the \$159,000 encompassed the cost of representation in a fully litigated case. *Id.* at 4. He testified that because the purchase price of \$45,000,000 does not exceed the appraised value of the property of \$48,657,600 as agreed upon by the statutorily appointed appraisers, the purchase price is reasonable. *Id.* at 4-5.

Mr. Deason stated that the purchase price included a "cost differential" as defined in Ind. Code § 8-1-30.3-5(c). *Id.* at 5. He explained a "cost differential" will almost always be present when the purchase price is derived from something other than the original cost, as is the case with this acquisition. *Id.* He testified Indiana American is proposing to reflect a total original cost rate base of \$45,159,000, which would be adjusted to reflect the \$45,000,000 purchase price plus the actual incidental and acquisition costs. *Id.* at 6. He explained the assumption will be that the "cost differential" would be included as a part of each asset category in the journal entry proposed in Attachment JD-1 on a pro-rated basis. *Id.* He further explained the cost differential will be "amortized" and charged to expense over a reasonable period of time with corresponding changes to rate base through depreciation expense calculated pursuant to Indiana American's approved depreciation accrual rates.<sup>2</sup> *Id.* Mr. Deason testified that the journal entry in Attachment JD-1

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<sup>2</sup> Indiana American proposes the Silver Creek System assets be subject to the depreciation accrual rates approved

proposes a reasonable manner for allocating the full purchase price plus expenses and other incidental costs of the acquisition. *Id.* at 6-7.

Mr. Deason testified that Indiana American proposes to move the customers of the Silver Creek system to the existing Indiana American Area 1 rates, including routine monthly billing rates, including volumetric rates, fixed meter charges, and Public Fire charges. *Id.* at 7. At the time of his adopted direct testimony, Mr. Deason stated an average residential customer of the Silver Creek System could expect to pay \$51.34 per month for water service, including fire protection charges based on the Step 1 rates implemented on February 21, 2024 under Cause No. 45870. Mr. Deason's testimony indicated this does not include the effect of the Step 2 rates to be implemented in May 2024 under Cause No. 45870. *Id.* at 7-8. Mr. Deason stated Indiana American is not requesting any changes to the current water rates and charges of its customers as a result of the acquisition, and overall existing customers should see a decrease in their rates from the acquisition. *Id.* at 7, 9.

Mr. Deason described the "safe harbor" set forth in Ind. Code § 8-1-30.3-5(d)(7) for determining if rates will unreasonably increase solely from an acquisition. *Id.* at 9. For purposes of subsection (d), rates will not unreasonably increase in future general rate cases as a result of an acquisition, if the net original cost proposed to be recorded under subsection (f) of Section 5 is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in its most recent general rate case, plus any adjustments that have occurred. Ind. Code § 8-1-30.3-5(d)(7). Conversely, if the net original cost is above two percent (2%), the Commission shall make a determination on whether the sole result of the acquisition will unreasonably increase rates in future general rate cases and may consider (1) the anticipated dollar value increase and (2) the increase as a percentage of the average bill as evidence. *Id.* He testified the Silver Creek acquisition is slightly above the 2% safe harbor at 2.46%. However, Mr. Deason explained, rates in future general rates cases will not unreasonably increase solely from the acquisition and overall rates and charges of existing Indiana American customers should in fact be lower than they otherwise would be due to the acquisition, all else being equal. *Jt. Pet. Ex. 4* at 9. He explained Indiana American knows rates and charges will not increase unreasonably solely as a result of the acquisition due to the calculated revenue requirement effect of the acquisition in Attachment JD-2's "Rev Impact Calc – Silver Creek" worksheet which shows a .153% decrease in their revenue requirement as a result of adding in Silver Creek's 7,938 unique customers.<sup>3</sup> *Id.* at 10.

**D. Rules and Regulations.** Indiana American is proposing to apply the same rules and regulations of its existing water customers to customers of the Silver Creek System. *Jt. Pet. Ex. 2* at 7 and Attachment JS-3 (Joint Petition) at 3.

**E. Depreciation.** Mr. Deason stated Indiana American proposes subjecting the Silver Creek assets to Indiana American's depreciation accrual rates approved by the Commission in Cause No. 45870 to be implemented upon close of the transaction. *Jt. Pet. Ex. 4* at 7. He stated these were approved in Cause No. 45870 and implemented in February 2024.

**F. Liens of Mortgage Indenture.** Mr. Deason stated Indiana American is subject to

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from Cause No. 45870 in February 2024, which was Indiana American's most recent rate case.

<sup>3</sup> The calculation showing the 2.46% is on Line 14 of "Rev Impact Calc – Silver Creek" of Attachment JD-2.

an Indenture of Mortgage dated May 1, 1968, as supplemented and amended (the “General Mortgage”) which secures most of its utility property for the benefit of the holders of Indiana American’s bonds and after the acquisition, the Silver Creek System will become subject to the lien of the General Mortgage, if approved by this Commission. *Id.* at 10-11.

## **5. OUCC’s Testimony.**

Margaret A. Stull, Chief Technical Advisor in the OUCC’s Water/Wastewater Division, discussed the favorable ratemaking treatment Indiana American seeks pursuant to Ind. Code § 8-1-30.3-5. Ms. Stull explained that Joint Petitioners (Indiana American and Silver Creek) propose Indiana American be permitted to include in its rate base the proposed acquisition price plus actual incidental costs. Public’s Ex. 1 at 5. Ms. Stull explained that the total purchase price Indiana American proposes to record is \$45,159,000, which includes the \$45,000,000 purchase price set forth in the Agreement and an additional \$159,000 of transaction costs. Public’s Ex. 1 at 4-5.

Ms. Stull noted Joint Petitioners also seek authority for Indiana American to apply Indiana American’s existing depreciation accrual rates to the water utility assets being acquired from Silver Creek and to encumber these assets, subjecting them to the lien of Indiana American’s Mortgage Indenture. Public’s Ex. 1 at 2. Additionally, Joint Petitioners request approval for Indiana American to apply the rules and regulations applicable to Indiana American’s existing water customers to the former Silver Creek customers. Finally, Ms. Stull noted the Commission is also being asked to authorize Indiana American to apply its Area One rates and charges to the customers to be acquired from Silver Creek. Of these requests, Ms. Stull recommended the Commission deny Indiana American’s request to apply its Area One rates to the former Silver Creek customers at this time. She recommended, instead, that the Commission direct Indiana American to continue to apply Silver Creek’s rates as it has done in several other cases where Indiana American acquired other utilities.

Ms. Stull explained that authorizing favorable ratemaking treatment through acquisition adjustments was a long-standing role of the Commission, which required the Commission to consider whether benefits such as the procurement of economies of scale and other customer benefits are present, but as a result of Ind. Code § 8-1-30.3-5, the Commission no longer has the discretion to determine that favorable ratemaking treatment is not justified. Public’s Ex. 1 at 7. Such benefits are now presumed based on basic factors such as the size of the offered utility. *Id.*

Ms. Stull explained that the favorable ratemaking treatment Indiana American seeks under Ind. Code § 8-1-30.3-5 requires the Commission to find, “The offered utility is too small to capture economies of scale. . . .”<sup>4</sup> Ms. Stull noted the Cambridge Dictionary defines economies of scale

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<sup>4</sup> Ms. Stull noted Ind. Code § 8-1-30.3-5 requires a finding that “The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.” Ind. Code § 8-1-30.3-5(d)(2). Ms. Stull testified Silver Creek has not failed to furnish or maintain adequate, efficient, safe, and reasonable services and facilities, adding that Silver Creek has provided and continues to provide safe, reliable water service and facilities to its customers. Ms. Stull noted that Silver Creek indicated, “SCWC is in good financial health” and that “SCWC and its water system are not, in any way, financially troubled or in a state of technical or operational distress.” Joint Petitioners’ Exhibit No. 1, Testimony of Christopher Adam Snyder, Attachment CAS-5, p. 4.

as “the reduction of production costs that is a result of making and selling goods in large quantities, for example, the ability to buy large amounts of materials at reduced prices.” Public’s Ex. 1 at 7. She stated that *capturing economies of scale*<sup>5</sup> typically suggests lower costs and, therefore, prices of services. In this case, under Indiana American’s proposal, Silver Creek customers will experience a significant increase in rates by being switched to a provider with presumed economies of scale (larger than 8,000 customers).

Ms. Stull explained how the proposed application of Indiana American’s rates will affect the Silver Creek customers. She noted that, according to the IURC’s 2024 Water Billing Survey, Silver Creek residential customers using 4,000 gallons of water are currently charged \$26.95. Public’s Ex. 1 at 9. After the acquisition is finalized, if Indiana American’s Area One rates are applicable, these customers will be charged \$55.46<sup>6</sup> based on tariffs provided in Indiana American’s “Submission of Revised Step 2 Compliance Filing” in Cause No. 45870. She testified this represents a \$28.51 increase per month or a nearly 106% rate increase. *Id.*

Ms. Stull asserted Silver Creek customers should not be charged according to Indiana American’s Area One rates until after Indiana American’s next base rate order. Public’s Ex. 1 at 9. She pointed out that nothing in Ind. Code § 8-1-30.3-5 establishes that the Commission *must* authorize the imposition of the acquiring utility’s rate structures. *Id.* Ms. Stull noted that in several recent acquisitions the Commission authorized Indiana American to continue to charge the customers it acquired according to the selling utility’s rate schedule. For example, in Cause No. 45550, Indiana American was authorized to continue to charge the Town of Lowell’s higher water rate. In Cause No. 45461, Indiana American was authorized to continue to charge the River’s Edge Water System rate, and in Cause No. 45290, Indiana American received permission to continue to charge the Town of Riley’s rate, which was lower than the rate Indiana American charged its existing customers. Public’s Ex. 1 at 9.

Ms. Stull explained that as in Cause No. 45290, Silver Creek currently provides water service at a lower cost. Indiana American already provides water service indirectly to Silver Creek’s customers. She noted Indiana-American has not evidenced what additional marginal costs it will experience as a result of adding Silver Creek’s customers directly to its operations. Public’s Ex. 1 at 9-10. Ms. Stull stated that Indiana American has not shown why it cannot provide the same basic service to this set of customers at the rates those customers are currently paying to a utility, which, as a matter of law, is too small to capture economies of scale. In this case, Indiana American should be required to follow the same practice established in the other acquisition cases Ms. Stull referenced. *Id.*

Ms. Stull pointed out that not imposing Area One rates until the next rate case will not cause Indiana American’s existing customers to subsidize Silver Creek’s customer’s services. Public’s Ex. 1 at 10. She noted no level of subsidization has been established, and moreover, what Indiana American’s existing customers pay Indiana American for water service will not be affected during the life of these rates by what Indiana American charges former customers of Silver Creek. (Indiana American’s current rates were recently established in Cause No. 45870.) *Id.* Ms. Stull

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<sup>5</sup> <https://dictionary.cambridge.org/us/dictionary/english/economies-of-scale>.

<sup>6</sup> Consisting of a fixed charge of \$20; a volumetric charge of \$30.69 (2.5 x \$12.2775); and a fire protection charge of \$4.77. The \$20 fixed charge includes 1,500 gallons of water.

added that if Silver Creek's customers continue paying lower rates consistent with Silver Creek's existing schedules, it would be appropriate for those customers to be subject to any capital tracker charges Indiana American may be authorized to collect, including distribution system improvement charges and system enhancement improvement charges. *Id.*

Ms. Stull concluded by recommending that Silver Creek customers continue to be charged their currently approved tariff rates until Indiana American's next base rate case, whereupon Area One rates would be applied.

## **6. Joint Petitioners' Rebuttal Testimony.**

On rebuttal, Mr. Schneider stated the OUCC did not oppose the acquisition but did request different rates than what Indiana American proposed. Jt. Pet. Ex. 2-R at 2. He stated the OUCC's new rates would be an issue as the Asset Purchase Agreement was conditioned upon approval of Indiana American's proposed rates. *Id.* Silver Creek customers were made aware of the terms of the Asset Purchase Agreement and Indiana American's proposed rates and voted in favor of the acquisition, he explained. *Id.* at 2-3. Silver Creek is a sale for resale customer of Indiana American and passes on any increases in costs it experiences from Indiana American onto its customers. *Id.* at 3. He explained that prior rate adjustments have been made by the Silver Creek Board through 30-Day Filings submitted to the Commission to which the OUCC apparently acquiesced. *Id.* He stated at the time OUCC witness Stull submitted her testimony, the costs from the recent rate case were not yet reflected in Silver Creek rates. *Id.*

While Ms. Stull argued in her testimony that Indiana American has not provided evidence of what additional marginal costs exist or why service cannot be provided at the rates Silver Creek members are currently paying, Mr. Schneider pointed out that Indiana American's Area One rates have been approved by the Commission to recover the cost of serving customers in Area One, and Ms. Stull has presented no analysis demonstrating that Indiana American's costs of serving the Silver Creek customers will be any different from the costs of serving other Area One customers. *Id.* at 3-4. He stated that as a matter of law under Ind. Code § 8-1-30.3-6(5), Silver Creek is too small to capture economies of scale and it is necessary to look at the level of service provided. *Id.* at 4. He stated one way Silver Creek customers would benefit immediately from the acquisition is they would now be able to utilize Indiana American's engineering infrastructure, expertise, and technical capabilities and Indiana American's robust cybersecurity protection. *Id.* He also stated a significant factor for Silver Creek's management leading to the sale was the risk of losing operational expertise from upcoming retirements from Silver Creek employees. *Id.* at 5. He explained many Silver Creek operational and managerial employees were with the utility for many decades and there was a real fear of not being able to replace them with qualified individuals. *Id.* By selling the utility to Indiana American, that problem is averted as Indiana American employees are able to supplement the existing Silver Creek team with an additional twenty-five employees who have the necessary certifications and qualifications to serve the customers of Silver Creek efficiently. *Id.*

Mr. Schneider also testified that the summary of the proposed terms of the Asset Purchase Agreement included that the rates of Silver Creek members would increase by nearly 70% for a typical monthly customer using 5,000 gallons per month as well as a table showing various monthly bill comparisons at the then existing rates. That same notice to members also indicated

that if the Silver Creek system is not acquired by Indiana American, that the Silver Creek rates would increase. Jt. Pet. Ex. 2-R at 2. The customers were also made aware in the customer notice included as Attachment CAS-4 to Joint Petitioners' Exhibit No. 1 that they would be reimbursed their membership fee and also receive an estimated payment of approximately \$4,500-\$4,800 per membership from the proceeds of the sale and any remaining cash on hand. With this information provided to them, the members of Silver Creek voted in favor of the transaction, including moving to Indiana American's Area One rates. *Id.* at 2-3.

## **7. Commission Discussion and Findings.**

**A. Applicability of Statute.** Pursuant to Ind. Code §§ 8-1-2-83(a) and 8-1-2-84(c) we are required to approve the transfer by one public utility to another of its franchise, works, and system. If Ind. Code § 8-1-30.3-5 applies in such a transaction, we are directed to include as a part of our order certain approvals with respect to the recording of the transaction. In order for the latter section to apply to the acquisition of a water or wastewater utility, two criteria must be met: first, the utility is being acquired in a transaction involving a willing buyer and seller; and, second, one of the two utility companies must be subject to Commission jurisdiction. We find that both of these conditions are satisfied in this case. Indiana American and Silver Creek are public utilities subject to our jurisdiction, and no party has disputed the fact that this transaction involves a willing buyer and a willing seller.

**B. Sale Approval and Public Interest.** A proposed sale is considered to be in the public interest if it meets the requirements of Ind. Code § 8-1-30.3-5(d), which are the following:

- (1) The utility property is used and useful to the offered utility in providing water service, wastewater service, or both.
- (2) The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.
- (3) The utility company will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility's plant, the offered utility's operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service.
- (4) The acquisition of the utility property is the result of a mutual agreement made at arm's length.
- (5) The actual purchase price of the utility property is reasonable.
- (6) The utility company and the offered utility are not affiliated and share no ownership interests.
- (7) The rates charged by the utility company will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility. For purposes of this subdivision, the rates and charges will not increase unreasonably in future general rate cases so long as the net original cost proposed to be recorded under [Ind. Code § 8-1-30.3-5(f)] is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base under IC 8-1-31 and

IC 8-1-31.7 that have occurred after the rate case. If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate case, the commission shall proceed to determine whether the rates charged by the utility company will increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility and, in making the determination, may consider evidence of:

- (A) the anticipated dollar value increase; and
  - (B) the increase as a percentage of the average bill.
- (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.

Certain requirements were uncontested. However, as Section Ind. Code § 8-1-30.3-5 directs us to consider each requirement, our analysis of each statutory requirement is below.

i. **Used and Useful Property.** Mr. Hobbs and Mr. Schneider testified that the utility property to be acquired is used and useful to the Silver Creek System, as Silver Creek is currently operating the system and using the property to provide water service to its customers. No party disputed this, and therefore, we find this requirement is met.

ii. **Offered Utility Too Small to Capture Economies of Scale.** Mr. Snyder and Mr. Schneider testified the Silver Creek System serves fewer than 8,000 customers, which is one of the findings the Commission may make under Ind. Code § 8-1-30.3-6 to demonstrate that the offered utility is too small to capture economies of scale. Mr. Snyder testified that on July 28, 2023, the date the Board used to certify the number of members eligible to vote on the acquisition, Silver Creek had 7,938 unique customers. Ms. Stull testified Silver Creek listed 8,041 customers in its 2022 IURC Annual Report but explained upon further investigation by the OUCC and looking at the facts of Silver Creek's operations Silver Creek did not report unique customers in its annual reports but reports "memberships." She stated a "membership" is required for each metered connection and one customer may have multiple "memberships". Accordingly, the OUCC was satisfied that Silver Creek should be considered to have fewer than 8,000 customers for purposes of qualifying for the determination that it is too small to capture economies of scale as a matter of law. Pub. Ex. 1 at 6.

Under Ind. Code § 8-1-30.3-6(6), this Commission may also consider "any other facts that the commission determines demonstrate the offered utility's inability to capture economies of scale or to furnish or maintain adequate, efficient, safe, or reasonable service or facilities" for the purposes of finding an offered utility is "too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities" under Ind. Code § 8-1-30.3-5(d)(2). The evidence of record reveals that Silver Creek anticipates a significant portion of its existing management and workforce will retire in the near future. Jt. Pet. Ex. 2, Attachment JS-3 (Joint Petition), at 8; Jt. Pet. Ex. 1 at 4. In addition, the record shows that as a stand-alone utility, Silver Creek's geographic limitations on customer growth also poses a financial burden to

its current customer base. Jt. Pet. Ex. 1 at 14-15.

After considering the evidence of record, we find that, pursuant to Ind. Code § 8-1-30.3-6(2), (5) and (6), the Silver Creek Systems “is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities.”

**iii. Purchaser Will Improve Economies of Scale.** Mr. Schneider and Mr. Hobbs testified how Indiana American’s ownership of the Silver Creek System will improve economies of scale and gave numerous examples. Their testimony supports a finding that it is in the best interest of Silver Creek’s customers to become part of the larger Indiana American customer base as the combined size will allow the customers to be served in a more efficient manner than if they were to be continued to be served by Silver Creek alone. The record shows that being included into a larger customer base will benefit Silver Creek’s customers by helping mitigate future rate increases due to the operational efficiencies. In particular these operational efficiencies include: a reallocation and optimization of headcount and reduced managerial overhead expense, the elimination of administrative services costs associated with operating a water utility, the addition of Indiana American’s engineering expertise and inclusion as part of Indiana American’s prioritization program for infrastructure replacement and planning purposes, the being protected by a comprehensive cybersecurity program. The evidence demonstrates that Silver Creek customers would see these benefits immediately. We find that the evidence of record demonstrates that Indiana American will improve economies of scale of the Silver Creek System and will make reasonable and prudent improvements to the offered utility’s plant and operations if needed.

**iv. Arm’s-Length Negotiations.** Mr. Snyder and Mr. Schneider both testified that the Asset Purchase Agreement was the result of arm’s length negotiations between Silver Creek and Indiana American. Thus, we find that this requirement is met.

**v. Reasonable Price.** Both Mr. Deason and Mr. Schneider testified that the purchase price for the Silver Creek System was less than the appraised value, as determined by appraisals that meet the requirements of Ind. Code § 8-1-30.3-5.5. Jt. Pet. Ex. 4 at 4-5; Jt. Pet. Ex. 2 at 5; Jt. Pet. Ex. 1, Attachment CAS-2. Therefore, pursuant to Ind. Code § 8-1-30.3-5(c)(2), we find that the purchase price is considered reasonable for purposes of Ind. Code § 8-1-30.3-5(d).

**vi. Buyer and Seller Are Unaffiliated.** Based on Mr. Snyder’s and Mr. Schneider’s undisputed testimony, Silver Creek and Indiana American are not affiliated and share no ownership interests, and therefore, this requirement is met.

**vii. Rates Will Not Increase Unreasonably.** Mr. Deason and Mr. Schneider testified rates would not increase unreasonably as a result of the acquisition. Mr. Deason stated that under the provisions of Ind. Code § 8-1-30.3-5(d)(7) the Silver Creek acquisition is slightly above the 2% safe harbor at 2.46%. However, he testified that the acquisition would not unreasonably increase rates in future general rate cases and overall rates and charges for Indiana American customers should be lower due to the acquisition. He testified Indiana American knows rates and charges will not increase unreasonably solely as a result of the acquisition due to the calculated revenue requirement effect of the acquisition in Attachment JD-2’s “Rev Impact Calc – Silver Creek”. Mr. Deason’s calculation assumes that the cost of providing service to the customers of

the Silver Creek System will be equal to Indiana American's average cost of serving existing customers except for rate base (and associated after-tax return, depreciation and property tax). Jt. Pet. Ex. 4 at 10. He then computed how much more the incremental after-tax return, depreciation, and property taxes will be per customer for the acquisition compared to Indiana American's existing system and customer base. Line 45 of the worksheet from this Attachment JD-2 calculates that the incremental revenue requirement from adding these 7,938 customers under our proposed journal entry is equal to (\$536,690) or a decrease of 0.153% (Line 47) in Indiana American's revenue requirement as authorized in its most recent rate case. In other words, rates will be lower for existing customers than they otherwise would be, all else being equal.

Therefore, based on the evidence of record, we find that rates charged by Indiana American will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from Silver Creek.

**viii. Cost Differential Amortization.** Mr. Deason stated the purchase price in the Asset Purchase Agreement was \$45,000,000, with an assumed additional \$159,000 of incidental expenses and other costs of acquisition. He testified that the purchase price included a "cost differential" as defined in Ind. Code § 8-1-30.3-5(c). He testified the "cost differential" would be included as a part of each asset category in the journal entry proposed in Attachment JD-1 on a pro-rated basis. The cost differential will be "amortized" and charged to expense over a reasonable period of time with corresponding changes to rate base through depreciation expense calculated pursuant to Indiana American's approved depreciation accrual rates. He testified, the journal entry in Attachment JD-1 proposes a reasonable manner for allocating the full purchase price plus expenses and other incidental costs of the acquisition.

Ms. Stull testified the OUCC accepts Indiana American's proposed journal entry.

Based on the evidence in the record and as there is no controversy between the parties, we find the cost differential will be amortized and charged to expense over a reasonable period of time through depreciation expense.

**ix. Conclusion.** Because we find the evidence of record demonstrates that all of the requirements of Ind. Code § 8-1-30.3-5(d) are met, we find the proposed sale of the Silver Creek System to Indiana American through the Asset Purchase Agreement is in the public interest.

**C. Ind. Code § 8-1-30.3-5(e) Requirements.** Under Ind. Code § 8-1-30.3-5(e), Indiana American, as the acquiring utility, is required to provide the following:

- (1) Notice to customers of the acquiring utility company that a petition has been filed with the commission under this chapter. The notice provided under this subdivision must include the cause number assigned to the petition. Notice under this subdivision may be provided to customers in a billing insert.
- (2) Notice to the office of the utility consumer counselor.
- (3) A statement of known infrastructure, environmental, or other issues affecting the offered utility, and the process for determining reasonable and prudent improvements upon completing the acquisition.

Based on the evidence of record, we find that Indiana American has satisfied all three of these requirements. Mr. Deason sponsored as Attachment JD-3 the statutory notice including the Cause number that was provided to customers via bill insert and filed in this Cause on April 17, 2024. Notice was provided to the OUCC through service of the Petition and Joint Petitioners' case-in-chief. Mr. Hobbs testified there were no known water quality or environmental issues affecting Silver Creek's System but potential future environmental challenges may occur due to loss of residual chlorine levels from existing water supply and explained how Indiana American's hydraulic modeling capabilities would best maximize Silver Creek's current storage capacity for the benefit of the now larger Indiana American customer base while also mitigating future potential water issues from Silver Creek's available storage. Mr. Hobbs explained the process Indiana American will undertake after closing to determine what improvements need to be made to the system.

**D. Sale Approval and Accounting Treatment.** Because we have determined that Joint Petitioners have satisfied all of the requirements listed in Section 30.3-5(d) and (e), we find that Joint Petitioners' petition should be granted and thus the provisions of Section 30.3-5(f) directs the Commission as follows:

In a proceeding under subsection (d), the commission shall issue its final order not later than two hundred ten (210) days after the filing of petitioner's case in chief. If the commission grants the petition, the commission's order shall authorize the acquiring utility company to make accounting entries recording the acquisition and that reflect:

- (1) the full purchase price;
- (2) incidental expenses; and
- (3) other costs of acquisition;

As the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

The amount Indiana American seeks to record in net original cost rate base is equal to the purchase price of \$45,000,000 plus approximately \$159,000 in estimated incidental expenses and other costs of acquisition for a total original cost rate base of approximately \$45,159,000, as set forth in Attachment JD-1 to Joint Petitioners' Exhibit No. 4. The OUCC took no issue with the proposed purchase price or journal entry.

In this proceeding, we are to decide whether the Section 30.3-5(d) and (e) factors have been met (and we have found above that they have) and then we "shall" authorize the accounting and ratemaking treatment directed by Section 30.3-5(f). Based on the evidence in the record and as the OUCC did not contest the proposed journal entry, we approve Indiana American's proposed accounting and journal entries as described by Mr. Deason's direct testimony and Attachment JD-1. Therefore, we find Indiana American is authorized to 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 Attachment JD-1. As acknowledged by Mr. Deason, the journal entry

should be adjusted to reflect actual (rather than estimated) incidental expenses and other costs of acquisition.

We find that Indiana American's existing depreciation accrual rates approved by the Commission in Cause No. 45870 and included in the calculation of rates implemented on February 21, 2024, should be applied on and after the closing date of the acquisition to depreciable property purchased from Silver Creek pursuant to the Asset Purchase Agreement.

**E. Rates and Rules.** In the Joint Petition, Indiana American proposed to apply the rules, regulations, and rates and charges generally applicable to its Area One customers to the Silver Creek customers. (Petition, p. 11) The OUCC did not oppose applying Indiana American's rules and regulations. Accordingly, the Commission finds those rules and regulations should be applied as proposed.

The OUCC took issue, however, with Indiana American's proposal to apply its Area One rates to the customers Silver Creek had served. The OUCC opposed this request and asked the Commission to find that Silver Creek's former customers should continue to be charged their currently approved tariff rates until Indiana American's next base rate case, whereupon Area One rates would be applied.

To qualify for ratemaking treatment under Ind Code § 8-1-30.3-5, among other things the Commission must find the offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities. *See* Subsection 5(d)(2). There is no suggestion in this case that Silver Creek is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities. As such, the relief Indiana American seeks in this Cause is tied to the premise that the utility it is acquiring is too small to capture economies of scale.

The Commission must also find that the utility company (i.e., Indiana American) "will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility's plant, the offered utility's operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service." *See* Subsection 5(d)(3). Again, there is no assertion that Indiana American needs to make improvements so Silver Creek's customers will begin to receive adequate, efficient, safe, and reasonable service. The Commission, having found both of these criteria have been met, finds it illogical that Indiana American cannot provide service directly to these customers without incurring greater cost than Silver Creek, which lacks economies of scale by virtue of its small size, or that the evidence supports this premise.

As Ms. Stull noted, *capturing economies of scale* typically suggests lower costs and, therefore, lower prices of services. Public's Ex. 1 at 7. We have elsewhere found that Silver Creek lacks the economies of scale that Indiana American has and is required to bring into play. This belies the need and justification for any immediate rate increase for Silver Creek's customers. Yet, Indiana American proposes to immediately charge nearly twice what Silver Creek currently charges for essentially the same service.

While Mr. Schneider testified that because of the acquisition Silver Creek customers will be receiving the benefits of a comprehensive nationwide cybersecurity program, we are not persuaded the per customer cost of that program is equal to the significant difference between Silver Creek's rates and Indiana American's Area One rates. Additionally, there is no evidence

improvements are needed to allow Silver Creek's customers to begin receiving adequate, efficient, safe, and reasonable service as described in Subsection 5(d)(3). In fact, the evidence demonstrates otherwise.

In light of our findings that Indiana American will improve economies of scale and Silver Creek cannot capture economies of scale as a matter of law, it was incumbent upon Indiana American to establish with proof why the rates of these customers—customers Indiana American has indirectly been serving but will now serve directly—should be so significantly increased. Indiana American suggests it is the OUCC's burden to establish that the Area One rates Indiana American proposes to apply to these customers are not cost based. This suggestion, however, ignores key facts. Most importantly, Indiana American is the party seeking relief in the form of its request to establish the rates and charges that will prospectively apply to the customers Silver Creek served. Indiana American proposes to apply its Area One rates, but in other acquisition cases, Indiana American opposed that result, asking that the offered utility's existing rates continue to apply. As the party seeking approval to apply the Area One rates, Indiana American has the initial burden of proof. Indiana American has done nothing to shift that burden. Indiana American presented no evidence demonstrating marginally higher costs to provide water directly to Silver Creek's customers instead of on a wholesale basis, and based on the record, we are unable to conclude that it will cost Indiana American any more than what is already in its revenue requirement to serve Silver Creek on a wholesale basis. Indiana American seeks a significant rate increase for the customers Silver Creek served without cost or other justification the Commission finds persuasive.

Presumably, the addition of the Silver Creek customers will have a positive effect on Indiana American's prospective rates through the economies of scale that adding nearly 8,000 customers will capture. But until Indiana American's next rate case, there is no mechanism by which the addition of these customers can benefit Indiana American's customers, including those acquired from Silver Creek. Meanwhile, Indiana American seeks to benefit from the projected economies of scale it will gain as a result of this transaction before any of its existing customers, whose rates were established in Cause No. 45870, may benefit from the additional economies of scale captured through the acquisition of Silver Creek's customer base.

Indiana American had an opportunity to demonstrate how its marginal costs will increase as a result of Silver Creek's customers being added. Instead of affirmatively doing so, Indiana American implied it was the OUCC's burden to demonstrate the rate structure Indiana American requested should not apply. Mr. Schneider merely opined that Ms. Stull presented "no analysis demonstrating that Indiana American's costs of serving the Silver Creek customers will be any different from the costs of serving other Area One customers." *Schneider Rebuttal* at 3-4. In its prayer for relief in the Joint Petition, Indiana American requests our authority to charge its Area One rates; consequently, it was Indiana American's evidentiary burden to prove the application of those rates is reasonable. While burdens may shift in response to a prima facie case, we find Indiana American made no such prima facie case.

The suggestion in Joint Petitioner's proposed order<sup>7</sup> that the OUCC had the burden to demonstrate "that Indiana American's costs of serving the Silver Creek customers will be any different from the costs of serving other Area One customers" is further unreasonable because it

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<sup>7</sup> Pages 13 and 19 of Joint Petitioner's proposed order.

is Indiana American that possesses and maintains the information that could be used to establish how the acquisition would affect Indiana American's marginal costs, not the OUCC. Nonetheless, the OUCC provided evidence upon this issue, including Indiana American's response to a data request confirming Indiana American had no plan to hire individuals to provide service to the Silver Creek area. In response to OUCC DR Q 4-2 asking Indiana American to "identify any positions that will need to be created to run Silver Creek's assets or serve Silver Creek's customers following acquisition," Indiana American responded that "No job position is expected to be created for the purposes of running Silver Creek's assets or serving Silver Creek's customers following acquisition." Public's Exhibit CX-1.

While there was, arguably, an inference that the Silver Creek customers received a pretty nice payout in connection with the acquisition and knew what rate they were signing up for, so they have little cause to complain about the proposed significant rate increase (Joint Petitioner's proposed order at pages 16 and 19), such an argument disregards the fact that the value these customers received was by virtue of their status as beneficial owners of the utility, not as customers. The value they received was presumably fair, and it should not be eroded by potentially unreasonable rates. Such a sentiment also ignores that customers come and go, and in a short time there may be a growing number of individuals receiving water service in the Silver Creek customer area that did not participate in the sale. Yet, under Indiana American's proposal, they would be paying rates significantly higher than what they would have paid under Silver Creek's ownership, without an acceptable justification for these higher rates having been shown. Indiana American's burden is not met by customer consent to the acquisition, but rather, by evidence that the proposed rates are necessary for Indiana American to meet its marginal cost.

Viewing the evidence as a whole, the Commission finds Indiana American has not established that we should approve its request to charge the nearly 8,000 Silver Creek customers its Area One rates. The factors we considered include our findings that Indiana American will improve economies of scale, that Silver Creek is too small to capture economies of scale as a matter of law, that Indiana American is already the ultimate provider of water service to the Silver Creek customers, that the rates charged to the former Silver Creek customers will not affect the rates charged to Indiana American's other customers until its next rate order, and most importantly, the lack of evidence showing any marginal increase in costs to Indiana American as a result of providing water service directly to the Silver Creek customers.

Consequently, the Commission finds that we agree with the OUCC's recommendation that Silver Creek's current tariffed rates shall continue to apply, subject to water trackers or other rate adjustment mechanisms such as the distribution system improvement charge; therefore, we further find Indiana American should be ordered to continue charging the customers Silver Creek served the same rates and charges as Silver Creek billed these customers until approval of Indiana American's next base rate case order.

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

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

1. Joint Petitioners are authorized to consummate the acquisition of the Silver Creek System by Indiana American on the terms described in the Asset Purchase Agreement and in the evidence as discussed in this order.

2. In accordance with our findings above, Indiana American is authorized to reflect the acquisition of the Silver Creek System on its books and records as of the closing date by making the accounting and journal entries described in Joint Petitioners' Exhibit No. 4, Attachment JD-1, as adjusted to actual incidental expenses and costs of the acquisition. Indiana American may record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to \$45,000,000, plus actual incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as shown in Joint Petitioners' Exhibit No. 4, Attachment JD-1. The net original cost, as defined in this order, of the acquired property shall be used for accounting, depreciation, and rate base valuation purposes after closing.

3. Indiana American is authorized to apply its non-recurring charges and the rules and regulations generally applicable to its Area One customers to the customers currently served by the Silver Creek System.

4. Indiana American's request to apply its Area One rates to the customers connected to the acquired assets is denied. Subject to any approved trackers, the rates Silver Creek was charging shall continue to apply to the customers Silver Creek formerly served until Indiana American's next general base rate case order.

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

6. Indiana American is authorized to encumber the properties comprising the Silver Creek System with the lien of Indiana American's mortgage indenture.

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

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED:**

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

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Dana Kosco  
Secretary to the Commission