

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

**JOINT PETITION OF CROSSROADS)
UTILITIES, LLC (“CROSSROADS”) AND LMH)
UTILITIES CORP. (“LMH”) FOR APPROVAL AND)
AUTHORIZATION OF: (A) THE ACQUISITION)
BY CROSSROADS OF LMH’S WASTEWATER)
UTILITY PROPERTY (THE “LMH SYSTEM”) IN)
DEARBORN COUNTY, INDIANA PURSUANT TO)
THE PURCHASE AGREEMENT THEREFOR;) CAUSE NO. 45833
(B) APPROVAL OF ACCOUNTING AND RATE BASE)
TREATMENT; (C) APPROVAL OF THE APPLICATION)
OF LMH’S EXISTING RATES AND CHARGES AFTER)
CLOSING; (D) APPROVAL OF CROSSROADS’)
RULES AND REGULATIONS)
FOLLOWING CLOSING; (E) APPLICATION OF)
LMH’S DEPRECIATION ACCRUAL RATES TO SUCH)
ACQUIRED PROPERTIES; AND (F) THE APPROVAL OF)
THE TRANSFER OF LMH’S CERTIFICATE OF)
TERRITORIAL AUTHORITY TO CROSSROADS.)**

VERIFIED JOINT PETITION

Crossroads Utilities, LLC (“Crossroads”) and LMH Corp. (“LMH”), (together, “Joint Petitioners”), hereby petition the Indiana Utility Regulatory Commission (“Commission” or “IURC”) for certain approvals relating to the acquisition of the wastewater system of LMH Utilities (the “LMH System”) by Crossroads. In support, Joint Petitioners respectfully show the Commission:

1. Crossroads is an Indiana limited liability company formed under the laws of the State of Indiana. Upon approval of this Petition and closing of the transaction described below, Crossroads will be a public utility subject to regulation by the Commission in the manner and to the extent provided by the laws of the State of Indiana, including Indiana Code § 8-1-2-1 *et. seq.* As the new owner of the LMH System, Crossroads will own, operate, manage and control plant,

property, equipment and facilities for the collection, transportation and treatment of wastewater for residential, commercial, industrial, and potentially wholesale purposes.

2. LMH is a for-profit corporation engaged in the business of providing sewage disposal service in rural Dearborn County, Indiana, headquartered in Bright, Indiana. LMH currently serves 1,331 customers. LMH's Picnic Woods wastewater treatment plant ("WWTP") is a 300,000 gallons per day ("GPD") sequencing batch reactor system. LMH's collection system consists of approximately 23 miles of collection and force mains, composed of PVC pipe in sizes varying from two inches to eight inches in diameter. LMH is subject to the Commission's jurisdiction in accordance with Indiana Code § 8-1-30.3-5(a)(2) for purposes of its wastewater rates, charges and financings. The LMH System is used and useful to LMH in providing wastewater service to its customers as described in Indiana Code § 8-1-30.3-5(d)(1).

3. Crossroads and LMH engaged in arm's length negotiations to arrive at an Asset Purchase Agreement (the "Agreement") providing for Crossroads' purchase of the LMH System. Crossroads is a willing buyer and LMH is a willing seller in accordance with Indiana Code § 8-1-30.3-5(a)(1). The Agreement provides that prior to closing, Crossroads shall have received an Order from the IURC including the following approvals:

- (A) Approval of the acquisition;
- (B) Approval to transfer LMH's System to Crossroads;
- (C) Authorization for Crossroads to serve the customers of the LMH System;
- (D) Approval of Crossroads' proposed accounting and rate base treatment with respect to the acquisition including recognition of the full purchase price and cost differential, costs of acquisition, in net original cost rate base; and
- (E) Approval of the application of LMH's depreciation accrual rates to the LMH System assets.

4. Crossroads and LMH are filing this Joint Petition under Ind. Code ch. 8-1-30.3, as amended. Indiana Code ch. 8-1-30.3 (referred to herein as “Chapter 30.3”) provides that a public water or wastewater utility that acquires the utility property of an “offered utility” (formerly a “distressed utility”) may petition the Commission to include the “cost differential” associated with the acquisition as part of its rate base. Chapter 30.3 establishes certain circumstances under which this ratemaking treatment is required and sets forth certain findings the Commission must make in order to grant the requested relief. One justification for acquiring the offered utility under Chapter 30.3, the inability of the offered utility to capture economies of scale due to its size. Another justification for authorizing the acquisition under Chapter 30.3 is that the acquiring utility 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.

5. The purchase price for the System in this acquisition includes a “cost differential” as that term is defined in Ind. Code § 8-1-30.3-1, and as part of the conditions to closing noted above, Joint Petitioners seek an Order of this Commission that the full purchase price of the systems plus transaction costs, including the cost differential, shall be included in Crossroads’ rate base for ratemaking purposes in general rate cases. The definition of “cost differential” set forth in Ind. Code § 8-1-30.3-1(a) remains the same under the amended statute; and there is a rebuttable presumption that the cost differential is reasonable under Ind. Code § 81-30.3-5(b). In 2020, the Indiana General Assembly added an additional circumstance that applies here under which the purchase price and any resulting cost differential are considered reasonable for acquisitions not made under IC 8-1.5-2-6.1. Ind. Code § 8-1-30.3-5(c)(2) states that:

[i]f the acquisition is not made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under section 5.5 of this chapter, then

the purchase price is considered reasonable for purposes of [the elements set forth in IC 8-1-30.3-5(d)] and any resulting cost differential is considered reasonable.

Thus, for purposes of the requirement in Ind. Code § 8-1-30.3-5(d)(5) that the purchase price be reasonable, the purchase price is considered reasonable if the acquisition is not made under Section 6.1 and to the extent the purchase price does not exceed the appraised value of the system as determined under IC 8-1-2-5.5. Section 5.5 sets forth the requirements for an appraisal for acquisitions not under Ind. Code § 8-1.5-2-6.1.

6. Ind. Code § 8-1-30.3-5(d) provides that the Commission shall grant such relief if it finds:

- a) The utility property is used and useful to the offered utility in providing water service, wastewater service, or both water and wastewater service.
- b) 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.
- c) 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.
- d) The acquisition of the utility property is the result of a mutual agreement made at arms-length.
- e) The actual purchase price of the utility property is reasonable.
- f) The utility company and the offered utility are not affiliated and share no ownership interests.
- g) 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.
- h) 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 to rate base.

For purposes of subdivision (g), the statute clarifies that the determination regarding whether the acquisition will unreasonably increase the acquiring utility's rates is with a view to a future general rate case, and the consideration is whether the acquisition is the sole cause of such increase. The statute also defines an increase in rates and charges as reasonable so long as the net

original cost proposed to be recorded 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. Ind. Code § 8-1-30.3-5(d)(7). The statute sets forth a process in the event the amount proposed to be recorded is greater than two percent (2%) of the acquiring utility's net original cost rate base. *Id.*

7. The statute provides that if the amount proposed to be recorded 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, 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. Crossroads does not have existing rate base in Indiana. Crossroads does not propose any rate increase for customers of the LMH System at this time and commits that rates will not increase unreasonably in future general rate cases solely as a result of Crossroads' acquisition of the LMH System.

9. Indiana Code § 8-1-30.3-6 specifies what it means for purposes of Section 5(d)(2) for an offered utility to be too small to capture economies of scale or to have failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities. Subsection (5) of Ind. Code § 8-1-30.3-6 no longer requires that the offered utility be municipally owned or sold under Ind. Code § 8-1.5-2-6.1, and only requires the offered utility to serve fewer than eight thousand (8,000) customers to satisfy the finding. Further, subsection (6) includes, as an additional determination

the Commission may make to satisfy the finding, a consideration of any other facts that demonstrate an offered utility's inability to capture economies of scale.

10. Each of the elements of Ind. Code § 8-1-30.3-5(d) exist with respect to this acquisition. Specifically, with respect to element (2), LMH is too small to capture economies of scale under Ind. Code § 8-1-30.3-6 because the LMH Systems serve fewer than eight thousand (8,000) customers. Ind. Code § 8-1-30.3-6(5). Specific to element (6), Crossroads and LMH are not affiliated and share no ownership interests. Ind. Code § 8-1-30.3-5(d)(6).

11. Crossroads and LMH are seeking approval pursuant to Ind. Code § 8-1-30.3-5(d) of this transaction prior to closing on the acquisition. As required under subsection Ind. Code § 8-1-30.3-5(e), LMH is causing notice to be provided to all of its customers of the proposed acquisition and this proceeding. Further, a copy of this petition and evidence is being provided to the Indiana Office of Utility Consumer Counselor ("OUCC") as required.

12. In accordance with Indiana Code § 8-1-30.3-5(e)(3), Joint Petitioners provide in their verified, pre-filed testimony "a statement of known infrastructure, environmental, or other issues affecting [LMH], and the process for determining reasonable and prudent improvements upon completing the acquisition."

13. Joint Petitioners seek approval of the sale of the LMH System pursuant to the terms and conditions of the Agreement included in the evidence submitted herewith. The proposed acquisition is in the public interest because the elements of Ind. Code § 8-1-30.3-5(d) have been satisfied, and Joint Petitioners are seeking approval pursuant to that section.

14. Following the closing of the proposed acquisition, day-to-day management of the LMH System will be performed by qualified and experienced sewer utility professionals and customers of the LMH System will enjoy high quality service from Crossroads. Crossroads will

implement improved asset management practices and prioritize necessary improvements for the LMH System.

15. Crossroads proposes to maintain LMH’s existing rates and charges applicable to customers of the LMH System from and after closing of the acquisition until Crossroads determines it is appropriate to seek a rate adjustment. Crossroads requests authority to continue depreciating the LMH assets at LMH’s existing composite rate of 2.5% per year for all depreciable asset categories as describe in Joint Petitioners’ evidence. Crossroads also requests approval of its proposed rules and regulations included with Joint Petitioners’ case-in-chief.

16. Crossroads seeks approval to record as the net original cost rate base an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated in a reasonable manner among appropriate utility plant in service accounts. This is without regard to amounts that may be recorded on LMH’s books and records and without regard to any grants or contributions previously received by LMH. Crossroads is presenting its proposed journal entries in its evidence submitted herewith, together with its proposed allocation among utility plant in service accounts.

17. Pursuant to the Commission’s Order dated August 22, 1990 in Cause No. 38965, LMH received an initial Certificate of Territorial Authority (“CTA”), and LMH’s territory was expanded in four additional IURC proceedings as set forth below.

CTA Description	IURC Cause Number	IURC Order Date(s)
Original	38965	8/22/90
Expansion	39645	6/30/93
Expansion	40004	5/3/95
Expansion	40891	8/5/98
Expansion	41413	3/22/00; 5/24/01

Crossroads seeks the transfer of LMH’s original and four expanded CTAs (the “Collective CTAs”) to Crossroads.

18. Crossroads has the lawful power and authority to apply for such a certificate and to provide such service, the financial ability to install, commence and maintain the proposed sewer service, and public convenience and necessity require the rendering of such service in the area in which LMH is presently authorized to serve. As is set forth more fully in the Crossroads' case-in-chief testimony, Crossroads has the financial, managerial and technical ability to own, operate and maintain the LMH System and to provide excellent quality service to LMH's customers.

19. In accordance with Ind. Code § 8-1-30.3-5(f), Joint Petitioners respectfully request that the Commission issue a Final Order on an expedited basis and no later than two hundred and ten (210) days after filing the Joint Petition. Joint Petitioners have conferred with the OUCC and propose the following agreed procedural schedule:

January 3, 2022	Joint Petitioners' Case-in-Chief Filing
March 16, 2023	OUCC Testimony Due
April 4, 2023	Joint Petitioners' Rebuttal Testimony Due
April 10, 2023	Settlement filings
April 18, 19, or 20, 2023 (one day)	IURC Evidentiary Hearing
May 5, 2023	Joint Petitioners' Proposed Order
May 26, 2023	OUCC's Proposed Order
June 2, 2023	Joint Petitioners' Reply to OUCC Proposed Order
August 2, 2023 (Wed.) Day 210	Estimated Date for Final IURC Order

The parties further agree that discovery should be conducted on an informal basis, with responses or objections due within ten (10) calendar days. After the Joint Petitioners' Rebuttal filing date, any responses or objections to a discovery request shall be made within five (5) business days. Discovery requests received after 5:00 p.m. EST on Monday through Thursday or

after 12:00 p.m. EST on Fridays or the day before a holiday shall be deemed received the next business day.

20. Joint Petitioners consider that Ind. Code §§ 8-1-2-6, -12, -19, -38, -39, -83, -84, -89 and ch. 8-1-30.3, among others, may be applicable to the subject matter of this petition.

21. The following are the attorneys for Joint Petitioners and are authorized to accept service of papers on behalf of their respective clients:

For Crossroads Utilities, LLC:

Nikki G. Shoultz, Atty. No. 6509-41
Kristina Kern Wheeler, Atty. No. 20957-49A
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Telephone: 317-684-5000
Fax: 317-223-0242 (telefax)
Email: nshoultz@boselaw.com
Email: kwheeler@boselaw.com

For LMH Utilities Corp.:

Jeffrey M. Peabody, Atty. No. 28000-53
Lauren Aguilar, Atty. No. 33943-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
Telephone: 317-231-6465
Fax: 317-231-7433
Email: jeffrey.peabody@btlaw.com
Email: laguilar@btlaw.com

WHEREFORE, Joint Petitioners respectfully request the Commission promptly issue a Pre-Hearing Conference Order approving the agreed procedural schedule and thereafter issue an Order granting the following relief:

(a) Approve that without regard to amounts that may be recorded on LMH's books and records and without regard to any grants or contributions that LMH may have received, Crossroads 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 Crossroads' evidence;

(b) Grant such approvals as may be necessary to consummate the acquisition by Crossroads of the LMH Systems on the terms described herein and in the Agreement which will be submitted as part of Joint Petitioners' evidence herein;

(c) Authorize Crossroads' adoption and application of its proposed rules and regulations submitted with Joint Petitioners' case-in-chief and authorize Crossroads to charge the rates and charges currently in effect for customers of the LMH System.

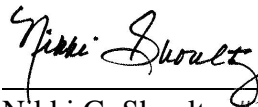
(d) Authorize Crossroads to apply the depreciation accrual rates to the LMH System as described in Joint Petitioners' evidence herein;

(e) Authorize the transfer of LMH's Collective CTAs to Crossroads; and

(f) Grant Joint Petitioners all other appropriate relief.

Dated this 3rd day of January, 2023.

Respectfully submitted,



Nikki G. Shoultz, #16509-41
Kristina Kern Wheeler, #20957-49A
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000 (office)
(317) 223-0242 (facsimile)
nshoultz@boselaw.com
kwheeler@boselaw.com

Attorneys for Crossroads Utilities, LLC



Jeffrey M. Peabody, Atty. No. 28000-53
Lauren Aguilar, Atty. No. 33943-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
Telephone: 317-231-6465
Fax: 317-231-7433
Email: jeffrey.peabody@btlaw.com
Email: laguilar@btlaw.com

Attorneys for LMH Utilities Corp.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served this 3rd day of January, 2023, by electronic transmission to the following:

Dan Levay
Indiana Office of Utility Consumer Counselor
PNC Center, Suite 1500 South
115 W. Washington Street
Indianapolis, IN 46204
dlevay@oucc.in.gov
infomgt@oucc.in.gov



Nikki G. Shultz, #16509-41

4495554_1

VERIFICATION

I hereby verify that the foregoing is true and accurate to the best of my knowledge and belief.

DATED: January 3, 2023



Michael Myers