

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

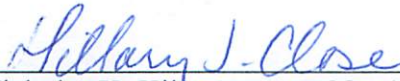
JOINT PETITION OF INDIANA-AMERICAN)
WATER COMPANY INC. ("INDIANA)
AMERICAN") AND THE TOWN OF RILEY,)
INDIANA ("RILEY") FOR APPROVAL AND)
AUTHORIZATION OF: (A) THE)
ACQUISITION BY INDIANA AMERICAN OF)
RILEY'S SEWER UTILITY PROPERTIES)
(THE "RILEY SYSTEM") IN VIGO COUNTY,)
INDIANA IN ACCORDANCE WITH A)
PURCHASE AGREEMENT THEREFOR; (B))
APPROVAL OF ACCOUNTING AND RATE)
BASE TREATMENT; (C) APPROVAL OF THE)
RATES AND CHARGES FOR SEWER)
SERVICE IN THE AREA SERVED BY THE)
RILEY OPERATION; (D) APPROVAL OF)
APPLICATION OF INDIANA AMERICAN'S)
MUNCIE SEWER RULES AND)
REGULATIONS TO THE RILEY SEWER)
SYSTEM WITH CHANGES TO ADDRESS)
PRORATION OF PARTIAL UTILITY)
PAYMENTS ; (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. 45290

SUBMISSION OF PROPOSED ORDER

Indiana-American Water Company, Inc. ("Indiana American") and the Town of Riley, Indiana ("Riley") (collectively "Joint Petitioners") hereby submit their Proposed Order in this proceeding. Based on discussions at the hearing on January 17, 2020, Joint Petitioners will submit any updates to the Proposed Order, if needed, following the hearing to be held on February 11, 2020.

Respectfully submitted,



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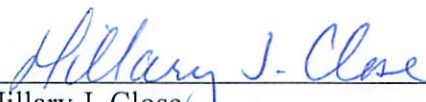
Attorney for Petitioner

Town of Riley, Indiana

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 22nd day of January, 2020, by electronic transmission to the following:

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Hillary J. Close

DMS 16291088v1

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ORDER OF THE COMMISSION

Presiding Officers:

Stefanie N. Krevda, Commissioner

Jennifer L. Schuster, Administrative Law Judge

On September 9, 2019, Indiana American Water Company, Inc. (“Indiana American”) and the Town of Riley, Indiana (“Riley” or the “Town”) (collectively, “Joint Petitioners”) filed their Petition in Cause No. 45290 seeking certain approvals relating to the proposed acquisition by Indiana American of the assets comprising the sewer system owned by Riley (the “Riley System”).

On December 5, 2019, the Office of Utility Consumer Counselor (“OUCC”) filed its case-in-chief. On December 18, 2019, Joint Petitioners filed their Rebuttal Testimony and Attachments

in this Cause. On January 14, 2020, the Commission issued a docket entry requesting additional information from Indiana American, to which Indiana American responded on January 15, 2020.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in Cause No. 45290 was held commencing at 9:30 a.m. on January 17, 2020 in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared and participated in the hearing.

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

1. Notice and Jurisdiction. Due, legal and timely notice of the public hearing conducted herein was given by the Commission as required by law. Indiana American is a “public utility” within the meaning of that term in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. The Riley System is a municipally owned utility as that term is defined in Ind. Code § 8-1.5-1-10 for purposes of Ind. Code §§ 8-1.5-2-4 through 8-1.5-2-6.1. Pursuant to Ind. Code ch. 8-1-30.3 and Ind. Code § 8-1.5-2-6.1, the Commission has jurisdiction over the proposed sale of a municipally owned utility. The Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. Characteristics of the Petitioners.

A. Indiana American’s Characteristics. Indiana American is an operating public utility, incorporated under the laws of the State of Indiana, 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 engaged in the provision of water utility service to the public in an around numerous communities throughout the State of Indiana, including Vigo County. Indiana American also provides sewer utility service in Hamilton, Wabash and Delaware Counties. Indiana American has charter power and authority to engage in the business of providing such water and sewer utility service under indeterminate permits and franchises, licenses and permits heretofore duly acquired. Indiana American owns, operates, manages and controls plant, property, equipment 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.

B. Riley’s Characteristics. Riley is a municipality located in Vigo County, Indiana. Riley owns and operates a municipal sewer system and serves approximately 430 customers. Indiana American previously acquired Riley’s water utility system pursuant to the Commission’s orders in Cause No. 43855 and 44161. The Riley System is located near Indiana American’s existing Wabash Valley Operations in Vigo County. The Riley System is a municipal sewer utility and therefore is not considered a “utility” for purposes of Ind. Code § 8-1-2-1, but is a “utility” and “municipally owned utility” for purposes of Ind. Code §§ 8-1.5-2-4 through 6.1.

3. Relief Requested. Joint Petitioners filed Cause No. 45290 pursuant to Ind. Code § 8-1-30.3-5 (“Section 30.3-5”) and § 8-1.5-2-6.1 (“Section 6.1”) and request that the Commission

(1) grant such approvals as may be necessary to consummate the acquisition of the Riley System by Indiana American on the terms described in the Joint Petition and the Asset Purchase Agreement between Indiana American and Riley (Attachment DAB-2); (2) approve that without regard to amounts that may be recorded on Riley's books and records and without regard to any grants or contributions that Riley may have received, Indiana American may record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed in Joint Petitioners' evidence; (3) authorize Indiana American to apply the rules and regulations applicable to its existing wastewater customers in and adjacent to Delaware County, Indiana (Muncie Sewer, formerly Farmington), with changes to address partial utility payments, to customers to be served by Indiana American as a result of this acquisition; (4) approve the adoption of Riley's wastewater rates and charges adopted by the Riley Town Council as of the closing by Indiana American as reflected in the tariff sheet sponsored by Indiana American witness Greg Shimansky (Attachment GDS-2); (5) authorize Indiana American to apply its existing depreciation accrual rates to the Riley System; and (6) approve the encumbering of the properties comprising the Riley System with the lien of Indiana American's Mortgage Indenture.

4. Joint Petitioners' Direct Evidence. Joint Petitioners presented direct testimony from Clay White, President of the Riley Town Board, Douglas Brock, Vice President, Operations employed by American Water Works Service Company, Inc. ("Service Company"), Gregory Shimansky, Director, Rates & Regulatory employed by Service Company, and Ezat Nayeri, Engineering Manager employed by Indiana American.

A. Indiana Code § 8-1.5-2-6.1 and the Offered Utility Statute. Mr. Shimansky provided a backdrop to Indiana's legislative policy towards consolidation in the water and sewer industries. Mr. Shimansky explained that challenges facing water and wastewater utilities in the U.S., including the need to make billions of dollars of investment to repair and replace aging infrastructure, have contributed to consolidation in the industry. Mr. Shimansky further explained the State of Indiana has made the legislative determination to encourage beneficial consolidation through several legislative enactments over multiple Sessions. Mr. Shimansky explained that part of this legislative direction has included the original of Ind. Code ch. 8-1-30.3, as well as the amendments to that chapter during subsequent Sessions. Mr. Shimansky further explained the most recent amendment to the statute, Senate Enrolled Act 472 (2019), removed the stigma of equating a small utility to a "distressed" utility (now referring to the system to be sold as an "offered utility") and highlighted economies of scale. He testified that with the recent 2019 amendment, the chapter is now known as the Offered Utility Statute.

Mr. Brock testified regarding how the sale complied with the statutory process under Ind. Code § 8-1.5-2-6.1 and the Offered Utility Statute. Mr. Brock explained Indiana law establishes certain circumstances under which a public water or wastewater utility that acquires the utility property of an "offered utility" may petition the Commission to include any "cost differential" associated with the acquisition as part of its rate base. He further explained that Riley's proposed sale of its wastewater system to Indiana American is governed by Ind. Code § 8-1.5-2-6.1 requiring Commission approval of the sale of non-surplus utility property by municipal utilities. The standard for approval is whether the sale according to the proposed terms and conditions is in the public interest. Ind. Code § 8-1.5-2-6.1(d). The purchase price is deemed reasonable if it does not

exceed the statutory appraised value. *Id.* If the Commission makes the findings set forth in Ind. Code § 8-1-30.3-5(d), Ind. Code § 8-1.5-2-6.1 directs that the proposed sale is in the public interest.

Mr. Brock described how the proposed acquisition of the Riley System followed this process. He explained that under the new law, 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 conditions listed in Ind. Code § 8-1-30.3-6 exist. Mr. Brock testified the Riley System serves fewer than 5,000 customers so it satisfies this requirement. Mr. Brock further testified that the Riley System also satisfies additional requirements under Sec. 30.3-6 because: (1) it has violated one or more regulatory requirements and received multiple Notice of Violations from IDEM, (2) it is unable to furnish and maintain adequate service to its customers at rates equal to or less than Indiana American’s wastewater rates due to necessary improvements to the plant and system that it does not believe it can afford, and (3) it lacks the adequate technical ability and expertise to manage the system.

Mr. Brock testified that because the system is an “offered utility,” the Joint Petitioners in this Cause have filed a petition under Ind. Code § 8-1-30.3-5, and in order to qualify for the ratemaking treatment established in that section, the acquisition must satisfy all of the elements listed in Ind. Code § 8-1-30.3-5(d). He described how the proposed acquisition satisfies each of these requirements. Compliance with each of these requirements is described in further detail in the Commission’s findings discussion below.

Mr. Brock testified that the customers of the Riley System will benefit from the acquisition. Mr. Brock reiterated that under the 2019 statutory amendment, the Commission may now consider whether a system is too small to capture economies of scale for purposes of satisfying the requirements under Section 30.3-5(d). Mr. Brock explained the meaning of “economies of scale” as it is used in this context. He explained that economies of scale is generally understood to describe cost savings from larger size, but it is far too simplistic to simply compare what it costs Riley to operate its system and what it will cost Indiana American. Instead, the question is: whether it is less expensive for Indiana American to provide the higher level of service it provides on a regular basis because of its size, than it would be for Riley to provide that same level of service.

Mr. Brock described in detail how Indiana American will improve the system’s economies of scale and operations to benefit Riley’s customers. Mr. Brock testified Indiana American is in the utility business and brings to bear all of the financial, managerial and technical ability and expertise required to adequately run the utility in a way that Riley cannot. Mr. Brock provided specific examples of these benefits including: access to Indiana American’s 21 licensed wastewater operators, inclusion in Indiana American’s prioritization model and asset management program, access to professional staff to keep and maintain its books and records, the ability to leverage Indiana American’s purchasing and contracting expertise, access to Indiana American’s testing and research resources, and access to Indiana American’s technology and information systems, among other benefits.

Mr. Brock further testified the proposed purchase price for the system is \$1,545,000. The appraised value of the Riley System as determined pursuant to Indiana statute is \$2,749,000, and the appraised value of the land is \$15,000. Mr. Brock explained the Town Council determined to

sell the System for less than the full appraised value in order to result in lower utility rates for the Riley wastewater customer than would need to be charged if the full appraised value was used as the purchase price. Mr. Brock testified that the original cost rate base for the Riley System would be \$1,710,000, assuming \$165,000 of incidental expenses and other costs of acquisition.

Mr. Brock testified that in addition to the requirements listed in Section 30.3-5(d), Indiana American must also provide the required information set forth in subsection 5(e) in connection with its petition. With respect to those requirements, Mr. Brock testified Indiana American provided the required notices, as well as 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. Mr. Ezat Nayeri discusses the known issues and the process for determining reasonable and prudent improvements in greater depth in his testimony.

Mr. Nayeri testified regarding the issues facing the Riley System which have rendered it unable to furnish or maintain adequate, efficient, safe and reasonable service and facilities. He testified the system has had multiple environmental compliance violations, including excessive Infiltration and Inflow (I&I) in its system leading to a number of effluent violations. The System has also experienced at least one Sanitary Sewer Overflow (SSO) in the twelve months prior to the IDEM inspection identified in his testimony. Further, based on an environmental compliance review performed by IDEM, Mr. Nayeri testified that Riley's facilities appear to be at a serious risk of deterioration. Mr. Nayeri further testified regarding the process Indiana American will undertake upon closing to determine reasonable and prudent improvements to be made to the System. He testified Indiana American will evaluate system improvements by first reviewing any previously completed system evaluations and studies. He testified that depending on the information found, Indiana American may conduct additional system evaluations which may include I&I evaluation via smoke testing and flow monitoring, as well as hydraulic and biological loading capacity of the treatment plant, among other evaluations.

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

B. Proposed Acquisition and Asset Purchase Agreement. Clay White, President of the Town Board of Riley, testified regarding the proposed acquisition of Riley's System by Indiana American. Mr. White provided a brief overview of Riley's System. He explained the operation of the utility is controlled by the Riley Town Board and testified that the Town Board does not have the time, technical expertise or the resources to manage a wastewater utility, especially in today's age of increasing environmental regulation. He further testified the Town does not have the financial resources to continue operating the utility and cannot attract capital to finance the necessary improvements to upgrade the system. He also testified the Town has struggled to maintain a certified operator and, at best, can only maintain a part-time operator

that is only available a limited number of hours thereby leaving the community without 24/7 operations. Mr. White testified the Town's constituents, who are also customers, deserve a level of service quality that the Town Board is ill-equipped to provide. He testified all of these considerations led the Town Board to evaluate the possibility of selling the Town's wastewater utility to Indiana American.

Mr. White testified the Town followed the statutorily required appraisal process to sell its wastewater assets. He testified that on March 6, 2017 the Town Board voted to appoint three appraisers to appraise the Riley System. Mr. White testified an appraisal of the land was returned on May 2, 2017, but due to the inadequacy of the Town's records, the appraisal of the actual sewer facilities was significantly delayed. He testified that a copy of the appraisal of the Riley System signed by both professional engineers was returned on July 9, 2018, and sponsored a copy of both appraisals (land and system) as Attachment CGW-1. Mr. White further testified that the statutorily required public hearing was held on September 26, 2018, and on November 5, 2018, the Town Council formally voted to sell the sewer system to Indiana American. Mr. White explained the Town agreed to a purchase price of less than the appraised value in order that the sewer rates to be charged by Indiana American could be lower. He further testified the Town only recently realized it needed to adopt an ordinance to finalize the sale, and the Town Council enacted that ordinance as set forth as Attachment CGW-2. Mr. White testified the Town and Indiana American began conducting negotiations in March 2017 which resulted in an asset purchase agreement (the "Asset Purchase Agreement") being finalized and signed effective February 4, 2019. He testified that the negotiations leading up to the execution of the Agreement were conducted at arm's length.

Mr. White further testified regarding other communications he has had with Riley customers regarding the sale. He testified the Town held several Board meetings, in excess of the statutory requirements, to determine public opinion and receive input regarding the proposed sale. He testified that Indiana American officials attended these meetings to allow customers an opportunity to get answers directly from Indiana American. Mr. White further testified the response from these meetings was clear that citizens were overwhelmingly in favor of the sale.

The Asset Purchase Agreement was filed as Attachment DAB-2. Mr. Brock testified that Indiana American proposes to acquire all of the property that is subject to the Town's appraisal sponsored by Mr. White as Attachment CGW-1, at a purchase price of \$1,545,000. He testified the purchase price was determined using the appraised value of the Riley System as determined by the statutorily appointed appraisers; however, Indiana American is agreeing to pay less than appraised value. Mr. Brock also testified regarding the significant terms and conditions of the agreement, including the requirement that Riley institute a wastewater rate increase of 15% at or before closing. Mr. Brock stated that consummation of the transaction is conditioned on obtaining certain approvals from the Commission, including recognition of the full purchase price plus transaction costs in net original cost rate base, and the application of Indiana American's depreciation accrual rates to the assets being acquired.

Mr. Shimansky further testified regarding the notice required to be sent to Indiana American's existing customers. Mr. Shimansky testified that notice of the proposed transaction was provided via bill insert beginning in July 2019 (included as Attachment GDS-3) and the statutory notice including the cause number was mailed to all customers via bill insert and late-filed as Attachment GDS-4.

C. Accounting and Ratemaking Treatment. Mr. Shimansky testified that the accounting and ratemaking treatment reflected in the proposed journal entry conforms with the treatment to be granted under Section 30.3-5(d), where all of the factors set forth in that section are met. Mr. Shimansky testified that pursuant to Section 30.3-5(f), if this Commission makes the required findings, the resulting Order is to authorize Indiana American “to make accounting entries recording the acquisition that reflect: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition; as the original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.” *Id.* As a result, Indiana American is proposing to record the net original cost of the Riley System in the manner reflected in the proposed journal entry shown on Attachment GDS-1.

Mr. Shimansky further testified regarding the wastewater rates and charges to be applied to Riley’s customers. Mr. Shimansky testified Riley has agreed to adopt a 15% rate increase prior to Closing, and Indiana American has agreed to keep the Riley customers on that increased wastewater rate for the time being. Based on this increase, Mr. Shimansky testified a Riley wastewater residential customer of 4,000-gallon can expect to pay approximately \$67.61 per month. Mr. Shimansky testified this agreement will require a change to Indiana American’s wastewater tariff, and the revised tariff is included as Attachment GDS-2. Mr. Shimansky further testified that the rates charged by Indiana American to existing customers will not increase unreasonably in future general rate cases solely as a result of acquiring the Riley wastewater system. Mr. Shimansky explained under the recent amendments to Section 30.3-5, rates and charges are deemed reasonable so long as the net original cost proposed to be recorded is not greater than two percent of the acquiring utility’s net original cost rate base as determined in Indiana American’s most recent general rate case. Mr. Shimansky testified that the purchase price of the Riley system is less than 0.2% of the amount of Indiana American’s most recently determined net original cost rate base (\$1,182,170,152), and therefore is well below the 2% threshold.

D. Rules and Regulations. Mr. Brock testified regarding the rules and regulations to be applied to the customers of the Riley wastewater system. Mr. Brock testified in general Indiana American is proposing that the current Rules and Regulations Applicable to Sewer Service in and Adjacent to Delaware County, Indiana (Muncie Sewer, formerly Farmington) (IURC No. S-12-D, dated December 12, 1997) apply to sewer service to customers of the Riley System. However, Indiana American is proposing a modification to those rules as applied to the customers of the Riley wastewater system to include a provision for pro-rating partial payments with respect to water and wastewater service except where a customer has followed Indiana American’s existing complaint process as set forth in Rule 4.2(d) of its Rules and Regulations Applicable to Water Service (IURC W-15, dated March 30, 2015). Attachment DAB-4 contains the proposed rules applicable to wastewater service for customers of the Riley System.

Mr. Brock testified this revision is necessary, because, as a private entity, Indiana American does not have the same ability as a municipality to disconnect a customer’s water for non-payment of the customer’s bill. He testified that without the pro-ration provision, a customer could manipulate the application of partial payments to suggest they be applied to water only and delay or avoid the consequences of non-payment for sewer service, because Indiana American’s recourse for non-payment of sewer is physical disconnection of the customer’s sewer line—a far more costly remedy. Mr. Brock further testified under the proposed modification, if a customer refuses

to pay the sewer bill, the unpaid amount will be allocated to both the water bill and sewer bill, leading to service termination for the failure to pay in full the water bill if the customer continues to delay. Mr. Brock explained that if a customer legitimately contests the bill for sewer service, the proposed rule modification provides that the customer may invoke the process set forth in Rule 4.2(d) of Indiana American's Rules and Regulations Applicable to Water Service.

5. OUCC's Evidence. Ms. Kristen Willoughby, Utility Analyst in the OUCC's Water/Wastewater Division, testified regarding Indiana American's proposed acquisition of the Riley System. Ms. Willoughby testified regarding the environmental compliance issues the Riley System has faced since 2009, and explained Riley is currently subject to an Agreed Order with IDEM issued in 2015. Ms. Willoughby further testified Riley has had ten years since its first agreed order with IDEM in 2009 to bring the System back in compliance, and while Riley has completed some capital improvement projects, the system is still not in compliance. Ms. Willoughby testified that while Riley may be capable of bringing the utility back in compliance, it has thus far not accomplished this on its own and prefers another entity to take on the responsibility. Ms. Willoughby further testified that as a large investor owned utility, Indiana American has the technical, managerial, and financial capability to evaluate the Riley System and bring it into compliance. She recommended that if the Commission approves the acquisition, the Commission require Indiana American to comply with the existing Agreed Order or work with IDEM to modify the existing Agreed Order to bring the utility into compliance.

Ms. Margaret Stull, Chief Technical Advisor in the OUCC's Water/Wastewater Division, also testified regarding the proposed acquisition. Ms. Stull noted that the purchase price identified in the Indiana American witnesses' testimony is \$1,545,000, while the purchase price identified in Riley witness Mr. White's testimony is \$1,453,373.32. Ms. Stull testified that any appraisal costs are not incidental costs of the purchaser, Indiana American, but rather are costs that would normally be borne by the seller and which Indiana American agreed to pay. She recommended the Commission allow Indiana American to include any appraisal costs incurred as additional compensation for the assets and not as an incidental expense or other costs of acquisition. She further recommended the Commission allow Indiana American to record in rate base the cost differential at the amount it proposed in its case-in-chief.

Ms. Stull also testified regarding the 15% rate increase Riley proposes to establish prior to closing. Ms. Stull testified it is unusual for a municipality to establish the rate of a public utility subject to the Commission's rate jurisdiction, and it is better practice for the Commission to approve the rates Indiana American will charge the Riley customers if it is appropriately cost based. Ms. Stull testified, however, that the 15% increase proposed is the middle ground between Riley's current rate and Indiana American's current rate, and the increase will help transition the Riley customers to the higher rates they will eventually pay. Therefore, Ms. Stull testified the 15% rate increase should be approved. However, Ms. Stull recommended the Commission reject the tariff proposed by Indiana American for the 15% rate increase and instead approve the tariff rates as set forth in Table MAS-1 of her testimony. Her proposed tariff rates were based on her assumption that one of the three rates reflected on the tariff proposed by Indiana American was actually reflecting the 15% rate increase contemplated in Section 6.1 of the Asset Purchase Agreement.

Ms. Stull further recommended the Commission reject the changes proposed to the rules and regulations applicable to the Riley wastewater customers allowing Indiana American to prorate partial payments. Ms. Stull testified Joint Petitioners provided no evidence there is a problem with non-payment of sewer utility bills by Riley customers to warrant this restriction on a customer's ability to direct their partial payments. She testified water is essential to life and customers should have the ability to direct their payments when necessary to ensure continued access to potable water.

Ms. Stull also recommended that the Commission reject Indiana American's proposed tariff language regarding unmetered residential customers or residential customers with inaccurate meter readings. Ms. Stull testified the language is problematic because it purports to impose penalties on one class of customer without any rational or stated basis for doing so, and it is unclear what the phrase "average treatment rate of a single family dwelling unit means", among other reasons. Ms. Stull also testified the volumetric rate for treatment per 1,000 gallons is inaccurately labeled "Operation, Maintenance & Repair Charge" and recommended this be addressed.

6. Joint Petitioners' Rebuttal Testimony. Mr. Greg Shimansky testified on rebuttal on behalf of Joint Petitioners. Mr. Shimansky testified regarding the OUCC's overall recommendation regarding Indiana American's acquisition of the Riley System. Mr. Shimansky testified that at bottom, OUCC witnesses support the relief Indiana American has requested except for the changes to its proposed tariff and proposed rules. Mr. Shimansky testified the OUCC did not oppose the acquisition, the accounting entries, or the ratemaking treatment.

Mr. Shimansky responded to Ms. Stull's findings and her proposed recommendations. With respect to Ms. Stull's testimony regarding the apparent discrepancy between the purchase price identified in Indiana American's testimony and Riley's testimony, Mr. Shimansky testified that as set forth in the Purchase Agreement, the agreed upon purchase price is \$1,545,000. He testified the price identified in Riley witness White's testimony appears only in the minutes of Riley's September 26, 2018 and November 5, 2018 Town Council meetings, which meetings were held well before the Purchase Agreement was signed in February 2019. With respect to Ms. Stull's comments on Riley's 15% rate increase prior to closing, Mr. Shimansky testified he appreciated that Ms. Stull ultimately arrived at the conclusion that the rates included in the Purchase Agreement should be approved. Mr. Shimansky further testified the rates are part of the Purchase Agreement for which approval is sought in this Cause, and therefore this preserves the Commission's oversight of the rates charged by the regulated entity. Further, with respect to Ms. Stull's comments on appraisal costs being included in the \$165,000 acquisition expense forecast, Mr. Shimansky testified that appraisal costs are not included in the \$165,000 expense and therefore the OUCC appears to agree with the \$165,000, subject to the limitation "to the qualified amounts actually incurred." Shimansky Rebuttal at 6.

Mr. Shimansky also responded to Ms. Stull's recommendations regarding Indiana American's proposed rates and tariff. Mr. Shimansky testified he disagreed with the calculation of the rates as proposed by the OUCC and with the rate schedule proposed by Ms. Stull that only includes a Base Charge and a treatment charge. He explained that in increasing Riley's rates by 15% in accordance with the signed Purchase Agreement, all three of Riley's existing rate components need to be considered. Mr. Shimansky testified the rates in Indiana American's proposed tariff are Riley's existing rates, both fixed and volumetric, increased by 15%, and no

other changes have been made to Riley's tariff, including the language. Mr. Shimansky provided a table of what the proposed rates will look like when the appropriate 15% increase is applied. Mr. Shimansky testified that if Indiana American removes the section as proposed by the OUCC, Indiana American would not be collecting the current Town of Riley rate in effect at the time of the acquisition. With respect to the other two recommendations Ms. Stull made regarding Indiana American's tariff language, Mr. Shimansky testified those changes would be acceptable to Indiana American and reiterated that the language Ms. Stull recommends be changed came verbatim from Riley's existing tariff.

Mr. Shimansky also testified regarding Ms. Stull's opposition to the proration language Indiana American proposed to add to its rules and regulations applicable to Riley. Mr. Shimansky testified he disagreed with Ms. Stull's opposition to the proration language and noted that the language already exists in Indiana American's rules applicable to Sheridan. He testified he disagreed with Ms. Stull's opposition, because the language is necessary, as there is no inexpensive means of enforcing the payment obligation with wastewater service. He testified that without this rule, Indiana American will be recovering its higher costs of collection from all other customers. Mr. Shimansky reiterated the proration requirement will only apply to undisputed bills and the rule would only apply to a customer who agrees that they owe the amount and is purposely making the decision not to pay it. Mr. Shimansky also testified regarding Ms. Stull's contention that there is no evidence there is a problem with non-payment of sewer bills is inaccurate. He testified the State has already made the determination for the vast majority of sewer customers that disconnection of water service is the preferred option for failure to pay a sewer bill.

Mr. Shimansky also responded to Ms. Willoughby's testimony. He clarified that none of the recent IDEM issues identified in Ms. Willoughby's testimony are the responsibility of Indiana American. He testified as to Ms. Willoughby's recommendation that Indiana American will work with IDEM to bring the utility into compliance after closing.

7. Commission Discussion and Findings. This acquisition is proceeding pursuant to Section 6.1, which states, in its entirety:

- (a) This section applies to a municipality that adopts an ordinance under section 5(d) of this chapter after March 28, 2016.
- (b) Before a municipality may proceed to sell or otherwise dispose of all or part of its nonsurplus utility property under an ordinance adopted under section 5(d) of this chapter, the municipality and the prospective purchaser must obtain the approval of the commission under this section.
- (c) As part of the sale or disposition of the property, the municipality and the prospective purchaser may include terms and conditions that the municipality and the prospective purchaser consider to be equitable to the existing utility customers of:
 - (1) the municipality's municipally owned utility; and
 - (2) the prospective purchaser;as applicable.
- (d) The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality

and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest. For purposes of this section, the purchase price of the municipality's nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of this chapter.

(e) The following apply to the commission's determination under subsection (d) as to whether the proposed sale or disposition according to the proposed terms and conditions is in the public interest:

(1) If:

(A) the prospective purchaser petitions the commission under IC 8-1-30.3-5(d); and

(B) the commission approves the prospective purchaser's petition;

the proposed sale or disposition is considered to be in the public interest.

(2) If subdivision (1) does not apply and subject to subsection (h), the commission shall consider the extent to which the proposed terms and conditions of the proposed sale or disposition would require the existing utility customers of either the prospective purchaser or the municipality's municipally owned utility, as applicable, to pay rates that would subsidize utility service to the other party's existing customers. For purposes of this subdivision, the proposed terms and conditions will not result in rates that would subsidize service to other customers if the amount to be recorded as net original cost under subsection (f) is not greater than two percent (2%) of the prospective purchaser's net original cost rate base as determined in the prospective purchaser's most recent general rate case. If the amount to be recorded is greater than two percent (2%), the commission shall proceed to determine whether:

(A) the proposed terms and conditions would result in a subsidy described in this subdivision; and

(B) the subsidy would cause the proposed terms and conditions of the proposed sale or disposition not to be in the public interest.

The commission shall calculate the amount of the subsidy that would result and shall set forth in an order under this section such changes to the proposed terms and conditions as the commission considers appropriate to address the subsidy. The prospective purchaser and the municipality shall each have thirty (30) days from the date of the commission's order setting forth the commission's changes to either accept or reject the changes. If either party rejects

- the commission's changes, the proposed sale or disposition is considered not to be in the public interest.
- (3) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required after the proposed sale or disposition.
 - (4) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall accept as reasonable the valuation of the nonsurplus utility property determined through an appraisal and review under section 5 of this chapter.
- (f) As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:
- (1) the full purchase price;
 - (2) incidental expenses; and
 - (3) other costs of acquisition;
- allocated in a reasonable manner among appropriate utility plant in service accounts.
- (g) The commission shall issue a final order under this section not later than two hundred ten (210) days after the filing of the parties' case in chief.
- (h) In reviewing a proposed sale or disposition under subsection (e), the commission shall determine whether the factors set forth in IC 8-1-30.3-5(d) are satisfied as applied to the proposed sale or disposition of the municipality's nonsurplus municipally owned utility proposed for purposes of section 5(m) of this chapter. If the commission determines that the factors set forth in IC 8-1-30.3-5(d):
- (1) are satisfied as applied to the proposed sale or disposition, section 5(g) through 5(k) of this chapter does not apply to the municipality's ordinance adopted under section 5(d) of this chapter; or
 - (2) are not satisfied as applied to the proposed sale or disposition:
 - (A) section 5(g) through 5(k) of this chapter applies to the municipality's ordinance adopted under section 5(d) of this chapter; and
 - (B) the question as to whether the sale or disposition should be made must be submitted to the voters of the municipality at a special or general election if at least the

number of registered voters of the municipality set forth in section 5(h) of this chapter sign and present a petition to the legislative body opposing the sale or disposition, in accordance with section 5(g) through 5(k) of this chapter.

However, notwithstanding this subsection, in reviewing a proposed sale or disposition under subsection (e)(2), the commission may not condition its approval of the proposed sale or disposition on whether the factors set forth in IC 8-1-30.3-5(d) are satisfied or on any other factors except those provided for in subsection (e)(2), (e)(3) and e(4).

Under Section 6.1, the ultimate question we must answer is whether “the sale or disposition according to the terms and conditions proposed is in the public interest.” Section 6.1(d). If it is, then we are to authorize the transfer and the purchaser to “record as the net original cost rate base an amount equal to . . . the full purchase price . . . incidental expenses . . . and other costs of acquisition” “without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality.” Section 6.1(f). We are to allocate this net original cost rate base “in a reasonable manner among appropriate utility plant in service accounts.” *Id.*

Section 6.1 also provides us guidance as to how we are to approach this question of the public interest. If the petition is also filed under Section 30.3-5(d) (as it is here) and we approve the petition, then Section 6.1 directs “the proposed sale or disposition is considered to be in the public interest.” In order for Section 30.3-5 to apply, two things are required: first the utility is being acquired in a transaction involving a willing buyer and willing seller; and second, that one of the two utility companies is subject to our regulation. Both of these conditions are satisfied. There is no dispute that Indiana American is subject to our regulation, and there is no dispute that this transaction involves a willing buyer and a willing seller.

A. IC § 8-1-30.3-5(d) Requirements. For purposes of determining whether the proposed sale or disposition is in the public interest as required by Section 6.1, “the proposed sale is considered to be in the public interest [if it meets the requirements of Section 30.3-5(d)].” Section 6.1(e). The requirements under Section 30.3-5(d) are:

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

With respect to this element, the question we must answer is whether the utility property to be sold is used and useful to the Town of Riley, which is the “offered utility” as defined in Ind. Code § 8-1-30.3-2.6. Mr. Ezat Nayeri testified that the utility property is used and useful to the Town of Riley, as the Town is currently operating the system and using the utility property to provide wastewater service to its customers and constitutions. Nayeri Direct at 6. There is no dispute that the Riley System is used and useful to the Town of Riley, and therefore we find this requirement is met.

- (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.

Mr. Brock testified the Riley System serves fewer than 5,000 customers, which is one of the findings the Commission may make under Section 30.3-6 to satisfy this requirement. Brock Direct at 9, 10-11. Mr. Brock further testified that while not necessary to satisfy additional conditions, the Riley System meets several other elements outlined under Section 30.3-6 to satisfy this requirement. Brock Direct at 10-11. We find that the Riley System serves fewer than 5,000 customers and, therefore, pursuant to Section 30.3-6(5), this means the Riley System “is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe and reasonable service and facilities,” and we so find.

- (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.

The recent amendment to the statute¹ now allows us to consider not only whether the acquiring utility will make reasonable and prudent improvements to the offered utility’s system, but whether the acquiring utility will improve economies of scale, as well. Mr. Brock testified at length regarding how Indiana American’s ownership of the Riley System will improve economies of scale, and provided a number of examples to support his testimony. Brock Direct at 13-20. The crux of Mr. Brock’s testimony is that Indiana American has developed the financial, managerial and technical ability and expertise required to adequately run the Riley System, by virtue of the fact that Indiana American is in the utility business and operating a utility is its full time job. Brock Direct at 13. In contrast, the Riley Town Board is not in the utility business and therefore cannot bring to bear the same level of commitment, expertise and knowledge that Indiana American can. Further, Mr. Nayeri testified regarding the known issues currently facing the Riley System. He also testified regarding the process Indiana American will undertake to determine what reasonable and prudent improvements Indiana American will make upon closing. Nayeri Direct at 4-6. The OUCC did not dispute either Mr. Brock’s or Mr. Nayeri’s testimony on this point.

Therefore, we find Indiana American will improve economies of scale of the Riley System, and will make reasonable and prudent improvements to the offered utility’s plant and operations depending on its investigation upon closing. Therefore, the requirements of Sec. 30.3-5(d)(3) are satisfied and we so find.

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

¹ Senate Enrolled Act 472 (2019).

Riley witness Mr. Clay White described the process undertaken by Riley prior to entering the transaction. Mr. White testified that negotiations proceeded over the course of several months while Riley was undergoing the statutory process and such negotiations were conducted at arm's length. White Direct at 3-4. Mr. Brock echoed Mr. White's testimony and testified the negotiations leading up to the execution of the Asset Purchase Agreement were conducted at arms length. Brock Direct at 6. We find the acquisition is the result of a mutual agreement made at arms length.

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

Both Mr. Brock and Mr. White testified the Riley Town Council determined to sell the Riley System for less than the full appraised value in order to result in lower utility rates for the Riley wastewater customer than would otherwise need to be charged if the full appraised value was used as the purchase price. Brock Direct at 7; White Direct at 4. Mr. Brock testified the purchase price was therefore based on less than the appraised value of the wastewater utility assets, and is deemed to be reasonable under Ind. Code § 8-1.5-2-6.1(d) because it does not exceed the statutory appraised value. Brock Direct at 20-21. The appraisal was sponsored by Mr. White as Attachment CGW-1. While the OUCC identified a discrepancy between the purchase price identified in Indiana American's testimony and Mr. White's testimony, Mr. Shimansky explained the discrepancy on rebuttal and testified that the correct figure is \$1,545,000, which is the amount set forth in the Purchase Agreement. Shimansky Rebuttal at 4-5. The evidence presented supports the appraised value as being determined pursuant to the statutory process.

The amount of the purchase price proposed to be included in net original cost rate base (\$1,545,000) does not exceed the appraised value of the assets being acquired, and so the purchase price proposed to be booked to rate base is reasonable and we so find.

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

We find, based upon Mr. Brock's testimony to the effect (Brock Direct at 21), that Riley and Indiana American 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.²

The recent amendment to the statute makes clear that “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.” Ind. Code § 8-1-30.3-5(d)(7). Mr. Shimansky testified in Indiana American's most recent general rate case (Cause No. 45142) the net original cost rate base as determined by the Commission was \$1,182,170,152 (6/26/2019 Order, p. 27); Shimansky Direct at 20. Mr. Shimansky further testified the purchase price of the Riley System is less than 0.2% of that amount and thus well below the statutory 2%. *Id.* He testified the purchase price is small enough that it will not increase Indiana American's rates unreasonably, and further determination on the impact of rates will be decided upon in future rate cases. *Id.* Therefore, we find the rates charged by Indiana American will not increase unreasonably as a result of this acquisition.

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

Mr. Shimansky testified that his proposed journal entry allocates the entire purchase price reasonably among utility plant in service accounts. In this fashion, the cost differential will be amortized and charged to expense over a reasonable period of time through depreciation expense. Attachment GDS-1. We have approved this approach in previous cases³, and we find it to be appropriate here as well.

B. IC § 8-1-30.3-5(e) Requirements. Ind. Code § 8-1-30.3-5(e) provides that “in connection with its petition under [Section 30.3-5(d)], the acquiring utility company shall provide the following”:

- (1) Notice to customers of the acquiring utility company that a petition has been filed with the commission under [Chapter 30.3]. The notice provided under this subdivision must include the cause number assigned to the petition. Notice

² The subsection goes on to state that “If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of 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.

³ See, e.g. *Indiana-Am. and Charlestown*, Cause No. 44976/44964, (3/14/18) (“Charlestown”).

under this subdivision may be provided to customers in a billing insert.

Mr. Shimansky sponsored as Attachment GDS-3 which provides notice of the proposed transaction to Indiana American's customers via bill insert beginning in July 2019. Mr. Shimansky also sponsored Attachment GDS-4, the statutory notice including the Cause number which was mailed to customers via bill insert and late-filed in this Cause on November 12, 2019. Thus, Indiana American sent two notices to customers, one at or near the time of filing this case⁴ and the second one which was mailed later once a cause number was assigned to this case. The notices provided in this Cause were mailed early enough in the proceeding to afford customers an opportunity to participate if they chose to do so, and the notices were provided to all Indiana American customers. We find Joint Petitioners satisfied Section 30.3-5(e)(1).

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

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

(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.

With the recent amendments to the statute, Section 30.3-5(e)(3) now requires that an acquiring utility provide a "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." Ind. Code § 8-1-30.3-5(e)(3). Mr. Nayeri testified regarding the known issues facing the Riley System that have rendered it unable to furnish or maintain adequate, efficient, safe and reasonable service and facilities. Nayeri Direct at 4-5. He also testified regarding the process Indiana American will undertake if the acquisition closes to determine the reasonable and prudent improvements to be made to the Riley System. *Id.* at 5-6. This process includes first reviewing any previously completed system evaluation studies, and then, depending on the information found, conducting additional system evaluations if necessary. *Id.*

Mr. Nayeri's testimony outlines known issues currently impacting the Riley System and explains the process Indiana American will undertake after closing to determine what improvements need to be made to the System. We therefore find that Indiana American has complied with Section 30.3-5(e)(3) of the statute.

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

⁴ Bill notices were sent in Indiana American bills July 10, 2019 through August 9, 2019. Shimansky Direct at 14; Attachment GDS-3.

C. 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) in order for a sale or disposition to be deemed in the public interest, and have also met the requirements of Section 30.3-5(e) of what must be included with the petition, we find, pursuant to Section 6.1(d), that the proposed acquisition of the Riley System is in the public interest and the sale is approved.

Because Joint Petitioners have satisfied all of the statutory requirements required for approval, Section 6.1(f) directs the Commission as follows:

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

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

The first issue we must address for purposes of this journal entry is: what is the “purchase price”? No party disputed the proposed purchase price of \$1,545,000 and we already found the purchase price is reasonable. The amount that Indiana American seeks to record in net original cost rate base is equal to the purchase price plus \$165,000 of incidental expenses and other costs of acquisition, for a total original cost rate base of \$1,710,000, which is set forth in Joint Petitioners’ Attachment GDS-1. Ms. Stull testified she agreed the \$165,000 of proposed costs of acquisition should be included in rate base “but only to the extent the \$165,000 of proposed costs do not include the costs of appraisals prepared for Riley at its direction.” Stull at 7. On rebuttal, Mr. Shimansky testified that appraisal costs are not included in the \$165,000 acquisition expense forecast. Shimansky Rebuttal at 6. Therefore, there appears to be no dispute over the \$165,000 amount Indiana American proposes to include in rate base as proposed acquisition expenses, and we find this amount reasonable. Mr. Shimansky also testified “the purchase price for the acquisition includes a ‘cost differential’ as that term is defined in Ind. Code § 8-1-30.3-5(c)”, and he went on to explain the basis for that conclusion. Shimansky Direct at 16-17. No party disputed that statement, and we find there is a cost differential.

As directed by the statute, we therefore find that without regard to amounts that may be recorded on Riley’s books and records and without regard to any grants or contributions that Riley 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 purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed by Indiana American. We therefore find that Indiana American’s proposed accounting and journal entries as described in Mr. Shimansky’s direct testimony and Attachment GDS-1, should be approved and that the costs so reflected on the books and records of Indiana American be used as the original cost of such properties for accounting, depreciation, and rate base valuation purposes. As discussed in Ms. Stull’s testimony, the journal entry should be adjusted to reflect actual (rather

than estimated) incidental expenses and other costs of acquisition and this is consistent with prior Commissioner precedent. *See Charlestown*, Cause No. 44976/44964, p. 35. We find that Indiana American's existing depreciation accrual rates approved by the Commission in Cause No. 44992 on May 30, 2018, and as included in the calculation of rates with the Order in Cause No. 45142 dated June 26, 2019 should be applied on and after the closing date of the acquisition to depreciable property purchased from Riley pursuant to the Asset Purchase Agreement.

D. Rates and Rules. The only real dispute in this Cause is over the rate tariff and rules Indiana American proposed in its case-in-chief. As a preliminary matter, Ms. Stull expressed concerns over the Town of Riley setting rates that Indiana American will charge after closing. Stull at 6. It appears Ms. Stull's primary concern is that the Town of Riley will be setting the rates to be charged by a regulated utility, when traditionally only the Commission has that authority. *Id.* On rebuttal, Mr. Shimansky explained that sometimes when an acquisition will result in a rate increase for a municipality's customers, Indiana American requires the municipality to increase their rates so there is greater assurance that the local community understands the effect of the transaction and is supportive. Shimansky Rebuttal at 6. Further, he testified the 15% rate increase is part of the Purchase Agreement which the Commission has authority to review and approve in this Cause, and, therefore, the Commission does have oversight authority of the rates. While we appreciate Ms. Stull's concerns, we agree with Mr. Shimansky that the Commission does have oversight authority of the rates in this Cause. Further, we agree with Indiana American it is good practice to have the municipality increase rates as Riley has done here, as it gives the community an opportunity to participate in the local approval process.

The OUCC also disagreed with Indiana American's proposed rate tariff in this Cause, with Ms. Stull taking the position that "each base monthly charge and the volumetric charge be increased by 15%." Stull at 10. Ms. Stull also recommended removal of the first of two fixed charges under the assumption that the to-be-excluded fixed charge is supposed to represent the 15% rate increase. *Id.* Ms. Stull also presented her own proposed rate schedule. *See* Table MAS-1. On rebuttal, Mr. Shimansky testified he disagreed with Ms. Stull's calculation of the rates as proposed by the OUCC. Shimansky Rebuttal at 7. He testified that, per the Purchase Agreement, Riley is to increase its rates for sewer service by 15% and the rates Indiana American proposed are the Town's existing rates, both fixed and volumetric, increased by 15%. *Id.* Mr. Shimansky provided a calculation of the correct rates in his testimony. *See* Shimansky Rebuttal at 7-8. He testified if Indiana American removes the section as proposed by the OUCC, Indiana American will not be collecting the current Town of Riley rates, which is part of the Purchase Agreement and not disputed in this Cause. Shimansky Rebuttal at 8.

We have reviewed the rate calculations provided by Indiana American and the OUCC, and we agree Indiana American's calculations are correct. Therefore, we find the rate tariff presented in Attachment GDS-2 is correct and should be approved, subject to the modification to the language for unmetered customers with respect to which the OUCC raised concerns. We further find that on and after closing, the metered sewer rates adopted by the Riley Town Council will apply for service to be provided by Indiana American in the areas currently served by the Riley Wastewater System. We find that the tariff should reflect, however, the removal of language regarding unmetered residential customers or residential customers with inaccurate meter readings.

The final issue to be addressed is Indiana American's proposal to include language in its existing rules and regulations applicable to wastewater service, which would permit Indiana American to pro-rate a user's partial payments for water and wastewater service except where a customer has followed Indiana American's existing complaint process as set forth in Rule 4.2(d) of its Rules and Regulations Applicable To Water Service. Mr. Brock testified on direct the proration language is necessary because Indiana American does not have the ability, as a private entity, to disconnect a customer's water for non-payment of the customer's sewer bill. Brock Direct at 23. Ms. Stull testified she disagreed with Joint Petitioners' proposal to add this language, because Joint Petitioners did not provide evidence that there is a problem with non-payment of sewer utility bills by Riley customers and because customers should have the ability to direct their payments when necessary to ensure continued access to potable water. Stull at 13.

On rebuttal, Mr. Shimansky noted that this language already exists in Indiana American's rules applicable to Sheridan. Shimansky Rebuttal at 9. He also reiterated that the proration requirement will only apply to undisputed bills and, if a customer chooses not to pay a sewer bill because there is a dispute over the amount owed, Indiana American will not prorate. *Id.* at 9-10. Mr. Shimansky echoed Mr. Brock's direct testimony and testified that the proration language is needed because, with wastewater service, there is no inexpensive means of enforcing payment. *Id.* at 10. Mr. Shimansky further testified without the rule, Indiana American will be recovering its higher costs of collection from all other customers. *Id.* Mr. Shimansky explained that under Ms. Stull's approach, a customer could game the system, refuse to pay an undisputed sewer bill up until the point where Indiana American is ready to make a physical disconnection, and then pay the arrearage or simply move away. *Id.* at 11.

While we appreciate Ms. Stull's concerns regarding the proposed proration language, we understand Indiana American's desire to implement the language. Unlike municipal utilities, private entities do not have the ability to force or make arrangements for the disconnection of water service for failure to pay a sewer bill. 170 IAC 6-1-16(c). Further, we are reassured by the fact that the proration process will only apply to undisputed bills, meaning that if a customer legitimately disputes payment of a sewer bill, the customer's payments will not be prorated. We are further reassured by the fact that this process is currently in place in Sheridan and there was no evidence presented that there has been an issue with the application of this rule in Sheridan. Further, we do not believe it is appropriate for Indiana American to be recovering the higher costs of collection from all customers, when specific customers are the direct cause of those higher costs.

For these reasons, we agree with Indiana American's proposal to include the proration language. We find that Indiana American's rules and regulations for wastewater service applicable to its existing wastewater customers in and adjacent to Delaware County, Indiana (Muncie Sewer, formerly Farmington) shall apply to the Riley Sewer System, with the modification to permit Indiana American to pro-rate a user's partial payments for water and wastewater service except where a customer has followed Indiana American's existing complaint process as set forth in Rule 4.2(d) of its Rules and Regulations Applicable To Water Service, as described herein.

E. Encumbrances. We find that the encumbering of the properties comprising the Riley Water 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 hereby authorized to consummate the acquisition of the Riley System by Indiana American on the terms described in the Asset Purchase Agreement and in the evidence as discussed herein.

2. The acquisition of the Riley System by Indiana American on the terms and conditions described in the Asset Purchase Agreement and in the evidence herein is in the “public interest” as defined in Indiana Code § 8-1.5-2-6.1(d) and –(e).

3. Indiana American may record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to \$1,545,000, plus actual incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed by Joint Petitioners in Attachment GDS-1.

4. Indiana American is hereby authorized to charge customers currently served by the Riley System the rates and charges as the same have been adopted by the Riley Town Council as of the Closing Date. Prior to placing into effect the foregoing wastewater rates, Indiana American shall file with the Water/Wastewater Division of the Commission its revised Schedule of Charges for Sewer Service (IURC No. S-22-A) reflecting the metered sewer rates authorized herein, as modified in Finding Paragraph D above.

5. Indiana American shall be and is hereby authorized to apply the rules and regulations for wastewater service applicable to Indiana American’s Muncie Sewer Operation to the Riley Sewer System, with the modifications described in Finding Paragraph D above. Prior to placing into effect the foregoing rules and regulations for wastewater service for the customers of the Riley System, Indiana American shall file with the Water/Wastewater Division of the Commission its proposed rules, as presented in Attachment DAB-6.

6. Indiana American is hereby authorized to reflect the acquisition of the Riley System on its books and records as of the closing by making the accounting and journal entries described in Attachment GDS-1, as adjusted to actual incidental expenses and costs of the acquisition.

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

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

8. Indiana American is hereby authorized to encumber the properties comprising the Riley Sewer System with the lien of Indiana American’s mortgage indenture.

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

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

APPROVED:

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

Mary M. Becerra
Secretary to the Commission

DMS 16292374v1