

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

JOINT PETITION

Indiana-American Water Company, Inc. (“Indiana American”) and Silver Creek Water Corporation (“Silver Creek”) (each individually a “Joint Petitioner” and collectively “Joint Petitioners”) hereby petition the Indiana Utility Regulatory Commission (“Commission”) for certain approvals relating to the proposed acquisition by Indiana American of Silver Creek’s water utility properties (the “Silver Creek System”). In support, Joint Petitioners respectfully show the Commission:

1. 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 and around numerous communities throughout the State of Indiana, including Clark and Floyd Counties. Indiana American also provides wastewater utility service in Clark, Delaware, Hamilton, Wabash and Vigo 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.

2. 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). 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's water system currently consists of approximately 742,430 linear feet of water mains that range in size from 3/4- inch to 16 inches in diameter and range in age from zero to 59 years. As part of its transmission and distribution system Silver Creek has approximately 2,148 valves, 8,451 meters,

and 877 fire hydrants. In terms of storage, Silver Creek has five water tanks. Silver Creek is subject to the jurisdiction of the Commission for purposes of its water rates and charges and financing. A map delineating Silver Creek's water system is attached to Joint Petitioners' testimony of Christopher Adam Snyder as Attachment CAS-1.

3. Joint Petitioners Indiana American and Silver Creek have entered into an asset purchase agreement (the "Agreement") providing for the purchase of the Silver Creek System by Indiana American. The Agreement provides that prior to closing, Indiana American shall have received an Order from the Commission including the following approvals:

(a) Approval of the acquisition of the Silver Creek System by Indiana American;

(b) Confirmation that Indiana American may record for accounting and ratemaking purposes an amount equal to the full purchase price plus incidental expenses and other costs of acquisition as the net original cost of the utility plant being acquired;

(c) Approval of the application of Indiana American's depreciation accrual rates approved by the Commission in Cause No. 45870;

(d) Approval of 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 the customers of the Silver Creek System; and

(e) The encumbrance of the Silver Creek System with the lien of Indiana American's mortgage indenture.

Indiana American and Silver Creek 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 is the inability of the offered utility to capture economies of scale due to its size and number of customers served.

4. The purchase price for the Silver Creek System 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 system plus transaction costs, including the cost differential, shall be included in Indiana American's 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 § 8-1-30.3-5(b). In 2020, the Indiana General Assembly added an additional circumstance 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 set forth 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 Ind. Code § 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.

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

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

For purposes of subdivision (7), 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, plus any adjustments to the rate base under Ind. Code ch. 8-1-31 and ch. 8-1-31.7 that have occurred after the 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 as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base under Ind. Code ch. 8-1-31 and ch. 8-1-31.7 that have occurred after the rate case. *Id.* In such instances, 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.

6. Joint Petitioner Indiana American acknowledges that 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, plus any adjustments to the rate base under Ind. Code ch. 8-1-31 and ch. 8-1-31.7 that have occurred after the rate case and therefore the Commission must proceed in determining 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 under Ind. Code § 8-1-30.3-5(d)(7). As discussed in the

testimony and supporting evidence of Gregory D. Shimansky, rates and charges in future general rate cases will not increase unreasonably solely as a result of acquiring the utility property from Silver Creek (Ind. Code § 8-1-30.3-5(d)(7)).

7. 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 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.

8. Indiana Code § 8-1-30.3-5(e) requires a utility company to provide notice to its customers that a petition has been filed, and states that such notice may be provided to customers in a billing insert. Subsection (e) also requires the acquiring utility to provide notice to the Office of Utility Consumer Counselor ("OUCC"). Subsection (e) further requires the acquiring utility company to provide "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).

9. As indicated in this Joint Petition and Joint Petitioners' case-in-chief filing, the acquisition satisfies the elements of Ind. Code § 8-1-30.3-5(d). Specifically, with respect to element (2), Silver Creek is too small to capture economies of scale and has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities under Ind. Code § 8-1-30.3-

6. As explained at length in the testimonies of Mr. Justin Schneider, Mr. Christopher Adam Snyder, and Mr. Matthew Hobbs, the Silver Creek System and Silver Creek's customers will benefit from the economies of scale that will be achieved by Silver Creek being acquired by a larger water utility like Indiana American. Further, as explained in the testimony of Mr. Snyder, Silver Creek anticipates that a significant portion of its existing workforce and management will retire in the not-so-distant future. Silver Creek is concerned about its ability to replace these existing employees upon their retirement, and, in this event, the utility will have inadequate financial, managerial, or technical ability or expertise moving forward. Ind. Code § 8-1-30.3-6(2). Further, as discussed previously, 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.

10. Indiana American and Silver Creek 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), Indiana American is causing notice to be provided to all of its customers of the proposed acquisition and this proceeding. Further, a copy of this Joint Petition and supporting evidence is being provided to the OUCC so as to notify that office in compliance with the statute.

11. Joint Petitioners are seeking approval of the sale of the Silver Creek System pursuant to the terms and conditions set forth in 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. Indiana American possesses the technical, financial and managerial ability to provide water utility service following the closing.

12. Following the closing of the proposed acquisition, day-to-day operations of the Silver Creek System will be performed by Indiana American's water utility professionals and the customers of the system will receive the same high quality service Indiana American provides to all of its customers. Indiana American will implement asset management and distribution system prioritization for the Silver Creek System.

13. Indiana American proposes to apply to the Silver Creek System its rules and regulations and the rates and charges generally applicable to customers of Indiana American's Area One rate group, as the same may be changed from time to time.

14. Indiana American 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 Silver Creek's books and records and without regard to any grants or contributions previously received by Silver Creek. Indiana American is presenting its proposed journal entries in its evidence submitted herewith, together with its proposed allocation among utility plant in service accounts.

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

16. Pursuant to 170 IAC 1-1.1-9(8), Joint Petitioners will communicate with the OUCC regarding procedural matters in this Cause and will file a proposed procedural schedule within thirty (30) days of filing this Joint Petition.

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

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WHEREFORE, Joint Petitioners pray that the Commission make such investigation and hold such hearings as may be required for purposes of issuing an Order that would grant the following relief:

(a) 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 Indiana American's evidence;

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

(c) Authorize the application of Indiana American's rules and regulations and rates and charges generally applicable to Indiana American's Area One rate group, as the same may be changed from time to time, to service provided by Indiana American to customers of the Silver Creek System, from and after closing of the acquisition;

(d) Authorize Indiana American to apply its existing depreciation accrual rates to the Silver Creek System;

(e) 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; and

(f) Grant Joint Petitioners all other appropriate relief.

Dated this 12th day of March, 2024.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 12th day of March, 2024, by electronic transmission to the following:

Indiana Office of Utility Consumer Counselor
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A handwritten signature in blue ink, appearing to read "J.M. Box", enclosed in a thin black rectangular border.

Lauren M. Box