

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; (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.)**

CAUSE NO. 45833

PUBLIC’S EXHIBIT NO. 1-S

SETTLEMENT TESTIMONY OF MARGARET A. STULL

ON BEHALF OF

THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

April 14, 2023

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

A handwritten signature in black ink that reads "Daniel M. Le Vay". The signature is written in a cursive style with a long, sweeping tail on the "y".

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CERTIFICATE OF SERVICE

This is to certify that a copy of the *Public's Exhibit No. 1-S OUCC's Settlement Testimony of Margaret A. Stull on behalf of the OUCC* has been served upon the following captioned proceeding by electronic service April 14, 2023.

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**SETTLEMENT TESTIMONY OF OUCC WITNESS MARGARET A. STULL
CAUSE NO. 45833
CROSSROADS UTILITIES, LLC AND LMH UTILITIES CORP.**

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Margaret A. Stull, and my business address is 115 W. Washington St.,
3 Suite 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor (“OUCC”) as
6 a Chief Technical Advisor in the Water/Wastewater Division. My qualifications are
7 set forth in Appendix A.

8 **Q: What is the purpose of your testimony?**

9 A: I will explain the OUCC’s support for the settlement agreement (“Settlement”)
10 between Crossroads Utilities, Inc. (“Crossroads”), LMH Utilities Corp. (“LMH”),
11 and the OUCC (collectively, the “Settling Parties”) and how the public interest will
12 be served if the Commission approves the proposed Settlement.

13 **Q: Please provide an overview of Joint Petitioners’ request in this case.**

14 A: LMH currently operates a for-profit wastewater utility in rural Dearborn County,
15 Indiana, serving approximately 1,331 customers and consisting of a 0.480 MGD
16 sequestering batch reactor wastewater treatment plant, 263 manholes, 17 lift
17 stations, and a sanitary sewer collection system. Crossroads is an Indiana limited
18 liability company newly formed under the laws of the State of Indiana. Crossroads
19 and LMH negotiated an asset purchase agreement for Crossroads’ purchase of

1 LMH's franchise, works, and system. The asset purchase agreement provides that
2 prior to closing, Crossroads shall have received an order from the Commission
3 including the following approvals and authorizations:

- 4 ▪ Approval of the acquisition;
- 5 ▪ Approval to transfer LMH's system to Crossroads;
- 6 ▪ Authorization for Crossroads to serve the customers of the LMH system;
- 7 ▪ Approval of LMH's current rates and charges following closing;
- 8 ▪ Approval of Crossroads' proposed rules and regulations following closing;
- 9 ▪ Approval of Crossroads' proposed accounting and rate base treatment,
10 including recognition of the full purchase price, cost differential, and costs
11 of acquisition in net original cost rate base;
- 12 ▪ Approval of the application of LMH's depreciation accrual rates to the
13 LMH system assets; and
- 14 ▪ Approval of the transfer of LMH's certificates of territorial authority to
15 Crossroads.

II. TERMS OF THE SETTLEMENT

A. Purchase Price and Rate Base

16 **Q: What do Joint Petitioners propose regarding the transfer of LMH's assets?**

17 A: Joint Petitioners propose that LMH should be authorized to transfer to Crossroads
18 the LMH assets as described in the Asset Purchase Agreement, including LMH's
19 certificates of territorial authority.

20 **Q: Did the OUCC agree to this proposal?**

21 A: Yes. Subject to the terms of the Settlement reached between the OUCC and Joint
22 Petitioners the OUCC agrees LMH should be authorized to transfer to Crossroads
23 its certificates of territorial authority and its assets as described in the Asset
24 Purchase Agreement

1 **Q: What did Joint Petitioners agree as the purchase price for LMH's wastewater**
2 **utility assets?**

3 A: Joint Petitioners agreed to a \$1,712,173 purchase price as set forth in the asset
4 purchase agreement. Further, Joint Petitioners warrant that all assets that are to be
5 conveyed and are necessary for the operation of LMH's assets and the provision of
6 sewage disposal service are to be acquired for the \$1,712,713 purchase price.

7 **Q: Does the OUCC agree the purchase price should be considered reasonable and**
8 **approved?**

9 A: Yes. The purchase price is supported by appraisals in excess of that amount, which
10 appraisals Petitioner included in its case. Our own analysis indicated that is a
11 reasonable price for the assets based on our knowledge of the assets.

12 **Q: What do Joint Petitioners propose as the original cost rate base to be recorded**
13 **by Crossroads?**

14 A: Joint Petitioners propose Crossroads be authorized to record \$2,072,173 as the
15 original cost rate base of the assets acquired. This amount consists of the
16 \$1,712,173 purchase price plus \$360,000 of related transaction costs.

17 **Q: What have the Settling Parties agreed to regarding authorized original cost**
18 **rate base?**

19 A: The Settling Parties agreed Crossroads should be authorized to record as the
20 original cost rate base of the acquired assets an amount not to exceed \$2,023,673.
21 This amount consists of the \$1,712,173 purchase price plus related transaction costs
22 to be incurred by Crossroads, not to exceed \$311,500 (paragraph 9 of the
23 Settlement).

1 **Q: What do the Settling Parties agree constitutes reasonable transaction costs?**

2 A: The Settling Parties agreed that, for purposes of this settlement, reasonable
3 transaction costs include acquisition costs incurred by Crossroads as of March 21,
4 2023 of \$281,500 and thereafter, reasonable transaction costs paid not to exceed
5 \$30,000 for a total not to exceed \$311,500.

B. Rates and Charges, Depreciation Accrual rates, and Rules and Regulations

6 **Q: What do Joint Petitioners propose regarding the initial rates and charges and**
7 **depreciation accrual rates to be implemented by Crossroads?**

8 A: Joint Petitioners propose that Crossroads be authorized to charge customers LMH's
9 currently approved rates and charges for wastewater service as well as apply
10 LMH's current depreciation accrual rate.

11 **Q: Do the Settling Parties agree to these proposals?**

12 A: Yes. The Settling Parties agreed that LMH's current rates and charges and its
13 depreciation accrual rates currently applicable to the acquired property shall both
14 remain in effect until adjusted by the Commission. LMH's current rates and charges
15 were approved by the Commission on July 29, 2020 in Cause No. 45307-U. LMH
16 uses the Commission's composite depreciation rate of 2.5% for a wastewater utility
17 with a treatment plant.

18 **Q: Do the Settling Parties agree to Crossroads proposed rules and regulations?**

19 A: The Settling Parties agree that Crossroads' proposed Rules and Regulations should
20 apply to Crossroads' operations except that Crossroads' proposed rules governing
21 customer deposits shall be modified to be consistent with 170 I.A.C. 8.5-2-3.

1 **Q: Do these settlement terms benefit ratepayers?**

2 A: Yes. These settlement terms ensure that the current rates and charges will continue
3 to be charged to LMH customers until new rates and charges are evaluated and
4 authorized by the Commission. Further, it ensures the Commission's composite
5 depreciation rate will continue to apply to the acquired assets as well as additional
6 investments made by Crossroads. Finally, it ensures that the rules and regulations
7 imposed on customers are in compliance with the Commission's requirements.

C. Capital Structure

8 **Q: Did Joint Petitioners make any proposal regarding Crossroads' capital**
9 **structure?**

10 A: No. Crossroads' response to discovery indicated that in its initial rate case it expects
11 to present a capital structure that would be 100% equity. In other words, Crossroads
12 does not plan to issue any debt to buy the assets or pay for capital improvements it
13 may make.

14 **Q: Did the Settling Parties reach an agreement regarding Crossroads' capital**
15 **structure for its initial rate case?**

16 A: Yes. While Crossroads is not committing to achieve any particular capital structure,
17 Crossroads agreed it will use certain factors and criteria to establish a level of debt
18 to make capital improvements to the acquired system.

19 **Q: What are the factors Crossroads will use to determine the level of debt it uses**
20 **to make capital improvements to its acquired system?**

21 A: Crossroads agrees to consider the following factors:
22 a. Cost of available debt, including the interest rate and the cost of issuing the
23 debt.
24 b. Prevailing cost of equity.

- 1 c. Effect of procuring debt on the weighted average cost of capital (“WACC”)
2 compared to the effect of relying entirely on an equity infusion.
- 3 d. Ability to find an investment grade nationally recognized lending
4 institution, willing to issue debt to fund the projects anticipated by
5 Crossroads.

6 **Q: What are the criteria Crossroads will use to determine the level of debt it uses**
7 **to make capital improvements to its acquired system?**

8 A: Crossroads agrees to use the following criteria:

- 9 a. If Crossroads is able to consolidate debt with other affiliated utilities in
10 order to obtain a larger debt offering for a lending institution to consider
11 when applying for debt, including applicable fees, Crossroads will agree to
12 debt finance no less than 20% of its total capital investment in new projects
13 for which it seeks recovery in its next base rate case.
- 14 b. If Crossroads is not in a position to consolidate debt with other affiliated
15 utilities in order to obtain a larger debt offering from a lending institution to
16 consider when obtaining debt, including applicable fees, Crossroads will
17 attempt to obtain financing for Crossroads projects on a standalone utility
18 basis by seeking financing from three different investment grade national
19 banks. If standalone financing cannot be obtained from one of those three
20 banks, Crossroads will have no obligation to issue debt.
- 21 c. Crossroads will use debt to finance some level of future capital
22 improvements if applying the cost of debt, including applicable fees, would
23 result in a lower WACC than a 100% equity investment using the
24 application of a reasonably anticipated cost of equity determination.

25 After consideration of the foregoing factors and criteria, if applying the cost
26 of debt, including applicable fees, would result in a lower WACC than a
27 100% equity investment, Crossroads shall finance through debt no less than
28 20% of the cost of capital improvement projects for which it seeks recovery
29 in its next base rate case.

30 **Q: Are there any other settlement terms that affect the capital structure to be**
31 **included in Crossroads’ initial rate case?**

32 A: Yes. Joint Petitioners propose that Crossroads will pay LMH \$1,180,000 upon
33 closing with the remaining \$532,173 of the purchase price paid to LMH in
34 installments. The Settling Parties agree that any unpaid portion of the purchase

1 price shall be reflected as a 0% interest loan from LMH and reflected in Crossroads'
2 capital structure for ratemaking purposes in Crossroads' initial rate case.

3 **Q: Do these capital structure settlement terms benefit ratepayers?**

4 A: Yes. The settlement terms related to capital structure as described above will serve
5 to reduce the overall cost of capital in Crossroads' initial rate case, thereby reducing
6 the potential rate effect of this acquisition on customers. A capital structure that has
7 debt as a component results in a lower weighted average cost of capital, as the cost
8 of debt is always lower than the cost of equity. The OUCC encourages utilities to
9 have a material amount of debt in their capital structures to mitigate the effect on
10 customer rates. Application of the agreed criteria should establish a base line level
11 of debt. The Settlement further stipulates that the application of the criteria does
12 not preclude Crossroads from borrowing more to achieve a capital structure the
13 OUCC would consider more balanced.

D. Future Expenditures, Projects, and Rate Requests

14 **Q: What future expenditures and projects does Crossroads discuss in its case-in-**
15 **chief?**

16 A: In Crossroads' case-in-chief, Mr. Myers indicated that during its due diligence, its
17 engineer noted several potential projects and improvements including, but not
18 limited to, efforts to locate and remediate inflow and infiltration through televising
19 and adding a unit to the sequencing batch reactor system.

20 **Q: Is Crossroads seeking preapproval for any future capital expenditures it will**
21 **make?**

22 A: No. Crossroads is not seeking preapproval of any potential improvements in this
23 proceeding.

1 **Q: Does the OUCC agree that Crossroads' potential future expenditures and**
2 **projects as described are reasonable and necessary?**

3 A: No. The OUCC has concerns with both the need for certain potential future projects
4 and expenditures and as well as whether all such projects would qualify as a capital
5 cost to be included in rate base.

6 **Q: What have the Settling Parties agreed to regarding potential future**
7 **expenditures and capital projects?**

8 A: The Settling Parties agree that for purposes of settling this case, each party reserves
9 its right to argue its respective positions in future proceedings with regard to the
10 potential improvements, including but not limited to the need, prudence, scope,
11 cost, and timing of any potential improvements.

12 Crossroads also agreed to consult informally from time to time with the
13 OUCC to update the OUCC and to receive the OUCC's input and suggestions on
14 issues related to potential improvements, but Crossroads shall not be bound to adopt
15 or implement the OUCC's suggestions nor shall the OUCC be considered to waive
16 any argument or position by virtue of a position it takes or omits to take in the
17 forgoing consultations.

E. Jurisdictional Basis for Commission's Order

18 **Q: Did Joint Petitioners request ratemaking treatment under Indiana Code §§8-**
19 **1-30-.3-1 et.al.?**

20 A: Yes. However, Joint Petitioners agreed Crossroads would withdraw its request for
21 ratemaking treatment under §§8-1-30-.3-1 et.al and proceed under the
22 Commission's traditional jurisdiction of granting favorable ratemaking on an
23 acquisition adjustment on the difference between the net book value of the assets

1 and the purchase price as well as reasonable transaction costs. The OUCC stipulated
2 that Crossroads qualifies for this treatment.

3 **Q: Have the Settling Parties reached an agreement regarding the appropriate**
4 **jurisdictional basis for the Commission's order?**

5 A: Yes. The Settling Parties agree the Commission has jurisdiction pursuant to IC 8-
6 1-2-89 to grant the relief sought by Joint Petitioners and to authorize Crossroads to
7 record for ratemaking treatment the \$1,712,173 purchase price it agreed to pay for
8 LMH's assets plus its reasonable transaction costs based on the Commission's
9 longstanding and continuing jurisdiction to grant such relief. As a utility analyst, I
10 participated in several Commission causes before the enactment of Indiana Code §
11 8-1-30.3-1 in which the Commission evaluated whether acquiring utilities qualified
12 for favorable ratemaking treatment on acquisition adjustments and transaction
13 costs. As I noted above, the OUCC agreed Crossroads qualifies under traditional
14 regulatory criteria for Commission approval to record the agreed purchase price
15 and transaction costs as net book original cost (i.e., the basis on which Crossroads
16 may earn a return on and of the purchase price and transaction costs.) The Settling
17 Parties agreed that evidence Joint Petitioners provided in their case-in-chief
18 constitutes a prima facie case for favorable ratemaking treatment under traditional
19 acquisition adjustment methodology as described by the Commission, for instance
20 in the final order in Cause No. 43817 (Indiana American's purchase of Marion
21 Heights), Cause Nos. 39639 and 40703, (Indiana American's Acquisition of
22 Indiana Cities) and Cause No. 43855 (Indiana American's Acquisition of Town of
23 Riley Water).

F. Income Tax Issues**1. LMH Excess Accumulated Deferred Income Tax Liability**

1 **Q: Please explain the excess accumulated deferred income tax liability included**
2 **in LMH's books.**

3 A: LMH currently has a regulatory liability on its books representing excess
4 accumulated deferred income tax ("excess ADIT") as a result of the Tax Cuts and
5 Jobs Act. This regulatory liability, originally in the amount of \$104,800, was
6 approved on December 27, 2018 by the Commission in Cause No. 45032 S-17. In
7 accordance with the Commission's order, LMH is to amortize the total excess
8 ADIT balance over a 14.45-year period, with the annual amortization amount to be
9 \$7,253. The amount of the regulatory liability remaining on the books as of
10 December 31, 2022 is \$75,788. Amortization of this regulatory liability is reflected
11 in LMH's current rates and will be fully amortized in 2033.

12 **Q: What have the Settling Parties agreed as to this regulatory liability?**

13 A: The Settling Parties agreed that the regulatory liability for excess ADIT currently
14 on LMH's books will remain in place after closing on the acquisition. Crossroads
15 will continue to charge LMH's rates and therefore will continue to amortize and
16 account for this regulatory liability. In order to accomplish this, LMH agrees it shall
17 pay Crossroads at closing the net present value of the excess ADIT Regulatory
18 Liability in the amount of \$57,962, which reflects a discount rate of 5%, and
19 assumes Crossroads will assume the amortization of excess ADIT by year-end
20 2023. In return, the Settling Parties agree that Crossroads shall continue to amortize
21 the remaining balance of the excess ADIT Regulatory Liability until it is fully
22 amortized in 2033.

2. Crossroads' Income Tax Liability

1 **Q: Is Crossroads a taxable entity?**

2 A: No. Crossroads is a limited liability company ("LLC"), which is treated like a
3 partnership for income tax purposes. An LLC's income (or loss) is included in the
4 taxable income of its owners. No income taxes are recorded on the books of an
5 LLC.

6 **Q: What are your concerns regarding Crossroads' recovery of income tax**
7 **expense in future rates?**

8 A: Crossroads could potentially include income tax expense in its revenue requirement
9 and recover this expense from ratepayers. Further, I expect Crossroads will most
10 likely use accelerated depreciation for tax purposes, creating an accumulated
11 deferred income tax ("ADIT") liability, which would be funded by customers
12 through rates. ADIT should be included in the capital structure as a zero-cost source
13 of capital, reducing a utility's weighted average cost of capital and thereby
14 providing a benefit to ratepayers. However, while Crossroads' collection of income
15 taxes in rates will generate a deferred income tax liability, the amount of that
16 liability will not be ascertainable from Crossroads' books and records as it will not
17 record this liability.

18 **Q: What have the Settling Parties agreed as to this regulatory liability?**

19 A: The Settling Parties agreed that if Crossroads is permitted to include tax liability in
20 rates, it will employ a mechanism to track the resulting deferred tax liability that
21 otherwise will not be recorded in Crossroads' accounting books and records.

1 **Q: Are these income tax settlement terms in the public interest?**

2 A: Yes. These terms ensure that LMH customers continue to receive the benefit of the
3 excess ADIT liability ordered by the Commission. They also provide for the
4 determination of the ADIT to be included in the capital structure in future
5 Crossroads' rate cases.

G. Crossroads' Affiliate Transactions

6 **Q: Does Crossroads intend to obtain goods and services from an affiliate?**

7 A: Yes. Crossroads has indicated that its affiliate, Envirolink, will operate the acquired
8 utility.

9 **Q: Are there industry guidelines regarding affiliated transactions?**

10 A: Yes. The National Association of Regulatory Utility Commissioners ("NARUC")
11 issued "Guidelines for Cost Allocations and Affiliate Transactions," which
12 recommends the price for services, products, and the use of assets provided by a
13 non-regulated entity (such as Envirolink) should be *at cost* (fully allocated) or
14 *prevailing market prices, whichever is lower*.

15 **Q: What have the Settling Parties agreed to regarding affiliated transactions?**

16 A: Crossroads agreed that costs for goods or services provided directly or indirectly
17 by an unregulated affiliate will be charged to Crossroads at the *lower of* the fully
18 allocated cost or market rates for the goods or services. Crossroads further agrees
19 the OUCC will have access to the books and records of affiliates that have provided
20 or will provide goods or services directly or indirectly to Crossroads.

1 **Q: What have the Settling Parties agreed as to the meaning of “fully allocated**
2 **cost”?**

3 A: “Fully allocated cost” means “the sum of the direct costs plus an appropriate share
4 of indirect costs.”

5 **Q: Are these affiliate transaction settlement terms in the public interest?**

6 A: Yes. These terms ensure that the costs included in Crossroads’ revenue requirement
7 are fair and reasonable and are not overstated by the inclusion of any unregulated
8 affiliate profits.

III. CONCLUSION

9 **Q: In your opinion, is the Settlement in the public interest?**

10 A: Yes. There are a number of customer benefits generated by the Settlement, as
11 indicated above. The Settlement is a product of intense, arms-length negotiations,
12 requiring each party to compromise on difficult issues. In order to make such
13 compromises, each party must assess its litigation risk that the tribunal will find the
14 other side’s case more compelling. The Settlement strikes an appropriate balance
15 between the interest of the ratepayers and the interests of Crossroads. The numerous
16 customer benefits outlined and described in detail above, lead the OUCC, as the
17 statutory representative of all ratepayers, to conclude that the Settlement is an
18 equitable resolution, supported by the evidence, and should be approved.

19 **Q: Does this conclude your settlement testimony?**

20 A: Yes.

APPENDIX A - QUALIFICATIONS

1 **Q: Please describe your educational background and experience.**

2 A: I graduated from the University of Houston at Clear Lake City in August 1982 with
3 a Bachelor of Science degree in Accounting. From 1982 to 1985, I held the position
4 of Gas Pipeline Accountant at Seagull Energy in Houston, Texas. From 1985 to
5 2001, I worked for Enron in various positions of increasing responsibility and
6 authority. I began in gas pipeline accounting, was promoted to a position in
7 financial reporting and planning, for both the gas pipeline group and the
8 international group, and finally was promoted to a position providing accounting
9 support for infrastructure projects in Central and South America. In 2002, I moved
10 to Indiana, where I held non-utility accounting positions in Indianapolis. In August
11 2003, I accepted a utility analyst position with the OUCC. In 2011, I was promoted
12 to Senior Utility Analyst. In 2018, I was promoted to Chief Technical Advisor.

13 Since joining the OUCC I have attended the National Association of
14 Regulatory Utility Commissioners (“NARUC”) Eastern Utility Rate School in
15 Clearwater Beach, Florida, and the Institute of Public Utilities’ Advanced
16 Regulatory Studies Program in East Lansing, Michigan. I have also attended several
17 American Water Works Association and Indiana Rural Water Association
18 conferences as well as the National Association of Utility Consumer Advocates
19 (“NASUCA”) Water Committee Forums. I have participated in the NASUCA
20 Water Committee and the NASUCA Tax and Accounting Committee, including
21 serving as chair for the Tax and Accounting Committee from 2016 – 2021.

1 **Q: Have you previously testified before the Indiana Utility Regulatory**
2 **Commission?**

3 A: Yes. I have testified before the Commission as an accounting witness in various
4 causes involving water, wastewater, electric, and gas utilities.

5 **Q: Have you held any professional licenses?**

6 A: Yes. I passed the CPA exam in 1984 and was licensed as a CPA in the State of
7 Texas until I moved to Indiana in 2002.

AFFIRMATION

I affirm the representations I made in the foregoing testimony are true to the best of my knowledge, information, and belief.

A handwritten signature in black ink that reads "Margaret A. Stull". The signature is written in a cursive style with a horizontal line underneath it.

By: Margaret A. Stull
Cause No. 45833
Office of Utility Consumer Counselor (OUCC)

Date: April 14, 2023