

ORIGINAL

STATE OF INDIANA

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

INDIANA UTILITY REGULATORY COMMISSION

**JOINT PETITION OF HOWARD COUNTY)
UTILITIES, INC. (“SELLER”), AND GREEN)
ACRES SUBDIVISION SEWER SYSTEM,)
INC. (“PURCHASER”) FOR: (A))
APPROVAL OF THE TRANSFER OF)
SELLER’S FRANCHISE, WORKS, SYSTEM,)
AND CERTIFICATE OF TERRITORIAL)
AUTHORITY TO PURCHASER PURSUANT)
TO AN AGREEMENT FOR ACQUISITION) CAUSE NO. 45360
OF ASSETS; (B) APPROVAL OF RATES)
THAT PURCHASER MAY CHARGE UPON) APPROVED: NOV 18 2020
CLOSING THE ACQUISITION; AND (C))
AUTHORITY FOR PURCHASER TO ISSUE)
BONDS, NOTES, OR OTHER)
OBLIGATIONS, INCLUDING A)
MORTGAGE ENCUMBRANCE THEREON.)**

ORDER OF THE COMMISSION

Presiding Officers:

Stefanie N. Krevda, Commissioner

David E. Veleta, Senior Administrative Law Judge

On March 23, 2020, Howard County Utilities, Inc. (“HCU”) and Green Acres Subdivision Sewer System, Inc. (“Green Acres”) (“Joint Petitioners”) filed their Joint Petition (“Petition”) with the Indiana Utility Regulatory Commission (“Commission”), seeking authority for: (i) approval of the transfer of HCU’s franchise, works, system, and certificate of territorial authority to Green Acres pursuant to an agreement for acquisition of assets; (ii) approval of rates that Green Acres may charge upon closing the acquisition; and (iii) authority for Green Acres to issue bonds, notes, or other obligations, including a mortgage encumbrance thereon. That same day Joint Petitioners also filed testimony and attachments from the following witnesses: Scott L. Lods, President of HCU; Chuck Lewis, Secretary for the Green Acres Subdivision Homeowners Association; Steven K. Brock, financial consultant and municipal advisor with the firm Therber, Brock & Associates, LLC; and Judith Cleland, Owner of Cleland Environmental Engineering, Inc.

Previously, on August 23, 2019, HCU had filed an application in Cause No. 45283-U requesting an increase to its rates and charges pursuant to the Commission’s Small Utility filing procedure. On November 7, 2019, HCU filed a Motion for Stay in that cause to allow HCU and Green Acres to pursue the transfer of HCU’s franchise, works and system, including its CTA, to Green Acres. The presiding officers in Cause No. 45283-U issued a docket entry on November 14, 2019 granting HCU’s Motion to stay that proceeding and allowing this proceeding to commence on March 23, 2020.

On April 15, 2020, Joint Petitioners and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a stipulation and agreed procedural schedule and associated terms in lieu of prehearing conference, which agreement was approved by docket entry dated that same day. On July 22, 2020, the OUCC prefiled its case-in-chief including the testimony and attachments of the following witnesses: Richard J. Corey, Utility Analyst in the Water/Wastewater Division; Shawn Dellinger, Utility Analyst II in the Water/Wastewater Division; and James T. Parks, P.E., Utility Analyst II in the Water/Wastewater Division.

After the OUCC filed its case-in-chief in this Cause, the parties began engaging in informal discussions to address items the OUCC identified in its testimony as its primary issues in this Cause. On August 17, 2020, Joint Petitioners filed a Motion for Agreed One-Week Extension of Procedural Schedule to allow settlement discussions to continue. On August 24, 2020, Joint Petitioners filed their Notice of Intent Not to File Testimony. The Notice indicated the parties had reached a settlement in principle resolving all issues in this Cause.

On September 8, 2020, Joint Petitioners filed a Stipulation and Settlement Agreement (the “Settlement”), between Joint Petitioners and the OUCC (collectively, the “Settling Parties”) with respect to all issues raised in this Cause. On that same day, Joint Petitioners filed Settlement Testimony from Steven K. Brock and the OUCC filed Settlement Testimony from Richard J. Corey. On September 10, 2020, the OUCC filed a correction to Mr. Corey’s Settlement Testimony.

On September 18, 2020 a settlement hearing was held via WebEx in this Cause and the parties’ evidence was admitted into the record in this Cause without objection including the parties’ respective cases, testimony in support of the Settlement from both Joint Petitioners and the OUCC and consumer comments from HCU’s customers, which the OUCC had filed in Cause No. 45285-U.

Having considered all of the evidence presented in this proceeding, based on the applicable law and evidence, the Commission now finds:

1. Notice and Jurisdiction. Notice of the hearings conducted in this Cause was given as required by law. HCU is a “public utility” as that term is defined in Ind. Code § 8-1-2-1, and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana, including, Ind. Code ch. 8-1-2. Green Acres is a not-for-profit corporation formed under the laws of the State of Indiana. Under Ind. Code § 8-1-2-83, the Commission has jurisdiction over HCU’s proposed sale of its system to Green Acres; therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. Joint Petitioners’ Characteristics. HCU is a corporation owning plant and equipment used and useful in the provisions of wastewater collection and disposal service in a rural area in Howard County, Indiana. HCU holds a Certificate of Territorial Authority (“CTA”) as a result of the approval of the Commission in its Order in Cause No. 43294 issued January 23, 2008, which was modified by the Commission’s Nunc Pro Tunc Order issued February 6, 2008. Green Acres is a not-for-profit corporation, formed under the laws of the State of Indiana, acting on behalf of the Homeowners Association of the Green Acres Subdivision located in Kokomo,

Indiana. HCU and Green Acres entered into an Agreement for Acquisition of Assets (the “Purchase Agreement”) on March 9, 2020, for purposes of Green Acres acquiring HCU’s plant and equipment used and useful in provision of sewage disposal service (the “System”).

3. Joint Petitioners’ Requested Relief. In its Joint Petition, Joint Petitioners requested authority for: (i) approval of the transfer of HCU’s franchise, works, system, and certificate of territorial authority to Green Acres pursuant to the Purchase Agreement; (ii) approval of rates that Green Acres may charge upon closing the acquisition; and (iii) authority for Green Acres to issue bonds, notes, or other obligations, including a mortgage encumbrance thereon.

Scott L. Lods testified that the Commission should approve the Agreement for Acquisition of Assets entered into between HCU and Green Acres dated March 9, 2020, that transfers HCU’s franchise, works, system and CTAs to Green Acres as the Purchaser. Mr. Lods also noted that the parties entered into an Amendment to the Agreement (the “Amendment”) on March 20, 2020, to clarify the parties’ intent with regard to how transaction costs of both parties will be paid at Closing. Mr. Lods testified that both the Agreement and the Amendment are attached to Mr. Lods’ testimony as Attachment SLL-1.

Steven K. Brock testified regarding the following items: (1) the calculation of Green Acres initial rates and charges; (2) the issuance of Green Acres loan financing with First Farmers Bank; (3) the loan guarantee from USDA-Rural Development; and (4) the support of the petition for financing authority and initial rates and charges to the Commission.

Chuck Lewis testified that Green Acres has the necessary technical, managerial and financial capacity to own and operate HCU. Mr. Lewis testified to the technical and managerial aspects of Green Acres. Mr. Lewis also testified to community support for the project.

Judith Cleland testified regarding the preparation of the Draft Preliminary Engineering Report for submission to Rural Development in connection with the application for the guarantee of the loan described by Witness Brock. That Draft Preliminary Engineering Report was included in Ms. Cleland’s testimony as Attachment JC-1. Furthermore, included as an appendix to that report is a valuation study that Ms. Cleland completed of the assets proposed to be acquired from HCU.

4. OUCC’s Responsive Testimony. Richard J. Corey, Utility Analyst in the Water/Wastewater Division, testified regarding Joint Petitioners’ proposed revenue requirement. Mr. Corey recommended a number of adjustments to Joint Petitioners’ revenue requirement, including, adjustments to working capital, rental expense, contract legal expense, insurance expense, utility receipts tax (“URT”) expense, allocated utility expense, sludge disposal expense, IURC fee and Indiana Department of Environmental Management (“IDEM”) fee. Mr. Corey also sponsored schedules setting forth the OUCC’s position on Joint Petitioners’ proposed revenue requirement in this Cause. Mr. Corey testified the OUCC agrees with the transfer of assets including the CTA from HCU to Green Acres with certain conditions. He recommended the Commission authorize Green Acres to charge a monthly rate of \$120.42 per customer, which will provide Green Acres the opportunity to collect \$313,135 in net revenues.

Shawn Dellinger, Utility Analyst II in the Water/Wastewater Division, testified regarding Joint Petitioners' proposed financing. Mr. Dellinger recommended approval of the proposed financing necessary to allow Green Acres to purchase HCU's assets. Mr. Dellinger further recommended Joint Petitioners should be required to true-up the proposed annual debt service once the interest rates on the proposed debt are known. He recommended Joint Petitioners file a true-up report within 30 days of closing on the loan for this purpose. Mr. Dellinger also recommended the Commission disallow Green Acres' requested debt service reserve revenue requirement because Joint Petitioners have not shown it is necessary. Mr. Dellinger described the acquisition of HCU's assets in a larger context, which he said appears to be tied to the transfer of the golf course. Mr. Dellinger explained the OUCC does not oppose the transfer of the utility or the financing necessary to complete the transaction, but the OUCC does not agree that the purchase price equates to the value of the used and useful plant. But Mr. Dellinger added the OUCC did not consider approval of the transaction require a finding as to the fair value of the used and useful plant.

James T. Parks, P.E., Utility Analyst II in the Water/Wastewater Division, testified regarding the proposed acquisition. Mr. Parks recommended the Commission approve the transfer of HCU's franchises, works, system, and CTA to Green Acres. Mr. Parks made a number of recommendations in connection with his overall recommendation the acquisition be approved. Mr. Parks recommended the Commission not establish in this Cause any finding that purports to equate the value of this utility's used and useful plant with the agreed purchase price. Mr. Parks also recommended the Commission approve Green Acres' requested revenue requirement for extensions and replacements and the money be placed in a restricted account for use only on capital improvement projects of the wastewater utility. He further recommended Green Acres budget for emergency sewer repairs, budget for other periodic maintenance expense and investigate effluent flow meter readings to determine actual flows and identify I&I sources. Mr. Parks also made a number of recommendations regarding HCU's records, including, the Commission require HCU to create Record Drawings for the 2011 improvements, prepare a list of all sewer records it has to be provided to Green Acres and provide its Asset Management Plan and all corresponding documentation to Green Acres. Mr. Parks further recommended Green Acres develop, implement, and permit a regular program of off-site sludge disposal, as well as implement a maintenance program to paint all rusted and corroded metal within the treatment plant. He also recommended Joint Petitioners include a parcel map and property description of the three acres that will be transferred to Green Acres, and further recommended Green Acres obtain and record its property interest in the three acre parcel for a permanent access road to the treatment plant. Finally, Mr. Parks recommended the Commission order HCU to correct the erosion problem before the transfer is made by filling in eroded gullies and reseeding to establish cover vegetation.

5. Joint Petitioners' Rebuttal. On August 24, 2020, Joint Petitioners filed their Notice of Intent Not to File Rebuttal Testimony and Notice of Settlement in Principle. This Notice indicated Joint Petitioners did not intend to file rebuttal testimony because Joint Petitioners and the OUCC had reached a settlement in principle on all issues remaining in the Cause.

6. Settlement Agreement. The Settlement Agreement filed with the Commission on September 8, 2020, presents the parties' resolution of all issues in this Cause. The Settlement is attached to this Order and incorporated by reference. The witnesses offering settlement testimony discussed the Settlement as a fair, just, and reasonable resolution of the issues in this Cause. The

Settlement and supporting evidence is outlined below.

Joint Petitioners' witness Steven K. Brock testified the Settlement represents a fair and reasonable resolution of all issues in this proceeding. He testified that in his opinion, the Settlement is in the public interest and should be approved.

OUCC witness Richard J. Corey also testified the Settlement represents a reasonable compromise of the OUCC's and Joint Petitioners' positions as set forth in their respective cases. Mr. Corey further testified that in his opinion, the Settlement is in the public interest because there are a number of customer benefits generated by the Settlement, not least of which is a reduction in the amount of rate increase imposed on customers. He testified the numerous customer benefits outlined in the Settlement and described in detail in his testimony, lead the OUCC, as the statutory representative of all ratepayers, to conclude that the Settlement establishes a reasonable result, is supported by the evidence, and should be approved. These witnesses testified to the reasonableness of the settlement as a whole and provided additional perspective on specific terms of the Settlement as discussed below.

7. Revenue Requirement Issues. Mr. Brock and Mr. Corey offered Settlement Testimony on the compromise reached by the Settling Parties with respect to certain revenue requirement issues in this Cause. Mr. Brock summarized the recommendations made by OUCC witnesses Corey, Dellinger, and Parks regarding Joint Petitioners' proposed revenue requirement. Brock Settlement at 3-9. With respect to Mr. Parks' recommendations, Joint Petitioners originally proposed to include \$54,700 as an annual revenue requirement for extensions and replacements ("E&R") in the case-in-chief. Attachment SKB-2, p. 17. Mr. Parks recommended the Commission approve Green Acres' request to include \$54,000 as an annual revenue requirement for E&R and further recommended the money be placed in a restricted account for use only on capital improvements of the wastewater utility. Parks Direct at 18. Mr. Parks also recommended Green Acres undertake a number of operations and maintenance activities. *Id.* In his Settlement Testimony, Mr. Brock testified he agreed with Mr. Parks' recommendation that the \$54,700 be placed in a restricted account to be used for capital improvements of the wastewater utility, but expressed his objection regarding the undefined nature of "capital improvement projects of the wastewater utility," as well as his concern over the fact Mr. Parks' recommendations for the various operations and maintenance activities have no specific operating expense item funding. Brock Settlement at 5.

Paragraphs 2a through 2c of the Settlement reflect the parties' compromise on these two issues. As discussed in Mr. Brock's Settlement Testimony, for purposes of Settlement, the Settling Parties have agreed to an E&R revenue requirement amount of \$44,700 to be placed in a restricted account and only used for the projects of the type outlined in Paragraph 2a. *Id.* at 6. Further the Settling Parties have agreed to an O&M revenue requirement of \$10,000 to be expended only for the items outlined in Paragraph 2b. As reflected in Paragraph 3d, the Settling Parties agree Green Acres shall be permitted to use the funds in the E&R Restricted Account or the \$10,000 allocated for Unspecified Maintenance and Repairs for the activities recommended by Mr. Parks but for which no specific revenue requirement amount was allotted. Further, Green Acres' agreement to undertake those activities is also reflected in Paragraph 3d of the Settlement.

Mr. Corey and Mr. Brock also testified regarding the Settling Parties' agreement with respect to other revenue requirement issues. Joint Petitioners requested approval of rates that Green Acres may charge upon closing the acquisition in the amount of \$151.47 per month, which would allow Green Acres to provide sewer revenues of \$392,603 per year. See Attachment SKB-2. In his case-in-chief testimony, Mr. Corey recommended a number of changes to Joint Petitioners' proposed revenue requirement and ultimately recommended a monthly rate of \$120.42 per customer, which would provide Green Acres the opportunity to collect \$313,135 in net revenues. Corey Direct at 16. As reflected in Paragraphs 2d(a) through (g) of the Settlement, Joint Petitioners accepted the majority of Mr. Corey's recommendations for purposes of Settlement. In his Settlement Testimony, Mr. Brock explained there is one substantive difference between Mr. Corey's recommendations and the parties' agreement on settlement and the difference is the adjustment for annual contract legal expense. Brock Settlement at 9. He explained Joint Petitioners recommended an annual contract legal expense revenue requirement of \$24,000 and Mr. Corey recommended no test year adjustment, leaving the annual contract legal expense at the test year amount of \$8,383. *Id.* For purposes of Settlement, Mr. Brock testified the parties agreed to contract legal expense of \$16,000 per year, which reflects a compromise between the parties' proposals. *Id.*

Mr. Brock and Mr. Corey also testified regarding the parties' agreement with respect to Joint Petitioners' proposed debt issuance. On direct, OUCC witness Dellinger made three recommendations regarding Joint Petitioners' proposed financing: (1) the Commission approve the requested financing authority and proposed transaction; (2) the Commission disallow Green Acres' requested debt service reserve requirement; and (3) Petitioner's rates should be trued-up to reflect the actual cost of debt. Dellinger Direct at 10-11. Mr. Dellinger also recommended a process for the true-up in his testimony. *Id.* In his Settlement Testimony, Mr. Brock testified Joint Petitioners are accepting all three of Mr. Dellinger's recommendations for purposes of settlement. Brock Settlement at 4. The Settling Parties' agreement with respect to Joint Petitioners' proposed financing is reflected in Paragraph 2e of the Settlement. Paragraph 2e also sets forth the agreed-upon process for truing-up Joint Petitioners' interest rates to reflect the actual cost of debt at Closing.

Paragraph 4 of the Settlement sets forth the parties' agreement with respect to the rates Green Acres shall be permitted to charge its customers upon Closing. Mr. Corey testified that for purposes of Settlement, the Settling Parties recommend the Commission authorize a monthly initial rate of \$123.35 per month per customer which will provide Green Acres the opportunity to collect \$320,752 in net revenues.

8. Non-Revenue Requirement Issues. Mr. Corey also testified regarding the compromise reached on the non-revenue requirement issues. The terms are outlined in Paragraph 3 of the Settlement. Mr. Corey described the parties' compromise with respect to the 12 non-revenue requirement issues, including the records HCU is to provide Green Acres at Closing and the various operations and maintenance activities Green Acres has agreed to undertake upon taking over the system. Corey Settlement at 10. Mr. Corey further testified that as a condition of this settlement of all issues, the parties agree that nothing in the Settlement shall be construed as an admission or agreement with respect to the value of used and useful utility property. *Id.* He testified the parties further agree the authorization sought in this Cause and provided for in the Settlement

does not require or imply a finding with respect to the fair value of Howard County Utilities' used and useful utility property. *Id.*

9. Stipulation Effect, Scope, and Approval. Paragraph 5 of the Settlement addresses the effect and scope of the Settlement, the approval being sought for the Settlement, and applicable conditions to the effect of the Settlement. Paragraph 5 of the Settlement specifically makes clear that the Settlement is the result of compromise in the settlement process, and that neither the making of the Settlement nor any of its provisions shall constitute an admission or waiver by any Settling Party in any proceeding, now or in the future, nor shall it be cited as precedent. Paragraph 5 also states that the Settlement is a compromise and will be null and void unless approved in its entirety without modification or further condition that is unacceptable to any Settling Party. The Settlement also includes provisions concerning the substantial evidence in the record supporting the approval of the Settlement, recognizes the confidentiality of the settlement communications and reflects other terms typically found in settlement agreements before this Commission.

10. Request to Close Cause No. 45283-U. On August 23, 2019, HCU filed its application in Cause No. 45283-U requesting an increase to its rates and charges pursuant to the Commission's Small Utility filing procedure. On November 17, 2019, HCU filed a Motion for Stay in Cause No. 45283-U in order to allow HCU and Green Acres to file the joint petition in this Cause and proceed with the transfer of HCU's franchise, works and system, including its CTA, to Green Acres. The presiding officers in Cause No. 45283-U issued a docket entry on November 14, 2019 granting HCU's Motion to Stay the proceeding and allowing this proceeding to commence. Because this proceeding resolves all issues in Cause No. 45283-U, including the issue of what rates and charges Green Acres is authorized to charge upon Closing, the Settling Parties respectfully request the Commission to close Cause No. 45283-U.

11. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this cause sufficiently supports the conclusions that the Settlement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

The Commission has before it substantial evidence from which to determine the reasonableness of the terms of the Settlement. Our review of the reasonableness of the Settlement

is aided by the parties' supporting settlement testimony. The Settling Parties' supporting testimony shows the proposed transfer is in the public interest and beneficial to all parties involved. The supporting testimony also provides an explanation of the components underlying the initial rates and charges to be charged by Green Acres provided for in the Settlement, and therefore we find the rates and charges are reasonable for purposes of settlement and supported by the evidence of record.

Approval of the Settlement eliminates the risks, uncertainty, and consumption of time and resources that would otherwise be required for the Commission to issue its final order in this proceeding. The Settlement also resolves all remaining issues in this Cause and reaches a reasonable compromise as reflected in the Settlement and the parties' supporting testimony. Ultimately, the Settlement provides for the transfer of HCU's system to Green Acres and for reasonable rates to be charged by Green Acres upon Closing.

Further, because the Settlement resolves all issues in this Cause and Cause No. 45283-U, we find the Settling Parties' request to close Cause No. 45283-U is appropriate and should be granted.

12. Conclusion. The testimony supporting the Settlement addresses why the Settlement is reasonable and in the public interest. Based upon our review of the record, particularly the Settlement terms and supporting testimony, the Commission finds the Settlement is within the range of potential outcomes and represents a just and reasonable resolution of the issues.

On the basis of the Settlement and the supporting evidence presented in these proceedings, we find the transfer of HCU's system to Green Acres is in the public interest and should be approved. We further find Green Acres should be authorized to issue \$2.2 million in bonds, notes, or other obligations to purchase HCU's system, and should be authorized to charge an initial rate of \$123.35 per month per customer. The Commission further finds and concludes that the Settlement is reasonable, supported by substantial evidence, and in the public interest. Accordingly, the Settlement is approved.

13. Effect of Settlement Agreement. Consistent with the terms of the Settlement, the Settlement is not to be used as precedent in any other proceeding or for any other purpose except to the extent necessary to implement or enforce its terms; consequently, with regard to future citation of the Settlement or of this Order, we find our approval herein should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/1997).

14. List of Other Records. Within 90 days of the issuance of this Order, HCU shall submit a compliance filing which lists all sewer records that are being provided to Green Acres, including the Asset Management Plan.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. The September 8, 2020 Stipulation and Settlement Agreement, a copy of which is attached to this Order, is approved in its entirety and incorporated into this Order as if set out in full.

2. The transfer of HCU's franchise, works, system and CTA to Green Acres as accomplished by the terms of the Purchase Agreement is approved.

3. Upon Closing, Green Acres is authorized to charge an initial monthly rate of \$123.35 per month per customer, which will provide Green Acres the opportunity to collect \$320,752 in net revenues.

4. Green Acres is authorized to issue \$2.2 million in bonds, notes, or other obligations to finance the purchase of HCU's system and to secure such debt by encumbering the utility plant with a mortgage.

5. Green Acres shall file a true-up report as provided in Paragraph 2.e. of the Settlement Agreement.

6. Cause No. 45283-U is dismissed as a result of this proceeding.

7. Within 90 days of the issuance of this Order, HCU shall submit a compliance filing which lists all records that are being provided to Green Acres, including the Asset Management Plan.

8. Upon closing the transaction with HCU, Green Acres shall file a tariff with the Commission's Water/Wastewater Division a schedule of rates. Upon its approval, the tariff shall be effective on or after the closing date.

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

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

APPROVED: NOV 18 2020

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

Mary M. Schneider
Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF HOWARD COUNTY)
UTILITIES, INC. (“SELLER”), AND GREEN)
ACRES SUBDIVISION SEWER SYSTEM,)
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AUTHORITY FOR PURCHASER TO ISSUE)
BONDS, NOTES, OR OTHER)
OBLIGATIONS, INCLUDING A MORTGAGE)
ENCUMBRANCE THEREON.)

STIPULATION AND SETTLEMENT AGREEMENT

Howard County Utilities, Inc. (“HCU”) and Green Acres Subdivision Sewer System, Inc. (“Green Acres”) (“Joint Petitioners”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively, the “Settling Parties”), by their respective counsel, respectfully request the Indiana Utility Regulatory Commission (“Commission”) to approve this Stipulation and Settlement Agreement (“Stipulation”). The Settling Parties agree that the terms and conditions set forth below represent a fair and reasonable resolution of the issues described herein, subject to incorporation into a final order of the Commission, which approves this Stipulation without any modification or condition that is not acceptable to the Settling Parties.

1. In this proceeding, this Stipulation follows the submission of both Joint Petitioners’ and the OUCC’s case-in-chief testimony, and reflects Joint Petitioners’ acceptance, with limited exceptions, of the OUCC’s positions stated in its Settlement Testimony. It coincides with the Settling Parties’ filing of supplemental testimony in support of this Stipulation. Since the time of the OUCC’s filing of its

case-in-chief in this Cause, the parties have engaged in discussions to address items the OUCC has identified in testimony as its primary issues in this Cause. Those interactions have framed the discussions between the Settling Parties, and formed the basis for the Settling Parties to reach agreement on the terms reflected in this Stipulation. A basic component of each party's willingness to enter this agreement is the overall result that is achieved hereby. The Settling Parties have agreed to concessions on individual issues to which the Settling Parties would not be willing to agree but for the overall result produced by this Stipulation and Settlement Agreement. In other words, each party is agreeing to forego or compromise on positions on individual issues in exchange for the overall result produced collectively by all of the concessions. As set forth below, the parties have negotiated terms that resolve all issues in this proceeding. In most cases, the agreed upon terms are founded upon documented positions that are in the record in this proceeding, including in Settlement Testimony that the Settling Parties have agreed each of them will file in support of this Stipulation.

2. For purposes of settlement of the revenue requirement issues, the Settling Parties stipulate and agree as follows:

- a. **Establishment of E&R Restricted Account.** Green Acres shall establish an E&R Restricted Account and place the agreed-upon E&R revenue requirement amount of \$44,700 in this account. Funds placed in this account shall be used only on capital improvement projects of the wastewater utility as follows:
 - i. Extensions of the collection system or treatment system;
 - ii. Replacements of the collection system or treatment system; and
 - iii. For any capital improvement required to comply with an Indiana Department of Environmental Management ("IDEM") mandate.

b. **Miscellaneous Unspecified Maintenance and Repairs.** (a) The Settling Parties stipulate a *pro forma* O&M revenue requirement of \$10,000, to be expended for the following purposes:

- i. For periodic maintenance;
- ii. For IURC required maintenance or repair items that no specific revenue requirement amount has been allocated for in this Settlement or the Final Order in this Cause; and
- iii. For any required maintenance or repair action to comply with an IDEM mandate.

(b) Any portion of the \$10,000 not used for the foregoing may also be used for any E&R expenditures listed above in Paragraph 2a. At the end of each fiscal year, any unexpended amount shall be placed in the E&R Restricted Account.

c. **Annual Reporting of E&R Restricted Account and Unspecified Maintenance and Repairs Expenditures.** Included with its annual report submitted to the Commission, Green Acres shall provide information to the Commission and the OUCC describing the capital improvements funded through its E&R Restricted Account and any expenditure funded through the \$10,000 amount allocated for miscellaneous unspecified maintenance and repairs.

d. **Other Revenue and Expense Adjustments.** For purposes of Settlement, the Settling Parties agree to the following:

(a) Operating Revenues. The Settling Parties agree to *pro forma* operating revenues of \$179,519. This amount reflects the actual 2018 total operating receipts reflected on HCU's 2018 income statement.

(b) Building Rental Expense. The Settling Parties agree that Joint Petitioners' proposed *pro forma* rental expense of \$10,056 for renting the Green Acres Golf Course club house shall be disallowed, as Green Acres will be the owner of the club house after Closing. For purposes of Settlement, the Settling Parties therefore agree to *pro forma* rental expense of \$0.

(c) Contract Legal Expense. The Settling Parties agree to *pro forma* contract legal expense of \$16,000 per year. This amount reflects a compromise between Joint Petitioners' original proposal of \$24,000 and the OUCC's proposal \$8,383.

(d) Insurance and Utilities Expense. The Settling Parties agree that Joint Petitioners' proposed *pro forma* insurance expense of \$2,187 and *pro forma* utilities expense of \$1,455 associated with operating the club house shall be disallowed, as Green Acres will be the owner of the club house after Closing. For purposes of Settlement, the Settling Parties therefore agree to *pro forma* insurance expense of \$0 and *pro forma* utilities expense of \$0.

(e) Indiana Utility Receipts Tax. The Settling Parties agree that Joint Petitioners' proposed adjustment to Indiana Utility Receipts Tax ("URT") of \$5,482 be disallowed, based on the assumption Green Acres is exempt under Indiana law from paying URT. However, if it is determined at a later date that Green Acres is not exempt from paying URT, Green Acres shall be permitted to submit a tariff revision for purposes of adding URT expense to its revenue requirement.

(f) IURC and IDEM Fee. The Settling Parties agree to a *pro forma* IURC adjustment of \$175 and a *pro forma* IDEM fee of (\$999). The IURC Fee and IDEM Fee are calculations based on operating revenues and customer count, respectively.

(f) Sludge Removal Expense. The Settling Parties agree to a *pro forma* Sludge Removal Expense of \$3,000 per year, which is in addition to the \$10,000 allocated for Miscellaneous Unspecified Maintenance and Repair activities as set forth in Paragraph 2b.

(g) Working Capital. The Settling Parties agree that Joint Petitioners' proposed annual working capital revenue requirement of \$5,376 be disallowed, as a working capital provision of \$24,000 is included in Joint Petitioners' estimated non-construction costs in the financing.

(h) Debt Service Reserve. The Settling Parties agree that there be no revenue requirement for funding a Debt Service Reserve account as initially requested, because First Farmers Bank & Trust is not requiring a debt service reserve as a condition of the financing.

- e. **Requested Financing, True-Up Report and Revision of Tariff.** The Settling Parties agree that Joint Petitioners' proposed financing shall be approved. Within thirty (30) days of closing on the financing, Green Acres shall file in this Cause a true-up report describing the final terms of the financing. Green Acres shall also restate in its true-up report the precise terms of this section of the settlement agreement. Within fourteen (14) calendar days of service of the true-up report, the OUCC shall state whether it objects or disagrees with the true-up report. If there is no objection or disagreement, and if the annual debt service payment on the financing differs from the originally estimated total of \$136,176, Green Acres shall file with the IURC a revised tariff adjusting the rates to include the final amount of annual interest payments on the financing. However, Green Acres need not file a revised tariff if both Green Acres and the OUCC state in writing that they consider

the difference to be immaterial for purposes of revising Green Acres' rates. In such case, Green Acres shall file the written statement.

3. For purposes of settlement of the non-revenue requirement issues, the Settling Parties stipulate and agree as follows:

- a. **HCU Records.** (a) Prior to the final hearing in this Cause, the owner of HCU agrees to determine and physically mark (with spray paint) the location of all underground electric lines and piping that conveys air or wastewater starting from the lift station and continuing to and throughout the wastewater treatment plant. HCU shall photograph the markings so that the markings can be seen in relation to adjacent above ground plant and provide copies to Green Acres and the OUCC.
- (b) Prior to the final hearing in this Cause, the owner of HCU shall legibly mark on its plans and drawings the locations as constructed of all electric lines and any piping that conveys air or wastewater starting from the lift station and continuing to and throughout the wastewater treatment plant.
- (c) A copy of the marked-up plans/drawings shall be provided to both Green Acres and the OUCC. The mark-ups shall be made on plans and drawings that are of the highest quality of legibility (e.g. CAD files) so that all numbers and lines can be transmitted electronically so that legibility may be retained for all reasonably expected uses. The mark-up should include location of the underground asset and description including type (e.g. electrical, I&C, air sewage, water), diameter and depth.
- (d) For purposes of this Paragraph, "electric lines" should include all lines on the property, including, but not limited to:

- (i) Power company lines (buried) on property from the County Road to the Power Company owned pad transformer/meter.
 - (ii) Buried electric lines from the pad transformer to the WWTP Motor Control Center.
 - (iii) Buried electric lines from the standby generator to the Automatic Transfer Switch (ATS) in the Control Building.
 - (iv) Buried electric lines from the Control Building to the Influent Pump Station, Equalization Tank pumps, UV Disinfection System, and instrumentation.
 - (v) Instrumentation and control (“I&C”) wiring between field mounted panels and the Control Panel(s) in the Control Building.
- b. **Easement and Other Access Issues.** Joint Petitioners agree to include a parcel map and property description of the three (3) acres that will be transferred at Closing. Joint Petitioners further agree that Green Acres shall obtain and record its property interest in the three (3) acre parcel for permanent access road to the treatment plant.
- c. **Erosion in Gullies.** Joint Petitioners agree that HCU shall correct the erosion problem in eroded gullies and reseed the area to establish cover vegetation by September 15, 2020.
- d. **Capital Repairs and Maintenance Terms.**
- (a) Budget for Repairs. Green Acres shall budget for emergency repairs, regular sewer cleaning and televising, and sewer and manhole repairs and replacements.
 - (b) Effluent Flow. Green Acres shall investigate effluent flow meter readings to determine if reported flows are erroneously high and, if the flows are accurate, Green Acres shall focus on finding and removing I&I sources.

(c) Sludge Removal. Green Acres shall develop, implement, and permit a regular program of off-site sludge disposal.

(d) Painting Program. Green Acres shall develop and implement a maintenance program to paint all rusted and corroded metal within the treatment plant.

(e) Expenditures. Green Acres shall be permitted to fund any expenditure associated with the activities set forth in Paragraph 3d(a) through (d) from funds in the E&R Restricted Account or from the \$10,000 allocated for Miscellaneous Unspecified Maintenance and Repair for maintenance activities, as applicable.

- e. **Miscellaneous Provisions.** The OUCC views the proposed transfer in the larger context and considers the purchase price includes values and benefits to the acquiring party beyond the value of the used and useful property. Accordingly, as a condition of this Settlement of all issues, the Settling Parties agree that nothing herein shall be construed as an admission or agreement with respect to the value of the used and useful utility property. The Settling Parties agree the authorizations sought in this Cause and provided for in this Settlement do not require or imply a finding with respect to the fair value of HCU's used and useful utility property.

4. **Rates.** The Settling Parties stipulate that, upon Closing, Green Acres shall be permitted to charge its customer rates as follows: The revenue requirement shall be calculated to produce annual operating revenues of \$320,752. The rates shall be in effect upon Closing.

5. **Stipulation Effect, Scope and Approval.** The Stipulation is conditioned upon and subject to its acceptance and approval by the Commission in its entirety without any change or condition that is unacceptable to any Settling Party. Each term of the Stipulation is in consideration and support of each and every other term. If the Commission does not approve the Stipulation in its entirety or if the Commission makes modifications that are unacceptable to any Settling Party, the Stipulation shall be

null and void and shall be deemed withdrawn upon notice in writing by any party within 10 days after the date of the final order stating that a modification made by the Commission is unacceptable to the Settling Party.

The Stipulation is the result of compromise in the settlement process and neither the making of the Stipulation nor any of its provisions shall constitute an admission or waiver by any Settling Party in any other proceeding, now or in the future. The Stipulation shall not be used as precedent in any other current or future proceeding or for any other purpose except to the extent provided for herein or to the extent necessary to implement or enforce its terms.

The evidence to be submitted in support of the Stipulation, together with evidence already admitted, constitutes substantial evidence sufficient to support the Stipulation and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of the Stipulation.

The communications and discussions and materials produced and exchanged during the negotiation of the Stipulation relate to offers of settlement and shall be privileged and confidential.

The undersigned represent and agree that they are fully authorized to execute the Stipulation on behalf of the designated party who will be bound thereby.

The Settling Parties will either support or not oppose on rehearing, reconsideration and/or appeal, an IURC Order accepting and approving this Stipulation in accordance with its terms.

ACCEPTED and AGREED this 8th day of September, 2020.

Howard County Utilities, Inc.

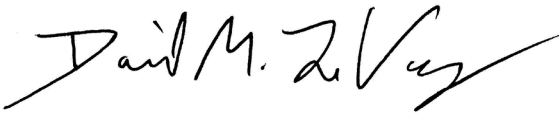
Indiana Office of Utility Consumer Counselor

By:



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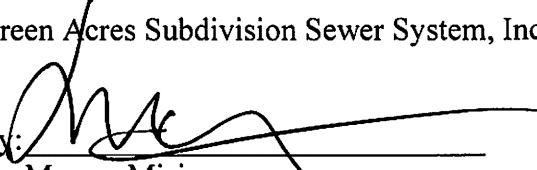
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