

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**JOINT PETITION OF CONSUMERS INDIANA WATER)
COMPANY, HEIR INDUSTRIES, INC., SOUTH HAVEN)
SEWER WORKS, INC., WILDWOOD SHORES)
UTILITIES, INC., WYMBERLY SANITARY WORKS,)
INC., UTILITY CENTER, INC. AND AQUA INDIANA,)
INC. FOR APPROVAL OF AND CONSENT TO THE)
TRANSFER TO AQUA INDIANA, INC. OF THE PLANT,)
PROPERTY AND OTHER ASSETS OF THE OTHER)
ABOVE-NAMED PETITIONERS AND FOR OTHER)
RELATED RELIEF.)**

CAUSE NO. 44533

APPROVED:

APR 29 2015

ORDER OF THE COMMISSION

**Presiding Officers:
James F. Huston, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge**

On September 18, 2014, the Joint Petitioners Consumers Indiana Water Company, Heir Industries, Inc., South Haven Sewer Works, Inc. (“South Haven“), Utility Center, Inc. (“UCI“), Wildwood Shores Utilities Corp., Wymberly Sanitary Works, Inc., and Aqua Indiana, Inc. (collectively the “Joint Petitioners“) filed their Verified Joint Petition requesting the Commission’s consent and approval to certain transfers of water and/or wastewater utility plant, property, and other assets to Aqua Indiana, Inc. (“Aqua Indiana“), and certain relief related to such transfers. The Verified Petition also contained a request for the Commission’s approval of schedules of rates and charges and rules and regulations for service to be applicable to Aqua Indiana’s water and wastewater operations after implementation of the proposed transfers.

The Commission conducted a technical conference and evidentiary hearing on February 4, 2015, at 10:00 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC were present and participated. Prior to the start of the evidentiary hearing, the Commission conducted a technical conference in order to address issues raised by the Commission’s staff concerning the proposed schedules of rates and charges and the proposed rules and regulations for service. As a result of those discussions, Joint Petitioners agreed to submit revised versions of their proposed schedules of rates and charges and proposed rules and regulations, which would be made part of the record. During the evidentiary hearing, the parties offered their respective pre-filed testimony and exhibits, which were admitted into the record without objection. The evidence of record in this Cause also includes Joint Petitioners’ Exhibits 12, 13 and 14, which comprise the revised versions of the proposed schedules and rates and charges and proposed rules and regulations for service that were late-filed on February 26, 2015.

Based upon the applicable law and the evidence presented herein, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Notice of the time and place of the hearings conducted by the Commission in this Cause was given as required by law. Each of the Joint Petitioners is a “public utility“ that is subject to the Commission’s jurisdiction pursuant to Indiana law, including without limitation Ind. Code § 8-1-2-1. Considering the entities involved and the relief requested, the Commission has jurisdiction over the parties and subject matter of this Cause pursuant to Ind. Code § 8-1-2-83 and Ind. Code § 8-1-2-89.

2. **Joint Petitioners’ Characteristics.** Consumers Indiana Water Company is an Indiana for-profit corporation providing water and wastewater utility services to approximately 1,093 customers in Lake County, Indiana. Heir Industries, Inc. is an Indiana for-profit corporation providing wastewater utility services to approximately 105 customers in Clark County, Indiana. South Haven is an Indiana for-profit corporation providing wastewater utility services to approximately 3,973 customers in Porter County, Indiana. Wildwood Shores Utilities Corp. is an Indiana for-profit corporation providing wastewater utility services to approximately 89 customers in Morgan County, Indiana. Wymberly Sanitary Works, Inc. is an Indiana for-profit corporation providing wastewater utility services to approximately 569 customers in Floyd County, Indiana. UCI is an Indiana for-profit corporation providing water and wastewater services to approximately 12,975 customers in Allen County, Indiana. Aqua Indiana is an Indiana for-profit corporation providing water utility services to approximately 313 customers in Montgomery County, Indiana. In addition to providing water utility services, Aqua Indiana provides managerial and operational services to the other Joint Petitioners from regional offices in Indianapolis and Fort Wayne.

3. **Relief Requested.** Joint Petitioners Consumers Indiana Water Company, Heir Industries, Inc., South Haven, Wildwood Shores Utilities Corp., and Wymberly Sanitary Works, Inc. (collectively, the “Merging Utilities“) and Joint Petitioner Aqua Indiana, Inc. are seeking Commission approval for and its consent to the transfer by merger of the plant, property and other assets of each of the Merging Utilities to Aqua Indiana. Further, Joint Petitioner UCI and Joint Petitioner Aqua Indiana respectfully request Commission approval for and its consent to the transfer to Aqua Indiana of the plant, property and other assets used by UCI to provide wastewater utility services as a contribution to Aqua Indiana’s capital. In connection with the proposed transfers by the Merging Utilities and UCI, Aqua Indiana requests authority: (1) to reflect on its books and records the assets, liabilities and capital account balances of the Merging Utilities and UCI as they appear on the books and records of those corporations as of the date the plant, property and other assets are transferred to Aqua Indiana; (2) to adopt the Merging Utilities’ and UCI’s existing depreciation accrual rates for application to the transferred properties of the Merging Utilities and UCI; and (3) to apply to customers the same recurring and non-recurring rates and charges as the Merging Utilities and UCI would apply to customers. Lastly, Aqua Indiana requests approval of new sets of rules and regulations for its water and wastewater operations to be applicable upon implementation of the proposed transfers.

4. **Joint Petitioners’ Direct Evidence.** Joint Petitioners’ witness Thomas M. Bruns sponsored the Plan and Agreement of Merger (the “Plan“) pursuant to which the Merging Utilities would be merged into Aqua Indiana. According to Mr. Bruns, the Plan provides for the transfer and assignment of all of the Merging Utilities’ plant, property, and other assets to Aqua Indiana. Mr. Bruns noted that several of the Merging Utilities and UCI provide wastewater utility services and hold CTAs issued by the Commission pursuant to Ind. Code § 8-1-2-89. These

CTAs, which will be transferred to Aqua Indiana if the Commission grants the relief requested in this proceeding, include the following:

Consumers Indiana Water Company	June 19, 2002 Order in Cause No. 42190; July 3, 2007 Order in Cause No. 43125
Heir Industries, Inc.	November 19, 1997 Order in Cause No. 40396
South Haven Sewer Works, Inc.	May 19, 1999 Order in Cause No. 41135; March 14, 2001 Order on Less than All of the Issues in Cause No. 41135 and March 12, 2003 Order in Cause No. 41135
Utility Center, Inc.	March 3, 2004 Order in Cause No. 42332
Wildwood Shores Utilities Corporation	July 6, 2005 Order in Cause No. 42766; July 16, 2008 Order in Cause No. 43311
Wymberly Sanitary Works, Inc.	May 4, 2005 Order in Cause No. 42764; March 25, 2009 Order in Cause No. 43606

Mr. Bruns also noted that an indeterminate permit held by Consumers Indiana Water Company to provide water utility service will be transferred to Aqua Indiana, which already holds an indeterminate permit to provide water service within a portion of Montgomery County.

According to Mr. Bruns, there is only one difference among the proposed mergers. While all of the proposed mergers are conditioned upon receiving Commission approval, the merger of South Haven into Aqua Indiana is further conditioned upon resolving a federal consent decree imposed on South Haven while under prior ownership. That consent decree was issued by United States District Court for the Northern District of Indiana in a case docketed as *United States of America v. South Haven Sewer Works, Inc.*, Civil Action No. 02-03-CV290. Mr. Bruns stated that, until the court issues a final non-appealable order dissolving the consent decree and closing that case, South Haven, unlike the other Merging Utilities, will remain a separate corporation. Mr. Bruns further stated that South Haven has completed all of the infrastructure improvements required by the consent decree and, at this time, he anticipates that South Haven will seek the dissolution of the consent decree within approximately 12 months.

Mr. Bruns noted that the Plan also identified several corporations that are not among the Joint Petitioners in this Cause. As Mr. Bruns testified, those corporations (i.e., Indiana Water Infrastructure Group, Inc., Water One, Inc., Reynolds Operations Corporation, and Aqua Indiana South Haven, Inc.) are all Indiana corporations that have ties to one or more of the Merging Utilities and were included in the Plan in order to simplify Aqua America, Inc.'s presence in

Indiana. According to Mr. Bruns, those corporations were not included among the Merging Utilities and Joint Petitioners in this proceeding because each of them does not own or operate any utility assets in Indiana or provide any utility services to customers in Indiana.

Mr. Bruns also described the transfer involving UCI and sponsored the form of the agreement pursuant to which UCI will contribute all of the plant, property and other assets used by it to provide wastewater utility services to Aqua Indiana. According to Mr. Bruns, the transfer of UCI's wastewater utility plant and property as a contribution to Aqua Indiana effectively accomplishes the same result as a merger, but leaves Utility Center in a position to satisfy continuing obligations it has to the City of Fort Wayne as part of the sale of UCI's water utility properties pursuant to the Commission's Order in Cause No. 44503.

Mr. Bruns sponsored corporate resolutions authorizing and approving the Plan and the agreement pursuant to which UCI is contributing all of the plant, property and other assets used by it to provide wastewater utility services to Joint Petitioner Aqua Indiana.

Mr. Bruns testified that the proposed transfers would result in very little, if any, changes in the operation of the Merging Utilities and UCI, which currently are under the same executive management and, to a great degree, are operated and maintained by the same workforces. Mr. Bruns stated that this situation will continue to exist after the proposed transfers to Aqua Indiana are consummated. The financial and other support provided by the Joint Petitioners' parent company, Aqua America, Inc., for the utility operations now conducted by the Merging Utilities and UCI also will remain unchanged after their transfer to Aqua Indiana. Mr. Bruns testified that these are also the reasons why it should be clear that Aqua Indiana will have the managerial, technical and financial ability to provide adequate and reliable service to the customers now served by the Merging Utilities and UCI. Mr. Bruns noted that the proposed transfers should cause very little, if any confusion for customers, since the Merging Utilities and UCI all have been operating under the assumed name "Aqua Indiana, Inc." for several years and customer communications typically are made under that name.

Mr. Bruns testified that Aqua Indiana intends to reflect on its books and records the assets, liabilities, and capital account balances of the Merging Utilities and UCI as they appear on the books and records of those corporations as of the date the plant, property and other assets are transferred to Aqua Indiana. Aqua Indiana also proposes to adopt the Merging Utilities' and UCI's existing depreciation accrual rates for application to the transferred properties of the Merging Utilities and UCI. Further, Mr. Bruns stated that, until otherwise provided, Aqua Indiana intends to apply to customers the same recurring and non-recurring rates and charges as the Merging Utilities and UCI would apply to customers. Mr. Bruns sponsored a copy of the schedules of rates and charges that Aqua Indiana intends to implement if the proposed transfers are approved.

While Aqua Indiana intends to apply to customers the Merging Utilities' and UCI's current rates and charges, Mr. Bruns noted that Aqua Indiana is seeking Commission approval to implement after consummation of the proposed transfers a set of revised rules and regulations applicable to all of its water utility customers and another set applicable to its wastewater utility customers. Uniform rules and regulations, according to Mr. Bruns, will promote consistent, nondiscriminatory, and non-preferential treatment of Aqua Indiana's customers in all areas of its

operations other than in regard to rates and charges. Uniform rules and regulations also will aid Aqua Indiana's efforts to provide service in an economical and efficient manner. Mr. Bruns sponsored a copy of Aqua Indiana's proposed rules and regulations for its water and wastewater utility operations, respectively.

Mr. Bruns testified that Aqua Indiana's proposed rules and regulations are in many respects the same as those currently applied by UCI. The Commission approved UCI's rules and regulations in connection with the proceedings in Cause No. 43874. Mr. Bruns described the deviations from the UCI rules and regulations contained in the proposed rules and regulations. First, according to Mr. Bruns, UCI's water and sewer main extension rules were replaced with those used by another of the Merging Utilities, Consumers Indiana Water Company, which were approved in the Commission's June 19, 2002 Order in Cause No. 42190. Mr. Bruns also noted that Aqua Indiana's second proposed deviation from the current UCI rules and regulations involves the addition of language dealing with grinder pumps and related facilities, which reflects provisions in the current rules of Heir Industries, Inc., another of the Merging Utilities that requires the use of such facilities by many of its customers due to the character of its system.¹

Mr. Bruns recommended that the Commission approve the relief requested in this Cause. According to Mr. Bruns, the transfer of the Merging Utilities' and UCI's plant and property to Aqua Indiana and provision of service to each of their current customers does not represent a meaningful change from the current state of affairs, but reflects an opportunity to provide service to customers in a more cost effective and efficient manner. Further, Mr. Bruns stated that having all of the operations of the Merging Utilities and UCI in the same legal structure will permit more effective and efficient operation of their respective plant, property and other assets. For example, consolidation of the separate operations into a single entity will reduce the number of corporate and regulatory proceedings, related record-keeping and documentation, and result in other administrative efficiencies and advantages. In Mr. Bruns' view, there also should be some cost savings that result from the combination, although they are difficult to quantify.

5. OUCC's Evidence. The OUCC's witness Mr. Charles E. Patrick described the proposed transfers involving the Joint Petitioners and other relief requested in this Cause, including without limitation the manner in which Aqua Indiana proposed to account for the proposed transfers. Mr. Patrick noted that all of the Merging Utilities, UCI, and Aqua Indiana currently are direct or indirect subsidiaries of Aqua America, Inc. He also described the federal and state statutes that were the basis for its proposed mergers.

According to Mr. Patrick, the OUCC recommended that the Commission approve the proposed transfers, the proposed schedules of rates and charges, and the proposed new rules and regulations. Mr. Patrick also stated that the OUCC recommended that Aqua Indiana be required to notify the Commission and OUCC within 14 days of accomplishing each phase of the proposed transfers. Further, Mr. Patrick testified that the OUCC also recommended that the Commission require Aqua Indiana to notify its customers and provide access to the new rules and regulations that would be applicable.

¹ The proposed rules and regulations, as revised in the late-filed exhibits, reflect the comments of the Commission's staff that were the subject of the February 4 technical conference conducted in this Cause.

6. **Joint Petitioners' Rebuttal Evidence.** In his rebuttal testimony, Mr. Bruns noted that the OUCC specifically recommended that Commission approve most, but not all, of the elements of the relief requested by the Joint Petitioners in this Cause. While discussed in Mr. Patrick's testimony, Mr. Bruns pointed out that Mr. Patrick made no recommendation and stated no objection to Aqua Indiana reflecting on its books and records the assets, liabilities, and capital account balances for the transferred properties as they appear on the books and records of the Joint Petitioners as of the date they are transferred to Aqua Indiana, subject to such adjustments as are necessary to reflect the transfers. Similarly, Mr. Bruns indicated that Mr. Patrick's testimony contained no objection or recommendation concerning Aqua Indiana's request that the Commission approve of it applying to the transferred properties the same depreciation accrual rates as are currently applied to those properties.

In regard to the OUCC's recommendation that the Commission require Aqua Indiana to notify it and the OUCC within 14 days of accomplishing each phase of the proposed mergers and asset transfer, Mr. Bruns agreed and stated that Aqua Indiana will notify the Commission and the OUCC within 14 days of accomplishing each phase of the proposed mergers and asset transfer. Similarly, in regard to the OUCC's recommendation that the Commission require Aqua Indiana notify and provide its customers with electronic access to the new rules and regulations that it has proposed to apply after the proposed mergers and asset transfer are implemented, Mr. Bruns agreed and stated that Aqua Indiana would provide its customers with notice of the transfers and the new rules and regulations and sponsored a proposed form of that notice. Mr. Bruns pointed out that, as shown in the proposed form of notice, the new rules and regulations will be accessible to customers electronically at <https://www.aquaamerica.com/our-states/indiana.aspx>.

7. **Commission Discussion and Findings.** The pre-filed testimony and exhibits demonstrate that the proposed transfers by the Merging Utilities and UCI to Aqua Indiana will have very little, if any, impact on the current operations of the Joint Petitioners. Aqua Indiana is already responsible for the operations of each of the Merging Utilities and UCI and will have the same resources available to provide service in their place as it currently has. Aqua Indiana also has been shown to have the managerial, technical, and financial ability to provide service to the current customers of the Merging Utilities and UCI. Further, the proposed transfers should not cause any significant confusion among the current customers of the Merging Utilities and UCI since each of them has been doing business under Aqua Indiana's name for several years.

The evidence also supports concluding that having all of the operations of the Merging Utilities and UCI in the same legal structure will permit more effective and efficient operation of their respective plant, property, and other assets. For example, consolidation of the separate operations into a single entity will reduce the number of corporate and regulatory proceedings, related record-keeping and documentation, and result in other administrative efficiencies and advantages. While admittedly difficult to quantify, the consolidation of the Merging Utilities and UCI into Aqua Indiana will, at least, create an opportunity for cost savings that could benefit customers. Accordingly, based on the evidence of record, we find that the proposed transfers are in the public interest and should be approved. Consistent with the recommendation of the OUCC and agreed to by the Joint Petitioners, Aqua Indiana shall notify the Commission and the OUCC within 14 days of implementing any phase of the transfers.

Aqua Indiana's proposal to account for the property, plant, and assets received from the Merging Utilities and UCI in the same way as those utilities did, including without limitation the use of their depreciation rates, is sound and should be implemented. Similarly, Aqua Indiana's continuing use of the Merging Utilities and UCI's current rates and charges, as shown on its proposed schedules of rates and charges, appearing as Joint Petitioners' Late-Filed Exhibit 12, will be the least disruptive and confusing for customers and should be approved.

Even though Aqua Indiana will continue to use the Merging Utilities' and UCI's current rates and charges, we agree that Aqua Indiana should apply a new, common set of rules and regulations to govern its water and wastewater services in the form of those appearing as Joint Petitioners' Late-Filed Exhibits 13 and 14. The sets of proposed rules and regulations reflect provisions that the Commission has already approved for use by UCI and other of the Merging Utilities. They also reflect the comments of the Commission's staff discussed at the February 4, 2015 technical conference conducted in this Cause. Uniform rules and regulations will promote consistent, nondiscriminatory, and non-preferential treatment of Aqua Indiana's customers in all areas of its operations (other than rates and charges). Uniform rules and regulations will aid Aqua Indiana's efforts to provide service in an economical and efficient manner. Aqua Indiana shall give notice to its customers of the adoption of the new rules and regulations upon approval by the Commission.

Finally, we note that the merger of South Haven into Aqua Indiana is conditioned on the future dissolution of the consent decree. Upon a final decision by the federal district court approving the dissolution, Aqua Indiana shall file notice with the Commission, under this Cause, that this condition has been satisfied.

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

1. The proposed transfers to Aqua Indiana by merger of all of the Merging Utilities respective plant, property, and other assets, and all actions necessary to effectuate or related to such mergers and transfers, are approved;
2. The proposed transfer to Aqua Indiana as a contribution to its capital of UCI's plant, property, and other assets currently used to provide wastewater utility service, and all actions necessary to effectuate or related to such a transfer, is approved;
3. The proposed transfers to Aqua Indiana of the operating rights of each of the Merging Utilities and UCI, including without limitation any certificates of territorial authority and licenses, permits and franchises for the use of county roads and rights-of-way held by each, are approved;
4. The recording on the books and records of Aqua Indiana upon completion of the transfers of the Merging Utilities and UCI's plant, property, and other assets of the aggregate of the assets, liabilities and capital accounts of the Merging Utilities and UCI, subject to such adjustments as are necessary to reflect the transfers, is hereby approved;
5. The cancellation of the Merging Utilities and UCI's existing rates and charges for service, and the application by Aqua Indiana of those same rates and charges to customers

currently served by the Merging Utilities and UCI, subject to subsequent amendment, addition, deletion, and changes as the Commission may allow, is approved;

6. The cancellation of the Merging Utilities and UCI's rules and regulations for service, and the application of the rules and regulations proposed by Aqua Indiana, subject to subsequent amendment, addition, deletion, and changes as the Commission may allow, are approved;

7. Aqua Indiana shall file with the Water/Wastewater Division of the Commission new schedules of rates and charges, and rules and regulations for service, consistent with Finding No. 7, which schedules of rates and charges and rules and regulations of service shall be effective on and after the date of approval.

8. Aqua Indiana shall comply fully with the notice requirements as set forth in Paragraph No. 7.

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

STEPHAN, MAYS-MEDLEY, HUSTON, AND ZIEGNER CONCUR; WEBER NOT PARTICIPATING:

APPROVED: APR 29 2015

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


Brenda A. Howe
Secretary to the Commission