

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF THE BOARD OF DIRECTORS FOR)
UTILITIES OF THE DEPARTMENT OF PUBLIC)
UTILITIES OF THE CITY OF INDIANAPOLIS, D/B/A)
CITIZENS ENERGY GROUP, CWA AUTHORITY, INC.,)
THE CITY OF INDIANAPOLIS AND ITS DEPARTMENT)
OF WATERWORKS AND ITS SANITARY DISTRICT FOR)
APPROVALS IN CONNECTION WITH THE PROPOSED)
TRANSFER OF CERTAIN WATER UTILITY ASSETS TO)
THE BOARD AND THE PROPOSED TRANSFER OF)
CERTAIN WASTEWATER UTILITY ASSETS TO THE)
AUTHORITY, INCLUDING: (A) APPROVAL OF INITIAL)
RATES AND RULES FOR WATER AND WASTEWATER)
SERVICE , AS WELL AS THE TERMS OF CERTAIN)
AGREEMENTS FOR WASTEWATER TREATMENT AND)
DISPOSAL SERVICE; (B) APPROVAL OF AN)
ENVIRONMENTAL COMPLIANCE PLAN UNDER IND.)
CODE 8-1-28 AND AN ADJUSTMENT MECHANISM FOR)
WASTEWATER RATES TO PROVIDE TIMELY)
RECOVERY OF COSTS NECESSARY TO COMPLY IN)
WHOLE OR IN PART WITH THE SAFE DRINKING)
WATER ACT AND/OR CLEAN WATER ACT; (C))
APPROVAL OF PROPOSED ALLOCATIONS OF)
CORPORATE SUPPORT SERVICES COSTS AMONG)
AFFECTED UTILITIES; (D) APPROVAL OF AN)
OPERATING AGREEMENT BETWEEN CITIZENS)
ENERGY GROUP AND CWA AUTHORITY, INC.; (E))
APPROVAL OF DEPRECIATION RATES AND OTHER)
ACCOUNTING MATTERS RELATED TO THE WATER)
AND WASTEWATER ASSETS; AND (F) ANY OTHER)
APPROVALS NEEDED IN CONNECTION THEREWITH)

CAUSE NO. 43936

APPROVED: JUL 13 2011

BY THE COMMISSION:
David E. Ziegner, Commissioner
Jeffery A. Earl, Administrative Law Judge

On August 11, 2010, the City of Indianapolis, Indiana ("City"), the Department of Waterworks of the City, acting by and through its Board of Waterworks ("DOW" or the "Department"), the Sanitary District of the City, acting by and through its Board of Public Works ("Sanitary District"), the Board of Directors for Utilities of the Department of Public Utilities of the City, d/b/a Citizens Energy Group, ("Citizens" or the "Board") and CWA Authority, Inc. (the "Authority") (collectively "Joint Petitioners") filed a Verified Joint Petition with the Indiana Utility Regulatory Commission ("Commission"). The Verified Petition requested approvals relating to the proposed acquisition of certain water utility assets by Citizens from the City and the DOW and the

proposed acquisition of certain wastewater utility assets by the Authority from the City and Sanitary District.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, a Prehearing Conference in this Cause was held on September 13, 2010. Joint Petitioners, the Indiana Office of Utility Consumer Counselor (“OUCC”) and several parties who had been granted or were seeking intervention appeared and participated at the Prehearing Conference. On September 22, 2010, the Commission issued a Prehearing Conference Order detailing the procedural schedule in this Cause.

The following parties petitioned to intervene in this proceeding, which petitions were granted by the Presiding Officers: Veolia Water Indianapolis, LLC (“Veolia”); a group of industrial customers identifying itself as the Indianapolis Water/Sewer Industrial Group (“Industrial Group”); the Citizens Action Coalition of Indiana, Inc. (“CAC”); United Water Services, LLC (“United”); the Indianapolis Water Service Advisory Board (“SAB”); the Town of Pittsboro, Indiana (“Pittsboro”); and a group of individuals identifying itself as the Consumer Ratepayers (“Consumer Ratepayers”).¹

On October 29, 2010, Joint Petitioners and Veolia filed a motion for leave (the “Motion for Leave”) to submit a Settlement Agreement entered into by and among the City, the DOW, Citizens, and Veolia (the “Veolia Settlement Agreement”) and an Assignment and Assumption Agreement entered into by and among the City, the Sanitary District, and the Authority relating to the management agreement between the City and United Water Services Indiana, LLC (the “Authority/United Agreement”). On December 1, 2010, the Presiding Officers granted the Motion for Leave by docket entry.

Pursuant to proper notice given as provided by law, an Evidentiary Hearing was held on December 6, 7, 8, 10, and 14, 2010, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners, the OUCC, the Industrial Group, CAC, United, Veolia, Consumer Ratepayers, the SAB, and Pittsboro participated in the hearing. At the conclusion of Joint Petitioners’ case-in-chief and the supplemental cases-in-chief of Joint Petitioner and Veolia, this matter was continued until January 5, 2011, at which time the Commission held a public Field Hearing for the purpose of receiving testimony from the general public.

The Evidentiary Hearing was reconvened and held on February 21 through 23, 2011. Joint Petitioners, the OUCC, the Industrial Group, CAC, Pittsboro, Veolia, and the SAB participated in the hearing held on February 21-23, 2011. At the conclusion of the February, 2011, evidentiary hearing, the record was closed and the Presiding Officers established a post-hearing briefing schedule.

On April 12, 2011, Joint Petitioners filed a Verified Petition to Reopen the Record and for Leave to Submit a Settlement Agreement and Evidence in Support of the Proposed Resolution of

¹ The Consumer Ratepayers subsequently withdrew their intervention, objections, testimony, and exhibits, none of which was offered or admitted into evidence in this proceeding. As a result, we need not address those filings. A group of individuals identifying itself as the Non-Union Employees of the City of Indianapolis and its Department of Waterworks d/b/a Indianapolis Water (“Non-Union Employees”) also filed a petition to intervene in this proceeding; however, the Non-Union Employees withdrew their request to intervene prior to any Commission ruling on their petition to intervene.

Issues in this Cause pursuant to 170 IAC 1-1.1-17 and 170 IAC 1-1.1-22. A Settlement Agreement entered into among Joint Petitioners, the OUCC, the Industrial Group, and the SAB (the “Settling Parties”) was attached as Exhibit A to the Petition to Reopen the Record. By docket entry dated April 14, 2011, the Presiding Officers granted the Petition to Reopen the Record. Pursuant to proper notice given as provided by law, an Evidentiary Hearing was held on May 10, 2011, to hear additional evidence regarding the Settlement Agreement. Joint Petitioners, the OUCC, the Industrial Group, CAC, and Veolia participated in that evidentiary hearing.

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

1. Joint Petitioners’ Characteristics. The DOW is a department of the City that owns and operates plant and equipment for the production, transmission, delivery, and furnishing of water utility service throughout most of Marion County and portions of Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Morgan, and Shelby Counties.

The Sanitary District is a department of the City that furnishes wastewater utility service by means of plant and equipment, including mains and laterals comprising a wastewater collection and transportation system and associated treatment facilities. The Sanitary District furnishes wastewater utility service to commercial, residential, industrial, and other types of customers in Marion County and a portion of Hamilton County contiguous to Marion County. The Sanitary District also has entered into Wastewater Treatment and Disposal Agreements by which it provides wastewater transportation and treatment services to seven surrounding municipalities, districts, and wastewater utilities. The Sanitary District’s current rates and terms of conditions for wastewater service are subject to approval of the City-County Council of the Consolidated City of Indianapolis and Marion County, Indiana (the “City-County Council”). The Sanitary District’s existing rates and charges for wastewater utility service were adopted by Ordinance of the City-County Council on April 13, 2009, and are codified in Section 671-102 of the Revised Code of the Consolidated City of Indianapolis, Indiana.

Citizens is the trade name for the Board of Directors for Utilities of the Department of Public Utilities of the City. Citizens currently owns and operates Citizens Gas, a municipal gas utility, Citizens Thermal, a municipal steam utility, and Citizens Gas of Westfield, an investor-owned utility.

The Authority is an Indiana nonprofit corporation, a political subdivision, and an instrumentality of the Board created pursuant to an Interlocal Cooperation Agreement between the City, the Sanitary District, and Citizens, which was entered into in accordance with Indiana’s Interlocal Cooperation Act, Ind. Code ch. 36-1-7. The Interlocal Cooperation Agreement provides that the Authority will possess all of the “appropriate and requisite authorizations, powers, functions and duties” of each of the City, the Sanitary District, and the Board necessary to allow the Authority to administer and operate the acquired Wastewater utility properties, including the power of eminent domain but excluding the City’s and the Sanitary District’s taxing power and taxing authority. Pursuant to the Interlocal Cooperation Agreement, the Board has delegated to the Authority its statutory powers to adopt rates and charges for the provision of wastewater utility service.

2. **Legal Notice and Commission Jurisdiction.** Due, legal, and timely notice of the public hearings conducted in this Cause was given as provided by law. Legal notice of the filing for approval of an Environmental Compliance Plan also was published by Joint Petitioners in accordance with Ind. Code § 8-1-28-6.

The DOW is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana, including certain provisions of the Public Service Commission Act, as amended. The Sanitary District is a department of the City existing and operating under Ind. Code ch. 36-9-25. The Sanitary District's current rates and terms of service are not subject to the jurisdiction of the Commission, but the Sanitary District is a party because it is selling its Wastewater utility assets to the Authority, which, as discussed below, is subject to this Commission's jurisdiction.

Utilities owned and operated by the Board are subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana, including Ind. Code § 8-1-11.1-3 and certain provisions of the Public Service Commission Act, as amended. Under Ind. Code § 8-1-11.1-3(c)(9) and Ind. Code § 8-1.5-3-8, the utilities operated by the Board are required to obtain Commission approval of changes in their schedules of rates and charges and terms and conditions for service.

Pursuant to the Interlocal Cooperation Agreement, the Board has delegated to the Authority its statutory powers to adopt rates and charges for the provision of wastewater utility service under Ind. Code § 8-1-11.1-3(c)(9). That statute provides that rules and rates for utility service adopted by the Board, and thus the Authority through the delegation in the Interlocal Cooperation Agreement, "shall be in effect only after the rules and rates have been filed with and approved by the commission and such approval shall be granted by the commission only after notice of hearing and hearing as provided by IC 8-1-1 and IC 8-1-2, and only after determining compliance of the rates of service with IC 8-1.5-3-8 and IC 8-1.5-3-10."

Therefore, the Commission has jurisdiction over the Joint Petitioners and the subject matter of this Cause including the rates and charges to be collected by Citizens and the Authority for water and wastewater Service respectively, as well as both entities' terms of service.

3. **Relief Requested.** The Verified Petition requested an Order from the Commission:

- (a) approving the Asset Purchase Agreement (the "Water System Agreement" or "Water APA") under which the City and the DOW will sell and transfer to the Board certain water utility assets currently owned and operated by the City and the DOW (the "Water System") and the transactions contemplated therein, finding said agreement and its terms are reasonable and in the public interest and authorizing the City, the DOW and the Board to take all actions necessary to effect such agreement;
- (b) finding that the Board has the legal, financial, technical, and managerial ability to own and operate the Water System;
- (c) approving any agreement reached by the Board and Veolia as reasonable and in the interest of the customers of the Water System;

- (d) approving the use by the Board of the schedules of rates and charges applicable to the provision of water utility service by the DOW in effect at Closing, as well as rules and regulations for service based upon those used by the DOW;
- (e) approving the DOW's assignment of any DOW Interlocal Agreements and franchise rights to the Board and the Board's assumption of the DOW's obligations thereunder;
- (f) approving the adoption by the Board of the DOW's depreciation rates currently used for the Water System;
- (g) approving the recording on the books and records of the Board of the acquired Water System assets as described in the evidence in this proceeding;
- (h) approving the Asset Purchase Agreement (the "Wastewater System Agreement" or "Wastewater APA") under which the City and the Sanitary District will sell and transfer to the Authority certain Wastewater System assets currently owned and operated by the City and the Sanitary District (the "Wastewater System") and the transactions contemplated therein, finding said agreement and its terms and the Authority's agreement to make the payments in lieu of taxes ("PILOT") in accordance with the schedule agreed upon by the parties and attached to Special Ordinance No. 5, 2010, to be reasonable and in the public interest and authorizing the City, the Sanitary District, and the Authority to take all actions necessary to effect such agreement;
- (i) finding the Authority has the legal, financial, technical, and managerial ability to own and operate the Wastewater System;
- (j) approving any agreement reached by the Authority and United respecting operation of the Wastewater System as reasonable and in the interest of the customers of the Wastewater System;
- (k) approving the use by the Authority of the schedules of rates and charges currently applicable to the provision of wastewater utility service by the Sanitary District, as set forth in the City's rate Ordinance, and in effect at Closing to be effective for wastewater utility service rendered by the Authority;
- (l) approving the terms of certain agreements for wastewater treatment and disposal service and the use by the Authority of general terms and conditions of service based upon the rules now in effect for wastewater utility service by the Sanitary District;
- (m) approving the adoption by the Authority of the Sanitary District's depreciation rates currently used for the Wastewater System;

- (n) finding the Board's assumption of outstanding indebtedness of the DOW or City related to the Water System or issuance of any new indebtedness related to the Board's proposed acquisition of the Water System to be reasonable, in the public interest, and recoverable in rates;
- (o) finding the Board's or the Authority's assumption of any existing outstanding indebtedness of the Sanitary District or City related to the Wastewater System, issuance of any new indebtedness related to the Authority's proposed acquisition of the Wastewater System, and the Authority's semiannual payments to the City associated with its general obligation bonds associated with the Sanitary District (the "GO Debt") to be reasonable, in the public interest and recoverable in rates;
- (p) authorizing the proper accounting treatment of the acquired Wastewater System assets on the books and records of the Authority as described in the evidence in this proceeding;
- (q) approving the Authority's environmental compliance plan ("ECP") and authorizing the Authority to seek a recovery mechanism for wastewater rates and charges to provide timely recovery of ECP expenditures necessary for the Authority to comply in whole or in part with the Safe Drinking Water Act and/or Clean Water Act;
- (r) approving an operating agreement between the Board and the Authority and the proposed methodology for allocating corporate support services costs among the affected utilities and non-utility affiliates under the Board's control;
- (s) approving a certificate of territorial authority to the Authority for the provision of wastewater utility service to any customers located in rural areas; and
- (t) granting all other appropriate relief necessary or appropriate.

4. The Proposed Water and Wastewater Acquisitions.

A. Initial Evidence Regarding the Proposed Acquisitions. At the Evidentiary Hearing held in December, 2010, the Joint Petitioners offered their case-in-chief testimony and exhibits in support of the relief requested in the Verified Petition. Chris W. Cotterill, Chief of Staff for the Office of Mayor Gregory A. Ballard of the City, and Michael G. Lane, Senior Consultant and Accredited Senior Appraiser with R.W. Beck, testified on behalf of the City, DOW, and the Sanitary District. The following witnesses testified on behalf of Citizens and the Authority: Carey B. Lykins, President and Chief Executive Officer of Citizens and the Authority; William A. Tracy, Senior Vice President of Operations; John R. Brehm, Senior Vice President and Chief Financial Officer; Lindsay C. Lindgren, Vice President of Gas and Steam Operations; James O. Dillard, General Manager of Project Engineering; David C. Kiesel, Superintendent of Engineering; Ann W. McIver, Director of Environmental Stewardship; LaTona S. Prentice, Executive Director of

Regulatory Affairs; Michael D. Strohl, Vice President of Customer Relationships; Peggy L. Howe, Vice President of the Enterprise Management Solutions Division of Black & Veatch; Thomas J. Flaherty, Senior Vice President in the Energy, Chemicals and Utilities Practice of Booz & Company; J. Perry Offutt, Managing Director in the Investment Banking Division and Head of Infrastructure Investment Banking for the Americas with Morgan & Stanley & Co. Inc. (“Morgan Stanley”); and Jeffrey L. Kelsey, Director of Property Tax Services in the State and Local Tax Practice section of KSM Business Services, Inc. of Katz, Sapper & Miller, CPAs. Joint Petitioners provided testimony addressing a variety of topics, including the strategic rationale for the proposed transactions, the financial and other benefits that are expected to be realized as a result of the transfer of the Water and Wastewater Systems and the Authority’s financial, technical, and managerial ability to own and operate the Water and Wastewater Systems; the value of the assets to be transferred and fairness of the purchase price; and the proposed rates and charges and terms and conditions for service for the water and Wastewater Systems under Citizens’s and the Authority’s ownership.

The following witnesses also testified at the December, 2010 Evidentiary Hearing on behalf of the Joint Petitioners and Veolia in support of the Veolia Settlement: Mr. Cotterill on behalf of the City; Aaron D. Johnson, Vice President of Integration and Associate Counsel, on behalf of Citizens; Mr. Tracy on behalf of Citizens; and Brian J. Clarke, Executive Vice President, Business Support and General Counsel of Veolia Water Americas, LLC, on behalf of Veolia.

At the Evidentiary Hearing held in February, 2011, the OUCC and certain intervenors offered their respective case-in-chief testimony and exhibits. The following witnesses testified on behalf of the OUCC regarding the proposed acquisitions and the relief requested in the Verified Petition: Scott A. Bell, Director of the Water/Wastewater Division; Edward R. Kaufman, Senior Analyst; Walter P. Drabinski, President of Vantage Energy Consulting LLC (“Vantage”); Charles E. Patrick, Utility Analyst for the Water/Wastewater Division; Margaret A. Stull, Utility Analyst II in the Water/Wastewater Division; Roger A. Pettijohn, Senior Analyst for the Water/Wastewater Division; and Harold L. Rees, Senior Analyst for the Water/Wastewater Division. In its case-in-chief testimony, the OUCC did not oppose the proposed utility transfers, however, the OUCC stated certain conditions and limitations needed to be established before the Commission approved the proposed acquisitions. Each of the OUCC witnesses addressed certain aspects of the relief requested and described areas of concern that supported the OUCC’s request for establishing the conditions and limitations it proposed. The following witnesses also testified at the February 2011 hearing setting forth the initial positions of the Industrial Group and SAB: Michael A. Gorman, a consultant with Brubaker & Associates, Inc., on behalf of the Industrial Group; Roger Goings, Vice Chairman of the SAB, and David George, an elected Councilman for the Fishers Town Council and Chairman of the SAB, on behalf of the SAB.

Finally, at the February 2011 Evidentiary Hearing, the Joint Petitioners and Veolia offered the testimony of rebuttal witnesses, Lykins, Johnson, Prentice, and Brehm, who addressed topics raised by the OUCC, Industrial Group and SAB witnesses.

B. Overview of the Asset Purchase Agreements. Included among the evidence presented by the Joint Petitioners in this proceeding were the asset purchase agreements pursuant to which the acquisitions of the Water and Wastewater Systems would be consummated (collectively the “APAs”). A summary of certain key provisions in the APAs follows.

1. **The Water System Agreement.** Under the Water System Agreement, Citizens will acquire, except for specifically excluded assets, all of the City's and the DOW's right, title, and interest to the assets used, necessary, or important in the operation of the Water System (the "Acquired Assets"). The City, however, will retain, without limitation, its Eagle Creek Flood Control facility (subject to Citizens's right to withdraw water therefrom), certain accounts receivable, intellectual property, access rights, and other reserved rights and scheduled assets. Citizens also will assume the liabilities of the City and the DOW relating to the Water System, including without limitation those related to litigation relating to the Water System against either the City or the DOW, performance under certain contracts, and certain retiree medical benefits (the "Assumed Liabilities"). In addition to the Assumed Liabilities, Citizens will issue debt to replace and refund certain long term debt owed by the City and the DOW (the "Assumed Debt Obligations"). As of June 1, 2010, the Assumed Debt Obligations amounted to \$915,655,000. The aggregate amount of the liabilities and debt obligations assumed by Citizens constitutes full consideration for Citizens's acquisition of the Water System assets.

Citizens is required to hold and operate the Water System for the exclusive and perpetual benefit of the inhabitants of the City in furtherance of a public charitable trust. The purposes of the public charitable trust are: (a) to provide reasonable water services at reasonable cost, as determined by the Commission, to the inhabitants of the City in the same manner as other utilities held and operated by Citizens Energy Group; and (b) to protect the City and its inhabitants against further sale or disposition of the Water System and forever from private ownership, control or partisan political governance. The Water System shall be operated in the same manner as the existing public charitable trust governing the operation of the gas and steam utilities and any financial benefits shall be retained or utilized exclusively for the beneficiaries of the trust. Citizens is not permitted to seek rates and charges pursuant to Ind. Code § 8-1.5-3-8(e), or any successor statute, unless such rates are for the operation, maintenance, or improvement of the Water System or to satisfy Citizens's obligations to the City and the DOW under the Water System Agreement.

The Water System will never be transferred to, or owned by, a for-profit entity or for the benefit and profit of private investors or shareholders. The terms of the public charitable trust prevent Citizens from selling, leasing, or otherwise disposing of Water System assets, except in the case of disposing of "Surplus Property," which is defined in the Water System Agreement as property no longer necessary for the operation of the Water System and therefore to fulfill the purposes of the public charitable trust. Further, the Water System Agreement explicitly states that "Surplus Property shall not include: Geist Reservoir, Morse Reservoir, the Canal, the South Well Fields and any other wells or current water resources to the extent such wells or water sources are critical to providing water to the trust beneficiaries." Despite both parties acknowledging that the public charitable trust prohibits a further sale or disposition of the Water System assets, Citizens has granted the City, at the City's request, a right of first refusal to purchase the Water System at its then fair market value if Citizens is ever able and elects to dispose of the assets.

The rates and charges in effect at the time of Closing will remain unchanged for two years, unless changes are necessary due to an emergency, as defined by Ind. Code § 8-1-2-113, or to avoid a default under Citizens's bonds. Citizens is required to comply with all applicable laws relating to customer billing, credit and collections, including, but not limited to 170 IAC 5-1-16.

2. **The Wastewater System Agreement.** The provisions of the Wastewater System Agreement are consistent with, and in many instances identical to, the provisions of the Water System Agreement. Notable exceptions are set forth below.

Under the Wastewater System Agreement, the Authority will acquire all of the City's and Sanitary District's right, title, and interest to all of the assets used, necessary, or important in the operation of the Wastewater System. The Authority will assume the liabilities of the City and Sanitary District relating to the Wastewater System, including without limitation those related to the Sanitary District's Septic Tank Elimination Program ("STEP"), litigation relating to the Wastewater System against either the City or Sanitary District, performance under certain contracts, the Consent Decree,² and PILOT Payments (the "Assumed Liabilities"). The Authority, however, will issue debt to replace certain debt obligations of the Sanitary District (referred to in the Wastewater System Agreement as the "Assumed Debt Obligations"). The Authority will: (i) issue debt sufficient to replace the interest-bearing and other indebtedness related to the debt issued to the Indianapolis Bond Bank for the Indiana State Revolving Fund ("SRF") (referred to in the Wastewater System Agreement as "Accepted Debt"), which amounted to \$434,094,250 as of June 1, 2010; (ii) issue debt sufficient to replace the outstanding amount of non-SRF revenue bonds of the Sanitary District (referred to in the Wastewater System Agreement as "Non-SRF Revenue Debt"), which amounted to \$39,290,000 as of June 1, 2010; and (iii) issue debt sufficient to replace the debt to the Indianapolis Bond Bank with respect to the line of credit provided by Wells Fargo, N.A. (referred to in the Wastewater System Agreement as "Line of Credit"). The Authority also will make PILOT Payments in accordance with City-County Special Ordinance No. 5, 2010 through 2039, and thereafter in accordance with the PILOT statute, and semiannual payments to the City in an amount equal to the interest and remaining principal payments of the City under the GO Debt with a principal outstanding of \$53,608,000 as of June 1, 2010.

In addition to the assumption of the Assumed Liabilities, the Assumed Debt Obligations, the obligations relating to STEP, and the obligations relating to PILOT Payments, the Authority is required to pay the City and the Sanitary District as full consideration for the Wastewater System, the amount of \$262,600,000, subject to certain conditions and adjustments. On the date of Closing, the City and Sanitary District are obligated to place \$40,000,000 in a cash escrow account, which funds will be available to resolve certain claims related to the proposed transaction.

Rates charged to the ratepayers of the Wastewater System will increase no more than 10.75% annually through 2013 (as set forth in the rate structure in the Revised Code of Consolidated City and County Section 671-102), unless changes are necessary due to an emergency, as defined by Ind. Code § 8-1-2-113, or to avoid a default under the Authority's bonds.

5. **The Settlement Agreement.** The Settlement Agreement in this Cause was filed as Petitioners Exhibit CBL-SA-1 and is attached hereto as Exhibit A.³ Attachment 1 to the Settlement

² The City and the Sanitary District are subject to, and required to comply with, the terms of a Consent Decree, as amended, entered by the U.S. District Court for the Southern District of Indiana, in *United States and State of Indiana v. City of Indianapolis*, Cause No. 1:06-CV-1456-DFH-VSS. The Consent Decree requires the Sanitary District to construct and implement a number of specific remediation measures designed to reduce storm and wastewater overflows ("CSO") from the Wastewater System into the City's rivers and streams.

³ The Commission notes that the City and the Authority entered into a separate letter agreement with the Industrial Group calling for a one-time payment of \$1.5 million dollars from the Cash Escrow Amount established pursuant to Section 3.02(b) of the Wastewater System Agreement. The letter agreement was filed as Petitioners' Exhibit CBL-SA-

Agreement is a list of conditions and terms relating to the proposed acquisitions that were agreed upon by the Settling Parties. Those conditions and terms are summarized below:

A. Ratemaking Approvals and Future Rate Increases. Citizens and the Authority will implement the rates and charges in effect for the Water and Wastewater Systems at the time of Closing. The Authority may file its first general rate case for the Wastewater utility one full year following commencement of operations by the Authority, but not later than January 1, 2014. The Authority will file a cost-of-service study in its first rate case and discuss with the OUCC and Industrial Group the preliminary results of such study in advance of filing the study in the rate case.

The Settling Parties agree that approval of the Settlement Agreement will constitute approval and authority for Citizens and the Authority to seek and obtain recovery in future Commission proceedings of certain specified payments resulting from the transactions. However, no ratemaking treatment will be requested as a result of any acquisition adjustment recorded in connection with the acquisitions. The Settling Parties recommend the Commission approve the Authority's agreement to make the PILOT Payments in accordance with Section 3.05 of the Wastewater System Agreement. Citizens and the Authority will use, for ratemaking purposes, 2% and 2.5% depreciation rates, respectively.

The Settling Parties further recommend Commission approval, outside of a general rate case, of an adjustment mechanism for recovery of costs to be incurred by the Authority in complying with its ECP (the "ECPRM"). However, only debt service payments for debt issued to fund capital expenditures incurred under the approved ECP and the costs of issuances and debt service reserve requirements associated with such debt issuances shall be recoverable through the ECPRM. The ECPRM also will not include a reconciliation component.

B. Reporting of Savings. Citizens will document savings generated as a result of the acquisitions and provide reports to the Commission, the OUCC, and other Settling Parties for a period of four years following Closing. Within sixty days of Closing, Citizens will submit a report specifying the metrics that Citizens proposes to use to track realized savings, including certain metrics specified in the Settlement Agreement. Within 180 days from Closing, Citizens will begin submitting semi-annual status reports. Citizens and the Authority also will participate in a series of technical conferences regarding the proposed metrics and reporting methodology and present testimony describing their achieved savings in their first two rate cases filed subsequent to Closing.

C. Accounting Issues. Citizens and the Authority will have one year from Closing to finalize the respective opening balance sheets for the water utility and Wastewater utility. Any adjustments to the amounts on the DOW's or the Sanitary District's records at Closing will be reduced to writing and provided to the Settling Parties at the end of the first year of ownership. Citizens further agrees to record and amortize Contributions in Aid of Construction ("CIAC") on the DOW's balance sheet at Closing and plant and cash contributed to the Water System after

2. As the payment discussed in the letter agreement will be funded by the City from the Cash Escrow account, it will have no effect on ratepayers; thus, we do not address it in this Order.

Closing. Similarly, the Authority will record and amortize CIAC it receives after Closing. Any acquisition adjustment will be recorded in accordance with National Association of Regulatory Commissioners (“NARUC”) guidelines and amortized according to Generally Accepted Accounting Principles (“GAAP”).

System Development Charges and “Connection Fees” also will be recorded as CIAC. The Authority has agreed to determine the amount of “Connection Fees” collected by the Sanitary District from January 1, 2006, to Closing and record such amounts as CIAC. Citizens and the Authority will use System Development Charges and Connection Fees for growth-related capital purposes.

D. Intergovernmental Agreements and Advisory Groups. The Settling Parties agree to the assignment to Citizens and the Authority, respectively, of any franchise rights held by the DOW and the Sanitary District and any intergovernmental or interlocal agreements to which the DOW or the Sanitary District are parties. Citizens will maintain the SAB, and Citizens and the Authority agree to continue involvement with technical advisory groups, environmental groups, and other organizations interested in water and wastewater issues. Citizens further agrees, pursuant to Indiana’s Open Door Law, to provide public notice of any meetings in which Citizens’s Board will conduct business affecting the Water and Wastewater Systems, and, for a period of eight years from Closing, take additional steps to inform customers about Board meetings.

E. Affiliate Relationships and Cost Allocations. Citizens will allocate 10% of shared corporate support services (“CSS”) costs to the Authority. Citizens and the Authority will review the CSS allocation methodology every three years and submit a written report to the Commission, the OUCC, and other Settling Parties. Citizens and the Authority further agree to equitably allocate water meter reading costs between the Water and Wastewater Systems. The Affiliate Guidelines and Cost Allocation Guidelines approved in Cause No. 43963 shall apply to the water and wastewater operations.

F. Environmental and Conservation Issues. The Settling Parties recommend Commission approval of the Authority’s proposed ECP pursuant to Ind. Code § 8-1-28-7. The Settling Parties acknowledge that STEP projects, in addition to those the Authority and City agreed to as set forth in the Wastewater System Agreement, will be completed by the Authority, subject to the adequacy of rates and charges to fund the cost of such projects. The Authority will collaborate with the OUCC and the Commission to establish a framework and process to solicit input from interested stakeholders regarding public policy issues, such as the prioritization of STEP projects. Citizens will develop a water conservation plan using the 2009 Water Conservation Plan developed by Veolia within twelve months of Closing and a drought response plan within twenty-four months of Closing.

G. Rules and Regulations and Tariff Issues. Subject to certain agreed-upon changes set forth in the Settlement Agreement, the Settling Parties recommend the Commission authorize implementation of the terms and conditions for water and wastewater service, as proposed in Joint Petitioners’ case-in-chief testimony, until such time as the Commission approves revised terms and conditions for service. Citizens and the Authority agree to request that the Commission initiate a series of technical conferences with Commission Staff, the OUCC, and any other interested Settling Parties to address recommended revisions to the Water and Wastewater Systems’ terms and conditions for service. The Settlement Agreement sets forth alternative processes in the

event the Settling Parties agree to changes to the terms and conditions for service, or are unable to reach agreement.

H. Reporting Requirements in Initial Rate Cases and Other Responsibilities Flowing from the Final Order in Cause No. 43645. Citizens will conduct an Equivalent Meter Factor (“EMF”) analysis to be used in the water utility’s next base rate case. Within six months of Closing, Citizens will determine how to collect the data necessary to perform the EMF analysis. Unless Citizens converts the water utility’s operations to monthly meter reading, Citizens also will complete a study reviewing various estimating methods and provide a recommendation regarding the best estimating practice in its first general water rate case. Citizens will make semi-annual compliance filings providing an update on the fulfillment of the water utility’s Capital Improvement Program (“CIP”), including explanation of any differences between the CIP being pursued by Citizens and the CIP approved by the Commission in Cause No. 43645.

I. Other Provisions. Neither Citizens nor the Authority will sell or seek to sell the Acquired Assets, except for Surplus Property, without first seeking and receiving authority from the Commission. Citizens also will not transfer the Harbour Water System or the Morgan County Water System to another entity or convert either to a for-profit operation without the approval of the Commission. Citizens and the Authority further agree that, until termination of the Authority’s ECP, regulated utility revenues and funds from their respective water and Wastewater operations, including proceeds from the sale of surplus property, shall be retained and used to operate, improve and expand that respective utility.

6. Supplemental Evidence Supporting Approval of the Settlement Agreement.

A. Supplemental Testimony of Chris W. Cotterill. Joint Petitioners’ witness Mr. Cotterill testified that he believes the Settlement Agreement is in the public interest. Mr. Cotterill testified “the completion of this transaction holds great promise for the City’s water and wastewater utilities and their customers” and expressed his hope that “this settlement will accelerate the implementation of the proposed transaction, which I firmly believe is in the public interest.” Pet. Exh. CWC-SA at 2. Mr. Cotterill also testified regarding the status of the DOW’s issuance of the debt contemplated in the final Order in Cause No. 43645 pursuant to Paragraph 35 of the Settlement Agreement. Mr. Cotterill testified the Board of Waterworks approved the issuance of the 2011A Waterworks Revenue Bonds on March 22, 2011. Mr. Cotterill stated the City-County Council approved the issuance of these bonds and the issuance of The Indianapolis Local Public Improvement Bond Bank Bonds, Series 2011E (“Bond Bank Bonds”) on April 11, 2011, in the amount of \$60,705,000. Mr. Cotterill stated that S&P, Moody’s and Fitch rated the Bond Bank Bonds as “A+” “A2” and “A” respectively. Mr. Cotterill testified that a Preliminary Official Statement describing the bonds has been completed, and investor presentations are expected to be scheduled in the near future. According to Mr. Cotterill, the City expects to close on the issuance before the end of May, 2011.

B. Supplemental Testimony of Carey B. Lykins. Joint Petitioners’ witness Mr. Lykins described the process Joint Petitioners’ engaged in to resolve the issues raised by the OUCC in this proceeding. Mr. Lykins testified Joint Petitioners and the OUCC began settlement discussions immediately after the OUCC filed its case-in-chief testimony. After the February hearings concluded, the Joint Petitioners and the OUCC resumed settlement discussions. Mr. Lykins stated that in April, after redoubling their efforts and concluding numerous negotiating

sessions over a period of several weeks, Joint Petitioners and the OUCC reached agreement on a set of “Stipulations and Conditions” that address various aspects of the proposed acquisitions. Joint Petitioners also engaged in settlement negotiations with the Industrial Group and the SAB.

Mr. Lykins testified that transparency and collaboration are two key principles embraced by Citizens and embodied in the Settlement Agreement. Mr. Lykins believes that the Settlement Agreement will foster a transparent and collaborative relationship between Citizens, the Authority, the OUCC, the Commission, and other key stakeholders.

Mr. Lykins believes the Settlement Agreement is in the public interest. Mr. Lykins testified that the Settlement Agreement comprehensively addresses a variety of issues regarding the transition of the Water and Wastewater Systems and presents a reasonable compromise among the Settling Parties on numerous disputes raised in testimony filed in this Cause. Mr. Lykins concluded by stating that he is hopeful that the Settlement Agreement and the submission of an agreed proposed order will lead to the issuance of a final Commission Order in this Cause sooner than if the Settling Parties had presented multiple proposed orders for the Commission’s consideration.

C. Supplemental Testimony of Aaron D. Johnson. Joint Petitioners’ witness Mr. Johnson testified that Joint Petitioners’ case-in-chief, the OUCC’s direct testimony, and Joint Petitioners’ rebuttal testimony all are supportive of the terms of the Settlement Agreement. Mr. Johnson testified that many provisions of the Settlement Agreement are based either directly upon proposals made by Joint Petitioners, which were supported in their case-in-chief, or upon recommendations made by the OUCC and supported in the OUCC’s case-in-chief, which in turn were accepted by Citizens and the Authority in their rebuttal testimony.

Mr. Johnson pointed out that the Settlement Agreement establishes a cap on the transaction costs that can be recovered through rates and emphasized that the transaction costs to be recovered through rates will not include any transaction costs incurred by the City. Citizens anticipates the total transaction costs incurred and recovered through rates will be less than the \$14,000,000 aggregate cap established in the Settlement Agreement. Mr. Johnson believes that the level of transaction costs in the proposed acquisitions is a very reasonable amount for a deal of this size and complexity.

According to Mr. Johnson, the major benefit of the Settlement Agreement is facilitating the Commission’s consideration and resolution of the issues presented by this proceeding and potentially providing a more expeditious achievement of the benefits of the proposed acquisitions on terms acceptable to all of the Settling Parties. Mr. Johnson testified the Settlement Agreement also creates long-term benefits for the Settling Parties beyond its overriding benefit, including the establishment of a framework for continued collaboration among the Settling Parties and Commission staff. Mr. Johnson gave examples of aspects of the Settlement Agreement that will continue Citizens’s history of transparency and collaboration, such as the reporting requirements agreed upon by the Settling Parties. Another aspect of the Settlement Agreement that promotes transparency and collaboration is the fact that the Settlement Agreement will ensure the role of the SAB and the historical engagement with technical advisory groups, environmental groups and other organizations interested in water and wastewater issues will continue going forward. Mr. Johnson stated that the Settlement Agreement reflects Citizens’s belief in the value of having a long range regional and local comprehensive plan for its utilities, and the value that engaging our community can add to the process.

Other aspects of the Settlement Agreement that promote transparency and collaboration, according to Mr. Johnson, are the provisions of the Settlement Agreement addressing access to Citizens's Board of Directors. Mr. Johnson testified that in addition to complying with the notice requirements of the Indiana Open Door Law, Citizens and the Authority have agreed that for a period of eight years following Closing, Citizens and the Authority will provide the public with additional notice of Board meetings through its website and billing inserts.

Mr. Johnson testified the Settlement Agreement does not require Citizens to segregate extensions and replacement funds in a restricted account. Mr. Johnson believes this requirement was expressly based upon evidence relating to the DOW presented in Cause No. 43645. Mr. Johnson testified that Citizens does not disagree that there are problems to be addressed, but stressed that Citizens desires some degree of flexibility to adjust the actual amount spent on capital improvements in the future based upon alternative solutions or cost savings.

Mr. Johnson testified that any changes in the amount spent for extensions and replacements, and an explanation for the deviation, would be reflected in semi-annual compliance filings. Mr. Johnson identified a number of possible reasons for deviations from the capital improvement plan approved by the Commission in Cause No. 43645. Changed circumstances between 2008 and mid-2011 could modify the prioritization of certain capital improvement projects. Citizens may determine a more optimal mix of operating and capital expenditures than those approved in Cause No. 43645. Moreover, some projects in the DOW's capital improvement plan may be unnecessary under Citizens's ownership of the system.

Mr. Johnson testified the Settling Parties have agreed that the Affiliate Guidelines and Cost Allocation Guidelines, which the Commission recently approved in Cause No. 43963, will apply to the water and wastewater operations. Mr. Johnson sponsored Joint Petitioners' Exhs. ADJ-SA-1 and ADJ-SA-2, which are copies of the Affiliate Guidelines and Cost Allocation Guidelines. Mr. Johnson testified that Citizens has successfully worked with interested parties, including unregulated entities, in the past to ensure that all interests are properly addressed. The language in the Settlement Agreement preserves this process.

Mr. Johnson testified regarding the OUCC's concerns over the possibility of a future sale of the Water and Wastewater Systems. Mr. Johnson emphasized that the Settlement Agreement provides that neither Citizens nor the Authority will seek to sell the Acquired Assets, except for Surplus Property, without first seeking and receiving authority from the Commission. Mr. Johnson further testified that it is Citizens's hope that the provisions of the Settlement Agreement will create an impediment to any potential future attempts to unwind and attack the trusts that are created by the Agreement.

Mr. Johnson testified the Settlement Agreement also addresses the recommendation made by Industrial Group witness Mr. Gorman that the Commission prohibit Citizens and the Authority from moving cash out of the Water and Wastewater Systems into other operations or affiliates. Until the termination of the ECP, Citizens and the Authority have agreed that regulated utility revenues and funds from their respective water and wastewater operations, including proceeds from the sale of surplus property, will be retained and used to operate, improve, and expand that respective utility, to retire outstanding debt of the utility, and/or to maintain that utility in a sound physical and financial condition necessary to render adequate and efficient service. Mr. Johnson

testified that Citizens was concerned about including a provision in the Settlement Agreement that may limit any discretion and authority of its Board of Directors and, therefore, was willing to limit its discretion only for a specifically defined time period.

Mr. Johnson stated that upon termination of the ECP, Citizens does not intend to include in its requested rates revenue that is not necessary for the operation, improvement, expansion, or retirement of outstanding debt of the Water and Wastewater Systems. Mr. Johnson stated the revenues to be generated by the Water and Wastewater Systems will be designed to produce sufficient revenues to meet the particular utility's statutory revenue requirements. Mr. Johnson testified that the best case financial scenario for the Water and Wastewater Systems is one in which they break even.

D. Supplemental Testimony of LaTona S. Prentice. Joint Petitioners' witness Ms. Prentice testified that the Settlement Agreement provides for Citizens and the Authority to implement the rates and charges in effect for the Water and Wastewater Systems at the time of Closing. Ms. Prentice testified that the Settlement Agreement also provides for implementation of the terms and conditions for water and wastewater service proposed in Joint Petitioners' case-in-chief testimony, subject to certain agreed-upon changes, until such time as the Commission approves revised terms and conditions for service. Ms. Prentice described the changes the Settling Parties have agreed be immediately incorporated into the terms and conditions for service. Ms. Prentice sponsored Joint Petitioners' Exhs. LSP-SA-1 AND LSP-SA-2, which are Citizens's and the Authority's revised terms and conditions for service, rate schedules and appendices, reflecting the agreed-upon changes.

Ms. Prentice described the process the Settling Parties have agreed upon for further revising the terms and conditions for service, including the non-residential deposit rules for both the Water and Wastewater Systems. Ms. Prentice believes the parties will be able to reach an agreement regarding revisions to the water and wastewater terms and conditions for service without the need for a formal proceeding. Ms. Prentice stated that the parties only disagreed on a few issues relating to the proposed terms and conditions for service raised in this proceeding and some of those issues already have been resolved in the Settlement Agreement.

Ms. Prentice testified regarding provisions in the Settlement Agreement pertaining to the Authority's proposed ECP. Ms. Prentice testified the Settlement Agreement contemplates Commission approval of the Authority's proposed ECP pursuant to Indiana Code § 8-1-28-7, including approval, outside of a general rate case, of its ECPRM for recovery of costs to be incurred by the Authority in complying with its ECP. Ms. Prentice testified the Settlement Agreement also requires the Authority to commence discussions with the OUCC and Commission regarding the specific procedures that will govern Commission proceedings relating to the proposed ECPRM.

Ms. Prentice testified the Settlement Agreement provides that only debt service payments for debt issued to fund capital expenditures incurred under the approved ECP and the costs of issuances and debt service reserve requirements associated with such debt issuances shall be recoverable through the ECPRM. Moreover, under the Settlement Agreement, the ECPRM will not include a reconciliation component. Ms. Prentice testified that operating expenses associated with implementing the combined sewer overflow ("CSO") control measures will have to be recovered through base rates, which will require some degree of planning on the part of the Authority.

Ms. Prentice concluded the terms of the Settlement Agreement represent a reasonable resolution of the issues raised by the parties in this proceeding. Ms. Prentice stated that as with any settlement, all parties will receive certain benefits from the bargain in exchange for concessions in the give and take of settlement negotiations. However, she believes the provisions of the Settlement Agreement represent a reasonable compromise for all Parties.

E. Supplemental Testimony of Scott A. Bell. OUCC witness Mr. Bell testified that the OUCC considers the Settlement Agreement to be supported in large part by the evidence that is already of record before the Commission. Mr. Bell discussed some of the essential components of the Settlement Agreement and described how certain provisions of the Settlement Agreement will benefit ratepayers. Initially, Mr. Bell stated that the provision of the Settlement Agreement precluding Citizens and the Authority from withdrawing from Commission jurisdiction benefits the ratepayers by promoting long term Commission oversight of both the Water and Wastewater Systems. Mr. Bell also testified that the provision establishing a timeframe for the Authority to file its first rate case ensures that the Commission will have the opportunity to review and analyze the Wastewater utility's rates and ensure that ratepayers are paying reasonable rates.

Mr. Bell also stated that the provisions of the Settlement Agreement relating to the ECP would benefit ratepayers. Mr. Bell stated the OUCC believes that excluding operating expenses from the ECPRM and instead addressing the recovery of those expenses in the context of a general rate case will simplify the process, save both the Commission and the OUCC time and resources, and may ultimately result in lower rates for customers. In addition, Mr. Bell testified the agreement not to include a reconciliation mechanism will further simplify the process and save additional Commission and OUCC time and resources.

Mr. Bell next supported the reporting provisions included in Paragraphs 8 through 10 of the Settlement Agreement. Mr. Bell testified that the requirements will ensure that Settling Parties are aware of the financial benefits (savings) of the acquisition and that the ratepayers receive those benefits in future rate proceedings.

Mr. Bell testified that Paragraphs 11 through 15 of the Settlement Agreement, which clarify various accounting issues, will provide greater transparency for the Commission and the OUCC in future rate cases and provide appropriate accounting treatment of CIAC. Mr. Bell stated that Paragraph 19 of the Settlement Agreement, relating to continued participation of citizen advisory groups and public access to Citizens's Board meetings will provide a number of benefits. Mr. Bell testified that Citizens and the Authority will benefit from their participation in meetings with these groups and the ratepayers will be better served by the increased knowledge obtained by Citizens and the Authority.

With respect to the provisions of the Settlement Agreement relating to a Water Conservation Plan and the Drought Response Plan, Mr. Bell testified that the development of the Water Conservation Plan and Drought Response Plan will assist Citizens in proactively managing its source of water supply during normal consumption patterns and during periods of drought. Mr. Bell testified that the provision of the Agreement resolving the OUCC's concerns regarding the transfer of the Harbour Water System and Morgan County Water System to another entity provides ratepayers protection from the transfer of utility systems to a more costly form of ownership.

Mr. Bell similarly testified regarding the provision of the Settlement Agreement that requires Citizens and the Authority to retain their respective revenues and use them to operate, improve and expand their respective systems, retire outstanding debt of the utility, and/or otherwise to maintain that utility in a sound physical and financial condition necessary to render adequate and efficient service. Mr. Bell stated it is the OUCC's position that once the time limit in Paragraph 40 expires, Citizens and the Authority would not necessarily be authorized to expend water or wastewater revenues and funds for purposes other than operating each respective utility. Mr. Bell explained that it is the OUCC's position that after the expiration of that period, Citizens's and the Authority's practice with respect to funds and revenues generated by the Water and Wastewater Systems would be subject to the regulatory paradigm as determined by the Commission and applicable law. Mr. Bell clarified, however, that it is not the OUCC's belief that after the expiration of the period Citizens or the Authority intends to use such funds and revenues for purposes other than operating the respective utilities.

Mr. Bell concluded by stating that the Settlement Agreement should be viewed as a whole, and the OUCC considers the Commission's approval of every condition to be necessary for the Settlement Agreement to be in the public interest.

7. Commission Review of Settlement Agreements. 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.

Further, 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 Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, consistent with the purpose of Ind. Code ch. 8-1-2, and serves the public interest.

In this case, the Commission has before it a large body of evidence with which to judge the reasonableness of the terms of the Settlement Agreement. Not only did the OUCC and Joint Petitioners file supplemental testimony in support of the Settlement Agreement, the Commission also was presented with substantial evidence in the form of Joint Petitioners' case-in-chief, the OUCC's direct testimony, and Joint Petitioners' rebuttal testimony, all of which are supportive of the terms of the Settlement Agreement.

We note that in addition to the Settlement Agreement relating to the broad relief requested in this Cause, we were presented with the Veolia Settlement Agreement and the Authority/United Agreement. We also were provided substantial evidence upon which to judge the reasonableness of the terms of those agreements.

8. Commission Findings Relating to the Approval of the Terms of the APAs and Contemplated Transactions. Inherent in the Settlement Agreement is the Settling Parties' agreement that the Commission should approve the acquisition of certain water utility assets by Citizens from the City and the DOW and the acquisition of certain Wastewater utility assets by the Authority from the City and Sanitary District as contemplated in the APAs. The Settlement Agreement provides that: "[t]he Settling Parties agree that the Commission's timely entry of an Order approving this Settlement Agreement will assist in facilitating achievement of the benefits of the proposed acquisitions at the earliest opportunity." Pet. Exh. CBL-SA-1 at ¶ 1.

At the same time, in his supplemental testimony in support of the Settlement Agreement, Mr. Lykins recognized our duty to determine whether the evidence in this Cause sufficiently supports the conclusion that approval of the Settlement Agreement and proposed acquisitions is consistent with the public interest. As discussed in detail below, there is sufficient evidence of record to support approval of the Settlement Agreement as set forth herein and a finding that the proposed acquisitions are in the public interest.

A. Benefits of the Contemplated Transactions. The Commission was presented with evidence demonstrating the significant challenges both the Water and Wastewater Systems face in the upcoming years, which underscores the need to ensure these critical utility assets are under the operational control of a qualified and experienced utility organization. Both Systems require a significant amount of capital investment. This is particularly true with respect to the Wastewater utility, which must comply with the terms of the Consent Decree. Based upon the evidence presented in this proceeding, we find that transferring control of the Water and Wastewater Systems from the City to Citizens and the Authority will provide many benefits to the City's water, wastewater, gas, and steam customers and is in the public interest.

Mr. Cotterill summarized the City's view of the primary benefits of the transfer. Mr. Cotterill stated that the proposed transaction is about removing these vital utilities from local, short-term focused, political control and treating them like the long term assets they are. Utilities are better managed by a utility company with continuity of management and a longer term view of what is necessary to efficiently operate utilities. Mr. Cotterill specifically referred to Citizens's extensive experience in managing its other public utilities, and stated his belief that Citizens will be able to deliver benefits to ratepayers that the City simply could not achieve.

Ms. Howe, a water and wastewater industry expert employed by Black & Veatch, agreed with Mr. Cotterill's assessment that the utilities would be better positioned under Citizens's operational control. Ms. Howe has over 30 years of experience in the water and wastewater industry, much of which has been focused on organizational and financial aspects of utility operation. She opined that "transfer of the management and operation of the water and wastewater utilities from the City to Citizens Energy Group will benefit the utilities and their customers and is in the public interest." Pet. Exh. PLH at 12.

Mr. Lykins further testified that "this proposed transaction is very much in the public interest, very much for the benefit of the people of Indianapolis." Tr. at D-60. Mr. Lykins outlined the cost savings and operational benefits that will be achieved through the combination of the utilities. Pet. Exh. CBL at 16. Mr. Lykins further stated that the transfer of the utilities will result in improved long-term decision making. *Id.*

Moreover, the evidence reflects that transferring the ownership and operations of the Water and Wastewater Systems to Citizens and the Authority, respectively, will create significant synergies and associated cost savings well beyond the acquisition costs. Citizens and the Authority retained Booz & Company to identify any synergies and associated cost savings that could be realized by combining the water, wastewater, gas and steam utilities serving the City under a combined management structure. Booz & Company projected that after three years, the proposed acquisitions will result in over \$60 million of annual savings for the water, wastewater, gas, steam utilities and other operations. Walter P. Drabinski of Vantage Energy Consulting, LLC, a witness engaged by the OUCC to review the Booz & Company analysis of the projected synergies, concluded, “the quantification of synergies and costs to achieve are plausible and realistic.” OUCC Ex. 3-1 at 19.

Based upon the Settlement Agreement and the evidence presented, we find the proposed transactions are in the public interest.

B. Reasonableness of the Purchase Price and Other Terms of the APAs.

Both the City and Citizens retained outside experts to assess and provide testimony concerning the reasonableness of the purchase price for the Water and Wastewater Systems’ assets. The City presented the testimony of Michael G. Lane, a Senior Consultant and Accredited Senior Appraiser with R.W. Beck in support of the purchase price. Mr. Lane conducted an appraisal of the Water and Wastewater Systems and along with R.W. Beck personnel performed field inspections of the Water and Wastewater System facilities in Indianapolis in July, 2009. Mr. Lane testified that R. W. Beck found the total value of the consideration the City will receive from the transfer of the Water and Wastewater Systems to Citizens falls within the range of values set forth in R. W. Beck’s appraisal and is reasonable from a financial point of view.

J. Perry Offutt, Managing Director in the Investment Banking Division and Head of Infrastructure Investment Banking for the Americas with Morgan Stanley also testified in support of the reasonableness of the purchase price. Morgan Stanley employed multiple methodologies to assess the reasonableness of the purchase price. Mr. Offutt stated that the consideration to be paid by the buyers named in the applicable purchase agreements was fair to Citizens from a financial point of view.

Joint Petitioners spent months engaged in arms-length negotiations and due diligence that ultimately resulted in the terms expressed in the APAs. The testimony of Messrs. Offutt and Lane demonstrates that those negotiations resulted in the determination of a fair price for the Water and Wastewater Systems’s assets. We also note the terms of the APAs have been subject to a significant amount of review and scrutiny. Among other things, the APAs were presented to and approved by the City-County Council.

Based upon the Settlement Agreement and the evidence presented in this proceeding, the Commission finds that the purchase price and the terms of the APAs are reasonable, in the public interest and should be approved. We note that except for the ratemaking approvals explicitly set forth in the Settlement Agreement, our approval of the terms set forth in the APAs should not be construed as binding the Commission or in any way limiting our discretion with respect to the inclusion or exclusion in the revenue requirement of the water or wastewater utility of expenses that may be found to be imprudent in future rate cases.

C. Citizens's and the Authority's Legal, Financial, Managerial and Technical Ability to Acquire the Water and Wastewater Systems. Joint Petitioners' witness Mr. Tracy described several examples demonstrating Citizens's managerial and technical capacity to manage and operate a number of utility projects. Mr. Tracy testified that Citizens Gas has a proven track record of providing safe, reliable, high quality service to its customers. Citizens Thermal's steam utility has provided reliable and high quality steam service to its customers for over a century. Citizens Thermal also operates a chilled water production and distribution system. Finally, Mr. Tracy noted that Citizens is involved in the operation of an intrastate natural gas pipeline.

Joint Petitioners' witness Mr. Lindgren further testified that Citizens's engineering group is capable and qualified to provide design, engineering, and construction service to a water utility and a wastewater utility given the utility management, design, engineering, and construction experience that they have and the individuals that we have. Joint Petitioners' witness Mr. Dillard noted that the water system is similar to Citizens Thermal's chilled water system with respect to moving the water, putting pipes in the ground, maintaining the systems, and controlling the systems. Mr. Dillard also stated that there are similarities among the Wastewater System and the steam and chilled water systems. Mr. Dillard stated that the wastewater system uses vertical pumps and submersible pumps and lift stations that resemble the pumps in Citizens's chilled water and steam systems.

Ms. Howe, a Vice President with Black & Veatch who has over 30 years of experience in the water and wastewater industry, also testified regarding Citizens's technical and managerial capabilities. Ms. Howe undertook a number of steps to better understand Citizens's operational experience and capabilities to operate the Water and Wastewater Systems, including the following: reviewing various documents related to Citizens, the Water and Wastewater Systems, and the proposed acquisitions; meeting with a number of Citizens's executives and operational employees; and touring various facilities that Citizens currently owns and operates. Ms. Howe testified:

Citizens Energy Group's operational record with respect to its gas distribution system, as confirmed by the Huron benchmarking study, as well as its operation of the steam and chilled water distribution systems demonstrates Citizens Energy Group has the capability to operate the network of underground pipes and other facilities that make up the water distribution system and wastewater collection system.

(Pet. Exh. PLH at 11). She further expressed her belief that Citizens Energy Group's management and operation of production facilities in its steam utility, chilled water operation, and former coke oven gas production facility demonstrates its capability to successfully manage treatment facilities and the commodity aspect of the water utility business, *i.e.*, the City's water supply. Ultimately, Ms. Howe concluded that Citizens Energy Group is well positioned to assume management and operational control of the Water and Wastewater Systems.

Joint Petitioners' witness Mr. Brehm offered testimony regarding the financial ability of Citizens and the Authority to acquire and operate the Water and Wastewater Systems. Mr. Brehm testified that the Authority's and the Board's financial plan results in projections showing the Authority and the Board will be able to acquire, operate, maintain, and improve the Wastewater System in order to provide adequate and reliable service to customers while maintaining sufficient financial flexibility to raise necessary debt capital across a variety of market conditions. Mr. Brehm

stated, however, that annual rate increases are a fundamental requirement in order for the Authority to have the financial ability to operate, maintain, and improve the Wastewater System in order to provide adequate and reliable service to customers.

OUCC witness Mr. Bell testified Citizens and the Authority would be well equipped to manage the Water and Wastewater Systems. OUCC witness Mr. Kaufman similarly testified Citizens should have the financial capacity to own and operate the Water and Wastewater Systems.

In addition, OUCC witness Mr. Rees testified Citizens will have the technical ability to operate the Water System satisfactorily after the Transition Period set forth in the Veolia Settlement Agreement. Mr. Rees stated his belief that Citizens has extensive utility operation and management experience and expertise that is transferrable to water utility operations, including experience in capital planning, construction, and project management. Moreover, Citizens intends to augment its own workforce that will be involved with the management and operation of the Water System with knowledgeable and experienced personnel currently employed by the DOW and Veolia. Joint Petitioners' witness Mr. Lindgren confirmed that Citizens has already begun the process of interviewing Veolia employees. Mr. Lykins also confirmed that Citizens intends to employ a large percentage of Veolia and DOW employees.

OUCC witness Mr. Pettijohn testified that the Authority does not by itself have the technical ability to operate and maintain the Belmont and Southport wastewater treatment facilities and associated collection system. Mr. Pettijohn explained wastewater treatment requires unique processes that are closely monitored and regulated by governmental units such as the EPA and IDEM. Accordingly, Mr. Pettijohn testified that it is imperative that Citizens and the Authority retain the services of United and the Sanitary District employees that currently operate and manage the City's wastewater utility facilities to ensure safe, adequate, and reliable service continues to be provided if the transfer of wastewater utility assets is approved.

The Authority entered into an agreement with United and will accept assignment of the United Management Agreement between the City and United. *See* Joint Petitioners' Exh. ADJ-R1. As a result, the same employees that currently operate the Wastewater System will continue to operate the System upon the Authority's acquisition of the System. Moreover, Mr. Johnson testified that should the Authority/United Agreement be terminated, the Authority would have the ability to hire United employees who are working on the system. In addition, United has agreed to provide certain transition services to the Authority, including the provision of training in the procedures and techniques employed by United operating the wastewater system.

Based upon the evidence presented, the Commission finds that Citizens has extensive experience operating public utilities based upon its provision of natural gas, steam, and chilled water services. With respect to the managerial capability to run the Water and Wastewater Systems, we find this experience highly relevant. Both the evidence presented and our own experience with Citizens in other cases convinces us that Citizens and the Authority have the managerial capability to own and operate the Water and Wastewater Systems.

With respect to the technical capability to run the Water and Wastewater Systems, we find that Citizens's prior utility experience will be relevant in part to the provision of water and wastewater services; however by itself, such experience does not convince us that Citizens and the Authority have the technical capability to operate the Water and Wastewater Systems. Citizens has

demonstrated limited experience in water and wastewater treatment, but not at the scope and scale of the utilities it is seeking to assume control over. Citizens's witnesses indicated their understanding of this fact, and we find that Citizens has taken numerous steps to supplement its lack of experience. Citizens has been working closely with Veolia and United to learn about the operation and maintenance of the Systems. Citizens has engaged other industry experts to educate itself about the operation of water and wastewater utilities. Citizens has committed to hiring a large percentage of Veolia's employees – the employees who currently operate the Water System – and the Authority will accept assignment of the operating agreement with United, thus ensuring that it will have competent individuals operating the Systems from day one. Based upon this evidence, the Commission concludes that Citizens and the Authority have the technical capability to own and operate the Water and Wastewater Systems.

With respect to the financial capability to own and operate the Water and Wastewater Systems, Mr. Brehm presented evidence of the financial projections for the Water and Wastewater Systems based upon the agreed upon rates and rate increases approved below. In addition, Citizens and the Authority have expressed their commitment to seek Commission approval of new rates and charges for the systems as appropriate going forward. Therefore, we conclude that Citizens and the Authority have the financial capability to own and operate the Water and Wastewater Systems.

D. Conclusion Regarding the Public Interest of the Proposed Acquisitions.

For the reasons set forth above and based upon the conclusion reached below regarding the Settlement Agreement, we believe the evidence of record demonstrates the transfer of the Water System by the City and the DOW to Citizens on the terms described in the Water System Agreement is supported by the public convenience and necessity and is in the public interest. The evidence further reflects that the transfer of the Wastewater System by the City and the Sanitary District to the Authority pursuant to the terms set forth in the Wastewater System Agreement is supported by the public convenience and necessity and is in the public interest. Accordingly, the Commission finds the proposed transfers of the Water and Wastewater Systems pursuant to the terms of the APAs to be in the public interest, subject to the terms and conditions described in Paragraph 9 below.

9. Commission Findings Regarding Specific Terms of the Settlement Agreement.

A. Ratemaking Approvals and Future Rates.

1. Inclusion of Certain Indebtedness as a Revenue Requirement in Future Rate Cases. The Settlement Agreement provides that Commission approval thereof will constitute approval and authority for Citizens and the Authority to seek and obtain recovery in future Commission proceedings of:

- (a) debt service payments for the assumption or replacement of the Assumed Debt Obligations (as that term is defined in Section 2.04 of the Water APA and Section 2.04 of the Wastewater APA);
- (b) debt service payments for Citizens's assumption or replacement of debt the DOW issues in accordance with Paragraph 7.C.5.b of the Final Order in Cause No. 43645.

- (c) payments to the City to satisfy the Authority's obligation under Section 2.04(e) of the Wastewater APA;
- (d) debt service payments for debt issued to fund the Purchase Price as that term is defined in the Wastewater APA;
- (e) debt service payments for debt issued to fund the costs of issuances and debt service reserve requirements associated with the foregoing debt issuances; and
- (f) debt service payments for debt issued to fund transaction costs incurred to consummate the transactions (e.g., fees paid to consultants, attorneys, and financial advisors in connection with the acquisitions); provided, however, the total transaction costs shall not exceed seven million dollars (\$7M) for the water utility and seven million dollars (\$7M) for the wastewater utility.

Pet. Exh. CBL-SA-1 at ¶ 1.

For the reasons that follow, the Commission finds the foregoing provisions of the Settlement Agreement are reasonable and in the public interest. As reflected in Paragraph 8 above, the Commission finds the proposed transfers of the Water and Wastewater Systems pursuant to the terms of the APAs to be in the public interest. Each of the foregoing categories of payments is a necessary expense required to consummate the transfers of the Water and Wastewater Systems. Specifically, as a part of the transactions, Citizens must assume or replace the outstanding debt obligation of the DOW and Sanitary District, including debt the DOW issues in accordance with Paragraph 7.C.5.b of the final Order in Cause No. 43645, which is discussed below. Those payments, along with the debt service payments for debt issued to fund the Purchase Price and transaction costs incurred to consummate the transactions, are a necessary component of the transactions.

Joint Petitioners and the OUCC presented evidence in their respective cases-in-chief relating to the listed debt issuances. Joint Petitioners' witness Mr. Brehm described in detail the above items of which the Board and Authority sought approval in this proceeding to recover in rates. Mr. Brehm clarified that neither Citizens nor the Authority is requesting in this proceeding approval to recover debt service payments for debt issued to finance working capital or future capital expenditures. OUCC witness Mr. Patrick also discussed the foregoing obligations at length and recommended that the Commission approve: (1) Citizens's assumption of the existing DOW debt; (2) the Authority's assumption of existing Sanitary District debt; (3) debt service payments in future rate cases on the Purchase Price; and (4) recovery of debt service payments on the City's wastewater utility GO Bonds.

We also note that the Settlement Agreement places a cap on the transaction costs recoverable through rates. Joint Petitioners' witness Mr. Johnson stated that the transaction costs to be incurred include fees paid to consultants, attorneys, and financial advisors in connection with the acquisitions and do not include costs incurred by the City. Mr. Johnson indicated that a tremendous amount of work was done by outside consultants and other professionals. Mr. Johnson stated that he understood the level of transaction costs is a very reasonable amount for a deal of this size and complexity.

The Settling Parties have further agreed that Commission approval of the relief requested in this Cause shall not decrease the Commission's discretion to disallow future requests by Citizens or the Authority to recover in rates any other costs the Commission finds unreasonable, imprudent, unlawful, excessive, or otherwise not conforming with Indiana ratemaking principles. This would be true even in the absence of such an agreement.

We further understand the unusual scope and magnitude of the Authority's need to access the capital markets on an ongoing and regular basis and its need for timely approval of rates sufficient to support frequent future debt issuances. Mr. Brehm testified that annual rate increases are a fundamental requirement in order for the Authority to have the financial ability to operate, maintain, and improve the Wastewater System in order to provide adequate and reliable service to customers.

2. Inclusion of Amount of PILOT Payments in the Authority's Revenue Requirement in Future Rate Cases. The Settling Parties recommend that the Commission approve the Authority's agreement to make the PILOT Payments over a thirty-year period in accordance with the schedule attached to Special Ordinance No. 5, 2010. Citizens and the Authority agreed that the PILOT payments set forth in Special Ordinance No. 5, 2010 will act as both a floor and a ceiling for purposes of rate recovery. The Authority is not, however, precluded from requesting recovery in rates of any additional PILOT or property tax payments not covered by Special Ordinance No. 5, 2010 that may be imposed and lawfully due and that will be paid to taxing authorities.

Joint Petitioners' witness Mr. Cotterill testified the City would not have entered into the transactions if the Authority had not agreed to make the PILOT payments required under the Wastewater System Agreement. Petitioners' witness Mr. Kelsey testified that the agreed-upon schedule of PILOT Payments attached to the Special Ordinance is less each year than what property taxes otherwise would be at current tax rates. OUCC witness Mr. Kaufman stated that the OUCC accepted Joint Petitioners' proposed PILOT schedule, noting that Mr. Kelsey provided a schedule in his testimony that compared the proposed PILOT payment schedule to the estimated property taxes that the City could otherwise collect if the Authority constructs the plant as described in its testimony. Based upon Mr. Kelsey's testimony, Mr. Kaufman believed the amount the City could otherwise collect and charge to ratepayers through the Authority's rates exceeds the amount it has agreed to collect from the Authority. This creates a benefit to the ratepayers in the form of a lower revenue requirement.

Ind. Code § 36-3-1-11(e) states that PILOT payments must be:

- (1) agreed upon by the property owner and the legislative body of the consolidated city;
- (2) a percentage of the property taxes that would have been levied by the legislative body for the consolidated city and the county upon the real property described in [Ind. Code § 36-3-1-11(d)] if the property were not subject to an exemption from property taxation; and
- (3) not more than the amount of property taxes that would have been levied by the legislative body for the consolidated city and county upon the real property described in subsection (d) if the property were not subject to an exemption from property taxation.

Given the 30-year term of the PILOT payment schedule, it is not possible for Joint Petitioners to provide evidence proving that the scheduled payment for any given year will not exceed the actual property tax levied in that year and, thus, violate Ind. Code § 36-3-1-11(e). Were that to happen, we do not believe ratepayers should be required to fund through rates any amount of PILOT that exceeds the property tax that would have been levied in that year. Therefore, we order the Authority to include in its annual report to the Commission a calculation of the difference between the amount paid under the PILOT schedule and the amount of property tax that would have been levied, and the Commission reserves the right to consider appropriate action, including but not limited to a reconciliation mechanism, should a scheduled PILOT payment ever exceed the amount of property tax that would have otherwise been levied.

Subject to the caveat above, the Commission finds the schedule of PILOT payments attached to Special Ordinance No. 5, 2010 is reasonable, in the public interest and recoverable in rates. We further find the Authority may not seek in future rate cases to recover PILOT payments greater than those it has agreed to pay the City. However, the foregoing limitation does not apply to PILOT payments or property tax payments that may be imposed and lawfully due to taxing authorities not covered by Special Ordinance No. 5, 2010.

3. Adoption of the DOW's and the Sanitary District's Existing Rates and Charges. The Settlement Agreement provides that Commission approval of this Settlement Agreement constitutes approval and authority for Citizens and the Authority to implement the rates and charges in effect for the Water and Wastewater Systems at the time of Closing. The rates for the Water and Wastewater Systems are discussed in detail below.

a. The Water Utility's Rates and Charges. The DOW's existing rates were approved by the Commission's Order in Cause No. 43645. *Dep't of Waterworks of the Consol. City of Indianapolis*, Cause No. 43645, 2011 Ind. PUC LEXIS 30 (IURC Feb. 2, 2011) ("Water Rate Case"). By keeping the DOW's rates in place, there will be no disruption to customers and Citizens will have an opportunity to develop an accounting record indentifying the revenue requirements associated with its ownership and operation of the Water System. Joint Petitioners' Exhibit JRB-5, the "Water System Financial Summary," shows that the DOW's existing rates and charges, assuming Commission approval of a 28.3% rate increase in Cause No. 43645, would generate adequate revenue to cover Citizens's anticipated revenue requirements. Petitioners' witness Mr. Lykins testified that the 25.99% rate increase ultimately approved by the Commission in Cause No. 43645 was "sufficient for [Citizens] to move forward" with the acquisition of the water utility. Tr. at P-26.

In light of the terms of the Settlement Agreement and the evidence of record, the Commission finds Citizens should be authorized to adopt the DOW's current rates and charges as set forth in Water Rate Case Order. On June 27, 2011, pursuant to Cause No. 43645 the DOW filed a Revised Schedule of Rates and Charges Based on True-Up Report that reduced the rate increase from 25.99% to 25.21%.

b. The Wastewater Utility's Rates and Charges. The Sanitary District's existing rates and charges for wastewater service were adopted by Ordinance of the City-County Council on April 13, 2009, and are codified in Section 671-102 of the Revised Code of the Consolidated City of Indianapolis, Indiana. That Section of the City Code provides that the

Sanitary District's wastewater rates will increase 10.75% annually effective January 1, 2009, through 2013. The 10.75% annual increases for 2009, 2010, and 2011 have already been implemented. The annual increases in the Sanitary District's wastewater rates were designed largely to fund a portion of the capital cost of the CSO Projects mandated under the Consent Decree, thereby reducing the CSO events and improving the aging Wastewater System.

In the OUCC's case-in-chief, OUCC witness Ms. Stull accepted Joint Petitioners' proposal that the Commission approve the annual 10.75% across-the-board increases to wastewater user rates through 2013. Joint Petitioners' Exhibit JRB-1, the "Wastewater System Financial Summary," demonstrates the Sanitary District's authorized rates and charges, including the annual 10.75% rate increases, should generate adequate revenue to cover the Authority's anticipated revenue requirements, at least for the short term.

In light of the evidence presented, the Commission finds that the Authority should be authorized to adopt the rates and charges effective at Closing, as well as the annual 10.75% rate increases to take effect in 2012 and 2013.

4. Future Rates. The Wastewater System Agreement provides that the Authority will adopt and leave in place the Sanitary District's current schedule of rates and charges through 2013. With respect to the timing of the Authority's initial rate case, the Settlement Agreement provides:

The Authority shall file a general rate case for the wastewater utility no earlier than one (1) full year following commencement of operations by the Authority. Notwithstanding the foregoing, the Authority's first rate case shall be filed no later than January 1, 2014. The Authority will file a cost-of-service study in its first rate case and discuss with the OUCC and Industrial Group the preliminary results of such study as soon as reasonably practicable in advance of filing the study in the rate case. As soon as reasonably practicable after Closing but no later than six (6) months prior to the anticipated filing of the Authority's first rate case, the Authority will begin discussing with and seeking input from the OUCC and Industrial Group regarding rate design and cost-of-service issues related to the wastewater utility.

Pet. Exh. CBL-SA-1 at ¶ 2.

The foregoing terms are intended to ensure that the Authority will have sufficient operating experience to allow the Commission and the other interested parties to conduct a thorough review of the wastewater utility's rates in its first rate case. OUCC witness Mr. Bell testified that because the City's wastewater utility rates have never been reviewed by the Commission, this stipulation ensures that the Commission will have the opportunity to review and analyze the wastewater utility's rates and ensure that ratepayers are paying reasonable rates. The provision also protects the financial integrity of the Wastewater System by ensuring that the Authority files a rate case no later than January 1, 2014. Accordingly, the Commission finds the terms of the Settlement Agreement relating to the timing of the Authority's first general rate case to be reasonable.

The Commission continues to have concern, however, over the lack of a delineation of resources, responsibilities, and costs between the Authority-owned Wastewater Utility and City-owned Stormwater Utility. Only the Wastewater Utility is being transferred to the Authority, yet

the United Agreement is for the operation of both the Stormwater and Wastewater Utilities. In addition, the combined portion of the Wastewater Utility is composed of infrastructure common to both the Stormwater and Wastewater Utilities. This creates confusion as to how the physical ownership, responsibilities, and costs, including the allocation of resources committed for compliance with the Long Term Control Plan and the cost of the United Agreement, will be divided between the Authority and the City and the respective revenue streams of the two utilities. The Commission expects the parties to agree to an appropriate plan of cooperation between the utilities that, as best as possible, ensures neither utility's ratepayers are subsidizing the other utility's costs. However, the Commission understands that the Authority and the City will need time to fully understand the interaction of the two systems and to arrive at such an agreement. Therefore, the Commission orders the Authority, as part of its cost-of-service study, to include an explanation of how the City and Authority have allocated the ownership, responsibilities, and costs to each respective Utility to be filed with the Authority's first rate case.

5. Environmental Compliance Plan. In the Verified Petition, Joint Petitioners requested Commission approval of an environmental compliance plan ("ECP") and an Order authorizing the Authority to implement an adjustment mechanism for wastewater rates and charges to provide recovery, outside of a general rate case, of ECP Expenditures necessary for the Authority to comply in whole or in part with the Safe Drinking Water Act and/or Clean Water Act. Joint Petitioners' proposed ECP and the proposed ECPRM, as well as the terms of the Settlement Agreement relating thereto, are discussed below.

a. Approval of the Environmental Compliance Plan. Joint Petitioners' proposed ECP is comprised of the Consent Decree, the Long Term Control Plan, the First Amendment to the Consent Decree, the non-material modification to Table 7-5, as well as the Second Amendment to the Consent Decree (the First Amendment and Second Amendment are collectively referred to as the "Amendments"). In general, the foregoing documents require the Authority to complete certain delineated control measures in order to minimize CSOs. Only through the implementation of the ECP will the Authority be able to comply with EPA mandates under the Clean Water Act.

Indiana Code ch. 8-1-28 sets forth the information that must be submitted by a utility seeking approval of an ECP. Joint Petitioners submitted the information required under Ind. Code § 8-1-28-5(b). The Consent Decree summarizes the requirements of the Clean Water Act applicable to the Authority, as required under Ind. Code § 8-1-28-5(b)(1). Simply put, the terms of the Consent Decree must be complied with or the Authority will be in violation of the Clean Water Act and be subject to stipulated penalties. The measures that must be implemented to comply with the Clean Water Act are described in Table 7-5 of the Consent Decree. Table 7-5 also includes the schedule under which the Authority proposes to implement the measures. An estimate of the cost of implementing each of the Consent Decree measures is included in the LTCP. The LTCP also contains a detailed discussion of the alternatives evaluated.

The ECP has been submitted to the applicable state governmental compliance agency in accordance with Ind. Code § 8-1-28-9. Both the EPA and the IDEM have approved the documents comprising the ECP. As required under Ind. Code § 8-1-28-6, the Authority published notice of the filing of an ECP in newspapers of general circulation in Marion, Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Morgan, and Shelby Counties, Indiana.

No party opposed Joint Petitioners' proposed ECP. OUCC witness Mr. Bell recommended the Commission approve the proposed ECP as contemplated in Ind. Code § 8-1-28-5. The Settlement Agreement also recommends the Commission approve the Authority's proposed environmental compliance plan pursuant to Ind. Code § 8-1-28-7.

Therefore, we find the ECP is in the public interest as set forth in Ind. Code § 8-1-28-7(1)(C). The Commission further finds the ECP constitutes a reasonable and least cost strategy consistent with providing reliable, efficient, and economical service as set forth in Ind. Code § 8-1-28-7(1)(B). The Commission further approves the estimated cost and schedule for developing and implementing the environmental compliance plan. To the extent future modifications are made to the Consent Decree or LTCP, which would modify the projects to be completed, the Authority shall submit those modifications to the Commission for review and approval in accordance with Ind. Code § 8-1-28-10.

b. The ECP Recovery Mechanism. Indiana Code § 8-1-28-11 states that a public utility may, absent fraud, concealment, gross mismanagement, or inadequate quality control, recover the costs and expenses incurred in the development and implementation of an approved environmental compliance plan. In its case, the Authority proposed to recover such costs and expenses outside of a general rate case through a mechanism it styled as an ECPRM.

In its case-in-chief, the OUCC did not oppose the ECPRM. The OUCC acknowledged that:

due to the Authority's truly unique circumstances, some extraordinary relief may be merited . . . The annual debt service will be significant and beyond the Authority's control. Further, recovery of such annual debt service does not fit into Indiana's standard regulatory framework. Given these facts, some type of atypical rate relief may be merited and should benefit the ratepayers as well as the utility.

OUCC Exh. 2 at 28-29. The OUCC objected to two aspects of Joint Petitioners' proposed ECPRM. Specifically, the OUCC opposed the recovery of operating costs through the ECPRM and the use of a reconciliation mechanism to reconcile the difference between estimated and actual sewage disposal service revenues.

In the Settlement Agreement, the Settling Parties recommend that the Commission authorize the Authority to implement an ECPRM, "provided, however, only debt service payments for debt issued to fund capital expenditures incurred under the approved ECP and the costs of issuances and debt service reserve requirements associated with such debt issuances shall be recoverable through the ECP adjustment mechanism." Joint Petitioner's Exh. CBL-SA-1 at ¶ 5. The Settling Parties also agreed the ECPRM will not include a reconciliation component though the nature and extent of any true-up mechanism will be established through the process described below.

The testimony filed in support of the Settlement Agreement reflects that the terms of the Settlement Agreement relating to the ECPRM represent a reasonable resolution of the Settling Parties' respective positions. In Joint Petitioners' supplemental testimony, Ms. Prentice testified that the fact that operating expenses associated with implementing the CSO control measures will have to be recovered through base rates will require some degree of planning on the part of the Authority. Specifically, Ms. Prentice testified that the Authority will need to ensure that its base rates are sufficient to pay costs associated with upcoming increases in operating costs resulting from CSO

control measures being placed into service. OUCC witness Mr. Bell stated that the exclusion of operating expenses and a reconciliation process from the ECPRM will simplify the process and save both the Commission and OUCC time and resources.

With respect to the specific procedures that will govern Commission proceedings relating to the ECPRM, the Settlement Agreement provides:

[W]ithin sixty (60) days of a final Order in this Cause, the Authority will participate in a series of technical conferences with the Commission, the OUCC and any other Settling Parties to establish such procedures. If the Authority and the Settling Parties have not agreed to procedures that will govern Commission proceedings related to establishing a process for the ECP adjustment mechanism by June 1, 2012, the Authority will petition the Commission for a formal proceeding and hearing to establish the procedures that will govern Commission proceedings relating to the proposed ECP adjustment mechanism. The OUCC and any intervenors shall have no less than ninety (90) days to respond to the case-in-chief testimony filed by the Authority in any such proceeding.

While the Commission finds that it is appropriate for the Authority to recover debt service payments, including the costs of issuances and debt service reserve, for debt issued to fund capital expenditures incurred under the approved ECP through an ECPRM, the Commission has insufficient evidence to approve a mechanism at this time. The Commission agrees with OUCC witness Mr. Kaufman that some form of atypical relief is warranted under the unique circumstances presented in this case, and that an ECPRM would be an appropriate form of atypical relief. However, the details of the plan have not been fully developed, and it is not clear to the Commission that it is reasonable or in the public interest to exclude a reconciliation process from the recovery mechanism. In the absence of such specific details, the Commission cannot pre-approve the ECPRM in the Settlement Agreement.

That being said, the Commission finds the process agreed to by the parties to develop the specific procedures that will govern Commission proceedings related to the proposed ECPRM to be reasonable and further finds that the Authority shall present a complete proposal for its ECPRM in a separately filed proceeding. Within twenty (20) days following the issuance of this Order, the Authority shall file a formally docketed proceeding seeking formal approval of an ECPRM and requesting an attorney conference to allow all interested parties to discuss a procedural schedule for the proceeding.

6. Adoption of Existing Depreciation Rates. In Joint Petitioners' case-in-chief, Mr. Brehm testified that Citizens be allowed to use 2% as its depreciation rate for water assets and the Authority be authorized to use 2.5%, which is consistent with the Commission's guidance for depreciation rates for a wastewater utility that owns a treatment plant. OUCC witness Mr. Patrick agreed with Citizens's proposed depreciation rates for both the Water and Wastewater Systems' assets.

Accordingly, in the Settlement Agreement, the Settling Parties recommended that the Commission authorize: (1) Citizens to use, for ratemaking purposes, a 2% depreciation rate for water utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes; and (2) the Authority to use, for ratemaking purposes, a 2.5% depreciation

rate for wastewater utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes.

Based upon the Settlement Agreement and the evidence presented, the Commission finds Citizens should be authorized to use, for ratemaking purposes, a 2% depreciation rate for water utility plant in service until such time as the Commission may order or authorize the use of a different depreciation rate for ratemaking purposes. The Commission further finds the Authority should be authorized to use, for ratemaking purposes, a 2.5% depreciation rate for wastewater utility plant in service until such time as the Commission may order or authorize the use of a different depreciation rate for ratemaking purposes.

B. Reporting of Savings. The OUCC recommended that Citizens and the Authority be required to document savings generated as a result of the acquisitions, and provide reports to both the Commission and the OUCC showing what savings have been achieved and that the savings are directly attributable to the proposed merger. OUCC witness Mr. Drabinski recommended that within 180 days from the date of Closing the proposed transaction, Citizens should file a report providing the status of the implementation of the consolidation, the savings realized by categories, support for the savings, the costs incurred and support for the costs. Mr. Drabinski also recommended that subsequent to the initial report, reports on the implementation, savings realized and cost incurred should be provided on a semi-annual basis for a period of at least four (4) years. OUCC witness Mr. Bell further recommended that Citizens be required to document any construction cost savings for the remaining CSO projects.

Joint Petitioners' witness Mr. Johnson testified that Citizens has no objections to a reporting requirement as proposed and described by Mr. Drabinski. Mr. Johnson stated, however, that Mr. Drabinski's proposed reporting requirements may need to be modified as Citizens concludes the design phase of the integration.

In the Settlement Agreement, the Settling Parties agreed that for a period of four (4) years from the date of Closing, Citizens "will document the savings it generates as a result of the acquisitions and provide reports to the Commission, the OUCC and other Settling Parties showing the savings that are directly attributable to the acquisitions." Pet. Exh. CBL-SA-1 at ¶ 8(a). The Settlement Agreement further provides that within sixty (60) days of Closing Citizens will submit a report to the Commission and the OUCC that specifies the metrics that Citizens proposes to use to track savings realized from the consolidation of the gas, steam, water, and wastewater utilities. These metrics will include measuring bad debt expense and operation and maintenance expenses, to an indexed baseline applicable to the relevant expenses. Within one hundred-eighty (180) days from the date of Closing, Citizens will begin submitting semi-annual reports to the Commission, the OUCC and other Settling Parties that provide the status of the implementation of consolidation and the savings realized by categories.

In his supplemental testimony, Mr. Johnson indicated that Citizens will measure actual expenditures against an indexed baseline. Mr. Johnson testified that Citizens will also measure the effects of supply chain management, value engineering, and project rationalization upon capital expenditure savings. In measuring supply chain management savings, Citizens will measure average unit costs for key procurement categories as well as the extent of contract consolidation.

In addition, Citizens and the Authority will participate in a series of technical conferences with the Commission, the OUCC and any other Settling Parties to determine whether Citizens's proposed metrics and proposed reporting on the status of implementation are appropriate. Citizens and the Authority also have agreed to present testimony describing the savings achieved from the proposed transactions and how such savings have affected the proposed rate increase in the first two rate cases filed subsequent to Closing by the Authority and each of Citizens's regulated utilities, including the water utility. Citizens and the Authority further agree to continually analyze the currently approved CSO projects detailed in the Long Term Control Plan in order to identify and implement design efficiencies and costs savings and describe any savings realized in the periodic reports submitted to the Commission. Citizens also will describe in the periodic reports its compliance with any ongoing commitments or obligations set forth in the Settlement Agreement.

The Commission finds the provisions of the Settlement Agreement regarding the reporting of savings relating to the acquisitions and other issues to be reasonable and supported by the evidence of record. The detailed reporting requirements outlined in the Settlement Agreement will keep all interested parties and stakeholders apprised of Citizens's progress in achieving the benefits of the acquisitions. The reporting requirements and processes for reviewing reporting metrics also establish a framework for continued collaboration among the Settling Parties and Commission staff with respect to a number of issues in upcoming years.

C. Accounting Issues.

1. Books and Records. Joint Petitioners requested that the Commission approve the recording on Citizens's books and records of the value of the acquired Water System assets as described in the evidence in this proceeding. Joint Petitioners also requested that the Commission authorize the proper accounting treatment of the acquired Wastewater System assets on the books and records of the Authority as described in the evidence in this proceeding. In Joint Petitioners' case-in-chief, Mr. Brehm testified:

Once the acquisitions of the Water and Wastewater Systems close, Citizens and the Authority will take the necessary steps to finalize their opening balance sheets with respect to the Systems. Under Generally Accepted Accounting Principles, Citizens and the Authority will have one year following closing to make any necessary adjustments to their opening balance sheets. Citizens and the Authority, accordingly, expect their balance sheets and the value of their respective water and wastewater assets, to be finalized well before filing their initial rate cases.

Pet. Exh. JRB at 38. OUCC witness Ms. Stull testified the OUCC believes the proposed one-year period in which Citizens and the Authority will take the necessary steps to finalize the opening balance sheets of both entities to be reasonable and in conformance with GAAP guidelines.

Accordingly, the Settlement Agreement provides that:

[P]ursuant to GAAP, Citizens and the Authority will have one (1) year from the date of Closing to finalize the respective opening balance sheets for the water utility and wastewater utility. For those assets that Citizens and the Authority conclude are correctly recorded on the books and records of the DOW and Sanitary District, assets will be recorded in the same detail, both classification and value, as reflected in the

DOW's and Sanitary District's books and records at Closing, to the extent practicable.

Pet. Exh. CBL-SA-1 at ¶ 11. Citizens and the Authority also agreed to explain in writing any adjustments that modify the amounts on the DOW or the Sanitary District's records at Closing and provide this detail to the Settling Parties at the end of the first year of ownership.

The Settlement Agreement provides that no ratemaking treatment will be requested in the future as a result of any acquisition adjustment recorded in connection with the Authority's purchase of the wastewater utility or Citizens's purchase of the water utility assets. However, Citizens and the Authority will record any acquisition adjustment resulting from acquisition of the wastewater utility assets or water utility assets in accordance with the NARUC Uniform System of Accounts and amortize any such acquisition adjustment according to GAAP.

Citizens also agreed in the Settlement Agreement to record and amortize plant and cash contributed to the Water System in accordance with NARUC guidelines and record and amortize at the water utility's composite depreciation rate CIAC on the DOW's balance sheet at the date of Closing. The Settlement Agreement also provides that the Authority will record and amortize at its composite depreciation rate CIAC it receives after Closing in accordance with NARUC guidelines.

Based upon the Settlement Agreement and the evidence presented, the Commission finds that Citizens and the Authority shall maintain the books and records of the Water and Wastewater Systems in accordance with GAAP and the NARUC Uniform System of Accounts. The Commission understands that pursuant to GAAP, Citizens and the Authority will have one year from the date of Closing to finalize the respective opening balance sheets for the Water and Wastewater Systems. In preparing its balance sheet for the water utility, Citizens shall record the amount of CIAC and amortized CIAC that exists on the DOW's balance sheet at the date of Closing. Both Citizens and the Authority should amortize CIAC using the composite depreciation rate for plant. Citizens and the Authority should further record contributions of plant and cash in accordance with NARUC guidelines.

2. Wastewater "Connection Fees". Joint Petitioners requested that the Commission approve the use by the Authority of the schedule of rates and charges currently applicable to the provision of wastewater utility service by the Sanitary District. The Sanitary District currently imposes a "Connection Fee" in the amount of \$2,530. No party opposed the imposition of this Connection Fee. The Settlement Agreement provides that its approval "will also constitute approval and authority for . . . the Authority to implement . . . the rates and charges in effect for the . . . wastewater utility at the time of Closing." The Settlement Agreement does not provide for any future escalation of the Connection Fee beyond \$2,530. Petitioners' Exhibit LSP-SA-2 filed in support of the Settlement Agreement on April 29, 2011 included automatic escalation language. We therefore order the Authority to file a revised version of Appendix B, eliminating Section "Automatic Modification of Fee," to conform to the terms of the Settlement Agreement within thirty days of the effective date of this order.

OUCC witness Ms. Stull made other recommendations relating to the Connection Fee, which are addressed below:

a. **Restriction of the Connection Fee to Pay for Growth Related Capital Projects.** Ms. Stull initially recommended that the Commission restrict the use of funds derived from the Connection Fee to pay for growth-related capital projects, which would include costs related to STEP. In the Settlement Agreement, the Settling Parties agreed that System Development Charges and Connection fees collected by Citizens and the Authority shall be used for growth-related capital purposes, including either retiring debt or constructing facilities related to system growth, which would include, for example, capital costs related to the Septic Tank Elimination Program. Citizens and the Authority, however, are not required to segregate funds derived from the Connection Fee. The Commission finds the foregoing terms of the Settlement Agreement to be a reasonable resolution of the issue raised by OUCC witness Ms. Stull.

b. **Re-designating the Connection Fee as a System Development Charge.** Ms. Stull recommended that the Commission require the Connection Fee included in the Authority's proposed wastewater tariffs to be re-designated as a system development charge ("SDC") and that the Authority be required to record any such fees as CIAC. Ms. Stull testified that the Memorandum describing the calculation of the Connection Fee indicates that the rationale and method to calculate the fee is similar to the guidelines to calculate a system development charge.

The Settlement Agreement provides that "[t]he Authority's 'Connection Fees' shall be recorded as CIAC. The Authority shall determine the amount of 'Connection Fees' collected by the Sanitary District from January 1, 2006 to the date of Closing and shall record such amounts as CIAC." Pet. Exh. CBL-SA-1 at ¶ 14(b).

Based upon the evidence presented, the Commission finds that the terms of the Settlement Agreement relating to the re-characterization of Connection Fees collected by the Sanitary District represent a reasonable compromise between the Settling Parties' respective positions. We understand the difficulty that may be inherent in attempting to determine the amount of Connection Fees collected by the Sanitary District during historical periods and believe that January 1, 2006, is a reasonable time limitation for re-characterizing such fees. This re-characterization should not adversely impact the Authority's debt service coverage ratios given that Paragraph 39 of the Settlement Agreement provides "that funds from System Development Charges and Connection Fees are revenue for purposes of debt service coverage calculations."

D. Intergovernmental Agreements; Advisory Groups.

1. **Request for Assignment of Interlocal Agreements.** Joint Petitioners requested that the Commission approve the DOW's assignment of any Interlocal Agreements the DOW had entered into with surrounding communities, along with any associated franchise rights. No party objected to the assignment of the Interlocal Agreements. OUCC witness Mr. Patrick recommended that the Commission approve the assignment of any DOW Interlocal Agreements and franchise rights to Citizens. Through the Settlement Agreement, the Settling Parties recommend the Commission authorize the assignment to Citizens of any franchise rights held by the DOW and any Intergovernmental Agreements to which the DOW is a party.

Based upon the Settlement Agreement and the evidence presented, the Commission finds that Joint Petitioners' request for approval of the transfer of the Interlocal Agreements, and any associated franchise rights, should be approved.

2. **Continuation of the SAB.** The Settlement Agreement provides that “Citizens will maintain the Service Advisory Board and will honor the commitments set forth in the Intergovernmental Agreements the DOW is a party to, including the water utility’s obligation to treat communities inside and outside Marion County with substantial similarity in a nondiscriminatory fashion, particularly in offering non-preferential rates.” Pet. Exh. CBL-SA-1 at ¶ 17.

We find that the terms of the Settlement Agreement relating to the continuation of the SAB are reasonable and should be approved. In addition to resolving the SAB’s concerns, the Settlement Agreement preserves the SAB’s current role in providing input regarding water related issues. We believe that input from such groups will be valuable as Citizens begins operating the utility. As such, the Commission agrees with OUCC witness Mr. Rees that the continuation of the SAB will help Citizens’s technical management of the water utility.

3. **Approval of the Rates and Charges and Terms and Conditions set forth in certain “Satellite Agreements”.** Joint Petitioners also sought Commission approval of the rates and terms set forth in certain agreements for wastewater treatment and disposal service entered into by the City (“the “Satellite Agreements”). The Satellite Agreements are contracts that the City has entered into with various surrounding municipalities, conservancy districts, and public sewage disposal utilities. Pursuant to terms set forth in the Satellite Agreements, the City has agreed to permit the neighboring wastewater systems to connect their facilities to the City’s wastewater treatment, transportation, and disposal facilities and accept wastewater for treatment and disposal. The Satellite Agreements set forth the terms and conditions, rates, and charges that are applicable to the transportation and treatment service being provided to each of the neighboring wastewater systems.

Through the Settlement Agreement, the Settling Parties recommend that the Commission authorize the assignment to the Authority of any franchise rights held by the Sanitary District and any interlocal agreements the Sanitary District is a party to with respect to the treatment or disposal of wastewater.

Based upon the terms of the Settlement Agreement and the evidence presented herein, the Commission finds that the rates, charges, and terms and conditions for service set forth in the Satellite Agreements are reasonable and should be approved. To the extent the Satellite Agreements are renegotiated or modified, we find that such modifications should be filed with the Commission for approval.

4. **Continued Role of Advisory Groups and Access to Board Meetings.** OUCC witness Mr. Bell recommended that the Commission require Citizens and the Authority to: (1) continue the DOW’s and the Sanitary District’s practice of actively participating in the AWT Technical Advisory Panel and the Technical Advisory Group (“TAG”) meetings and treating these groups as a valuable management asset; (2) create a forum to allow public input on significant utility decisions; and (3) adopt the current practice of working with the local environmental groups or other partners to protect source water resources and streams and rivers.

In the Settlement Agreement, Citizens agreed that it and the Authority would continue to participate in and seek input from technical advisory groups, environmental groups, and other

organizations interested in water and wastewater issues. In addition, as part of their respective first rate cases, Citizens and the Authority agreed to report on the current status of their participation in such groups. Citizens also agreed to take steps designed to broaden notice as to the date, time, and location of the public meetings of its Board and the Authority's Board. In addition to complying with the notice requirements of the Open Door Law, Citizens has agreed that for a period of eight years following Closing, Citizens and the Authority will: (1) include on Citizens's home page a clearly marked hyperlink to a notice of the date, time, and location of regularly scheduled Board Meetings; (2) annually include a tentative schedule of regularly scheduled Board meetings in a billing insert for water and wastewater customers; and (3) include on monthly water and wastewater customer bills, or in a billing insert, a statement that the time and location of regularly scheduled meetings of the Citizens and Authority Boards can be found on Citizens's web site (collectively the "Notice Requirements").

The Commission finds the above terms relating to the continued commitment to seek input from technical advisory groups, environmental groups, and other organizations interested in water and wastewater issues, as well as the Notice Requirements to be appropriate and therefore, should be approved. The Commission expects that the Notice Requirements will ensure that members of the community interested in water and wastewater issues are apprised of the date and time of Board meetings and afforded an opportunity to be heard. However, the Commission does not understand why the Notice Requirements should be limited to a period of eight years, nor does the evidence support such a limitation. Therefore, we conclude that Citizens and the Authority shall abide by the Notice Requirements indefinitely. Should Citizens and/or the Authority wish to cease or limit the Notice Requirements after the conclusion of the agreed eight-year period, they shall file a formal request to do so with the Commission.

E. Affiliate Relationships; Cost Allocations.

1. Approval of an Operating Agreement between Citizens and the Authority. Joint Petitioners requested approval of an Operating Agreement between the Authority and Citizens, which was filed in this Cause as Joint Petitioners' Exhibit WAT-1. The Agreement governs Citizens's provision of certain managerial, administrative, technical, operational, and other services to the Authority. Citizens provision of such services to the Authority is consistent with the Interlocal Cooperation Agreement and, in part, makes possible certain synergies and efficiencies that are intended to be derived from the acquisition. Joint Petitioners' witness Mr. Tracy stated that combining the existing Water and Wastewater Systems with the utilities currently owned by Citizens Energy Group will achieve operating synergies and cost savings that will result in higher quality service, increased reliability, and lower customer rates. No party opposed the approval of the Operating Agreement between the Authority and Citizens. Accordingly, we find the Operating Agreement is reasonable and should be approved.

2. Proposed Methodology for Allocating CSS Costs and Equitable Allocation of Meter Reading Costs. Through the Settlement Agreement, the Settling Parties recommend that the Commission approve Citizens's proposal to allocate ten (10) percent of shared corporate support services ("CSS") costs to the Authority. A complete description of the proposed methodology is set forth in Joint Petitioners' Exhibit JRB-R1. Based upon the Settlement Agreement and the evidence presented, the Commission finds that Citizens's proposed methodology for allocating CSS costs among the affected utilities and non-utility affiliates should be approved. The agreed-upon methodology allows all customer stakeholders to benefit from the

proposed transactions. The Commission further finds that the proposed methodology and the corresponding percentage allocation of CSS costs should be used by all of the regulated Citizens utilities for ratemaking purposes in their next rate case.

The Settlement Agreement further provides that Citizens and the Authority will conduct a review every three (3) years of the methodology used to allocate CSS costs among the regulated utilities and unregulated entities and determine whether the methodology continues to be appropriate. OUCC witness Ms. Stull testified that a periodic review of the allocation of shared costs is essential. Citizens's witness Mr. Brehm testified that the Authority considered Ms. Stull's proposal to be reasonable. The Commission, therefore, finds that in accordance with the terms of the Settlement Agreement, Citizens shall review the allocation of CSS costs at least once during every three-year period. Also pursuant to the Settlement Agreement, Citizens shall submit reports regarding the results of such reviews to the Commission, the OUCC, and other Settling Parties.

In the Settlement Agreement, Citizens and the Authority further agree to equitably allocate water meter reading costs between the Water and Wastewater Systems. We find that Citizens shall propose an appropriate allocation methodology in the first water or wastewater utility rate case.

3. Affiliate Guidelines. The Settling Parties agreed that the Affiliate Guidelines and Cost Allocation Guidelines approved in Cause No. 43963 should be construed to apply to the Water and Wastewater Systems. A copy of the Affiliate Guidelines and Cost Allocation Guidelines was attached to the supplemental testimony of Mr. Johnson as Joint Petitioners' Exhibits ADJ-SA-1 and ADJ-SA-2, respectively. Accordingly, under the terms of the Settlement Agreement, in the case of a contract for goods or services from any for-profit affiliate, Citizens or the Authority, have agreed to support the affiliate contract by providing the OUCC and the other Settling Parties with documentation and explanation establishing why the terms constitute "Competitive Terms" as defined in the Affiliate Guidelines.

The Commission finds that the terms of the Settlement Agreement represent a reasonable resolution of the Settling Parties' respective positions with respect to Citizens's and the Authority's interactions with affiliates. The Settlement Agreement incorporates Citizens's Affiliate Guidelines and Cost Allocation Guidelines, which have been in existence in some form since 2002, when they were initially approved by the Commission in Consolidated Cause Nos. 42233, 37394 GCA 50 S1, and 37399 GCA 50 S1, which involved Citizens Gas. The Settlement Agreement's incorporation of the Affiliate Guidelines ensures that before contracting with an affiliate, Citizens and the Authority will work with interested stakeholders to ensure that interests are properly addressed.

F. Environmental and Conservation Issues.

1. The Septic Tank Elimination Program. The Parties presented evidence regarding the need for completion of STEP projects. With respect to the Authority's ongoing commitment to undertake STEP projects, Mr. Lykins testified that Citizens is committed to addressing the issue of failed septic systems in the Marion County community. Mr. Lykins indicated that he envisions the Authority proposing another set of septic tanks to be eliminated in every wastewater system rate case.

Citizens witness Mr. Dillard explained that the Authority would consider completion of additional STEP projects beyond those it is obligated to perform under the Wastewater System

Agreement through a cost-benefit analysis process that will encompass a variety of factors, including both the tangible and intangible costs associated with the STEP projects, their environmental impact, overall community benefit, and available funds. Mr. Dillard and OUCC witness Mr. Bell agreed that the Authority should utilize the work the City has already done in connection with assessing and prioritizing STEP projects, including without limitation the STEP Prioritization Criteria that is part of Appendix C to the Consent Decree's Long Term Control Plan. Joint Petitioners and the OUCC agreed, however, that in order for the Authority to be financially responsible for completing the STEP projects, it would need to be funded through rates or other sources.

The Settlement Agreement reflects the OUCC's and Joint Petitioners' general consensus with respect to need to complete the STEP projects and the need to prioritize the projects. The Settlement Agreement provides:

The Settling Parties acknowledge that septic tank elimination projects, in addition to those the Authority and City agreed to as set forth in Section 2.04(d) of the Wastewater APA, will be completed by the Authority, subject to the adequacy of rates and charges to fund the cost of such projects. The Authority will make reasonable efforts to obtain grants and other sources of funding, giving due consideration to the terms and conditions associated with the acceptance of such grants or other sources of funding, to offset the amount required to be funded in rates for septic tank elimination projects. The Settling Parties further acknowledge that the prioritization of and the terms and conditions relating to the elimination of septic tanks and connection of septic tank users to the sanitary sewer system involve a number of public policy issues that require input from numerous stakeholders. The Authority agrees to collaborate with the Commission and the OUCC to establish a framework and process to solicit input from interested stakeholders and consider those issues. The Authority will make information about the septic tank elimination projects available to the public utilizing the Citizens website and other communication media.

Pet. Exh. CBL-SA-1 at ¶ 25.

The Commission understands the public policy support for the completion of the City's STEP program. However, the Commission is not convinced that a public utility is the proper party to implement the City's public policy programs, at least to the extent that funding for such programs is subsidized by the utility's ratepayers. While we acknowledge the commitment the Authority has made to complete the STEP projects outlined in Section 2.04(d) of the Wastewater APA, we are not yet convinced of the appropriateness of the Authority's continued participation in STEP beyond its initial commitment. For this reason, we find that the terms of the Settlement Agreement, which require Commission approval for the recovery of costs for STEP projects beyond those listed in Section 2.04 of the Wastewater APA, should be approved. In addition, the Commission finds that Citizens and the Authority should make information about the septic tank elimination projects available to the public utilizing the Citizens website and other communication media.

2. Pursuit of Water Conservation Measures. In Cause No. 43645, we directed the DOW to pursue additional near-term water conservation measures by: (1) establishing a lead for conservation program coordination; (2) undertaking a conservation rate study; (3) undertaking an automatic meter reading ("AMR") pilot; (4) establishing a voluntary maximum daily

reduction load shifting program with large customers; (5) implementing additional conservation messaging on water bills; (6) implementing a water main replacement program; and (7) implementing enhanced well monitoring to enhance supply availability. The DOW was directed to update the Commission on these measures in its next general rate case. However, before effectuating an AMR pilot or an alternate pilot utilizing broadband based smart grid technology, we ordered the DOW to explore other possible options, including whether selecting one technology may foreclose other options. We also ordered the DOW to file a compliance report summarizing its findings within 30 days of completing its evaluation.

In the Settlement Agreement, Citizens agreed to pursue each of the conservation measures imposed on the DOW. However, in lieu of undertaking an AMR “pilot,” Citizens has agreed to complete an AMR study. Citizens also agreed to commence discussions regarding a conservation rate study with the OUCC, other Settling Parties, and Commission Staff no later than three (3) months prior to the submission of such study to the Commission. Citizens has agreed to update the Commission on the implementation of these measures in its next general rate case.

We believe water conservation is an important objective. Accordingly, we find the terms of the Settlement Agreement regarding Citizens’s pursuit of the foregoing measures to be in the public interest. We are mindful of the many challenges that the change in ownership structure presents. Therefore, we find the agreed-upon modifications to the water conservation measures imposed on the DOW in Cause No. 43645 to be reasonable. With respect to the conduct of an AMR study, we believe the study should explore other possible options, including among other things, consideration of the implications of the National Broadband Plan developed and released by the Federal Communications Commission in March of 2009.

3. Water Conservation Plan. OUCC witness Mr. Bell testified Veolia invested significant resources into developing a comprehensive water conservation plan as directed by the Commission in Cause No. 43056. Therefore, the OUCC recommended Citizens either adopt the 2009 Veolia Water Conservation Plan or use the 2009 Veolia Water Conservation Plan to develop its own water conservation plan to be presented to the Commission for approval. Joint Petitioners agreed with Mr. Bell’s recommendation that Citizens should develop a water conservation plan of its own using the 2009 Veolia Water Conservation Plan. Joint Petitioners’ witness Mr. Lindgren testified Citizens’s water conservation plan can be prepared and presented for Commission approval within twelve months from when Citizens commences operation of the Water System.

The Settlement Agreement provides that Citizens will develop a water conservation plan using the 2009 Water Conservation Plan developed by Veolia and present its plan to the Commission, the OUCC and other interested parties within twelve (12) months of the date of Closing.

The Commission finds that twelve (12) months is a reasonable time in which to develop a water conservation plan. Accordingly, based upon the Settlement Agreement and the evidence presented, the Commission finds that Citizens shall prepare its own water conservation plan using the 2009 Veolia Water Conservation Plan and present it to the Commission for approval within twelve months after Citizens begins operating the Water System.

4. **Drought Response Plan.** OUCC witness Mr. Bell recommended that Citizens develop a systematic plan to ensure it is able to timely and effectively respond to drought conditions. SAB witness Mr. Goings testified that although Central Indiana has not experienced severe drought conditions for several years, he believes that sooner or later a drought will occur, and therefore, the ramifications of a potential drought need to be understood. Joint Petitioners agreed with Mr. Bell that it should develop a drought response plan. Joint Petitioners' witness Mr. Lindgren explained that complexities associated with drought resource planning and the need to coordinate with regulatory agencies increases the time needed to develop a drought response plan.

In the Settlement Agreement, the Settling Parties acknowledge the complexities associated with drought response planning and the need to coordinate with numerous regulatory agencies and stakeholders, including the Commission, the OUCC, the City, and the Indiana Department of Natural Resources. Accordingly, the Settlement Agreement provides that Citizens will develop a drought response plan and present its plan to the Commission, the OUCC and other interested parties within twenty-four (24) months of the date of Closing.

Based upon the terms of the Settlement Agreement and the evidence presented herein, the Commission finds that Citizens shall prepare a drought response plan and present it to the Commission for approval within twenty-four (24) months after Citizens begins operating the Water System.

G. Rules and Regulations; Tariff Issues.

1. **Treatment of Deposits Held by the DOW and Sanitary District.** OUCC witness Ms. Stull testified that to the extent that the DOW or the Sanitary District holds customer deposits at Closing, these deposits should either be paid back to customers or transferred to Citizens or the Authority. Ms. Stull stated that if deposits are transferred to Citizens or the Authority, these deposits should retain their classification as customer deposits. In the Settlement Agreement, the City, Citizens, and the Authority agree that "any liability for customer deposits by the DOW or Sanitary District at Closing will be duly accounted for and either be refunded or transferred to Citizens or the Authority and recorded as customer deposits." Pet. Exh. CBL-SA-1 at ¶ 28. The Commission finds the foregoing terms to be reasonable. Parties should file, within sixty (60) days of closing, a report that shows the ending balances of customer deposits on the DOW's and the Sanitary District's books, the opening balances of customer deposits on Citizen's and the Authority's books, and any refunds issued by DOW and the Sanitary District.

2. **Terms and Conditions for Service.** Joint Petitioners requested that the Commission approve the use by Citizens of rules and regulations for service based upon those approved for use by the DOW. Joint Petitioners further requested that the Commission approve the general terms and conditions of service for the Authority based upon the rules now in effect for wastewater utility service by the Sanitary District. Although the wastewater rules have never been approved by the Commission, they are based upon various ordinances adopted by the City in the course of its governance of the wastewater utility.

The OUCC recommended that the matter of water and wastewater terms and conditions be deferred to a subdocket. Similarly, Industrial Group witness Mr. Gorman expressed concern about the proposed non-residential deposit rules. However, Ms. Prentice testified in rebuttal that it is

imperative that Citizens Waterworks and the Authority have in place a set of terms and conditions specific to each utility immediately upon closing.

In the Settlement Agreement, the Settling Parties recommended that the Commission authorize Citizens and the Authority to implement the Terms and Conditions for water and wastewater utility service proposed by Joint Petitioners in their case-in-chief testimony, subject to certain delineated changes, until such time as the Commission approves revised terms and conditions for service. Revised versions of the terms and conditions for water and wastewater utility service incorporating the agreed upon changes specifically identified in the Settlement Agreement were attached to the supplemental testimony of Ms. Prentice as Exhibits LSP-SA-1 and LSP-SA-2.

Citizens and the Authority also agreed to request a series of technical conferences with Commission Staff, the OUCC, and any other interested Settling Parties to address recommended revisions to the Water and Wastewater Systems' terms and conditions for service, including but not limited to the non-residential deposit terms for both the Water and Wastewater Systems, and the customer deposit interest rate for both Water and Wastewater Systems. The Settlement Agreement states that if the parties are able to agree on proposed changes to terms and conditions for service as a result of the technical conferences, Citizens and the Authority shall file the revised terms and conditions for service with the Commission for approval using the Commission's thirty (30)-day filing process. If the parties are unable to agree to revised terms by March 1, 2012, Citizens and the Authority will notify the Commission and initiate docketed proceedings for the purpose of establishing the terms and conditions for service outside a general rate case.

Terms and conditions for service, along with rates and charges for service, govern the relationship between the utility and its customers. Absent valid and Commission-approved terms and conditions for water and/or wastewater service, a customer could challenge any action or decision of the utility. If terms and conditions are not approved as part of this proceeding, there would be no guidelines to govern the relationship between the utilities and their customers. Further, upon Closing, the City will no longer own wastewater utility assets and will repeal most of the Ordinances relating to the operation of the sewer utility, eliminating any frame of reference for the utility's rules. Accordingly, we find the terms of the Settlement Agreement relating to the implementation of the terms and conditions for water and wastewater utility service proposed by Joint Petitioners in their case-in-chief testimony, subject to certain delineated changes, to be reasonable and in the public interest on an interim basis. Therefore, we approve the Terms and Conditions for water and wastewater service filed as Joint Petitioners' Exhibits LSP-SA-1 and LSP-SA-2 subject to the directives below.

With respect to further refinements to the Terms and Conditions for service, the Commission finds that Citizens and the Authority shall within twenty (20) days following the issuance of this Order schedule a meeting with all interested parties to discuss whether any further modifications of the Terms and Conditions for service are necessary or appropriate. If the Settling Parties agree to modifications to the terms and conditions, Citizens or the Authority, as applicable, should file those modifications with the Commission for its consideration and approval pursuant to the 30-day filing procedure. If the parties are unable to agree to revised terms by March 1, 2012, Citizens and the Authority shall notify the Commission and initiate docketed proceedings for the purpose of establishing the terms and conditions for service for each utility.

H. Potential Transfers of Acquired Assets. The OUCC expressed concern with the provision of the APAs granting the City a right of first refusal to purchase the Water and Wastewater Systems back at their then fair market value in the event that Citizens or the Authority ever attempt to sell the acquired assets. The Settlement Agreement reinforces provisions in the APAs, which state that the Water and Wastewater Systems will be held by Citizens and the Authority respectively in furtherance of public charitable trusts and therefore cannot be sold. Specifically, Paragraph 38 of the Settlement Agreement provides that “Citizens and the Authority maintain that the Asset Purchase Agreements prohibit them from selling Acquired Assets, except for Surplus Property.”⁴ Pet. Exh. CBL-SA-1 at ¶ 38. In addition, Citizens and the Authority agree in the Settlement Agreement that neither utility will sell or seek to sell the Acquired Assets, except for Surplus Property, without first seeking and receiving authority from the Commission. The Settling Parties further agreed that whether a sale is in the public interest will be affected by the purchase price and the rate impact of any such proposed transaction.

We find the terms set forth in Paragraph 38 to be a reasonable means of addressing the OUCC’s concerns regarding the City’s right of first refusal to purchase the Water and Wastewater Systems in the event of an attempted sale by Citizens or the Authority. The Settlement Agreement ensures involvement of all interested stakeholders in the event the Acquired Assets are sold by requiring that the Commission approve any such sale only upon finding it to be in the public interest. Before finding any sale to be in the public interest, the Commission necessarily would review factors such as the rate impact on customers, the purchase price and the managerial, financial and technical ability of any proposed acquiring entity to operate the assets. Moreover, Mr. Johnson expressed his belief that the right of first refusal language does not negate the prohibition of a future sale of the Acquired Assets by Citizens or the Authority, but rather was included in the APAs because the City felt it was necessary to receive a right of first refusal for political reasons.

Although we find the terms of Paragraph 38 to be generally acceptable, the Commission is troubled by the lack of a clear definition of just what constitutes surplus property. The Commission questioned several witnesses, none of whom could provide such a definition. As a result, the decision of what assets constitute surplus property, the sale of which would not require Commission approval, rests solely with Citizens and/or the Authority without oversight. In order to provide some oversight of that decision without materially modifying the Settlement Agreement, we order Citizens and the Authority to provide notice to the Commission and to the OUCC of their intent to sell surplus property with a value in excess of \$50,000. The Notice shall include a detailed description of the property to be sold and a statement explaining why Citizens believes the property is surplus property.

The Settlement Agreement also provides: “Citizens shall not, without the approval of the Commission, transfer the Harbour Water System or the Morgan County Water System to another entity or convert either to a for-profit operation.” Pet. Exh. CBL-SA-1 at ¶ 30. Mr. Johnson testified that this requirement for Commission approval applies regardless of whether Citizens makes a determination that either the Harbour Water or Morgan County Water systems are Surplus Property. Mr. Bell stated that this stipulation provides ratepayers protection from the transfer of

⁴ As noted above, the Water System Agreement explicitly provides that “Surplus Property shall not include: Geist Reservoir, Morse Reservoir, the Canal, the South Well Fields, and any other wells or current water sources to the extent such wells or water sources are critical to providing water to the trust beneficiaries.” See Water System Agreement § 8.08(b).

utility systems to a more costly form of ownership. Based upon the Settlement Agreement and the evidence presented herein, we find that in the event Citizens desires to transfer the Harbour Water System or the Morgan County Water System to another entity or convert either to a for-profit operation, it shall seek prior Commission approval – even if Citizens makes a determination that the Harbour Water or Morgan County Water Systems are Surplus Property.

For all of the foregoing reasons, the Commission finds that the terms set forth in Paragraphs 30 and 38 of the Settlement Agreement are in the public interest and should be approved with the addition of the notice requirement discussed above.

I. **Responsibilities Flowing from the Final Order in Cause No. 43645.** In the Settlement Agreement, Citizens has agreed to comply with many of the requirements imposed on the DOW in the Order in Cause No. 43645. In addition to the water conservation commitments discussed in finding 9.F.2 above, requirements that Citizens has specifically agreed to comply with are discussed below.

1. **Equivalent Meter Factor Analysis and Capacity Factor Analysis.** We directed the DOW to begin collecting, within 60 days of the Order, data necessary to provide a current Equivalent Meter Factor analysis in its next base rate case, including historical meter costs. We also directed the DOW to, within 60 days of the Order, determine how it will collect data to perform a current capacity factor analysis for submission in the DOW’s next base rate case. The Settlement Agreement provides:

31. Citizens shall conduct an Equivalent Meter Factor analysis according to generally accepted cost of service study practices. In the course of conducting such analysis, Citizens shall collaborate with the Settling Parties. The results of such analysis will be utilized in Citizens’s next base rate case. Citizens will endeavor to determine if historical meter cost data can be constructed from existing records.

32. Within six months of Closing, Citizens shall determine how it will collect the necessary data to perform a current capacity factor analysis for submission in its next base rate case and notify the Commission of its determination.

We find the foregoing provisions of the Settlement Agreement to be reasonable and therefore, should be approved.

2. **Meter Reading Issues.** Similarly, we required the DOW in its next base rate case to provide a recommendation regarding the best estimating logic for meter reading. We noted, however, that if the DOW switches to monthly meter reading, the recommendation is not necessary. In the Settlement Agreement, Citizens agreed that unless it converts the water utility’s operations to monthly meter reading, it will complete a study that reviews various estimating methods and provide a recommendation regarding the best estimating practice in its first general rate case.

We find that the foregoing provisions of the Settlement Agreement should be approved.

3. **The DOW Debt Issuance.** In Cause No. 43645, we approved a single-phase rate increase, notwithstanding the fact that the DOW had not yet issued its 2011 bonds.

The OUCC argued for a phased rate increase to take effect when the 2011 bonds are actually issued. In recognition of the OUCC's argument we ordered the DOW to file a tariff reflecting a 3.7% decrease in the rates and charges approved in the Order if it had not closed on its proposed bond issue within 120 days of the effective date of the Order. We also required the DOW to prepare and file a true-up report in this Cause within 20 days after closing on the 2011 bonds.

On May 26, 2011, the DOW filed Notice of Bond Closing in Cause No. 43645, indicating it had closed upon the 2011 bonds within the 120 period required in the Order. On June 15, 2011, the DOW filed its true-up report as required by the Order. Because the DOW has fully complied with respect to these provisions of the Commission's Order in Cause No. 43645, we find that no further action is necessary by Citizens.

4. Future Debt Issuances. In Cause No. 43645, we directed the DOW to meet with the OUCC to develop a process for review of future debt issuances by the DOW and to file a report setting forth the process for review of future debt issuances. In the Settlement Agreement, Citizens agreed to meet with the OUCC to develop a process for discussing future debt issuances by Citizens for the water system. However, the Settlement Agreement expressly provides that Citizens's agreement to engage in this process shall not be construed as agreement to limit in any way Citizens's statutory authority to issue debt. The Commission finds that the foregoing provisions of the Settlement Agreement are appropriate. Given the significant capital needs of the Water System, the OUCC will benefit by being apprised of potential future debt issuances. We agree with Mr. Brehm's assertion that it is sensible to promote visibility and understanding in advance of material increases in the amount of outstanding debt.

5. Capital Improvements. In the Order in Cause No. 43645, we expressed our concern about the DOW's funding of capital improvement projects. The Settlement Agreement provides that until Citizens's first water rate order, "Citizens shall make semi-annual compliance filings providing an update on the fulfillment of the water utility's Capital Improvement Program." Pet. Exh. CBL-SA-1 at ¶ 34. The compliance filings will explain the reasons for any differences between the Capital Improvement Program being pursued by Citizens and the Capital Improvement Plan approved by the Commission in Cause No. 43645. In conjunction with the compliance filings, Citizens also will provide reports detailing the cost of the actual capital improvements implemented during the year which is the subject to the report, separated by project. We note that the requirements imposed on the DOW in Cause No. 43645 to segregate extensions and replacements ("E&R") funds are not imposed on Citizens or the Authority in the Settlement Agreement. We find that the foregoing terms of the Settlement Agreement are reasonable and should be approved.

6. Requirements of the DOW Rate Case Order not Otherwise Specified in the Settlement Agreement. The Settling Parties also agreed that within ninety (90) days of Closing, Citizens shall identify all requirements of the final Order in Cause No. 43645 not otherwise specified in the Settlement Agreement that the DOW was required to complete and state how and when the DOW satisfied the requirement. For any such requirements not satisfied by the DOW, Citizens shall indicate whether Citizens has satisfied the condition or explain why the condition should not apply to Citizens. Citizens shall satisfy this condition by filing a report with this Commission and providing a copy to the Settling Parties. As Mr. Bell noted in his testimony in support of the Settlement, this will make for a transition in which it is more likely that actions the

Commission considered important in its final Order in Cause No. 43645 will occur. We find that the foregoing terms of the Settlement Agreement are reasonable and should be approved.

J. Use of Regulated Utility Revenues and Funds from the Water and Wastewater Operations. Industrial Group witness Mr. Gorman recommended that the Commission direct Citizens and the Authority not to move cash out of the Water and Wastewater Systems into other operations or affiliates of Citizens or the Authority. In the Settlement Agreement, Citizens and the Authority agree that:

[R]egulated utility revenues and funds from their respective water and wastewater operations, including proceeds from the sale of surplus property, shall be retained and used to operate, improve and expand that respective utility, or retire outstanding debt of the utility, and otherwise to maintain that utility in a sound physical and financial condition necessary to render adequate and efficient service. Citizens and the Authority's commitment to this provision shall expire upon termination of the ECP described in Paragraph 5 of the Stipulations and Conditions above. Nothing herein shall be construed to modify the powers of the Commission as set forth in Title 8 of the Indiana Code.

Pet. Exh. CBL-SA-1 at ¶ 40.

Mr. Johnson explained that upon termination of the ECPRM, Citizens does not intend to include in its requested rates any revenue that is not necessary for the operation, improvement, expansion, or retirement of the outstanding debt of the Water and Wastewater Systems or to otherwise maintain the utilities in sound physical and financial condition necessary to render adequate and efficient service. According to Mr. Johnson, the time limitation in the foregoing provision was included because Citizens was concerned about including a provision in the Settlement Agreement that may limit any discretion and authority of its Board of Directors which may or may not exist in Ind. Code ch. 8-1-11.1 specifically or Indiana law in general. However, Mr. Johnson stated that in the interest of compromise, Citizens was willing to limit its discretion, but only for a specifically defined time period.

We note that the OUCC will be a participant in the Water and Wastewater Systems' future rate cases. Mr. Bell testified that it is the OUCC's position that after the expiration of that period, Citizens's and the Authority's practice with respect to funds and revenues generated by the Water and Wastewater Systems would be subject to the regulatory paradigm as determined by the Commission and applicable law. Mr. Bell further stated that the OUCC does not believe Citizens intends to use funds and revenues from the Water and Wastewater Systems for purposes other than operating the respective utility.

Based upon the evidence presented, the Commission finds that the terms set forth in Paragraph 40 of the Settlement Agreement are reasonable and should be approved. The Commission notes that the rates and charges of the Water and Wastewater Systems will be established under Ind. Code § 8-1-11.1-3(c)(9), which references Ind. Code § 8-1.5-3-8. Accordingly, the revenues to be generated by the Water and Wastewater Systems will be subject to Commission scrutiny and designed to produce sufficient revenues to meet the particular utility's statutory revenue requirements. Therefore, it is the Commission's expectation that the Water and

Wastewater Systems will not generate revenues beyond those necessary to operate, improve, and expand each utility.

K. Veolia Settlement Agreement. In the Verified Petition, Joint Petitioners sought Commission approval of “any agreement reached by the Board and Veolia [Indianapolis] as reasonable and in the interest of the customers of the Water System.” On October 29, 2010, Joint Petitioners and Veolia filed with the Commission the Veolia Settlement Agreement entered into between the City, Citizens, and Veolia.⁵

In the overall Settlement Agreement, Citizens, the Authority, the City, the DOW, the Sanitary District, the SAB, the OUCC, and the Industrial Group recommended that the Commission “approve without modification . . . the Settlement Agreement to Transition Management & Operations of the City of Indianapolis Water System from Veolia Water.” No party opposed approval of the Veolia Settlement Agreement.

Moreover, the evidence reflects that the Veolia Settlement Agreement is reasonable and in the public interest. The Veolia Settlement Agreement is designed to ensure the transition of the management and operation of the Water System to Citizens in a safe, thoughtful, and organized fashion. Under the terms of the Veolia Settlement Agreement, Veolia, the DOW, and Citizens will cooperate to effectuate the transfer of the management and operation of the Water System to Citizens. In general, Veolia is required to provide Citizens with the training and know-how employed in every aspect of its operations under the existing Management Agreement with the City. The Veolia Settlement Agreement requires Veolia to facilitate the transfer and employment of any Veolia managers or personnel whom Citizens desires to hire and who may desire to be employed by Citizens. Veolia has agreed to have no covenant not to compete or other restriction on Citizens hiring any of its employees who are employed as of the Effective Date or thereafter in connection with the operation of the Water System. The Veolia Settlement Agreement further allows Citizens to directly operate and manage the Water System. The Veolia Settlement Agreement, therefore, clears the way for Citizens to consolidate the Water and Wastewater Systems and achieve synergies and cost savings to the benefit of all utility customers.

The Commission received testimony from several witnesses during the later stages of the Evidentiary Hearing in this Cause, indicating that Veolia has been more cooperative with the transition process. The Veolia Settlement Agreement reasonably compensates Veolia for its services and investment made in reliance on the long-term relationship contemplated in its original Management Agreement with the City. Finally, the Veolia Settlement Agreement as a whole produces a fair and reasonable resolution of the complex issues associated with Citizens’s proposed acquisition of the Water System and clarifies the plan for the safe, thoughtful and organized transition and future operation and management of the Water System by Citizens.

⁵ At the time of this filing, the DOW was subject to special requirements imposed by the Commission’s June 30, 2009 Order in Cause No. 43645 that prohibited the DOW from entering into any agreements or other type of transaction relating to the operation, management, sale, or transfer of the water utility or its assets without prior Commission approval, including agreements that would not otherwise have required Commission review or approval. Those requirements were terminated by the Commission’s Order dated February 2, 2011 in Cause No. 43645.

However, one clause of the Veolia Settlement Agreement gives us pause. Section 5.4 contains an agreement between the City and Veolia to arbitrate any amount of money that Veolia contends are owed to it under the First Amendment to the Management Agreement, which are specifically disallowed in Cause No. 43645. Section 5.4 limits the amount of such an arbitration claim to \$3.5 million.

Similarly, Section 8.04 of the Water System Agreement states:

[Citizens] and the [City] shall share equally the Veolia Contingent Payable to the extent such amount remains outstanding after negotiations between [the City], [Citizens], and Veolia. [The City's] obligation to pay one half of the Veolia Contingent Payable shall be paid as an Excluded Liability. [Citizens's] obligation to pay one half of the Veolia Contingent Payable shall be paid out of any remaining Case Escrow Amount, with any remaining obligation to be paid by [Citizens].

The Water System Agreement defines the "Veolia Contingent Payable" as "any amount [the City] is legally obligated to pay to Veolia the [sic] incentive fee earned for services performed by Veolia in the 2009 calendar year, in the approximate amount of Five Million Two Hundred Thousand Dollars (\$5,200,000), which obligation has been disallowed by the IURC." Joint Petitioner's Exh. CBL-6, at 16.

Taken together, these provisions could be viewed as an attempt by Veolia to recover any costs that might be specifically disallowed by the Commission's Order in Cause No. 43645. They also create the possibility that Citizens may be required to use ratepayer funds to pay such costs. The Commission specifically questioned Mr. Lykins whether it was Citizens's intent to "engage in agreements which may have the effect of subverting the direction of the Commission?" Tr. at D-182. Mr. Lykins responded, "Under no circumstances would that be my intention." *Id.* We agree with Mr. Lykins that under no circumstances should Citizens use ratepayer funds to pay costs claimed by Veolia, which have been specifically disallowed in the Order in Cause No. 43645. To the extent either the City or Veolia attempt to invoke Section 8.04 of the Water System Agreement and seek payment directly from Citizens, Citizens shall immediately notify the Commission. No funds paid by Citizens to Veolia that subvert a prior Commission directive will be recoverable through rates without prior Commission approval.

Subject to the concerns expressed above, we find that the Veolia Settlement Agreement entered into by the City, Citizens, and Veolia is reasonable and in the public interest. To the extent our approval is necessary or appropriate, we further find the Veolia Settlement Agreement should be approved in its entirety and without change.

L. Authority/United Agreement. Similarly, no party opposed the Authority/United Agreement. In the overall Settlement Agreement, the Settling Parties recommended that the Commission "approve without modification . . . the Agreement Pertaining to the Agreement for the Operation of the Operation and Maintenance of the Advanced Wastewater Treatment Facilities and Wastewater and Stormwater Collection Systems." Pet. Exh. CBL-SA-1 at ¶ 41.

Moreover, the evidence reflects that the Authority/United Agreement is reasonable and in the public interest. OUCC witness Mr. Pettijohn testified that "[i]t is imperative that Citizens and

the Authority retain the services of United and the Sanitary District employees that currently operate and manage the City's wastewater utility facilities to ensure safe, adequate and reliable service continues to be provided if the transfer of wastewater utility assets is approved." OUCC Exh. 6 at 4.

The Authority/United Agreement contemplates that Citizens and the Authority will retain the services of United. Under the Agreement, United confirms that the Authority is a permitted assignee of the City's rights and obligations under the Management Agreement, and agrees to facilitate assignment of the Management Agreement upon the Closing of the water and wastewater transactions between the City, Citizens and the Authority. In the event the Authority/United Agreement is terminated, it contains provisions to ensure a safe and orderly transition of the Wastewater System. Based upon the evidence presented, we find the CWA/United Agreement to be reasonable and in the interest of the customers of the Wastewater System.

M. Conclusion Regarding Settlement Agreement. The Settlement Agreement entered into by and among Citizens, the Authority, the City, the DOW, the Sanitary District, the SAB, the OUCC and the Industrial Group, a copy of which was introduced into evidence as Petitioners' Exhibit CBL-SA-1 and is attached hereto, is hereby adjudged to be in the public interest and should be approved with the minor modifications discussed above. With regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 (IURC March 19, 1997).

10. Discussion and Findings Regarding the Request for Approval of a Certificate of Territorial Authority. Joint Petitioners Late-filed Exhibit No. 1 makes clear that the only "rural area" within which the Authority will provide service is approximately 1.5 acres in Hamilton County located in the vicinity of Geist reservoir. Joint Petitioners have provided a legal description and map for this area, as well as evidence that it has notified other sewer service providers in the area of the request for a CTA allowing it to continue to serve this small area. Specifically, the description of the properties that will be covered by the requested CTA is as follows:

Lots 69, 70, 71, 72, 73, 74 and 75 in Bridgewater - Section 4, per plat thereof, recorded in Plat Cabinet 1, Slide 731 (Instrument Number 9609644663) in the Office of the Recorder of Hamilton County Indiana.

No Party has objected to the requested CTA. Accordingly, in light of the information provided in Joint Petitioners' Exhibit No. 1, as well as the evidence presented by Mr. Dillard and other witnesses, we find that the requirements for the issuance of a CTA set forth at Ind. Code § 8-1-2-89 have been satisfied. The Authority has shown itself to have the lawful power and authority to apply for the CTA and to provide sewage disposal service in the area, as well as the financial ability to install, commence, and maintain sewage disposal service to the area. Further, the evidence supports concluding that public convenience and necessity requires the Authority's continued service. Further, we find that, given the circumstances surrounding the request for a CTA, the Authority has complied with 170 IAC 8.5-3-1 and justified the requested CTA.

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

1. The Settlement Agreement filed in this Cause as Joint Petitioners' Exhibit CBL-SA-1 is approved in its entirety with minor changes as discussed above.
2. The terms of the Water System Agreement are reasonable and in the public interest and the transactions contemplated therein are approved; the City, the DOW, and Citizens are authorized to take all actions necessary to effect the Agreement.
3. The Veolia Settlement Agreement entered into by the City, Citizens, and Veolia is approved in its entirety and without change, subject to the concerns we expressed in Paragraph 9.K above.
4. Citizens is authorized to adopt the schedules of rates and charges applicable to the provision of water utility service by the DOW in effect at Closing, in accordance with Paragraph 9.A.3, above. Citizens shall file with the Water/Sewer Division tariffs reflecting the rates and charges approved herein. Citizens's schedules of rates and charges shall be effective upon filing with and approval by the Water/Sewer Division and shall apply to water usage from and after the date of Closing.
5. The DOW's assignment of any Interlocal Agreements and franchise rights to Citizens and Citizens's assumption of the DOW's obligations thereunder is approved.
6. Citizens is authorized to use 2% as its depreciation rate for water utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes and to record on its books and records the acquired Water System assets in accordance with Paragraph 9.A.6, above.
7. Citizens's assumption of the outstanding indebtedness of the DOW or the City related to the Water System and/or issuance of any new indebtedness related to Citizens's acquisition of the Water System, as described in Paragraph 9.A.1 above is reasonable, in the public interest, and the associated debt service shall be recoverable in rates.
8. Within twelve (12) months from the date of Closing, Citizens shall file with the Commission a formal petition for approval of its Water Conservation Plan as discussed in Paragraph 9.F.3 above.
9. Within twenty-four (24) months from the date of Closing, Citizens shall file with the Commission a formal petition for approval of its Drought Response Plan as discussed in Paragraph 9.F.4 above.
10. The terms of the Wastewater System Agreement are reasonable and in the public interest and the transactions contemplated therein are approved; the City, the Sanitary District, and the Authority are hereby authorized to take all actions necessary to effect the Agreement.

11. The Authority's agreement to make the PILOT Payments in accordance with the schedule agreed upon by the parties and attached to Special Ordinance No. 5, 2010 is approved, subject to the conditions discussed in Paragraph 9.A.2 above.

12. The Authority/United Agreement entered into by the Authority, Citizens, and United respecting operation of the Wastewater System is approved.

13. The Authority is authorized to adopt the schedules of rates and charges applicable to the provision of wastewater utility service by the Sanitary District in effect at Closing to be effective for wastewater utility service rendered by the Authority, including authority to increase such rates by 10.75% on January 1, 2012 and again by 10.75% on January 1, 2013, as set forth in the schedule of rates and charges approved by the City-County Council being adopted by the Authority. The Authority shall file with the Water/Sewer Division tariffs reflecting the current rates and charges approved herein. The Authority's schedules of rates and charges shall be effective upon filing with and approval by the Water/Sewer Division and shall apply to sewer usage from and after the date of Closing.

14. The Authority is authorized to adopt the terms of the agreements for wastewater treatment and disposal service filed in this Cause as Joint Petitioners' Exhibits LSP-7 through LSP-13.

15. The Authority hereby authorized to use 2.5% as its depreciation rate for wastewater utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes and to record on its books and records the acquired Wastewater System assets in accordance with Paragraph 9.A.6 above.

16. The Authority's assumption of any existing outstanding indebtedness of the Sanitary District or City related to the Wastewater System, issuance of any new indebtedness related to the Authority's acquisition of the Wastewater System, and the Authority's semiannual payments to the City associated with the Sanitary District's GO Debt, as described in Paragraph 9.A.1 above is reasonable, in the public interest, and the associated debt service shall be recoverable in rates.

17. The Authority is authorized to implement its proposed Environmental Compliance Plan as described in Paragraph 9.A.5.a above and may seek approval of an ECPRM as discussed in Paragraph 9.A.5.b above. Within twenty (20) days following the issuance of this Order, the Authority shall file a formally docketed proceeding seeking formal approval of an ECPRM and requesting an attorney conference to allow all interested parties to discuss a procedural schedule for the proceeding.

18. No sooner than one year after the date of Closing, but no later than January 1, 2014, the Authority shall file its first general rate case. As part of its cost-of-service study in that case, the Authority shall include an allocation of the ownership, responsibilities, and costs of the Wastewater and Stormwater Systems owned by the Authority and the City, respectively, as discussed in Paragraph 9.A.4 above.

19. The Authority is hereby granted pursuant to Ind. Code § 8-1-2-89 a certificate of territorial authority to provide sewage disposal service within the following portion of Hamilton County, Indiana:

Lots 69, 70, 71, 72, 73, 74 and 75 in Bridgewater – Section 4, per plat thereof, recorded in Plat Cabinet 1, Slide 731 (Instrument Number 9609644663) in the Office of the Recorder of Hamilton County Indiana.

This Order shall be the sole evidence of the grant of such certificate of territorial authority.

20. Citizens and the Authority are authorized to adopt the general terms and conditions for water and wastewater service filed as Exhibits LSP-SA-1 and LSP-SA-2 in accordance with and subject to finding 9.G.2, above, until such time as the Commission approves revised terms and conditions for service. Citizens and the Authority shall file copies of their respective general terms and conditions of service with the Commission’s Water/Sewer Division reflecting the terms and conditions approved above. Citizens’s and the Authority’s general terms and conditions of service shall be effective upon filing with and approval by the Water/Sewer Division and shall apply from and after the date of Closing. Citizens and the Authority shall schedule a meeting with all interested parties to address recommended revisions to the Water and Wastewater Systems’ terms and conditions for service.

21. The operating agreement between Citizens and the Authority filed as Joint Petitioners’ Exhibit WAT-1 is approved, along with the proposed methodology for allocating corporate support services costs among the affected utilities and non-utility affiliates described in Paragraph 9.E.1 above.

22. Citizens and the Authority shall comply with the reporting requirements set forth in Paragraphs 9.B and 9.I.5. above.

23. The Affiliate Guidelines and Cost Allocation Guidelines approved in Cause No. 43963, and as amended from time-to-time, shall be construed to apply to the Water and Wastewater Systems under Citizens’s and the Authority’s respective ownership.

24. Citizens and the Authority shall provide notice to the Commission and the OUCC of their intent to sell surplus property with a value in excess of \$50,000, as discussed in Paragraph 9.H. above. In addition, Citizens shall seek prior Commission approval before attempting to transfer the Harbour Water System or the Morgan County Water System to another entity or convert either to a for-profit operation – even if Citizens makes a determination that the Harbour Water or Morgan County Water Systems are Surplus Property.

25. In accordance with Indiana Code § 8-1-2-70, Petitioner shall pay the following itemized charges within twenty days from the date of the Order into the Treasury of the State of Indiana, through the Secretary of this Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	\$ 36,041.34
OUCC Charges:	\$213,100.63
Legal Advertising Charges:	<u>\$ 269.94</u>
Total:	\$249,411.91

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

ATTERHOLT, LANDIS AND ZIEGNER CONCUR; BENNETT AND MAYS ABSENT:

APPROVED: JUL 13 2011

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

A handwritten signature in cursive script that reads "Brenda A. Howe". The signature is written in black ink and is positioned above a horizontal line.

**Brenda A. Howe
Secretary to the Commission**

BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF THE BOARD OF DIRECTORS FOR)
UTILITIES OF THE DEPARTMENT OF PUBLIC UTILITIES OF)
THE CITY OF INDIANAPOLIS, D/B/A CITIZENS ENERGY)
GROUP, CWA AUTHORITY, INC., THE CITY OF)
INDIANAPOLIS AND ITS DEPARTMENT OF WATERWORKS)
AND ITS SANITARY DISTRICT FOR APPROVALS IN)
CONNECTION WITH THE PROPOSED TRANSFER OF)
CERTAIN WATER UTILITY ASSETS TO THE BOARD AND)
THE PROPOSED TRANSFER OF CERTAIN WASTEWATER)
UTILITY ASSETS TO THE AUTHORITY, INCLUDING: (A))
APPROVAL OF INITIAL RATES AND RULES FOR WATER)
AND WASTEWATER SERVICE, AS WELL AS THE TERMS OF)
CERTAIN AGREEMENTS FOR WASTEWATER TREATMENT)
AND DISPOSAL SERVICE; (B) APPROVAL OF AN)
ENVIRONMENTAL COMPLIANCE PLAN UNDER IND. CODE)
8-1-28 AND AN ADJUSTMENT MECHANISM FOR)
WASTEWATER RATES TO PROVIDE TIMELY RECOVERY)
OF COSTS NECESSARY TO COMPLY IN WHOLE OR IN PART)
WITH THE SAFE DRINKING WATER ACT AND/OR CLEAN)
WATER ACT; (C) APPROVAL OF PROPOSED ALLOCATIONS)
OF CORPORATE SUPPORT SERVICES COSTS AMONG)
AFFECTED UTILITIES; (D) APPROVAL OF AN OPERATING)
AGREEMENT BETWEEN CITIZENS ENERGY GROUP AND)
CWA AUTHORITY, INC.; (E) APPROVAL OF DEPRECIATION)
RATES AND OTHER ACCOUNTING MATTERS RELATED TO)
THE WATER AND WASTEWATER ASSETS; AND (F) ANY)
OTHER APPROVALS NEEDED IN CONNECTION)
THEREWITH)

CAUSE NO. 43936

SETTLEMENT AGREEMENT

This Settlement Agreement, which includes the stipulations and conditions set forth in Attachment 1 attached hereto and incorporated herein by reference ("Attachment 1"), (the main body hereof and Attachment 1 collectively the "Settlement Agreement"), is made as of the 11th day of April, 2011, and entered into by and among the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis d/b/a Citizens Energy Group (the "Board" or "Citizens"), CWA Authority, Inc. (the "Authority"), the City of Indianapolis (the "City") and its Department of Waterworks ("DOW") and its Sanitary District ("Sanitary District"), the Indianapolis Water Service Advisory Board, the Indiana Office of Utility Consumer Counselor (the "OUCC") and the Indianapolis Water/Sewer Industrial Group (the

“Industrial Group”)¹ (collectively the “Settling Parties”). Citizens, the Authority and the City are sometimes referred to collectively herein as the “Joint Petitioners.”

WHEREAS, on August 11, 2010, in Cause No. 43936, the Joint Petitioners filed their Verified Joint Petition requesting approvals from the Indiana Utility Regulatory Commission (“Commission”) relating to the proposed acquisition of certain water utility assets by the Board from the City and DOW pursuant to an asset purchase agreement that was admitted into evidence in Cause No. 43936 and identified as Petitioners’ Exhibit CBL-6 (the “Water APA”) and the proposed acquisition of certain wastewater utility assets by the Authority from the City and Sanitary District pursuant to an asset purchase agreement that was admitted into evidence in Cause No. 43936 and identified as Petitioners’ Exhibit CBL-7 (the “Wastewater APA”);

WHEREAS, on October 29, 2010, the City, the DOW, Citizens and Veolia Water Indianapolis, LLC (“Veolia”) submitted for the Commission’s approval an agreement that was admitted into evidence in Cause No. 43936 and identified as Settling Parties’ Exhibit 1 (the “Veolia Transition Agreement”), which, among other purposes, is intended to ensure the transition of the City’s water utility system to Citizens in a safe, thoughtful and organized fashion;

WHEREAS, the Settling Parties have engaged in communications and exchanged information relating to the relief requested by Joint Petitioners in the Verified Joint Petition and other matters; and

WHEREAS, as a result of such communications and negotiations, the Settling Parties agree that the terms and conditions set forth in this Settlement Agreement represent a fair, just and reasonable resolution of the issues raised in this Cause;

NOW THEREFORE, subject to the Commission’s approval of this Settlement Agreement in its entirety without modification or imposition of any other term or condition that may be unacceptable to any Settling Party, the Settling Parties agree as follows:

1. Agreement of Settling Parties to Support Commission Approval of Settlement Agreement. The Settling Parties agree that the Commission’s timely entry of an Order approving this Settlement Agreement will assist in facilitating achievement of the benefits of the proposed acquisitions at the earliest opportunity and that time therefore is of the essence. Accordingly, the Settling Parties will cooperate to expeditiously prepare and submit for the Commission’s consideration an agreed proposed order and testimony in support of approving this Settlement Agreement as in the public interest.

2. Non-Precedential Effect of Settlement Agreement. The Settling Parties agree that an Order approving this Settlement Agreement shall not be used as an admission by any Settling Party or used as precedent against any Settling Party except to the extent necessary to enforce the

¹ The Industrial Group comprises Eli Lilly & Company, National Starch, LLC, Rolls-Royce Corporation and Vertellus Agriculture & Nutrition Specialties, Inc.

terms of the Settlement Agreement. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein is without prejudice to and shall not constitute a waiver of any position that any Settling Party may take with respect to any or all of the issues resolved herein in any future proceeding.

3. Submission of Settlement Agreement, Supporting Evidence and Proposed Order. All evidence supporting the Settlement Agreement shall be reviewed and agreed upon by the Settling Parties prior to submission to the Commission. The Settling Parties agree to waive cross examination of any witness offering evidence in support of the Settlement Agreement that has been prepared in accordance with this Paragraph. The Settling Parties stipulate that the evidence submitted in support of the Settlement Agreement constitutes substantial evidence and provides an adequate evidentiary basis upon which the Commission can make necessary findings of fact and conclusions of law for the approval of the Settlement Agreement as consistent with the public interest and grant any relief contemplated herein. The form of agreed proposed order shall include, among other things, (a) specific language regarding the relief being authorized in this proceeding; and (b) language to instill confidence to bond rating agencies that the water and wastewater utilities under Citizens' and the Authority's ownership, respectively, will have rates sufficient to meet their ongoing debt service coverage requirements.

4. Effect of Submission of Settlement Agreement. The terms and conditions set forth in the Settlement Agreement are supported by the evidence introduced during hearings before the Commission in December 2010, January 2011 and February 2011 and, based on the Settling Parties' independent review of the evidence and additional evidence filed in support of the Settlement Agreement by the Settling Parties, represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation in a Final Order without modification or further condition. If the Commission does not accept and approve the Settlement Agreement in its entirety, without change or condition, and issue a Final Order in this Cause acceptable to each Settling Party, any Settling Party can withdraw from the Settlement Agreement and, notwithstanding Paragraph five (5) below or any other provision herein, exercise any right it has to appeal or request rehearing or reconsideration of such Final Order.

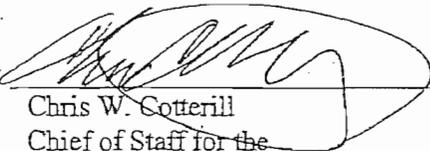
5. Appeal of Order Approving Settlement Agreement. The Settling Parties shall not individually or jointly appeal or seek rehearing, reconsideration or a stay of a Final Order that accepts and approves the Settlement Agreement in its entirety and incorporates its terms and conditions without modification or further condition. Any of the Settling Parties may, and Citizens, the Authority and the City shall, support such a Final Order in the event of an appeal or a request for rehearing, reconsideration or a stay by any person.

[Signature pages follow]

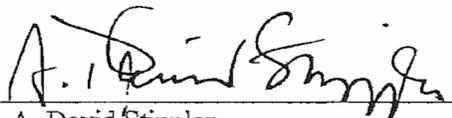
[Signature page to the April 2011 Settlement Agreement in Cause No. 43936]

The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of the designated Settling Parties who will be bound thereby.

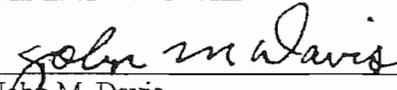
The Consolidated City of Indianapolis, Indiana, the Department of Waterworks of the City of Indianapolis and the Sanitary District of the City of Indianapolis

By: 
Chris W. Cotterill
Chief of Staff for the
Office of Mayor Gregory A. Ballard
City of Indianapolis, Indiana

Indiana Office of Utility Consumer
Counselor

By: 
A. David Stippler
Indiana Utility Consumer Counselor

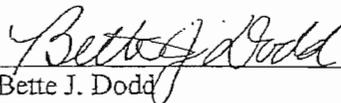
Service Advisory Board of the
Department of Waterworks

By: 
John M. Davis
Attorney for the
Service Advisory Board of the
Department of Waterworks

The Board of Directors for Utilities of the Department of Public Utilities of the City, as trustee of a public charitable trust, d/b/a Citizens Energy Group and CWA Authority, Inc.

By: 
Carey B. Lykins
President and Chief Executive Officer
Citizens Energy Group and
CWA Authority, Inc.

The Indianapolis Water/Sewer Industrial Group

By: 
Bette J. Dodd
Attorney for the Indianapolis
Water/Sewer Industrial Group

Attachment 1 to the April 2011 Settlement Agreement in Cause No. 43936

STIPULATIONS AND CONDITIONS

Ratemaking Approvals and Future Rate Increases

1. The Settling Parties agree that the Commission's approval of the relief requested in this Cause shall not decrease the Commission's discretion to disallow future requests by Citizens or the Authority to recover in rates any costs the Commission finds unreasonable, imprudent, unlawful or excessive, or otherwise not conforming with Indiana ratemaking principles. Neither Citizens nor the Authority shall ever contest the Commission's authority to regulate its rates and charges and terms and conditions for water or wastewater utility service. Approval of this Settlement Agreement will constitute approval and authority for Citizens and the Authority to seek and obtain recovery in future Commission proceedings of:

(a) debt service payments for the assumption or replacement of the Assumed Debt Obligations (as that term is defined in Section 2.04 of the Water APA and Section 2.04 of the Wastewater APA);

(b) debt service payments for Citizens' assumption or replacement of debt the DOW issues in accordance with Paragraph 7.C.5.b of the Final Order in Cause No. 43645.

(c) payments to the City to satisfy the Authority's obligation under Section 2.04(e) of the Wastewater APA;

(d) debt service payments for debt issued to fund the Purchase Price as that term is defined in the Wastewater APA;

(e) debt service payments for debt issued to fund the costs of issuances and debt service reserve requirements associated with the foregoing debt issuances;

(f) debt service payments for debt issued to fund transaction costs incurred to consummate the transactions (e.g., fees paid to consultants, attorneys and financial advisors in connection with the acquisitions); provided, however, the total transaction costs shall not exceed seven million dollars (\$7M) for the water utility and seven million dollars (\$7M) for the wastewater utility; and

(g) the annual amount of PILOT Payments in accordance with Section 3.05 of the Wastewater APA, subject to Stipulation and Condition No. 3 below.

Commission approval of this Settlement Agreement will also constitute approval and authority for Citizens and the Authority to implement (i) the rates and charges in effect for the water utility at the time of Closing and the rates and charges in effect for the wastewater utility at the time of Closing, including implementation of increases by the wastewater utility of 10.75 percent annually in 2012 and 2013; and (ii) the Authority's proposed adjustment mechanism for wastewater rates and charges to provide timely recovery of costs incurred to comply in whole or

in part with the Safe Drinking Water Act and/or Clean Water Act in accordance with Stipulation and Condition No. 5 below.

2. The Authority shall file a general rate case for the wastewater utility no earlier than one (1) full year following commencement of operations by the Authority. Notwithstanding the foregoing, the Authority's first rate case shall be filed no later than January 1, 2014. The Authority will file a cost-of-service study in its first rate case and discuss with the OUCC and Industrial Group the preliminary results of such study as soon as reasonably practicable in advance of filing the study in the rate case. As soon as reasonably practicable after Closing but no later than six (6) months prior to the anticipated filing of the Authority's first rate case, the Authority will begin discussing with and seeking input from the OUCC and Industrial Group regarding rate design and cost-of-service issues related to the wastewater utility.

3. The Settling Parties recommend the Commission approve the Authority's agreement to make the PILOT Payments in accordance with Section 3.05 of the Wastewater APA as reasonable and in the public interest. The Settling Parties agree that the PILOT Payments the Authority has agreed to make to the City each year pursuant to Section 3.05 of the Wastewater APA will act as both a floor and a ceiling for purposes of rate recovery. The Authority will not be precluded by this Settlement Agreement from requesting recovery in rates of any additional PILOT or property tax payments not covered by the PILOT agreement that may be imposed and lawfully due and that will be paid to taxing authorities; provided, however, the Settling Parties reserve the right to challenge any such request.

4. The Settling Parties agree that no ratemaking treatment will be requested in the future as a result of any acquisition adjustment recorded in connection with the Authority's purchase of the wastewater utility or Citizens' purchase of the water utility assets.

5. The Settling Parties recommend the Commission authorize the Authority to implement an adjustment mechanism for wastewater rates and charges as proposed by the Authority to allow recovery of costs incurred to comply with the Authority's Environmental Compliance Plan ("ECP") outside of a general rate case; provided, however, only debt service payments for debt issued to fund capital expenditures incurred under the approved ECP and the costs of issuances and debt service reserve requirements associated with such debt issuances shall be recoverable through the ECP adjustment mechanism. The Settling Parties agree the mechanism shall not include a reconciliation component.

After Closing, the Authority will commence discussions with the OUCC and Commission regarding the specific procedures that will govern Commission proceedings relating to the proposed ECP adjustment mechanism. More specifically, within sixty (60) days of a final Order in this Cause, the Authority will participate in a series of technical conferences with the Commission, the OUCC and any other Settling Parties to establish such procedures. If the Authority and the Settling Parties have not agreed to procedures that will govern Commission proceedings related to establishing a process for the ECP adjustment mechanism by June 1, 2012, the Authority will petition the Commission for a formal proceeding and hearing to establish the procedures that will govern Commission proceedings relating to the proposed ECP

adjustment mechanism. The OUCC and any intervenors shall have no less than ninety (90) days to respond to the case-in-chief testimony filed by the Authority in any such proceeding.

6. The Settling Parties recommend the Commission authorize Citizens to use, for ratemaking purposes, a two (2) percent depreciation rate for water utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes.

7. The Settling Parties recommend the Commission authorize the Authority to use, for ratemaking purposes, a 2.5 percent depreciation rate for wastewater utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes.

Reporting of Savings

8. (a) For a period of four (4) years from the date of Closing, Citizens will document the savings it generates as a result of the acquisitions and provide reports to the Commission, the OUCC and other Settling Parties showing the savings that are directly attributable to the acquisitions. With respect to the foregoing documentation of savings, Citizens will provide reports as set forth in (i) and (ii) below:

(i) Within sixty (60) days from the date of Closing the proposed acquisitions, Citizens shall submit a report to the Commission and the OUCC that specifies the metrics that Citizens proposes to use to track savings realized from the consolidation of the gas, steam, water and wastewater utilities. These metrics shall include, among other possible items, a comparison of actual operation and maintenance expenses to an indexed operation and maintenance baseline for corporate shared services, customer service, design and engineering, technical and field services and supply chain, or such other categories that the parties deem more relevant. For purposes of measuring capital expenditures savings these metrics shall include, among other possible items, average unit costs for key procurement categories and actual capital spend for planned projects versus projected capital spend.

(ii) Within one hundred-eighty (180) days from the date of Closing the proposed acquisitions, Citizens shall commence submission of semi-annual reports to the Commission, the OUCC and other Settling Parties that provide the status of the implementation of consolidation and the savings realized by categories consistent with Joint Petitioners' Exhibit TJJF-2. The reports will describe steps taken to achieve savings. The reports should explain both successes and impediments encountered to achieve savings. The reports should also list all costs incurred to achieve savings. The reports should compare actual savings to projected savings and explain why the projected savings were not achieved.

(b) Citizens and the Authority will participate in a series of technical conferences with the Commission, the OUCC and any other Settling Parties to determine whether Citizens' proposed metrics and proposed reporting on the status of implementation are appropriate.

(c) In the first two (2) rate cases filed subsequent to the Closing by the Authority and each of Citizens' regulated utilities, the Authority or Citizens, as applicable, will present

testimony describing the savings achieved from the proposed transactions and how such savings have affected the proposed rate increase. Citizens shall continue to report such savings in future rate cases for all regulated entities until a steady state of annual savings has been achieved.

9. Citizens and the Authority will continually analyze the currently approved CSO projects detailed in the Long Term Control Plan in order to identify and implement design efficiencies and costs savings. Savings realized as a result of such efforts will be described in the periodic reports submitted pursuant to Stipulation and Condition No. 8 above.

10. Citizens will describe in the periodic reports submitted pursuant to Stipulation and Condition No. 8 above its compliance with any ongoing commitments or obligations set forth in this Settlement Agreement.

Accounting Issues

11. The Settling Parties agree that pursuant to GAAP, Citizens and the Authority will have one (1) year from the date of Closing to finalize the respective opening balance sheets for the water utility and wastewater utility. For those assets that Citizens and the Authority conclude are correctly recorded on the books and records of the DOW and Sanitary District, assets will be recorded in the same detail, both classification and value, as reflected in the DOW's and Sanitary District's books and records at Closing, to the extent practicable. Citizens and the Authority shall reduce to writing and explain any adjustments that modify the amounts on DOW or DPW's records at Closing and provide this detail to the Settling Parties at the end of the first year of ownership. In their respective rate cases, Citizens and the Authority shall be able to provide detailed general ledger transactions for the test year and each month subsequent to the test year through the OUCC's pre-filing date in an electronic format that is searchable and able to be sorted. In their respective next rate cases, for any business unit from which costs are allocated, Citizens and the Authority shall provide detailed general ledger transactions for the test year and each month subsequent to the test year through the OUCC's pre-filing date in an electronic format that is searchable and able to be sorted. Citizens represents that the detailed general ledger information provided may be produced via a query of the general ledger system and notes there is some level of risk of inaccuracy inherent in such query.

12. Citizens will record and amortize at the depreciation rate described in Paragraph 6 above Contributions in Aid of Construction ("CIAC") on the DOW's balance sheet at the date of Closing, subject to Citizens' verification that such CIAC was properly recorded on the DOW's books and records.

13. Citizens will record and amortize plant and cash contributed to the water system in accordance with NARUC guidelines. System Development Charges shall continue to be recorded as CIAC.

14. (a) The Authority will record and amortize CIAC it receives after Closing at the depreciation rate described in Paragraph 7 above in accordance with NARUC guidelines. The Authority shall maintain records that can be reviewed by the Commission and the OUCC.

(b) The Authority's "Connection Fees" shall be recorded as CIAC. The Authority shall determine the amount of "Connection Fees" collected by the Sanitary District from January 1, 2006 to the date of Closing and shall record such amounts as CIAC.

15. Subject to Stipulation and Condition No. 4, Citizens and the Authority will (a) record any acquisition adjustment resulting from acquisition of the wastewater utility assets or water utility assets in accordance with the NARUC Uniform System of Accounts; and (b) amortize any such acquisition adjustment according to GAAP.

Intergovernmental Agreements; Advisory Groups

16. The Settling Parties recommend the Commission authorize the assignment to Citizens of any franchise rights held by the DOW and any Intergovernmental Agreements to which the DOW is a party.

17. Citizens will maintain the Service Advisory Board and will honor the commitments set forth in the Intergovernmental Agreements the DOW is a party to, including the water utility's obligation to treat communities inside and outside Marion County with substantial similarity in a nondiscriminatory fashion, particularly in offering non-preferential rates.

18. The Settling Parties recommend the Commission authorize the assignment to the Authority of any franchise rights held by the Sanitary District and any interlocal agreements the Sanitary District is a party to with respect to the treatment or disposal of wastewater.

19. Citizens and the Authority will continue to participate in and seek input from technical advisory groups, environmental groups and other organizations interested in water and wastewater issues. As part of their respective first rate cases, Citizens and the Authority shall report on the current status of their participation in such groups.

In meetings in which Citizens' Board conducts business affecting the water and wastewater utilities, Citizens and the Authority shall provide notice of the meetings in accordance with I.C. § 5-14-1.5-5 or any successor statute. Citizens and the Authority shall post any agendas for Board meetings and maintain memoranda of meetings in accordance with I.C. § 5-14-1.5-4 or any successor statute. In addition to complying with I.C. §§ 5-14-1.5-4 and 5-14-1.5-5 or any successor statutes, for the first eight (8) years following Closing, Citizens shall provide the following information to water and wastewater customers regarding meetings of the Citizens and Authority Boards: (a) Citizens shall include on its home page a clearly marked hyperlink to a notice of the date, time, and location of its regularly scheduled Board Meetings; (b) once each year, Citizens' shall include in a billing insert for water and wastewater customers a tentative schedule of its regularly scheduled Board meetings; and (c) each month, Citizens shall include on water and wastewater customer bills or in a billing insert a statement that the time and location of regularly scheduled meetings of the Citizens and Authority Boards can be found on the Citizens web site.

Affiliate Relationships; Cost Allocations

20. The Settling Parties recommend the Commission approve Citizens' proposal to allocate ten (10) percent of shared corporate support services ("CSS") costs to the Authority.

21. Citizens and the Authority agree to conduct a review every three (3) years of the methodology used to allocate CSS costs among the regulated utilities and unregulated entities and determine whether the methodology continues to be appropriate. Citizens shall submit reports to the Commission, the OUCC and other Settling Parties regarding such reviews.

22. Citizens and the Authority agree to equitably allocate water meter reading costs between the water and wastewater utilities.

23. The Settling Parties agree that the Affiliate Guidelines and Cost Allocation Guidelines approved in Cause No. 43963, and as amended, shall be construed to apply to the water and wastewater operations. Citizens and the Authority agree each shall comply with the terms of the Affiliate Guidelines and Cost Allocation Guidelines to ensure that neither would be able to subsidize its respective Affiliates or non-regulated operations. In the case of a contract for goods or services from any for-profit Affiliate, Citizens or the Authority, as the case may be, shall support the Affiliate contract by providing the OUCC and the other Settling Parties with documentation and explanation establishing why the terms constitute "Competitive Terms" under the Affiliate Guidelines.

Environmental and Conservation Issues

24. The Settling Parties recommend the Commission approve the Authority's proposed environmental compliance plan pursuant to Indiana Code § 8-1-28-7.

25. The Settling Parties acknowledge that septic tank elimination projects, in addition to those the Authority and City agreed to as set forth in Section 2.04(d) of the Wastewater APA, will be completed by the Authority, subject to the adequacy of rates and charges to fund the cost of such projects. The Authority will make reasonable efforts to obtain grants and other sources of funding, giving due consideration to the terms and conditions associated with the acceptance of such grants or other sources of funding, to offset the amount required to be funded in rates for septic tank elimination projects. The Settling Parties further acknowledge that the prioritization of and the terms and conditions relating to the elimination of septic tanks and connection of septic tank users to the sanitary sewer system involve a number of public policy issues that require input from numerous stakeholders. The Authority agrees to collaborate with the Commission and the OUCC to establish a framework and process to solicit input from interested stakeholders and consider those issues. The Authority will make information about the septic tank elimination projects available to the public utilizing the Citizens website and other communication media.

26. The Settling Parties acknowledge conservation planning can promote the maintenance of a safe and reliable water supply. Citizens will develop a water conservation plan using the 2009

Water Conservation Plan developed by Veolia and will present its plan to the Commission, the OUCC and other interested parties within twelve (12) months of the date of Closing. Citizens will commence discussions regarding water conservation with the OUCC, other Settling Parties and Commission Staff no later than three (3) months prior to the submission of its proposed water conservation plan to the Commission. Further, in accordance with Finding Paragraph No. 6.D.4 of the Final Order in Cause No. 43645, Citizens shall pursue the following near-term water conservation measures: (1) establish a lead for conservation program coordination; (2) undertake a conservation rate study; (3) undertake an automatic metering reading ("AMR") study; (4) establish a voluntary maximum daily reduction load shifting program with large customers; (5) implement additional conservation messaging on water bills; (6) implement a water main replacement program; and (7) implement enhanced well monitoring to enhance supply availability. Citizens will commence discussions regarding a conservation rate study with the OUCC, other Settling Parties and Commission Staff no later than three (3) months prior to the submission of such study to the Commission. In its next general rate case, Citizens shall update the Commission on the implementation of these measures.

27. The Settling Parties acknowledge the complexities associated with drought response planning and the need to coordinate with numerous regulatory agencies and stakeholders, including the Commission, the OUCC, the City and the Indiana Department of Natural Resources. Citizens will develop a drought response plan and present its plan to the Commission, the OUCC and other interested parties within twenty-four (24) months of the date of Closing.

Rules and Regulations; Tariff Issues

28. The City, Citizens and the Authority agree that any liability for customer deposits by the DOW or Sanitary District at Closing will be duly accounted for and either be refunded or transferred to Citizens or the Authority and recorded as customer deposits.

29. Subject to the changes identified in this section below, the Settling Parties recommend the Commission authorize Citizens and the Authority to implement the Terms and Conditions for water and wastewater utility service proposed by Joint Petitioners in their case-in-chief testimony, until such time as the Commission approves revised Terms and Conditions for service. Citizens and the Authority will request that the Commission initiate a series of technical conferences with Commission Staff, the OUCC, and any other interested Settling Parties to address recommended revisions to the water and wastewater utilities' Terms and Conditions for service, including but not limited to the non-residential deposit terms for both the water and wastewater utilities, and the customer deposit interest rate for both water and wastewater utilities as set forth in Paragraph 29(e) below. If the Settling Parties agree on proposed changes to Terms and Conditions for service, Citizens and the Authority shall file the revised Terms and Conditions for Service with the Commission for approval using the Commission's thirty (30)-day filing process. If the Settling Parties are unable to agree to revised terms by March 1, 2012, Citizens and the Authority shall so notify the Commission and initiate a docketed proceeding for the purpose of establishing the Terms and Conditions for service outside a general rate case.

Citizens and the Authority agree that the following changes should be made effective upon Closing unless otherwise indicated:

(a) Reclassify the water utility's "Connection Charge" included on page 102B (Water Rate No. 2) and reflect them in Appendix A;

(b) Revise the water utility's bad check charge to be consistent with the bad check charge imposed by Citizens Gas and the Authority;

(c) Revise Section 12 of the Authority's Terms and Conditions and Appendix A to make clear its reconnection charge will only be assessed to "sewer only" customers;

(d) Offer a deferred late payment program to all senior citizens water and wastewater utility customers within six (6) months of Closing; and

(e) Revise the customer deposit interest rate to six (6) percent per annum.

Transfer of Water Systems Outside Marion County

30. Citizens shall not, without the approval of the Commission, transfer the Harbour Water System or the Morgan County Water System to another entity or convert either to a for-profit operation.

Responsibilities Flowing from the Final Order in Cause No. 43645

31. Citizens shall conduct an Equivalent Meter Factor analysis according to generally accepted cost of service study practices. In the course of conducting such analysis, Citizens shall collaborate with the Settling Parties. The results of such analysis will be utilized in Citizens' next base rate case. Citizens will endeavor to determine if historical meter cost data can be constructed from existing records.

32. Within six months of Closing, Citizens shall determine how it will collect the necessary data to perform a current capacity factor analysis for submission in its next base rate case and notify the Commission of its determination.

33. For its first general rate case of the water utility, in accordance with Finding Paragraph 10 of the Final Order in Cause No. 43645, unless Citizens converts the water utility's operations to monthly meter reading, it shall complete a study that reviews various estimating methods and provide a recommendation regarding the best estimating practice.

34. Citizens shall make semi-annual compliance filings providing an update on the fulfillment of the water utility's Capital Improvement Program. Such compliance filings shall explain the reasons for any differences between the Capital Improvement Program being pursued by Citizens and the Capital Improvement Plan approved by the Commission in Cause No. 43645. In conjunction with the compliance filings, Citizens shall provide reports detailing the cost of the actual capital

improvements implemented during the year which is the subject to the report, separated by project. The duration of this requirement will be until Citizens' first rate order.

35. DOW represents that it intends to issue the debt contemplated by Finding Paragraph No. 7.C.5.c. of the Final Order in Cause No. 43645. To the extent it is unable to issue such debt within one-hundred-twenty (120) days from the date of the Order, either DOW or Citizens (depending on the date of Closing) shall file a request with the Commission seeking appropriate relief. Within twenty (20) days after issuing such debt, either DOW or Citizens (depending on the date of Closing) shall file a true-up report as required by Finding No. 7.C.5.c and Ordering Paragraph 3 of the Final Order in Cause No. 43645. Nothing herein shall be construed to prohibit another Settling Party from challenging the substance of such relief sought.

36. Citizens agrees to meet with the OUCC to develop a process for discussing future debt issuances by Citizens for the water system. However, Citizens' agreement to engage in this process shall not be construed as agreement to limit in any way Citizens' statutory authority to issue debt.

37. Within ninety (90) days of Closing, Citizens shall identify all requirements of the Final Order in Cause No. 43645, not otherwise specified in this Settlement Agreement, that the DOW was required to complete and state how and when the DOW satisfied the requirement. For any such requirements not satisfied by the DOW, Citizens shall indicate whether it has satisfied the condition or explain why the condition should not apply to Citizens. Citizens shall comply with this requirement by filing a report with the Commission and providing a copy to the Settling Parties.

Other provisions

38. Citizens and the Authority maintain that the Asset Purchase Agreements prohibit them from selling Acquired Assets, except for Surplus Property. In addition, Citizens and the Authority hereby agree that neither Citizens nor the Authority will sell or seek to sell the Acquired Assets, except for Surplus Property, without first seeking and receiving authority from the Commission. The Settling Parties agree that whether a sale is in the public interest is affected by the purchase price and the rate impact of any such proposed transaction.

39. System Development Charges and Connection fees collected by Citizens and the Authority shall be used for growth-related capital purposes, including either retiring debt or constructing facilities related to system growth, which would include, for example, capital costs related to the Septic Tank Elimination Program. (This restriction should not be construed as a requirement that Citizens or the Authority, as the case may be, should segregate such funds.) Notwithstanding the foregoing, the Settling Parties agree that funds from System Development Charges and Connection Fees are revenue for purposes of debt service coverage calculations.

40. Citizens and the Authority agree that regulated utility revenues and funds from their respective water and wastewater operations, including proceeds from the sale of surplus property, shall be retained and used to operate, improve and expand that respective utility, or retire outstanding debt of the utility, and otherwise to maintain that utility in a sound physical and financial condition necessary to render adequate and efficient service. Citizens and the

Authority's commitment to this provision shall expire upon termination of the ECP described in Paragraph 5 of the Stipulations and Conditions above. Nothing herein shall be construed to modify the powers of the Commission as set forth in Title 8 of the Indiana Code.

41. The Settling Parties recommend the Commission approve without modification (a) the Settlement Agreement to Transition Management & Operations of the City of Indianapolis Water System From Veolia Water; and (b) the Agreement Pertaining to the Agreement for the Operation of the Operation and Maintenance of the Advanced Wastewater Treatment Facilities and Wastewater and Stormwater Collection Systems.



Indianapolis
Gregory A. Ballard, Mayor



citizens

ENERGY GROUP

April 28, 2011

Ms. Bette Dodd
Lewis & Kappes
One American Square, Suite 2500
Indianapolis, Indiana 46282

Dear Ms. Dodd:

On behalf of CWA Authority, Inc. (the "Authority") and the City of Indianapolis, we appreciate the opportunity we have had to discuss concerns your clients have raised regarding the proposed transfer of the City's wastewater utility to the Authority and particularly the scheduled 2012 and 2013 increases to wastewater utility rates, which have been approved by the City-County Council. We recognize the national economic downturn we are in makes increases to utility rates and other rising costs all the more problematic for your clients.

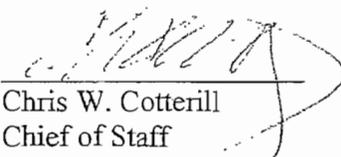
That is one reason the proposed transfer of the water and wastewater utilities from the City to the Authority is so important. The City believes removing these critical utility assets from short-term focused political control and transferring management and operation of the systems to an experienced utility operator, all under the oversight of the Indiana Utility Regulatory Commission, will result in much more efficient and well-run utilities. Moreover, the cost savings made possible by combining operation of the water and wastewater utilities with Citizens' other utilities will create tremendous value for your clients.

Nevertheless, we appreciate the fact that despite those savings, utility and other costs your clients incur to operate their facilities in the City will continue to rise. We are especially sensitive to the significant impact the 2012 and 2013 across the board increases to the wastewater utility's Excessive Strength Surcharge will have on your clients. We are aware that your clients pay over 75 percent of the approximately \$11.4 million generated annually by that surcharge.

We believe the Authority's commitment to collaborate with your clients and the OUCC regarding the completion of a cost-of-service study to be presented in the Authority's first rate case will provide an opportunity to evaluate the wastewater utility's rate design, including an evaluation of the Excessive Strength Surcharge, and make any appropriate rate design changes before implementing further increases beyond the increases already approved by the City-County Council. Additionally, to resolve those and all other issues your clients have raised regarding the proposed transaction, upon Closing of the wastewater acquisition, the City will make a one-time payment to your clients as directed by you in the amount of \$1,500,000, from the Cash Escrow Amount established pursuant to Section 3.02(b) of the Wastewater Asset Purchase Agreement. Such escrow will be funded on the date of Closing of the transactions. Therefore, the payment to your clients is contingent upon Closing and will be made promptly following the placement of the Cash Escrow Amount into the escrow account.

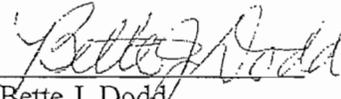
If the foregoing is acceptable to your clients, please sign below and return an executed original of this letter to either of us.

Sincerely,


Chris W. Cotterill
Chief of Staff
Office of Mayor Gregory A. Ballard
City of Indianapolis


Carey B. Lykins
President and CEO
CWA Authority, Inc.

Accepted and agreed


Bette J. Dodd
Attorney for Eli Lilly & Company, National Starch, LLC,
Rolls-Royce Corporation and Vertellus Agriculture & Nutrition Specialties, Inc.

