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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE OUCC'S REQUEST FOR) CAUSE NO. 44262
INVESTIGATION OF THE UTILITY OPERATIONS)
OF CENTURIAN CORPORATION AND MTA, LLC.) APPROVED: OCT 02 2013

ORDER OF THE COMMISSION

Presiding Officers:

James D. Atterholt, Chairman

Jeffery A. Earl, Administrative Law Judge

On October 26, 2012, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its petition with the Indiana Utility Regulatory Commission ("Commission") in this matter. On July 31, 2013, the Commission issued an Interim Order in this Cause, finding that Centurian Corporation/MTA, LLC ("Respondents") have severe deficiencies that they have failed to remedy, and concluding that this case should proceed to hearing on receivership under Ind. Code § 8-1-30-5.

Pursuant to notice as required by law, the Commission held a hearing on the issue of the acquisition of the utility or the appointment of a receiver at 9:30 a.m. on August 21, 2013, in Hearing Room 222, 101 West Washington Street, Indianapolis, IN. Respondents, the OUCC, the Indiana State Department of Health ("ISDH"), the Indiana Department of Environmental Management ("IDEM") appeared and participated in the hearing. Respondents appeared pro se. In addition, representatives of the following non-parties also attended the hearing: JLB Sewer, Inc. ("JLB") and Prairie Utilities, Inc. ("Prairie Utilities"), 1st American Management Company ("1st American"), Aqua Indiana ("Aqua"), and the Fox Chase Farms Homeowners Association ("Homeowners Association").

Based on the evidence presented and the applicable law, the Commission finds:

1. **Notice and Commission Jurisdiction.** Notice of the hearings in this Cause was given and published as required by law. Centurian is an investor-owned utility that holds a Certificate of Territorial Authority ("CTA") from the Commission to provide sewage disposal service to customers in the Fox Chase Farms subdivision ("Fox Chase") in rural Porter County, Indiana. MTA is a limited liability corporation owned by Mr. Richard Ostergren that currently owns the sewage utility's physical and real property.

Under Ind. Code § 8-1-30-3, the Commission may, after a request by the OUCC, review a water or sewer utility's operations, including: technical, financial, and managerial capacity; physical condition and capacity of the utility company's plant; compliance with Indiana or federal

law or the Commission's orders; and provision of service to customers. Therefore, the Commission has jurisdiction over Respondents and the subject matter of this proceeding.

2. **Evidence Adduced at the Hearing.**

A. **Respondents.** Mr. Radtke presented a prepared written statement that responded to the Commission's interim order. Mr. Radtke also testified that he has not been paid for the last few months and that Radtke and Associates has been paying the utility's electric bill. Finally Mr. Radtke testified that the utility has been complying with state orders over the last few months.

B. **JLB/Prairie Utilities.** At the request of the bench, Thomas Astbury, President of JLB and Prairie Utilities, took the stand to answer some questions. Mr. Astbury testified that he has conducted an initial investigation into the possibility of acquiring the utility. He said that he operates a small private sewer plant serving a single commercial customer nearby, which has additional capacity. An initial feasibility study indicated it may be feasible to connect the utility to the nearby treatment plant. Mr. Astbury indicated that he has spoken with the Homeowners Association, and they have expressed a cautious interest.

C. **1st American.** At the request of the bench, John Marshall, President of 1st American, took the stand to answer some questions. Mr. Marshall indicated his interest in serving as the receiver for this property. He testified that 1st American has extensive experience in property management and in receivership, but has no experience operating a utility. Because of this, Mr. Marshall indicated that 1st American would contract with an engineering firm to operate the utility and to assist in seeking a long-term solution. Mr. Marshall said that an appropriate long-term solution would be to find a utility company to take over the utility or to connect the utility to an existing sewer treatment utility.

D. **Aqua.** At the request of the bench, Tom Bruns, President of Aqua, took the stand to answer some questions. Mr. Bruns testified that Aqua operates the South Haven Sewer Utility ("South Haven"), and that Aqua paid for an initial feasibility report regarding the possibility of connecting the utility to South Haven. He said it could be possible to either interconnect the utility to South Haven and bill the utility for treatment or make the Fox Chase Farms homeowners customers of Aqua. Either the utility or the homeowners would have to pay for the connection, but Mr. Bruns said that Aqua has a loan program to allow the costs to be spread out over time if the homeowners become Aqua customers.

E. **Homeowners Association.** At the request of the bench, Barbara Matthews, President of the Homeowners Association, took the stand to answer some questions. Ms. Matthews testified that the Homeowners Association has interviewed another possible operator, Utility Services Corporation. She also said that the Homeowners Association believes that connection to another existing system for sewage treatment is the best long-term solution as opposed to attempting to fix the existing treatment system on-site.

3. **Commission Discussion and Findings.** Pursuant to Ind. Code § 8-1-30-5, if the Commission makes a finding under Ind. Code § 8-1-30-4 and after notice and a hearing, it may issue an order to provide for the appointment of a receiver to operate the subject public utility. If the Commission issues such an order, the Attorney General shall file an action in a court with jurisdiction on behalf of the Commission for appointment of a receiver under Ind. Code ch. 32-30-5. The receiver appointed by the court has the same rights and duties under Indiana law as a utility company providing water or sewer service.

Respondents presented no evidence to show that they have made any effort to remedy the severe defects in the sewer system or that they have any intention of doing so in the future. Therefore, we must consider alternative solutions. Several entities attended the hearing and discussed possible solutions, both short- and long-term, for the utility. No entity expressed an interest in immediately acquiring the utility. Therefore, based on our findings in the Interim Order in this Cause and the evidence presented, we conclude that a receiver should be appointed pursuant to Ind. Code § 8-1-30-5(b)(2) to operate the utility in compliance with law and the Commission's orders and to remedy any deficiencies found by the Commission.

Mr. Marshall expressed the interest of 1st American in serving as the receiver. In light of the company's inexperience with the technical operation of a sewer utility, we cannot comfortably recommend that 1st American be named the receiver. However, we would not object to such an appointment provided 1st American worked with a qualified engineering firm or sewer system operator. Rather, we leave the appointment of a receiver to the discretion of the superior court, who is best suited to identify an appropriate receiver.

Whoever is appointed receiver, we encourage that entity or person to work closely with the Homeowners Association, who has been actively engaged in addressing the issues with the utility in seeking a long-term solution. We also encourage the receiver to continue discussions with JLB/Prairie Utilities and Aqua, both of whom have experience working with and restoring troubled sewer utilities. Finally, we encourage the receiver to consult with the staffs of the Commission and the OUCC for assistance in bringing the utility into regulatory compliance and in addressing any need for rate relief or other regulatory issues. The receiver shall also contact the Commission's Water/Wastewater staff for assistance in addressing the CTA issue discussed above.

4. **Attorney General Authorization.** Pursuant to Ind. Code § 8-1-30-5(f), we authorize the Attorney General to file an action in a court with jurisdiction on behalf of the Commission for the immediate appointment of a receiver under Ind. Code ch. 32-20-5.

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

1. Pursuant to Ind. Code § 8-1-30-5(f), the Attorney General shall file an action in a court with jurisdiction seeking the immediate appointment of a receiver for the Centurian/MTA sewer utility system.

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

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

APPROVED: OCT 02 2013

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



Shala M. Coe
Acting Secretary to the Commission