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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE OUCC’S REQUEST )  
FOR COMMISSION INVESTIGATION OF THE )  
UTILITY OPERATIONS OF HARBOR TOWN )  
SANITARY SEWAGE CORP. AND TO TAKE )  
SUCH REMEDIAL ACTION AS IT DEEMS )  
ADVISABLE AND NECESSARY WITH REGARD )  
TO SUCH OPERATIONS )

CAUSE NO. 44468

APPROVED: OCT 01 2014

ORDER OF THE COMMISSION

**Presiding Officers:**

**Carol A. Stephan, Commission Chair**

**Jeffery A. Earl, Administrative Law Judge**

On March 24, 2014, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its petition with the Indiana Utility Regulatory Commission (“Commission”) in this matter. On September 10, 2014, the Commission issued an Interim Order in this Cause, finding that Harbor Town Sanitary Sewage Corp. (“Harbor Town”) has severe deficiencies that it has failed to remedy, and concluding that this case should proceed to hearing on receivership under Ind. Code § 8-1-30-5.

After providing 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 1:30 p.m. on September 16, 2014, in Hearing Room 222, 101 West Washington Street, Indianapolis, IN. The Indiana Office of the Utility Consumer Counselor (“OUCC”) appeared and participated in the hearing. Harbor Town did not appear or participate in the hearing. Representatives of Aqua Indiana and the Indiana Department of Environmental Management (“IDEM”) attended the hearing but did not participate. No members of the public attended or sought to participate.

Under 170 IAC 1-1.1-18(m), a party who, after being duly notified, fails to be represented at a scheduled hearing is deemed to have waived the opportunity to participate in the hearing and is deemed to have consented to, and may not be permitted thereafter to reopen, any matter resolved or accomplished at such hearing.

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

- 1. Notice and Commission Jurisdiction.** Harbor Town is an investor-owned utility that holds a Certificate of Territorial Authority (“CTA”) from the Commission to provide sewage disposal service to the Harbor Town subdivision in Posey County, Indiana.

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 Harbor Town and the subject matter of this proceeding.

**2. Evidence Adduced at the Hearing.** No evidence was presented during the hearing on receivership.

**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.

Harbor Town presented no evidence that it has made any effort to remedy the severe defects in the sewer system or that it has any intention of doing so in the future—in fact, Harbor Town did not participate in any portion of this proceeding other than sending a letter to the Commission Chair that was tendered to the record on June 10, 2014. Therefore, we must consider alternative solutions.

No entity expressed an interest in acquiring the utility. Therefore, based on our findings in the Interim Order in this Cause and the lack of alternative solutions, 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. In the absence of evidence of a qualified receiver, 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 the receiver to consult with the staffs of the Commission, the OUCC, and IDEM for assistance in bringing the utility into regulatory compliance and in addressing any need for rate relief or other regulatory issues.

**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 Harbor Town sewer utility system.
2. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY AND ZIEGNER CONCUR; WEBER ABSENT:**

**APPROVED:      OCT 01 2014**

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



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