

BEFORE THE

INDIANA UTILITY REGULATORY COMMISSION

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JOINT PETITION OF THE DEPARTMENT OF)
PUBLIC UTILITIES FOR THE CITY OF)
INDIANAPOLIS, ACTING BY AND THROUGH)
THE BOARD OF DIRECTORS FOR UTILITIES,)
AS TRUSTEE, IN FURTHERANCE OF A PUBLIC)
CHARITABLE TRUST FOR THE WATER)
SYSTEM D/B/A CITIZENS WATER AND CWA)
AUTHORITY, INC. FOR APPROVAL OF ANY)
NECESSARY REFINEMENTS TO THEIR)
RESPECTIVE TERMS AND CONDITIONS FOR)
SERVICE)

CAUSE NO. 44163

APPROVED:

DEC 19 2012

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Jeffery A. Earl, Administrative Law Judge

On February 29, 2012, the Department of Public Utilities for the City of Indianapolis, acting by and through the Board of Directors for Utilities, as Trustee, in furtherance of a Public Charitable Trust for the Water System d/b/a Citizens Water (“Citizens Water”) and CWA Authority, Inc. (“Authority”) (collectively, “Joint Petitioners”) filed with the Indiana Utility Regulatory Commission (“Commission”) a Verified Petition seeking approval of any necessary refinements to their respective Terms and Conditions for Service in accordance with the Commission’s July 13, 2011 Order in Cause No. 43936.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, the Commission held a Prehearing Conference at 10:30 a.m. on April 10, 2012, in Hearing Room 224, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared and participated at the Prehearing Conference. Prior to the opening of the record, Joint Petitioners and the OUCC reached an agreement regarding procedural and scheduling matters in this Cause. On April 25, 2012, the Commission issued a Prehearing Conference Order setting forth the procedural schedule agreed upon during the Prehearing Conference.

On April 17, 2012, the Citizens Water/Sewer Industrial Group (“Industrial Group”) filed a Petition to Intervene, which the Presiding Officers granted on April 30, 2012. On July 26, 2012, Joint Petitioners, the OUCC, and the Industrial Group (collectively “Parties”) filed a Stipulation and Settlement Agreement (“Settlement Agreement”) with the Commission. Also on July 26, 2012, Joint Petitioners filed the direct testimony of Korlon L. Kilpatrick II in support of the Settlement Agreement and agreed-upon revisions to the Terms and Conditions for Service.

Pursuant to proper notice given as required by law, the Commission conducted a technical conference at 9:30 a.m. on August 2, 2012, in Hearing Room 222, 101 West Washington Street,

Indianapolis, Indiana. Representatives of the Parties and the Commission's Staff attended and participated in the Technical Conference. On August 10, 2012, Joint Petitioners filed the Verified Supplemental Testimony in Support of Settlement of Korlon L. Kilpatrick II, along with revised versions of Joint Petitioners' Terms and Conditions for Service, which included certain changes discussed during the August 2, 2012 Technical Conference.

On August 14, 2012, the Presiding Officers issued a Docket Entry directing Joint Petitioners to respond to requests for additional information. Joint Petitioners filed Verified Responses to Presiding Officers' Requests for Additional Information on August 15, 2012. On August 16, 2012, Joint Petitioners filed corrections to Mr. Kilpatrick's Supplemental Testimony.

Pursuant to proper notice given as required by law, the Commission conducted a Settlement Hearing at 9:30 a.m. on August 16, 2012, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and the Industrial Group participated in the hearing. No members of the general public appeared. The Parties' evidence was admitted into evidence along with the revised versions Joint Petitioners' Terms and Conditions for Service.

Based upon the applicable law and the evidence of record, the Commission finds:

1. **Joint Petitioners' Characteristics.** Citizens Water owns and operates certain water utility assets and provides water utility service to the public in Marion, Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Morgan, and Shelby Counties in Indiana.

The Authority is an Indiana nonprofit corporation created pursuant to an Interlocal Cooperation Agreement entered into in accordance with Ind. Code ch. 36-1-7. The Authority owns and operates certain wastewater system assets and furnishes wastewater utility service to commercial, industrial, and other types of customers in Marion County and portions of Hamilton County, Indiana. The principal offices of Citizens Water and the Authority are located at 2020 North Meridian Street, Indianapolis, Indiana.

2. **Notice and Jurisdiction.** Due, legal and timely notice of the public hearing in this Cause was given and published as required by law. Ind. Code § 8-1-11.1-3(c)(9) gives the Commission jurisdiction over Citizens Water's and the Authority's rules for service and rates for service. Accordingly, the Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

3. **Background of Proceeding.** On July 13, 2011, the Commission issued an Order in Cause No. 43936 that approved the acquisition by Citizens Water of certain water utility assets previously owned and operated by the City of Indianapolis ("City") and its Department of Waterworks ("DOW") and the acquisition by the Authority of certain wastewater system assets previously owned and operated by the City and its Sanitary District. In Cause No. 43936, the Commission also authorized Citizens Water and the Authority to adopt, with minor modifications, the general terms and conditions for water and wastewater service proposed in the settlement agreement in that case. The Commission instructed Citizens Water and the Authority to continue to work with interested parties to further revise the terms and conditions for service and to file a new Cause for approval of new terms and conditions for service if the parties were unable to reach agreement. The Parties participated in technical conferences on October 13, and 25, 2011, but were unable to reach agreement. Therefore, Joint Petitioners filed this Cause.

4. **Settlement Agreement.** On July 26, 2012, the Parties reached a Settlement Agreement, in which they agreed to certain revisions and refinements to Citizens Water's and the Authority's respective terms and conditions for Service. The Settlement Agreement does not preclude the Parties from proposing further revisions to the terms and conditions for service in the context of a future proceeding in which those terms and conditions for service are at issue. The Settlement Agreement also allows Joint Petitioners to make further revisions to their respective terms and conditions for service as may be necessary through the Commission's 30-day filing procedures. However, Joint Petitioners agreed to give notice to the other Parties of any proposed revisions at least five business days in advance of the 30-day filing.

5. **Evidence in Support of Settlement Agreement.** Korlon L. Kilpatrick II, Manager, Rates & Business Applications of Citizens Energy Group, offered testimony in support of the Settlement Agreement. Mr. Kilpatrick said that over the course of the last several months, the Parties reviewed Joint Petitioners' respective Terms and Conditions for Service in great detail. The Settling Parties discussed certain provisions of the Terms and Conditions in person and by phone and as a result of those discussions agreed to the modifications to the Terms and Conditions for Service reflected in the attachments to the Settlement Agreement.

Mr. Kilpatrick said that the agreed-upon changes to Joint Petitioners' respective Terms and Conditions for Service can broadly be categorized as: (1) additions to memorialize the manner in which Citizens Energy Group intends to address certain circumstances in the course of operating the water and wastewater utilities; (2) changes to clarify provisions that may have been vague or confusing or to simplify matters for customers; and (3) miscellaneous non-substantive changes and other "clean-up" edits.

Mr. Kilpatrick stated the Parties agreed to nonresidential deposit terms that clarify when Joint Petitioners will demand a deposit from a nonresidential customer, the manner in which the amount of the deposit will be determined and the circumstances under which the deposit must be returned. Citizens Energy Group intends to make corresponding changes to the Terms and Conditions for Gas Delivery Service in an upcoming 30-day filing.

Mr. Kilpatrick testified that Joint Petitioners' current terms and conditions for service allow customers to make complaints only with respect to bills not yet delinquent. The OUCC was concerned this provision might foreclose the option to use the complaint process for a customer only a few days delinquent in paying a bill. Mr. Kilpatrick stated it is important there be some limitation on when complaints about billing can be raised. Otherwise, the complaint process could be used to indefinitely postpone disconnection or the collections process. Ultimately, the Parties agreed to a modification that allows a customer to file a complaint at any time prior to the actual disconnection of service.

Mr. Kilpatrick said most of the changes to Joint Petitioners' respective Terms and Conditions for Service were designed to clarify provisions that may have been vague or confusing. Numerous provisions in Joint Petitioners' respective terms and conditions for service were modified by crafting a definition, adding an explanatory parenthetical, clarifying a time limit to specifically indicate whether the deadline is to be determined in calendar days or working days, and adding references to the Commission's regulations. For example, in Citizens Water's Terms and Conditions for Water Service, Rule 1.1 was modified to provide: "A Customer shall not sell or give

away water to anyone, *as an alternative to that person or entity receiving water service from the Utility*, unless otherwise specifically included in its agreement with the Utility for service.” The italicized addition clarifies that the provision is not designed to restrict how a customer is actually using the water they draw from the tap -- but to prohibit sales for resale. In addition, multiple sections of Joint Petitioners’ respective terms and conditions for service were edited simply to make the provisions easier to read and understand and consistent with each other.

Mr. Kilpatrick opined that the agreed-upon modifications to Joint Petitioners’ respective terms and conditions for service represent a reasonable compromise for all Parties.

Mr. Kilpatrick offered supplemental testimony in support of the terms and conditions for service, to incorporate changes proposed by the Commission’s Staff during the August 2, 2012 technical conference. Joint Petitioners included most of the revisions proposed by the Commission’s Staff. Mr. Kilpatrick address the remaining issues in his supplemental testimony.

Commission Staff recommended that Joint Petitioners provide supplemental testimony regarding the need for the italicized text in the following substantively identical provisions in their respective Terms and Conditions for Service:

Interest on any deposit held by the Utility on or before August 31, 2012 will earn an interest rate of six percent (6%) per annum from the date of receipt by the Utility through August 31, 2012. Effective September 1, 2012, any deposit held for more than thirty (30) days will earn interest calculated monthly at the authorized rate of interest for the current month from the date the deposit is paid in full to the Utility. The rate of interest will be established by the Indiana Utility Regulatory Commission in a general administrative order for each calendar year.

Mr. Kilpatrick stated that the Commission’s water and wastewater utility regulations provide that deposits held for more than twelve months shall earn interest from the date of deposit at a rate of 6% per annum. Using a rate of interest established annually by the Commission through a general administrative order (“GAO”) would protect all ratepayers from being burdened with a considerably higher interest expense that the utilities would need to recover in their respective revenue requirements. Mr. Kilpatrick stated Citizens Gas of Westfield similarly sought and received approval to use the rate of interest prescribed by GAO as part of a general rate case.

Mr. Kilpatrick testified that there currently is no process in place under which the Commission establishes an interest rate for water or wastewater utility deposits pursuant to a GAO. Mr. Kilpatrick suggested that until such time as a process for establishing an interest rate for water and wastewater deposits is established, Citizens Water’s and the Authority’s terms and conditions for service could be revised to indicate that the interest rate on deposits could be based on the Commission’s annual GAO setting forth the interest rate for gas utility deposits.

Commission Staff also asked that the Authority’s Terms and Conditions for Service, or some other document such as a technical manual, clarify whether the customer or the Authority is responsible for maintenance and replacement of equipment installed pursuant to the Septic Tank Elimination Program (“STEP”). Mr. Kilpatrick said that the Commission’s Staff and the Parties agreed that the Authority should review materials provided to customers as part of the STEP program and propose possible changes or additions in the Authority’s next rate case.

During the August 16, 2012 Evidentiary Hearing, the Presiding Officers asked Mr. Kilpatrick whether Joint Petitioners would agree to modify the definitions of the terms “Customer” in their respective terms and conditions for service to mirror the definition of the same terms in the Commission’s regulations. Mr. Kilpatrick testified Citizens Water agreed to the changes.

6. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition of Ind., Inc. v. PSI Energy, Inc.*, 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 of Ind., Inc. v. Public Service Co. of Ind., Inc.*, 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, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

Joint Petitioners provided the other Parties and the Commission’s Staff several opportunities to provide input into Joint Petitioners’ respective terms and conditions for service. Joint Petitioners’ final proposed terms and conditions for service resulted from the combined efforts of the Parties and Commission Staff. The terms and conditions of service strike an appropriate balance between protecting the interests of utilities and their customers and clearly document the terms and conditions for utility service.

Only one issue requires specific discussion – the interest rate on customer deposits. Joint Petitioners’ request authority to pay an interest rate on customer deposits that is based on the Commission’s GAO for gas utilities. 170 IAC 6-1-15(f) states that deposits held by a water utility for more than twelve months shall earn interest from the date of deposit at a rate of 6% per annum “or such other rate of interest as the commission may prescribe following a public hearing.” 170 IAC 8.5-2.3(f) is the exact same provision but applies to wastewater utilities.

Mr. Kilpatrick testified that if Joint Petitioners have to pay 6% interest on customer deposits, the utilities would be required to include those amounts as expenses in its revenue requirements. Thus, credit-worthy customers in essence pay the interest on deposits. By utilizing the interest set for gas utilities by the GAO (which has recently been substantially lower than 6%), this burden on customers is mitigated. In addition, we note that Citizens also provides gas utility service to many of its water and wastewater customers, and that Citizens is moving toward a unified customer bill for all three utilities. In this respect, Citizens Water and the Authority are different from most other water and wastewater utilities in the state. In light of these unique facts, we find that it is reasonable to allow Citizens Water and the Authority to pay interest on customer deposits at the rate set by the GAO for gas utilities.

The Commission finds the proposed changes to Joint Petitioners' respective terms and conditions for service, admitted as Joint Petitioners' Exhibits KLK-S-1 and KLK-S-2, with the agreed modifications to the term "customer" discussed above, are reasonable and just. Therefore, we approve Joint Petitioners' respective proposed terms and conditions for service.

The Parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

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

1. The proposed changes to Citizens Water's and the Authority's respective Terms and Conditions for Service, as set forth in Petitioners' Exhibits KLK-S-1 and KLK-S-2 are hereby approved, subject to the revision of the term Customer as described in Section 5 above.

2. Joint Petitioners shall file with the Water Sewer Division of the Commission a copy of their respective Terms and Conditions for Service, including the agreed upon changes. Upon approval by the Water Sewer Division, the revised Terms and Conditions for Service shall be effective and shall cancel any prior rules and regulations.

3. This Order shall become effective upon and after the date of its approval.

4. 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 to the Secretary of this Commission:

Commission Charges:	\$ 1,303.67
OUCG Charges:	\$ 2,286.64
Legal Advertising Charges:	\$ 161.89
Total:	\$ 3,752.20

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: DEC 19 2012

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


Brenda A. Howe
Secretary to the Commission

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FILED

JUL 26 2012

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NECESSARY REFINEMENTS TO THEIR)
RESPECTIVE TERMS AND CONDITIONS FOR)
SERVICE)

CAUSE NO. 44163

STIPULATION AND SETTLEMENT AGREEMENT

On July 13, 2011, the Commission issued an Order in Cause No. 43936 approving, among other relief: (i) the acquisition by the Department of Public Utilities for the City of Indianapolis, acting by and through the Board of Directors for Utilities, as Trustee, in furtherance of a Public Charitable Trust for the Water System d/b/a Citizens Water (“Citizens Water”) of certain water utility assets previously owned and operated by the City of Indianapolis, Indiana (the “City”) and the Department of Waterworks; and (ii) the acquisition by CWA Authority, Inc. (the “Authority”) of certain wastewater system assets previously owned and operated by the City and its Sanitary District.

In Cause No. 43936, the Commission also approved a Settlement Agreement entered into among Joint Petitioners, the Indiana Office of Utility Consumer Counselor (“OUCC”), the Indianapolis Water/Sewer Industrial Group (the “Industrial Group”) and the Service Advisory Board of the DOW. The Settlement Agreement recommended that the Commission authorize Citizens Water and the Authority (collectively, the “Petitioners”) to “implement the Terms and Conditions for water and wastewater utility service proposed . . . in their case-in-chief testimony, until such time as the Commission approves revised Terms and Conditions for service.” The

Settlement Agreement provides Joint Petitioners could:

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. . . . 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.

In its Order in Cause No. 43936, the Commission approved Petitioners' proposed Terms and Conditions for Service and found "[i]f the parties are unable to agree to revised terms by March 1, 2012, Citizens [Water] 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."

Pursuant to the terms of the Settlement Agreement and Order, the Petitioners initiated technical conferences on October 13, 2011 and October 25, 2011, which addressed, among other issues, potential refinements to their respective Terms and Conditions for Service. Following the technical conferences, Petitioners, the OUCC and Industrial Group (collectively, the "Settling Parties") continued their discussions relating to Petitioners' Terms and Conditions for Service, but were unable to reach an agreement with respect to specific refinements prior to March 1, 2012.

On February 29, 2012, Petitioners filed a Verified Petition initiating this Cause and requesting that the Commission hold such attorneys' conferences, technical conferences and hearings as it deems necessary and advisable, and thereafter approve any necessary refinements to their respective Terms and Conditions for Service. Following the filing of the Verified Petition, representatives of the Settling Parties continued their discussions regarding Petitioners' Terms and Conditions for Service. As a result of those discussions, the Settling Parties have

agreed to certain refinements to Petitioners' respective Terms and Conditions for Service. The Settling Parties' agreement is set forth in this Stipulation and Settlement Agreement ("Agreement").

I. Agreement to Modify Citizens Water's Terms and Conditions for Water Service.

1. The Settling Parties agree that the revisions and refinements to Citizens Water's Terms and Conditions for Water Service set forth in Joint Settlement Exhibit 2 attached hereto are "nondiscriminatory, reasonable, and just," and should be approved by the Commission. The agreed-upon revisions to the Terms and Conditions for Water Service are shown in red-lined format in Joint Settlement Exhibit 2.

II. Agreement to Modify the Authority's Terms and Conditions for Sewage Disposal Service.

2. The Settling Parties agree that the revisions and refinements to the Authority's Terms and Conditions for Sewage Disposal Service set forth in Joint Settlement Exhibit 3 attached hereto are "nondiscriminatory, reasonable, and just," and should be approved by the Commission. The agreed-upon revisions to the Terms and Conditions for Sewage Disposal Service are shown in red-lined format in Joint Settlement Exhibit 3.

III. Agreement Does Not Preclude Further Proposals to Modify Terms and Conditions for Service.

3. This Agreement does not preclude any Settling Party from proposing further revisions to either Citizens Water's Terms and Conditions for Water Service or the Authority's Terms and Conditions for Sewage Disposal Service in the context of a general rate case filed by Petitioners or any other proceeding in which Petitioners' respective Terms and Conditions for Service are an issue. The Settling Parties further understand that in the normal course of operations, Citizens Water or the Authority may identify the need to make further revisions to

their respective Terms and Conditions for Service and may propose such revisions pursuant to the Commission's 30-day filing procedures. Citizens Water and the Authority will give at least five (5) business days notice to the Settling Parties of the proposed revisions in advance of any 30-day filing seeking a change in their respective Terms and Conditions for Service. This Agreement also is not intended to address changes to Petitioners' respective Terms and Conditions for Service necessary to allow for combined billing of water, sewage disposal and gas delivery services, which changes will be proposed in an upcoming 30-day filing.

IV. Scope and Approval of Agreement

4. Neither the making of this Agreement nor any of its provisions shall constitute in any respect an admission by any Settling Party in this or any other litigation or proceeding. Neither the making of this Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Agreement, shall establish any principles or legal precedent applicable to Commission proceedings.

5. This Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any Settling Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction. This 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 of the Settling Parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

6. The undersigned have represented and agreed that they are fully authorized to execute this Agreement on behalf of their designated clients, and their successors and assigns,

who will be bound thereby, subject to the agreement of the Settling Parties on the provisions contained herein and in the attached exhibits.

7. The communications and discussions during the negotiations and conferences attended only by any or all of the Settling Parties, their attorneys, and their consultants have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged. All prior drafts of this Agreement, the attachments hereto, and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

8. This Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to any Settling Party.

9. The Settling Parties will request Commission acceptance and approval of this Agreement in its entirety, without any change or condition that is unacceptable to any party to this Agreement.

10. The Settling Parties may offer supporting testimony for the approval of this Agreement in this proceeding and will request that the Commission issue a Final Order promptly accepting and approving the same in accordance with its terms. The Settling Parties also will work cooperatively on news releases or other announcements to the public about this Agreement.

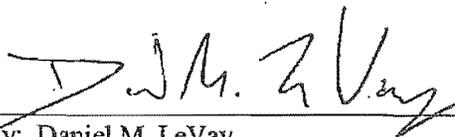
10. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of any Final Order entered by the Commission approving the Agreement in its entirety without changes or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions hereof) and shall support this Agreement in the event of any appeal or a request for rehearing, reconsideration or a stay by any person not a

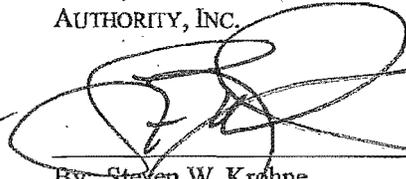
party hereto.

Accepted and Agreed on this 26th day of July, 2012.

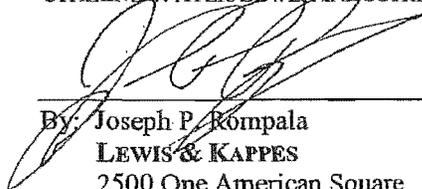
INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR

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 WATER AND CWA
AUTHORITY, INC.


By: Daniel M. LeVay
Deputy Consumer Counselor
INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR
National City Center
115 W. Washington St., Suite 1500 South
Indianapolis, IN 46204


By: Steven W. Krohne
HACKMAN HULETT & CRACRAFT, LLP
111 Monument Circle, Suite 3500
Indianapolis, IN 46204-2030

CITIZENS WATER/SEWER INDUSTRIAL GROUP


By: Joseph P. Rompala
LEWIS & KAPPES
2500 One American Square
Box 82053
Indianapolis, IN 46282-0003