

Mr. Stephenson, who represents Indiana-American, offered a presentation on behalf of the Petitioners. Mr. Stephenson explained that Indiana-American and the Marion Heights have negotiated the sale of Marion Heights's assets to Indiana-American. Marion Heights provides water service and the transfer of Marion Heights' assets will also require approval of the Indiana Utility Regulatory Commission ("*IURC*"). A proceeding before the IURC has been initiated and the evidentiary hearing has been conducted. The parties filed proposed orders the week of February 15, 2010 and a decision from IURC is expected within 90 to 120 days.

Mr. Stephenson explained that the IURC requires all testimony to be submitted in a "written question and answer format" and he submitted certified copies of that testimony as well as certified copies of additional evidentiary documents filed with the IURC. The hearing officer admitted four (4) sets of documents, including the "direct testimony of Jeffrey C. Henson, Michael J. Hoffman, Deron E. Allen and Helen A. Ruhl, together with attachments", "the joint petitioners' submission of revised exhibits HAR 2 and HAR 4", "joint petitioners' rebuttal testimony" and "OUCC testimony", all of which were filed in cause number 43817 with the IURC, into the record of this proceeding.

Mr. Stephenson highlighted certain portions of the records noting that the written filings of the joint petitioners, Indiana-American and Marion Heights, contain several documents including, a copy of the contract that has been entered into between Indiana-American and Marion Heights and the appraisal of the assets of Marion Heights. The appraisal, which is statutorily required, was used to determine the fair market value of Marion Heights' assets and formed the basis for the purchase price of \$900,000.00 contained within the contract.

The purchase price to be paid by Indiana-American to Marion Heights is \$900,000.00. Marion Heights does have outstanding debt of approximately \$600,000.00. Mr. Stephenson noted that details of the outstanding debt are discussed in the written testimony of Marion Heights' board member Helen Ruhl. The outstanding debt, being less than the purchase price, will be paid in full with the proceeds of the sale.

The remaining proceeds of the sale, approximately \$300,000.00 will be distributed to the customers of the Marion Heights Conservancy District. The process by which the proceeds will be distributed is set forth in the Indiana Office of Utility Consumer Counselor's (OUCC) testimony, attachment schedule 2.7. Mr. Stephenson acknowledged that OUCC had concerns with the original plan of Marion Heights and Indiana-American to exclude members with outstanding bills from any distribution. Instead, OUCC suggested that the distribution to persons with outstanding bills be first applied to the outstanding bill with the remainder being distributed to the member. Marion Heights and Indiana-American accepted the OUCC's recommendation on that point as is noted in the rebuttal testimony.

Mr. Stephenson observed that Marion Heights was previously approved to provide sewer service. He stated that Marion Heights never pursued the provision of sewer service and

consequently there is no infrastructure or assets associated with sewer service to be transferred.

Mr. Stephenson observed that the benefits to be gained by the Marion Heights' customers are based upon the expertise across the United States of American Water, Indiana-American's parent company. Indiana-American is fully regulated by the IURC as to rates. The current customers of Marion Heights will experience reductions in water bills as a result of this transaction. Mr. Stephenson noted that although Indiana-American has a rate increase petition pending before the IURC at this time, even with the rate increase proposed by Indiana-American, the Marion Heights rates will remain lower than their present rates. The other benefits include the maintenance in Indiana of a large management staff and engineering services staff. Furthermore, the single tariff pricing proposals pursued by Indiana-American in its rate proposals allows for costs of improvements to be spread out across the State. This can be a big benefit for a smaller district, like Marion Heights, because sometimes the costs of improvements can be substantial and this allows these costs to be spread out among various districts.

Tom McKinney, Marion Heights Conservancy District Board Member

Mr. McKinney stated that he has been on the Board for approximately 30 years. "As far as the Board's concerned, the reason we looked at selling and dissolving the district is because of the economic conditions." The costs of maintaining and providing water in a small service district like Marion Heights' is getting cost prohibitive according to McKinney. He stated that Indiana-American will reduce the rates and the board felt that it needed to look at ways to provide water cheaper. Marion Heights is in a position now, because the condition of the treatment facility; "we've kept it maintained"; for a sale. Mr. McKinney stated that because of resources, Indiana-American can provide as good or better service for a lower cost and that he took an oath of office to provide water for the district in the best interest of our consumers. He stated that the board sees no negatives to our customers, only positives, and believes that at this time the sale to Indiana-American is the best avenue. "It's a win-win for the district."

The hearing officer inquired as to the possibility that ongoing maintenance would result in additional increases in rates by Marion Heights in the event the districts assets are not sold to Indiana-American.

Mr. McKinney explained that there is no maintenance or upgrades to the facility that are "necessary" but to keep the system in its present "state of the art" condition there would be work necessary in the near future. Mr. McKinney noted that Marion Heights would probably be considering a rate increase at the present time if it was not for the pending sale to Indiana-American.

2. Remonstrators

No person spoke in opposition to the proposed dissolution of the district. No remonstrance has been filed with the Commission.

B. STATE AGENCY COMMENTS

Indiana Utility Regulatory Commission: DeAnna L. Brunner, Assistant Counsel, filed with the Commission on February 16, 2010, the following:

The General Counsel's Office of the Indiana Utility Regulatory Commission (the "Commission") has reviewed your letter and the Petitions regarding the dissolution of the Marion Heights Conservancy District ("Marion Heights"). Since the Petitioner seeks to dissolve the territory of Marion Heights under IC 14-33-15, it appears that the Commission is without jurisdiction over the Petition as it relates to the provision of the water service for this conservancy district.

Please be advised that the Commission's records indicate that the following regulated water utility is currently serving Vigo County: Indiana-American Water Company Inc. ("Indiana-American"). Other utilities and conservancy districts may provide water service near the Marion Heights area as well. The Commission would note that Cause number 43817 is currently pending before the Commission. In this Cause, Indiana-American and Marion Heights jointly petitioned for the acquisition of Marion Heights by Indiana-American. In a data request from the Office of Consumer Counselor, which asked the Joint Petitioners to provide the names of other bidders for Marion Heights, the parties stated, "There were no other bidders."

Department of Natural Resources, Division of Water:

On October 15, 2009, a petition for the dissolution of the Marion Heights Conservancy District was filed in Vigo County Superior Court under Cause Number 44503. An order referring the petition to the Natural Resources Commission was signed by the Judge for the Vigo Circuit Court/Superior Court #3 on December 2, 2009. The petition which was filed pursuant to IC 14-33-15-1 indicates that the District be dissolved due to lack of benefit. The petition was forwarded to the Division of Water for review and comment.

Background

The Marion Heights Conservancy District (MHCD) is located in west central Vigo County, near Terre Haute. The boundaries of the District include the communities of Marion Heights, Sycamore Park, and the St. Mary-of-the Woods College. On October 25, 1963, the MHCD was established for the purpose of providing a water supply including treatment and distribution to the freeholders of the District. The Natural Resources Commission (NRC) approved the District Plan and First Unit of Work for the MHCD on September 25, 1964. The NRC approved an amendment to the District Plan on July 16, 1965. This amendment

identified the construction of a well field, treatment plant, and distribution system to provide water supply to the service area. On December 17, 1984, the NRC approved the Second Unit of Work adopting the plans, specifications, and cost estimates for an additional well to be installed in the existing well field owned by the District. On January 11, 2000, the Vigo Circuit Court approved an addition of area to add an 80-acre tract to the District. On October 11, 2005, the Vigo Circuit Court approved the petition filed by the Marion Heights Conservancy District to add the purpose of providing for the collection, treatment, and disposal of sewage and other liquid waste.

Authority

Chapter 15, Section 1 of the Indiana Conservancy District Act, “Dissolution Due to Loss of Benefit”, states:

”A district may be dissolved by the same procedure used to establish the district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit.”

Chapter 15, Section 5 further states:

“The court may not dissolve a district if the district has bonds or notes outstanding.”

Summary of Evidence

Because the Conservancy District operates with a part-time staff and a relatively small customer base it is difficult to operate the water utility with affordable rates. It has also become difficult to find qualified personnel to serve on the board of directors. The Chairperson for the Marion Heights Board of Directors indicated in testimony to the Indiana Utility Regulatory Commission (IURC) that keeping up with the reporting requirements for a water utility has proven to be a challenge.

MHCD is also facing short and long term improvements which are necessary for continuing their operations. These improvements would mean significant and immediate rate increases.

Discussions on the acquisition began in late 2007 and a purchase price of \$900,000 was offered in 2008. After both parties participated in a valuation of the District’s assets, they began negotiating an acceptable purchase price and terms of the agreement. A special informational meeting was held on March 5, 2009 to update all customers on the proceedings.

According to the filed petition signatures of at least 30% of the freeholders in MHCD were received in support of the dissolution.

The petition for dissolution was filed on October 15, 2009 in the Vigo

County Superior Court.

Testimony at the February 22, 2010 public hearing indicated that MHCD has entered into a Purchase Agreement with Indiana-American Water. A petition has also been filed with the IURC requesting approval of the price, terms, and conditions of the acquisition.

Currently the customers of the Marion Heights Conservancy District have rates significantly higher than Indiana-American's rates for that area. Should the dissolution be approved and Indiana-American provides water service to the MHCD customers, the rates will be below what they currently pay.

There are many benefits to Indiana-American Water acquiring the assets of MHCD. Indiana-American has the ability to provide full time management staff and maintenance personnel. The single tariff pricing proposal allows for costs of improvements to be spread out among all water users.

With respect to the District's financial obligations, according to testimony at the February 22nd public hearing, MHCD currently has an outstanding debt of approximately \$600,000. Existing funds and proceeds from the sale of the MHCD assets will be used to satisfy the outstanding bond debt at First Financial Bank.

According to Schedule 2.5 of the Agreement, the remaining monies will be distributed to MHCD customers of record that are active on the closing date.

Findings of Fact

1. The District was established in 1963 for the purpose of providing water supply including treatment and distribution.
2. In 2005, the purpose of providing for the collection, treatment, and disposal of sewage and other liquid wastes was added. However at the February 22nd public hearing it was noted that Marion Heights Conservancy District did not pursue sewage collection and therefore there are no associated assets.
3. IC 14-33-15-1 provides that if there has been a change of circumstances that causes the district to lose its benefit, the district shall be dissolved.
4. Marion Heights Conservancy District has entered into a purchase agreement with Indiana-American Water Company. Indiana-American will provide water service to the current customers of Marion Heights. Indiana-American is an operating public utility and subject to oversight by the Indiana Utility Regulatory Commission
5. IC 14-33-15-5 provides that a district may not be dissolved if it has

- outstanding financial obligations.
6. The Agreement between the District and Indiana-American includes Schedule 2.5 setting forth the proposed allocation of proceeds from the dissolution following payment of the expenses and liability of Marion Heights Conservancy District.

Recommendation

The Division of Water recommends approval of the proposed dissolution of the Marion Heights Conservancy District.

Should you have questions concerning the above comments, please contact Terri Price, Project Development Section at 317-234-1081.

MWN/TCP

II. FINDINGS OF FACT

1. On December 3, 2009, the Vigo County Circuit Court entered its Order referring the Petition for dissolution of the Marion Heights Conservancy District to the Natural Resources Commission, Division of Hearings.
2. On December 8, 2009, the Petition for the dissolution of the Marion Heights Conservancy District was filed.
3. On February 22, 2010, a public hearing was conducted as scheduled pursuant to Indiana Code § 14-33-2-17.
4. Marion Heights Conservancy District has contracted with Indiana-American Water Company, Inc. to purchase the District's assets and to provide retail water services to the District's area.
5. Marion Heights Conservancy District and Indiana-American Water Company, Inc. have jointly petitioned the Indiana Utility Regulatory Commission ("IURC") to allow for the acquisition of Marion Heights Conservancy District by Indiana-American Water Company, Inc., which matter remains pending before the IURC, as of the date of this Report.
6. Provided the IURC approves the acquisition of Marion Heights Conservancy District by Indiana-American Water Company, Inc. there will be a change of circumstances that will cause the District to lose its benefits.
7. The customers of Marion Heights Conservancy District will benefit from decreased water rates as well as the increase expertise, management and engineering

services of Indiana-American Water Company, Inc. as a result of the acquisition of Marion Heights Conservancy District.

8. Pursuant to Indiana Code § 14-33-15-5, a conservancy district may not be dissolved if it has bonds or notes outstanding.
9. Marion Heights Conservancy District's outstanding debts will be fully paid by the proceeds of its sale to Indiana-American Water Company, Inc.
10. Upon closing the sale of Marion Heights Conservancy District's assets to Indiana-American Water Company, Inc. and after payment of necessary expenses, the net balance will be distributed to the Marion Heights Conservancy District's existing customers.

III. RECOMMENDATION

The foregoing is approved and adopted as the determination and fact finding report of the Natural Resources Commission under Indiana Code §§ 14-33-2-17, 14-33-2-22 and 14-33-15.

March 1, 2010

Sandra L. Jensen
Hearing Officer