

STATE OF INDIANA

FILED

INDIANA UTILITY REGULATORY COMMISSION FEB 24 2009

IN THE MATTER OF THE PETITION )
OF THE DEPARTMENT OF WATERWORKS )
OF THE CONSOLIDATED CITY OF )
INDIANAPOLIS, INDIANA, FOR )
AUTHORITY TO INCREASE ITS RATES )
AND CHARGES FOR WATER UTILITY )
SERVICE ON BOTH EMERGENCY AND )
NON-EMERGENCY BASES, FOR )
APPROVAL OF A NEW SCHEDULE OF )
RATES AND CHARGES APPLICABLE )
THERE TO, AND FOR APPROVAL OF A )
MECHANISM TO ANNUALLY IMPLEMENT )
RATE CHANGES BASED ON THE ANNUAL )
ADJUSTMENT TO THE DEPARTMENT'S )
PAYMENTS UNDER THE MANAGEMENT )
AGREEMENT WITH VEOLIA WATER )
INDIANAPOLIS, LLC )

INDIANA UTILITY
REGULATORY COMMISSION

43645

CAUSE NO. \_\_\_\_\_

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INDIANA UTILITY
REGULATORY COMMISSION

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PETITION

The Petitioner, the Department of Waterworks of the Consolidated City of Indianapolis, Indiana (the "Department" or the "Petitioner"), by counsel, files its Petition requesting the Indiana Utility Regulatory Commission (the "Commission") to approve an increase in the Department's rates and charges for water utility service on both emergency and non-emergency bases, to approve a new schedule of rates and charges applicable to such water utility service and to approve a mechanism to annually implement rate changes based on the annual adjustment to the Department's payments under its management agreement with Veolia Water Indianapolis, LLC ("Veolia"). In support of its Petition, the Department states that:

- 1. Department Characteristics. The Department is a department of the Consolidated City of Indianapolis, Indiana, existing and operating under the authority of Ind. Code ch. 8-1.5-4 and IC § 36-3-4-23. The Department furnishes water utility service to customers in Marion

County, Indiana, and in portions of Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Morgan and Shelby Counties. The Department is subject to the jurisdiction of the Commission for approval of rates and charges.

2. Department's Existing Rates and Charges. The Department's existing rates and charges for water utility service were approved by the Commission in its Order issued in Cause No. 43056 on April 4, 2007 (the "Rate Order").

3. Emergency Rate Relief. The Department's rates and charges no longer produce revenues sufficient to meet the Department's minimum revenue coverage ratios on its bonded indebtedness and to cover the Department's expenses. The failure to meet minimum revenue coverage ratios is due primarily to the Department's interest expense on its bonded indebtedness. That interest expense increased from approximately \$32.6 Million in 2007 to approximately \$51.5 Million in 2008, due to auction and variable interest rates that increased substantially in the financial turmoil of 2008 that continues to the present and to interest expense related to bonds issued in late 2007. The continuing high interest expense puts the Department in a position where, without immediate rate relief, it will continue to fail to meet the Department's minimum revenue coverage ratios and will deplete its operating cash reserves. If the Department continues to fail meeting its minimum coverage ratios, ratings agencies will downgrade the Department's bond issues, resulting in even higher interest rates and interest expense. A ratings downgrade will also negatively impact the grade of the debt of the Consolidated City of Indianapolis, as well, and thus the Department's bond issues have a broader impact than simply the Department's operations. The increased interest expense and exhaustion of operating cash reserves, despite the Department's cost-cutting efforts, will lead to serious financial deterioration of the utility and the

inability of the utility to meet daily expenses, which could lead to the possible curtailment of service. Therefore, an emergency exists.

4. Non-Emergency Rate Relief. The Department's rates and charges no longer produce sufficient revenue to (a) pay all the legal and other necessary expenses incident to the operation of the utility, including maintenance costs, operating charges, upkeep, repairs, depreciation and interest charges on bonds or other obligations; (b) provide a sinking fund for the liquidation of bonds or other obligations; (c) provide a debt service reserve for bonds and other obligations; (d) provide adequate money for working capital; (e) provide adequate money for making extensions and replacements to the extent not provided for through depreciation; (f) provide money for the payment of any taxes that may be assessed against the utility; and (g) compensate the Department for taxes that would be due the Department on the utility property if it were privately owned. The existing rates are, therefore, insufficient and unlawful.

5. Annual Adjustment Mechanism. The Department has contracted with Veolia to operate the Department's water utility pursuant to that certain Management Agreement (the "Agreement") entered into by the Department and USFilter Operating Services, Inc. (Veolia's predecessor) on March 21, 2002, and amended by that First Amendment to the Management Agreement (the "Amendment"; the Agreement and the Amendment together the "Management Agreement") entered into by and between the Department and Veolia on June 26, 2007. Under the Management Agreement, the Department pays to Veolia a Service Fee, which is comprised of a Fixed Fee and an Incentive Fee. The Management Agreement provides that the Fixed Fee paid to Veolia is adjusted each year. The Incentive Fee is a percentage, not to exceed 25% in any given year, of the Fixed Fee. The Department requests that the Commission establish an

annual adjustment mechanism for the Department's rates that allows the Department to incorporate the annual adjustment to the Service Fee into the Department's rates.

6. Authorization; New Schedule of Rates and Charges. Attached hereto as Exhibit 1 is a copy of the resolution adopted by the Board of Directors of the Department, which authorizes the Department to file a petition with the Commission seeking an increase in rates and charges on emergency and non-emergency bases. New schedules of rates and charges that are lawful, nondiscriminatory, reasonable and just will be proposed in the Department's emergency case-in-chief and in its non-emergency case-in-chief. The Department will seek approval of the emergency schedule of rates and charges on an interim basis, subject to refund, pending a final determination on the appropriate level of the Department's rates and charges.

7. Applicable Law. The Department considers IC §§ 8-1-2-42, -68 and -113 and IC ch. 8-1.5-4, among other statutes, to be applicable to the relief requested by this Petition.

8. Attorneys. The attorneys authorized to represent the Department in this proceeding, each of which is authorized to accept service of papers in this proceeding on behalf of the Department, are David T. McGimpsey, Brian W. Welch and Casey M. Holsapple, Bingham McHale LLP, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204 and Lauren R. Toppen, 1220 Waterway Boulevard, Indianapolis, Indiana 46202.

9. Application of 170 IAC 1-1.5. In the thirty (30) days prior to filing this Petition (the "Pre-Filing Period"), representatives of the Department and representatives of the Commission transmitted communications to each other. The communications took the form of written correspondence and telephone calls and concerned automated meter reading, water conservation and accounting system issues that were present in the Department's last rate case in Cause No. 43056. One Commission-requested meeting also occurred during the Pre-Filing

Period concerning the Indianapolis Local Public Improvement Bond Bank and its relationship with the Department. The Department believes some, or all, of these “holdover” issues might arise in this Cause. However, the Department does not believe that the communications during the Pre-Filing Period constitute *ex parte* communications under 170 IAC 1-1.5.

WHEREFORE, the Department requests that the Commission promptly publish notice, conduct an evidentiary hearing on the Department’s request for emergency relief and a prehearing conference on the Department’s non-emergency request, and take such further action as it deems necessary or appropriate, including the issuance of an Order on an emergency basis approving a new schedule of rates and charges for water utility service furnished by the Department. The Department further requests that the Commission thereafter issue a Final Order approving an increase in the Department’s rates and charges for water utility service, approving a new schedule of rates and charges for water utility service, approving a mechanism to annually implement changes to the Department’s rates based on the annual adjustment in the Department’s payments under the Management Agreement to Veolia and granting the Department all other appropriate relief.

Respectfully submitted,

Department of Waterworks of the  
Consolidated City of Indianapolis, Indiana

By:   
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Attorneys for the Petitioner, Department of  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that two (2) copies of the foregoing Petition were served, by hand delivery, this 24<sup>th</sup> day of February, 2009; to:

The Office of the Utility Consumer Counselor  
National City Center  
115 West Washington Street  
Suite 1500 South  
Indianapolis, Indiana 46204

  
An attorney for Petitioner, the Department  
of Waterworks of the Consolidated City of  
Indianapolis, Indiana

Courtesy copies hand-delivered to:

Bette J. Dodd, Esq.  
Timothy L. Stewart, Esq.  
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One American Square  
Suite 1700  
Indianapolis, IN 46282

James A. L. Buddenbaum, Esq.  
Parr Richey Obremskey Frandsen & Patterson LLP  
Capital Center South  
201 North Illinois Street  
Suite 300  
Indianapolis, IN 46204

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**Exhibit 1**

**Resolution Authorizing Rate Case Filing**

INDIANAPOLIS DEPARTMENT OF WATERWORKS  
BOARD OF DIRECTORS

RESOLUTION NO. 5, 2009

APPROVAL TO FILE RATE PETITION

WHEREAS, the Board of Directors of the Department of Waterworks of the Consolidated City of Indianapolis, Indiana (the "Board") is the governing body of the Waterworks District of the City of Indianapolis, Indiana (the "District"), operating pursuant to the provisions of IC ch. 8-1.5-4, IC 36-3-4-23, General Ordinance No. 112, 2001, of the Consolidated City of Indianapolis and Marion County, Indiana, and other applicable authorizing statutes, including IC ch. 36-1-3 and IC 36-9-2-14; and

WHEREAS, pursuant to Chapter 273 of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana, the Department of Waterworks (the "Department"), is the owner of the Indianapolis waterworks assets and has the duty to furnish an adequate water supply to its customers; and

WHEREAS, the Department has entered into that certain Management Agreement dated as of March 21, 2002 as amended by the First Amendment to the Management Agreement dated as of June 26, 2007, with Veolia Water Indianapolis, LLC, which was ratified by the Board of Directors of the Department ("Board"), for the operation and maintenance of the waterworks assets; and

WHEREAS, the Department furnishes water utility service to nearly one (1) million customers in Marion County, Indiana and in portions of Boone, Brown, Hamilton, Hancock, Hendricks, Morgan, and Shelby counties; and

WHEREAS, the Department's existing rates and charges were approved by the Indiana Utility Regulatory Commission (the "IURC") in its Order issued in Cause No. 43056 on April 4, 2007, and were adopted by the Board with its passage of Resolution 13, 2007, on April 25, 2007; and

WHEREAS, as a result of the ongoing financial market crisis, the Department's interest expense on its auction and variable rate debt has increased significantly, with payments rising from approximately \$32.6 Million in 2007 to approximately \$51.5 Million in 2008; and

WHEREAS, the Department's rates and charges no longer produce sufficient revenue to meet the Department's minimum revenue coverage ratios on its bonded indebtedness or to meet the Department's operating expenses, and the Department's operating cash reserves are being depleted; and

WHEREAS, a continued failure to meet the coverage ratios on the Department's bonded indebtedness will cause ratings agencies to downgrade the Department's bond issues, resulting in even higher interest rates and interest expense; and

WHEREAS, the Department has undertaken cost-cutting efforts, including \$1.5 Million in cuts to the Department's consulting budget from 2008 to 2009; and

WHEREAS, despite the Department's cost-cutting efforts, the increased interest expense and exhaustion of operating cash reserves will lead to serious financial deterioration of the utility, the inability to meet daily expenses and possibly the curtailment of service; and

WHEREAS, the Board finds that an emergency exists and that it is necessary to petition the IURC for emergency rate relief; and

WHEREAS, the Department's rates and charges are also no longer sufficient to fund capital expenditures, such as mandatory surface water plant upgrades, as well as other expenses necessary and incidental to the operation of the utility; and

WHEREAS, the Board finds that it is necessary to petition the IURC on a non-emergency basis for an increase in its rates and charges to fund necessary capital expenditures and other expenses necessary and incidental to the operation of the utility.

NOW, THEREFORE, BE IT RESOLVED by the Board that it hereby authorizes the Department to file a petition with the IURC for an increase in rates and charges on emergency and non-emergency bases (the "Petition"), such increases to be in an amount that, subject to IURC approval, are reflected in a revised schedule of rates and charges to be subsequently approved by the Board; and

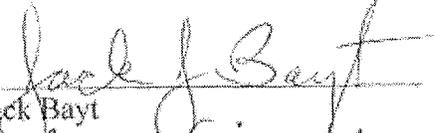
BE IT FURTHER RESOLVED by the Board that the Interim Executive Director in consultation with the Office of Corporation Counsel and the Office of Finance and Management is hereby authorized and directed to: (i) prepare, execute and deliver each and every document, certificate, instrument, agreement or affidavit as may be necessary, convenient or proper to effectuate the intent and purposes of the Petition, as appropriate; (ii) prepare, execute and deliver each and every document, certificate, instrument, agreement or affidavit as may be necessary, convenient or proper to effectuate the intent and purposes of these resolutions, as appropriate; and (iii) to take any and all such additional action as may be necessary, convenient or proper to effectuate the intent and purposes of these resolutions, as appropriate; and

BE IT FURTHER RESOLVED by the Board that it ratifies any and all actions of the Interim Executive Director, the Office of Finance and Management and the Office of Corporation Counsel previously undertaken as may have been necessary, convenient or proper to effectuate the intent and purposes of these resolutions.

ADOPTED during a meeting of the Board this 19th day of February, 2009.

**CONSOLIDATED CITY OF INDIANAPOLIS,**

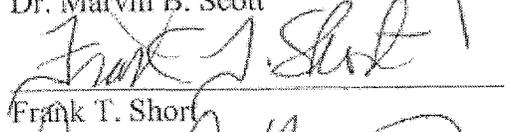
DEPARTMENT OF WATERWORKS,  
BOARD OF DIRECTORS

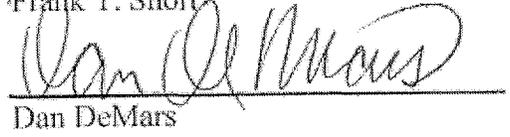
  
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Jack Bayt

  
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Larry Gigerich

  
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Samuel L. Odle

  
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Dr. Marvin B. Scott

  
\_\_\_\_\_  
Frank T. Short

  
\_\_\_\_\_  
Dan DeMars

Attest:

  
\_\_\_\_\_  
Jim Atterholt,  
Secretary-Treasurer