

the Commission pursuant to Ind. Code § 8-1-2-89 to provide sewage disposal service to customers in the FCF in rural Porter County, Indiana. Ind. Code § 8-1-30-5(f) provides that the Receiver appointed by the court has the same rights and duties under Indiana law as a utility company providing sewer service. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Background and Petitioner's Characteristics. The Indiana State Department of Health ("ISDH") issued an Emergency Order to the Utility on August 6, 2011 to abate any public health hazards, citing various violations that resulted in sewage discharge and ponding. On January 11, 2012, the Indiana Attorney General's Office filed a Verified Complaint for Preliminary and Permanent Injunction in the Porter County Superior Court to enforce the ISDH's Emergency Order to abate. On October 26, 2012, the OUCC filed its petition with the Commission in Cause No. 44262 asserting the Utility was not being operated properly and was being operated without a CTA. As a result, the Commission initiated an investigation for the purpose of assuring compliance with Commission Orders, remediation of severe deficiencies, and the provision of reasonable adequate sewage disposal service. On July 31, 2013, the Commission issued an Interim Order in Cause No. 44262, finding that the Utility had severe deficiencies it failed to remedy, and concluded that the case should proceed to hearing on receivership under Ind. Code § 8-1-30-5.

The Commission held a hearing on the issue of the acquisition of the utility or the appointment of a receiver on August 21, 2013 and issued an Order on October 2, 2013 finding the Attorney General should file an action in a court with jurisdiction, pursuant to Ind. Code § 8-1-30-5(f), seeking the immediate appointment of a receiver for the Utility. On October 7, 2013, the ISDH filed a motion for appointment of a receiver with the Porter County Superior Court. 1st American was appointed Receiver for the Utility on October 7, 2013. The Porter County Superior Court issued its Amended Court Order Appointing Receiver in Cause No. 64D02-1201-PL-527 on December 6, 2013. 1st American is a Receiver with authority over the Utility which furnishes wastewater utility services to approximately 88 homes in FCF in Liberty Township, Valparaiso, Porter County, Indiana.

3. Interim Emergency Relief Requested. Petitioner is requesting an immediate emergency increase in rates and charges pursuant to Ind. Code § 8-1-2-113. The emergency rates are being requested on an interim basis, subject to refund. Petitioner's current rates and charges for sewage disposal service were approved by the Commission in Cause No. 40157 on August 30, 1995. Specifically, Petitioner requests to increase its rates and charges on an across-the-board basis from \$65.00 per month to \$95.00 per month.

1st American's Petition indicated the current rates and charges no longer produce revenues sufficient to meet the minimum requirements to cover and pay the expenses for running the sewage collection and treatment system at FCF. The Petition noted the Porter County Superior Court issued an injunction in October 2012 requiring the Utility to pump and haul

2001 Order in Cause No. 41741. In 2008, all of Centurian Utilities' real property was transferred to MTA, LLC without Commission approval. On April 24, 2008, the Indiana Secretary of State administratively dissolved Centurian. See the Commission's Order in Cause No. 44262. Throughout this Order, Centurian Utilities and MTA, LLC are collectively referred to as "the Utility".

sewage from the system as frequently as needed to keep the discharging sewage from the ground surface. After being appointed Receiver, 1st American hired Midwest Contract Operations (“MCO”) to operate the sewage collection and treatment system. MCO discovered numerous problems with the sewage collection and treatment system’s septic mounds and pumps. Petitioner indicated there are insufficient resources available to replace and/or repair the pumps. The Petition further noted that when the court appointed 1st American as the Receiver, it received no money from the Utility to run the sewage collection and treatment system and 1st American has been billing the residents of FCF \$65.00 per month, but has not been receiving full payment from every customer. 1st American’s Petition requests an increase in monthly rates in order to cover existing costs due to the condition of the system.

4. Summary of Evidence Presented. At the preliminary hearing in this Cause on May 27, 2014, Petitioner offered its Exhibit 1 and Late Filed Exhibit 1 into the evidentiary record in support of its request for emergency rate relief. OUCC counsel noted it believes the exhibits were sufficient to support 1st American’s request for emergency rate relief on an interim basis and did not object to the exhibits being offered into evidence.

Petitioner’s Exhibit 1 included a letter from the Fox Chase Farms Property Owners Association in support of an increase in monthly utility rates to \$92.50. Petitioner also included a letter from MCO to 1st American in Exhibit 1. The letter outlined numerous problems with the sewage collection system and proposals to correct the problems. The letter included both the cost estimates to correct identified problems and estimates for operations and maintenance expenses of the system for 2014. The estimates total \$43,948.

Petitioner submitted, as part of Exhibit 1, monthly receivership reports and cash flow statements for December 2013 through April 2014 that it was required to submit to the Porter County Superior Court. The reports provide an overview of 1st American’s monthly income and operating expenses. The reports project the utility’s 12-month income to be \$100,320 with projected expenses of \$99,450 or net operating income of \$870 for the 12-month period. The April 2014 receivership report and cash flow statement includes an excerpt from an ISDH report documenting the April 8, 2014 discharge of sewage onto the ground surrounding the system’s septic mounds.

Petitioner included, in Exhibit 1, a Memorandum of Understanding (“MOU”) between the Town of Chesterton, 1st American, the Fox Chase Farms Property Owners Association, and Whispering Sands MHC, LLC (“Whispering Sands”) for connection to the Town of Chesterton’s sewer collection system. The MOU indicates the Petitioner, the FCF, and the Whispering Sands mobile home park will abandon the present utility servicing their respective properties when the proposed connection to the Town of Chesterton’s system is completed. The MOU provides an estimate of the monthly cost of connection to the new system to be \$137.77 per FCF customer. Also included as part of Exhibit 1, was a letter from McMahan Engineering that provides an overview of anticipated services that will be required while the Town of Chesterton constructs its sanitary sewer extension to service the FCF.

Petitioner’s Late-Filed Exhibit 1 summarized four different proposals from outside sources to provide sanitary sewer service to FCF. Proposals were submitted to FCF from Aqua-

Indiana, Inc.; Astbury Water Technology, Inc.; Town of Chesterton Utilities; and the Damon Run Conservancy District. Each proposal provided information regarding what services would be provided and the estimated costs for the services. The information also included an agreement for professional engineering service from NIES Engineering, Inc.

5. Commission Discussion and Findings. The Commission’s emergency powers are found in Ind. Code § 8-1-2-113, which states in relevant part:

[t]he commission may, when it considers necessary to prevent injury to the business or interests of the people or any public utility of this state in case of any emergency to be judged by the commission, temporarily alter, amend, or with the consent of the public utility concerned, suspend any existing rates, service, practices, schedules, and order relating to or affecting any public utility or part of any public utility in this state.

Consequently, the Commission has the authority to evaluate the evidence presented, determine whether an emergency exists and take such action as it deems necessary to prevent harm to the utility or the public.

A grant of emergency relief requires proof that a situation exists which absent immediate corrective action will result in serious harm to either, or both, the petitioning utility and its customers. *Hoosier Energy Rural Elec. Coop., Inc.*, Cause No. 37294, 1984 Ind. PUC LEXIS 777, at *5 (IURC 02/15/1984). The Petitioner bears the burden of presenting sufficient evidence to establish an emergency situation exists. *Petition of HVL Utilities, Inc. and HVL Services*, Cause Nos. 36630 and 36631, 1983 Ind. PUC LEXIS 682, at *14 (IURC 01/11/1983). The Commission has typically considered the following four factors in making a determination on a request for emergency relief: (1) the possible curtailment of service; (2) serious financial deterioration; (3) an inability to meet daily expenses; and (4) cost-cutting efforts. *Id.* These four factors are neither inclusive nor exclusive. If the evidence demonstrates that an emergency situation exists such that immediate action is required to prevent serious injury, then the Commission should grant a reasonable level of interim emergency rate relief subject to terms and conditions that the Commission deems appropriate. *Id.* at *14. Ind. Code § 8-1-2-113 is broad in its terms, and comprehensive in meaning. *State of Ind., ex rel. Indpls. Traction and Terminal Co. v. Lewis*, 120 N.E. 129, 131 (Ind. 1918). The Indiana Supreme Court has indicated this law contemplates service supervision by the Commission and to that end, it should be liberally construed with a view to public welfare. *Id.* Further, while discussing the Commission’s ability to act during an emergency, the Court stated, “Under this section the commission may judge of the full scope and requirements of the emergency, its probable effects and duration, and to make such order as the exigencies of the case demand.” *Id.*

1st American’s evidence demonstrates the utility’s current rates and charges no longer produce revenues sufficient to meet the minimum requirements to cover and pay the expenses for running the sewage collection and treatment system at FCF. The utility’s estimated income and expenditures support a minimum monthly rate of \$94.18 per customer, as summarized in the following table:

2014 Proposed Cash Operating Expenses

Real Estate/Personal Property Taxes	\$ 3,800
Property Insurance	1,800
Legal & Accounting	10,000
Administrative	250
Management Fees	15,840
Grounds Care	2,000
General Maintenance	4,000
MCO contract labor	44,200
Engineering Services	8,400
Equipment Parts Reserve	5,500
Electric, Common Utilities	3,660
Total Operating Expense	99,450
Divide by: Number of FCF homeowners	88
Annual Operating Expense per FCF homeowner	1,130.11
Divide by: 12 months	12
Monthly Operating Expense per FCF homeowner	<u>\$ 94.18</u>

We find that if an increase in rates and charges is not ordered on an emergency basis, Petitioner will suffer serious financial deterioration and be unable to meet the utility's daily expenses. Based on the evidence of record, we further find that if Petitioner's rates are not increased on an emergency basis, a revenue shortfall is likely to occur and could result in a curtailment of service to Petitioner's customers. The amount of the requested emergency increase is appropriate to cover Petitioner's expected operating expenses over the next 12-month period.

We also find that Petitioner's evidence establishes the existence of an emergency. The Petition noted the Porter County Superior Court issued an injunction in October 2012 requiring the utility to pump and haul sewage from the system as frequently as needed to keep the discharging sewage from the ground surface. Petitioner's evidence indicates that as recently as April 8, 2014, the ISDH documented a discharge of sewage onto the ground surrounding the system's septic mounds. 1st American needs sufficient revenue to provide sewage disposal free from sewage discharges onto the ground. We further note that the OUCC has not objected to Petitioner's request for an increase in its rates and charges on an emergency basis. The OUCC opined at the preliminary hearing that Petitioner has provided sufficient information to constitute its case-in-chief for emergency rate relief.

Accordingly, the Commission finds that 1st American's request for an emergency rate increase from \$65.00 to \$94.18 per month should be and is hereby granted. 1st American's emergency rates shall be approved on an interim basis and subject to refund.

The Commission also notes that based on the evidence presented it appears that 1st American intends to transfer its utility assets to the Town of Chesterton and relinquish its CTA. 1st American is cautioned that the Commission has authority over its CTA and the sale, assignment, transfer, lease or encumbrance of a public utility's franchise, works, or system pursuant to Ind. Code § 8-1-2-83 and Ind. Code § 8-1-2-89. Pursuant to Ind. Code § 8-1-2-84, the Commission also has authority over 1st American's merger or consolidation with another utility. Therefore, we find that 1st American will need to Petition the Commission, under a separate Cause, for approval if it seeks to transfer the assets of the utility or relinquish its CTA. If this is not what 1st American intends to do with the assets of the utility, it needs to file testimony and additional evidence clarifying its intentions and support for permanent rates.

6. Additional Conditions on Interim Emergency Rate Relief. Based on the evidence presented, the Commission further finds that the emergency rates authorized herein shall be subject to the following additional conditions:

A. Petitioner shall update and file with the Commission and the OUCC monthly cash flow statements reflecting any changed conditions beginning with July 2014 and continuing through such time as a final Order is issued in this Cause. Such filings shall be due by the 10th of the month following the month of the cash flow statement.

B. Petitioner shall file monthly unaudited financials, including a balance sheet and a statement of revenues and expenses, beginning with July 2014 and continuing until such time as a final Order is issued in this Cause. Such filings shall be submitted at the same time cash flow statements are filed with the Commission.

C. Petitioner shall not enter into any contracts, agreements, joint ventures, or other type of transaction relating to the operation, management, sale or transfer of the sewer utility or its assets without prior Commission approval.

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

1. Petitioner shall be and is hereby authorized to increase its existing rates and charges on an emergency basis from \$65.00 to \$94.18 per month, subject to refund pending the Commission's Order on permanent rate relief or until otherwise ordered by the Commission as provided in Finding Paragraph 5 and subject to the conditions set forth in this Order.

2. Prior to placing into effect the rates and charges approved herein, Petitioner shall file with the Water/Sewer Division of the Commission a schedule of rates and charges in a manner consistent with this Order and the Commission's rules for filing such schedules. When approved by the Commission's Water/Sewer Division, such schedule shall cancel all prior rates and charges.

3. Petitioner shall comply with the conditions set forth in Finding Paragraph 6.
4. This Order shall be effective on and after the date of its approval.

STEPHAN, MAYS, WEBER, AND ZIEGNER CONCUR:

APPROVED: JUL 23 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**