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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN)
WATER COMPANY, INC. ("INDIANA AMERICAN"))
AND THE CITY OF LAKE STATION, INDIANA)
("LAKE STATION") FOR APPROVAL AND)
AUTHORIZATION OF: (A) THE ACQUISITION BY)
INDIANA AMERICAN OF LAKE STATION'S)
WATER UTILITY PROPERTIES (THE "LAKE)
STATION WATER SYSTEM") IN LAKE COUNTY,)
INDIANA IN ACCORDANCE WITH A PURCHASE)
AGREEMENT THEREFOR; (B) APPROVAL OF)
ACCOUNTING AND RATE BASE TREATMENT; (C))
APPLICATION OF INDIANA AMERICAN'S AREA)
ONE RATES AND CHARGES TO WATER SERVICE)
RENDERED BY INDIANA AMERICAN IN THE)
AREA SERVED BY THE LAKE STATION WATER)
SYSTEM ("THE LAKE STATION AREA"); (D))
APPLICATION OF INDIANA AMERICAN'S)
DEPRECIATION ACCRUAL RATES TO SUCH)
ACQUIRED PROPERTIES; AND (E) THE)
SUBJECTION OF THE ACQUIRED PROPERTIES TO)
THE LIEN OF INDIANA AMERICAN'S MORTGAGE)
INDENTURE.)

CAUSE NO. 45041

APPROVED: AUG 15 2018

ORDER OF THE COMMISSION

On January 19, 2018, Indiana American Water Company, Inc. ("Indiana American") and the City of Lake Station, Indiana, ("Lake Station" or the "City") (collectively "Joint Petitioners") initiated the above-captioned Cause by filing a Joint Petition with the Indiana Utility Regulatory Commission ("Commission"), seeking approval of Indiana American's acquisition of Lake Station's water utility properties (the "Lake Station Water System"). That same day, Joint Petitioners filed their case-in-chief.

Pursuant to notice and as provided in 170 IAC 1-1.1-15, a prehearing conference was held in this Cause on February 20, 2018. As of the prehearing conference, the parties of record were Joint Petitioners and the Indiana Office of Utility Consumer Counselor ("OUCC"). On March 7, 2018, based upon the discussions and agreements reached at the prehearing conference, a Prehearing Conference Order was issued establishing a procedural schedule and addressing related matters.

On February 22, 2018, the Town of Schererville ("Schererville"), a sale for resale customer of Indiana American, filed a Petition to Intervene, and on February 28, 2018, the City of Crown

Point (“Crown Point”), one of Indiana American’s largest wholesale water customers, also petitioned to intervene. Both interventions were granted on March 7, 2018.

On March 29, 2018, the OUCC, Crown Point, and Schererville each filed their case-in-chief. Joint Petitioners on April 9, 2018, filed their rebuttal testimony. They also filed a notice of witness substitution advising that the prefiled direct testimony of Gary M. VerDouw was being adopted by Gregory P. Roach and Matthew Prine.

The Presiding Officers issued a docket entry on April 20, 2018, requesting information from Indiana American regarding its most recent Comprehensive Planning Study for the Northwest District. Indiana American filed its response on April 23, 2018.

The Commission held an evidentiary hearing in this Cause commencing at 9:00 a.m. on April 23, 2018, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The hearing concluded on April 24, 2018. Joint Petitioners, the OUCC, Crown Point, and Schererville appeared by counsel at the hearing and participated.

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

1. Notice and Jurisdiction. Notice of the evidentiary hearing was given as required by law. Indiana American is a public utility as defined in Ind. Code § 8-1-2-1 and, as such, is subject to the Commission’s jurisdiction. The Lake Station Water System is a municipally owned utility as defined in Ind. Code § 8-1-2-1(h). Under Ind. Code ch. 8-1-30.3 and Ind. Code § 8-1.5-2-6.1,¹ the Commission has jurisdiction over Indiana American’s proposed purchase of a municipally owned utility; therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. Characteristics of the Petitioners.

A. Indiana American’s Characteristics. Indiana American is an Indiana corporation engaged in providing water utility service to the public in numerous communities throughout Indiana, including Lake County, for residential, commercial, industrial, public authority, sale for resale, and fire protection purposes. Its principal office is in Greenwood, Indiana. Indiana American serves approximately 300,000 water customers and also provides sewer utility service in two Indiana counties.

B. Lake Station’s Characteristics. Lake Station is a municipality located in Lake County, Indiana, that owns and operates a water system serving approximately 3,443 metered customers. For purposes of its rates, charges, and financing, Lake Station withdrew from the Commission’s jurisdiction on February 13, 1989. The Lake Station Water System is near Indiana American’s Northwest Indiana Operations (“Northwest District”) and includes six production wells, a 400,000 gallon elevated tank, a 1.5 million gallon (“MG”) ground storage tank and booster

¹ Because this Cause was initiated on January 19, 2018, before amendments to Ind. Code ch. 8-1-30.3 and Ind. Code 8-1.5-2-6.1 were adopted and became effective on July 1, 2018, under P.L. 64-2018, Sec. 1 and Sec. 2, for purposes of this Order, the statutes referenced and applied are the versions in effect on January 19, 2018, unless otherwise expressly stated.

station, and a water treatment plant placed in service in 2015. It also includes approximately 3,275 feet of raw water collection main connecting the production wells to the water treatment plant, approximately 15,310 feet of new water main and appurtenances conveying finished water from the water treatment plant to the 1.5 MG ground storage tank, over 240,000 feet of water main ranging from 1 to 12 inches, approximately 347 buried line valves, and 3,569 water meters.

3. Relief Requested. Joint Petitioners request the Commission: (1) grant such approvals as necessary to consummate acquisition of the assets comprising the Lake Station Water System by Indiana American on the terms described in the Joint Petition and the Asset Purchase Agreement between Indiana American and Lake Station (Attachment MP-3); (2) authorize Indiana American, without regard to the amounts recorded on Lake Station's books and records and without regard to any grants or contributions Lake Station may have received, to record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed in Joint Petitioners' evidence;² (3) authorize Indiana American to apply the rules, regulations, rates, and charges generally applicable to Indiana American's Area One rate group, as the same may be changed from time to time, for service Indiana American provides in the areas Lake Station currently serves; (4) authorize Indiana American to apply its existing depreciation accrual rates to the Lake Station Water System; and (5) approve encumbering the Lake Station Water System property with the lien of Indiana American's mortgage indenture.

4. Joint Petitioners' Direct Evidence. Joint Petitioners presented the direct testimony of Christopher Anderson, Mayor of the City of Lake Station, Matthew Prine, Director of Community and Government Affairs for Indiana American, and Gregory P. Roach, Senior Manager of Revenue Analytics for American Water Works Service Company.

A. Ind. Code §§ 8-1.5-2-6.1 and 8-1-30.3-5. Mr. Prine testified regarding Ind. Code § 8-1.5-2.6.1 ("Section 6.1") which was enacted in 2016 and governs the relief Joint Petitioners seek. He explained that prior to the passage of Section 6.1, Ind. Code ch. 8-1-30.3 ("Chapter 30.3") was established as a new chapter during the 2015 legislative session governing the process and standards to be applied in the sale of distressed utility property. According to Mr. Prine, during the 2016 legislative session, Section 6.1 was passed as a new section in the Code to change the process for sales of municipally owned utilities, and Chapter 30.3 was amended. Mr. Prine testified that, when taken together, these changes redefined the Commission's role and the standards to be applied in approving the sale or disposition of non-surplus municipal utility property.

Mr. Prine testified that one result of these legislative changes is to encourage regionalization as a strategy in addressing Indiana's ongoing infrastructure needs, by allowing a

² In the Joint Petition, Indiana American sought authority to record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the full purchase price, incidental expenses, and other acquisition costs. The request to include an amount equal to the full purchase price was modified in Joint Petitioners' case-in-chief because the Asset Purchase Agreement requires Indiana American, at its cost, to demolish the elevated water tank after closing and convey the land upon which this asset is located back to Lake Station, resulting in neither the tank nor this real estate being used for water service.

public water or wastewater utility that acquires the utility property of a “distressed utility” to petition the Commission to include the “cost differential” associated with the acquisition as part of its rate base. He noted the term “distressed utility” is defined by statute (Ind. Code §§ 8-1-30.3-2 and -5(a)). Mr. Prine stated that, in addition to these legislative changes, an Indiana Finance Authority report on water utility infrastructure needs throughout Indiana (the “2016 IFA Report”) encouraged system regionalization and emphasized the need for: (1) prioritizing replacement of aging or failing water mains and (2) developing a schedule of asset management that organizes the construction needed to maintain and extend the life of a utility system. Mr. Prine testified that the Lake Station Water System faces challenges in all of the areas the 2016 IFA Report highlights.

Mr. Prine further testified that, due to the legislative changes, the process for the sale of a municipally owned water or sewer utility has changed. He explained that a municipality must now obtain the Commission’s approval to sell its water or sewer utility, with this grant of approval determined under Section 6.1 or Ind. Code § 8-1-30.3-5 (“Section 30.3-5), as applicable.

Mr. Prine explained that under the current process, the Mayor/Council President or Council of a city or town considering an acquisition must appoint three appraisers to appraise the system’s value. Upon return of the appraisal, the municipality must hold a public hearing on the proposed acquisition. If the municipality decides to sell, an ordinance must be adopted approving the proposed acquisition. For ordinances adopted pursuant to this process after March 28, 2016, Commission approval is required under Section 6.1. The standard for approval is whether the sale, according to the proposed terms and conditions, is in the public interest. If a petition is filed pursuant to Ind. Code § 8-1-30.3-5(d) (“Section 30.3-5(d)”), and the Commission makes the required findings set forth in Ind. Code § 8-1-30.3-5(c) (“Section 30.3-5(c)”), according to Mr. Prine, Section 6.1 directs that the proposed sale is in the public interest. Mr. Prine stated that under Section 6.1, the purchase price is deemed to be reasonable if it does not exceed the appraised value. He described why he believes the proposed acquisition of the Lake Station Water System followed this process. Mr. Prine testified the Lake Station Water System is considered a distressed utility under Ind. Code § 8-1-30.3-6(4) and (5). The Joint Petitioners, therefore, filed their petition under Section 30.3-5, and he outlined the various requirements of Sections 30.3-5(c) and (d).

Mr. Prine testified the appraised value of the Lake Station Water System is \$20,380,600, of which \$20,200,000 represents water infrastructure assets, and \$180,600 is attributable to real estate. The purchase price Indiana American proposes to pay the City is \$20,680,000; therefore, the purchase price is \$299,400 more than the appraised value. But, Mr. Prine testified the purchase price actually exceeds the appraised value of the assets being acquired by a greater amount. He explained that because of Lake Station’s interconnection with Indiana American, the elevated storage tank will not be needed. Under the Asset Purchase Agreement, Indiana American is required post-closing, after opening its connection with Lake Station, to remove the 400,000 gallon elevated storage tank and convey the land upon which this tank is located back to the City (Attachment MP-3 at p. 10). As a result, Indiana American proposes the appraised value of the tank (\$177,130) and the land (\$4,000) be deducted from the system appraisal, that Indiana American’s estimated tank demolition costs (\$50,000) be added to the purchase price, and the difference between the adjusted purchase price of \$20,730,000 (\$20,680,000 + \$50,000) and the adjusted appraised value of \$20,199,470 (\$20,380,600 - \$181,130), i.e., \$530,530 (\$20,730,000 - \$20,199,470) not be included in its net original cost rate base. Thus, under Indiana American’s

proposal, the original cost rate base for the Lake Station Water System will be \$20,339,470, assuming \$140,000 of incidental expenses and other costs of acquisition and an adjusted appraised value of \$20,199,470.

With respect to the notice requirements in Section 30.3-5(d), Mr. Prine testified that he believes the notice Section 30.3-5(d)(1) requires was provided. Lake Station's customers were notified of the proposed acquisition and that they will be charged, after closing, Indiana American's Area One rates, resulting in a water customer using 5,000 gallons paying \$44.17 per month.³ He testified the acquisition will not cause the rates to Indiana American's customers to increase by more than one percent of Indiana American's base annual revenues, but Indiana American, nonetheless, provided notice to its customers.

In addressing the requirements in Section 30.3-5(d)(4) and describing Indiana American's plan for improvements to the Lake Station Water System, Mr. Prine testified this plan, in part, is to include the Lake Station Water System in Indiana American's prioritization model so Indiana American can commence the overall infrastructure replacement plan the 2016 IFA Report contemplates for all Indiana water utilities. In addition, Indiana American's interconnection with the Lake Station Water System will enable reliable service to Lake Station's customers from Indiana American's existing Northwest District treatment capacity. Mr. Prine testified that, through this connection, Indiana American will provide daily water service at a lower operational cost than operating Lake Station's water treatment and softening plant. He further testified that it is anticipated Lake Station's treatment facility will be maintained and operated regularly to ensure its reliability, but due to the high cost to operate this treatment plant, Indiana American intends to only use the plant during peak demand days or as emergency supply. Mr. Prine stated that Indiana American estimates \$2,800,000 in capital improvements will be made in the first five years of its ownership of the Lake Station Water System⁴ and that Lake Station's distribution system needs improvements which will be planned through Indiana American's capital program and prioritization model.

After describing why he believes Indiana American satisfied the requirements in Sections 30.3-5(c) and 30.3-5(d), Mr. Prine summarized how Section 6.1 interacts with Chapter 30.3. According to Mr. Prine, if the purchase price of the proposed acquisition does not exceed the appraised value and if the elements of Sections 30.3-5(c) and 30.3-5(d) are met, Section 6.1 directs the Commission to issue a final order approving the sale within 210 days after the filing of Joint Petitioners' case-in-chief. The order is to authorize the acquiring utility to record as the net original cost of the utility plant in service assets being acquired: (1) the full purchase price; (2) incidental expenses; and (3) other costs of acquisition, allocated in a reasonable manner among appropriate utility plant in service accounts. Mr. Prine testified that because the amount of the purchase price Indiana American seeks to include in rate base does not exceed the appraised value and the

³ Prior to the evidentiary hearing, Indiana American filed a correction to Mr. Prine's prefiled testimony revising the amount of its current rate for 5,000 gallons per month from \$44.17 to \$45.71. As revised, Lake Station's customers will be charged \$45.71 after closing, not \$44.17.

⁴ Under Section 6.4(d) of the Asset Purchase Agreement, Indiana American agreed to invest in replacing aging water utility infrastructure, stating: "The investment is anticipated to include as much as two million eight hundred thousand dollars (\$2,800,000.00) of investment in the Assets." Attachment MP-3 at p. 10.

elements of Sections 30.3-5(c) and (d) are met, Section 6.1(d) directs the Commission to issue an Order approving the sale.

B. Proposed Acquisition and Asset Purchase Agreement. Mayor Anderson testified regarding the proposed acquisition of the Lake Station Water System. Mayor Anderson explained that operation of this utility is controlled by the City's Public Works Department. Both historically and in the present, the Public Works Department has lacked the time, technical expertise, and resources to manage a water utility, particularly in today's age of drinking water regulations. Mayor Anderson testified that Lake Station's constituents, who are also the utility's customers, deserve a level of service the City is ill-equipped to provide. He noted that every repair or infrastructure change represents increased costs to customers, and that is difficult for a small community. Additionally, Mayor Anderson stated the City does not have the funds to finance the repair or replacement of a catastrophic loss to an aging water system. He testified the cost to customers associated with Lake Station owning and managing the utility is greater than if it is operated by Indiana American, which is well-equipped to address Lake Station Water System's issues.

The appraisal Mayor Anderson sponsored as Attachment CA-1 states there was moderate and steady development of the City's water system from 1979 to 2013 when the City began moving forward with implementing its 2012 Water Improvements Plan ("2012 Plan"). The 2012 Plan, which was developed by Lake Station's engineering consultant, American StructurePoint Inc. of Indianapolis, recommended the City construct five new replacement wells and new raw water collection pipelines; rehabilitate an existing well; construct a new two MG per day ("MGD") ground water treatment plant, improve the existing 1.5 MG ground storage tank and booster pumping station, and reinforce the water distribution system. According to the appraisal, these improvements were completed and in service by year-end 2015. (Jt. Petitioners' Ex. 3, Attachment CA-1 at p. 5)

Mayor Anderson testified the City followed the statutory process necessary to sell its water assets, beginning these discussions in March 2016. A proposed purchase agreement was received from Indiana American in approximately July 2017. Arms-length negotiations were conducted, resulting in the Asset Purchase Agreement being finalized on September 27, 2017. Mayor Anderson testified that to implement the sale, the Lake Station City Council on February 23, 2017, voted to appoint Tom Bochnowski of Bochnowski Appraisal, Kenneth Buczek of DVG Inc., and Judith Cleland of Cleland Environmental as the official appraisers of the Lake Station Water System. He testified that on March 13, 2017, Lake Station received the appraisal, a copy of which he sponsored (Attachment CA-1).

The appraisal includes a Return of Appraisal dated June 24, 2016, (Attachment CA-1 at p. 1) signed by the three official appraisers. This Return of Appraisal evidences the water utility's appraised value on June 24, 2016, was \$20,380,600. The appraisal also includes a subsequent Return of Appraisal dated March 13, 2017, again valuing the Lake Station Water System at \$20,380,600. (Attachment CA-1 at p. 87) The same appraisers did not, however, sign both returns. Mr. Bochnowski and Ms. Cleland signed the 2016 and 2017 Return of Appraisal. Russell Jacob Pozen signed the 2017 Return of Appraisal rather than Kenneth L. Buczek who

signed the 2016 Return of Appraisal, because Mr. Buczek had retired. Public's Ex. 2, Attachment ERK-9 at p. 2.

Mayor Anderson testified that the required public hearing was held on April 24, 2017, following notice published on March 22, 2017. The Mayor further testified that the City enacted Ordinance No. 2017-03 on June 8, 2017. This Ordinance (Attachment CA-2) states that on February 23, 2017, the City of Lake Station Common Council adopted a resolution to proceed with exploring the potential sale of the water utility and authorized the appointment of three appraisers. Ordinance No. 2017-03 also states the price for the sale of the Lake Station Water System shall be \$20,680,000.

Mayor Anderson testified that Mr. Prine and other Indiana American officials attended numerous City Council meetings to provide an opportunity for customers to get answers directly from Indiana American. He stated the City held additional meetings, in excess of the statutory requirements, to determine public opinion and receive input upon the proposed sale. Mayor Anderson testified that, while some customers expressed opposition to the sale, the large majority of customer opinion has been favorable, and it was clear the citizens were overwhelmingly in favor of the proposed transaction.

The Asset Purchase Agreement, sponsored by Mr. Prine as Attachment MP-3, sets forth the terms and conditions of the proposed sale. Mr. Prine testified that Indiana American proposes to acquire all of the property described in Section 2.1 of the Asset Purchase Agreement at a purchase price of \$20,680,000. He testified the purchase price was determined using the appraised value; however, Indiana American has agreed to pay more than that value but is limiting what Indiana American seeks to include in rate base to the appraised value of the assets being purchased. Mr. Prine testified that consummation of the transaction is conditioned on obtaining certain approvals from the Commission, including recognition of the purchase price up to the value of the assets being acquired, plus transaction costs, in net original cost rate base, and the application of Indiana American's Area One rates to Lake Station's water customers.

Mr. Prine testified that Lake Station's water customers and Indiana American's customers will benefit from the acquisition. He testified that under the City's ownership, Lake Station's Water System has experienced rising operating costs, in part because of the high filtration and softening cost associated with the City's recently constructed water treatment plant. Mr. Prine testified that under Indiana American's ownership, Lake Station's customers will see lower rates, long-term asset management and investment, and access to lower water production costs because the interconnection between the City's system and Indiana American's will enable Indiana American to deliver high quality treated Lake Michigan water, which has naturally low hardness. He further testified that Lake Station customers will gain full-time management of their water system including, but not limited to, a full-time operations staff, 24/7 customer service and emergency response, enhanced security measures, and full-time engineering and water quality specialists. The Lake Station Water System will also be included in Indiana American's prioritization model, allowing planning and asset management needs like those the 2016 IFA Report identified to be met.

C. Accounting and Ratemaking Treatment. Mr. Roach testified that Attachment GMV-1 is the journal entry Indiana American is proposing for the Lake Station Water System acquisition. He noted the purchase price for the acquisition includes a cost differential as that term is defined in Ind. Code § 8-1-30.3-1. Mr. Roach testified that as part of the agreed conditions to closing, the Joint Petitioners seek an Order that the full adjusted purchase price of \$20,730,000, minus the amount in excess of the appraised value, plus incidental expenses and other costs of acquisition estimated at \$140,000, including the cost differential, shall be included in Indiana American's rate base for ratemaking purposes.

Mr. Roach testified that, for purposes of the proposed journal entry, Indiana American excluded from the purchase price to be included in rate base the amount in excess of the appraised value of the assets being acquired. This was done by separating the full purchase price into two amounts: (1) the purchase price to be recorded and (2) the amount in excess of appraised value. Indiana American proposes to record the net original cost of the Lake Station Water System in the manner reflected in the proposed journal entry and the amount in excess of appraised value in NARUC Account 114, with the latter not included in net original cost rate base.

Mr. Roach explained the calculation of the Amount in Excess of Appraised Value. He testified that Indiana American's actual cash outlay at closing will be \$20,680,000. In addition to that and as explained by Mr. Prine, Mr. Roach stated that Indiana American must demolish and remove from service the 400,000 gallon elevated storage tank at an estimated demolition cost of \$50,000, which is a liability undertaken as of the closing; therefore, this amount will be recorded as an asset retirement obligation at the closing and is additional consideration Indiana American is paying, hence, additional purchase price. That makes the total purchase price \$20,730,000. Given the demolition obligation in the Asset Purchase Agreement, Mr. Roach's perspective is that Indiana American is not actually acquiring the 400,000 gallon elevated storage tower, but instead, must demolish it and return ownership of the clean site to Lake Station. As such, Mr. Roach excluded the appraised value of the storage tower and its underlying real estate from the asset value Indiana American is acquiring for purposes of comparing the purchase price to the appraised value. This results in a final purchase price that exceeds the appraised value of the assets being acquired by \$530,530.

Mr. Roach testified the purchase price is reasonable even when the amount in excess of the appraised value is considered, but to minimize issues in this Cause, Indiana American is not asking to include this amount in net original cost rate base. The amount of the purchase price proposed to be included in net original cost rate base is \$20,199,470. Mr. Prine testified the depreciation accrual rates to be applied to the Lake Station Water System assets will be the rates the Commission approved in Cause No. 43081 on November 21, 2006, as included in the calculation of rates with the approval of Indiana American's rate case in Cause No. 43187 on October 10, 2007, as the same may be changed in Indiana American's depreciation case, Cause No. 44992.

Mr. Roach testified that Indiana American has access to the necessary funds to support the acquisition, with those funds coming initially from internally generated funds. The projected investment to acquire the Lake Station Water System is equal to approximately 2.2% of Indiana American's total capital structure as of June 30, 2017, and thus, the acquisition will not impair Indiana American's ability to raise necessary capital on reasonable terms while maintaining a

reasonable capital structure. Mr. Prine described the encumbrance that will be placed on the Lake Station Water System assets as a result of the acquisition under Indiana American's general mortgage indenture which secures most of Indiana American's utility property for the benefit of Indiana American's bond holders.

Mr. Roach also testified regarding Indiana American's intention to apply Indiana American's Area One rates for water service and private and public fire service to the City's water customers. He stated that Lake Station will be operated as part of Indiana American's Northwest District, and the customers served in the Northwest District are all subject to Indiana American's Area One rates; therefore, applying these rates and charges to Lake Station's current water customers is just and reasonable. Mr. Prine testified that the monthly bill for a Lake Station residential customer using 5,000 gallons will decrease from \$46.35 to \$45.71 for customers with fire protection, based on the current tariff in effect for both utilities. Mr. Prine further testified that given the small size of the Lake Station Water System, the rates Indiana American charges are not expected to increase unreasonably as a result of acquiring this system.

5. OUCC's Evidence. Edward R. Kaufman, CRRA, Water-Wastewater Division Assistant Director, testified on behalf of the OUCC. He stated approximately \$7,366,043 in plant that Indiana American proposes to acquire will not be used and useful in its provision of water service; therefore, the proposed acquisition fails to comply with Section 30.3-5(c)(1). From Mr. Kaufman's perspective, Indiana American failed to provide sufficient testimony or an engineering analysis from which the Commission can conclude Lake Station's water softening and treatment plant and supply wells are reasonably necessary after closing for the provision of water service by Indiana American. Mr. Kaufman testified that a couple sentences on pages 16 and 17 of Mr. Prine's direct testimony in which Mr. Prine testifies that Indiana American will only use the Lake Station water treatment plant during peak day demands or as emergency supply represent the totality of Indiana American's evidence on this issue and do not show these assets are needed for emergency supply or reasonably necessary to provide water service. He testified the Indiana Court of Appeals, in discussing the used and useful standard, has stated:

A review of prior rate orders indicates that the Commission has developed a bifurcated test for determining the 'used and useful' status of a utility's property. **The Commission's 'used and useful' standard requires: (1) that the utility plant be actually devoted to providing utility service, and (2) that the plant's utilization be reasonably necessary to the provision of utility service.** *See, e.g., In re Indianapolis Water Co.* (1964 Ind. Pub. Serv. Comm'n), Docket No. 30,022, June 17, 1964 (property held for future use was not 'reasonably necessary'); *In re Indianapolis Water Co.* (1958 Ind. Pub. Serv. Comm'n), 26 P.U.R.3d 270 (plant used only during peak demand period was 'reasonably necessary'); *In re Indiana Gas & Water Co.* (1952 Ind. Pub. Serv. Comm'n), Docket No. 23,584, Sept. 25, 1952 (property under construction was not 'actually in service'). (emphasis as shown in Public's Ex. 2 at p. 7)

Mr. Kaufman testified that if Indiana American chooses to maintain Lake Station's water treatment facility and supply water wells for peak demand and emergency supply, its choice does not qualify these assets as plant whose utilization is reasonably necessary. He deferred to OUCC

witness Parks, a professional engineer, to explain why, from an engineering perspective, certain Lake Station assets are unnecessary to supply water service. Mr. Kaufman stated the cost that will be imposed on Indiana American's ratepayers related to such plant is more than \$1 million per year, plus any operational costs Indiana American incurs to maintain this plant.

Mr. Kaufman testified that Indiana American does not now own or maintain any water treatment plants that are operated exclusively on peak-days or as emergency supply. He theorized that Indiana American does not do so because it is not cost effective. Additionally, Mr. Kaufman stated that Indiana American provided no analysis demonstrating that maintaining the Lake Station treatment plant and water supply wells for peaking and emergency supply is more cost effective than other potential alternatives. Mr. Kaufman testified there is no evidence that it is even feasible to use Lake Station's plant for this limited purpose, and as indicated in responding to OUCC Data Request ("DR") 4.5, Indiana American has taken no steps to determine what operational steps are necessary to run the Lake Station plant on only a temporary basis. He testified it is Indiana American's burden to present credible evidence demonstrating the assets it proposes to acquire, including Lake Station's water treatment plant and supply wells, are reasonably necessary for the provision of utility service, and Indiana American's direct testimony provides no such evidence. Mr. Kaufman testified that based on OUCC witness Parks' testimony, Indiana American proposes to purchase \$7,366,043 in plant that is not used and useful. He recommended the Commission deny Indiana American's request to include the cost differential in its rate base because assets included in the proposed acquisition are not used and useful.

Mr. Kaufman also testified that Ind. Code ch. 8-1.5-2 establishes a process a municipality is required to follow when it decides to sell or otherwise dispose of non-surplus utility property. He testified that based on the OUCC's review, Lake Station did not satisfy Ind. Code § 8-1.5-2-4 which requires a municipality to provide "a written document that shall be made available for inspection and copying at the offices of the municipality's municipally owned utility" Mr. Kaufman stated that Ind. Code § 8-1.5-2-4 requires this written document to contain: (1) the appointment of three Indiana residents to serve as appraisers (a combination of licensed engineers and appraisers); (2) the appraisal of the property; and (3) the time when the appraisal is due. He testified that in response to OUCC DR 3.1, Lake Station provided two resolutions specific to the sale of its water utility. The first resolution, adopted March 17, 2016, (OUCC Attachment ERK-9 at p. 4) relates to the City's original decision to sell the Lake Station Water System, and the second pertains to the recertification the appraisal firms provided. (OUCC Attachment ERK-9 at p. 6) Based on the OUCC's review, neither satisfies Ind. Code § 8-1.5-2-4.

Mr. Kaufman testified that while the resolutions describe the property to be appraised, i.e., the City's water utility, neither identifies three Indiana residents who will serve as the appraisers as the statute requires. Mr. Kaufman testified the resolutions merely list firm names. He testified the appraisers should be listed to ensure the appraisal complies with Ind. Code § 8-1.5-2-5 which requires each appraiser appointed as provided by Ind. Code § 8-1.5-2-4 to not be a resident or taxpayer of the municipality. Mr. Kaufman was also critical of Lake Station's resolutions not disclosing the date the appraisal is due as Ind. Code § 8-1-2-4 requires. Instead of including this information, the resolutions have placeholder blanks where this date should have been inserted. Mr. Kaufman testified that non-compliance with these statutory requirements may implicate whether Joint Petitioners are entitled to the requested relief.

Mr. Kaufman also testified that he disagreed with Mr. VerDouw's⁵ calculation of the rate impact the Lake Station acquisition will have on Indiana American's future rates. Under his analysis, Indiana American's proposed acquisition of Lake Station will cause its revenue requirements to increase by 0.98%, not by 0.55% as Mr. VerDouw calculated. Mr. Kaufman recognized that his calculation is, however, under the one percent threshold in Section 30.3-5(d)(2) that triggers notice to Indiana American's current customers. Mr. Kaufman also expressed concern about the cumulative impact Indiana American's acquisitions will have on its future revenue requirements.

Mr. Kaufman testified that in the *Charlestown Order* the Commission stated it lacks statutory authority to disturb the appraisers' judgment, so while the OUCC is not contesting the valuation per se, the OUCC is concerned about the appraisal process followed in this Cause and whether it led to artificially higher appraised values. He testified the appraisal, which was completed in June 2016, will be more than two years old when an Order is issued and simply applying Indiana American's overall depreciation rate to Lake Station's estimated Total Replacement Cost reduces the Depreciated Replacement Cost by approximately \$1,000,000 per year. Mr. Kaufman was also critical of the appraisers adding \$1,836,287 in unspecified non-construction costs to the Depreciated Replacement Cost because no supporting evidence was provided during discovery for this figure. He testified the soft costs included in the appraisal are hypothetical and merely inflate the cost of the appraised assets. Mr. Kaufman also discussed negative net salvage value, noting the Lake Station Water System appraisal makes no reduction/recognition for removal costs Indiana American will incur on the assets it proposes to purchase. Mr. Kaufman was also critical of the appraisal in this Cause using a single methodology (Mr. Buczek's) instead of being based upon multiple separate appraisals and those being based on multiple methods. Mr. Kaufman illustrated that the acquisition cost per customer for Indiana American reflects a strong rate of increase over the past 15 years, with the acquisition cost per customer in this Cause being approximately \$5,907 based on a purchase price of \$20,339,470. This per customer acquisition cost exceeds all previous Indiana American acquisitions and is significantly higher than Indiana American's current average investment of \$3,375 per customer. Mr. Kaufman testified that a higher than average investment per customer may signal that Indiana American's existing ratepayers will experience higher rates as a result of the acquisition proposed.

Mr. Kaufman disagreed that larger water utilities always produce economies of scale. He testified that while size is an important factor that affects a water utility's revenue requirements, it is not the only factor. The benefits of regionalization and economies of scale only occur if the growing company makes them happen. According to Mr. Kaufman, in this case, as OUCC witness Parks explains, by maintaining Lake Station's treatment plant and water supply wells, Indiana American reverses the economies of scale it gains from providing water to Lake Station from Indiana American's existing facilities. Mr. Kaufman also testified that, by paying a higher rate base per customer than its current average rate base per customer, Indiana American and its ratepayers fail to garner the benefits of Indiana American's increasing size. In addition, Mr. Kaufman testified that Indiana American's largest operating expense is the service company

⁵ Indiana American witnesses Prine and Roach each adopted portions of the testimony Indiana American originally prefiled as the direct testimony of Gary M. VerDouw. The bulk of Mr. VerDouw's prefiled testimony and exhibits, including the calculation Mr. Kaufman references, was adopted by Mr. Roach.

expense (more than 25.0%) that its parent company pushes down to Indiana American. Because this is based on the number of customers Indiana American serves, this cost increases proportionately as Indiana American grows its customer base instead of achieving economies of scale by increasing its size.

Finally, Mr. Kaufman provided a journal transaction that he testified Indiana American should employ if the Commission accepts the OUCC's position that Indiana American's current ratepayers should not bear the cost of Lake Station's water treatment facility and supply wells because this plant is not used and useful. This reduces the amount Indiana American is authorized to recover in its rate base by approximately \$7,366,043.

James T. Parks, P.E., Utility Analyst II in the OUCC's Water/Wastewater Division, testified regarding the used and useful nature of the Lake Station Water System. He stated that Section 30.3-5(c) provides that "a utility company that acquires the utility property may petition the Commission to include the cost differentials as part of its rate base." As a condition of the relief Indiana American requests, under Section 30.3-5(c)(1) the Commission must find the "utility property is used and useful in providing water service."

Mr. Parks explained that Lake Station's water utility treats groundwater using softening, filtration, fluoridation, disinfection, corrosion control, pumping, and distribution services. The City's new water softening/filtration plant was funded through a Drinking Water State Revolving Fund ("DWSRF") loan from the Indiana Finance Authority ("IFA") and placed in service in 2015. The DWSRF loan documentation reflects \$9,780,712.59 was disbursed for the wells and water plant, and \$2,076,298.00 was disbursed for Lake Station's distribution system. Mr. Parks stated Lake Station is producing less than 700,000 gallons per day on average with a maximum day flow of 1.084 MGD.

Mr. Parks described Indiana American's Northwest District. He testified this district is the largest of Indiana American's 21 operating units in Indiana, comprising 66,713, or 22%, of its 299,038 customers statewide. The Northwest District treats high quality water from Lake Michigan using two treatment plants, the 54 MGD Borman Park Water Treatment Plant ("WTP") and the 24 MGD Ogden Dunes WTP. Because Lake Michigan water is naturally low in hardness, iron, and manganese, Indiana American does not soften the water or employ special processes to remove iron and manganese. Mr. Parks testified the Northwest District has a robust water system with substantial reserve capacity in its treatment, storage, and distribution facilities and redundant plant and that Indiana American's two existing WTPs can meet all of Lake Station's average day and peak day water demands. Currently, the Northwest District has 40 MGD of excess daily average production capacity at its two treatment plants. Mr. Parks noted that based on annual average flows, the Borman Park and Ogden Dunes WTPs operate at less than 50% of their design capacities, and the Borman Park WTP can and has supplied all the water needed in the Northwest District without the Ogden Dunes plant in service.

Mr. Parks stated he reviewed Indiana American's *Summary of Recommended Improvements for the Northwest System* submitted annually to the Commission since 2009. ("IURC Annual Reports") He testified that beginning in its 2009 IURC Annual Report, Indiana American recommended projects to increase production capacities at its existing WTPs, but

Indiana American did not expand the Ogden Dunes plant. Instead, these capacity expansion projects are no longer listed in the 2016 IURC Annual Report, which he presumes is due to Indiana American's lower water demand projections.

Mr. Parks testified that Lake Station has physically been interconnected with Indiana American's water system since 1965. The 1990 Water Supply Agreement between Lake Station and Indiana American gave Lake Station the right to receive 750,000 gallons per day and a peak flow rate of 1.0 MGD; however, the valves at the meter vault are currently closed as a result of the Water Supply Agreement between Lake Station and Indiana American Water expiring in 2015 and not being renewed. According to Mr. Parks, everything needed for Indiana American to serve Lake Station is constructed and in place. The interconnection is actually oversized and, when opened, will convey all the water Lake Station's system needs without operating the City's softening/filtration plant.

Mr. Parks testified that he concurs with Indiana American's decision to not use Lake Station's groundwater wells and water softening/filtration plant for daily flows due to their higher operating costs. He testified the City's treatment plant, wells, and related assets are also not reasonably necessary for Indiana American to provide back-up service; therefore, they should not be considered used and useful. Mr. Parks testified that due to its high cost to operate, Indiana American plans to only use Lake Station's existing treatment plant "during peak demand days, or as emergency supply," Jt. Petitioners' Ex. 1 at p. 17, but Indiana American does not currently anticipate any peak days. He stated these assets are not needed from a technical, operational, or economic standpoint to provide service to any of Indiana American's customers and if acquired by Indiana American, should not be allowed in rate base. Mr. Parks recommended the Commission disallow the inclusion of the \$7,366,043 appraised value of Lake Station's wells and water treatment plant.

6. Intervenor Schererville's Direct Evidence. Theodore J. Sommer, a Certified Public Accountant and Partner with LWG CPAs and Advisors, testified on intervenor Schererville's behalf. In testifying regarding the proposed sale of the Lake Station Water System, Mr. Sommer expressed concerns about this acquisition due to its potential rate impact and related cost allocation issues. Mr. Sommer testified that Indiana American has emphasized the rate impact of the proposed acquisition on Indiana American's overall revenue requirement is only 0.551%, but assuming this calculation is accurate, it fails to take into consideration that Indiana American has made multiple acquisitions under the distressed utility statute which, in the aggregate, are significant. Mr. Sommer stated that Indiana American has filed four distressed utility acquisition cases since July 1, 2017, and there is no way of knowing how many additional acquisitions may be on Indiana American's horizon and how much higher the aggregate percentage rate impact could go. According to Mr. Sommer, Indiana American's direct testimony in this Cause ignores future base rate increases and the increased distribution system improvement costs that will be necessary to serve the newly acquired distressed utilities long-term.

Mr. Sommer testified the cumulative rate impact of these acquisitions could result in an unreasonable rate increase for Schererville. He stated Schererville has significant concerns regarding how the distressed utilities will impact cost-of-service and the rates Schererville pays Indiana American as a sale-for-resale customer. Mr. Sommer testified that Schererville's citizens

should not bear the burden of Indiana American's numerous for-profit acquisitions through its wholesale water rates, particularly since these Indiana American investments have no direct impact on the cost of providing Schererville with wholesale service.

Mr. Sommer testified that based upon Mr. Prine's direct testimony, Indiana American only intends to operate the Lake Station water treatment plant during peak demand days or as emergency supply. When asked in OUCC DR 4.5(d) how many peak days Indiana American anticipates will occur requiring it to operate this facility, Indiana American's response was "Currently none" Intervenor Schererville Ex. 1 at p. 6.

Mr. Sommer testified that Lake Station's water treatment plant was completed in December 2015 at a cost of approximately \$11,848,000. He further testified that it is clear from Mr. Prine's testimony that Indiana American has no current plan to use Lake Station's treatment plant to serve Schererville, but to make Lake Station whole, Indiana American's customers, including Schererville, are being asked to bear the cost of a water treatment plant that will sit unused or mostly unused. Mr. Sommer stated that Lake Station is essentially double dipping because it is being reimbursed for its water treatment plant while its customers will be benefiting from Indiana American's lower residential rates. Mr. Sommer recommended that if the Commission determines the Lake Station acquisition costs should go into Indiana American's base rates, given the serial nature of these acquisitions, the Commission should require a separate rate structure to be created for these distressed utilities or their rate impact should be phased in over time. He noted that Indiana American currently has a separate rate structure for Mooresville and Winchester, so there is some history for this separate rate concept. Otherwise, Indiana American's multiple acquisitions will result in rate shock. Mr. Sommer testified that Schererville did not cause these acquisition costs, does not benefit from these acquisitions, and should not bear the cost of these acquisitions through rates.

7. Intervenor Crown Point's Direct Evidence. Gregory T. Guerrettaz, a Certified Public Accountant and President of Financial Solutions Group, Inc., testified on Crown Point's behalf. Mr. Guerrettaz testified that Crown Point's municipal water utility is one of Indiana American's largest volume sale for resale bulk wholesale water purchasers. He stated that Indiana American's rates to sale for resale customers have continued to escalate. Eventually, Indiana American's cumulative wholesale water increases will increase the rates Crown Point charges its water customers and decrease the revenue Crown Point will have available for system improvements. Mr. Guerrettaz testified that Crown Point, therefore, needs to minimize Indiana American's sale for resale rate increases, thereby reducing the upward pressure on Crown Point's water rates and allowing revenue to be available for Crown Point to perform its water system maintenance and improvements.

Mr. Guerrettaz reviewed Indiana American's rate increases associated with its distribution system improvement charge ("DSIC") since 2009. These total 42.79% through January 2017. He stated the Indiana General Assembly's passage of House Enrolled Act 1519 in 2017 resulted in Indiana American's DSIC increases now being allocated on an equivalent meter basis, significantly reducing the initial rate impact of DSIC improvements on sale for resale customers. Mr. Guerrettaz testified that Indiana American is seeking Commission approval to purchase the Lake Station Water System for somewhat over the appraised value, notably including a substantial

value for Lake Station's municipal wells, water treatment plant, and ground level water storage. According to Mr. Guerrettaz, Indiana American's business strategy includes growth through small utility acquisitions, and recent statutory revisions make it likely Indiana American's acquisition of small water utilities will increase. Mr. Guerrettaz testified the price Indiana American pays for these acquisitions may become increases in Indiana American's rate base for purposes of return and depreciation, thus potentially increasing its revenue requirements and rates. He explained that the purchase of distressed utilities can result in Indiana American making substantial additional investment to recondition the purchased water utility's plant and perform maintenance, replacements, and other catch up the prior owner may have been deferred, putting upward pressure on Indiana American's rates.

Mr. Guerrettaz explained why the rate impact to sale for resale customers from Indiana American's acquisitions of distressed water utilities is not necessarily reasonable or equitable. He testified that sale for resale customers like Crown Point should not have to pay to improve distant distressed water utilities that are in disrepair or poor condition. This causes Crown Point to help pay the maintenance and capital investment costs of distant small utility systems while Crown Point must at the same time pay its own capital and maintenance expenses. Mr. Guerrettaz testified it makes no sense to charge sale for resale municipal water utilities like Crown Point for the acquisition and renovation of distant small utilities. The distressed utilities get a big appraised value check from Indiana American and their customers may even experience lower rates from Indiana American while Crown Point and other wholesale municipal customers must maintain their own utility plant and provide water service at reasonable rates to their citizens and businesses but face increased wholesale rates. Mr. Guerrettaz testified that in his opinion this is lopsided, unacceptably unfair, and not in the public interest.

Mr. Guerrettaz also stated he is not convinced Indiana American needs Lake Station's ground water supply assets. He expressed concern that these assets will not be used and useful to Indiana American and represent unneeded water supply and ground water treatment capacity. Mr. Guerrettaz testified the Lake Station water supply assets do not appear to be needed by Indiana American and should not be determined in this Cause to be used and useful. He stated that adhering to basic ratemaking principles like matching costs with cost creators, proper allocation of costs, and ensuring plant in a utility's rate base is used and useful are reasonable common regulatory goals that go to the reasonableness and public interest in distressed utility acquisitions. In addition, Crown Point's municipal water utility should not be forced to subsidize the proposed acquisition through Indiana American's sale for resale rates.

8. Joint Petitioners' Rebuttal Testimony. Mayor Anderson provided rebuttal testimony regarding the used and useful nature of Lake Station's treatment plant and water supply wells. He explained the need for the plant was determined at the local and state level before Lake Station built it. Lake Station borrowed millions of dollars from the State of Indiana to build this plant and the related facilities and still owes most of that money to the Indiana Drinking Water State Revolving Fund ("SRF"). He further testified that to qualify for that loan, Lake Station went through detailed engineering review both at the local and state levels. Mayor Anderson testified that it would strike him as strange for the State to conduct such a review and agree to finance a project that Mr. Kaufman contends is not "reasonably necessary to the provision of utility service."

Public's Ex. 2 at p. 7; Jt. Petitioners' Ex. 3-R at p. 7. Mayor Anderson testified that the use of the plant has not changed materially since it was financed.

Mayor Anderson further testified in his prefiled rebuttal that there is no deal or even a possibility of a deal which contemplates a sale to Indiana American without the treatment plant. But he acknowledged on cross-examination that, if Lake Station receives \$20 million, its water customers get Indiana American's rates, and Indiana American gets the treatment plant, but for ratemaking purposes that plant is not recognized in Indiana American's future rates, he believes Lake Station would support this alternative, although any new agreement would need Council agreement. Tr. A-98-99. Mayor Anderson also acknowledged that if the \$7 million value of the water treatment plant were removed from the purchase price, Lake Station will still receive more money than it now owes the SRF.

Mayor Anderson testified that besides wanting to exit the water business, the primary reason for Lake Station agreeing to the sale at this time was because of the dire financial crisis the City is currently experiencing as a result of poor decisions by prior administrations. According to the Mayor, Lake Station is struggling to make payroll and meet other basic financial needs of the City and its citizens. On cross-examination, when questioned about the nature of these prior decisions, the Mayor testified that at the beginning of 2016, Lake Station had almost a \$2 million general fund deficit from over-spending the budgets and not keeping track of revenue. He testified the decision to spend over \$12 million to build a new City Hall which resulted in a \$965,000 per year mortgage payment was the decision that really hurt. According to Mayor Anderson, Lake Station was adopting budgets that exceeded the revenue coming in, resulting in probably a hundred different areas where Lake Station over-spent.

In addition to the civil city's financial crisis, Mayor Anderson testified the Lake Station water utility owes millions of dollars to the SRF. Mayor Anderson testified he cannot go back and undo what past administrations have done, but he can make decisions to help Lake Station get out of debt and operate in a fiscally responsible manner. From the Mayor's perspective, this includes selling the water system, including the water treatment plant, to Indiana American. In his prefiled rebuttal testimony, Mayor Anderson expressed his belief that the result Mr. Kaufman and Mr. Parks seek would be unfair to Lake Station. Simply because the purchaser Lake Station selected has an existing interconnection with the Lake Station Water System and a pipeline to Lake Michigan, Messrs. Kaufman and Parks believe this plant is not necessary to continued water service after closing. However, the Mayor testified there was only one bidder who fits this description, and it is because Lake Station selected that bidder that these arguments are being made. Mayor Anderson testified that the appraisers have defined what the system is worth, and it should not matter who the purchaser is. Mayor Anderson also testified that while the treatment plant may not service the day-to-day needs of Lake Station's citizens as it does today once Indiana American acquires the system, it does retain value as an available source of ground water in the most industrialized portion of the State which otherwise relies on vulnerable surface water sources. Additionally, he posited it could help service surrounding communities Indiana American serves. The Mayor stated he would have a difficult time explaining to his constituents why a perfectly good treatment plant the State approved and loaned the money to build was retired from service simply because another State agency felt it is no longer reasonably necessary to keep it available for emergency use. On cross-examination, he acknowledged he could not say for certain whether

using the treatment plant on a daily basis was discussed when the Asset Purchase Agreement was entered into. Tr. 1-107.

Mr. Prine also provided rebuttal testimony, responding to the used and useful nature of Lake Station's treatment plant and water supply wells. Mr. Prine testified that Mr. Kaufman's proposal to not include the cost differential in rate base is in error because no evidence was presented that any element of Sections 30.3-5(c) and (d) has not been satisfied. In response to questions at the hearing, Mr. Prine clarified that it is Indiana American's responsibility to prove these statutory elements. Tr. B-4.

Mr. Prine testified that Mr. Kaufman's proposal to not include the cost differential in rate base also does not follow from Mr. Parks' opinion, and the OUCC's ultimate position is inconsistent with Mr. Prine's view of Ind. Code § 8-1.5-2-6.1(f). He testified there seems to be confusion over verb tense. According to Mr. Prine, for Section 30.3-5(c)(1) to be satisfied, Indiana American must show the utility property "is" used and useful in providing water service. Jt. Petitioners' Ex. 1-R at p. 10. Mr. Prine testified he did not see anywhere that Mr. Parks testifies the Lake Station plant is not used and useful. It is serving customers today, and as Mayor Anderson testified, the treatment plant underwent detailed engineering review before the SRF loaned Lake Station money to build it. According to Mr. Prine, Mr. Parks testified instead that these assets "will not be" used and useful rather than they "are not" used and useful. Jt. Petitioners' Ex. 1-R at p. 10. Mr. Kaufman's recommendation that the cost differential should, therefore, not be included in rate base does not follow from Mr. Park's opinion.

Mr. Prine further testified that the treatment plant should not and cannot be excluded from the water system sale. He echoed Mayor Anderson's testimony that the purchase price would not change regardless of what Indiana American does with the treatment plant after closing. Mr. Prine explained that once Lake Station sells its water system it will no longer have a revenue stream to pay off the SRF loan; therefore selling the system without the treatment plant is not possible. Mr. Prine stated the sale will not proceed without the treatment plant. He testified that Indiana American is purchasing the entire Lake Station Water System, not simply buying assets. Thus, if the Commission accepts Mr. Parks' testimony that the treatment plant is not reasonably needed for Indiana American to provide water service and will cease to be used and useful upon closing, Mr. Prine testified that under Section 6.1(f), the purchase price does not change but must be reallocated among the remaining utility plant in service accounts in a different manner than Indiana American originally proposed in Attachment GMV-1. Mr. Prine testified that if the Commission agrees Indiana American has satisfied the elements of Sections 30.3-5(c) and (d), then the journal entry must permit Indiana American to record as net original cost rate base the full purchase price, including the treatment plant value.

Mr. Prine testified that for the sake of clarity he asked Indiana American's witness Roach to reallocate and present a proposed journal entry that reflects the treatment plant will not be used and useful following the closing. Mr. Prine stated the Commission should approve the journal entry Indiana American originally submitted, but if the Commission agrees with Mr. Parks that the plant is no longer used and useful after closing, then the Commission could approve the alternative journal entry Mr. Roach sponsors (Attachment GPR-1R).

Finally, Mr. Prine also testified on rebuttal regarding Schererville witness Sommer's recommendations that the Commission require a separate rate structure to be created or that the rate impact of the acquisition be phased in. Mr. Prine characterized Mr. Sommer's testimony as beyond the scope of this proceeding or at the very least, premature. Mr. Prine testified that the question Mr. Sommer raises is essentially one of rate design, and the proper place to consider his concerns is a general rate case. With respect to what he characterized as more policy-based concerns that both Mr. Sommer and Mr. Guerrettaz raised regarding the propriety of wholesale customers' rates being impacted by acquisitions, Mr. Prine testified the General Assembly has already established that acquisitions, like the proposed Lake Station acquisition, are in the public interest and in furtherance of the infrastructure policy codified at Ind. Code § 8-1-2-0.5.

Stacy Hoffman, Director of Engineering for Indiana American, also provided rebuttal testimony, primarily responding to the OUCC's testimony upon whether Lake Station's supply wells and treatment plant are used and useful under Section 30.3-5(c)(1) in providing water service. Mr. Hoffman testified Indiana American does not see its use of this plant in the future as one of the elements the Commission is to consider under Section 30.3-5. The statutory inquiry, from his perspective, is whether the plant is used and useful, which it is. He does not see an element that asks whether the plant will be used and useful after its acquisition. Mr. Hoffman testified there is no dispute that this plant is currently used and useful. He echoed Mayor Anderson in testifying that the treatment plant and water supply wells are operational and currently satisfy Lake Station's water supply needs. Mr. Hoffman testified the issue other parties are raising is not whether the plant is used and useful but whether and how it will in the future be used and useful.

Mr. Hoffman also testified regarding Indiana American's water plant capacities and customer demands. He testified that Mr. Parks appropriately cites Indiana American's 2016 IURC Annual Report in stating the Indiana American Borman Park and Ogden Dunes WTPs have treatment capacities of 54 MGD and 24 MGD respectively. The total capacity of the plants from this report would be 78 MGD. Mr. Hoffman testified that he wanted to clarify, however, that these are the respective filter capacities without the largest filter out of service, without considering hydraulic limitations of transmission mains leaving the plant. He testified the pump capacities of the Borman Park and Ogden Dunes plants considering the transmission main system hydraulic limitations are approximately 49 MGD and 23 MGD, respectively. Mr. Hoffman further testified the plant capacities for the Borman Park and Ogden Dunes plants with their largest respective filter unit out of service are 45 MGD and 18 MGD, respectively. Together the combined plant capacity of both plants with the largest filter unit out of service at each plant is 63 MGD. He testified that considering plant capacities with their largest filter out of service is a design element of the Ten States Standards to which the Indiana Department of Environmental Management ("IDEM") refers for facility design.

Mr. Hoffman testified that water utilities do not design facilities for just average daily demands. Customer demands vary throughout each day, throughout each year, and into the future, so utilities must design facilities to meet projected peak hourly demands over a projected future period. From Mr. Hoffman's perspective, for purposes of assessing plant facility adequacy, a plant's capacity should not be compared to average daily system demands, as Mr. Parks did, but rather, to projected peak demand. Mr. Hoffman testified that Indiana American's projected base maximum day demand for 2020 at a 95% confidence interval for the maximum to average day

ratio is 61.5 MGD, not including Lake Station's maximum day demand of 1.1 MGD, as referenced by Mr. Parks. Adding Lake Station's maximum day demand to Indiana American's maximum day demand projection results in a maximum day demand projection of 62.6 MGD, which is nearly identical to the combined reliable capacity of Indiana American's plants with the largest respective filter unit out of service, 63 MGD.

Mr. Hoffman testified that this perspective of system capacity for meeting system demands is more appropriate than the perspective Mr. Parks presented. Mr. Hoffman also testified that Mr. Parks' conclusion that capacity is sufficient to provide Lake Station's average daily flow of 0.7 MGD nearly 60 times over and easily meet estimated peak demand days is not how he would characterize the plant capacity as it relates to meeting system demand. Mr. Hoffman testified that given the thin margin between Indiana American's combined reliable plant capacity with the largest filter units out of service and the projected base maximum day demand, plus Lake Station's maximum day demand, Indiana American finds significant value in Lake Station's treatment plant for supplementing regional water supply during peak demand or as emergency supply under the circumstances Mr. Prine testified about. He noted Mr. Prine had appropriately testified that Indiana American will only operate the Lake Station plant when needed given the efficiencies of operating Indiana American's larger plants for base demands. Mr. Hoffman testified this is sensible and by no means implies the new Lake Station plant is not valuable or should not be considered used and useful.

Mr. Hoffman testified that another step in assessing a system's capacity is to evaluate the system's resiliency for meeting customer demands during critical asset failures. He referred to this as a criticality analysis. Mr. Hoffman stated a criticality analysis evaluates the impacts to customer service from failure of critical assets that the Ten States Standards do not address. Mr. Hoffman testified that during an event contemplated in the criticality analysis it makes perfect sense to use the Lake Station plant and wells to supply the Lake Station service area and potentially to supply an additional 1 MGD to other customers in the vicinity of Lake Station. He testified that by not sharing the same water source as Borman Park and neighboring utilities, the Lake Station plant is more insulated from an event that may cause Indiana American to lose production from its WTPs. Mr. Hoffman testified the Lake Station plant and wells are essentially brand new, produce quality water, and could provide valuable supply in a critical event, and the nature of the supply being ground water also contributes to system resiliency. In response to questions at the hearing, however, Mr. Hoffman acknowledged he has no documents or calculations supporting the criticality analysis findings. Tr. C-27-28. He also conceded that Indiana American has no plans to operate and use the Lake Station plant in the foreseeable future.

Gregory Roach, who is employed by American Water Works Service Company as Senior Manager of Revenue Analytics, provided rebuttal testimony responding to OUCC witness Kaufman's proposed revised journal entry. Mr. Roach provided a revised journal entry identified as Attachment GPR-1R. He explained that the difference between Attachment GMV-1 and the attachment Mr. Kaufman sponsored as Attachment ERK-3 is that Mr. Kaufman's amount for "distribute utility plant to detail" is \$7,366,042 less than the amount reflected in Attachment GMV-1. He testified Attachment GPR-1R reallocates that difference among the remaining utility plant in service accounts rather than removing that amount from rate base. Mr. Roach allocated this amount among the related utility plant in service accounts proportionally based upon the asset

values the appraisers determined, excluding the water treatment plant. He testified that in this fashion, he allocated the purchase price, plus incidental costs and acquisition expenses, among utility plant in service accounts in a reasonable manner if it is determined the water treatment plant will not be considered used and useful and is, therefore, not included in net original cost rate base following closing.

Mr. Roach also testified in response to Mr. Kaufman's calculation of the effect on rates to Indiana American's customers in future cases as a result of this acquisition. He testified that Mr. Kaufman is proposing to change the calculation methodology the Commission approved in its Order in consolidated Cause Nos. 44964/44976 by changing the calculation of incremental depreciation expense and property tax expense as well as changing the proposed return percentage. Mr. Roach stated the OUCC proposed the same adjustments to Indiana American's calculation in Cause No. 44964/44976, but the Commission approved Indiana American's calculation with one correction to the interest synchronization calculation, which is reflected in Indiana American's calculation in this case. Mr. Roach added that even with Mr. Kaufman's modifications, he, too, shows a rate effect of less than one percent.

9. Commission Discussion and Findings. Over the past several years, the Indiana General Assembly has enacted statutes that promote the regionalization of water and wastewater utilities through encouraging the acquisition of distressed or small municipal utilities by larger utilities. In 2015, House Enrolled Act No. 1319 ("HEA 1319") was enacted with bi-partisan, unanimous support in both houses. HEA 1319 created the distressed utility statute, Chapter 30.3, which at that time defined "distressed utility" in relevant part as a public utility with not more than 3,000 customers or that was not viable absent acquisition. In 2016, the General Assembly enacted Senate Enrolled Act No. 257 ("SEA 257"), also with bi-partisan, unanimous support in both houses. SEA 257 created Section 6.1 regarding sales and dispositions of municipal nonsurplus utility property and establishing procedures and the specific factors the Commission must consider in determining whether the sale or disposition is in the public interest. SEA 257 also changed the definition of distressed utility in Chapter 30.3 to include a municipal utility with no more than 5,000 customers, even if the municipal utility did not meet any of the other factors for being distressed. Both HEA 1319 and SEA 257 provided for the inclusion of the entire purchase price (which is considered reasonable if it does not exceed the appraised value of the property) in rate base, rather than just the book value of utility assets allowed under more traditional regulation. SEA 257 further emphasized this change by amending Ind. Code § 8-1-2-6 with specific exceptions for Sections 6.1 and 30.3-5 proceedings. In addition, in 2016, the General Assembly enacted Ind. Code § 8-1-2-0.5 declaring it the policy of the state,

to use all practicable means and measures, including financial and technical assistance, in a manner calculated to create and maintain conditions under which utilities plan for and invest in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Indiana citizens.

Furthermore, while not applicable to this proceeding because the effective date was after the date the Joint Petition was filed, the General Assembly enacted Senate Enrolled Act No. 411 in 2018,

which was passed with significant bi-partisan support in both houses and which provided that the Commission “shall accept as reasonable” the appraised value. Ind. Code § 8-1.5-2-6.1(e)(4).

After carefully considering this legislative history, we find it clear that through these enactments the General Assembly intended to encourage regionalization and investment in water and wastewater utility infrastructure, including the investment that occurs through acquisitions. We also find that encouragement is provided through the statutory allowance for, and the requirement of, placing the full purchase price (which is considered reasonable if less than or equal to the appraisal value) into rate base.

Indiana American and Lake Station seek approval of Indiana American’s prospective acquisition of the Lake Station Water System. More specifically, their Joint Petition seeks approval under Section 30.3-5(d) and asserts the proposed transaction also satisfies the requirements of Section 30.3-5(c). As such, Joint Petitioners request the Commission approve the transaction under the terms and conditions of the Asset Purchase Agreement, finding the transaction proposed is in the public interest in accordance with Section 6.1(e)(1) and that Indiana American should be authorized to include the cost differential in its rate base.

As the Commission explained in the *Georgetown* and *Charlestown Orders*, Section 6.1 applies to a municipality that adopts an ordinance under Ind. Code § 8-1.5-2-5(d) after March 28, 2016, addressing the sale or disposition of nonsurplus utility property. Section 6.1(b) requires a municipality adopting such an ordinance to obtain Commission approval before the transaction occurs. Mayor Anderson testified that Lake Station adopted an ordinance approving the proposed acquisition of the Lake Station Water System by Indiana American on June 8, 2017. Thereafter, Lake Station and Indiana American entered into the Asset Purchase Agreement on September 27, 2017, (Attachment MP-3), and they now seek Commission approval of the acquisition.

Under Section 6.1, the ultimate question the Commission must answer is whether “the sale or disposition according to the terms and conditions proposed is in the public interest.” Section 6.1(d). In evaluating whether the proposed transaction is in the public interest, Section 6.1(e) provides two avenues. First, under Section 6.1(e)(1), if a municipally owned utility files a petition under Section 30.3-5(d) and the Commission approves this petition under Section 30.3-5(c), then “the proposed sale or disposition is considered to be in the public interest.” Alternatively, if Section 6.1(e)(1) does not apply, Section 6.1(e)(2) requires the Commission to consider the degree to which the acquisition will require one utility’s customers to subsidize service to the other and whether that subsidy causes the transaction not to be in the public interest. For purposes of this proceeding, the relevant inquiry is under Section 6.1(e)(1). *See* Jt. Petitioners’ Ex. 1 at p. 18, lines 1-2.

Indiana American and Lake Station also seek approval under Chapter 30.3. Chapter 30.3 applies if: (1) a utility company⁶ is acquiring property from another utility company in a transaction involving a willing buyer and willing seller at a cost differential; and (2) at least one of the two utility companies is subject to the Commission’s regulation. It is not disputed that Indiana

⁶ A utility company for purposes of Chapter 30.3 is defined as a public utility, municipally owned utility, or not-for-profit utility that provides water or wastewater service. Ind. Code § 8-1-30.3-3(1).

American is subject to our regulation. There is also no dispute that with respect to the proposed transaction, Lake Station is a willing seller, and Indiana American is a willing buyer. Indiana American's witness Roach testified that the purchase price for the proposed acquisition includes a cost differential. Accordingly, the Commission finds that because Joint Petitioners seek Commission approval under Chapter 30.3 to include this cost differential in Indiana American's rate base, we will initially determine whether Sections 30.3-5(d) and (c) have been satisfied.⁷

A. Ind. Code § 8-1-30.3-5(d) Requirements. This statutory provision provides the threshold upon what a utility seeking the Commission's approval of an acquisition before the utility property is acquired must preliminarily provide, stating:

(d) A utility company may petition the commission in an independent proceeding to approve a petition under subsection (c) [Section 30.3-5(c)] before the utility company acquires the utility property if the utility company provides:

- (1) notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility;
- (2) notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue;
- (3) notice to the office of the utility consumer counselor; and
- (4) a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

Each element in Section 30.3-5(d) is addressed below.

(1) Notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility. To demonstrate Indiana American's compliance with Section 30.3-5(d)(1), Mr. Prine sponsored Attachment MP-6. Attachment MP-6 is a letter to Lake Station residents dated January 19, 2017,⁸ notifying these customers of the proposed acquisition and explaining that after the closing, they will be charged Indiana American's Area One rates, which for the typical customer using 5,000 gallons of water per month will be \$44.17. The letter also includes a web link to information about the Commission's online document portal and a direct link to the docket. With Mr. Prine's correction of the date on the letter, it appears this notice was mailed to Lake Station customers near the time Joint Petitioners initiated this proceeding.

⁷ We note that although Sections 30.3-5(d) and (c) appear to contemplate a petition being filed by the purchasing utility, Section 6.1(e)(1) appears to contemplate the petition being filed by the municipality's municipally owned utility.

⁸ In response to questions from the Presiding Administrative Law Judge at the hearing, Mr. Prine testified that "2017" is a typographical error, and the letter was actually sent on or about January 19, 2018. Tr. A-55.

Based upon Mr. Prine's testimony and our review of Attachment MP-6, we find this notice was mailed early enough to afford Lake Station's customers an opportunity to participate in this proceeding if they chose to do so, and it was mailed to all Lake Station's customers. The letter afforded these customers notice of Indiana American's proposed acquisition and contained a statement upon what rates Lake Station's customers will be charged after the closing, i.e., Indiana American's Area One rates, and the amount a customer using 5,000 gallons will be billed; consequently, the Commission finds Section 30.3-5(d)(1) was satisfied.

(2) Notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent of the utility company's base annual revenue. Using a calculation methodology the Commission found acceptable in the *Charlestown Order*, Mr. Roach testified the Lake Station acquisition will not increase Indiana American's rates by an amount greater than one percent. Attachment GPR-1 at p. 12. Although the OUCC calculated a greater impact upon rates using a different methodology, OUCC witness Kaufman's calculations also reflect the acquisition will not increase Indiana American's rates more than one percent. The Commission, therefore, finds notice to Indiana American's customers of the proposed acquisition and its rate impact was not required.

(3) Notice to the Indiana Office of Utility Consumer Counselor. We find that notice was provided to the OUCC through service of the Verified Petition and the Joint Petitioners' case-in-chief.

(4) A plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility. Under Section 30.3-5(d)(4), the prospective purchasing utility is required to provide a "plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility." Mr. Prine testified that Indiana American's plan in part is to include the Lake Station Water System in Indiana American's distribution system prioritization model so the infrastructure replacement plan the 2016 IFA Report contemplates for all water utilities in Indiana can begin. The prioritization model looks at Indiana American's distribution system as a whole. He also testified it is estimated \$2,800,000 will be invested over the next five years in Lake Station's distribution system improvements. Although individual projects were not explicitly identified, Mr. Prine testified that this estimate was derived from assumptions based on a reasonable level of pipe replacement in a calendar year, knowing the distribution system is aged, and from details gleaned from the appraisals. Attachment TJS-3 at p. 46. Mr. Prine also testified that Indiana American has maintained an existing system interconnection with the Lake Station Water System and by reopening this interconnection, Indiana American will be able to provide daily water service at a lower operational cost than operating the Lake Station treatment and softening plant as the primary source of system delivery. Finally, he testified that service to current Lake Station customers will be enhanced through the capturing of economies of scale from Lake Station being part of a much larger system. Jt. Petitioners' Ex. 1 at p. 16, line 15 through p. 17, line 13.

In his rebuttal testimony, Mr. Prine stated that Indiana American's plan for improvements, as set forth in his direct testimony, does not require an engineering analysis and consists of:

- (1) enabling the provision of service reliability to Lake Station from the existing system interconnection with Indiana American's Northwest Indiana Operation;
- (2) inclusion of the Lake Station system in Indiana American's prioritization model for the distribution system so that we can commence the infrastructure replacement plan that the 2016 IFA Report (Attachment MP-4) contemplates;
- (3) an estimated \$2,800,000 in capital improvements to be made in the next five years to ensure system reliability, to be specifically identified after the system's incorporation in the prioritization model;
- (4) economies of scale achieved by this small system becoming part of the larger Indiana American system; and
- (5) operations being taken over by Indiana American's professional, full-time staff with full-time functional specialists in the areas of engineering and water quality and 24/7 customer service emergency response.

Jt. Petitioners' Ex. 1-R at p.8, lines 1 through 19. In addition, Mr. Hoffman testified that Indiana American's plan for improvements "does not include any immediate construction or engineering activities that are needed to address current water quality, pressures or flows to Lake Station." Jt. Petitioners' Ex. 5-R at p. 5, lines 5 through 8.

The evidence presented demonstrates that the Lake Station Water System has the benefit of a new water softening and treatment plant. In addition, no party raised or identified any operational or public health issues with the system needing to be addressed. Therefore, at this stage of the acquisition process, which is a pre-approval of a proposed acquisition, and considering that Lake Station does not appear to have immediate needs, we find that the plan as articulated by Mr. Prine meets the requirements of Section 30.3-5(d)(4).

We respectfully disagree with our dissenting colleagues who would find a plan does not exist simply because Indiana American did not provide a written document listing specific capital projects or indicate that it had thoroughly reviewed every asset of the Lake Station Water System and determined that no specific projects were necessary. Because the Lake Station Water System appears to be currently providing adequate, safe, and reasonable water service to its customers, we find Indiana American's plan to be reasonable. The plan includes placing the Lake Station Water System in Indiana American's distribution system prioritization model to assist in determining when assets should be replaced as well as providing approximately \$2,800,000 in capital improvements, which estimate was based on the depreciation of assets over a five-year period and a reasonable level of investment to maintain reliability. Attachment TJS-3 at p. 49. Indiana American's connection with the Lake Station Water System through its existing system interconnection will also serve to address the efficiency of service to Lake Station's customers. We do encourage Indiana American or any acquiring utility to specifically label their plan in any future acquisitions; however, this admonishment in this proceeding does not mean that Indiana American does not have a plan as required by Section 30.3-5(d)(4).

We also respectfully disagree that information about specific projects must be in a plan regarding a utility that is not operationally distressed in order for the plan to meet the requirements of Section 30.3-5(d)(4). The relevant statutes for the purchase of a municipal water utility do not require a separate engineering analysis or a separate appraisal by the purchasing utility. It is

important to note that the required plan is being provided by the acquiring utility that does not yet own or operate the system being acquired and is not being provided for purposes of seeking cost recovery for the contemplated projects. This is in stark contrast to Ind. Code Ch. 8-1-39 (“TDSIC Statute”), which requires a plan that designates specific projects. Likewise, it is clear from Ind. Code Ch. 8-1-31 (“DSIC Statute”), which defines “eligible distribution system improvements” as “new, used and useful water utility plant projects,” that the Indiana General Assembly knew how to require specification of projects, but chose not to do so in Section 30.3-5(d)(4). In addition, the plans and projects in the TDSIC and DSIC Statutes are required for seeking cost recovery of particular projects by the utility that owns and operates the utility system being improved, not for pre-approval of an acquisition.

Therefore, based on the evidence presented, we find that Indiana American has presented a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

B. Ind. Code § 8-1-30.3-5(c) Requirements. Having found Joint Petitioners have satisfied the requirements under Section 30.3-5(d), we next address Section 30.3-5(c) which requires the Commission to make certain findings to approve including the cost differential in Indiana American’s rate base. As defined under Ind. Code § 8-1-30.3-1, cost differential is the difference between the purchase price, plus incidental expenses and other costs of acquisition, and the original cost minus depreciation and contributions in aid of construction. Its inclusion in rate base enables the purchase price to be placed in the purchasing utility’s rate base, notwithstanding the seller’s accumulated depreciation or contributions in aid of construction.

(1) The utility property is used and useful in providing water service, wastewater service, or both water and wastewater service. This element was contested as it relates to the used and useful status of Lake Station’s treatment plant, wells, and associated equipment. The crux of this dispute is whether this requirement is satisfied if the utility property is used and useful to the seller or if it must also be used and useful to the acquiring utility. Mr. Parks’ testified that the Lake Station WTP will not be used and useful after Lake Station’s Water System is acquired by Indiana American. Public’s Ex. C-1 at p. 19.⁹ Mr. Prine testified that the Lake Station plant “is” used and useful as it is currently supplying water to Lake Station customers today. Jt. Petitioners’ Ex. 1 at p. 14. Mr. Parks noted that Lake Station relies almost exclusively on its own production. Public’s Ex. C-1 at p. 4. This was further confirmed by the appraisal, which states:

Moderate and steady development of the water system continued for the next 34 years (1979 to 2013), when in 2014 the City began moving forward with phased implementation of its “2012 Water Improvements Plan”, which was developed by the City’s engineering consultant, American StructurePoint Inc. of Indianapolis, Indiana. The 2012 plan recommended the construction of 5 new replacement wells and new raw water collection pipelines; the rehabilitation of an existing well (old #8); the construction of a new 2 million gallons per day (MGD) ground water treatment plant; improvements to the existing 1.5 MGD ground storage tank and

⁹ Mr. Parks’ opinion in this regard was always couched in the future tense. *See, e.g.*, Public’s Ex. C-1, p. 1-2, 13, 19, and 26.

booster pumping station; and additional reinforcement of the water distribution system. These improvements were completed and in service by the end of 2015.

Jt. Petitioners' Ex. 3, Attachment CA-1, p. 5. In other words, the decision to build the plant was recommended to Lake Station by professional engineers. Further these facilities were financed with a loan issued through the DWSRF. In order to qualify for that loan, the facilities had to undergo detailed engineering review. There has been no evidence introduced questioning Lake Station's decision to build the treatment plant.

In approaching this element, it is important to recognize that it is likely this transaction would not be before the Commission if the Lake Station source of supply and treatment plant were excluded from the acquisition. Mayor Anderson testified that Lake Station still owes money to the State of Indiana related to the construction of the treatment plant. He also testified that Lake Station could not sell its system without also selling the WTP because revenues from water sales would be needed to pay back the loan.

Indiana American argues that the verb tense (present and not future) used in Section 30.3-5(c)(1) requires us to find that the utility property it is seeking to acquire "is" used and useful by Lake Station in the provision of water service as opposed to finding that it "will be" used and useful to Indiana American after the acquisition. We agree and find that it is sufficient for the purposes of this statute that the utility property is used and useful to the selling utility.¹⁰

In addition to the plain language of the statute, the use of the present tense makes sense in the overall statutory scheme. If a purchaser was required to show that all of the assets being acquired would continue to remain reasonably in service after the closing, there may be anomalous results that could discourage the purchase of distressed utilities and its promotion of efficiencies through regionalization. The clear policy decision of the legislature to encourage regionalization through acquisitions further supports finding that the utility property is used and useful to the selling utility.

For example, as further discussed below, Section 6.1 requires the Commission to find the purchase price for a municipality's nonsurplus property to be reasonable if it does not exceed its appraised value. Consequently, if Lake Station had received two offers for the purchase of its utility at the appraised value, one from a utility that had an existing interconnection and need only open a valve to deliver quality water from an existing regional treatment plant and the other from a utility that would need to operate Lake Station's existing WTP and wells, it seems unreasonable to allow the cost differential in the rate base of the utility needing to continue operation of the existing WTP and wells, but not for the utility that simply needs to open the interconnection and may be able to provide more efficient service with its existing facilities. Changing the verb tense

¹⁰ While the other parties argue that there is no need to determine whether the utility property is used and useful to the utility selling its property, such a determination is relevant to determining whether the sale includes only the municipality's "nonsurplus utility property," a term that is not otherwise defined but generally understood to be that property which is used and useful in providing utility service. However, based on the concerns raised by the other parties, it is questionable whether the General Assembly actually contemplated that potential acquisitions may result in some, or possibly even all, of a municipal utility's property not being used or useful in providing future service and the associated consequences for the acquiring utility's customers.

to future tense would require that every single asset owned by the seller remain in service, despite the efficiencies, economies, and improvements to service that might be gained by the combination. It may also cause sellers not to choose the purchaser in the best position to regionalize and gain service efficiencies in order to sell to another purchaser for a higher price.

Our dissenting colleagues argue that under Ind. Code § 8-1-2-6,¹¹ to be part of a public utility's rate base, an asset must be used and useful to that utility and therefore, Indiana American is prohibited from including in rate base the cost of Lake Station's WTP and wells. However, we must respectfully disagree. As specific exceptions to Ind. Code § 8-1-2-6, Sections 6.1 and 30.3-5 were clearly intended by the legislature to change the standards of Ind. Code § 8-1-2-6 in certain circumstances, in order to promote the regionalization and greater efficiencies through the acquisition of distressed utilities and small municipal utilities. In addition, the legal case history regarding "used and useful" involved instances in which cost recovery was being sought for cancelled electric generation plants. *See Citizens Action Coalition, Inc. v. N. Ind. Pub. Serv. Co.*, 485-N.E.2d 610, 614-615 (Ind. 1985). In contrast, Indiana American provided testimony that it would be using Lake Station's existing WTP and wells to some extent, such as in cases of emergency and to backup Indiana American's existing system, particularly to assist with threats to its water supplies. We also recognize that Indiana American is not purchasing or building a treatment plant and wells; it is proposing to regionalize and purchase an entire system, which includes a treatment plant and wells, and all of which is included in the appraisal price. Moreover, Ind. Code § 8-1-2-6 is a statute of general applicability for use when reviewing utility rates and charges; whereas Sections 6.1 and 30.3-5 are more specific statutes addressing what may be included in the rate base of a utility that is acquiring a distressed utility. Indiana courts have held "where provisions of a statute conflict, the specific provision takes priority over the general provision." *Robinson v. Wroblewski*, 704 N.E.2d 467, 475 (Ind. 1998). Therefore, because Section 30.3-5(c)(1) does not require a utility to demonstrate that the acquired assets will be used and useful, Ind. Code § 8-1-2-6 does not prohibit Indiana American from including in rate base that which is authorized under Sections 6.1 and 30.3-5.

We also respectfully disagree with the OUCC and our dissenting colleagues that Section 30.3-5(c) applies to an acquisition that has already occurred. They base their interpretation on the fact that this provision states that the utility company that "acquires" the utility property may petition the Commission to include the cost differentials as part of its rate base. However, if you read Sections 6.1 and 30.3-5 as a whole, the review that occurs under Section 30.3-5(c) must occur *prior* to the close of the acquisition. *See*, Ind. Code 8-1-30.3-5(d) providing that a "utility company may petition the commission in an independent proceeding to approve a petition under [Section 30.3-5(c)] *before* the utility company acquires the utility property..." (emphasis added); Ind. Code § 8-1.5-2-6.1(b) requires the municipality and the prospective purchaser to obtain Commission approval "[b]efore a municipality may proceed to sell" its property (emphasis added); and Ind. Code § 8-1.5-2-6.1(e) requiring the Commission to approve the *proposed* sale as within the public interest if the municipality's municipally owned utility petitions the Commission under Section 30.3-5(d) and the Commission approves that petition under Section 30.3-5(c).

¹¹ Ind. Code § 8-1-2-6 (a) provides in part: "The commission shall value all property of every public utility actually used and useful for the convenience of the public at its fair value. ... "

The statute requires that the utility property before the acquisition “is used and useful” and does not address what its use will be after the closing. There is no dispute that the Lake Station WTP and wells, as they exist today, are currently used and useful, and we so find.

(2) The distressed utility failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities. What constitutes a failure to furnish or maintain adequate, safe, and reasonable service and facilities is defined by the factors set forth in Ind. Code § 8-1-30.3-6, any one of which will satisfy this element. Mr. Prine testified that Lake Station’s system is a municipally owned system that serves fewer than 5,000 customers and therefore qualifies as a distressed utility. While Mr. Prine also testified to other ways in which he believes Lake Station qualifies as distressed, only one is required.

The evidence presented demonstrates that under Ind. Code § 8-1-30.3-6(5), Lake Station is a distressed utility that has failed to furnish or maintain adequate, safe, and reasonable service and facilities.

(3) The utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service. As discussed above, Indiana American described its plan for improvements to the Lake Station Water System, including its intent to add the system’s assets to Indiana American’s prioritization model to ensure reasonable and prudent improvements are made when necessary. As discussed further below in this Order, we have also considered the financial, managerial, and technical ability of Indiana American to provide the utility service required following closing. There is no dispute regarding Indiana American’s ability to serve Lake Station’s customers and provide adequate, efficient, safe, and reasonable service. Accordingly, we find that this requirement has been satisfied.

(4) The acquisition of the utility property is the result of a mutual agreement made at arm’s length. Mayor Anderson described the process undertaken by Lake Station prior to entering the transaction. Mayor Anderson testified that negotiations proceeded over the course of several months while Lake Station was undergoing the statutory process necessary to sell the utility and such negotiations were conducted at arm’s length. Mr. Prine echoed Mayor Anderson’s testimony and also testified that the negotiations leading up to the executions of the Asset Purchase Agreement were conducted at arm’s length. There is no evidence to the contrary. Therefore, we find the acquisition is the result of a mutual agreement made at arm’s length.

(5) The actual purchase price of the utility property is reasonable. Section 6.1(d) provides that the purchase price of the municipality’s nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required by Ind. Code § 8-1.5-2-5 (“Section 5”). Mr. Roach testified that the final purchase price does exceed the appraised value of the assets being acquired. He reached this conclusion based upon the fact that the Asset Purchase Agreement requires Indiana American to remove the current Lake Station 400,000 gallon elevated storage tower and transfer via quit claim deed the real estate upon which that tower currently sits back to Lake Station, who will then use the property for development purposes. As such, Indiana American effectively is undertaking a removal obligation

rather than purchasing a storage tower. Indiana American determined that the value assigned to the tower by the appraisers should not be considered part of the appraised value of what it is purchasing for purposes of determining the reasonableness of the purchase price because Indiana American is not “purchasing” the tower, which is essentially surplus utility property. Further, the estimated removal costs are, in effect, additional purchase price. When these items are factored, the purchase price exceeds the appraised value of the assets being acquired by \$530,530. Mr. Roach testified that even when the amount in excess of the appraised value is considered, the purchase price still is reasonable. Nevertheless, to minimize issues, the additional amount would not be included in net original cost rate base under Indiana American’s proposal.

The appraisal was sponsored by Mayor Anderson as Attachment CA-1. The OUCC asserts that Lake Station did not comply with Ind. Code § 8-1.5-2-4 (“Section 4”); therefore, Joint Petitioners’ assertion that the purchase price is reasonable because it does not exceed the adjusted appraised value is not well founded. Joint Petitioners claim the Commission is without jurisdiction to determine whether the statutory requirements under Section 4 related to the appraisal have been met.

Section 5(a) states that each appraiser appointed as provided by Section 4 must:

- (1) by education and experience, have such expert and technical knowledge and qualifications as to make a proper appraisal and valuation of the property of the type and nature involved in the sale;
- (2) be a disinterested person; and
- (3) not be a resident or taxpayer of the municipality.¹²

Section 5 goes on to provide in (b) that the appraisers are to return their appraisal within the time fixed by the document appointing them under Section 4.

No evidence was presented to question that the appraisers here possess the necessary licenses; are disinterested; are residents of Indiana; are not residents or taxpayers of Lake Station; and possess, by training and experience the necessary skills to make a proper appraisal, or that the appraisal was untimely returned. Instead, the OUCC argues that Lake Station did not strictly comply with Section 4 because Lake Station selected three firms instead of specifically identifying and appointing three Indiana residents with the qualifications Section 4 identifies and failed to specify the time when the appraisal was due.

Mayor Anderson responded to the OUCC’s concerns by noting that Section 4 does not require the municipality’s resolution to actually list or identify the individuals that will serve as appraisers. Instead, Section 4 simply requires that the document “provide for” the appointment of appraisers that satisfy Section 4’s requirements. In response to an OUCC discovery request, Lake Station indicated that its “method for providing for the appointment of appraisers was to list three firms who are in the business of engineering and/or real estate appraisal and by listing the

¹² Similarly, Section 4 requires the appraisers appointed by a municipality to include three Indiana residents: a disinterested person who is an engineer licensed under Ind. Code ch. 25-31-1; a disinterested appraiser licensed under Ind. Code ch. 25-34-1; and a disinterested person who is either an engineer licensed under Ind. Code ch. 25-31-1 or an appraiser licensed under Ind. Code ch. 25-34-1.

qualifications required by statute for the individuals with those firms who would conduct the appraisal.” Public’s Ex. 2, Attachment ERK-9 at p. 2. Mayor Anderson testified that Lake Station’s retention of three firms is in line with how professionals are generally engaged by local governments. With regard to the appraisal due date, Mayor Anderson acknowledged that Lake Station personnel failed to fill in the blank on the resolution, but the failure was immaterial because the appraisal was timely returned.

The OUCC’s concerns are similar to those that were raised in *Charlestown*. Based on the evidence presented, they do not appear to have had a substantive impact on the retention of qualified appraisers or the work that was completed by those appraisers. The resolution adopted by Lake Station provides for the appointment of three qualified appraisers and, as Mayor Anderson testified, the appraisal was returned in timely fashion so that Lake Station could proceed through the statutory process.

Therefore, we find that the amount of the purchase price proposed to be included in net original cost rate base (i.e., \$20,199,470) does not exceed the appraised value of the assets being acquired, the municipality’s nonsurplus utility property, and so the purchase price proposed to be booked to rate base is reasonable.

(6) The utility company and the disinterested utility are not affiliated and share no ownership interests. Mr. Prine’s testimony that Lake Station and Indiana American are not affiliated and share no ownership interests was uncontroverted. Accordingly, we find that this requirement has been met.

(7) The rates charged by the utility company before acquiring the utility property of the distressed utility will not increase unreasonably as a result of acquiring the utility property. Mr. Prine testified that after the transaction, Lake Station’s customers will be subject to Indiana American’s Area One rates and that those customers will see a rate decrease from what they currently pay for water service. He stated the Indiana American’s current customers will not see a rate change as a result of this proceeding and that rates are not expected to increase unreasonably as a result of acquiring the Lake Station Water System. As indicated above, rates for Indiana American’s customers are not expected to increase by more than one percent as a result of the transaction. Accordingly, we find that the rates charged by Indiana American before this acquisition will not increase unreasonably as a result of acquiring the Lake Station Water System.

(8) The cost differential will be added to the utility company’s rate base to be amortized as an additional expense over a reasonable time with corresponding reduction in the rate base. Mr. Roach testified that the purchase price for the acquisition includes a cost differential as that term is defined in Chapter 30.3, but that the precise amount of the cost differential could not be calculated based upon the records that were available. Mr. Roach testified that his proposed journal entry allocates the full adjusted purchase price, minus the amount in excess of appraised value, plus incidental expenses, and other costs of the acquisition (including the cost differential) among utility plant in service accounts. In this manner, the cost differential will be amortized and charged to expense over a reasonable period of time through depreciation expense. A similar approach was approved in the *Georgetown Order*, and we find it to be appropriate here as well.

C. **Ind. Code § 8-1.5-2-6.1(e)(3)**. In reviewing the Asset Purchase Agreement, we are required to consider the financial, managerial, and technical ability of Indiana-American to provide the required water utility service. Mr. Prine testified that Indiana-American currently provides residential, commercial, industrial, and municipal water service, including sale for resale and public and private fire protection service, to approximately 300,000 customers. He stated that the day-to-day operations of the Lake Station Water System will be performed by full-time employees of Indiana American's Northwest Indiana Operation who are trained to provide the highest level of water service available. Indiana-American will also institute reasonable and prudent asset management by adding the Lake Station Water System to Indiana-American's ongoing prioritization model. Mr. Roach testified that Indiana-American has access to all necessary funds to support its purchase of the Lake Station Water System and is capable of financing the proposed asset purchase without significant adverse financial consequences for the utility or its customers. No evidence was offered contesting Indiana-American's financial, managerial, or technical ability to provide water utility service. Therefore, we find that Indiana-American possesses the financial, managerial, or technical ability to provide the required utility service after the sale.

D. **Sale Approval and Accounting Treatment**. Having determined that the proposed sale pursuant to the terms and conditions set forth in Asset Purchase Agreement is in the public interest and approved in accordance with the requirements of Section 6.1(e), we approve the sale as required by Section 6.1(d). We make this finding despite the future rate design arguments raised by Schererville and Crown Point because the statute directs this result. Schererville's and Crown Point's rate design and cost allocation arguments do not address Section 30.3-5(c) and (d) and are best considered in general rates cases, when all rates and charges are reviewed.

Because Joint Petitioners have satisfied all of the statutory requirements required for approval, Section 6.1(f) directs the Commission as follows:

As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:

- (1) the full purchase price;
- (2) incidental expenses; and
- (3) other costs of acquisition;

allocated in a reasonable manner among appropriate utility plant in service accounts.

The amount that Indiana American seeks to record in net original cost rate base is equal to the appraised value of the Lake Station Water System that it is purchasing. Accordingly, we find the "full purchase price" to be recorded as the net original cost rate base is \$20,199,470, which is set forth in Jt. Petitioners' Ex. 4, Attachment GMV-1.

The most disputed issue raised in this case was whether particular Lake Station Water System assets, i.e., the WTP and wells, should be considered reasonably necessary to the provision of utility service by Indiana American and therefore “used and useful” following the closing of the sale. We have determined and found that the WTP and wells are used and useful now to Lake Station and for acquisition purposes. This is why we approve the purchase. However, testimony has been presented that these assets might not be used and useful following the acquisition. If it does in fact turn out that the WTP and wells are not used and useful to Indiana American following the acquisition, we encourage Indiana American to voluntarily explore ratemaking options that might mitigate the impact of the purchase price in future proceedings. For example, the purchase price associated with the WTP and wells could be treated in a way that provides for a return of the investment, but does so at a reduced return on the investment. Another option may be to undertake an analysis to determine the ongoing value of the WTP and wells in providing water service to the consolidated customers and to compare that value against that of continuing to operate and maintain those assets. We encourage Indiana American and other utilities serving the public in Indiana to voluntarily use their resources and explore reasonable financial concessions that can serve to enhance regionalization efforts in a manner that also fosters positive public sentiments regarding those efforts for the benefit of all Hoosiers.

Accordingly, Indiana American is authorized to record for ratemaking purposes as the net original cost rate base of the assets being acquired an amount equal to the purchase price (as adjusted and described in Joint Petitioners’ evidence to exclude the amount in excess of the appraised value), incidental expenses, and other costs of acquisition, allocated among utility plant in service accounts as proposed by Indiana American. We find that Indiana American’s proposed accounting and journal entries as described in Mr. Roach’s direct testimony and Attachment GMV-1, should be approved and that the costs so reflected on the books and records of Indiana American be used as the original cost of such properties for accounting, depreciation, and rate base valuation purposes. The journal entry should be adjusted to reflect actual (rather than estimated) incidental expenses and other costs of acquisition. We find that Indiana American’s existing depreciation accrual rates approved by the Commission in Cause No. 43081 on November 21, 2006, and as included in the calculation of rates that was approved on October 10, 2007 in Indiana American’s rate case (Cause No. 43187), should be applied on and after the closing date of the acquisition to depreciable property purchased from Lake Station pursuant to the Asset Purchase Agreement, as the same may be adjusted as authorized by the Commission in its decision in Cause No. 44992.

E. Rates and Rules. Indiana American currently has on file with the Commission a schedule of rates and charges and rules and regulations applicable to water utility service provided by Indiana American in its Area One rate group. Consistent with the Asset Purchase Agreement, we find that, on and after the closing, Indiana American’s generally applicable rates and charges and rules and regulations for water service and private and public fire service applicable in Indiana American’s Area One rate group on file with and approved by the Commission should apply to services provided by Indiana American through the Lake Station Water System, as the same are in effect from time to time.

F. Encumbrances. We find that the encumbering of the properties comprising the Lake Station Water System by subjecting such properties to the lien of Indiana American’s General Mortgage as of the closing should be approved.

10. Confidentiality. Indiana American filed a motion for protection and nondisclosure of confidential and proprietary information on April 13, 2018, which was supported by the Affidavit of Mr. Hoffman. In its motion, Indiana American states certain information redacted in the prefiled testimony of OUCC witness Parks is confidential, proprietary, competitively sensitive, and/or trade secrets. A docket entry was issued on April 20, 2018, finding such information to be preliminarily confidential and protected from disclosure under Ind. Code §§ 8-1-2-29 and 5-14-3-4. The confidential information was subsequently submitted under seal. The Commission finds the information for which Indiana American seeks confidential treatment is confidential pursuant to Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3, is exempt from public access and disclosure by Indiana law, and shall continue to be held by the Commission as confidential and protected from public access and disclosure.

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

1. Joint Petitioners are authorized to consummate the acquisition of the Lake Station Water System by Indiana American on the terms described in the Asset Purchase Agreement and in the evidence as discussed herein.

2. The acquisition of the Lake Station Water System by Indiana American on the terms and conditions described in the Asset Purchase Agreement and in the evidence herein is in the “public interest” as defined in Ind. Code § 8-1.5-2-6.1(d) and (e).

3. Indiana American may record for ratemaking purposes as net original cost rate base of the assets being acquired an amount equal to \$20,199,470, plus actual incidental expenses, and other costs of acquisition reasonably incurred, allocated among utility plant in service accounts as proposed by Joint Petitioners in Attachment GMV-1.

4. Indiana American is authorized to charge customers currently served by the Lake Station Water System the current rates and charges and apply the same rules and regulations for water service and private and public fire service applicable in Indiana American’s Area One rate group on file with and approved by the Commission, as the same are in effect from time to time.

5. Indiana American is authorized to reflect the acquisition of the Lake Station Water System on its books and records as of the closing by making the accounting and journal entries described in Attachment GMV-1, as adjusted to actual incidental expenses and costs of the acquisition.

6. The net original cost, as defined herein, of the acquired property shall be used for accounting, depreciation, and rate base valuation purposes after closing.

7. Indiana American is authorized to apply its depreciation accrual rates on and after the closing date of the acquisition to depreciable property purchased from Lake Station pursuant to the Asset Purchase Agreement.

8. Indiana American is authorized to encumber the properties comprising the Lake Station's Water System with the lien of Indiana American's mortgage indenture.

9. The information submitted under seal in this Cause pursuant to Indiana American's request for confidential treatment is determined to be confidential trade secret information as defined in Ind. Code § 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure under Ind. Code §§ 8-1-2-29 and 5-14-3-4.

10. This Order shall be effective on and after the date of its approval.

HUSTON, KREVDA, AND ZIEGNER CONCUR; FREEMAN AND OBER DISSENTING WITH OPINION:

APPROVED: AUG 15 2018

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



Mary M. Becerra
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN)
WATER COMPANY, INC. ("INDIANA AMERICAN"))
AND THE CITY OF LAKE STATION, INDIANA)
("LAKE STATION") FOR APPROVAL AND)
AUTHORIZATION OF: (A) THE ACQUISITION BY)
INDIANA AMERICAN OF LAKE STATION'S)
WATER UTILITY PROPERTIES (THE "LAKE)
STATION WATER SYSTEM") IN LAKE COUNTY,)
INDIANA IN ACCORDANCE WITH A PURCHASE)
AGREEMENT THEREFOR; (B) APPROVAL OF)
ACCOUNTING AND RATE BASE TREATMENT; (C))
APPLICATION OF INDIANA AMERICAN'S AREA)
ONE RATES AND CHARGES TO WATER SERVICE)
RENDERED BY INDIANA AMERICAN IN THE)
AREA SERVED BY THE LAKE STATION WATER)
SYSTEM ("THE LAKE STATION AREA"); (D))
APPLICATION OF INDIANA AMERICAN'S)
DEPRECIATION ACCRUAL RATES TO SUCH)
ACQUIRED PROPERTIES; AND (E) THE)
SUBJECTION OF THE ACQUIRED PROPERTIES TO)
THE LIEN OF INDIANA AMERICAN'S MORTGAGE)
INDENTURE.)

CAUSE NO. 45041

APPROVED:

DISSENTING OPINION OF
COMMISSIONERS SARAH E. FREEMAN AND DAVID L. OBER

We respectfully dissent from the majority opinion because it contravenes traditional ratemaking principles embedded in Title 8 of the Indiana Code, longstanding judicial precedent, and the plain language of the statutes underpinning this Cause, as well as the legislative intent on which the majority bases its decision.

Accepting, as the majority contends, that enacting Ind. Code § 8-1.5-2-6.1 ("Section 6.1") signaled the Indiana General Assembly's intent to encourage investment in utility infrastructure, the legislature did not endorse investment, regionalization, or distressed utility acquisitions at any cost to Indiana's ratepayers. No such concept is embraced in Indiana's utility regulatory scheme. The General Assembly was well aware when enacting Section 6.1 and Ind. Code 8-1-30.3-5 ("Section 30.3-5") of how the Commission and Indiana's judiciary have historically interpreted the ratemaking concept of used and useful and, with that knowledge, required in Section 30.3-5 that the acquired property be used and useful to the acquiring utility in providing service in order for the acquiring utility to include the cost differentials in its rate base. The majority acknowledges that this legislation establishes "the specific factors the Commission must consider," (Majority at p. 20),

but then does not require compliance with these factors by finding the water treatment plant (“WTP”) and wells (which, valued by Lake Station’s appraisers at more than \$7.3 million, constitute more than one-third of Lake Station’s assets) are used and useful utility property despite not being reasonably necessary for Indiana American’s provision of water service. How the unregulated Lake Station water utility uses these assets does not justify saddling Indiana American’s ratepayers with the financial consequences of their inclusion in Indiana American’s rate base.

At the outset of its discussion, the majority quotes the following policy in Ind. Code § 8-1-2-0.5:

The general assembly declares that it is the continuing policy of the state, in cooperation with local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to create and maintain conditions under which utilities plan for and invest in infrastructure **necessary for operation** and maintenance **while protecting the affordability of utility services for present and future generations of Indiana citizens.** (emphasis added)

Importantly, the policy set forth in Ind. Code § 8-1-2-0.5 affirms infrastructure investment that both is necessary and protects the affordability of utility services for Indiana’s citizens. The majority’s interpretation of Section 30.3-5(c)(1), however, furthers neither objective. It does not protect affordability to add the cost differentials to Indiana American’s rate base by finding over \$7.3 million in assets that are not necessary to serve Indiana American’s ratepayers to be used and useful property and then look to those ratepayers for over \$1 million annually in future expenses and property taxes attributable to that plant. Public’s Ex. 2 at p. 11. This outcome may afford a better return for Indiana American’s shareholders, but it comes at Hoosier ratepayers’ expense as opposed to safeguarding the affordability of their utility services.

Moreover, in this Cause, there is no correlation between the utility for whom Lake Station’s treatment plant, wells, and related assets were shown to be used and useful—Lake Station—and the utility company to whose rate base the majority effectively adds this property when it concludes that Section 30.3-5(c)(1) is satisfied. For Indiana American’s ratepayers, this inclusion in rate base comes with a significant cost attributable to plant that is not useful in providing them service. We disagree that this result was encouraged or envisioned by the General Assembly and cannot countenance so burdening Indiana American’s ratepayers.

Accordingly, our dissent is first and foremost driven by the firm conviction that the acquisition the majority approves is unjust and unfair to Indiana American’s ratepayers because Section 30.3-5(c)(1) is misconstrued in the majority order. More specifically, as discussed below, we believe Indiana American did not satisfy the requirements of Section 30.3-5(c)(1), (c)(5), (c)(8), and (d)(4), so the cost differentials should not be approved for inclusion in its rate base. We also

believe this acquisition is not in the public interest as Section 6.1 requires and should, therefore, not be preapproved.¹

A. **Ind. Code § 8-1-30.3-5(d)**. Section 30.3-5(d) applies to this proceeding because Indiana American seeks preapproval of its proposed acquisition of the Lake Station Water System. Section 30.3-5(d) authorizes filing a petition under Section 30.3-5(c) before acquiring another utility's property, subject to four conditions, and provides as follows:

(d) A utility company **may petition** the commission in an independent proceeding to approve a petition under [Section 30.3-5(c)] before the utility company acquires the utility property **if the utility company provides:**

(1) **notice** of the proposed acquisition and any changes in rates or charges to customers of the distressed utility;

(2) **notice** to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue;

(3) **notice** to the office of the utility consumer counselor; and

(4) **a plan** for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility. (emphasis added)

A more traditional restatement of Section 5(d) as it applies to this Cause would read as follows:

If Indiana American provides notice to its customers and the OUCC and a plan for reasonable and prudent improvements, then Indiana American may petition the Commission to approve Indiana American's acquisition of the Lake Station Water System before the acquisition occurs.

Therefore, to petition the Commission before acquiring the property of a distressed utility, the acquiring utility company must provide the Commission with each item listed in Section 5(d)(1) through 5(d)(4). Accordingly, as a threshold concern, we believe this statute contemplates the notices and plan being documents provided to the Commission concurrent with filing of the petition.² In this Cause, no cohesive plan document was ever presented, prompting us to conclude

¹ Joint Petitioners seek approval of a proposed acquisition, not an acquisition that has been consummated. We would encourage Joint Petitioners to re-negotiate a transaction that is in the best interests of both utilities' ratepayers.

² The Commission afforded Indiana American, as the petitioner in *Indiana American Water & City of Charlestown*, Consolidated Cause Nos. 44976 and 44964 (IURC 3/14/2018) ("*Charlestown Order*"), leeway to provide the required plan after filing its petition and case-in-chief, in that case developing the plan through rebuttal, cross-examination testimony, and responses to docket entry questions. The concurring opinion, however, cautioned Indiana American that

that the majority, in finding Indiana American satisfied this requirement, improperly blurs the distinction between what Section 30.3-5(c)(3) and Section 30.3-5(d)(4) require.

Section 30.3-5(d)(4)³ requires an acquiring utility such as Indiana American to provide “[a] plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.” We concur with the majority that, for purposes of Section 30.3-5(c), Lake Station qualifies as a distressed utility because it serves fewer than 5,000 customers and not because it is operationally distressed. *See* Ind. Code § 8-1-30.3-6(5); *cf.* Ind. Code § 8-1-30.3-6(4). Regardless of whether Lake Station’s system is operationally distressed—as that term is commonly understood or perceived—Indiana American is not exempt from the requirement in Section 30.3-5(d)(4) to provide the Commission with a plan for reasonable and prudent improvements to the system it seeks to acquire. We do not believe the evidence Indiana American presented, whether in its case-in-chief or on rebuttal, demonstrates a plan for reasonable and prudent improvements.

Indiana American’s Director of Engineering and rebuttal witness Stacy S. Hoffman testified that Indiana American’s plan for improvements “does not include any immediate construction or engineering activities that are needed to address current water quality, pressures[,] or flows to Lake Station.” Jt. Petitioners’ Ex. 5-R at p. 5, lines 5 through 8. Mr. Hoffman did not present engineering testimony about Indiana American’s plan for improvements, instead deferring to Mr. Prine, Indiana American’s Community and Government Affairs Director, for plan testimony. Jt. Petitioners’ Ex. 5-R at p. 5. We therefore look to Mr. Prine’s testimony to determine whether Indiana American presented a plan for reasonable and prudent improvements as Section 30.3-5(d)(4) requires.

As part of Indiana American’s case-in-chief, Mr. Prine testified that Indiana American’s plan, in part, is to include the Lake Station Water System in Indiana American’s distribution system prioritization model so the infrastructure replacement plan the 2016 IFA Report contemplates for all Indiana water utilities can begin. Jt. Petitioners’ Ex. 1 at p. 16, lines 15 through 18. However, the prioritization model looks at Indiana American’s distribution system as a whole, and placement in this model is an action Indiana American will not be initiating until after acquisition. Mr. Prine consequently identified no specific improvements associated with the agreed \$2,800,000 minimum investment by Indiana American nor any improvement initiatives Indiana American plans to undertake with these dollars. Mr. Prine testified he does not think these have been identified. Attachment TJS-3 at p. 46. Mr. Prine also testified that Indiana American has an existing interconnection with the Lake Station Water System and, by reopening this interconnection, Indiana American will provide water service at a lower operational cost than by operating Lake Station’s treatment and softening plant after acquisition. Finally, he testified that service to current Lake

Section 30.3-5(d)(4) requires, at the very least, a plan for reasonable and prudent improvements to be a component of Indiana American’s case-in-chief. *Charlestown Order*, Concurring Op. at p. 2. The *Charlestown Order* was approved on March 14, 2018, approximately two months after Joint Petitioners initiated this Cause but issued before Joint Petitioners filed updated direct testimony on April 9, 2018, for Mr. Prine and Mr. Roach and filed their rebuttal testimony. In updating its case-in-chief (and in filing rebuttal), Indiana American opted to not heed the requirements of the statute or this cautionary admonition.

³ *Cf.* Section 30.3-5(c)(3) provides: “The utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service.”

Station customers will be enhanced through capturing economies of scale from Lake Station being part of Indiana American's larger system and that the plan includes achieving these economies of scale by virtue of Lake Station becoming part of Indiana American's larger system. Jt. Petitioners' Ex. 1 at p. 16, line 15 through p. 17, line 13; p. 18, line 23 through p. 19, line 11.

On rebuttal, Mr. Prine testified that Indiana American's plan for improvements does not require an engineering analysis and consists of:

- (1) enabling the provision of service reliability to Lake Station from the existing system interconnection with Indiana American's Northwest Indiana Operation;
- (2) inclusion of the Lake Station system in Indiana American's prioritization model for the distribution system so the infrastructure replacement plan the 2016 IFA Report (Attachment MP-4) contemplates can commence;
- (3) an estimated \$2,800,000 in capital improvements to be made in the next five years to ensure system reliability, to be identified after the system's incorporation in the prioritization model;
- (4) economies of scale achieved by Lake Station's system becoming part of Indiana American's larger system; and
- (5) operations being taken over by Indiana American's professional, full-time staff with full-time functional specialists in the areas of engineering and water quality and 24/7 customer service emergency response.

Jt. Petitioners' Ex. 1-R at p.8, lines 1 through 19.

We concur with the majority that Lake Station qualifies as a distressed utility under Ind. Code § 8-1-30.3-6 for purposes of Section 30.3-5(c) because it serves fewer than 5,000 customers. Ind. Code § 8-1-30.3-6(5). It is not operationally a distressed utility.

Joint Petitioners' only engineering testimony came from Mr. Hoffman who testified on rebuttal that Indiana American's plan for improvements "does not include any immediate construction or engineering activities that are needed to address current water quality, pressures or flows to Lake Station." Jt. Petitioners' Ex. 5-R at p. 5, lines 5 through 8. The majority acknowledges that Indiana American did not identify any specific improvements that it believes are necessary to continue adequate, safe, and reasonable water service to Lake Station's customers. Indiana American also never provided a plan document. In the absence of providing a plan identifying these improvements, we disagree that a plan was provided for reasonable and prudent improvements. Mr. Hoffman presented no engineering testimony on Indiana American's plan, instead deferring to Mr. Prine for plan testimony. Not being operationally distressed — as that term is commonly understood or perceived — does not exempt Indiana American from the requirement in Section 30.3-5(d)(4) to provide the Commission with a plan. We, therefore, look to the sufficiency of the plan Mr. Prine presented.

The first plan element Mr. Prine identified is serving Lake Station's customers via Indiana American's existing interconnection. Opening the connection between Lake Station and Indiana American post-closing is required by the Asset Purchase Agreement in order to demolish the elevated storage tank. Attachment MP-3 at p. 10. Utilizing this existing interconnection is, thus, an

action Indiana American has agreed to take, but this falls short of constituting an improvement plan. Lake Station is already interconnected with Indiana American's Northwest District. This physical connection has existed since at least the mid-1960s when Lake Station began purchasing water from Gary-Hobart Water Corporation, now Indiana American. Public's Ex. 1 at p. 4, footnote 4. Purchasing water from Indiana American was an alternative Lake Station considered and rejected before constructing its new treatment plant. Agreeing to serve Lake Station's customers via this existing interconnection is a long-standing option but not the required plan.

Mr. Prine testified Indiana American's plan for improvements also includes placing the Lake Station Water System in Indiana American's prioritization model. Jt. Petitioners' Ex. 1-R at p. 8, line 5. Based upon Mr. Prine's deposition testimony, the prioritization model identifies the projects throughout Indiana American's entire system that are most in need of replacement and prioritizes them. Attachment TJS-3 at p. 44. Lake Station's assets will not be placed in the prioritization model until owned by Indiana American.

Q What is Indiana American's plan for replacement of Lake Station's aging or failing distribution infrastructure?

A You know, as I described in my direct testimony – I can reference you to that. Page 16, I describe **how we plan to include** Lake Station's system into our overall prioritization model for the distribution system and **make appropriate plans for** improvements moving forward based off the data that we glean once we operate the system. (emphasis added)

Attachment TJS-3 at p. 42, lines 5 through 14.⁴

The prioritization model Mr. Prine describes is a recognized mechanism for system-wide asset management. This model will in the future identify improvements that may or may not include assets within Lake Station's Water System, but the prospective inclusion of the Lake Station Water System after closing does not provide the Commission with the plan for reasonable and prudent improvements Section 30.3-5(d)(4) requires. What Mr. Prine presented is that Indiana American plans to develop a plan that may or may not embrace near-term improvements to Lake Station's existing system, depending upon the prioritization model results. While adding Lake Station's system to Indiana American's prioritization model should improve future asset management for the Lake Station Water System, *see Indiana American Water & Town of Georgetown*, Cause No. 44915 (IURC 10/11/2017) ("*Georgetown Order*") at p. 14, the prospective inclusion of Lake Station's system is a plan to make a plan, not a plan that identifies improvements that the Commission can evaluate today to determine whether they are reasonable and prudent.

Mr. Prine also identified Indiana American's estimated \$2,800,000 in capital improvements over the next five years as part of its plan under Section 30.3-5(d)(4). But when asked about this estimate, Mr. Prine could not recall whether it came from engineering or from former Indiana American Director of Rates and Regulatory, Gary VerDouw who, like Mr. Prine, is not an engineer. Attachment TJS-3 at p. 49, lines 18 through 20. This investment commitment supports finding

⁴ Mr. Prine was deposed in this proceeding on March 2, 2018. At the evidentiary hearing, in response to cross-examination questions, he acknowledged being provided with an opportunity to review his deposition transcript and having agreed it is true and correct. He had no changes to his deposition. Tr. A-53.

Section 30.3-5(c)(3) is met, but it is not an operational improvement plan. Mr. Prine was unable to associate this dollar amount with any identified improvements or improvement plan.

Q Was that number [\$2.8 million] derived by putting in Lake Station's assets into the prioritization model?

A I don't believe it was specifically put into the prioritization model. I think it was derived from making assumptions on what a reasonable level of pipe replacement on a calendar year would be, knowing that the system is aged. The details that were gleaned from the appraisals indicate that there's pipe and areas of the city that probably need to be replaced. **I don't think those projects have been explicitly identified**, but we made an estimate, as I say there, an estimated \$2.8 million in capital improvements.

... This is an estimate so that we can give assurance that we are going to do the right thing. That we are going to make investments. **That we are going to identify projects that need to be done to keep the system viable – or reliable for the future.**

Q So Mr. Prine, this is a promise to Lake Station that you're going to spend \$2.8 million over the next five years for system reliability?

A I would not characterize it as a promise. I would characterize it as a – what **our estimated intent to do** and to make those improvements over that time will be.

...

Q So if there's a conflict between the \$2.8 million in capital improvements, and let's say your prioritization model only suggested a million dollars of projects should be done using the prioritization model, which is Indiana American going to do?

A Indiana American is going to do the right thing and focus on the projects that they need to focus on.

Q And they're going to rely on the prioritization model for that?

A They are going to rely on the prioritization model for that. (emphasis added)

Attachment TJS-3 at p.46, line 13 through 25; p. 47, lines 6 through 18; page 48, lines 9 through 20.

Mr. Prine acknowledged the projected \$2.8 million in capital improvements is simply an estimate of the dollars that may be expended when Indiana American identifies what needs to be done to maintain system reliability as opposed to those improvements having been identified and incorporated into a plan that these dollars will fund. Agreeing upon this estimate in the Asset Purchase Agreement (Attachment MP-3 at p. 10, Section 6.4(d)) may have afforded the investment assurance Lake Station desired, but it is not evidence that an improvement plan has been developed and provided for the Commission's review as Section 30.3-5(d)(4) requires.

Mr. Prine also asserts that the economies of scale that will be achieved by Lake Station becoming part of Indiana American's system are part of Indiana American's plan for improvements. In support of this position, Indiana American, in its post-hearing Brief in Support of Proposed Order, states that according to the 2016 IFA Report, "[L]arger systems improve the economic

performance for customers.” Bf. in Support of Proposed Order at p. 10. Indiana American asserts that if it acquires Lake Station, Lake Station will become part of a much larger utility; therefore, its acquisition will conclusively make that improvement, and “the acquisition alone is a plan for that improvement.” Bf. in Support of Proposed Order at p. 11. The fallacy in this argument is that every utility another utility acquires will become part of a larger system by being added to the acquiring system, yet the legislature required the acquiring utility to provide a plan as opposed to the acquisition itself satisfying Section 30.3-5(d)(4). We also note that the complete sentence Indiana American quotes from the 2016 IFA Report indicates the data from the 2016 IFA Utility Evaluation Report suggests that larger systems improve the economic performance for customers (Attachment MP-4 at p. 8 (p. 3 of Report)) as opposed to stating that being acquired by a larger utility conclusively improves service for customers of a distressed utility. Realization of economies of scale is not an improvement plan, but rather a prospective benefit of Indiana American’s acquisition. In this instance, as OUCC witness Kaufman testified, because Indiana American’s largest operating expense is the service company expense its parent company imposes and this cost increases as Indiana American’s customer base grows, increasing its size increases this cost. In addition, if Indiana American purchases Lake Station’s assets at a higher cost per customer than its average rate base per customer, as proposed, its ratepayers may fail to garner the economic benefits of increasing size. We are not persuaded the natural fruits of economies of scale are a plan for reasonable and prudent improvements under Section 30.3-5(d)(4).

The last item Mr. Prine characterizes as part of Indiana American’s plan is that operation of Lake Station’s Water System will be performed by Indiana American after closing, resulting in professional, full-time staff with full-time functional specialists in the areas of engineering and water quality, 24/7 customer service, and emergency response. These are, indeed, prospective benefits from the proposed acquisition. These are, essentially, the operational positives Indiana American identified in *Charlestown* to demonstrate Indiana American has the managerial and technical ability to provide the required water utility service in satisfaction of Ind. Code § 8-1.5-2-6.1(c)(3). *Charlestown Order* at p. 34. We are, however, not persuaded that purchasing Lake Station and, essentially, engaging in the normal course of business after the purchase constitutes providing the required improvement plan. We find this more properly reflects how Indiana American provides service to its system—its entire water system—and the operational status quo Lake Station’s customers will experience if served by Indiana American. Clearly, extending to Lake Station’s customers the operational practices applicable throughout Indiana American’s water system differs distinctly from the 5-year capital improvement plan Indiana American developed in *Georgetown* that identified planned improvements and their associated costs, *Georgetown Order* at p. 14, and the list of improvements and capital investments Indiana American provided for the Charlestown water system. *Charlestown Order* at 29. In both instances, improvements unique to the system being acquired were identified that were found to be reasonable and prudent. Engaging in the normal course of business is not the plan Section 30.3-5(d)(4) elicits.

Based on the analysis above and the testimony presented, at best Indiana American presented elements of a potential plan, such as inclusion within the prioritization model, but never provided the required plan; therefore, we disagree that the requirements of Section 30.3-5(d)(4) were satisfied. Under Section 30.3-5(d)(4), a plan must be provided, not a strategy to search for a solution.

The majority concludes that future inclusion within the prioritization model and approximately \$2,800,000 in unidentified capital improvements presents a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service. While that evidence satisfies Section 30.3-5(c)(3), we disagree that it satisfies Section 30.3-5(d)(4). Concluding otherwise makes the evidence Section 30.3-5(d)(4) requires indistinguishable from the evidence required under Section 30.3-5(c)(3). The law, however, discourages us from concluding the General Assembly intended Section 30.3-5(d)(4) to be useless and merely duplicative of Section 30.3-5(c)(3). *See In re Guardianship of Hickman*, 805 N.E.2d 808, 816 (Ind. Ct. App. 2004). Clearly, there is a difference between having the ability to find solutions that will improve service (Section 30.3-5(c)(3)) and providing the Commission with the improvement plan (Section 30.3-5(d)(4)).

In the future, purchasing utilities are urged to provide with any petition initiated under Section 30.3-5(d) a plan that identifies improvements and, in order for the Commission to find these are reasonable and prudent, their associated costs. Like the notices Section 30.3-5(d) requires, we believe this plan is optimally a stand-alone document identifying improvements to achieve or maintain efficient, safe, and reasonable service and the associated costs. Providing the required plan does not necessitate engineering specific projects or improvements, but rather, ensures the acquiring utility conducts sufficient due diligence to generally identify operational improvements both for its protection and that of its ratepayers. Ratepayers are not protected when utilities blindly invest millions of dollars without having performed sufficient due diligence to provide a plan with identified improvements and costs. We recognize that Indiana American expressed reluctance to evaluate the systems it seeks to acquire until after acquisition so as to not expend resources unnecessarily in case the acquisition does not occur, but we are not persuaded that a prudent purchaser would perform no system inspections or engineering evaluations until after closing. To avoid either extreme, Section 30.3-5(d)(4) does not require detailed, specific projects, simply a plan that is capable of evaluation.⁵

B. Ind. Code § 8-1-30.3-5(c) Requirements. As we noted initially, our paramount concern is the financial burden that the preapproval of Indiana American’s acquisition of the Lake Station Water System unjustifiably imposes on Indiana American’s ratepayers; therefore, we also address each element of Section 30.3-5(c).

(c)(1) The utility property is used and useful in providing water service, wastewater service, or both water and wastewater service. The Indiana Office of Utility Consumer Counselor (“OUCC”) and Intervenor Schererville and Crown Point contested this element with respect to the used and useful status of Lake Station’s treatment plant, wells, and associated equipment. The crux of this dispute is whether this requirement is satisfied if the utility property being acquired is used and useful only to the seller or whether it must be used and useful to the

⁵ Section 30.3-5(d)(2) was amended effective July 1, 2018, but this amendment is not applicable to this proceeding. For purposes of this Cause, Section 30.3-5(d)(2) required that Indiana American’s customers receive notice if the proposed acquisition will increase their rates by an amount greater than one percent of Indiana American’s base annual revenues. The improvement plan cost is included in making this one percent calculation, *see* Jt. Petitioners’ Ex. 4 at p. 1, line 11, and must therefore be identified for the one percent rate impact test to be accurately calculated. Notwithstanding the 2018 amendment of Section 30.3-5(d)(2) to remove the one percent test, Section 30.3(c)(7) was not amended and remains reliant upon a reasonable estimate of anticipated improvement costs when calculating the rate impact.

acquiring utility after acquisition. Section 30.3-5(c)(1) should be interpreted the same whether the acquisition at issue has occurred, as Section 30.3-5(c) envisions, or is before the Commission for preapproval under Section 30.3-5(d). In both instances, it is the acquiring utility for whom the property must be shown to be used and useful, not the seller.

It is well-established that when the legislature enacts new statutes, it is presumed to have been acquainted with the judicial construction of statutes on the same or similar subjects. *State v. Gerhardt*, 145 Ind. 439, 460, 44 N.E. 469, 476 (1896). Section 30.3-5(c)(1), enacted in 2015, requires a utility that seeks to include the property of a distressed utility in its rate base to demonstrate that the property is used and useful in providing utility service. Under Ind. Code § 8-1-2-6(a),⁶ for tangible property to be part of a public utility's rate base, an asset must be used and useful to that utility. For purposes of this proceeding, Indiana American asserts that the present verb tense in Section 30.3-5(c)(1) requires the Commission to find only that the utility property is presently used and useful to Lake Station. We decline to ascribe to the legislature the intent to perform an about face from how used and useful has been interpreted for more than 50 years by reading used and useful in Section 30.3-5(c)(1) in isolation from the utility regulatory scheme under the Public Service Commission Act. This interpretation also fails to recognize the interplay between Sections 30.3-5(c) and 5(d). As former Chief Justice Shepard stated in his concurring opinion in *Citizens Action Coal., Inc. v. Northern Ind. Pub. Serv. Co.*, 485 N.E.2d 610, 618 (Ind. 1985), this interpretation puts "too much weight on too slender a thread." It ignores that the object of the implied preposition in Section 30.3-5(c)(1) for whom the property is to be used and useful is the acquiring company, not the distressed utility.

In addressing the concept of used and useful for purposes of utility property, the Indiana Supreme Court has stated:

The ratemaking process has by statute and long-standing practice included the valuation of that property ... which is 'used and useful' in order to establish a rate base. The rate base consists of that utility property employed in providing the public with the service for which rates are charged and constitutes the investment upon which the return is to be earned.

...

Service commences with and includes 'used and useful' property. Without 'used and useful' property there cannot be any service. I.C. Sec. 8-1-2-1, by defining service in such a manner as to render it dependent on 'used and useful' property, is promoting a clear delineation and balance of investor and consumer responsibilities. In the competitive market, investors contribute capital which is employed to produce a product. Consumers purchase the product, and the purchase price includes a reimbursement for the capital contribution of the investors plus a profit to compensate the investors for the risk they assumed. In the market under consideration here, the utility is granted a monopoly. Utilities are regulated in order

⁶ Ind. Code § 8-1-2-6 (a), originally enacted in 1913, provides in part: "The commission shall value all property of every public utility actually used and useful for the convenience of the public at its fair value. ... " While the majority takes issue with relying upon the precedent interpreting used and useful under this statute, we note that when the legislature enacted Section 30.3-5 and Section 6.1, it recognized exceptions from Ind. Code § 8-1-2-6(b) but not from 6(a).

to protect the consumers from the abuses of monopoly i.e. artificially high prices. The statutes which govern the regulation of utilities and which grant the PSCI its authority and power provide a surrogate for competition. I.C. Sec. 8-1-2-1 and I.C. Sec. 8-1-2-4 insure that the responsibilities of utility investors and consumers are commensurate with the responsibilities of investors and consumers in a competitive market.

Citizens Action Coal., 485 N.E.2d at 614-15. (internal citations omitted). This appeal involved the cancellation of the Bailly N-1 nuclear project before it became used and useful property. The Court, given this scenario, further stated:

The definition of service in I.C. Sec. 8-1-2-1 restricts the scope of includable property to that property which performs and furnishes, i.e. producing property or 'used and useful' property. Consequently, I.C. Sec. 8-1-2-1, in conjunction with I.C. Sec. 8-1-2-4, protects consumers from having to pay for service not received, something which they would not be subjected to in a competitive industry.

Citizens Action Coal., 485 N.E.2d at 615. Across decades of case law, the concept that an asset must be both used and useful is inextricably tied to the concept of rate base and recovery from ratepayers.

The Commission long ago developed a bifurcated test to determine the used and useful nature of a utility's property, a test which has been judicially approved and acquiesced to by our legislature. The Commission's used and useful standard requires: (1) that the utility plant be actually devoted to the provision of utility service; and (2) that the plant's utilization be reasonably necessary to the provision of utility services. *Evansville v. S. Ind. Gas & Elec. Co.*, 167 Ind. App. 472, 339 N.E.2d 562, 589 (1975). Utility property cannot be partially or intermittently used and useful, but rather, must be either used and useful or held by its owner for future use. *Re Indianapolis Water Co.*, No. 27458, 26 P.U.R.3d 270, Ind. P.S.C. (August 22, 1958).

Against this established precedent affirming the importance of property being used and useful to a utility before being included in that utility's rate base, Indiana American asks the Commission to instead focus only on whether Lake Station's water treatment plant is used and useful to Lake Station before the proposed acquisition to the exclusion of whether it is used and useful to Indiana American after the proposed acquisition. Adopting this interpretation allows Indiana American to include in its rate base a water treatment plant and related assets at a cost to its ratepayers of more than \$7 million regardless whether the property is used and useful post-acquisition in Indiana American's provision of water service. It ignores the interplay between Sections 30.3-5(c) and 5(d) as well as the established ratemaking principles of used and useful property. Under this interpretation, there is no correlation between the entity for whom the utility property is used and useful in providing service and the utility company placing it in rate base for recovery from ratepayers. We find it is unreasonable to recoup millions of dollars from Indiana American's ratepayers for assets that are used and useful to Lake Station but not to Indiana American. In so finding we are not intimating that a purchaser is required to show that all the assets being acquired would continue to remain reasonably in service after closing into perpetuity. Rather,

a purchaser must demonstrate the assets are reasonably necessary post-acquisition to its ongoing provision of service.

Joint Petitioners brought this proceeding seeking approval of their proposed transaction under Section 30.3-5(d). Section 30.3-5(d) permits a utility company to seek Commission approval before acquisition.⁷ Section 30.3-5(c), in contrast, is drafted from the perspective of a utility having already acquired the seller's property and then petitioning the Commission to include the cost differentials in its rate base. Under Section 30.3-5(c):

[t]he utility company that acquires the utility property may petition the commission to include the cost differentials as part of its rate base.

In this Cause, our review under Section 30.3-5(c) is occurring before the acquisition because of the timing authorized under Section 30.3-5(d), but this timing does not alter the language in Section 30.3-5(c). Section 30.3-5(c) is plainly structured as if the transaction has been completed; therefore, the object for which the property at issue is used and useful is the acquiring utility. We are not persuaded that this changes because the petition is initiated under Section 30.3-5(d). This simply causes the Commission to need to first determine if the Section 30.3-5(d) elements are satisfied and then potentially conduct the review Section 30.3-5(c) requires. The majority's interpretation of Section 30.3-5(c)(1) — that this requirement is satisfied if the utility property is used and useful in providing water service only by the distressed utility — is not supported by reading the statute as a whole or by its plain language. Under Section 30.3-5(c), when the statute references the distressed utility, it does so explicitly, but otherwise Section 30.3-5(c) is drafted based upon what the Commission must find as to the acquiring utility to approve including the cost-differentials post-closing in its rate base.

Moreover, any speculation upon the likelihood that this transaction will occur if the requested preapproval is denied, is not an appropriate consideration under Section 30.3-5(c)(1). A potential outcome certainly does not impact whether the assets are used and useful in Indiana American's provision of service. The information the majority provides is also incomplete in that while Mayor Anderson testified Lake Station has outstanding SRF debt associated with the utility assets, he testified the proposed purchase price is \$20,680,000, Tr. A-104, and the balance on the SRF loan is "10.2, 10.5 million." Tr. A-103. Without the appraised value of the assets that are used and useful only to Lake Station being included in this transaction, i.e. \$7.3 million, Lake Station could still be made whole and pay off its utility debt without Indiana American's rates being improperly inflated.

We find that, in order for an acquiring utility to include the cost differentials in its rate base under Section 30.3-5(c), the utility property being acquired must be used and useful for the provision of water service by the acquiring utility. In this Cause, this means that all of the Lake Station Water System, including the treatment plant, supply wells, and related assets, must be used

⁷ Under Section 30.3-5(d), "A utility company may petition the commission in an independent proceeding to approve a petition under subsection (c) before the utility company acquires the utility property if the utility company provides: ..."

and useful for the provision of water by Indiana American in order for Indiana American to include the requested net original cost (\$20,199,470) in its rate base and earn a return on that value.

To make this determination, we apply the bifurcated ‘used and useful’ test: (1) The utility plant is actually devoted to providing utility service; and (2) the plant’s utilization is reasonably necessary to the provision of utility service. *Evansville v. S. Ind. Gas & Elec Co.*, 339 N.E.2d at 589. We, therefore, turn to determining whether the Lake Station treatment plant and related assets qualify as Indiana American’s used and useful utility property under Section 30.3-5(c)(1).

While Mr. Prine testified the Lake Station plant is currently used and useful in supplying water to Lake Station’s customers, Jt. Petitioners’ Ex. 1 at p. 14, lines 9-10, he also testified that “due to the high cost to operate the Lake Station water treatment plant, Indiana American intends to only use the plant during peak demand days, or as emergency supply.” Jt. Petitioners’ Ex. 1 at p. 17, lines 6-9. When asked in OUCC DR 4.5(d) how many peak days (each year) Indiana American anticipates will occur requiring it to operate the Lake Station treatment facility, Indiana American responded, “Currently none; however, demands resulting from new customers, future sale-for-resale agreements, or acquisitions could also require use of the Lake Station plant.” Intervenor Schererville’s Ex. 1, Attachment TJS-2 at p. 2. The majority mischaracterizes the record in stating, “Indiana American provided testimony that it would be using Lake Station’s existing WTP and wells to some extent, such as in cases of emergency... .” (Majority at p. 27) At best, the record reflects the assets at issue might in the future be used by Indiana American, but when and how frequently is conjecture. Mr. Hoffman conceded that Indiana American has no plans to operate and use the Lake Station plant in the foreseeable future.

Q I’m going to read to you Subsection d) of DR 4.5 [i.e. OUCC Data Request 4.5], and if you could, let me know what the response is to d) which is on the second page.

The question in d) is: ‘How many ‘peak’ days (each year) does Indiana American anticipate will occur requiring it to operate the Lake Station Treatment facility? Please provide any studies relied upon to answer this request.’

What is the response?

A The response is: ‘Currently none; however, demands resulting from new customers, future sale-for-resale agreements, or acquisitions could also require use of the Lake Station plant’

...

Q ... but just so I’m clear, the answer to 4.5 d) is still currently none; correct?

A That’s correct.

Tr. C-12.

Mr. Prine testified that it is “conceivable” Indiana American could use Lake Station’s treatment plant in the event of a critical asset failure or to meet future peak demand. Tr. C-15. Indiana American, however, provided no studies in its case-in-chief identifying any level of peak use that will trigger its eventual use of the wells and treatment plant. The OUCC disputed in its

case-in-chief that Indiana American will use the Lake Station plant for peaking or emergencies, with OUCC witness Parks characterizing it as an unnecessary emergency back-up treatment plant. Public's Ex. 1 at p. 13, lines 17-18. Accepting that some future emergency may prompt Indiana American to use the plant at issue, utility plant that may only be intermittently used is held for future use and is not used and useful utility plant in service. *See Re Indianapolis Water Co.*, No. 27458, 26 P.U.R.3d 270, Ind. P.S.C. (August 22, 1958).

Indiana American's Northwest District is the largest of Indiana American's 21 operating units, comprising 66,713, or 22%, of Indiana American's customers statewide. Public's Ex. 1 at p. 5. The Northwest District treats high quality water from Lake Michigan using two treatment plants, the 54 MGD Borman Park WTP and the 24 MGD Ogden Dunes WTP. Mr. Parks testified that, based on his review of the Monthly Reports of Operation submitted by Indiana American to IDEM and Indiana American's response to OUCC DR 16-1, the Northwest District produced an average of 38.1 MGD in 2017. He further testified the Northwest District currently has 40 MGD of excess daily average production capacity at its two treatment plants which is sufficient to provide Lake Station's average daily flow of 0.7 MGD nearly 60 times over and still easily meet Indiana American's estimated peak day demands. Public's Ex. 1 at p. 5.

Mr. Parks also noted that Indiana American has not in its IURC Annual Reports since 2009 recommended constructing or acquiring a third WTP to serve the Northwest District or supplementing its Lake Michigan water supply with ground water. Public's Ex. 1 at p. 6. In addition, Indiana American never went forward with a project it identified in one of its reports to expand the Ogden Dunes WTP from 24 to 36 MGD, and this project was not again proposed in Indiana American's 2016 IURC Annual Report. Public's Ex. 1 at p. 7. From Mr. Parks' perspective, "It not only makes economic sense, but also it makes engineering and operational sense to permanently shut down the [Lake Station] softening plant." Public's Ex. 1 at p. 16, lines 5-6. The OUCC argues that the Commission should disallow inclusion of the \$7,366,043 appraised value of the Lake Station wells and water treatment plant because they are not reasonably necessary for Indiana American to provide Lake Station's customers with service on a back-up or emergency basis and therefore will not be reasonably necessary for Indiana American's provision of water service post-closing. Public's Ex. 1 at p. 26.

Mr. Guerrettaz, testifying on behalf of Intervenor Crown Point, similarly expressed concern that Lake Station's water supply assets will not be used and useful to Indiana American. "Given the massive soft water supply Indiana American has from Lake Michigan and multiple intake points, I am not convinced its [sic] needs Lake Station's ground water supply assets." Intervenor Crown Point's Ex. 1 at p. 9, lines 3-5. From his perspective, these assets will represent unneeded water supply and ground water treatment capacity for Indiana American, and Indiana American's case-in-chief did not show otherwise. Intervenor Crown Point's Ex. 1 at p. 9.

On rebuttal, Mr. Hoffman, Indiana American's Director of Engineering, testified that Indiana American does not see whether Lake Station's plant will be used and useful after it is acquired by Indiana American "as an element the Commission is to find under Ind. Code § 8-1-30.3-5." Jt. Petitioners' Ex. 5-R at p. 7. We disagree.

Mr. Hoffman is critical of Mr. Parks' assumptions regarding the average pumping capacities of Ogden Dunes and Borman Park WTPs because they do not take into account the hydraulic capabilities of the mains leaving the WTPs, which will limit production to 23 and 49 MGD average respectively. He also testified that the Ten State Standards require the capacity be limited to each facility with their largest filter unit out of service, thereby resulting in average capacities of 18 and 45 MGD. Jt. Petitioners' Ex. 5-R at p. 9. According to Mr. Hoffman, a better methodology to determine average pumping capacities is to compare plant capacity to the maximum daily system demands over a projected future period and assess system storage in conjunction with plant capacity for their combined ability to meet peak hourly demands, and then evaluate system resiliency. Using this methodology, Mr. Hoffman calculates the Northwest District has a combined reliable capacity of 63 MGD which is nearly identical to the maximum day demand projection of 62.6 MGD. He testified that this thin margin between the reliable capacity and maximum day demand of 0.4 MGD suggests there is value in acquiring the Lake Station plant and wells to supplement regional supply. However, Mr. Hoffman's proposed methodology in this Cause yields a combined capacity that is substantially less than the capacities Indiana American has historically reported to the Commission for the same treatment plants. In further contrast to Mr. Hoffman's testimony, Mr. Prine testified on direct examination that the Northwest District's existing treatment capacity is nearly 80 MGD. Jt. Petitioners' Ex. 1 at p. 16, lines 22-23.

During cross-examination of Mr. Hoffman, the OUCC presented excerpts from Indiana American's confidential 2010 and 2017 Comprehensive Planning Studies showing the Northwest District's reliable, or firm, production capacity. Mr. Hoffman acknowledged that page 4-1 of the 2017 Comprehensive Planning Study (OUCC Ex. CX 11C) shows the reliable capacity for the Northwest District system is 70 MGD. Tr. B-63. As presented by Mr. Parks, Indiana American's demand projections in that same study reflect decreases in maximum daily demands below the 61.5 MGD identified by Mr. Hoffman. The OUCC also offered Public's Ex. CX 8, which is Indiana American's response to OUCC DR 21.27. It, too, reflects the Northwest Indiana District's reliable capacity as 70 MGD. Indiana American has consistently been reporting in its IURC Annual Reports treatment capacities of 54 MGD and 24 MGD for the Borman Park and Ogden Dunes treatment plants respectively. In addition, the Presiding Officers issued a Docket Entry inquiring whether Indiana American's most recent Comprehensive Planning Study for the Northwest District identifies any need to expand its water supply capacity. Indiana American's response, filed on April 23, 2018, affirmed no water supply expansion project is identified in this study, and the Northwest District has sufficient capacity for more than a decade. Jt. Petitioners' Ex. 6.

Based on the foregoing, particularly Mr. Parks' thorough testimony, we find Indiana American's evidence unpersuasive in demonstrating the Northwest District has insufficient capacity to meet daily average flows or maximum day demands unless Lake Station's treatment plant is used. Indiana American did not meet its burden to show that the Lake Station treatment plant, supply wells, and related assets will, after closing, be reasonably necessary for Indiana American to provide water service or be used and useful for purposes of Section 30.3-5(c)(1). In reaching this result, we reject Mr. Hoffman's thin margin perspective based upon Mr. Parks' testimony and because we find the following contrary to this assertion: (1) Indiana American's 2010 Comprehensive Planning Report reflected three projects, two of which related to expanding capacity, including expansion of the Ogden Dunes WTP. Neither project was undertaken nor recommended again in the 2017 Comprehensive Planning Report. Tr. B-68. If projected maximum

day demand has nearly reached reliable capacity, we are dubious Indiana American would remove these projects instead of actively pursuing these or similar projects to expand production. (2) Lake Station's treatment plant has not produced more than 1.1 MGD and with all units in service has a maximum design of 2 MGD; by comparison, in 2000 Indiana American's non-revenue water was 4.39 MGD, Tr. B-44, peaking at 12.42 MGD in 2016 (OUCC Ex. CX 7), and is projected to be 9.91 MGD by 2020, representing nearly ten times the potential amount of water Lake Station's WTP is designed to produce. (3) In responding to the Docket Entry inquiring about Indiana American's most recent Comprehensive Planning Study, Indiana American confirmed this study does not identify a current need for expansion of water supply capacity for the Northwest District. Instead, it evidences sufficient capacity for more than a decade. (4) Due to decreasing demand, Indiana American elected to not renew its 2 MGD water supply agreement with East Chicago. (5) Indiana American agreed to demolish, rather than use, Lake Station's 400,000 gallon elevated water tank that is in good condition. These five actions belie Indiana American's alleged supply deficiency and demonstrate instead that Lake Station's treatment plant and related facilities, after closing, are not reasonably necessary to Indiana American's rendering of water service.

Based on the foregoing analysis, we would find that Joint Petitioners did not show the Lake Station water softening and treatment plant and associated assets to be used and useful property under Section 30.3-5(c)(1). Accordingly, inclusion of the cost differentials as part of Indiana American's rate base is not appropriate, and we dissent from the majority's holding otherwise.

(c)(2) through (c)(4). We do not dissent from the discussion concerning Section 30.3-5(c)(2), (3), and (4).

(c)(5) The actual purchase price of the utility property is reasonable. Section 6.1(d) establishes a presumption that the purchase price of the municipality's nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value. Specifically, Section 6.1(d) states:

The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest. For purposes of this section [Section 6.1], the purchase price of the municipality's nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under [Ind. Code 8-1.5-2-5].

In evaluating the reasonableness of the "actual purchase price" under Section 30.3-5(c)(5), the majority errs in substituting what Indiana American witness Roach describes as the final purchase price and determining its reasonableness instead of the reasonableness of the actual purchase price.

Lake Station Mayor Anderson testified the purchase price of the proposed transaction is \$20,680,000. Tr. A-104. This is also the amount that Lake Station's Common Council approved as the purchase price in Ordinance No. 2017-3 on June 8, 2017, Attachment CA-2 at p.1, and the amount Indiana American and Lake Station agreed upon as the purchase price in Section 2.3 of the Asset Purchase Agreement. Attachment MP-3 at p. 2.

On June 24, 2016, the original appraisal of the Lake Station Water System at \$20,380,600 was certified (Attachment CA-1 at p. 1), and this remained the appraised value when the appraisal was recertified over eight months later in March 2017. Empirically, \$20,680,000 exceeds \$20,380,600, and we reject Mr. Roach's machinations to find otherwise. We, therefore, disagree that the presumption of reasonableness in Section 6.1 could be applicable in this Cause when evaluating the actual purchase price.

The actual purchase price includes a storage tower that Indiana American will tear down and real estate that Indiana American will convey back to Lake Station by quit claim deed after closing. Jt. Petitioners' Redirect Ex. 1. In his direct testimony, OUCC witness Kaufman also noted the original appraisal was completed by June 8, 2016, and will be more than two years old when the Order is issued in this Cause. Public's Ex. 2 at p. 19. According to Mr. Kaufman, simply applying Indiana American's overall depreciation rate to Lake Station's estimated total replacement cost reduces the depreciated replacement cost by approximately \$1,000,000 per year. By omitting two years of depreciation from the appraised value, the valuation overstates the value of the assets Indiana American is acquiring. Public's Ex. 2 at p. 19. Mr. Kaufman was also critical of \$1,836,287 in unspecified non-construction costs the appraisers added without supporting evidence for this figure.

We find neither the actual purchase price nor the purchase price to be booked to rate base is reasonable because each fails to incorporate the sizeable dollars by which the assets have depreciated since June 2016. Moreover, both include the cost differentials and more than \$7.3 million for assets in Indiana American's rate base that are not reasonably necessary for its provision of water service. We disagree that the purchase price is reasonable and disagree that the purchase price proposed to be booked to Indiana American's rate base is reasonable.

(c)(6) and (c)(7). We do not dissent from the majority's discussion upon Section 30.3-5(c)(6) and (7).

(c)(8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base. Section 30.3-5(c) requires the Commission to make certain findings to approve including the cost differentials in Indiana American's rate base. As defined under Ind. Code § 8-1-30.3-1, cost differential is the difference between the purchase price, plus incidental expenses and other costs of acquisition, and the original cost minus depreciation and contributions in aid of construction. Its inclusion in rate base enables the purchase price to be placed in the purchasing utility's rate base, notwithstanding the seller's accumulated depreciation or contributions in aid of construction. Given our findings above upon Section 30.3-5(c)(1) and (5), we would not approve inclusion of the cost differentials as part of Indiana American's rate base.

C. Ind. Code § 8-1.5-2-6.1(d) and (e). Before a municipality may sell its nonsurplus utility property under an ordinance adopted under Ind. Code § 8-1.5-2-5(d), the Commission must determine if the sale according to the terms and conditions proposed is in the public interest. Section 6.1(d). Section 6.1(e) is to be applied for purposes of determining public

interest under Section 6.1(d). Under Section 6.1(e)(1),⁸ the proposed sale is in the public interest if the municipally owned utility petitions the Commission under Section 30.3-5(d) and the Commission approves the petition under Section 30.3-5(c). Because the acquiring utility did not satisfy all the requirements of Section 30.3-5(c), the proposed sale is not, as a matter of law, in the public interest under Section 6.1(e)(1).

As discussed above, the agreed purchase price for Lake Station's system (\$20,680,000) exceeds the system's appraised value (\$20,380,600); therefore, there is no presumption under Section 6.1(d) that the purchase price is reasonable. Both the purchase price and the amount Indiana American proposes to include in net original cost rate base (\$20,199,470) fail to recognize two years of significant asset depreciation.

Independent of Section 6.1(e)(1), we believe Joint Petitioners did not demonstrate the proposed acquisition is in the public interest. Indiana American proposes to put into its rate base, on which it will earn a return and depreciation expense, more than \$7 million attributable in the appraisal to a treatment plant and supply wells that, consistent with our findings above, are not used and useful property after the closing for Indiana American's provision of water service. Indiana American also seeks to record as the net original cost rate base an amount equal to the full purchase price notwithstanding that Lake Station's treatment plant and wells are not used and useful to Indiana American, urging the Commission to simply reallocate \$7,366,043 million attributed in the appraisal to the treatment plant and supply wells among Indiana American's utility plant in service accounts. Jt. Petitioners' Ex. 4-R at p. 5. We decline to engage in this accounting sleight of hand, finding the sale according to the terms and conditions proposed is not in the public interest. The policy shared in Ind. Code § 8-1-2-0.5 embraces investing in necessary infrastructure while protecting the affordability of utility services. A sale under the terms and conditions proposed does not do so.

D. Compliance with Ind. Code § 8-1.5-2-4. The majority dismisses the OUC's assertion that Lake Station did not comply with Ind. Code § 8-1.5-2-4 ("Section 4") in connection with its review of the reasonableness of the actual purchase price. We, however, believe the alleged appraisal deficiencies merit our separate review, particularly given Joint Petitioners' claim that the Commission is without jurisdiction to determine whether the statutory requirements under Section 4 related to the appraisal have been met. We disagree with both parts of that claim.

Section 6.1(d) states that the purchase price shall be considered reasonable if it does not exceed the appraised value "set forth in the appraisal required under [Ind. Code § 8-1.5-2-5]." A purchase price does not become reasonable because there exists an appraisal that the price does not exceed. Rather, it is considered reasonable only if it does not exceed the specific appraisal that Ind. Code § 8-1.5-2-5 ("Section 5") requires. Section 5(a) requires that each appraiser be appointed as provided in Section 4. Therefore, in order for the Commission to determine whether the reasonableness presumption in Section 6.1(d) applies to the purchase price, the appraised value that informs the purchase price must be the product of an appraisal performed consistent with Section

⁸ Because Section 6.1(e)(1) is applicable to the Commission's determination of public interest in this Cause, we do not review whether the sale is in the public interest under Section 6.1(e)(2). Section 6.1(e)(2) does not become applicable because Section 6.1(e)(1) is not satisfied. It is only if Section 6.1(e)(1) does not apply that our inquiry may look to Section 6.1(e)(2).

5, which in turn requires the appraisers to have been appointed consistent with Section 4. As such, we agree with the OUCC that, when the Commission is requested to find a purchase price reasonable under Section 6.1(d),⁹ the Commission necessarily has jurisdiction to determine whether the appraisers were appointed as provided in Section 4. The majority presumably agrees that the Commission has jurisdiction, since the majority also reviews the alleged appraisal deficiencies, albeit with a different outcome.

In this Cause, the appraisers were not appointed in compliance with Section 4(1) because the Lake Station Common Council selected three businesses instead of appointing three Indiana residents with the qualifications Section 4 identifies. We disagree with the majority's interpretation that Section 4 simply requires that the referenced document provide for appointment of the appraisers (*see* Majority at p. 29) as opposed to requiring the appointment of three Indiana residents having the requirements listed in Section 4(1). This interpretation contradicts Section 5(b) which requires the individual appraisers to return their appraisal to the municipal legislative body or executive "that appointed them." Mayor Anderson testified on cross-examination that Lake Station, essentially, delegated to the three firms to select and ascertain the individual appraisers' qualifications.

Q Could you tell us to the best of your knowledge what the City did to ascertain the qualifications of the appraisers who did that appraisal?

A I don't think we did much.

I think there was a presumption that with these firms that are doing these appraisals, they have certain licensing requirements and that part of their duties would be to disclose any conflict before accepting any responsibility to do an appraisal.

Tr. A-20, lines 22-25 and A-21, lines 1-5.

Under Section 5(b), the appraisers are required to be sworn and return their appraisal to the municipal legislative body or municipal executive "that appointed them" within the time fixed in the written document appointing them under Section 4. Simply listing company names (OUCC Attachment ERK-9 at pp. 3 and 6) does not satisfy the Section 5(a) requirement that each appraiser be appointed as provided by Section 4. The Lake Station Common Council outsourced the appraiser appointments instead of appointing three appraisers. Attachment CA-2 at p. 1.

Also, while the majority concludes the OUCC's appraisal concerns do not appear to have substantively impacted the result, the record is not clear on this impact. One of the three firms, on its own volition, changed its appraiser selection for purposes of the recertified 2017 appraisal. Mr. Buczek, upon whose work the utility asset values in the 2016 Return of Appraisal were based (Attachment CA-1 at pp. 2-19), did not sign the 2017 Return of Appraisal. But Mr. Buczek's

⁹ We note that the General Assembly amended Ind. Code § 8-1.5-2-6.1, effective July 1, 2018, by adding a new subsection (4) to Section 6.1(e) which in relevant part states, "[T]he commission shall accept as reasonable the valuation of the nonsurplus utility property determined through an appraisal and review under section 5 of this chapter." P.L. 64-2018, Sec. 2. This amendment further evidences support for the Commission reviewing the appraisal's compliance with Section 5.

Summary Report on the Valuation of Water Utility Assets (Attachment CA-1 at p. 2-19) is the only individual appraisal of Lake Station's utility assets, other than real estate, in evidence. Mr. Buchnowski appraised only real estate, providing an appraised value for each of seven parcels "excluding any and all water tower [sic], wells, structure improvements, site improvements, and the like." Attachment CA-1 at p. 23. No comparable appraisal of utility assets or the land by Ms. Cleland or Mr. Pozen was introduced. Yet, notwithstanding Mr. Buczek's replacement in 2017, the exact appraised value his work yielded over eight months earlier was certified by the new appraiser group.

The OUCC alleges additional non-compliance by Lake Station with the requirements in Section 4(3), including Lake Station's failure to incorporate into a written document the date the appraisal was due. In the ordinance appointing the three firms, this date was left blank. Having found the appraisers were not appointed consistent with applicable statutes, we decline to review all the claimed appraisal infirmities. But, we include this discussion to afford notice that we believe the Commission may, in determining the reasonableness of a purchase price under Section 6.1(d), review whether the appraised value was reached in compliance with Section 5.

Consistent with our discussions above, we would not approve the proposed transaction. While there are multiple statutory elements that we find were not satisfied, the majority's interpretation of Section 30.3-5(c)(1) is the most troubling point of disagreement because of its adverse impact on Indiana American's ratepayers and its inexplicable shift from Commission and judicial precedent upon when utility property is used and useful.