

**ORIGINAL**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**JOINT PETITION OF THE CITY OF FORT )**  
**WAYNE, INDIANA, AND UTILITY CENTER, ) CAUSE NO. 44503**  
**INC. d/b/a AQUA INDIANA, INC. FOR THE )**  
**APPROVAL OF TRANSFER OF CERTAIN ) APPROVED:**  
**WATER FACILITIES AND ISSUANCE OF )**  
**WATERWORKS REVENUE BONDS )**

OCT 22 2014

**ORDER OF THE COMMISSION**

**Presiding Officers:**  
**Carolene Mays-Medley, Vice-Chair**  
**Loraine L. Seyfried, Chief Administrative Law Judge**

On June 13, 2014, Joint Petitioners, City of Fort Wayne, Indiana (“Fort Wayne”) and Utility Center, Inc. d/b/a Aqua Indiana, Inc. (“Aqua Indiana”), filed with the Indiana Utility Regulatory Commission (“Commission”) a Verified Joint Petition (“Petition”). In their Petition, Fort Wayne and Aqua Indiana sought Commission approval for and authority to implement the (i) transfer to Fort Wayne of certain Aqua Indiana water utility assets and facilities; (ii) terms and conditions of the Utility System Asset Acquisition Agreement (“Acquisition Agreement”) and the transactions contemplated by it and in its related exhibits, including the underlying Water Pollution Treatment Contract and Operations Agreement; and (iii) issuance by Fort Wayne of waterworks revenue bonds (“Bonds”).

On July 3, 2014, Fort Wayne and Aqua Indiana prefiled their case in chief. On August 28, 2014, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled its testimony and exhibits. On September 24, 2014, Fort Wayne, Aqua Indiana, and the OUCC filed an executed Joint Stipulation and Settlement Agreement (“Settlement Agreement”).

An evidentiary hearing was held in this Cause on October 2, 2014, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Fort Wayne, Aqua Indiana, and the OUCC were present and participated. No members of the general rate-paying public appeared or sought to testify in the evidentiary hearing. During the hearing, the parties offered their respective testimony and exhibits, which were admitted into the record without objection.

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

**1. Notice and Jurisdiction.** Notice of the time and place of the hearings conducted by the Commission in this Cause was given as required by law. Fort Wayne is a “municipally owned utility” as defined in Ind. Code § 8-1-2-1(h) and Aqua Indiana is a “public utility” as defined in Ind. Code § 8-1-2-1(a). Joint Petitioners seek Commission approval of their proposed transfer of assets and related transactions under Ind. Code §§ 8-1-2-83, 8-1-2-89, 8-1.5-2-19, and 8-1.5-3-8. Accordingly, the Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

**2. Joint Petitioners' Characteristics.** Fort Wayne is a municipality located in Allen County, Indiana. Through its municipally-owned utility, Fort Wayne provides both sewer and water service to customers inside and outside its municipal limits. Aqua Indiana is a for-profit Indiana corporation engaged in the business of providing sewer and water service in Allen County, Indiana. Aqua Indiana currently owns water utility assets and facilities serving customers in the southwest portion of Fort Wayne and nearby portions of Allen County outside of the boundaries of Fort Wayne (collectively, "Aqua Southwest"). As part of a still ongoing condemnation proceeding, Fort Wayne has possessed and operated Aqua Indiana's Northern Fort Wayne water and wastewater utility since February 8, 2008 ("Aqua North").

**3. Relief Requested.** In this Cause, Fort Wayne and Aqua Indiana seek Commission approval for (i) Fort Wayne to acquire and thereafter operate Aqua Southwest; (ii) the terms and conditions of the Acquisition Agreement; and (iii) the issuance of Bonds by Fort Wayne to fund the costs associated with the proposed acquisition.

**4. Evidence of the Parties.**

**A. Fort Wayne.** Mr. Matthew A. Wirtz, P.E., Deputy Director of Engineering Services and Chief Engineer for Fort Wayne, described the relief requested and explained that the Acquisition Agreement sets forth the terms by which Aqua Indiana will transfer Aqua Southwest to Fort Wayne. He stated Fort Wayne also seeks authority to issue Bonds to satisfy its financial obligations under the Acquisition Agreement, pay the cost of integrating Aqua Southwest into Fort Wayne's existing system, and pay certain costs associated with the proposed acquisition and issuance of Bonds.

Mr. Wirtz generally described the assets and other consideration Fort Wayne will receive if the Acquisition Agreement is approved. Specifically, Mr. Wirtz testified that Fort Wayne will receive all customers, records, vendor and developer agreements, inventory, and all Aqua Southwest assets. He stated Aqua Indiana's hard assets are identified in Appendix C in the Acquisition Agreement and include, among other things, three different well fields and treatment plants, three elevated storage tanks, and approximately 192 miles of water lines with associated hydrants and valves, services, and meters. In addition to the transfer of hard assets, Mr. Wirtz stated the Acquisition Agreement also settles the outstanding litigation regarding the condemnation of Aqua North, provides a formal mechanism for Fort Wayne to reduce future capital costs by diverting certain sewer flows to Aqua Indiana for wholesale sewage treatment, and establishes agreements between the parties for consulting and operations to facilitate cooperation and continuity.

In exchange for the tangible and intangible assets, Mr. Wirtz testified that Fort Wayne is paying a total purchase price of \$67 million, which includes the \$16.9 million that Fort Wayne previously paid as part of the condemnation proceedings for Aqua North. According to Mr. Wirtz, Fort Wayne will pay Aqua Indiana the remaining amount of \$50.1 million upon approval of the Acquisition Agreement and issuance of the Bonds as proposed herein. Mr. Wirtz explained why he believes the Acquisition Agreement constitutes a fair and reasonable compromise.

Mr. Wirtz also testified in support of Fort Wayne's proposal to issue \$63 million in Bonds to: (i) settle the litigation over the valuation of Aqua North; (ii) purchase Aqua Southwest; and (iii) make the improvements necessary to integrate Aqua Southwest into Fort Wayne's existing water

system. Mr. Wirtz noted that if the transaction is approved, the Aqua North and Southwest customers will be permanent customers of Fort Wayne and receive Fort Wayne's lower rates while Fort Wayne's existing customers will receive a number of direct and indirect benefits, such as capital cost avoidance and cooperation and planning with Aqua Indiana.

Mr. Wirtz confirmed that there are approximately 12,600 Aqua Southwest customers and 9,000 Aqua North customers and that all Aqua Indiana water customers will eventually be interconnected to and served by Fort Wayne's facilities. Although Fort Wayne currently has three existing interconnections with Aqua Southwest, Mr. Wirtz testified that Fort Wayne will need to complete approximately \$8 million of additional upgrades to serve all the Aqua Southwest customers. The new facilities and improvements include, among other things, upgrades to two existing utility pump stations and one Aqua Indiana elevated storage tank, installing approximately six miles of 12-inch, 16-inch, and 24-inch water main extensions, 2,200 new water meters, and associated piping and minor interconnection improvements (collectively, the "Interconnection Improvements"). Mr. Wirtz testified that the Bonds include an amount of approximately \$8 million for the Interconnection Improvements.

Mr. Wirtz explained why he believes the Interconnection Improvements are reasonable, necessary, and will result in better service for Aqua Indiana's customers. Citing to Cause No. 41187, he noted that the November 30, 2012 Water System Operations Audit of Aqua Southwest prepared by Crawford, Murphy, and Tilley, Inc. ("2012 IURC Audit") concluded that Aqua Indiana's supply and pressure issues could generally be attributed to an inadequate source of supply hindering Aqua Indiana's ability to fill its elevated storage tanks during times of high water usage. He also noted that the Commission required Aqua Indiana to update its master plan and recommended improvements to Aqua Indiana's source of supply. Mr. Wirtz indicated these improvements could be expensive and result in higher rates for the Aqua Southwest customers. Mr. Wirtz testified that the Interconnection Improvements will: (i) eliminate the need for Aqua or Fort Wayne to complete improvements recommended in the 2012 IURC Audit; (ii) allow Fort Wayne to transport and deliver more water to Aqua Southwest; (iii) remedy the water shortage and pressure problems previously experienced by the Aqua Southwest customers during high usage periods; and (iv) enable Fort Wayne to continually refill Aqua Southwest's elevated storage tanks and offer improved fire flow capacity. He explained that rather than requiring Aqua Indiana to raise its rates and complete the improvements recommended in the 2012 IURC Audit, Fort Wayne can complete the Interconnection Improvements at no additional cost to Aqua Southwest's or Fort Wayne's existing customers.

Regarding the timing for interconnection of the Aqua Southwest customers to Fort Wayne's system, Mr. Wirtz explained that Fort Wayne anticipates interconnecting the customers in three phases. Within approximately two weeks after closing on the purchase, Fort Wayne expects to complete the first phase by connecting approximately 2,000 Aqua Southwest customers. Within approximately four weeks, he anticipates Fort Wayne will complete the second phase and interconnect an additional 2,500 customers. Finally, the remaining Aqua Southwest customers will be interconnected in the fall of 2015 upon completion of the majority of the Interconnection Improvements. Mr. Wirtz stated that although the phase three customers would not be served from Fort Wayne's system until 2015, Fort Wayne will close on the acquisition and immediately begin serving all Aqua Southwest customers by utilizing Aqua Indiana's existing wells and treatment facilities. Mr. Wirtz explained that Fort Wayne has employees with the requisite experience and licenses to operate the Aqua Indiana system. In addition, Fort Wayne will be hiring ten of Aqua

Indiana's current water employees, including Aqua Indiana's current lead operator. Mr. Wirtz stated that retention of key Aqua Indiana personnel will bolster Fort Wayne's already capable workforce, provide valuable background and experience with the operation of all the Aqua Indiana facilities, allow for relatively easy operation of the Aqua Southwest facilities on a temporary basis, and facilitate an efficient, seamless transition from Aqua Indiana to Fort Wayne ownership.

In transitioning the customers from Aqua Indiana to Fort Wayne, Mr. Wirtz stated that Fort Wayne will use the same procedure it used in transitioning the Aqua North customers in 2008. The communication with the customers would be two-fold. First, Fort Wayne would publish or air notices in the local media at least one week prior to the proposed interconnection dates for each phase. Second, Fort Wayne would follow up with direct mailings and/or door hangers one to two days prior to integration and conversion of each phase to Fort Wayne water. During each phase of the transition, Mr. Wirtz confirmed the Aqua Southwest customers should not experience any interruptions in service.

Mr. Wirtz stated that the Aqua Southwest customers have been very supportive and positive about transitioning from Aqua Indiana to Fort Wayne ownership. He believes the Interconnection Improvements will address the lingering water pressure and quality issues experienced by the Aqua Southwest customers during high usage periods. He also noted that the typical Aqua Southwest residential customer will save between \$100 and \$140 per year once connected to Fort Wayne and paying its monthly user rates.

Finally, Mr. Wirtz testified that Fort Wayne has sufficient production and treatment capacity to serve the Aqua Southwest customers. He opined that the addition of the Aqua North and Southwest customers would provide economies of scale that benefit Fort Wayne's existing customers. He also noted that approval of the proposed transfer and completion of the Interconnection Improvements will allow Fort Wayne to reduce or avoid certain capital costs, eliminate future duplication of facilities, and increase redundancy for its customers on the West Side and Southwest High Pressure Districts (especially for two of its large volume users, Lutheran Hospital and General Motors).

Mr. Robert J. Clifford, a Certified Public Account with H.J. Umbaugh & Associates, described his experience in dealing with municipal utilities, the issuance of bonds, utility acquisitions, and the setting of rates. He stated his role in this case was to consider the potential rate impact of, and appropriate financing vehicle for, all the hard and soft costs associated with acquiring and then integrating Aqua Southwest into Fort Wayne and paying the costs associated with settling the ongoing legal issues resulting from Fort Wayne's acquisition of Aqua North (collectively, "Project Costs"). Mr. Clifford memorialized his findings in a written report ("Report") that sets forth his analysis as to Fort Wayne's financial requirements, as well as his conclusions regarding the terms of the proposed financing that Fort Wayne plans to complete to pay the Project Costs. Jt. Pet. Ft. Wayne Ex. 6.

Mr. Clifford explained that the Report was divided into three sections. The first section contains a letter from his firm to Fort Wayne regarding the purpose of the Report. The second section contains pro forma financial information, and the third section contains additional unaudited financial information regarding the test year ended November 30, 2013. Mr. Clifford stated the second section of the Report contains an estimate of the acquisition, integration, and metering costs proposed by Fort Wayne. He noted the total purchase price to be paid to Aqua Indiana is \$67

million with \$16.9 million having already been paid. Mr. Clifford stated that Fort Wayne estimates an additional \$7.4 million will be required to fully integrate Aqua Southwest, with an additional \$600,000 needed to install compatible meters. Other costs estimated at \$4.9 million include allowances for the financing and legal costs associated with the transaction, and the prefunding of a \$3.1 million debt service reserve. He stated the Project Costs to be financed are \$63 million.

Mr. Clifford stated the anticipated amortization period of the proposed Bonds is 20 years. He noted the Report provides that principal repayment on the Bonds is proposed to be paid annually over an 18 year period beginning on December 1, 2015, and interest will be paid semi-annually beginning on December 1, 2014, at assumed interest rates ranging from 0.85% to 4.65%. Mr. Clifford testified that the term for repayment would be a maximum of 20 years and a maximum interest rate of 5.5%. Although the Report used a maximum interest rate of 4.65%, Mr. Clifford stated that Fort Wayne seeks approval to issue debt at a slightly higher rate in the event interest rates increase by the time of actual closing on the Bonds. Mr. Clifford recommended that final interest rates be determined through competitive bidding and principal payments be “wrapped around” or structured to allow for more level combined annual debt service and to mitigate the impact on rates. Once the Bonds are sold, Mr. Clifford confirmed that the annual debt service requirement will be adjusted to reflect the actual interest rates resulting from the competitive sale. Mr. Clifford testified he believed the proposed financing terms were reasonable, and that the utility would have sufficient funds to meet the requirements of Ind. Code § 8-1.5-2-19. He also confirmed that Fort Wayne did not need a rate increase to complete the proposed transaction.

Mr. Clifford explained that the test year cash operating expenses of \$22,166,100 have been increased by \$2,324,700 to arrive at pro forma 2015 annual cash operating expenses of \$24,490,800. The adjustments to cash operating expenses include anticipated annual inflation of 3% compounded and the incremental cost of servicing the new Aqua Southwest customers. Mr. Clifford stated these incremental costs include the cost of producing 117,150,000 gallons of water, increasing the staffing by six new employees, additional Utility Receipts Tax, and an estimate for contingencies. Although Fort Wayne is retaining all ten Aqua Indiana water employees, Mr. Clifford noted his Report shows an overall staffing increase of six due to the fact that four other Aqua Indiana employees will be hired to fill vacancies within Fort Wayne’s water system.

Mr. Clifford concluded that he believes the terms and conditions in the Acquisition Agreement were fair, reasonable, and in the best interest of Fort Wayne, its customers, and the Aqua Southwest customers. He recommended the Commission approve the proposed financing, as well as the terms and conditions in the Acquisition Agreement.

**B. Aqua Indiana.** Mr. Thomas M. Bruns, President of Aqua Indiana, described Aqua Indiana’s services, current workforce, and the circumstances leading up to the transfer of Aqua North to Fort Wayne. He also described the longstanding litigation between Aqua Indiana and Fort Wayne concerning the condemnation and valuation of Aqua North. Mr. Bruns stated that when Fort Wayne proposed to condemn Aqua Southwest, he approached Fort Wayne to explore the possibility of settling the outstanding litigation concerning Aqua North, as well as the potential purchase of Aqua Southwest. According to Mr. Bruns, the Acquisition Agreement arose out of these discussions.

Mr. Bruns explained that the Acquisition Agreement provided for a \$67 million purchase price which includes the \$16.9 million previously paid by Fort Wayne in connection with the

transfer of Aqua North. Accordingly, the amount to be paid by Fort Wayne to Aqua Indiana at closing, which is scheduled for no later than December 31, 2014, is \$50.1 million.

Mr. Bruns described how it was a priority for Aqua Indiana to protect its employees as part of the transition from Aqua Indiana to Fort Wayne ownership. He stated that four of the ten affected employees have already volunteered to become employees of Fort Wayne, and Aqua Indiana expected the remaining six employees to be offered employment by Fort Wayne. Mr. Bruns stated that the parties have agreed to enter into a consulting agreement (“Consulting Agreement”) under which Aqua Indiana will provide Fort Wayne with engineering, legal, administrative, accounting, billing, customer service, and regulatory and related services in connection with Aqua Southwest for six months with the possibility of an extension. He noted the form of the Consulting Agreement, as well as a proposed operations agreement (“Operations Agreement”), were attached to and included as part of the Acquisition Agreement. Mr. Bruns explained that in the Operations Agreement Aqua Indiana agreed that it would not file for a water rate increase during 2014. He recommended the proposed transfer of Aqua Southwest to Fort Wayne be approved under the terms in the Acquisition Agreement and indicated his belief that Fort Wayne has the managerial, financial, and technical ability to own and operate the Southwest System.

Mr. Bruns next discussed the impact of the transaction on Aqua Indiana’s wastewater utility. He explained that the Acquisition Agreement does not provide for the transfer of any of Aqua Indiana’s wastewater assets, but the Operations Agreement obligates the parties to develop a plan for regular and ongoing communication and consultation regarding project development and implementation. In addition, the Operations Agreement establishes certain boundaries defining the service territory for the parties and prohibits Fort Wayne from condemning the Aqua Southwest sewer system for a period of five years after the closing, subject to certain exceptions. Mr. Bruns explained that Section 3 in the Operations Agreement requires Fort Wayne to provide Aqua Indiana with monthly water readings for a period of 20 years in order for Aqua Indiana to bill the Aqua Southwest sewer customers. The Operations Agreement also dictates that Fort Wayne agrees to “shut off” Fort Wayne water customers that fail to pay their Aqua Indiana sewer bill. Aqua Indiana, in turn, must pay Fort Wayne for the meter readings and shutoffs at the rates set forth in the Operations Agreement. In addition, Mr. Bruns stated that Section 5 of the Operations Agreement requires Aqua Indiana to assist with certain infrastructure and environmental initiatives and to become a member of Greater Fort Wayne, Inc. He expressed his belief that Aqua Indiana and its wastewater customers will benefit from the implementation of the Operations Agreement.

Mr. Bruns explained the major features of the Water Pollution Treatment Contract (“Wholesale Agreement”) that is included as part of the Acquisition Agreement. Pursuant to the Wholesale Agreement, Aqua Indiana agrees to accept for treatment up to 1.5 million gallons per day of wastewater from Fort Wayne. The agreement has a ten-year term with an automatic extension of five years. Mr. Bruns explained that during the five-year extension period, the Wholesale Agreement provides for changes to the maximum allowable flow from Fort Wayne, as well as the applicable rates and charges. Mr. Bruns stated that during the first five years of the Wholesale Agreement, Aqua Indiana will collect a minimum monthly charge of \$125,468.75 and \$2.75 for each one thousand gallons that exceeds 547,500,000 gallons per year. During years six through ten, Mr. Bruns explained that the same structure remains in place, but the minimum monthly amount and annual excess charge are subject to adjustment for inflation based on changes in the Consumer Price Index (“CPI”). According to Mr. Bruns, the minimum monthly amount is reduced to \$10,000

per month during the automatic five-year extension period, but the annual excess charge is replaced with a flow charge based on every one thousand gallons sent to Aqua Indiana for treatment. The flow charge will be subject to adjustments each year to reflect inflation based on changes in the CPI. In addition, Mr. Bruns stated that Fort Wayne is subject to a charge of \$10 for each one thousand gallons that exceed certain daily flow limits, and under certain circumstances, Aqua Indiana will receive all or a portion of the surcharge received by Fort Wayne based on the strength of a customer's discharge into Fort Wayne's wastewater system.

Mr. Bruns stated that the wholesale treatment services to be provided by Aqua Indiana under the Wholesale Agreement will be provided by Aqua Indiana's Midwest treatment plant which has sufficient capacity to provide the anticipated services. He explained that Fort Wayne will be generally responsible for all costs associated with the delivery of wastewater to a point at which its system connects with Aqua Indiana's treatment plant, and Aqua Indiana will be responsible for all costs associated with treatment of that wastewater. In this regard, the planned expansion of the Midwest plant is estimated to cost \$8.8 million and will be Aqua Indiana's responsibility. Mr. Bruns stated, however, that Fort Wayne will be responsible for the cost to construct certain facilities and piping at the Midwest plant that will serve as the connection point between Fort Wayne's and Aqua Indiana's systems. Mr. Bruns stated that Fort Wayne will also be responsible for the costs associated with the meter, sampling equipment, telemetry, and related appurtenances that will be used by Aqua Indiana to provide service under the Wholesale Agreement.

Mr. Bruns stated the rates and charges in the Wholesale Agreement will cover Aqua Indiana's cost to provide service to Fort Wayne, and he believed that Aqua Indiana's other customers will benefit from Aqua Indiana providing wholesale service to Fort Wayne. In addition, he believes the rates and charges included in the Wholesale Agreement are reasonable and just, and noted that Aqua Indiana's Board of Directors has approved the same. Mr. Bruns requested the Commission approve the proposed transfer, as well as the Acquisition Agreement and its attachments.

**C. OUCC.** Mr. Harold L. Rees, a Senior Utility Analyst for the OUCC's Water/Wastewater Division, provided an overview of Fort Wayne's water system. He stated his belief that Fort Wayne is capable of meeting the drinking water needs of the Aqua Southwest customers after the acquisition. Mr. Rees also described the general condition of the Aqua Southwest facilities. Based on his review and analysis, Mr. Rees affirmed he was unaware of anything indicating that water service from Fort Wayne will be incompatible with Aqua Southwest's service requirements.

Mr. Rees next provided an overview of the proposed transfer of assets and customers from Aqua Indiana to Fort Wayne, as well as the anticipated timing for interconnection of the Aqua Southwest customers. He explained how the acquisition and transition process is being facilitated, noting the Acquisition Agreement includes other agreements fundamental to the process, i.e., the Consulting Agreement, Operations Agreement, Wholesale Agreement, and Escrow Closing Agreement. Mr. Rees described how Fort Wayne intends to notify Aqua Southwest customers prior to interconnection. He also discussed the supply and pressure issues previously experienced by Aqua Southwest customers, as well as Aqua Indiana's agreement not to file for an increase in water rates during 2014. Mr. Rees discussed Fort Wayne's employment of all Aqua Indiana's employees affected by the transition, and noted the parties had entered into the Consulting Agreement to help in the transition.



Mr. Rees testified he reviewed Fort Wayne's proposed integration costs of \$7,998,400 and, in his professional opinion, believed such projects to be necessary and the estimated costs reasonable. Based on his review of the proposed transaction and the Joint Petitioners' filings, he recommended the Commission accept the Joint Petitioners' plan for transfer of Aqua Southwest to Fort Wayne.

Mr. Greg A. Foster, a Utility Analyst II in the OUCC's Water/Wastewater Division, summarized the Joint Petitioners' request and explained why the OUCC believes the request is reasonable and should be approved. Mr. Foster explained that since February 8, 2008, Fort Wayne has possessed and operated Aqua North. He affirmed that Fort Wayne paid Aqua Indiana approximately \$16.9 million for Aqua North, but recognized that Aqua Indiana disputed Fort Wayne's valuation of Aqua North and the parties were still engaged in litigation. Mr. Foster noted that in November, 2012, Fort Wayne's Mayor announced an interest in having Fort Wayne condemn the balance of Aqua Indiana's water utility system. He also described how Aqua Indiana approached Fort Wayne to sell Aqua Southwest rather than engage in costly litigation similar to that involving Aqua North. Mr. Foster confirmed that the Acquisition Agreement establishes an aggregate purchase price of \$67 million for Aqua Southwest and resolves the outstanding Aqua North litigation.

Mr. Foster confirmed his understanding that the Aqua Southwest customers will pay Fort Wayne's rates upon closing on the transaction. Based on his analysis, a typical in-city residential customer using 5,000 gallons per month would see a decrease in the customer's monthly rate from \$35.09 to \$25.64 per month. Mr. Foster stated that the OUCC supports the proposed asset transfer and, in his opinion, Fort Wayne has the technical and financial ability to acquire and operate the Southwest assets at a generally lower rate. Additionally, Mr. Foster confirmed that the Acquisition Agreement reaches a settlement that resolves potentially lengthy and costly litigation. Mr. Foster also provided the proposed entry on the books and records of Fort Wayne to record the purchase of Aqua Southwest. He stated that the amount of contributions in aid of construction ("CIAC") proposed by both Fort Wayne and Aqua Indiana is consistent. If Fort Wayne later decides to sell Aqua Southwest, Mr. Foster recommended the amount and characteristic of CIAC be retained. Additionally, Mr. Foster recommended that if certain assets are decommissioned as part of the transition process, Fort Wayne should follow the Uniform System of Accounts and remove them from rate base. In light of the higher price to be paid by Fort Wayne to Aqua Indiana, Mr. Foster agreed that Fort Wayne should revalue Aqua North.

Mr. Foster explained that there are no customer deposits included in the purchase and Fort Wayne will not charge the Aqua Southwest customers a deposit or connection charge. Mr. Foster reiterated the amount of debt to be issued by Fort Wayne, the maximum repayment term, and the maximum interest rate. He noted the Project Costs and proposed financing were supported by Joint Petitioners' testimony. Mr. Foster also briefly described the proposed Wholesale Agreement that was attached to the Acquisition Agreement.

In conclusion, Mr. Foster testified that the OUCC believes the Acquisition Agreement, including the underlying Wholesale Agreement, appear reasonable. He stated the OUCC recommends that the Commission approve the requested transfer of the water facilities from Aqua Indiana to Fort Wayne and Fort Wayne's requested financing authority subject to Joint Petitioners completing post-closing filings that show (i) a detailed final accounting entry to record the sale and



acquisition of the assets once the final acquisition balances are determined; (ii) the final terms of the Bonds when issued; (iii) status updates as each of the three phases of integration is completed; and (iv) a final status report indicating the total cost of the Interconnection Improvements and a listing of plant purchased by Fort Wayne, along with its book value that is being decommissioned or taken out of service.

**5. Settlement Agreement.** Fort Wayne, Aqua Indiana, and the OUCC entered into a Settlement Agreement, a copy of which is attached and incorporated into this Order. In the Settlement Agreement, the parties agree that the Acquisition Agreement, and all transactions contemplated therein and in its related exhibits, constitute a fair, just, and reasonable resolution of all outstanding issues between Fort Wayne and Aqua Indiana and should be approved by the Commission. The parties also stipulate and agree that Aqua Indiana should be authorized to transfer Aqua Southwest to Fort Wayne, and, upon transfer, Fort Wayne should provide service to the Aqua Southwest customers consistent with Fort Wayne's existing Commission-approved tariff. The parties further agree that Fort Wayne should be authorized to issue Bonds in the total amount of \$63 million with a maximum term of 20 years and a maximum interest rate not to exceed 5.5%. Provided the proposed acquisition is approved, the parties also agree that:

1. Within 30 days after completing issuance of the Bonds, Fort Wayne will file a report with the Commission identifying the exact amount of Bonds that were issued, the amortization schedule for the Bonds, as well as the interest rate on the Bonds and the annual debt service;
2. Within 60 days after closing on the acquisition of Aqua Southwest, Fort Wayne will file a report detailing the final accounting entry to record the sale and acquisition of the assets;
3. Fort Wayne will provide the Commission with an update and notification after it completes each phase of the integration of the Aqua Southwest customers onto Fort Wayne's system; and
4. Once the final integration is complete, Fort Wayne will file information as to its total cost of integrating Aqua Southwest customers and listing the facilities Fort Wayne anticipates taking out of service.

**6. Commission Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co., Inc.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition of Ind., Inc. v. Public Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be

supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before we can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

Although none of the parties filed testimony specifically supporting the Settlement Agreement, we note that the OUCC did not offer any evidence opposing the relief requested by Joint Petitioners. Nor did Joint Petitioners oppose the OUCC's post-filing recommendations. The Settlement Agreement filed herein simply reflects the OUCC's agreement with Joint Petitioners' requested relief and Joint Petitioners' agreement with the OUCC's recommendation that Fort Wayne provide certain information in post-closing filings with the Commission. Accordingly, we consider the evidence presented to determine whether it supports Joint Petitioners' requested relief.

Based on the evidence presented, we find Fort Wayne has the technical, financial, and managerial experience to own and operate Aqua Southwest. The evidence demonstrates Fort Wayne has historically provided water utility service to customers within its corporate boundaries and began providing such service to Aqua North customers in 2008. To begin serving Aqua Southwest customers, Fort Wayne expects to hire at least ten of Aqua Indiana's current employees, including its lead water operator. In addition, Fort Wayne and Aqua Indiana have entered into a Consulting Agreement whereby Aqua Indiana will provide engineering, accounting, customer service, and other related services to assist in the transition. Mr. Clifford also provided evidence of Fort Wayne's current finances and its ability to fund the Project Costs through the issuance of the proposed Bonds.

The record further indicates that Fort Wayne will assume ownership and transition the Aqua Southwest customers onto Fort Wayne's system in a systematic manner similar to that used to transition Aqua North customers without any anticipated interruptions in service. While we recognize that Aqua Indiana has over the years made significant repairs and replacements, its water system still needs potentially expensive source of supply improvements that, if completed, could lead to higher rates for the Aqua Southwest customers. The evidence here, however, reflects that Fort Wayne can assume ownership of Aqua Southwest, complete the Interconnection Improvements, and offer improved service at lower rates.

Joint Petitioners also provided evidence describing the terms of the Acquisition Agreement and the transactions contemplated by it and in its related exhibits. The terms of the Acquisition Agreement are expected to facilitate a relatively seamless transition in ownership from Aqua Indiana to Fort Wayne; settle longstanding litigation over the value of Aqua North; avoid future costly litigation; and, as noted above, provide for improved service and lower rates for the 12,600 existing Aqua Southwest customers. In addition, the evidence supports concluding the Operations Agreement, Wholesale Agreement, and other transactions contemplated by the Acquisition Agreement will foster cooperation and cost sharing between them, all of which will benefit the parties and their respective customers.

Based on the evidence of record, we find that the proposed transfer of the Aqua Southwest System from Aqua Indiana to Fort Wayne should be approved. In addition, we find that the terms and conditions of the Acquisition Agreement and the transactions contemplated by it and in its

related exhibits shall be approved and the parties authorized to implement it in accordance with its terms.

Fort Wayne also seeks approval to issue \$63 million in Bonds. Fort Wayne proposes to use the proceeds from the Bonds to pay for the acquisition of Aqua Southwest, settle the outstanding litigation over the value of Aqua North, pay for the Interconnection Improvements, and pay the soft costs associated with consummating the transaction. The evidence reflects that the term of the Bonds will not exceed 20 years, the maximum interest rate will not exceed 5.5%, the Bonds will be structured in order to minimize the rate impact on customers, and the proposed issuance will comply with Ind. Code § 8-1.5-2-19. There is no evidence indicating that the proposed terms are anything but reasonable and no party objected to Fort Wayne's proposed financing. In light of this evidence, we approve Fort Wayne's request to issue long term debt.

Pursuant to the terms of the Settlement Agreement, Fort Wayne is required to file a series of reports with the Commission after issuance of the Bonds, closing on the acquisition of Aqua Southwest, and integration of the Aqua Southwest customers onto Fort Wayne's system. We find these reporting requirements, as well as the terms within the Settlement Agreement, to be reasonable, just, and serve the public interest. Accordingly, the Settlement Agreement is approved.

The parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 at \*19-22 (IURC March 19, 1997).

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

1. The Settlement Agreement is approved.
2. The Acquisition Agreement, including the transactions contemplated by it and in its related exhibits, is approved and the parties are authorized to implement it in accordance with its terms.
3. The transfer of Aqua Southwest from Aqua Indiana to Fort Wayne is approved as set forth herein.
4. Fort Wayne shall satisfy the post-closing filing requirements described in Finding Paragraph No. 5.
5. Fort Wayne is authorized to issue long-term debt in an amount of \$63 million consistent with the findings herein.
6. In accordance with Ind. Code § 8-1-2-85, Fort Wayne shall pay a fee of \$.25 for each \$100 of water utility revenue bonds issued to the Secretary of the Commission within 30 days of the receipt of the financing proceeds authorized herein.

7. In accordance with Ind. Code § 8-1-2-70, Fort Wayne shall pay the following itemized charges within 20 days of this Order, into the Treasury of the State of Indiana, through the Secretary of the Commission.

Commission Charges	\$ 1,498.64
OUCG Charges	\$ 9,726.10
Legal Advertising Charges	\$ <u>191.68</u>
<b>Total:</b>	<b>\$11,416.42</b>

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

**STEPHAN, MAYS-MEDLEY, WEBER, AND ZIEGNER CONCUR; HUSTON NOT PARTICIPATING:**

**APPROVED:**

**OCT 22 2014**

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



**Brenda A. Howe**  
**Secretary to the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF THE CITY OF FORT )  
WAYNE, INDIANA, AND UTILITY CENTER, )  
INC. d/b/a AQUA INDIANA, INC. FOR THE )  
APPROVAL OF TRANSFER OF CERTAIN ) CAUSE NO. 44503  
WATER FACILITIES AND ISSUANCE OF )  
WATERWORKS REVENUE BONDS )  
)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement ("Settlement Agreement") is entered into this 24th day of September, 2014, by and between the City of Fort Wayne, Indiana ("Fort Wayne"), Utility Center, Inc. d/b/a Aqua Indiana, Inc. ("Aqua"), and the Office of Utility Consumer Counselor ("OUCC") (collectively, the "Parties"), who stipulate and agree for purposes of settling all matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of all issues in this Cause, subject to their incorporation in a final order of the Indiana Utility Regulatory Commission ("Commission").

Terms and Conditions of Settlement Agreement

1. Requested Relief. On June 13, 2014, Fort Wayne and Aqua initiated this Cause by filing their Joint Petition with the Commission requesting authority for Aqua to transfer certain water facilities to Fort Wayne and for Fort Wayne to issue waterworks revenue bonds.
2. Prefiled Evidence of Parties. In support of the Petition, Fort Wayne filed the Prefiled Testimony and Exhibits of Matthew A. Wirtz, P.E. and Robert J. Clifford, CPA, on July 3, 2014. On the same day, Aqua filed the Prefiled Testimony and Exhibits of Thomas M. Bruns, the President of Aqua. On August 28, 2014, the OUCC prefiled the Testimony and Exhibits of Greg A. Foster and Harold L. Rees.

3. **Settlement.** Through analysis, discussion, and negotiation, as aided by their respective technical staff and experts, Fort Wayne, Aqua, and the OUCC have now agreed on the terms and conditions as described herein that resolve all issues between them in this Cause.

4. **Approval of Utility System Asset Acquisition Agreement.** The parties agree that the Utility System Asset Acquisition Agreement and all transactions contemplated therein and in its related exhibits, including without limitation the underlying Water Pollution Treatment Contract and Operations Agreement (collectively, the "Acquisition Agreement"), constitute a fair, just and reasonable resolution of all outstanding issues between Fort Wayne and Aqua. The Commission should approve the Acquisition Agreement in its entirety as fair, just and reasonable and in the public interest and authorize the parties to implement it in accordance with its terms. The parties agree to use their best efforts in seeking and receiving Commission approval for the Acquisition Agreement.

5. **Transfer of Water Assets.** The parties stipulate that Aqua should be authorized to transfer Aqua's southwest system ("Aqua Southwest") to Fort Wayne. Upon transfer, Fort Wayne shall provide water service to the Aqua Southwest customers consistent with Fort Wayne's existing Commission-approved tariff.

6. **Issuance of Bonds.** The parties agree that Fort Wayne should be authorized to issue waterworks revenue bonds in the total amount of \$63 million ("Revenue Bonds"). The term for the Revenue Bonds will be twenty (20) years and the maximum interest rate will not exceed 5.5%. The parties further agree that the proceeds from the Revenue Bonds will be used to satisfy Fort Wayne's obligations under the Acquisition Agreement; construct certain interconnection and integration improvements; and pay other related soft costs.

7. **Reporting Requirements.** After the issuance of a final Commission Order in this Cause, Fort Wayne shall file the following:

- i. Within thirty (30) days after completing issuance of the Revenue Bonds, Fort Wayne will file a report with the Commission identifying the exact amount of Revenue Bonds that were issued, the amortization schedule for the Revenue Bonds, as well as the interest rate on the Revenue Bonds and the annual debt service;
- ii. Within sixty (60) days after closing on the acquisition of the Aqua Southwest system, Fort Wayne will file a report detailing the final accounting entry to record the sale and acquisition of the assets;
- iii. Fort Wayne will provide the Commission with an update and notification after it completes each phase of the integration of the Aqua Southwest customers onto Fort Wayne's system; and
- iv. Once the final integration is complete (and all Aqua Southwest customers are connected to Fort Wayne's system), Fort Wayne will file information as to its total cost of integrating the Aqua Southwest customers and listing the facilities Fort Wayne anticipates taking out of service.

8. **Admissibility and Sufficiency of Evidence.** The parties hereby stipulate that the prefiled testimony and exhibits of Joint Petitioners and the OUCC should be admitted into the record without objection or cross examination by either party. The parties agree that such evidence constitutes substantial evidence sufficient to support the Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed.

9. **Non-Precedential Effect of Settlement.** The parties agree that the facts in this Cause are unique and all issues presented are fact specific. Therefore, the Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any party



in any other proceeding except as necessary to enforce its terms before the Commission or any court of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either party may take with respect to any issue in any future regulatory or non-regulatory proceeding.

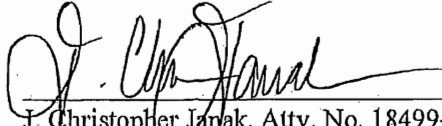
10. **Authority to Execute.** The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients who will hereafter be bound thereby.

11. **Approval of Settlement Agreement in its Entirety.** As a condition of this settlement, the parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties. The parties further agree that in the event the Commission does not issue a Final Order in the form that reflects the Agreement described herein, the matter should proceed to be heard by the Commission as if no settlement had been reached unless otherwise agreed to by the parties in a writing that is filed with the Commission.

12. **Proposed Order.** The parties have agreed to the form and content of a proposed order, a copy of which is attached hereto as Exhibit A. The parties agree to file the proposed order simultaneously herewith.

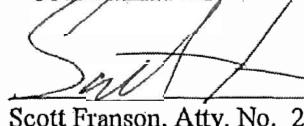
*[Signatures follow on next page]*

**CITY OF FORT WAYNE**



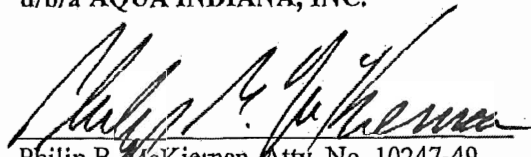
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**UTILITY CENTER, INC.  
d/b/a AQUA INDIANA, INC.**



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