STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF THE BOARD OF DIRECTORS FOR UTILITIES OF THE DEPARTMENT OF PUBLIC UTILITIES OF THE CITY OF INDIANAPOLIS, D/B/A CITIZENS ENERGY GROUP, CWA AUTHORITY, INC., THE CITY OF INDIANAPOLIS AND ITS DEPARTMENT OF WATERWORKS AND ITS SANITARY DISTRICT FOR APPROVALS IN CONNECTION WITH THE PROPOSED TRANSFER OF CERTAIN WATER UTILITY ASSETS TO THE BOARD AND THE PROPOSED TRANSFER OF CERTAIN WASTEWATER UTILITY ASSETS TO THE AUTHORITY, INCLUDING: (A) APPROVAL OF INITIAL RATES AND RULE FOR WATER AND WASTEWATER SERVICE, AS WELL AS THE TERMS OF CERTAIN AGREEMENTS FOR WASTEWATER TREATMENT AND DISPOSAL SERVICE; (B) APPROVAL OF AN ENVIRONMENTAL COMPLIANCE PLAN UNDER IND. CODE 8-1-28 AND AN ADJUSTMENT MECHANISM FOR WASTEWATER RATES TO PROVIDE TIMELY RECOVERY OF COSTS NECESSARY TO COMPLY IN WHOLE OR IN PART WITH THE SAFE DRINKING WATER ACT AND/OR CLEAN WATER ACT; (C) APPROVAL OF PROPOSED ALLOCATIONS OF CORPORATE SUPPORT SERVICES COSTS AMONG AFFECTED UTILITIES; (D) APPROVAL OF AN OPERATING AGREEMENT BETWEEN CITIZENS ENERGY GROUP AND CWA AUTHORITY, INC.; (E))APPROVAL OF DEPRECIATION RATES AND OTHER ACCOUNTING MATTERS RELATED TO THE WATER AND WASTEWATER ASSETS; AND (F) ANY OTHER APPROVALS NEEDED IN CONNECTION THEREWITH	**)**	**CAUSE NO. 43936**

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

PREFILED TESTIMONY

VOLUME III

PREFILED TESTIMONY

VOLUME III

CHARLES E. PATRICK- PUBLIC'S EXHIBIT #4

MARGARET A. STULL- PUBLIC'S EXHIBIT #5

ROGER A. PETTIJOHN- PUBLIC'S EXHIBIT #6

HAROLD L. REES- PUBLIC'S EXHIBIT #7

ON BEHALF

OF

THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

JANUARY 14, 2011

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CERTIFICATE OF SERVICE

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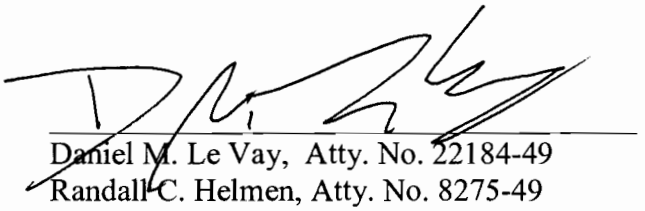

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TESTIMONY OF OUCC WITNESS CHARLES E. PATRICK
CAUSE NO. 43936
CITIZENS ENERGY GROUP, ET AL.

I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Charles E. Patrick, and my business address is 115 West Washington Street, Suite 1500 South, Indianapolis, Indiana 46204.

Q: By whom are you employed and in what capacity?

A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as a Utility Analyst for the Water/Wastewater Division.

Q: Please describe your educational background and experience.

A: I graduated from Indiana Central College in Indianapolis, Indiana in May, 1972, with a Bachelor of Science degree, majoring in accounting, economics, and business administration. I attended Indiana Central College, Indianapolis, Indiana from September 1973 through May 1977, where I pursued a Master's of Science degree in economics. I attended Kennesaw State College, Kennesaw, Georgia in 1985 through 1987, where I pursued a Masters of Business Administration degree with an emphasis in accounting. I served as chief executive officer for a group of dermatologists. I worked in a variety of industries as a controller. These include medical, forms manufacturing, carpet manufacturing, retail and wholesale distribution, and information systems recruiting and consulting. I have also worked in a variety of accounting positions in banking, Sarbanes-Oxley auditing and documentation, corporate tax, and water, sewer, propane gas, and cable

television utilities. I became Financial Officer in August 1980 for a group of utilities including Florida Cities Water Company, Avatar Utilities, Inc., Poinciana Utilities, Inc., and Avatar Cable Television, Inc. I attended the National Association of Regulatory Utility Commissioners ("NARUC") Rate School in Miami, Florida in May 1982 and in San Diego in May 2008. I also attended several American Water Works Association ("AWWA") and Indiana Rural Water Association ("IRWA") conferences.

Q: Have you previously testified before the Indiana Utility Regulatory Commission?

A: Yes.

Q: What is the purpose of your testimony?

A: I discuss the benefits of and express concerns about various aspects of the proposed acquisition of the water and wastewater assets by Citizens Energy Group ("CEG") and the CWA Authority ("the Authority") or collectively as the context permits ("Citizens" or "CEG").

Q: What aspects of the proposed acquisition do you address?

A: The aspects of the proposed acquisition that I address below include the following: CEG's request for assignment of the Indianapolis Department of Waterworks' ("DOW") Interlocal Agreements and franchise rights; CEG's request for approval of the assumption of outstanding indebtedness; CEG's request for approval of the issuance of new indebtedness related to the acquisition of the waterworks; the Authority's request for approval of the assumption of outstanding indebtedness of the City of Indianapolis Department of Public Works ("Sanitary District"); the Authority's request for approval of the issuance of new

indebtedness related to its acquisition of the Wastewater System; the Authority's request for an adjustment mechanism to allow it rate increases to cover expenditures it will make to comply with the U.S. Environmental Protection Agency ("EPA") Consent Decree; the Authority's request to recover in rates its semi-annual payment to the City of Indianapolis ("City") for the Sanitary District's ("GO Debt"); CEG's request for approval of depreciation rates currently in effect for the DOW; and the Authority's request for approval of the depreciation rate proposed by the Authority in this Cause. I also discuss CEG's proposal for working capital debt and the outstanding notes payable by DOW to the City.

Q: Please list the Sections of your testimony.

A: My testimony is organized into the following sections:

I. Introduction 1
II. Interlocal Agreement and Franchise Rights 6
III. Debt Assumption and New Debt 11
IV. Working Capital 29
V. CWA Authority's Rate Adjustment Mechanism 34
VI. Depreciation Rates 39
VII. DOW's Outstanding Note to the City 41
VIII. Recommendations 42

Q: Please describe the review and analysis you conducted in order to prepare your testimony.

I read the pre-filed testimony provided by CEG, the City, and Veolia Water Indianapolis, LLC ("Veolia"). I reviewed the Memorandum of Understanding

("MOU") between the City and CEG; the Water Asset Purchase Agreement; and the Wastewater Asset Purchase Agreement. I reviewed the R.W. Beck, January 2010, appraisal of the City's waterworks and wastewater systems. I reviewed the Interlocal Agreements and Franchise Rights Agreements. I reviewed the Verified Certificate of Resolution of the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis and the Verified Certificate of Resolution of the Board of Directors for CWA Authority, Inc. I reviewed the Consent Decree ("Consent Decree"), including both of its amendments, entered into between the City, the EPA and the Indiana Department of Environmental Management ("IDEM"), filed with the U.S. District Court for the Southern District of Indiana, on December 19, 2006. I participated in the preparation of many discovery questions issued to CEG and the City and reviewed responses received. I reviewed the testimony of Tyler E. Bolinger and Michael E. Brosch in Cause No. 42767 and the cross-examination of Mr. Donald L. Lindemann in Cause No. 39066. I reviewed my testimony and the OUCC's proposed order in Cause No. 43645, the pending DOW water rate case. I reviewed the final order in Cause No. 43680, Indiana-American Water Company's last water and sewer rate case. I reviewed DOW's Interlocal Agreements, affiliate agreements between CEG entities, summary reports compiled by Walker Information, and customer satisfaction surveys, benchmarking studies and/or safety awards for CEG entities at the 2020 N. Meridian Street facility. I attended the Commission's evidentiary hearing for Joint Petitioners' case-in-chief (conducted on Dec. 6, 7, 8, 10, and 14, 2010.) I attended the January 5, 2010 field hearing held at Crispus Attucks

Medical Magnet School in Indianapolis. Finally, I participated in many meetings with other OUCC staff to identify and discuss the issues in this Cause.

Q: Are you sponsoring any attachments?

A: Yes. I am sponsoring the following attachments:

Attachment CEP - 1	Sample DOW Interlocal Agreement
Attachment CEP - 2	Proposed Water Utility Debt Structure, February 15, 2011, Citizens Energy Group, Exhibit, JPO - 2
Attachment CEP - 3	OUCC Data Request and Response to Q 17-20, Estimated "Working Capital" Borrowing for the Water Utility
Attachment CEP - 4	OUCC Data Request and Response to Q 37-1, Estimated "Capex" Borrowing for the Water Utility
Attachment CEP - 5	OUCC Data Request and Response to Q 5-23, Estimated "Working Capital" Borrowing for the Wastewater Utility
Attachment CEP - 6	OUCC Data Request and Response to Q 12-15, Sanitary District Current Depreciation Rates,
Attachment CEP - 7	Data Request and Response to OUCC Q 27-2, Sanitary District Pro Forma Revenue Requirements to Produce Projected Rate Increases (A portion of the Excel File Provided)
Attachment CEP - 8	Petitioner's Exhibit MGL-3, Fairness Opinion Letter from Mr. Lane to Mr. Cotterill, dated August 3, 2010
Attachment CEP - 9	Citizens' Witness Prentice, Hearing transcript, K-25 - K-33
Attachment CEP - 10	OUCC Data Request and Response Q 6-8, Sanitary District Depreciation Rate
Attachment CEP - 11	OUCC Data Request and Response Q 31-8, Balance of Loan between City and DOW
Attachment CEP - 12	City's Witness Cotterill, Response to Commission Landis' Repayment of the DOW "Working Capital" Debt Question, Hearing transcript, B127 – B-130
Attachment CEP - 13	Data Request and Response to OUCC Q 20-11, Citizen's Repayment of DOW Loan from the City

II. INTERLOCAL AGREEMENTS AND FRANCHISE RIGHTS

Q: What have Joint Petitioners requested with respect to Interlocal Agreements and Franchise Rights?

A: Joint Petitioners ask the Commission to issue an order approving the: (1) DOW's assignment of any DOW Interlocal Agreements and franchise rights to the Board; (2) Board's assumption of DOW's obligations in those Agreements; (3) terms of certain agreements for wastewater treatment and disposal service; and (4) use by the Authority of general terms and conditions of service based on the rules now in effect for wastewater utility service by the Sanitary District.

Q: What statutes govern Interlocal Agreements in Indiana?

A: The Indiana statutes governing Interlocal Agreements are found in Ind. Code § 36-1-7, et seq.

A. Citizens Water Utility

Q: Have you read the Interlocal Agreements that will be transferred from the DOW to CEG?

A: Yes. I have read each of the Interlocal Agreements[1] that the DOW has with the following governmental entities: the Towns of Avon, Beech Grove, Brownsburg, Clermont, Cumberland, Danville, Darlington, Fishers, Lizton, McCordsville, New Palestine, Pittsboro, and Zionsville; the Cities of Carmel, Noblesville, Southport and the Consolidated City of Indianapolis; and the Board of Commissioners of Boone, Hamilton, Hancock, Hendricks, Marion and Morgan Counties. *See,* Att. CEP -1 for a representative sample of a DOW Interlocal Agreement.

[1] The DOW Interlocal Agreements were originally named Intergovernmental Agreements.

Q: Briefly describe the Interlocal Agreements that will be transferred from the DOW to CEG.

A: The above Interlocal Agreements between various water producers and providers and the DOW transferred substantially all of the assets of the aforesaid water entities to DOW. In consideration for these transfers, DOW agreed to establish a Joint Advisory Board to include one member from DOW and one member from each of the cities, towns or counties that entered into these Interlocal Agreements. DOW agreed to manage the newly acquired assets with regards to financing, staffing, and budgeting. DOW also agreed to make payments in lieu of taxes ("PILOT") as a cost of services in any and all rate proceedings before the Commission. These payments were to compensate all cities, towns or counties within the territory for taxes that would have been due on its utility property were the utility privately owned.

Q: Does the OUCC oppose the transfer of the Interlocal Agreements from the DOW to CEG?

A: No. The OUCC does not oppose the transfer of the Interlocal Agreements to CEG.

Q: Does the OUCC oppose the continued PILOT payments by CEG to each party that has an Interlocal Agreement that contains a PILOT provision?

A: No. The OUCC does not oppose the continuation of PILOT as provided in the Interlocal Agreements.

B. CWA Authority

Q: Have you read the Interlocal Agreements that will be transferred from the Sanitary District to CEG, through CWA Authority?

A: Yes. I have read each of the Interlocal Agreements[2] including amendments that the Sanitary District has with the Cities of Beech Grove, Greenwood and Lawrence, the Ben Davis and Tri-County Conservancy Districts, Boone County Utilities, LLC, and Hamilton Southeastern Utilities, Inc. *See,* Joint Petitioners' Exhibits LSP-7 through LSP-13.

These Interlocal Agreements provide that the listed communities and corporations agree to connect to the Sanitary District system in order to improve their present sewage system. They have further concluded that sewage generated within the various entities be transported and treated by the Sanitary District. Each entity named above has established with the Sanitary District a wastewater discharge volume, stated in average gallons per day. These entities have also agreed to a negotiated per thousand gallon charge. In addition, each entity has described the geographical area to be connected to the Sanitary District.

Q: Does the OUCC oppose the continued processing of sanitary wastewater by CEG, through the Authority, from other communities pursuant to Interlocal Agreements?

A: No. The OUCC does not oppose the continuation of sanitary wastewater processing as provided in the Interlocal Agreements by the Authority. This processing is beneficial to the public because it helps ensure that sanitary wastewater is properly treated.

[2] The Sanitary District Interlocal Agreements were originally titled Agreements.

Q: Are there any new Interlocal Agreements involving the Authority?

A: Yes. The Joint Petitioners' filed an Interlocal Agreement that established the Authority as the entity that will receive the assets and liabilities of the Sanitary District.

Q: Please explain your understanding of the Interlocal Agreement created by the Authority.

A: The City, Sanitary District and CEG filed an Interlocal Agreement between them that creates the Authority. As set forth in Joint Petitioners' case-in-chief, both the City and Citizens are political subdivisions, which gives them the power and authority to use the Interlocal Agreement statute. *See*, Ind. Code § 36-1-7-1(2). By creating CWA Authority in this fashion, the resulting new public charitable trust will have all the powers of both "parent" entities. *See*, Ind. Code. § 36-1-7-(2)(a). Joint Petitioners have indicated that through the Interlocal Agreement, CWA Authority will be considered a "non-profit," by which the Joint Petitioners have stated CWA Authority will be subject to Commission jurisdiction.

Q: What is your understanding of the powers that flow from each Joint Petitioner?

A: It is my understanding from reading the Interlocal Cooperation Agreement that the Interlocal Agreement Statute authorizes the City, the Sanitary District and Citizens, as political subdivisions and pursuant to a written agreement authorized by ordinance or resolution of each of them, to jointly exercise powers, and to administer the resulting agreement through a separate legal entity. The City, acting through the District, (a) owns the assets the Authority would acquire under the Purchase Agreement and (b) is permitted, has the power to own and operate the System for the benefit of the City's inhabitants, as set forth in the applicable

statute, ordinance or resolution. Under Ind. Code § 8-1-11.1, *et seq.*, Citizens has the power to provide utility services and own all utility property within or outside the City, within the limits authorized by law. The City-County Council is authorized to create and terminate City departments, divisions, offices and other agencies and, except as otherwise provided by Indiana law, to transfer the powers, duties, functions and obligations to or from such entities. [3]

Q: What is your understanding of the purposes of the Interlocal Cooperation Agreement?

A: As set forth in the Interlocal Cooperation Agreement, the purposes of the agreement are to: (a) establish a separate legal entity organized as an Indiana non-profit corporation to exercise all of the respective rights, powers, functions and duties of the City, the Sanitary District and Citizens that are necessary, useful or appropriate to furnishing wastewater collection and treatment services, excluding in the case of the City and Sanitary District, taxing power and taxing authority; (b) provide for the transfer of the System from the City and the Sanitary District to the Authority to be operated and held to provide wastewater service, as specified in the Purchase Agreement and other relevant documents, in perpetuity in public charitable trust in the same manner and to the same extent in which Citizens has operated and held its gasworks for the benefit of the inhabitants of the City; (c) to transfer or delegate to, and vest in, the Authority all the powers of the City, the Sanitary District and Citizens necessary, useful or appropriate to the acquisition, ownership and operation of the System, excluding in the case of the

[3] See Interlocal Cooperation Agreement for the Provision of Utility Services (Wastewater), p1.

City and the Sanitary District, taxing power and taxing authority; and (d) to allow the Authority to exercise the powers delegated and/or transferred to it on behalf of the City, Sanitary District and Citizens for the benefit of the inhabitants of the City and the customers of the System.[4]

III. DEBT ASSUMPTION AND NEW DEBT

A. Citizens Water Utility

Q: What is the proposal for Citizens' water utility to acquire assets and debt in conjunction with the purchase of the DOW assets?

A: According to the Verified Joint Petition (paragraph 31), the Board

> ...will acquire, except for specifically excluded assets, all of the City's and the DOW's right, title and interest to and under all of the assets used, necessary or important in the operating of the Water System, as defined in Section 2.01 of the Water System Agreement.

Paragraph 32 of the Petition states, the Board

> ...will assume the liabilities of the City and DOW relating to the Water System including without limitation those related to litigation against either the City or DOW relating to the Water System; performance under certain contracts; and certain retiree medical benefits described in the Water System Agreement (referred to in the Water System Agreement as the "Assumed Liabilities").

Additionally, description (n) of the Verified Joint Petition at page 20, asks the Commission issue an order

> ...finding the Board's assumption of outstanding indebtedness of the DOW or City related to the Water System or issuance of any new indebtedness related to the Board's proposed acquisition of the Water System to be reasonable, in the public interest and recoverable in rates.

[4] See Interlocal Cooperation Agreement for the Provision of Utility Services (Wastewater), pp. 1-2.

a. Department of Waterworks' Existing Debt

Q: Is CEG asking for authority to assume the DOW's existing debt?

A: No. In its Verified Joint Petition, CEG seeks a Commission finding that CEG's assumption of indebtedness related to the Board's proposed acquisition of the Water System "to be reasonable, in the public interest, and recoverable in rates." (See Subsection (n) of the Verified Joint Petition at p. 20.) But it does not actually ask the Commission to authorize the assumption of the debt and to authorize the issuance of debt to replace the assumed debt.

Q: Please describe CEG's proposal to assume existing debt in conjunction with the purchase of the DOW assets.

A: Citizens plans to assume DOW's existing long-term debt, and subsequently issue new debt to replace the assumed long term debt. Paragraph 33 of the Petition states:

> In addition to the Assumed Liabilities described in the Water System Agreement, as consideration for its acquisition of the Water System, the Board will issue debt to replace and refund certain Water System long term debt owed by the City and DOW amounting to $915,655,000 as of June 1, 2010.

Q: Is there a more current estimated long term debt that CEG will assume from DOW at the closing?

A: Yes. According to Citizens' witness Mr. Offutt, CEG's water utility will assume approximately $903,965,000 of existing debt at the time of closing on the acquisition of the water assets. *See,* Exhibit JPO-2, p. 12. Table CEP 1 below summarizes the anticipated outstanding debt at closing. These amounts recognize the debt service payments scheduled to be made through February 15, 2011, but no debt service payments beyond that date. *See*, Att. CEP - 2.

Table CEP 1 – Department of Water Acquired Debt

Bond Description	Anticipated Debt At February 15, 2011
2002 Series A	$ 23,040,000
2005 Series F	69,965,000
2006 Series A	77,830,000
2007 Series B	70,410,000
2007 Series L	102,830,000
2009 Series A	559,890,000
Total Anticipated Debt	$ 903,965,000

Q: Does the OUCC agree that DOW's outstanding long-term indebtedness be assumed by CEG?

A: If the Commission approves the acquisition of the DOW assets by CEG, the OUCC agrees the long-term debt should be assumed by CEG in the amount of debt outstanding at the time of closing.

Q: What amount does CEG propose to borrow at closing to replace the existing DOW debt?

A: Mr. Brehm disclosed that CEG plans to borrow the entire $903,965,000 (Petitioner's Exhibit JRB-2) plus transaction costs and issuance costs related to the borrowing. The amounts of the transaction and issuance costs are not yet known.

b. Citizens Water Utility New Debt

Q: Is CEG asking for authority to issue any new debt?

A: No. In its Verified Joint Petition, CEG seeks a Commission finding that CEG's issuance of any new indebtedness related to the proposed acquisition of the Water System "to be reasonable, in the public interest, and recoverable in rates." *See*,

Subsection (n) of the Verified Joint Petition at p. 20. But CEG does not actually ask the Commission to authorize the issuance of any new debt.

Q: Does CEG plan to issue any new indebtedness that is not for refinancing the existing debt?

A: Yes. While not stating a specified amount in his testimony, Mr. Brehm asserted that the CEG water utility will need to borrow funds for working capital (page 35, lines 1-2). In response to OUCC Data Request Q 17-20, CEG states that it intends to borrow $42,070,000 for working capital after the acquisition of DOW assets and debt. *See*, Att. CEP - 3. In response to OUCC Data Request Q 37-1, CEG indicated that it proposes to borrow $37,640,000 for capital spending in 2011. *See*, Att. CEP - 4.

Q: Does CEG plan to issue debt to provide funds for what CEG describes as "working capital" for the water utility?

A: Yes.

Q: How much debt does Citizens plan to issue for "working capital" for the water utility?

A: CEG did not state the total amount of debt it plans to issue for such funds. However, Mr. Brehm's Exhibit JRB-5 on line 17 shows $3.4 million for "Working Capital Financing". The $3.4 million is annual debt service on a bond issue not identified or described elsewhere in Joint Petitioners' case.

Q: Although the bond issuance was not identified by CEG in its case, was the OUCC able to determine the total amount of debt that CEG proposes to borrow to fund what CEG described as "working capital" for the water utility?

A: Yes. In response to OUCC Data Request Q 17-20, Mr. Brehm provided an amortization schedule of the debt service ($3,390,270 annually) that agrees with the amount he shows in Petitioner's Exhibit JRB-5, line 17. *See*, Att. CEP - 3.

This response indicated the total debt to fund "working capital" for the water utility was $42,070,000. I discuss this in more detail in the section regarding working capital below. In Table CEP 2 below, I show the composition of the proposed working capital debt for the water utility.

Table CEP 2 – Water Utility Working Capital Borrowing Detail

Debt Composition	Amount
Working Capital Required	$ 39,952,786
Debt Service Reserve Fund	1,695,135
Cost of Issuance	420,700
Total	$ 42,068,621
Rounded to	$ 42,070,000

Q: In its case in chief, did CEG indicate that it would borrow debt to finance "capital spending"?

A: Yes. However, CEG did not state the total amount of proposed bond borrowings. Mr. Brehm's Exhibit JRB-5 at line 16 indicates $2.6 million in 2011 for Bond Funded Capital Expenditure ("Capex") Debt Service. The Capex Debt Service amount increases in subsequent years to $4.8 million for 2012, $7.3 million for 2013, and $9.7 million per year for the years 2014 through 2025.

Q: Was the OUCC able to determine the total amount of requested "capital spending" for the waterworks that CEG proposes to borrow in 2011, 2012 and 2013?

A: Yes. In response to Data Request 37-1, Mr. Brehm provided amortization schedules for the water utility Capex. *See*, Att. CEP - 4. CEG plans to borrow $37,640,000 in 2011, $31,330,000 in 2012, and $35,450,000 in 2013.

Mr. Brehm provided an amortization schedule of the debt service that agrees with the amount he shows in Petitioner's Exhibit JRB-5, line 16. *See*, Att. CEP - 4. This response also provided the OUCC with the composition of the water utility capital spending debt.

Q: Does the OUCC agree with CEG's plan to borrow long-term debt for "working capital" for the water utility?

A: No. CEG is seeking a guarantee from the Commission that it will be permitted in future rates to include the annual debt service on debt it borrows to provide working capital for its water utility. CEG's planned borrowing for working capital is both excessive and would allow double recovery, as the water utility's working capital needs will be met through the rates authorized by the Commission in Cause No. 43645.[5] (See the "Working Capital" discussion below.) Also, Mr. Brehm's assertion, that the depletion of cash that took place while emergency rates were in place necessitates this request, does not justify the CEG water utility's need for its excessive working capital request. See the "Outstanding DOW Note to the City" discussion below beginning on page 40.

Q: Does CEG need to have cash on hand when it acquires the water utility?

A: Yes. Utilities require cash to operate.

Q: What is "Working Capital"?

A: "Working capital" is a term of art. The Indiana Court of Appeals has stated "the need for working capital arises from the day-to-day expenses which occur during the period between the time of billing and the time customers actually pay for service." *Bd. of Directors for Utils. v. Office of Util. Consumer Counselor*, 473

[5] See the "Working Capital" discussion below.

N.E.2d 1043, 1050 (Ind. App. 1985). There is a recognized Commission process designed to identify a utility's working capital needs in a way that will justify a revenue requirement in rates.

Q: Will CEG provide cash to immediately operate the water utility?

A: No. One of the things that adds to the complexity of the proposed transaction is that CEG does not propose to bring any equity or cash to the operations it plans to acquire. CEG will not acquire any operating cash from the City when it purchases the water utility. Nor does CEG intend to supply its own operating cash through a cash infusion. CEG will need cash to operate immediately and will not have the option of waiting for cash to build up through rates. In light of those facts, CEG plans to borrow the cash it will immediately need to operate the utility. This cash will need to be borrowed either through long term debt or a line of credit. See discussion of Working Capital below.

Q: Is it possible that CEG will need cash for its initial 30 days of operation in addition to its working capital requirement?

A: Yes. It is my understanding the City will retain the accounts receivable and cash of DOW, other than the cash equivalents and invested funds, plus investment earnings, and other amounts in capital improvement, bond and/or construction fund balances and debt service reserve funds. The City will also retain the trade payables. However, CEG will incur cash expenses including payroll, employee benefits including health, dental, vision, and disability insurance, leased property expense, and operational and maintenance ("O&M") expenses including chemicals and routine maintenance expenses during the first thirty (30) days of

operations without receiving cash from revenue to meet such expenses. In its case-in-chief, CEG has not identified these expenses or described a plan tailored to meet such expenses. Because CEG agreed to allow the City to retain the accounts receivable, CEG will experience an immediate cash shortfall that will not be met by the working capital revenue requirement the water utility justified in its rate case. But this does not change the fact that borrowing "working capital" to be recovered in future rates will effectively allow double recovery, since the water utility's working capital revenue requirement is already built into the rates to be established by the final order in Cause No. 43645.

Moreover, even if it were not double recovery, CEG is asking for an excessive amount of cash for its initial operations.

Q: If the cash for initial operations were not double recovery and the debt service was otherwise appropriate to include in rates, what is the appropriate amount of funds that should be financed?

A: If cash for initial operations were to be financed, the amount that would be appropriate should be based on thirty (30) days of operating cash. CEG is essentially asking for nearly eight (8) months of operating cash.

Q: How did you arrive at a figure of $4,392,000 for initial operations?

A: I calculated the appropriate amount by adding (Mr. Brehm's Exhibit JRB-5) 2011 Annual Operations of $48,400,000 plus 2011 Annual Other O&M /Admin Expenses of $4,300,000 and dividing that figure by 12. Since the transaction will not close until an Order in Cause No. 43645 is issued, the rates authorized by the Commission will be statutorily adequate. These rates will include cash for

working capital. Since there is no need to pay debt service on the new debt immediately, thirty days of total O&M should be sufficient for initial operations.

Q: What does the OUCC recommend with regards to borrowing long-term debt for "capital spending"?

A: If the Commission approves the acquisition of the DOW by CEG, the OUCC recommends the Commission deny CEG's long-term debt issuance for "capital spending" as discussed by Mr. Brehm. Mr. Brehm's Exhibit JRB-5 shows an annual debt service of $2.6 million for year 2011; $4.8 million for year 2012; $7.3 million for year 2013; and $9.7 million for years 2014 thru 2025 for Bond Funded Capex Debt Service.

When the Commission issues its Order in Cause No. 43645, DOW will have sufficient funds from rates to fund capital expenditures for 2011. A portion of "capital spending" funds will come from the "Extensions and Replacements" ("E&R") share of the revenue requirement. The OUCC's proposed revenue requirement for "Extensions and Replacements" in Cause No. 43645 is $22,276,000 annually or $1,855,333 monthly. Also, the OUCC recommended debt issuance of long-term debt of $66,600,000 ($111,000,000 times 60%) in Cause No. 43645.[6] Therefore, if the Commission accepts the OUCC's recommendations as described above, CEG will have an Order in Cause No. 43645 that will provide approximately $88,876,000 ($22,276,000 for E&R and $66,600,000 in long-term debt) in capital funds available to support "capital

[6] The OUCC recommended 60% from long term debt and 40% from extensions and replacements to fund the $111 million in requested Extensions and Replacements proposed by the Department of Waterworks over 2 years.

spending" in 2011. Beyond 2011, CEG will have annual capital spending funds from the "Extensions and Replacements" revenue requirement of $22,276,000. When the two year self-imposed moratorium has elapsed, it is anticipated that CEG's water utility will file a rate case in 2013.

B. The Authority

a. The Authority Assumed Debt

Q: What is the estimated existing long term debt that the Authority will acquire from the Sanitary District at closing?

A: According to Citizens Witness Mr. Offutt, the Authority will acquire approximately $497,949,000 of existing debt at the time of closing on the wastewater assets. *See,* Exhibit JPO-2, page 12. My Table CEP 3 below summarizes the anticipated outstanding debt at closing. These amounts recognize the debt service payments scheduled to be made on or before February 15, 2011, but no payments beyond that date. *See*, Att. CEP- 2.

Table CEP 3 – Sanitary District Acquired Debt

Bond Description	Anticipated Debt At February 15, 2011
SRF Bonds	$ 412,654,000
Revenue Bonds	37,445,000
General Obligation "GO" Bonds	47,850,000
Total Anticipated Debt	$ 497,949,000

Q: Is any of the existing debt in Table CEP 3 not being refinanced by CEG through the Authority?

A: Yes. According to Mr. Brehm, the GO Bonds "will remain obligations of the City". Mr. Brehm explained that "CEG, through the Authority, is required to make semiannual payments to the City in the amount equal to the City's debt service obligation on the General Obligation bonds." *See,* Joint Petitioners' Exhibit JRB, p. 10. This debt is estimated by Mr. Brehm to be approximately $47,850,000 at closing.

Q: What does the City's retention of the GO Bonds mean to the Authority?

A: If the Commission approves the sale of the wastewater assets to the Authority, CEG will need to recognize the debt obligation in its public financial statements until the debt obligation is satisfied. Mr. Brehm stated that "[t]he Authority is requesting Commission approval in this proceeding to recover the cost of the foregoing semiannual payment obligations in its annual revenue requirements after the rate moratorium ends in 2013." Thus, pursuant to the purchase agreement, the Authority will assume the City's debt obligation for the GO Bonds until the Authority has satisfied the City's debt obligations.

Q: Should the Authority be allowed to recover the debt service payments on these GO Bonds through rates?

A: Yes. If the Commission approves the acquisition of the Sanitary District wastewater assets by the Authority, the OUCC agrees the Authority should be allowed to recover annual debt service payments for the GO Bonds in any future rate cases until the City's associated debt has been satisfied.

b. The Authority's New Debt

Q: What amount does the Authority propose to borrow to replace the existing Sanitary District debt?

A: According to the Mr. Brehm, the Authority will have long term debt of $682,914,000 after closing and will obtain new debt to replace existing debt. *See*, Petitioner's Exhibit JRB-2. Table CEP 4 below summarizes the anticipated outstanding total debt after closing and refinancing the prior debt and obtaining additional financing for the acquisition. In addition, Mr. Brehm's response to OUCC Request Q 5-23, indicates that there will be an additional $100,630,000 borrowed to complete payment to the City for the acquisition of City wastewater assets. *See*, Att. CEP – 5.

Table CEP 4 – CEG Debt After Acquisition of the Sanitary District

Bond Description	Anticipated Debt After Closing In 2011
SRF Bonds	$ 412,654,000
Revenue Bonds	37,445,000
General Obligation "GO" Bonds	47,850,000
Acquisition Bonds	184,965,000
Total Anticipated Debt	$ 682,914,000

Mr. Brehm proposes that the Authority's "senior debt will include all current outstanding debt of the Wastewater System to be assumed or otherwise satisfied as part of the acquisition with the exception of the outstanding General Obligation bonds of the Wastewater System. . . ." The outstanding Sanitary District wastewater debt obligations, which the Authority proposes to borrow debt to

replace at closing, is approximately $450,099,000. This amount consists of the State Revolving Fund (SRF) debt of $412,654,000 and Revenue Bonds debt of $37,445,000.

Q: What does the OUCC recommend with regards to borrowing long-term indebtedness to replace the Sanitary District's existing long-term debt?

A: If the Commission approves the acquisition of the Sanitary District wastewater assets by CEG, through the Authority, the OUCC does not oppose the Authority's replacement of the current long-term debt with tier one debt in the exact amount outstanding at the date of closing, including associated transaction and issuance costs.

Q: What is the price the Authority will pay to acquire the Sanitary District wastewater assets?

A: The Authority will pay $262.6 million plus the assumption of Sanitary District debt to acquire Sanitary District assets. Mr. Brehm stated that "[t]he assignment of the $262.6 million purchase price to the Wastewater System reflects and is consistent with the relative fair value of the Wastewater System…" *See*, Exhibit JRB, p. 11. While the senior debt described above will constitute a first lien on the Authority's revenues, this $262.6 million will be a second lien on the Authority's revenues after payment of the wastewater system's operating expenses. Mr. Offutt stated that "$262.6 MM will be paid in cash to the City for the assets of the Systems." Mr. Offutt also stated that "$170.6 MM will be paid at closing; $92.0 MM will be paid on October 1, 2011." *See*, Joint Petitioners' Exh. JPO - 2, p. 4.

Q: Is the $262.6 million of debt the only debt the Authority will be issuing as a result of this acquisition?

A: No. The Authority proposes to borrow $99,775,000 for what is designated as "working capital" and $439,895,000 ($54,605,000 for 2010, $106,370,000 for 2011, $149,415,000 for 2012, and $129,505,000 for 2013) for capital expenditures ("Capex".) The annual debt service payments, which it designated "Bond Funded Capex Debt Service" on Petitioner's Exhibit JRB-1, shows $9.1 million, $17.5 million, and $24.9 million in cumulative annual debt service payments for 2011, 2012, and 2013, respectively. These borrowings result in both first and second lien debt.

Q: Please explain a second lien in the context of this Cause.

A: As Mr. Brehm explained "a second lien means the holders of such debt will have a lien on the new revenue of the Wastewater System after payment of the Wastewater System's operating expenses only after payment of all first lien debt service obligations have been satisfied." *See*, Joint Petitioners' Exh. JRB, p. 8. In other words, the debt for the acquisition will be junior or subordinated to the debt held by SRF and the Revenue Bonds.

Q: Will revenues from any other utility be used to secure any of this first lien or second lien debt?

A: No. As Mr. Brehm explained "[s]uch a lien structure means that the security of debt holders is limited to the revenue of the Wastewater System after payment of the Wastewater System's operating expenses." Mr. Brehm further stated that this "is consistent with the separate lien structures of CEG's existing utilities that prevent debt holders of one regulated utility from having a lien on the net revenues of any other regulated utility. This effectively means that each CEG utility must stand on its own from a credit perspective." *See*, Joint Petitioners'

Exhibit JRB, p. 8. Thus, the Authority's debt will be secured only by "net revenues" of the Authority, and none of CEG's other operations.

Q: The Authority plans to borrow approximately $439,895,000 for Capex during the first four years of operation. Does the Authority need to borrow Capex funds for the years projected years of 2010, 2011, 2012, and 2013?

A: No. The DPW Sanitary District Pro Forma Revenue Requirements clearly shows, under the Debt Service section, that the 10.75% rate increases developed by the Sanitary District and approved by the City County Council, for the years 2010, 2011, 2012, and 2013 include annual debt service amounts on projected borrowings of $479,000,000. *See*, Att. CEP - 7.

Q: What does the OUCC recommend with regard to borrowing long-term debt for Capex projects?

A: If the Commission approves the acquisition of the Sanitary District wastewater assets by CEG, through the Authority, the OUCC recommends that the Commission deny CEG's projected Capex borrowings of $439,895,000 ($54,605,000, $106,370,000, $149,415,000 and $129,505,000), as shown on CEG's Stormwater System Debt Service Projection and the associated annual debt service payments of $3,085,183, $6,006,905, $8,441,948 and $7,317,033, respectively, as proposed by Mr. Brehm. See, Att. CEP – 5.

Q: What amount does the Authority plan to borrow for "working capital"?

A: CEG did not propose an amount for "working capital" in its case in chief. Rather, it presented a debt service recovery amount on line 17 of Joint Petitioners' Exhibit JRB-1 that it requests the Commission approve. The $18.4 million amount includes debt service on the acquisition price and working capital. CEG did not disclose in its case-in-chief that it intends to borrow a particular amount of money

for working capital. However, in response to an OUCC data request question, Mr. Brehm indicated the Authority would borrow approximately $90.4 million:

> Petitioner has targeted an opening working capital balance equal to one and a half years of operating expenses, in this case approximately $90.4 million. Conventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case. Consequently for modeling purposes a working capital target of one and one half years of operating expenses was chosen.

See, CEG's response to OUCC Data Request Q 12-15; *See,* Att. CEP - 6.

The "Working Capital Debt Service" amount reflected on Joint Petitioners' Exhibit JRB-3, Line 11 reflects the amortization of long-term borrowing of $90.4 million ($99,775,000, after issuance and establishment of the Debt Service Reserve Fund) as discussed in Mr. Brehm's response to OUCC Data Request Q 12-15. On cross examination, however, Mr. Brehm indicated that the amount of working capital represented by "Working Capital Debt Service" on Exhibit JRB-3, Line 11 will be modified depending upon the circumstances at closing. Mr. Brehm sums up the Authority's proposal by stating, "[t]he authority that we are asking for is to include our cost of working capital in debt service, whatever they end up being." *See*, trans. of December 8, 2010, G-17.

Q: What does the OUCC recommend with regard to borrowing long-term debt for "working capital"?

A: If the Commission approves the acquisition of the Sanitary District wastewater assets by CEG, through the Authority, the OUCC recommends that the Commission deny the request that the Authority be guaranteed the recovery in

future rates of the annual debt service on the requested CEG's debt issuance for "working capital" as described by Mr. Brehm.

Q: Does CEG need to have cash on hand when it acquires the wastewater utility?

A: Yes. As with the water utility, the wastewater utility will require cash to operate.

Q: What is "Working Capital"?

A: "Working capital" is a term of art. The Indiana Court of Appeals has stated "the need for working capital arises from the day-to-day expenses which occur during the period between the time of billing and the time customers actually pay for service." *Bd. of Directors for Utils. v. Office of Util. Consumer Counselor*, 473 N.E.2d 1043, 1050 (Ind. App. 1985). There is a recognized Commission process designed to identify a utility's working capital needs in a way that will justify a revenue requirement in rates.

Q: Will Citizens provide cash to immediately operate the wastewater utility?

A: No. One of the things that adds to the complexity of the proposed transaction is that CEG does not propose to bring any equity or cash to the operations it plans to acquire. CEG will not acquire any cash or accounts receivable from the City when it purchases the wastewater utility. Nor does CEG intend to supply its own operating cash through a cash infusion. CEG will need cash to operate immediately and will not have the option of waiting for cash to build up through rates. In light of those facts, CEG plans to borrow the cash it will immediately need to operate the utility. This cash will need to be borrowed either through long term debt or a line of credit. See discussion of Working Capital below.

Q: Is it possible that CEG will need cash for its initial 30 days of operation in addition to its working capital requirement?

A: Yes. As part of the transfer, the City will not convey to the Purchaser the accounts receivable or cash that had been accrued to operate the utility. However, within the first 30 days of operations, CEG and the Authority will incur payroll expenses, employee benefits expenses (health, dental, vision, and disability insurance), leased property expense, and operation and maintenance ("O&M") expenses. These expenses will be incurred without immediate access to the funds that had been accrued to meet such expenses. In its case-in-chief, CEG has not identified these expenses or described a plan tailored to meet such expenses. Because CEG agreed to allow the City to retain the accounts receivable, CEG will experience an immediate cash shortfall that will not be met by the working capital revenue requirement the wastewater utility has until it concludes a billing and collection cycle. But this does not change the fact that allowing a borrowing of working capital to be recovered in rates will effectively allow double recovery, since the wastewater utility's working capital revenue requirement is already built into the rates established by the City.

Moreover, even if it were not double recovery, CEG is asking for an excessive amount of cash for its initial operations.

Q: If the cash for initial operations were not double recovery and the debt service was otherwise appropriate to include in rates, what is the appropriate amount of funds that should be financed?

A: If cash for initial operations were to be financed, the amount that would be appropriate should be based on thirty (30) days of operating cash. CEG is essentially asking for nearly eighteen (18) months of operating cash.

Q: How did you arrive at a figure of $4,500,000 for initial operations?

A: I calculated the amount of appropriate initial operating cash, by adding (JRB-1) 2011 Annual Operations of $47,200,000 plus 2011 Annual Other O&M /Admin Expenses of $6,800,000 and dividing by 12.

IV. WORKING CAPITAL

A. Citizens Water Utility

Q: Did CEG request "working capital" as part of its proposed debt to acquire the DOW assets?

A: Yes. In his testimony at p. 32, Mr. Brehm stated:

> Under the terms of the Water System Agreement, the consideration given to the City to acquire the Water System is assumption or other satisfaction of such outstanding debt. The projected financing costs also include debt service on debt issued to provide working capital for the Water System.

Q: Did CEG's witness Mr. Brehm identify in his testimony an amount of "working capital" that CEG plans to borrow for the water operations?

A: No. However, in response to an OUCC Data Request Q 17-20, Mr. Brehm provided an amortization schedule that summarizes the total debt CEG plans to borrow for "working capital" for the water utility. Mr. Brehm's amortization schedule shows the total amount of borrowings of $42,070,000. This amount indicates "working capital" of $39,952,786; debt service reserve fund of $1,695,135; and cost of issuance of $420,700. The annual debt service is

$3,390,270. *See*, Att. CEP - 3. The annual amortized portion of the $42,070,000, which matures in 2040, is $3.4 million.

Q: Did CEG's witness Mr. Brehm identify in his testimony a debt service amount for the amount of borrowings for waterworks operations?

A: Yes. Mr. Brehm's Exhibit JRB-5 forecasts rate increases, operating expenses, capital expenditures, debt, and working capital for Citizens water utility for the timeframe 2011 thru 2025. Line 17 of Exhibit JRB-5 shows $3.4 million of debt service for "working capital" for each of the foresaid years.

Q: Does the OUCC believe that Citizens needs to increase its working capital for the water utility?

A: No. In Cause No. 43645, the DOW proposed working capital of $10,947,000 annually.[7] The OUCC modified DOW's request in Cause No. 43645 and asked the Commission to allow $2,386,000 annually for working capital. The difference in the DOW's and the OUCC's calculation of working capital primarily revolved around whether DOW should be allowed to recover its subsequent year cash deficit of $15,658,000 million. Therefore, when an Order is issued in Cause No. 43645, DOW will have been provided with sufficient working capital without increasing the amount of borrowings that ratepayers will be required to repay.

B. <u>CWA Authority</u>

Q: Did Joint Petitioners request working capital as part of its proposed debt to acquire the Sanitary District wastewater assets?

A: Yes. In his testimony at p.7, Mr. Brehm stated:

[7] The Department of Waterworks (DOW) proposed to file a new rate case within two years after the final order in Cause No. 43645.

The projected financing costs also include debt service on debt issued to finance the purchase price paid to the City, as detailed in the Wastewater System Agreement. In addition, the projected financing costs include working capital for the Wastewater System.

Q: Did Mr. Brehm specifically identify the amount of working capital that is being requested for the Authority in the proposed debt in his testimony?

A: No. However, in response to OUCC Data Request Q 12-15, Mr. Brehm stated that "Petitioner has targeted an opening working capital balance equal to one and a half years of operating expenses, in this case approximately $90.4 million." Joint Petitioners' calculation starts with the sum of lines 8-10 of Petitioner's Exhibit JRB-1 for year 2011 (Operations, $47.2 million plus Other O&M/Admin Expenses, $6.8 million plus Bad Debts Expense, $6.2 million) and adds one half of the sum of the same lines for 2012 (Operations, $48.0 million plus Other O&M/Admin Expenses, $7.0 million plus Bad Debts Expense, $5.2 million). *See*, Att. CEP - 6. The sum of this calculation is $90.45 million. The Authority proposes to borrow this initial working capital (before issuance costs) as an addition to the amount required to pay off existing long term debt at the time of closing on the proposed purchase of the Sanitary District's assets.

Q: Does Joint Petitioner propose to include the debt service portion of the $90,449,095 of new debt for "working capital" in rates?

A: Yes. At line 17, Mr. Brehm's Exhibit JRB-1 indicates that additional debt service is estimated to be $18.4 million for the year 2011. This amount is for Acquisition Debt Service of $11,375,348 and "working capital" Debt Service of $6,984,250. *See*, Att. CEP - 5.

Q: How do Joint Petitioners describe working capital in this Cause?

A: Joint Petitioners describes "working capital" in this Cause in terms of rating agencies guidance. In response to OUCC Data Request Q 12-15, Joint Petitioners' state "[c]onventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case. Consequently for modeling purposes a working capital target of one and one half years of operating expenses was chosen." *See,* Att. CEP - 6.

Q: Does the OUCC accept Joint Petitioners' basis for calculating working capital?

A: No. Joint Petitioners' beginning working capital calculation includes total Operations and Maintenance (Operations, Other O&M/Admin Expenses, and Bad Debt Expense) for one and one half years. The OUCC disagrees with this approach. Cash working capital is the amount of revenue needed to bridge the monthly gap between the time when expenditures are required to provide service and the time collections are received for that service.[8] The two most frequently used methods to calculate the amount of working capital needed to bridge that financial gap are the lead/lag study and the 45-day formula.

[8] The Court of Appeals of Indiana has indicated "the need for working capital arises from the day-to-day expenses which occur during the period between the time of billing and the time customers actually pay for service." Board of Directors for Utilities v. Office of Utility Consumer Counselor, (1985) 473 N.E.2d 1043, 1050.

A lead/lag study refers to a survey determining the amount of working capital that a company must reserve. The lead/lag study also compares the time the company has to pay its bills. Lead time is the number of days between the company's receipt and the payment of invoices it receives. Lag time is the average number of days between the company billing of its customers and its receipt of payment.[9] The more popular method for calculating working capital is the use of the 45-day formula method. This method assumes the difference between the lead/lag periods is 45 days and calculates 12.5% (45 days / 360 days) of adjusted annual operating expenses as cash working capital. This methodology typically adjusts operating expenses for those items known to be paid after the receipt of revenues or paid "in arrears."

In response to OUCC Data Request Q 12-15, Mr. Brehm stated:

> Conventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case.

Joint Petitioners' analysis assumes it is acceptable to fund capital projects out of working capital. While it is acceptable to use working capital to cover a short fall because of timing issues, it is not acceptable to establish an amount of working capital that substantially exceeds the statutory mandates. Joint Petitioners' borrowed funds to complete capital projects outlined in the Consent Decree, as

[9] In Office of Consumers' Counsel v Public Utilities Com., 25 Ohio St. 3d 213 (Ohio 1986), it was held that lead-lag study is very expensive and time consuming, but it is the most accurate tool for determining cash working capital.

amended, through long-term debt and will continue to borrow funds to complete capital projects outlined in the consent decree, as amended. These funds should be used for the exclusive payment of accounts payable invoices related to capital projects. Working capital is only needed to meet day to day operational needs. Joint Petitioners' should not be paying for "`Consent Decree" capital projects out of working capital. Such projected use of the funds should not be used to justify CEG's proposed debt service on working capital.

Q: Did the Sanitary District prepare a traditional ratemaking case when it developed its proposed future rate increases in 2008?

A: No. The City did not prepare a traditional ratemaking case for presentation to its rate approval body. In response to Data Request Q 27-2, Darrell Fishel provided an excel spreadsheet that shows the information that Mr. Buzz Krohn, an outside rate consultant, developed to substantiate the required rate increases needed in order to comply with the required Consent Decree improvements. *See*, Att. CEP - 7.

Q: Did the Sanitary District include working capital in its computation of the 10.75% future rate increases that were subsequently authorized by the City County Council?

A: It is not explicit that the City's calculations include a "working capital" revenue component. However, since the City is retaining an estimated $75 million of operating cash that is in the "Wastewater General Fund", it implies that a working capital ratemaking component was previously built into customer rates. *See*, Joint Petitioners' Exhibit MGL-3, Table 1, p.3; Att. CEP - 8.

V. CWA AUTHORITY'S RATE ADJUSTMENT MECHANISM

Q: What is the "rate adjustment mechanism" that CEG is requesting on behalf of the Authority?

A: In the Petition at Paragraph 41, CEG on behalf of the Authority requests "Commission approval of a rate adjustment mechanism, under Ind. Code § 8-1-2-42(a) and/or Ind. Code § 8-1-28-11(a)(2), that, beginning in 2014, will permit it to adjust wastewater rates on an annual basis or more or less frequently as needed by the Authority in order to have funds available to pay for the environmental compliance plan ("ECP") expenditures. The proposed rate adjustment mechanism would be designed to recover the debt service on debt issued to fund ECP expenditures and be subject to periodic reconciliation between general rate cases to ensure that base rates and any approved rate adjustments provide the Authority with "income sufficient to maintain the wastewater system in a sound and financial condition to render adequate and efficient service," Ind. Code § 8-1.5-3-8(d), and to implement the Environmental Compliance Plan in order to "comply in whole or in part with the Safe Drinking Water Act or the Clean Water Act." Ind. Code § 8-1-28-2. Joint Petitioners', Exh. JRB, p. 19.

Q: Mr. Kaufman has previously discussed some of the OUCC's concerns regarding the Authority's proposed Rate Adjustment Mechanism. What is the focus of your testimony?

A: My testimony discusses the Authority's proposed reconciliation (or balancing) mechanism and the OUCC's opposition to include operating expenses as part of the proposed Rate Adjustment Mechanism.

Q: Is the Authority's proposed reconciliation akin to a balancing account?

A: Yes. The Authority proposes to reconcile, or balance, debt service on debt issued and estimated operating expenses on a forward-looking basis. CEG's Witness Prentice discussed the proposed Environmental Compliance Plan Recovery Mechanism ("ECPRM"). See, Joint Petitioners', Exh. LSP, pp. 18-26. Ms. Prentice provided a sample of the proposed ECPRM in Petitioner's Exhibit LSP-6. On the stand during cross examination Ms. Prentice had difficulty explaining the process of reconciliation that is being proposed because of its complexity. See, trans. of December 14, 2010 hearing at K-25-K-33; Att. CEP -9. This complexity is part of the basis for the OUCC's opposition to the reconciliation or balancing concept.

The OUCC believes that approval of new annual debt issuance and approval of debt service on this debt should be handled in as simple and straight forward manner as possible. (See the testimony of Mr. Kaufman.)

The annual operating and maintenance expenses are not different than those for any other utility. These can be addressed during periodic rate cases.

Q: Has the Commission previously ruled on the merits of a "balancing account"?

A: Yes. In Cause No. 43680, Indiana-American Water Company, April 30, 2010, pp. 110-112:

> Mr. Grubb testified that it is a general ratemaking precept that a regulated utility should have the opportunity to recover prudently incurred costs. Normally this is accomplished through timely filing of rate cases. Pension and OPEB costs do not fit the normal expense because of their fluctuation. Implementing the Pension/OPEB Balancing Account would assure ratepayers and the Petitioner that Petitioner recovers only the actual pension and OPEB expense which is incurred…
>
> *F. Commission Discussion and Findings.*
>
> Indiana American's pension expense has fluctuated in recent years, and Petitioner's proposal attempts to mitigate that instability. …the Commission finds that Petitioner's proposal with respect to a Pension/OPEB balancing account should be denied. Factors such as stock market fluctuations, pension asset allocation decisions of the Company, or ERISA funding requirements for rate determination purposes can affect Pension/OPEB costs. If the Commission were to grant Petitioner's request, the ratepayers, not Petitioner, would bear the risk inherently involved with the funding of Pension/OPEB accounts, such as market fluctuations, Company decisions, and funding requirements. Since the ratepayers bear these risks, it is possible that decisions concerning Pension/OPEB funding would not be carefully made. Prudent management of pension and OPEB funds is American Water's responsibility, and prudent investment decisions are a part of that responsibility. When deciding how to invest pension and OPEB funds, a utility may choose to invest aggressively or conservatively. Utilities that choose to properly diversify investments should not need the creation of a Pension/OPEB balancing account, which avoids inappropriately shifting the risk of investment decisions to ratepayers. (Emphasis added.)
>
> Accordingly, based on the evidence presented in this Cause, the Commission finds that *it is not in the public interest to require ratepayers to bear this risk*. In addition, the Commission finds that Indiana American failed to adequately explain how the creation of a Pension/OPEB balancing account would benefit the provision of water and sewer service to its ratepayers. Indiana American's request to implement a Pension/OPEB balancing account is denied.

Order at p. 111 (emphasis added.)

Q: Does the OUCC believe that the proposed reconciliation (balancing account) for Consent Decree projects is similar in effect to the Indiana American proposal in Cause No. 43680?

A: Yes. The OUCC has concerns regarding the Authority's proposed balancing account. As in Cause No. 43680, the Authority's proposal would shift its own risk to the public. But the Authority's testimony in this Cause provides no compelling evidence why these risks should be shifted from the utility to the ratepayers. Moreover, shifting these risks away from the utility to the ratepayers may reduce the Authority's incentive to minimize costs.

Next, O&M cost recovery should not be allowed unless the Commission has had the prior opportunity to scrutinize it. Also, many of the proposed costs that CEG is seeking recovery of, through the Authority, simply are not fixed, known, or measurable. The requirement that an item have a cost that is "fixed, known and measureable" to be included in rates is a bedrock principle of ratemaking. Finally, if too many costs are tracked that may cause an inappropriately long time between general rate cases. A regular review of a utility's costs and charges is important to ensure rates continue to be fair and reasonable.

Q: What is the OUCC's position regarding using a balancing account, as described by CEG, through the Authority?

A: The OUCC recommends against allowing CEG, through the Authority, to institute their proposed Rate Adjustment Mechanism. CEG's Witness Prentice testified, during the evidentiary hearing, that the actual reconciliation discussed in Authority's proposal will be scheduled over several years. Ms. Prentice testified

that the proposed debt and O&M costs associated with year one (1) will not be reconciled until year three (3). *See*, trans. of December 14, 2010 hearing at K-30-K-31; Att. CEP -9. This means that costs allowed to be passed to the ratepayers in 2014 would not be reconciled (accounted for) until sometime in 2017. This is simply not prudent given the magnitude of the expenses and borrowings that will be necessary for CEG, through the Authority, to borrow.

Q: Does the OUCC have an alternate proposal that will allow Joint Petitioner to recover annual debt service payments on debt used to comply with the Consent Decree, as amended?

A: Yes.

Q: Please provide an overview of the OUCC proposed mechanism.

A: The OUCC recommends that the Commission adopt a debt service recovery mechanism that will be filed each year while the Consent Decree is in effect. OUCC Witness Kaufman discusses the details of the OUCC's proposal for recovery of annual debt service payments tied to Consent Decree funding.

VI. DEPRECIATION RATES

A. Citizens Waterworks

Q: What depreciation rate does CEG propose to use to depreciate the acquired water assets by Citizens?

A: According to Citizens witness, John R. Brehm, "CEG proposes to use 2% as its depreciation rate for water assets, which I understand is the current depreciation rate used by DOW." Joint Petitioners' Exhibit JRB, p. 38.

Q: What depreciation rate did the DOW use in its last rate case - Cause No. 43645?

A: DOW used a composite depreciation rate of 2% in Cause No. 43645, which was filed on March 11, 2009.

Q: Does the OUCC agree with the 2% depreciation rate requested by CEG's water utility for depreciating water assets?

A: Yes. According to the last depreciation study completed in 1988, the Commission established a 2% composite depreciation rate for a complete water system that has a treatment plant.

B. CWA Authority

Q: What depreciation rate does the Sanitary District use to depreciate its wastewater assets?

A: In response to an OUCC Data Request Q 6-8, Mr. Brehn stated as follows:

> The current depreciation rate of the wastewater system cannot be stated with precision. The City does not separate depreciation expense for the wastewater system from other components of the Department of Public Works, which includes the stormwater system, streets, curbs, sidewalks, traffic signals, bridges, street lights and related vehicles, building, equipment and property.

See, Att. – CEP - 10.

Q: What depreciation rate does CEG propose to use to depreciate the acquired wastewater assets transferred to the Authority?

A: Mr. Brehm suggested "that the Authority be authorized to use 2.5%, which is consistent with the Commission's guidance for depreciation rates for a wastewater utility that owns a treatment plant." Joint Petitioners' Exhibit JRB, p. 38.

Q: Does the OUCC agree that the 2.5% depreciation rate requested by the Authority be used to depreciate the wastewater assets?

A: Yes. According to the last depreciation study completed in 1988, the Commission established a 2.5% composite depreciation rate for a wastewater system with a treatment plant.

VII. DOW'S OUTSTANDING NOTE TO THE CITY

Q: Please describe how the DOW note to the City occurred.

A: In Cause No. 43645, DOW sought an increase to its rates and charges. In that Cause, DOW's witness John R. Skomp requested working capital of $13,268,000 per year, which included recovery of a $20,297,000 projected cash flow deficit for the calendar year ending December 31, 2009. In its rebuttal case, Petitioner reduced its proposed working capital revenue requirement to $11,125,000, with recovery of a $16,013,000 cash deficit for the year ended December 31, 2009. Subsequently, in January 2010, DOW filed Resolution No. 7, 2010 Approval of an Additional appropriation of Character 3 Funds to the 2009 Budget for $18,390,000 to cover additional debt service cost paid in 2009 related to bond refunding and swap agreement termination as previously approved by the Board. This $18,390,000 request resulted in a note to the City from DOW.

Q: Do you have any current information regarding the amount of debt owed by DOW to the City?

A: Yes. OUCC Data Request Q 31-8 asked the City to "provide the current balance of the working capital loan from the City to the Department of Water." *See*, Att. CEP – 11. The Department responded with the following statement:

> "As of December 2009, the Department had a liability to the City in the amount of $20,471,754.22. Based on the projected cash needs of the Department through the remainder of 2010, this amount is projected by the Department to be $50,247,545.33 on December 31, 2010. The Department projects that by the end of the first quarter of 2011 it will receive cash sufficient to reduce this amount to $36,373,270.05 in March 31, 2011."

Q: Did the City provide any insight into how it wants to proceed with the repayment of the advance for working capital debt to the City?

A: Yes. In response to questions by Commissioner Landis at the evidentiary hearing on Joint Petitioners' case-in-chief, the City's witness, Chris Cotterill stated that he expected the City to be repaid for the outstanding debt owed by DOW. Trans. of December 6, 2010, pp. B-129-B-130. Mr. Cotterill explained that "[a]ny funds that the City of Indianapolis general fund the taxpayers, in effect have loaned, have extended, to the Department of Waterworks to help it during its negative cash balance time, we feel an obligation to the taxpayers to repay that but nothing more." Id., see also Att. CEP – 12.

Q: Did CEG provide any insight into how it wants to proceed regarding the loan for "working capital" debt to the City?

A: Yes. In response to OUCC Data Request Q 20-11, CEG responded "Citizens is not responsible for repayment of the advance from the City's general fund." *See*, Att. CEP – 13.

Q: Does the OUCC have a recommendation with regard to this issue?

A: Yes. If the Commission approves collection of DOW's requested working capital revenue requirement of $11,125,000 in its Final Order in Cause No. 43645, CEG should be required to repay the amount of the outstanding debt that DOW has payable to the City.

VIII. RECOMMENDATIONS

Q: Please summarize your recommendations to the Commission in this cause.

A: I recommend--

- The Commission approve the assignment of any DOW Interlocal Agreements and franchise rights to the Board;
- The Commission approval of the Board's assumption of DOW's obligations in the Interlocal Agreements and franchise rights;

- The Commission approval of the transfer of agreements for wastewater treatment and disposal (Wastewater Interlocal Agreements) to the Authority;
- The Commission approval of the Board's assumption of existing DOW debt;
- The Commission decline to pre-approve debt service payments as a revenue requirement in future rate cases on the estimated debt the water utility will seek for working capital;
- The Commission decline to pre-approve debt service payments in future rate cases on the estimated debt the water utility seeks on estimated Capex;
- The Commission approval of debt service payments for the water utility in future rate cases on $4,392,000 of initial cash;
- The Commission approval of the Board's assumption of existing Sanitary District debt;
- The Commission approval of debt service payments in future rate cases on the purchase price of $262,600,000 ($285,595,000 which includes purchase of Sanitary District wastewater assets, associated costs of issuance and debt service reserve fund);
- The Commission decline to pre-approve debt service payments in future rate cases for the estimated debt the Authority will seek for working capital;
- The Commission decline to pre-approve debt service payments in future rate cases for the estimated debt the Authority seeks on estimated Capex;
- The Commission approval of debt service payments for the Authority in future rate cases on $4,500,000 of initial cash;
- The Commission approval of recovery of the debt service payments on the City's wastewater utility GO Bonds in future Authority rate cases;

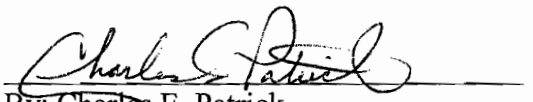
- The Commission decline the use of a balancing account in conjunction with the Rate Adjustment Mechanism;
- The Commission approval of a 2.0% depreciation rate for DOW acquired Utility Plant in Service ("UPIS") by CEG;
- The Commission approval of a 2.5% depreciation rate for Sanitary District acquired UPIS by the Authority;
- The Commission require CEG to repay the City for any outstanding short-term DOW debt owed to the City, if the Commission grants recovery of the DOW not in the working capital revenue requirement.

Q: Does this conclude your testimony?

A: Yes.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



By: Charles E. Patrick
Indiana Office of
Utility Consumer Counselor

01/14/2011
Date

Cause No. 43936

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Sample DOW Interlocal Agreement

Attachment CEP - 1

Intergovernmental Agreement

BY THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement"), entered into by the county or municipality listed on the signature line below ("Unit") and the Consolidated City of Indianapolis Department of Waterworks ("Waterworks"), agree as follows:

Whereas, the water utilities of IWC Resources, Inc. ("Water Company") provide public water utility and related water production, transmission, delivery, storage, distribution, and supply services ("Water Services") throughout central Indiana, including services rendered within Unit's territory; and

Whereas, on the effective date (the "Effective Date"), Waterworks will acquire substantially all of the assets and properties of the Water Company including the right and obligation to provide Water Services to residential, commercial, industrial, municipal and other customers ("Customers") located throughout central Indiana, which includes Customers located within Unit's territory; and

Whereas, the parties make this Agreement for the purpose of providing the terms and conditions of their mutual commitment to cooperation in the provision of Water Services within Unit's territory; and

Whereas, Waterworks intends to enter into agreements regarding Water Services with other counties and municipalities located throughout central Indiana ("Other Units" and, together with Unit, "Units") on terms substantially similar to this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1. Administration of this Agreement. The parties acknowledge and agree that mutual cooperation is important for the effective and efficient administration of this Agreement.

   a. Joint Advisory Board. To promote cooperation in the administration of this Agreement, there will be established a joint advisory board (the "Advisory Board") whose members will include a representative from Waterworks and from each of the Units electing to appoint a member to the Advisory Board.

   b. Unit Appointment. If Unit so elects, then it will appoint one member to the Advisory Board. Unit's Advisory Board member serves at the pleasure of

Unit for a term of one year ending on December thirty-first, and until his or her successor is appointed and qualified. Unit's member may be reappointed for successive terms. The chair shall be selected annually by a majority of the members of the Advisory Board.

c. Advisory Board Powers. The Advisory Board has the power to furnish recommendations to the Board of Directors of Waterworks with respect to any of the powers and duties the Waterworks' Board may exercise and perform including, but not limited to, recommendations concerning service, utility service agreements, rates, water quality, system expansion, bonding, and management. The Advisory Board has the power to retain an engineering consultant for a reasonable annual fixed fee. The amount of the fixed fee must be submitted in writing to Waterworks during Waterworks' budgeting process for the applicable fiscal year.

d. Meetings. The Advisory Board may hold meetings at times and places prescribed by its rules or established by resolution. No notice to members is required for holding, or taking any action at, a regularly scheduled meeting. A special meeting of the Advisory Board may be called by the chairperson or by a majority of its members at any place in the Waterworks' jurisdiction as designated in the call. Each member shall be notified of the time and place of a special meeting by written notice delivered at least forty-eight (48) hours in advance of the meeting. The notice requirement may be waived as to a member who attends the meeting, or who executes a written waiver of notice either before or after the meeting. Unless considered unnecessary by the Advisory Board, a representative of Waterworks' operator will attend each meeting.

e. Quorum and Voting. A majority of the total number of members shall constitute a quorum of the Advisory Board. A quorum is required for official Advisory Board action and the Advisory Board shall act by resolution and a majority vote of the quorum is required to pass a resolution.

2. Waterworks Responsibilities.

a. Water Services. On the Effective Date, the Water Company will assign and Waterworks will assume, as authorized by and subject to City-County general ordinance no. 112, 2001, all of the Water Company's rights, powers, privileges, and obligations under one or more franchise permits and/or similar agreements that are attached hereto and incorporated into this Agreement by this reference (collectively, the "Franchise Permits"). Accordingly, Unit hereby consents, approves and permits such assignment by the Water Company and assumption by Waterworks as of the Effective Date. Waterworks' responsibilities under this Agreement and under the Franchise

Permits will include the provision of Water Services to Customers within Unit's territory.

b. Indiana Utility Regulatory Commission Jurisdiction. Waterworks agrees to comply with the regulations of the Indiana Utility Regulatory Commission ("the Commission") set forth in 170 I.A.C. 6-1 and 170 I.A.C. 6-1.5. All rates and charges of Waterworks shall be authorized, to the extent permitted or required by law, by the Commission or its successor regulatory agencies.

c. Financing, Staffing, Budgeting. The financing, staffing, and supplying of Water Services and the establishing and maintaining of a budget for Waterworks shall be determined by the Board of Directors of Waterworks.

d. Supervision of Funds. The City Controller, as the chief fiscal officer to Waterworks, shall be responsible for receiving, disbursing, and accounting for all monies of Waterworks. All monies received from the operation of Waterworks, or received from the disposal of any assets or operation rights thereof, shall be used only for the operation, maintenance, extension, financing, acquisition of professional or expert personnel, payment in lieu of taxes, or as otherwise specifically directed by the Board of Directors of Waterworks for the provision of Water Services.

e. Payments in Lieu of Taxes. Waterworks shall make payments to compensate all units within the territory of Unit for taxes that would have been due on its utility property were it privately owned, subject, however to Waterworks' ability to include such payments in its rates. Waterworks agrees to include the payments in lieu of taxes as a cost of services in any and all rate proceedings before the Commission.

f. Rates. For a period of five (5) years following the Effective Date, Waterworks will use best efforts not to file a rate petition with the Commission seeking a rate increase within Unit's territory.

g. Notice to Unit's Advisory Board Member. Waterworks will provide adequate and reasonable notice to Unit's Advisory Board Member of any proposed water main extension within Unit's territory. The Unit's Advisory Board Member may, within 15 days, direct the Secretary-Treasurer of Waterworks' Board of Directors to enter the proposed water main extension as an item on the agenda of the next regularly scheduled meeting of the Board. At the Board meeting the proposed water main extension will be subject to public discussion and Board consideration.

h. Waterworks Property. In the event of termination of this Agreement, Waterworks retains all right, title and interest in the assets and real and personal property of the Water Company that Waterworks acquires as of the Effective Date and in any and all additions thereto. Further, Waterworks

retains the right to acquire, hold, and dispose of real and personal property used and useful in the provision of Water Services in connection with this Agreement.

3. Miscellaneous.

a. Duration. This Agreement is effective as of the Effective Date and shall be in force and effect until the later of: (a) the Waterworks' Bonds are no longer outstanding; (b) Waterworks assets within the Unit's territorial limits are no longer subject to any lien established by the Waterworks' Bonds; or (c) the expiration without renewal or extension of all of the Franchise Permits.

b. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together and, together with substantially similar agreements of Waterworks and the Other Units, will constitute one and the same instrument.

c. No Effect on Unit's Ability. This Agreement is not intended to, and does not, impinge upon the ability of the Unit to exercise any statutory right it may have to establish a department of waterworks and own a water utility.

d. Restriction of Waterworks' Annexation Rights. The provision or the extension of water utility service by Waterworks shall not be utilized to annex property within the territory of the Unit.

e. Severability. Should any provision (section, paragraph, sentence, clause, or any other portion) of this Agreement be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the parties in entering into this Agreement. To this end, the provisions of this Agreement are severable.

f. Further Assurances. The parties will cooperate with each other and will execute and deliver, or cause to be delivered, all such other documents and instruments, and will take all such other actions, as the other party hereto may reasonably request from time to time to carry out the intent of the provisions and purposes of this Agreement.

g. Approvals:

i. Approval of the Commission. On or before the Effective Date, Waterworks will submit this Agreement to the Commission for approval in connection with the Commission's approval of the Settlement, IURC Cause Number 41821.

ii. Party Approvals. This Agreement shall be in full force and effect as of the Effective Date when approved by the Chairman of the Board of Directors of the Consolidated City of Indianapolis Department of Waterworks and the executive of the Town of Avon.

Consolidated City of Indianapolis Department of Waterworks

By: _____
Chairman, Board of Directors

Date: _____

Attest: _____

Town of Avon

By: _____
~~Executive~~ TOWN MANAGER AS Authorized by Council

Date: 2/14/2

Attest: Sharon K. Stowell

ATTACHMENT – FRANCHISE PERMIT
TOWN OF AVON, INDIANA

NONE----------

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Proposed Utility Debt Structure

Citizens Energy Group

Exhibit JPO – 2, Page 12

Attachment CEP - 2

Citizens Energy Group
Exhibit JPO - 2

PRO FORMA CREDIT / FINANCING ANALYSIS

Proposed Utility Debt Structure

($000's) as of February 15, 2011

Gas Utility System Bonds 1986 Indenture	Gas Utility Distribution System Bonds 2008, 2009 & 2010 Series	Thermal Energy System Bonds 2001, 2006 & 2010 Series	Water System Bonds	Wastewater System Bonds SRF, Revenue and General Obligation Bonds
• Pledge of Income and Revenues from: • Gas Distribution System • Manufacturing Division (Discontinued Operations) • Citizens Resources Bonds outstanding under 1986 Indenture: •1986 Series B - $60,560	• Pledge of Income and Revenues from: • Gas Distribution System Bonds outstanding : •2008 Series A - $55,850 • 2008 Series B - $55,855 • 2008 Series C - $65,680 •2009 Series A - $29,955 •2010 Series A - $59,975 • Commercial Paper - $50,000	• Pledge of Income and Revenues from: • Steam Division • Chilled Water Division Bonds outstanding: • 2001 Series A - $81,160 • 2006 - $50,070 • 2010 Series A – $10,620	• Pledge of Net Revenues from: • Water Division Bonds outstanding: • 2002 Series A - $23,040 • 2005 Series F – $69,965 • 2006 Series A – $77,830 • 2007 Series B – $70,410 •2007 Series L - $102,830 • 2009 Series A - $559,890	• Pledge of Net Revenues from: • Sewer Division Bonds outstanding: • SRF Bonds- $412,654[1] • Revenue Bonds– $37,445[2] • GO Bonds - $47,850[3]
Total Gas Utility System Debt $60,560	Total Gas Utility Dist. System Debt $317,315	Total Thermal Energy Division Debt $141,850	Total Water Division Debt $903,965	Total CWA Debt $497,949

Total Utility Long-Term Debt: $1,921,639

Morgan Stanley

1) Assumption/replacement of SRF Bonds expected
2) Revenue bonds issued to fund purchase price and defeasance of outstanding market bonds
3) Agreement with the City to pay the debt service on the GO Bonds is subordinate to payment of revenue bonds

CEP ATTACHMENT 2
CAUSE NO. 43936
Page 2 of 2

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

DOW Working Capital Borrowing

Response to OUCC DR 17-20

Attachment CEP - 3

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Seventeenth Set of Data Requests

DATA REQUEST NO. 20: Line 17 of Citizen's exhibit JRB-5 shows an annual debt service for Working Capital Financing of $3.4 million. How was the $3.4 million figure determined? Please provide all inputs and calculations to derive the $3.4 million figure, including but not limited to the amount of the loan, interest rate(s) and number of periods of the loan.

RESPONSE:

See Attachment OUCC DR 17-20.

WITNESS:

John R. Brehm

Attachment OUCC DR 17-20

	Debt Service
2011	3,390,270
2012	3,390,270
2013	3,390,270
2014	3,390,270
2015	3,390,270
2016	3,390,270
2017	3,390,270
2018	3,390,270
2019	3,390,270
2020	3,390,270
2021	3,390,270
2022	3,390,270
2023	3,390,270
2024	3,390,270
2025	3,390,270
2026	3,390,270
2027	3,390,270
2028	3,390,270
2029	3,390,270
2030	3,390,270
2031	3,390,270
2032	3,390,270
2033	3,390,270
2034	3,390,270
2035	3,390,270
2036	3,390,270
2037	3,390,270
2038	3,390,270
2039	3,390,270
2040	3,390,270

Assumptions:	
Term	30 years
Interest Rate	7.0%
Working Capital Required	39,952,786
Debt Service Reserve Fund	1,695,135
Cost of Issuance	420,700
	42,068,621
Par Amount of Bond Issuance	42,070,000

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Citizens Water Capex Funding

OUCC Data Request and Response to Q 37 - 1

Attachment CEP - 4

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Thirty-Seventh Set of Data Requests

DATA REQUESTS

DATA REQUEST NO. 1: Please provide the amortization schedule that supports Schedule JRB-5, Line 16, "Bond Funded Capex Debt Service." Specifically, identify the proposed $2.6 million in 2011

RESPONSE:

See Attachment OUCC DR 30-14 that was included in the responses to OUCC Data Request Set No. 30.

WITNESS:

John R. Brehm

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Thirtieth Set of Data Requests

DATA REQUEST NO. 14: On pages 32-33 of Mr. Brehm's testimony he indicates that "The projected financing costs also include debt service on debt issued to provide working capital for the Water System. The projected financing costs also reflect debt service on debt issued to finance capital spending." Please provide a detailed breakdown of the total borrowing that will be incurred upon acquisition of the Department of Water assets including, but not limited to, borrowings for debt refunding, debt service reserve, issuance costs, capital spending, and working capital. This breakdown should include the amount of borrowing to be incurred for each item, the maturity date(s), and interest rate(s).

RESPONSE:

The amount of borrowing that "will be incurred upon acquisition" cannot be stated exactly as the date of closing is unknown and, as the OUCC has acknowledged (see, for example, the question posed in OUCC DR 28-5), the amount of debt principal of outstanding debt assumed goes down as the DOW makes debt service payments. See attachment DR 30-14, the Water Asset Purchase Agreement Section 2.04(a) and related schedule 2.04(a), and Petitioner's Exhibit JRB-2.

WITNESS:

John R. Brehm

Project Sullivan
Water
Debt Service Profile

ASSUMPTIONS	
Interest Rate (TIC)	5.65%
Term (years)	30
Second Lien Penalty	0.50%
Taxable Interest Rate	7.00%

	Debt Service-Existing Aggregate	First Lien Debt Service-Capital 2010	First Lien Debt Service-Capital 2011	Second Lien DSRF/Working Capital 2011	First Lien Debt Service-Capital 2012	First Lien Debt Service-Capital 2013	First Lien Debt Service-Capital 2014
2011	63,971,438	-	2,632,890	3,390,270			
2012	63,973,894	-	2,632,890	3,390,270	2,191,510		
2013	63,974,794	-	2,632,890	3,390,270	2,191,510	2,479,701	
2014	63,972,506	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2015	63,971,919	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2016	63,971,519	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2017	63,971,950	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2018	63,969,463	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2019	63,970,975	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2020	63,971,931	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2021	63,971,931	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2022	63,974,838	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2023	63,973,425	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2024	63,971,344	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2025	63,971,475	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2026	63,970,875	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2027	63,969,253	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2028	63,970,481	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2029	63,970,094	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2030	63,971,044	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2031	63,970,644	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2032	63,969,994	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2033	63,970,588	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2034	63,970,306	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2035	63,974,819	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2036	63,970,747	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2037	63,974,331	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2038	-	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2039	-	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2040			2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2041					2,191,510	2,479,701	2,430,736
2042						2,479,701	2,430,736
2043							2,430,736
Working Capital		$ -	$ -	$ 39,952,786		$ -	$ -
Bond Funded Capex		$ -	$ 35,946,186		$ 29,917,644	$ 33,852,942	$ 33,185,013
Debt Service Reserve Fund		$ -	$ 1,316,445	$ 1,695,135	$ 1,095,755	$ 1,239,850	$ 1,215,368
Capitalized Interest Fund							
Costs of Issuance		$ -	$ 376,400	$ 420,700	$ 313,300	$ 354,500	$ 347,500
Total Par Amount of Bonds		$ -	$ 37,640,000	$ 42,070,000	$ 31,330,000	$ 35,450,000	$ 34,750,000

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Citizens Wastewater Debt Funding

OUCC Data Request and Response to Q 5 - 23

Attachment CEP - 5

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Fifth Set of Data Requests

DATA REQUEST NO. 23: For the environmental compliance plan discussed in Mr. Brehm's testimony and the anticipated debt listed on JRB-1, please provide an anticipated amortization schedule for each piece of debt the wastewater utility anticipates it will issue for each year from 2011 through 2025. If included in your workpapers, please indicate the page number.

RESPONSE:

See attachment OUCC DR 5-23.

WITNESS:

John R. Brehm

Stormwater System
Debt Service Projection

	GO DS	First Lien Existi Debt Service-Capital 2013
2011	8,484,220	
2012	8,493,010	
2013	8,495,700	7,317,033
2014	8,487,825	9,182,272
2015	7,955,910	9,182,272
2016	7,957,800	9,182,272
2017	7,960,133	9,182,272
2018		9,182,272
2019		9,182,272
2020		9,182,272
2021		9,182,272
2022		9,182,272
2023		9,182,272
2024		9,182,272
2025		9,182,272
2026		9,182,272
2027		9,182,272
2028		9,182,272
2029		9,182,272
2030		9,182,272
2031		9,182,272
2032		9,182,272
2033		9,182,272
2034		9,182,272
2035		9,182,272
2036		9,182,272
2037		9,182,272
2038		9,182,272
2039		9,182,272
2040		9,182,272
2041		9,182,272
2042		9,182,272
2043		
2044		
2045		
2046		
2047		
2048		
2049		
2050		
2051		
2052		
2053		
2054		

Acquisition Cost	-
Capex Requirements	119,024,177
Bond Funded Capex	119,024,177
Debt Service Reserve Fund	9,182,272
Costs of Issuance	1,295,050
Total Par Amount of Bonds	129,505,000

ASSUMPTIONS	
Interest Rate	5.65%
Term (years)	30
Second Lien Penalty	0.50%
Taxable Interest Rate (Working Capital)	7.00%

First Lien Debt Service-Capital 2014	First Lien Debt Service-Capital 2015	First Lien Debt Service-Capital 2016	n Debt Spital 2025
8,978,686			
8,978,686	16,998,017		
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
	16,998,017	14,174,516	4,681,004
		14,174,516	4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
$ -	$ -	$ -	$ -
$ 131,218,487	$ 248,415,051	$ 233,047,775	$ 02,809,973
$ 118,094,821	$ 223,573,546	$ 188,438,220	$ 61,585,984
$ 8,978,686	$ 16,998,017	$ 14,174,516	$ 4,681,004
$ 1,283,600	$ 2,430,050	$ 2,028,400	$ 689,200
$ 128,360,000	$ 243,005,000	$ 202,840,000	$ 66,920,000

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Citizens Wastewater Working Capital

OUCC Data Request and Response to Q 12 -15

Attachment CEP - 6

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Twelfth Set of Data Requests

DATA REQUEST NO. 15: The attachment Citizens provided in Response to OUCC Question 5-23 indicates a borrowing of $90,449,095 (before issuance costs) under the column DSRF/Working Capital 2011 (see line reference – "Acquisition Cost). Please explain how that amount was derived and show all calculations.

RESPONSE:
Petitioner has targeted an opening working capital balance equal to one and a half years of operating expenses, in this case approximately $90.4 million. Conventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case. Consequently for modeling purposes a working capital target of one and one half years of operating expenses was chosen.

WITNESS:
John R. Brehm

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Department of Public Works

Wastewater Financial Summary

OUCC Data Request and Response to Q 27 - 2

Attachment CEP - 7

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Twenty-seventh Set of Data Requests

Q 27-2: According to a phone conversation between Mr. Patrick and Mr. Kaufman and Mr. Fishel, Mr. White, and Mr. Williams on Friday, October 15, 2010, there was a rate study prepared by Mr. Otto Krohn for the Department of Public Works related to the most recent rate increase approved (through 2013) and implemented for the Wastewater Utility. Please provide a copy of this report including all supporting schedules and attachments.

Answer: See response to DR 9 and attached Excel file.

Darrell Fishel

Indianapolis Clean Stream Team
DPW Sanitary District Pro Forma Revenue Requirements

PLAN A

Pro Forma Cash Revenue Requirements - $640 Million CIP thru 2013			
Total Projected Add'l Bonds to be Issued			$ 483,500,000
	Constr. Funds	Total Bonds	Assumed Rate	Term
SRF Bonds	$ 195,000,000	$ 197,500,000	3.50%	20
Open Market	$ 284,000,000	$ 286,000,000	6.50%	30

	2007 Actual	2008 Budget	2009 10.75%	2010 10.75%	2011 10.75%	2012 10.75%	2013 10.75%	2014 0.00%	2015 0.00%
WREP/UNITED CONTRACT - BASELINE	$ 48,078,503	$ 54,143,860	$ 51,640,333	$ 54,405,465	$ 56,307,434	$ 58,319,670	$ 60,427,377	$ 63,448,746	$ 66,621,183
ADD'L O&M FOR CIP			$ -		$ 240,000	$ 9,530,000	$ 17,558,456	$ 18,436,379	$ 19,358,198
DPW ADMINISTRATIVE									
POLICY AND PLANNING SERVICES	$ 1,151,733	$ 1,499,096	$ 1,555,642	$ 1,617,870	$ 1,682,605	$ 1,749,950	$ 1,820,012	$ 1,911,013	$ 2,006,563
ENGINEERING	$ 984,704	$ 1,123,696	$ 1,158,560	$ 1,204,678	$ 1,252,632	$ 1,302,494	$ 1,354,342	$ 1,422,059	$ 1,493,162
OPERATIONS - OTHER	$ -	$ -	$ 6,855,697	$ 7,006,863	$ 7,436,037	$ 7,797,050	$ 8,176,366	$ 8,585,184	$ 9,014,444
TOTAL O&M COSTS	$ 50,214,940	$ 56,766,652	$ 61,210,232	$ 64,234,876	$ 66,918,708	$ 78,699,164	$ 89,336,553	$ 93,803,381	$ 98,493,550
DEBT SERVICE GENERAL OBLIGATION BONDS (CONSTRUCTION FUNDS ONLY $ 195,000,000 SRF)	$ 8,121,725	$ 8,554,490	$ 8,552,725	$ 8,561,205	$ 8,551,493	$ 8,555,608	$ 8,558,235	$ 8,559,300	$ 7,955,510
REVENUE BONDS --- PRE-2008	$ 26,490,453	$ 37,012,958	$ 36,896,865	$ 38,213,639	$ 38,214,679	$ 38,217,585	$ 38,214,988	$ 38,212,918	$ 38,213,838
REVENUE BONDS --- PROPOSED ($ 284,000,000 O.M.)			$ 2,497,818	$ 5,347,442	$ 8,197,066	$ 11,046,690	$ 13,896,314	$ 13,896,314	$ 13,896,314
REVENUE BONDS --- PROPOSED ($ 479,000,000 5 Yrs)				$ -	$ 7,351,434	$ 21,901,148	$ 21,901,148	$ 21,901,148	$ 21,901,148
TOTAL DEBT SERVICE	$ 34,612,178	$ 45,567,448	$ 47,947,408	$ 52,122,286	$ 62,314,672	$ 65,171,317	$ 82,570,685	$ 82,569,680	$ 81,966,810

DOES NOT REFLECT POTENTIAL USE OF COMMERCIAL PAPER TRANSACTIONS

	Years	Rate
	20	3.50%
	30	6.50%

2013 vs 2008 $ 37,003,237

BOND COVERAGE (130% OF D.S. - PILOT - PayGoCIP's)

		2008	2009	2010	2011	2012	2013	2014	2015
PAYMENT IN LIEU OF TAXES (PILOT)		$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000
PAY-GO CIP'S		$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000
ADD'L BOND COVERAGE	25%		$ (2,013,148)	$ (969,429)	$ 1,578,668	$ 2,292,829	$ 6,642,671	$ 6,642,420	$ 6,491,703
TOTAL BOND COVERAGE (On Total Debt Service)		$ 14,000,000	$ 14,000,000	$ 13,986,852	$ 13,030,572	$ 15,578,668	$ 16,292,829	$ 20,642,671	$ 20,642,420	$ 20,491,703

Revised Coverage
25.00%

	Current	Proposed
	$ 17.96	$ 29.92
Orig Proposal (15%		$ 31.40

TOTAL REVENUE REQUIREMENTS $ 98,827,118 $ 116,334,100 $ 121,144,492 $ 129,387,734 $ 144,812,048 $ 160,163,311 $ 192,549,909 $ 197,015,481 $ 200,952,062

Revised Rates	5 Yr Total
10.75%	66.62%

PRO FORMA OPERATING REVENUE $ 103,276,305 $ 125,638,799 $ 131,508,156 $ 137,426,041 $ 146,738,980 $ 156,
PRO FORMA OPERATING REVENUE EXCESS (DEFICIT) $ 4,449,187 $ (695,901) $ 10,363,662 $ 7,038,307 $ 1,926,932 $
Does not reflect issuance of SRF or Revenue Bonds

PRO FORMA IMPACT ON FUND BALANCE:

	2008	2009	2010	2011	2012	2013	2014	2015
COMPUTED ANNUAL CHANGE IN FUND BALANCE	$ (695,901)	$ 8,349,714	$ 14,589,198	$ 15,926,219	$ 17,324,071	$ 6,745,617	$ 2,153,069	$ (2,013,547)
CUMULATIVE CHANGE IN FUND BALANCE	$ (695,901)	$ 7,653,813	$ 22,243,011	$ 38,169,230	$ 55,493,311	$ 62,238,927	$ 64,391,997	$ 62,378,450

Computed Coverage on Revenue Bonds (Excludes G.O. Bonds from Coverage Calc's)	178.4%	185.3%	171.6%	170.4%	139.6%	133.4%	126.9%

New Bond Detail

		2009	2010	2011	2012	2013	2014	2015	
Proposed SRF	Construction Fund	$ 35,000,000	$ 40,000,000	$ 40,000,000	$ 40,000,000	$ 40,000,000	$ -		$ 195,000,000
	Cost of Issuance	$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ -		$ 2,500,000
	Total New SRF Bond Issues	$ 35,500,000	$ 40,500,000	$ 40,500,000	$ 40,500,000	$ 40,500,000	$ -		$ 197,500,000
Proposed OM	Construction Fund			$ 95,000,000	$ -	$ 189,000,000	$ -		$ 284,000,000
	Cost of Issuance			$ 1,000,000	$ -	$ 1,000,000	$ -		$ 2,000,000
	DSR 0% Assumes DSR pre-funded with Open Market Bonds			$ -	$ -	$ -	$ -		$ -
	Total New Open Market Bond Issues			$ 96,000,000	$ -	$ 190,000,000	$ -		$ 286,000,000

PRELIMINARY
FOR DELIBERATIVE PURPOSES
1/5/2011

CEP ATTACHMENT 7
CAUSE NO. 43936
Page 3 of 4

Indianapolis Clean Stream Team
Sanitary District Pro Forma Operating Revenue

PLAN A

		ACTUAL BILLINGS 12/31/2005	% of total	ACTUAL BILLINGS 12/31/2007	% of total	COMPUTED BILLINGS 2008		PROJECTED 12/31/2008	% of total
RESIDENTIAL:							2007 Rev +		
METERED		$25,370,912	37.2%	$40,875,350	39.4%	$ 47,725,496	(27% x	$45,052,869	40.7%
NON-METERED		$581,743	0.9%	$894,299	0.9%	$ 1,051,369	2005 Rev)	$992,492	0.9%
		$25,952,655		$41,769,649		$ 48,776,864		$46,045,361	
COMMERCIAL:									
METERED		$16,016,953	23.5%	$25,182,726	24.4%	$ 29,447,304	2007 Rev +	$27,854,868	25.2%
NON-METERED		$19,748	0.0%	$37,904	0.1%	$ 43,236	(27% x	$59,698	0.1%
SELF-REPORTING		$189,693	0.3%	$337,678	0.3%	$ 388,896	2005 Rev)	$367,118	0.3%
		$16,226,399		$25,578,308		$ 29,050,436		$28,281,707	
GOVERNMENT / OTHER:									
METERED		$1,395,864	2.0%	$2,024,456	2.0%	$ 2,401,339	2007 Rev +	$2,266,864	2.0%
NON-METERED		$912	0.0%	$2,349	0.0%	$ 2,598	(27% x	$2,452	0.0%
SELF-REPORTING		$69,733	0.1%	$121,583	0.1%	$ 140,381	2005 Rev)	$132,519	0.1%
		$1,466,517		$2,148,356		$ 2,544,318		$2,401,834	
INDUSTRIAL:									
METERED		$583,314	0.9%	$804,974	0.8%	$ 964,471	2007 Rev +	$910,464	0.8%
NON-METERED		$7,733	0.0%	$639	0.0%	$ 2,727	(37% x	$2,575	0.0%
SELF-REPORTING		$8,286,989	12.1%	$13,282,070	12.9%	$ 15,519,554	2006 Rev)	$14,650,450	13.2%
		$8,878,028		$14,089,685		$ 16,486,752		$15,563,494	
INDUSTRIAL SURCHARGES:							Increase		
SUSPENDED SOLIDS		$1,960,775	2.9%	$2,425,816	2.3%	$ 2,837,971	17.0%	[illegible]	2.3%
BOD		$4,770,855	7.0%	$6,886,063	6.7%	$ 8,056,603	17.0%	[illegible]	6.9%
AMMONIA NITROGEN		$804,691	1.2%	$905,792	4.9%	$ 1,059,671	17.0%	[illegible]	0.9%
		$7,536,330		$10,217,381		$ 11,954,338		$9,925,000	
SATELLITE COMMUNITIES	Index @								
VARIABLE	3.0%	$3,844,393	5.6%	$4,473,464	4.3%	$ 4,607,137	3% Inc.	[illegible]	3.5%
FIXED	Fixed	$3,244,872	4.8%	$3,454,714	3.3%	$ 2,574,000	Fixed	$2,574,000	2.3%
		$7,089,265		$7,928,178		$ 7,271,137		$6,439,000	
MISCELLANEOUS		$1,058,027	1.6%	$1,561,820	1.5%	$ 1,561,820		$1,981,800	1.8%
SUB - TOTAL BILLED REVENUES		$68,207,210	100.0%	$103,293,379	100.0%	$118,554,664		[illegible]	100.0%
INTEREST INCOME						[illegible]	[illegible]	[illegible]	
CONNECTION FEES	Index @ 3.0%	$0		$2,505,179		[illegible]	[illegible]	[illegible]	
TOTAL REVENUES		$68,207,210		$105,798,558		[illegible]	[illegible]	[illegible]	

	PROJECTED 12/31/2009	% of total	PROJECTED 12/31/2010	% of total	PROJECTED 12/31/2011	% of total	PROJECTED 12/31/2012	% of total	PROJECTED 12/31/2013	% of total	PROJECTED 12/31/2014	% of total	PROJECTED 12/31/2015	% of total
	10.75%		10.75%		10.75%		14.75%		10.75%		0.00%		0.00%	
RESIDENTIAL: METERED	$48,896,852	40.4%	$58,159,878	40.6%	$61,259,315	40.5%	$67,779,348	41.1%	$75,065,628	41.3%	$75,065,628	41.3%	$75,065,628	41.3%
NON-METERED	$1,099,185	0.9%	$1,317,348	0.9%	$1,348,213	0.9%	$1,493,145	0.9%	$1,653,689	0.9%	$1,653,689	0.9%	$1,653,699	0.9%
	$49,996,237		$59,477,225		$62,546,527		$69,272,494		$76,719,287		$76,719,287		$76,719,287	
COMMERCIAL: METERED	$30,849,394	25.0%	$34,168,998	25.1%	$37,838,387	25.3%	$41,906,024	25.4%	$46,418,922	25.5%	$46,418,922	25.5%	$46,418,922	25.5%
NON-METERED	$66,412	0.1%	$73,238	0.1%	$88,601	0.1%	$99,880	0.1%	$99,462	0.1%	$99,462	0.1%	$99,462	0.1%
SELF-REPORTING	$406,563	0.3%	$450,390	0.3%	$498,697	0.3%	$552,307	0.3%	$611,680	0.3%	$611,680	0.3%	$611,680	0.3%
	$31,321,891		$34,689,168		$38,418,184		$42,548,139		$47,132,064		$47,132,064		$47,132,064	
GOVERNMENT / OTHER: METERED	$2,510,553	2.0%	$2,780,437	2.0%	$3,079,334	2.1%	$3,410,361	2.1%	$3,776,976	2.1%	$3,776,976	2.1%	$3,776,976	2.1%
NON-METERED	$2,716	0.0%	$3,008	0.0%	$3,331	0.0%	$3,089	0.0%	$4,086	0.0%	$4,086	0.0%	$4,086	0.0%
SELF-REPORTING	$146,765	0.1%	$162,542	0.1%	$180,016	0.1%	$199,368	0.1%	$220,800	0.1%	$220,800	0.1%	$220,800	0.1%
	$2,660,034		$2,945,987		$3,262,681		$3,613,419		$4,001,861		$4,001,861		$4,001,861	
INDUSTRIAL: METERED	$1,008,335	0.8%	$1,116,731	0.8%	$1,236,779	0.8%	$1,369,233	0.8%	$1,516,900	0.8%	$1,516,900	0.8%	$1,516,900	0.8%
NON-METERED	$2,851	0.0%	$3,158	0.0%	$3,497	0.0%	$3,873	0.0%	$4,290	0.0%	$4,290	0.0%	$4,290	0.0%
SELF-REPORTING	$16,225,384	13.1%	$17,969,613	13.2%	$19,901,346	13.3%	$22,040,741	13.4%	$24,410,120	13.4%	$24,410,120	13.4%	$24,410,120	13.4%
	$17,236,070		$19,089,501		$21,141,623		$23,414,347		$25,931,300		$25,931,310		$25,931,309	
INDUSTRIAL SURCHARGES: SUSPENDED SOLIDS	$2,760,750	2.2%	$3,066,391	2.3%	$3,396,020	2.3%	$3,761,101	2.3%	$4,165,419	2.3%	$4,165,419	2.3%	$4,165,419	2.3%
BOD	$7,196,750	5.8%	$7,972,816	5.8%	$8,829,672	5.9%	$9,778,862	5.9%	$10,830,009	6.0%	$10,830,009	6.0%	$10,830,009	6.0%
AMMONIA NITROGEN	$1,024,438	0.8%	$1,134,545	0.8%	$1,256,530	0.8%	$1,391,007	0.8%	$1,541,285	0.8%	$1,541,285	0.8%	$1,541,285	0.8%
	$10,981,938		$12,173,571		$13,482,229		$14,931,869		$16,536,713		$16,536,713		$16,536,713	
SATELLITE COMMUNITIES: VARIABLE	$3,909,950	3.2%	$4,100,379	3.0%	$4,223,390	2.8%	$4,150,003	2.6%	$4,400,594	2.8%	$4,618,012	2.5%	$4,753,463	2.6%
FIXED	$4,207,041	3.4%	$4,218,912	3.1%	$3,931,213	2.6%	$3,944,349	2.4%	$3,697,146	2.0%	$2,907,146	1.6%	$2,117,146	1.2%
	$8,187,991		$8,319,291		$8,154,603		$8,294,441		$8,177,740		$7,525,158		$6,870,608	
MISCELLANEOUS	$2,194,864	1.8%	$2,430,789	1.8%	$2,692,099	1.8%	$2,981,500	1.8%	$3,302,011	1.8%	$3,684,977	2.0%	$4,058,102	2.2%
SUB - TOTAL BILLED REVENUES	$123,580,604	100.0%	$136,118,449	100.0%	$149,699,944	100.0%	$165,058,900	100.0%	$181,701,065	100.0%	$181,490,449	99.8%	$181,232,028	99.7%
INTEREST INCOME	[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]	
CONNECTION FEES	[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]	
TOTAL REVENUES	[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]	
Pro Forma O&M	$ 61,210,233		$ 64,234,074		$ 66,918,700		$ 78,699,164		$ 89,336,553		$ 93,803,301		$ 98,493,550	
Pro Forma NOI	$70,297,121		$80,711,484		$92,240,901		$96,405,388		$103,316,303		$98,722,740		$93,093,363	
Pro Forma D.S. (no G.O.)	$39,394,683		$43,561,091		$53,763,179		$54,615,709		$74,812,458		$74,818,390		$74,011,304	
Bond Coverage	178%		185%		172%		179%		140%		133%		127%	

TOTAL BILLED GALLONS (MG)	Calendar Yr 2005	Calendar Yr 2007
	37,468.36	39,070.72
	100.00%	104.28%

FOG	$	900,000	COMM
BSMR - 2009 / 2010	$	2,500,000	RES
BSMR ADJMT.	$	1,665,419	RES
RATE BLOCK CONS.	$	-	RES
GROWTH	$	-	RES
TOTAL	$	5,065,419	
Total 2013 Revenues	$	192,652,855	

PRO FORMA REVENUE BY RATE CLASS:

	12/31/2005		12/31/2007		BASE YEAR 12/31/2008		PHASE 1 12/31/2009		PHASE 2 12/31/2010		PHASE 3 12/31/2011		PHASE 4 12/31/2012		PHASE 5 12/31/2013	
RESIDENTIAL	$25,932,655	38%	$41,769,649	39%	$46,045,361	40%	$50,763,987	40.8%	$59,545,618	41.1%	$68,944,558	41.4%	$73,833,584	41.7%	$80,884,706	42%
COMMERCIAL	$16,226,399	24%	$25,578,308	24%	$28,201,707	24%	$31,321,991	23.8%	$35,139,105	24.2%	$39,018,184	24.5%	$43,398,139	24.7%	$48,612,064	25%
GOVERNMENTAL	$1,466,517	2%	$2,148,356	2%	$2,401,834	2%	$2,660,834	2.0%	$2,945,987	2.0%	$3,262,681	2.0%	$3,613,419	2.1%	$4,001,861	2%
INDUSTRIAL - FLOW	$8,878,028	13%	$14,089,085	13%	$15,563,404	13%	$17,236,570	13.1%	$19,099,501	13.2%	$21,141,623	13.3%	$23,414,347	13.4%	$25,931,300	13%
INDUSTRIAL - STRENGTH	$7,536,330	11%	$10,217,381	10%	$9,925,000	9%	$10,981,938	8.4%	$12,173,571	8.4%	$13,482,229	8.5%	$14,931,869	8.5%	$16,536,713	9%
OTHER	$1,058,027	2%	$1,561,820	2%	$1,981,800	2%	$2,194,864	1.7%	$2,430,789	1.7%	$2,692,099	1.7%	$2,981,500	1.7%	$3,302,011	2%
TOTAL RETAIL REVENUES	$61,117,945	90%	$95,365,201	90%	$104,199,199	90%	$118,180,343	89.9%	$131,112,540	90.6%	$148,541,371	91.4%	$161,372,568	92.1%	$178,678,744	93%
WHOLESALE REVENUES	$7,089,265	10%	$7,928,178	8%	$6,439,000	6%	$8,187,991	6.2%	$8,319,291	5.7%	$8,154,603	5.1%	$8,294,441	4.7%	$8,177,740	4%
CONNECTION FEES	$0	0%	$2,505,179	2%	$5,000,000	4%	$5,180,000	3.9%	$5,304,500	3.7%	$5,463,635	3.4%	$5,637,544	3.2%	$5,704,370	3%
INTEREST INCOME	$0	0%	$0	0%	$0	0%		0.0%		0.0%		0.0%		0.0%		0%
TOTAL	$68,207,210	100%	$105,798,558	100%	$115,638,199	100%	$131,587,354	100.0%	$144,946,340	100.0%	$159,189,609	100.0%	$175,194,553	100.0%	$192,652,855	99%

PRELIMINARY
FOR DELIBERATIVE PURPOSES
1/5/2011

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

R. W. Beck Fairness Opinion

Attachment CEP - 8

Petitioners' Exhibit MGL-3

August 3, 2010

R·W·BECK
An SAIC Company

Mr. Chris Cotterill
Chief of Staff to Mayor Gregory A. Ballard
City of Indianapolis
Indianapolis, IN 46204

Subject: **Fairness Opinion**

Dear Mr. Cotterill:

You have requested that R. W. Beck, an SAIC Company, provide you with its opinion as to the fairness, from a financial point of view, of the consideration paid by Citizens Energy Group ("Citizens") to the City of Indianapolis ("City") for the City of Indianapolis' Water Works System (the "Water System") and Wastewater System (the "Wastewater System," together with the Water System collectively referred to as the "Systems") pursuant to the terms and conditions of the Definitive Agreements ("Agreements") entered into by the City, the respective Systems, and Citizens.

Under the Proposed Acquisition, Citizens will acquire all of the assets of the City's Systems as outlined in the Agreements. The acquired assets will be placed into public charitable trust to be held and operated in substantially the same manner as the utility systems currently held by Citizens' existing public charitable trust. The consummation of the Proposed Acquisition is subject to certain closing conditions and the completion of business, financial, legal and similar due diligence with results satisfactory to Citizens in its sole discretion.

In arriving at the opinion set forth below, R. W. Beck has completed the following tasks:

- Performed a Fair Market Value Appraisal of the Systems and relied upon generally accepted valuation methods and procedures in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). (These studies and analyses were required to provide an opinion with respect to the consideration paid to the City by Citizens. The Appraisal Report is attached as Exhibit 1.)
- Performed investigations, general field observations of the subject properties and reviewed applicable documents for the Water and Wastewater Systems, including certain documents, drawings, and other data provided by the City
- Reviewed certain information, including financial forecasts and the capital improvement plan of the Systems, furnished to us by or on behalf of the City
- Conducted discussions with members of the management of the Systems, staff of the Mayor's office, and other parties associated with the preparation of the Agreements and the studies and analyses preformed by or on behalf of the City in support of the Agreements
- Reviewed the Memorandum of Understanding and ancillary agreements thereto
- Reviewed the Definitive Agreements and related disclosures

131 SAUNDERSVILLE ROAD, SUITE 300 HENDERSONVILLE, TN 37075 (P) 615.431.3200 (F) 615.824.7570

In the preparation of this Fairness Opinion and supporting Appraisal Report, we made certain assumptions with respect to conditions that may occur in the future. In addition, we used and relied upon certain information and assumptions provided to us by sources that we believe to be reliable. It is our opinion that the use of such information and assumptions is reasonable for the purposes of the opinions that follow. Some assumptions, however, will invariably not materialize as stated herein or may vary significantly up to the closing date due to unanticipated and unforeseeable events and circumstances. In the event those assumptions change, the results of the analyses and opinions contained in this letter may change.

- In rendering this opinion, R. W. Beck did not assume responsibility for independently verifying and did not independently verify any financial or other information concerning the Systems.
- R. W. Beck has further relied on the assurances of the City's management that they are not aware of any facts that would make such financial or other information inaccurate, incomplete, or misleading. With respect to forecasts and financial projections of the Systems provided by management, R. W. Beck has assumed, for the purpose of this opinion, that the forecasts have been reasonably prepared on bases reflecting the best available estimates and judgments of management at the time of their preparation as to the future performance of the Systems.
- This Fairness Opinion is only valid when considering both Definitive Agreements between the City, the respective System, and Citizens as compensation for the proposed transfer.
- In the event the Definitive Agreements change, the opinions contained herein may change.

For the analysis that R. W. Beck performed to calculate the value of the increase in the payment in lieu of taxes ("PILOT") payments, see PILOT Analysis, also attached to this letter. The Definitive Agreement for the Wastewater System outlines the terms relative to PILOT payments to the City. Citizens has agreed to a schedule of increased PILOT payments, the Net Present Value of which is accretive to the deal and is included as part of the total value of consideration herein.

The appraisal discounted cash flow ("DCF") analysis assumed sufficient operating capital available with no additional input from purchaser; therefore, the value of the operating capital being retained by the City should also be credited to the deal.

As outlined in the Agreements, the value of consideration consists of multiple components consisting of Cash, Assumed Debt Obligations and Excluded Assets. A summarized breakdown of the total consideration paid by Citizens to the City is shown below in Table 1.

Table 1
Summary of Value of Consideration for Transfer of Assets

Cash		
Cash Payment at Closing	$170,600,000	
Cash Payment on Oct. 2011	92,000,000	
Cash Escrow Payment	(40,000,000)	
Excluded Assets		
Wastewater General Fund	75,000,000	Est.
Wastewater Net AR/AP	13,000,000	Est.
PV of Marginal PILOT Payments	172,250,000	
Assumption of Debt		
SRF Debt	1,349,749,250	
GO Debt	53,608,000	
Non-SRF Debt	39,290,000	
Line of Credit [1]	85,000,000	
Adjustments at Closing		
Credit Downgrade	(1,200,000)	
Step Obligations (from City)	(4,700,000)	
Environmental Insurance Costs	(1,000,000)	
Total Value of Consideration	$2,003,597,250	

[1] Line of credit for 2010 and 2011 capital expenditures

In preparation of the attached Appraisal Report, R. W. Beck looked at multiple ownership scenarios in performing the analyses under the Income Approach. Two types of ownership scenarios were considered as a part of the analyses. The first ownership structure is a public ownership scenario where the utility was purchased by a public entity or by a partnership between one or more entities to form a new public entity. The second ownership structure considered was an investor-owned utility. Within the two different ownership scenarios, an analysis was performed assuming the new entity either was to be operated under Indiana Utility Regulatory Commission (IURC) regulation or outside of IURC regulation. These scenarios were developed to represent the most likely purchaser of the Systems and develop a range of values under the Income Approach Table 2 below illustrates R. W. Beck's conclusion of Fair Market Value for the Systems as determined in our Appraisal Report.

Table 2
Fair Market Value

	Range of Values (Million)
Waterworks System	$950 - $1,100
Wastewater System	$980 - $1,100
Land Held for Future Use	$0.55
Total	**$ 1,901 - $2,201**

The total value of consideration for the transfer of assets, as outlined in the Agreements and shown above in Table 1, fell within that range of values for the Fair Market Value of the Systems and is shown above in Table 2. R. W. Beck's opinion of Fair Market Value was based on the results of our Income Approach analyses; however, R. W. Beck is of the opinion that any offer above Original Cost Less Depreciation (equivalent to net book value) would be reasonable for the Systems. The OCLD estimates of value based on our appraisal are $534 million for the Waterworks System and $700 million for the Wastewater System.

On the basis of and subject to the foregoing, we are of the opinion that the consideration received by the City is reasonable from a financial point of view.

This opinion has been prepared on behalf of the City in connection with the proposed Agreements and is not intended for any other use.

Sincerely,

R. W. BECK, INC.

Michael Lane, ASA
Senior Consultant

MGL/kjg

Attachments:

- Final Appraisal Report
- Definitive Agreements
- PILOT Analysis

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Prentice Direct Testimony, K-25 – K-33

Attachment CEP - 9

that volatile because you're going to be able to budget for them; correct?
A Volatile from the standpoint of not expecting a big jump or something like that, I would agree.
Q Right. From year to year --
A They may be different from year to year, but --
Q Okay. Now, if I read your testimony correctly, you want to through this tracker recover debt service, capital expenses and O&M, operating and maintenance, expenses. Do I understand that correctly?
A That's true with respect to the environmental compliance plan.
Q Which is all we're talking about here; right?
A Right.
Q Do you rely upon any statutory authority which allows Citizens to track these expenses?
A I believe it's 8-1-2-28, I think.
Q Thank you.
A Indiana Code, I guess I should say.
Q Thank you. It's my understanding the way you want to set this up -- Is it an annual filing?
A On this particular instance, I think it would

be at least annual. It could be that if a bond issue needed to happen in a different time frame, then it could be slightly different, but I would expect it to be about once a year.

Q And I assume it would be a fully docketed proceeding.

A I can't really say that for sure. It's my understanding that this would be the first of its kind under this particular statute, this filing would be, so there aren't a lot of rules and precedent established for it.

It's Citizens' hope, my hope, that we could sit down with the UCC and Commission Staff, if they're interested, and others to try to work out the procedural plan that would make the most sense for everybody.

Q Right. Okay, but I guess the thing I'm -- one of the things I'm trying to get at is: There is no need for this to be a summary proceeding like a GCA; I mean, you anticipate that the parties will have an opportunity to fully understand and address the costs that you are proposing for recovery. Is that a fair assumption on my part?

A I think so. Some of the proceedings, I guess, might not be very long if we're just recovering costs that we've already identified as the costs that will happen from year to year to year, so there might not be much need for a very long procedural schedule, but -- especially if we were going to be filing a different environmental compliance plan, I would expect that to be longer.

Q Right. It's my understanding that your proposal is that you are going to -- in essence, when you come in for your first filing, you're going to estimate or project what your first year's costs are going to be, and you are going to seek to recover that, and then at the next filing, you will reconcile to actual costs. Is that your proposal?

A Well, the timing of it would be a little bit different from that just because we wouldn't be all the way through the first year of recovery before we would be filing for the second, so the reconciliation of the first year would actually happen and roll into the calculation for the third year.

Q Okay. Help me; walk me through this. Let's

assume today the Commission approves your request to do this. When would you file -- when would you anticipate filing your first tracker?

A I think the first one would likely be filed in 2013 probably to go into effect January 1 of 2014.

Q So, this would be filed then sometime during the course of the year in 2013, enough time to be able to get an order by January 1, 2014?

A Yes.

Q And in that tracker, you are going to request to recover actual or anticipated costs?

A Well, in the first one, I expect they would be anticipated. I would expect that -- you know, based upon my understanding of Mr. Brehm's testimony, that it would be his desire, I guess, to issue bonds each year in order to cover the costs associated with the construction that year according to the CSO.

So, at the time we make the filing, I would expect that we would know how much we would want the bond issue to cover. We might not know the interest rate exactly, but we could get -- have a pretty good idea so

that we could estimate pretty reasonably what the debt service for that year will be.

Q Okay.

A Same would go for operating expenses, and if there were to be any -- just capital expenditures, and then once --

Q Can I stop you right there?

A Sure.

Q With respect to capital expenditures, when you come in in 2013, are you going to have any actual capital expenditures that you are going to seek recovery of, or are these going to be projected for the following year?

A They would be projected.

Q Okay, and same with O&M?

A Yes, and then they would be reconciled in a subsequent year, and any over- or under-recovery, then, would flow into the next filing.

Q Okay. So, you make a filing in 2013, get an order early in 2014; you will start recovering this -- How do you propose to recover this money? Through what?

A It would be a volumetric rate, I would expect. Is that what you're asking?

Q Yes, thank you, and then in 2014, sometime in 2014, you will make your second filing --
A Yes.
Q -- and in that second filing, what is it you're going to ask the Commission to do?
A In the second filing, we would -- assuming that there would be another new bond issue that would need to be made, we would show the second year -- This is going to get really complicated.

We would show the second year of the debt service on the first bond issue, and that would be known; we would know what the debt service on that would be at that time.

Then there would be a new bond offering that we would know the amount of the bond offering. We would know approximately what the interest rate would be on it, and so we would estimate the second bond issuance's debt service for its first year.
Q Okay. With respect to capital expenditures or O&M, are you going to reconcile in this filing No. 2 or --
A I wouldn't in No. 2. I would in No. 3; I would be reconciling the first year, and then

any over- or under-recoveries would flow into the third year's rate.

Q Would you consider PILOT to be an operating expense that you would seek recovery for in this proceeding?

A No.

Q What would happen to this tracker in years that you have a general rate case?

A For the costs that have already been identified and are known, we would roll those into base rates for recovery, and then it would be removed from this recovery mechanism, and then the sequence would basically start over again.

Q Are the STEP projects that we've heard discussed throughout these proceedings, would you anticipate that those costs be recovered in this tracker mechanism?

A I wouldn't expect so unless they're somehow in the CSO. I think there was a little bit of discussion about that earlier. There might be something that's in there related to STEP but not -- I wouldn't be seeking to recover just the STEP expenditures entirely, no.

Q Help me understand what operating and

maintenance expenses you intend to recover through this tracker.

A They would be the costs associated with operating some part of the CSO work that's been completed, I suppose, and operating, so things like maybe electric expenses, electricity, whatever kinds of costs -- you know, it depends on what the activity would be as to what the costs would be, if there would be any labor associated with it or that kind of thing, so it would be specific to what's gone into service with respect to the CSO work.

Q And also, as we indicated, you want to track capital expenditures in this, too, and is there any reason why you wouldn't recover capital expenditures either through depreciation or E&R? I'm curious why you decided you want to track it.

A The capital expenditures for CSO -- Basically, the way I'm kind of looking at that is there might be -- I don't know what it would be, but there might be a reason that a particular cost we wouldn't necessarily want to be covered through a bond issuance, and so it would be

just kind of a pay-as-you-go capital expense.

I would, however, expect that it would be a capital expenditure that would be outside of just normal capital expenditures for operating the wastewater utility.

Q But when you know these expenditures -- you know what these expenditures are going to be years in advance, why wouldn't you just roll them into your base rates?

A Mostly because of their size, I think. You know, rather than estimating on a forward-looking basis what our expenditures will be for the next two or three years and increasing rates today for something that's going to be expended two or three years from now, I wouldn't want to have to increase customers' rates before it was necessary to do so.

On the other hand, if I'm looking at it from a backward-looking perspective, the capital expenditures are so great that if I'm not recovering the costs of those as they're being incurred, I think the utility could suffer pretty extreme financial harm.

Q I next want to ask you some questions about

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Sanitary District Depreciation Rate Request

OUCC Data Request and Response Q 6-8

Attachment CEP - 10

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Sixth Set of Data Requests

DATA REQUEST NO. 8: What is the current depreciation rate use by the Sanitary District?

RESPONSE:

The current depreciation rate of the wastewater system cannot be stated with precision. The City does not separate depreciation expense for the wastewater system from other components of the Department of Public Works, which includes the stormwater system, streets, curbs, sidewalks, traffic signals, bridges, street lights and related vehicles, buildings, equipment and property.

WITNESS:

John R. Brehm

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Balance of Working Capital Loan

OUCC Data Request and Response Q 31-8

Attachment CEP - 11

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Thirty-first Set of Data Requests

Q 31-8: Please provide the current balance of the working capital loan from the City to the Department of Water.

Answer: As of December 31, 2009, the Department had a liability to the City in the amount of $20,471,754.22. Based on the projected cash needs of the Department through the remainder of 2010, this amount is projected by the Department to be $50,247,545.33 on December 31, 2010. The Department projects that by the end of the first quarter of 2011 it will receive cash sufficient to reduce this amount to $36,373,270.05 at March 31, 2011.

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Cotterill Direct Testimony, pp. B127 – B-130

Attachment CEP - 12

septic tanks. Our plan was to do at least another 7,000, and so there still is, at least from the experts that advised me and others, you know, several thousand more septic tanks that if we don't do them, eventually the EPA and others might get around to saying, it's time for you to clean these up.

COMMISSIONER ZIEGNER: That's all I have.

JUDGE EARL: Commissioner Landis?

QUESTIONS OF MR. CHRIS W. COTTERILL,
BY COMMISSIONER LANDIS:

Q Good afternoon, Mr. Cotterill.

In your conversation with Mr. Polk, you discussed the trust structure, and my understanding of that structure, subject to correction, is that under that structure, the utility is held in trust for the benefit of the citizens of Marion County. Is that a correct --

A I believe it says -- actually says the citizens of Indianapolis, but --

Q Okay.

A -- basically, yes.

Q But the consolidated city, that would be, in essence, Marion County?
A It would, legally distinct from the City of Lawrence, Beech Grove, Southport and the Town of Speedway.
Q Does that also, therefore, imply a higher level of responsibility comparable to a fiduciary responsibility which would be held by a financial trust trustee?
A I think it would be a -- My feeling is the answer is yes.

You know, Mr. Lykins will be the most articulate about the trust and those sorts of things, but we saw the trust and its nature as a non-profit and its history and its apolitical nature but with local control where it can't be sold, sort of all of those things together, as part of our decision-making process. It wasn't just the history or just the legal nature of the trust, but we saw sort of that multitude of benefits in the final -- in the final analysis.
Q Okay, and am I correct that I heard you to say that when you sought solicitations or sought indications of interest from various parties,

that all of those have been posted on the City's web site?

A Yes, sir, that's correct.

Q But those have not yet been filed in this proceeding; is that also correct?

A My understanding is they have not been filed, and I'm not sure that they've been the subject of discovery either, but if that's something we should do, we, obviously, will.

Q On Page 10 of your testimony, again, at this point, I think in your discussion with Ms. Dodd, you talked about current accounts receivable and said that that was the sum total of what the City would retain, essentially, to make sure that the utility transfers out with a zero balance.

In the rate case that is pending an order, the City sought working capital, an amount to, among other things, cover funds that were advanced by the City's pool of funds, to cover costs. The utility was going into a negative balance, and there were funds advanced.

How would that be handled in conjunction with this transaction?

A Well, you know, unfortunately, it may not be totally clear in my testimony. The intent is to just transfer the Waterworks, in effect, for its debt because it is significantly leveraged, and that's been the discussion within the rate case proceeding.

Any funds that the City of Indianapolis general fund the taxpayers, in effect, have loaned, have extended, to the Department of Waterworks to help it during its negative cash balance time, we feel an obligation to the taxpayers to repay that but nothing more. So, we are really trying to transfer the Waterworks as it is for -- to not take value out of the Waterworks.

If I may, the transaction should merely afford the ratepayers of the water system and that system itself the benefits of the consistency, the long-term planning, and the synergies -- on a financial side, the synergies in the capital planning. The value of the transaction monetarily is really coming out of the wastewater fund, the PILOT and the acquisition payments, entirely on the wastewater side.

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

OUCC Data Request and Response, Q 20-11

Attachment CEP - 13

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Twentieth Set of Data Requests

DATA REQUEST NO. 11: According to Citizen's response to OUCC DR Q 13-12, "The Water's System's current obligations are supported by an advance from the City's general fund." Will Citizens Waterworks be responsible for repayment of the advance from the City's general fund? If not, who is responsible for repayment of the advance from the City's general fund? Please explain.

RESPONSE:

Citizens is not responsible for repayment of the advance from the City's general fund. All other parts of this question should be directed to the City.

TESTIMONY OF OUCC WITNESS MARGARET A. STULL
CAUSE NO. 43936
CITIZENS ENERGY GROUP, ET AL.

I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Margaret A. Stull, and my business address is 115 W. Washington St., Suite 1500 South, Indianapolis, Indiana 46204.

Q: By whom are you employed and in what capacity?

A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as a Utility Analyst II in the Water/Wastewater Division.

Q: Please describe your educational background and experience.

A: I graduated from the University of Houston at Clear Lake City in August 1982 with a Bachelor of Science degree in accounting. From 1982 to 1985, I held the position of Gas Pipeline Accountant at Seagull Energy in Houston, Texas. From 1985 until 2001, I worked for Enron in various positions of increasing responsibility and authority, first in gas pipeline accounting, then in financial reporting and planning, both for the gas pipeline group and the international group, and finally providing accounting support for infrastructure projects in Central and South American. From 2002 until 2003, I held non-utility accounting positions in Indianapolis. In August 2003, I accepted my current position with the OUCC. Since joining the OUCC I have attended the National Association of Regulatory Utility Commissioners ("NARUC") Eastern Utility Rate School in Clearwater Beach, Florida.

Q: Have you held any professional licenses?

A: Yes. I passed the CPA exam in 1984 and was licensed as a CPA in the State of Texas until I moved to Indiana.

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to describe various aspects of the proposed transactions ("Proposal"), describe some of the OUCC's concerns about certain aspects of the Proposal, and make recommendations that will advance the public interest. Generally, my discussion and recommendations are focused on the accounting and financial aspects of Joint Petitioners' requests.

More specifically, I describe how the transfer of the water and wastewater assets should be recorded including contributed plant and any acquisition adjustment that might arise. I also discuss the necessity to record as much detail on Citizens Energy Group's ("CEG") and CWA Authority, Inc.'s ("the Authority") books and records as possible, and that both entities maintain their books and records in accordance with the guidelines provided by "NARUC". Next, I discuss CEG's proposed allocation methodology and the reasoning behind it, as well as the OUCC's concerns and acceptance of this proposal.

I discuss CEG's proposed water and wastewater tariffs and the OUCC's concerns which include rate related conditions in the asset purchase agreements ("APA") and the need to revise the water bad check charge. I recommend approval of the proposed water and wastewater tariffs contingent upon certain corrections and proposed changes being implemented. I recommend approval of the annual 10.75% increase in wastewater rates through 2013 but recommend

disapproval of the annual increases to the wastewater "connection fee". Additionally, I discuss the wastewater "connection fee", which is actually a system development charge ("SDC").

Finally, I discuss CEG's proposed water and wastewater rules and regulations and recommend that a sub-docket be convened in order to fully review and consider the rules and regulations that will govern CEG's operation of both utilities. Until the sub-docket process is complete, I recommend that the newly proposed rules not be implemented until they have been reviewed in a sub-docket. City's current rules and regulations remain in effect.

Q: Please list the sections of your testimony.

A: My testimony is organized into the following sections:

I. INTRODUCTION 1

II. RECORDING THE TRANSFER OF ASSETS 6

III. COST ALLOCATION 17

IV. CURRENT RATES AND CHARGES 21

V. RULES AND REGULATIONS 41

VI. RECOMMENDATIONS 52

Q: Have you previously testified before the Indiana Utility Regulatory Commission ("Commission")?

A: Yes, I have testified in many cases before the Commission involving both water and wastewater utilities. Most of these cases have involved rate setting or acquisition approval.

Q: Please describe the review and analysis you conducted in order to prepare your testimony.

A: I read the pre-filed testimony and workpapers of Joint Petitioners' witnesses Carey Lykins, John Brehm, William Tracy, Michael Strohl, LaTona Prentice, and Chris Cotterill. In addition to reading pre-filed testimony, I also reviewed the following exhibits:

CBL-6	Water System Asset Purchase Agreement
CBL-7	Wastewater System Asset Purchase Agreement
JRB-1	Financial Model Used to Evaluate Acquisition of the Wastewater Utility
JRB-2	Overview of Citizens Energy Group's Proposed Utility Debt Structure
JRB-3	Overview of Wastewater System Debt Service Coverage
JRB-4	Illustration of Proposed Allocation of Corporate Support Services Costs
JRB-5	Financial Model Used to Evaluate Acquisition of the Water Utility
JRB-6	Overview of Water System Debt Service Coverage
WAT-1	Operating Agreement
LSP-1	Citizens Waterworks' Proposed Terms and Conditions for Water Service
LSP-2	Citizens Waterworks' Proposed Rate Schedules
LSP-3	CWA Authority, Inc.'s Proposed Terms and Conditions for Sewage Disposal Service
LSP-4	CWA Authority, Inc.'s Proposed Sewage Disposal Rate Schedules
LSP-5	Proposed Rider A – Environmental Compliance Plan Recovery Mechanism Tariff
LSP-6	Example of Proposed ECP Recovery Mechanism Workpaper

I also read the supplemental testimony of Joint Petitioners' witness Mr. William Tracy, including Exhibits WAT-2 and WAT-3. I participated in the preparation

of discovery questions and reviewed Joint Petitioners' responses. My review of discovery responses included an analysis of support provided for both current and proposed wastewater rates (2010-2013) and the red-lined version provided for the proposed Citizen's Waterworks' Terms and Conditions for Service . I attended the hearings on Joint Petitioners' case-in-chief held on December 6-8, December 10, and December 14, 2010. On December 29, 2010 I participated in a review of discovery documents at CEG's offices. Further, I participated in several rate cases filed by the Department of Water Works ("DOW"), including Cause Nos. 43645 (emergency and permanent) and 43056. Finally, I attended numerous meetings with other OUCC staff to identify and discuss the issues in this cause.

Q: Please describe the attachments and schedules included with your testimony.

A: My testimony includes the following attachments:

- MAS Attachment 1 – Citizens' response to OUCC discovery questions 28-2 and 5-29
- MAS Attachment 2 – City's response to OUCC discovery questions 26-1 and 26-2
- MAS Attachment 3 – City's response to OUCC discovery question 31-1
- MAS Attachment 4 – Service Level Agreement for Fiscal Year 2010, Corporate Support Services and Citizens Resources
- MAS Attachment 5 – Citizens' response to OUCC discovery question 6-5
- MAS Attachment 6 – City's response to OUCC discovery questions 4-1 and 4-2 including attachments
- MAS Attachment 7 – City's response to OUCC discovery question 27-6 including attachment
- MAS Attachment 8 – American Water Works Association, M1 Manual, Principle of Water Rates, Fees, and Charges, Chapter 28 "System Development Charges"

- MAS Attachment 9 – Water Environment Federation "Financing and Charges for Wastewater Systems", Chapter 10 "System Development Charges"
- MAS Attachment 10 – Citizens response to OUCC discovery question 34-3

II. RECORDING THE TRANSFER OF ASSETS

Q: Please explain the proposal to record the acquisition of the water and wastewater assets on the books and records of CEG and the Authority.

A: On page 38, lines 10-21 of his direct testimony, Mr. Brehm briefly discusses this issue. According to Mr. Brehm, once the acquisitions close, CEG and the Authority will take the necessary steps to finalize the opening balance sheets of both entities within the one year period allowed by Generally Accepted Accounting Principles ("GAAP") and well before any rate cases are filed by either party.

Q: Does the OUCC agree with this proposal?

A: The OUCC believes the one year period proposed by CEG and the Authority to be reasonable and concurs that this conforms to GAAP guidelines.

Q: Are there any concerns or issues not addressed by Mr. Brehm?

A: Yes. Recording the water and wastewater assets on the books and records of CEG and the Authority involves additional issues besides the time needed to finalize the books and records. Specifically, contributed plant, also known as contributions-in-aid of construction ("CIAC"), must be taken into consideration in this process. It may also be necessary to record an acquisition adjustment. In addition to these concerns, Joint Petitioners have not specified whether the

transfer of assets from the City to CEG or the Authority will be recorded maintaining the same values and classifications as reflected on the City's books at closing, or if the acquired assets will be recorded as a "lump sum" with no detail recorded.

Q: What is the OUCC's position regarding this last issue?

A: The OUCC considers that the acquired assets should retain the same detail, both classifications and values, as reflected in the City's books and records at closing. The exceptions, as discussed below, would be (1) to record any known contributed plant for the wastewater utility since the Sanitary District has not recorded contributions, and (2) to record any water or wastewater assets known to be excluded from the City's books and records. After the acquisition, the goal should be to create and maintain the most accurate records possible.

A. Contributions-in-Aid of Construction

Q: Please explain what you mean by CIAC.

A: "CIAC" consists of contributions of property to a utility from various sources including customers, developers, and the government. Specifically, the NARUC Uniform System of Accounts ("USOA")[1] defines CIAC as an account that shall include:

1. Any amount or item of money, services or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which

[1] Uniform System of Accounts for Water Utilities and Wastewater Utilities, National Association of Regulatory Utility Commissioners, 1996.

represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition, improvement or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public.

2. Amounts transferred from Advances for Construction, representing un-refunded balances of expired contracts or discounts resulting from termination of contracts in accordance with the Commission's rules and regulations.

3. Compensation received from governmental agencies and others for relocation of sewer mains or other plants.

4. Any amount of money received by a utility, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the capital of the utility and which is utilized to offset the federal, state or local income tax effect of taxable contributions in aid of construction for Construction, and taxable compensation received from governmental agencies and others for relocation of water mains or other plans shall be reflected in a sub-account of this account.

These contributions are normally used by the utility in the conduct of the utility's business. Contributed property could consist of cash, a grant, or the collection of system development charges or other similar fees that are intended to pay for the construction of utility plant. Contributed property could also consist of utility plant itself, such as mains constructed by a developer and contributed to the utility in exchange for the provision of utility service. CIAC is not refunded or repaid to the contributor.

Q: How is CIAC generally recorded on the books and records of a utility?

A: Contributed plant is recorded as a debit to Utility Plant in Service ("UPIS") and a credit to CIAC based on the value assigned by the contributor. Plant purchased with contributed funds is simply recorded as a debit to UPIS and a credit to cash, since the contributed cash was already recorded as a credit to CIAC when it was

received. Generally, CIAC is amortized at the same rate as similar utility plant is depreciated. Net CIAC is sometimes considered a contra account to UPIS, although its placement on the balance sheet with Liabilities and Capital reveals it to be a source of capital.

Q: Do all non-profit and municipal utilities record CIAC properly?

A: No. Based on my experience, some non-profit and municipal utilities fail to record the contribution of plant on the utility's books and records. Their accounting systems are based on cash receipts and disbursements. Therefore, in the case of contributed plant, no entry is recorded because no cash changed hands. Conversely, when CIAC is received in the form of cash from grants, system development charges, and other similar fees, some utilities record this receipt of cash incorrectly as "revenue." However, the fact that contributed plant has not been recorded correctly in the utility's books and records does not mean that a utility has no CIAC.

Q: How is contributed plant treated for ratemaking purposes?

A: Actual plant contributed to the utility is recorded as a CIAC as described above, and is amortized over the life of the contributed asset. The effect of this treatment is to exclude the net amount of contributions from the calculation of rate base, and preclude an investor-owned utility from earning a return on the cost of such assets that were paid for or built by entities or persons other than the utility itself. In addition to excluding CIAC from the calculation of rate base, the amortization of CIAC reduces depreciation expense for ratemaking purposes.

Q: Why is it important to recognize and record any contributed plant included in the water and wastewater assets being acquired by CEG and the Authority?

A: It is important to record contributed plant accurately to protect ratepayers. If CEG or the Authority should ever seek a return on rate base, recording contributed plant correctly will ensure that the ratepayers are not required to pay a return on plant that was contributed by customers or provided on their behalf. The same is true if CEG or the Authority ever sell the water or wastewater utility assets to a for-profit entity. Finally, proper accounting of contributed plant, including amortization of this contributed plant, can provide ratepayers with some relief in any subsequent rate cases by reducing depreciation expense

Q: Did Joint Petitioners discuss CIAC in their case-in-chief or propose to record any CIAC associated with the purchase of DOW and the Sanitary District assets?

A: No. Joint Petitioners did not discuss CIAC or how to record the acquisition of the water or wastewater assets in any detail in their case-in-chief, including any associated CIAC. Further, when asked discovery questions on this issue, CEG did not acknowledge that CIAC existed for the wastewater utility and could not provide any information regarding how it intended to record CIAC for either the water or the wastewater utilities. (MAS Attachment 1)

Q: Did Joint Petitioners include contributed assets in the proposed purchase price to be paid by CEG and the Authority?

A: Yes. The R.W. Beck appraisal was an overall system appraisal and was not based on an item-by-item inventory of all "UPIS" assets owned by the DOW or the Department of Public Works ("DPW"). The appraisal included contributed assets. While the appraisal provided by R.W. Beck includes only a visual,

physical condition assessment of the aboveground Waterworks and Wastewater Systems assets, contributed plant or plant paid for through contributed funds were not excluded from the appraised value[2]. In response to OUCC discovery questions asking whether R.W. Beck considered the fact of CIAC in its valuation, Mr. Lane acknowledged that "R.W. Beck did not determine what, if any, CIAC was included in the UPIS." He added that "[t]he RCNLD [Replacement Cost New Less Depreciation] was based on actual plant in service at the time of the appraisal." (MAS Attachment 2)

As stated by Mr. Lane, the Replacement Cost New Less Depreciation Study ("RCNLD") was based on actual plant in service at the time of the appraisal. After the Emergency Order in Cause No. 43645, in several of the Notices of Intent DOW filed with the Commission, DOW asked for authority to accept contributed property from developers. Further, DOW recorded gross CIAC in an amount of $60.6 million recorded at the end of 2008 and $61.2 million recorded as shown on its 2009 Annual Report filed with the Commission. Therefore, contributed property is included in R.W. Beck's appraisal dated January 2010. See Petitioners' Exhibit MGL-2.

Q: What CIAC does the OUCC consider CEG's water utility should record on its balance sheet?

A: CEG's water utility should record the amount of CIAC and amortized CIAC that exists on DOW's balance sheet at the date of closing on the acquisition. As of

[2] See Section 2, p2-1, Description of the Existing Systems, R.W. Beck, Final Report, "Appraisal of the City of Indianapolis Waterworks and Wastewater Systems", January 2010.

December 31, 2009, DOW's Annual Report showed $61,198,141 in gross CIAC and accumulated amortization of $6,859,870.

Q: What does the OUCC believe would be the appropriate treatment of CIAC on CEG's water utility books and records?

A: The acquisition of the DOW assets by CEG is an asset purchase in which CEG will acquire certain liabilities, including DOW's long term debt. For ratemaking purposes, this utility plant should maintain its classification as CIAC and be recorded on CEG's water utility books and records, along with the accumulated amortization, as of the closing date. Further, CEG should continue to amortize CIAC in the same manner that DOW has employed.

Q: Does the OUCC consider that the City's wastewater utility has contributed plant?

A: Yes. Although the Sanitary District has not recorded contributed plant on its books and records, the OUCC believes, nonetheless, that the utility has contributed plant. One definite source of contributed plant is the "connection fee" collected by the wastewater utility since 2005. As discussed below, this connection fee is really a SDC and should be treated accordingly. It is also likely that the wastewater utility has received contributed plant over the years from developers and others seeking service from the Sanitary District.

Q: What is the OUCC's recommendation regarding the treatment of CIAC for the wastewater utility?

A: Although other sources of contributed plant may exist, in addition to the SDCs collected, few if any records have been maintained by the wastewater utility. Although the wastewater utility should have maintained proper books and

records, recording any contributed plant received, there isn't much information available to assist in identification of any additional sources of CIAC or to determine the original cost of any such contributions. The OUCC recommends that any known CIAC as of the closing date should be recorded on the Authority's books and records as such. The Sanitary District has collected $18,428,485 of connection fees or system development charges since the charge was approved in 2005 (MAS Attachment 3). At a minimum, the accumulated amount of connection fees collected as of the closing date of the acquisition of the wastewater assets should be recorded on the Authority's books and records as CIAC. In addition, the Authority should begin to amortize these contributions at 2.5% (wastewater depreciation rate) per annum on a going forward basis.

Q: Does the OUCC have any further recommendations regarding the recording of CIAC?

A: Yes. Immediately after the acquisition, the Authority should begin recording CIAC in accordance with NARUC guidelines and maintain property records that can be reviewed by the Commission and the OUCC. In addition, CEG's water utility should continue to record contributions of plant and cash in accordance with NARUC guidelines.

B. Acquisition Adjustment

Q: Please explain why the OUCC believes that recording the proposed acquisitions will result in an acquisition adjustment.

A: There are several reasons why an acquisition adjustment will need to be recorded for the proposed transactions. First, both the water and the wastewater utilities

have contributed plant, but these contributions were not factored into the valuations of the utility assets being acquired. Therefore, when this contributed plant is recorded on CEG's and the Authority's books and records, as discussed above, an acquisition adjustment should also be recorded. In addition, although the price to be paid for the wastewater utility has already been determined per the Asset Purchase Agreement, the wastewater utility continues to add new plant as well as depreciate existing plant in the interim. The net effect of these transactions will have an effect on the net utility plant balance recorded to the Authority's books and records. The difference between net utility plant and the pre-determined purchase price should be recorded as an acquisition adjustment. Finally, it is possible that other issues will arise during the one-year period CEG and the Authority will spend finalizing their books and records and these issues could lead to further adjustments.

Q: Should CEG or the Authority be allowed to include the amortization of any acquisition adjustment in future rates?

A: No. While CEG and the Authority should amortize any resulting acquisition adjustments according to GAAP guidelines, they should not be allowed to include this amortization as part of their revenue requirements in future rate cases. As discussed in greater detail by OUCC Witness Mr. Kaufman, the inclusion of debt service on debt incurred to purchase these utilities, as a part of revenue requirements in future rate cases, is essentially the granting of favorable ratemaking treatment for an acquisition adjustment. No further favorable treatment is necessary.

C. Books and Records

Q: Please summarize your concerns regarding the Sanitary District's current books and records.

A: My primary concern is the Sanitary District's use of general or governmental fund accounting for recording its books and records. The use of this type of fund accounting has prevented the Sanitary District from preparing proprietary financial statements and contributed to the general lack of utility plant accounting records, among other things.

Q: Please explain what you mean by "fund accounting."

A: This is the same issue the OUCC encountered during its review of DOW's books and records in Cause No. 43056. Unlike most utilities, which keep their books and records generally in accordance with the "NARUC" USOA, the Sanitary District (and DOW previously) kept its books and records using governmental fund accounting. This type of fund accounting emphasizes *accountability* rather than *profitability* and is used by governmental agencies, including municipalities and some non-profit organizations. In fund accounting, a fund is a self-balancing set of accounts segregated for a specific purpose(s) in accordance with laws and regulations or special restrictions and limitations. Unlike profit oriented businesses, which use a single set of self-balancing accounts (or general ledger), non-profits or governments can have more than one general ledger (or fund), depending on their financial reporting requirements. There are three categories of funds: governmental, proprietary (or enterprise), and fiduciary.

Q: What fund category, if any, should a municipal utility use?

A: Generally, a municipal utility should use proprietary or enterprise fund accounting. This category of fund accounting is used for municipal departments providing services to the public on a user charge basis, similar to the operation of a commercial enterprise. Enterprise fund accounting uses the accrual basis of accounting and records both long-term assets (utility plant in service) and liabilities (bond financing). This compares with governmental fund accounting, which uses the modified accrual basis and focuses on measuring financial resources available in the near future and therefore, does not reflect long-term assets or liabilities.

Q: Does the OUCC have any recommendations regarding how books and records should be maintained after the water and wastewater assets are transferred to Citizens?

A: Yes. CEG and the Authority should maintain their books and records in accordance with NARUC's USOA. If CEG uses fund accounting, proprietary or enterprise fund accounting is the only acceptable method to be used. Both entities should be able to provide a balance sheet that reflects all assets and liabilities of the water and wastewater utilities.

D. Customer Deposits

Q: Does the OUCC have any other concerns related to the transfer of water and wastewater assets?

A: Yes. To the extent that DOW or the Authority holds customer deposits at closing, these deposits should either be paid back to customers or transferred to

CEG or the Authority. If transferred to CEG or the Authority, these deposits should retain their classification as customer deposits.

III. COST ALLOCATIONS

Q: Please explain CEG's proposal regarding the allocation of shared costs after the transfer of the water and wastewater utility assets.

A: CEG recommended that the amount of Corporate Shared Services ("CSS") costs allocated to the wastewater utility be limited to 10% of the total amount of CSS costs.

Q: Please explain CEG's rationale for this proposal.

A: On pages 23-29 of his testimony, Mr. Brehm explained that the acquisition of the water and wastewater assets involves both increased incremental costs (debt service on acquisition and working capital debt) as well as potential cost savings that largely result from efficiencies and consolidation that will affect all of CEG's affiliates using CSS services. Overall, CEG expects there to be net cost savings. However, most of the incremental costs of the transaction are assignable to the wastewater utility, while any cost savings will be shared amongst all of the CEG affiliates that make use of services provided by CSS. Absent any "intervention," the wastewater utility will bear the brunt of the costs of the transaction, which in turn will cause a net increase in its costs and a corresponding need to increase customer rates. On page 28, lines 1-8, of his testimony, Mr. Brehm stated"

> ...the acquisition of the Water and Wastewater Systems were linked and the incremental costs of acquiring the Wastewater System were a necessity in order to achieve the

> significant cost savings available for Gas, Steam, Water, Westfield Gas and other divisions of the consolidated CEG. Consequently....it would not be equitable for the Wastewater System to experience an allocation of costs...that are less than the incremental costs it experiences.

Q: Does the OUCC accept this proposal?

A: Yes. However, the OUCC has several concerns, including subsidization of the wastewater utility, the need for periodic reviews of the allocation methodology, the potential use of a for-profit entity to operate the water and wastewater utilities, the allocation of meter reading costs, and CSS affiliated contracts on file with the Commission.

Q: Please explain the OUCC's concerns regarding subsidization of the wastewater utility.

A: CEG's proposal to limit the costs allocated to the Authority amounts to subsidization of wastewater operations. Generally, the Commission opposes the subsidization of one customer class by another or the subsidization of one utility's operations by another. In Cause No. 38037, Sherwood Forest Utilities, the final order contained the following language:

> This Commission has consistently been opposed to rate subsidization. We believe method of calculation used...is inappropriate because it would result in the water utility operations of the Petitioner subsidizing the operations of the sewer utility.
>
> Final Order dated November 26, 1986, p. 8.

Further, in Cause No. 36630, *HVL Utilities*, the Commission stated:

> ...we believe such subsidization masks the true cost of providing service to...customers of the utility. This in turn may promote unwise consumption decisions and also, by establishing current rates for service significantly below the actual cost incurred in providing current service, either shift the cost of providing current service to non-users or shift such costs to future consumers who are not benefitting from the existing subsidization.
>
> Final Order dated April 13, 1983, p. 14.

However, in some cases where rate shock would result, the Commission has allowed utilities to phase-in cost based rates for certain customer classes. In this case, some subsidization of the wastewater utility may be necessary to avoid unreasonably high rates. However, this subsidization should be reviewed periodically to determine whether it should continue.

Q: Please explain the OUCC's recommendation that the allocation of CSS costs be reviewed periodically.

A: Since CEG's proposal amounts to subsidization of the wastewater utility, the OUCC considers that a periodic review of the allocation of shared costs is essential to ensure that the subsidization is necessary and reasonable. These shared cost allocations can be reviewed during the course of a rate case filed by any of CEG's affiliated utilities that makes use of CSS shared services. At a minimum, these shared cost allocations should be reviewed every three to five years to verify that they continue to be necessary and appropriate.

Q: Please explain the OUCC's concerns regarding the use of a for-profit entity to operate or provide shared services to the water and wastewater utilities.

A: Currently, the operations as well as shared services (CSS) are set up as non-profit affiliates of CEG. On a quarterly basis, CSS bills out any over-allocated or under-allocated costs to the various divisions using its services, thereby eliminating any gain or loss created by the allocation process (MAS Attachment 4). Similarly, the operations of the water and wastewater utilities will be carried out by non-profit entities. If CEG decided to change the current structure by creating an affiliated for-profit (unregulated) company or companies to operate or provide shared services to the water or wastewater utilities, that would diminish CEG's ability to achieve the forecasted savings. Because a for-profit company must pay income taxes and does not have access to tax free debt it is likely to have a higher cost structure. Further, a for-profit entity would include profit in its cost of services. These increased costs would diminish CEG's opportunity to achieve any potential cost savings. Therefore, CEG should not be permitted to create a for-profit unregulated company to operate or provide shared services to the water or wastewater utilities. Moreover, the use of unregulated affiliated companies diminishes the OUCC's and the Commission's ability to review future revenue requirements and verify proposed savings have been achieved.

Q: Please explain the OUCC's concern regarding the allocation of meter reading costs.

A: Wastewater usage is billed to most customers based on their water usage and, as such, the wastewater utility benefits from water meter reading and should bear its share of these costs. But currently the City (DOW) does not allocate any of the

cost of reading water meters to the wastewater utility. Subsequent to the transfer of the water and wastewater assets to CEG and the Authority, water meter reading costs should be allocated to the wastewater utility as well as the water utility.

Q: Finally, please explain the OUCC's concerns regarding CSS affiliate contracts on file with the Commission.

A: Since CEG proposes to change the method of allocating CSS costs as discussed above, CEG will need to update all of its CSS affiliate contracts to reflect this change in allocation methodology. Since the Authority's shared costs are to be capped at 10%, any excess costs will necessarily be allocated to the remaining affiliates. Therefore, the allocation of costs among the various entities will not be strictly on a fully allocated pro rata basis. The Authority's affiliated contract should reflect its costs are limited to 10%, while the remaining affiliate contracts should reflect the methodology ordered by the Commission in this proceeding.

IV. CURRENT RATES AND CHARGES

A. Water

Q: Please explain Joint Petitioners' proposal regarding water rates and charges.

A: Joint Petitioners request approval of the schedule of rates and charges applicable to the provision of water utility service by the DOW in effect at Closing. This request includes implementing the rates to be approved by the Commission in Cause No. 43645. Joint Petitioners' Exhibit LSP-2 reflects the current DOW rates and charges in the form proposed by CEG. On pages 5-6 of her testimony, Ms.

Prentice explained that CEG is proposing three rate schedules and two appendices as follows:

Water Rate No. 1 – Metered Water Service
Water Rate No. 2 – Private Fire Protection Service
Water Rate No. 3 – Interruptible Raw Water Service
Appendix A – Miscellaneous Service Charges
Appendix B – Non-Recurring Charges

All of the services indicated are currently being offered by DOW and the rules for these services will remain unchanged. As Ms. Prentice explains, Appendix A represents fees for services generally requested by customers including meter installation and meter testing. Appendix B includes fees for services not typically requested by customers, including bad check charges and late payment fees.

Q: Does the OUCC accept any of these proposals?

A: Yes. The rates and charges reflected in Exhibit LSP-2 conform, for the most part, to the tariff approved by the Commission on September 9, 2009 in the emergency portion of Cause No. 43645. The OUCC accepts Joint Petitioners' general proposal to apply, at closing, the water rates and charges currently in place.

1. <u>Exhibit LSP-2 – Comments and Issues</u>

Q: Does the OUCC have any issues or comments regarding these proposals?

A: Yes. The OUCC notes some minor discrepancies in the proposed water tariff that should be corrected and some rates that should be reclassified. The OUCC also recommends the bad check charges currently applicable to water customers be updated before approval of the proposed water tariff. Finally, the OUCC has

concerns with rate related conditions imposed by the Water Asset Purchase Agreement.

Q: Please explain the minor discrepancies you identified in the proposed water tariff.

A: There are two fees that are reflected incorrectly in Exhibit LSP-2. The first is the Swimming Pool Filling Service Fee for pools larger than 40,000 gallons included in Appendix A. The second discrepancy is the Delinquent Account Collection Charge included in Appendix B.

Q: Please explain the discrepancy with the Swimming Pool Filling Service Fee.

A: On DOW's current tariff, the fee per thousand gallons in excess of 40,000 gallons is $2.81. In Appendix A, the fee is $2.50. Although it is refreshing to see a customer fee decrease, this fee was established to cover the cost of providing this service and reducing the fee to these customers means that other customers could be subsidizing this service.

Q: Please explain the discrepancy with the Delinquent Account Collection Charge.

A: On DOW's current tariff, the Delinquent Account Collection Charge is $12.00 per visit. In Appendix B, the fee is slightly higher at $14.00.

Q: How should these discrepancies be addressed?

A: Both of these discrepancies should be corrected before the water tariff is approved. If CEG believes that these fees should be changed, it should file a thirty day filing with the Commission, along with the required supporting documentation. Alternatively, these fees could be reviewed as part of the sub-

docket proposed by the OUCC to more thoroughly review the proposed rules and regulations for both the water and wastewater utilities.

Q: Please explain which rates you believe are misclassified on Exhibit LSP-2 and why they should be reclassified.

A: There is a group of charges included in Water Rate No. 2 that are more appropriately included in Appendix A. These charges are identified as "Connection Charges" on the bottom of Page 102B of Exhibit LSP-2 and include the fees to establish a private fire protection account and installation of a fire meter. These are services generally requested by a customer and, as described by Ms. Prentice, fall within Appendix A. These fees should be based on the cost to the utility to provide the particular service and should not be changed based on a general rate increase or decrease. Utilities may periodically review their costs to provide the types of services included in Appendix A and Appendix B. For Commission approval of any changes in these fees, utilities typically submit a thirty day filing. Including these types of fees with water rates, which are adjusted through the filing of a rate case, could cause confusion. This could further lead to these fees being inadvertently increased with a general rate increase or decrease.

Q: Please explain why the OUCC recommends bad check charges be revised prior to approval of the tariff.

A: Currently, the water utility has three different bad check charges. Depending upon where a customer is located, the charge for a bad check could be $9, $14.50, or $20. This is quite a range of charges. It seems unlikely that the water utility's cost to process bad checks varies depending upon where the customer is located.

It is more likely these fees are carry-overs from previous tariffs applicable prior to the water utility's acquisition of these customers. The OUCC recommends that the water utility's bad check charge be based upon CEG's current bad check charge of $11, similar to the fee reflected on the wastewater utility's tariff (Exhibit LSP-4).

2. Rate Related Conditions Imposed on Proposed Transfer of Water Utility

Q: Does the transfer of the water or the wastewater assets depend on any rate related conditions?

A: Yes. On page 37, lines 13-20, of his testimony, Mr. Brehm stated that the receipt of "sufficient" rate relief and "satisfactory resolution" of Cause No. 43645 are a condition precedent to "...CEG's obligation to consummate the transaction." Specifically, Article 12 of the Water Asset Purchase Agreement lists the Conditions Precedent to Obligations of the Sellers, with Section 12.04 addressing resolution of Cause No. 43645:

> **Section 12.04. IURC Rate Case**. The City's permanent rate case currently pending before the IURC as cause number 43645 (the "Rate Case") shall have been resolved in a manner *reasonably acceptable* to Sellers and the rates approved in such Rate Case shall have been implemented six (6) months prior to the Closing; provided that this condition shall be deemed satisfied unless Sellers notify Purchaser within (30) days of the IURC's ruling in the Rate Case that such resolution is not reasonably acceptable; (*Emphasis added*)

Further, Article 13 lists Conditions Precedent to Obligations of Purchaser, Section 13.04(b) addressing resolution of Cause No. 43645:

> **Section 13.04. IURC Approval of Purchaser Items.**
> (b) The Rate Case shall have been resolved in a manner reasonably acceptable to Purchaser;

Q: What do the Parties mean by "satisfactory" or "reasonably acceptable" resolution of Cause No. 43645?

A: That is unclear at this time. What the parties would consider a "satisfactory" or "reasonably acceptable" resolution of Cause No. 43645 is not discussed or explained in Joint Petitioners' testimony. When asked this question in discovery, CEG replied "....The term 'resolved' means more than merely the amount of the rate increase. The question is unanswerable absent an Order being issued by the Commission that can be studied by CEG..." (MAS Attachment 5) Some guidance to what CEG may deem "reasonably acceptable" may be found on line 1 of Exhibit JRB-5. This exhibit provides an overview of the annual cost of the financing plan for the Water System and uses an estimated rate increase of 28.3% for the year 2011.

Q: Are there any other conditions proposed by Joint Petitioners relevant to water user rates and charges?

A: Yes. Article 8 of the Water Asset Purchase Agreement imposes a rate moratorium for a period of two years after the Closing with certain exceptions for emergencies.

> **Section 8.10. Future Rates.** The Parties hereby agree that the rates described in Section 13.04(b) shall remain in effect for a period of at least two (2) years after the Closing, subject to necessary and appropriate applications to the IURC for rate increases due to the need for emergency rate relief under Indiana Code 8-1-2-113 or necessary to avoid a default under the coverage or other covenants of Purchaser under any applicable bond

indenture and Purchaser shall request any future rates as necessary, in compliance with Section 8.14.

Q: Does the OUCC accept these proposed conditions to the proposed transactions?

A: Yes. Although it's unclear what the Parties (Joint Petitioners) mean by "acceptable" resolution of Cause No. 43465, it has been made a part of the Water Asset Purchase Agreement and primarily affects the Parties themselves. Further, the OUCC agrees that a rate moratorium for some period of time would be best for ratepayers. The OUCC recommends that a water general rate case not be filed prior to January 1, 2014 except for emergencies. I understand the rate moratorium is expected to last for a period of two and one-half years, since rates are anticipated to have been in place for six (6) months prior to Closing according to the Water Asset Purchase Agreement (Sections 12.04 and 8.10). Currently, the earliest CEG could file a rate case under the Water Asset Purchase Agreement is approximately July, 2013, so the OUCC is only requesting a maximum potential delay of six (6) months. Waiting until 2014 to file a general rate case allows any cost savings to materialize and be included in the calculation of future rates. It also allows time to determine answers to certain issues related to rates and rules and regulations that are currently not known, such as how the proposed combined billing for gas, water, and wastewater customers will work and how customer deposits will be collected, among other things.

Q: Does the OUCC have any further concerns regarding water rates and charges?

A: Yes. Section 8.14 of the Water Asset Purchase Agreement discusses adequate rates and includes relief the OUCC considers unacceptable and not properly

recoverable in rates. In as much as Joint Petitioners are requesting that the Commission approve the Water Asset Purchase Agreement, they may be asking the Commission to approve this section of the agreement.

> **Section 8.14. Adequate Rates**. To the extent necessary, Purchaser shall from time to time request IURC approval of rates and charges that produce sufficient revenues to pay and fulfill its indemnification obligations, all other Assumed Liabilities and other statutory obligations and obligations under this Agreement.

To the extent this provision influences how rates are determined in future rate cases, the OUCC finds this clause objectionable because its inclusion in this agreement, and the subsequent request for Commission approval of the agreement, would mean that rates for this utility could be determined differently from other municipal water utilities and amounts to pre-approval of certain additional costs in future rates. Costs incurred to indemnify the previous owner of a utility, among other things, are not necessarily costs recoverable through rates. To the extent that this section seeks to include in future rates those costs not normally recoverable from customers, the OUCC recommends that the Commission decline to approve this section or clarify that approval of the purchase agreements, in part or as a whole, shall not be construed as binding on the Commission to decrease its discretion or allow recovery in rates of expenses it considers unreasonable, imprudent, unlawful or excessive, or otherwise not conforming with Indiana ratemaking principles. Moreover, based on my review of Joint Petitioners' case, it is unclear what statutory mechanism Joint Petitioners rely on for approval of any aspect of the asset purchase agreement that would

embrace any special rate making. In Cause No. 43435 (Re: Hamilton Southeastern Utility's application for CTA), the Commission declined to approve in its entirety a wholesale wastewater agreement, choosing instead to approve only those parts of the agreement it deemed necessary.

> Addressing Petitioner's request for approval of its wholesale agreement with Noblesville, Ms. Stull advised that the OUCC questions that such approval is necessary. She noted that the Commission does not typically exercise jurisdiction over rates set by a municipal sewer operation. Moreover, HSE has not stated by what statutory mechanism or what criteria the Commission would use to approve such an agreement. Ms. Stull added, however, that the Commission does have jurisdiction to consider whether public convenience and necessity require the rendering of the proposed service in the proposed area by this particular sewage disposal company, which is bound by the Noblesville agreement. She stated that there may be aspects of the agreement that implicate whether HSE should be the utility that serves this territory. She noted for example that HSE is contractually bound under this agreement to require a waiver of remonstrance from applicants as a condition of the applicant receiving sewer service from HSE. She asserted that if the Commission is to approve the entire agreement, the Commission will need to decide whether such a condition of receiving sewer service is appropriate and acceptable.
>
> We agree with the OUCC that approving the entire agreement is not necessary.
>
> Final Order dated February 11, 2009, p. 14 -15. (Emphasis added.)

Similarly, it is not necessary for the Commission to approve every aspect of the water asset purchase agreement, particularly when it may contain suggestions contrary to sound regulatory practice.

B. Wastewater

Q: Please explain Joint Petitioners' request for approval of wastewater rates and charges.

A: Joint Petitioners request approval for all rate increases already approved by the City County Council per Chapter 671 of Title III of the Marion County, Indiana, Code of Ordinances, including Ordinance No. 32, 2009 (connection fees) (MAS Attachment 6). These approvals include annual 10.75% across-the-board increases to user rates through 2013 and escalation of the "connection" fee based on changes to the consumer price index ("CPI").[3] Joint Petitioners are also requesting approval of the Authority's schedule of wastewater rates and charges as reflected in Exhibit LSP-4. On pages 17-19 of her testimony, Ms. Prentice explained that the Authority is proposing four rate schedules and two appendices as follows:

Sewer Rate No. 1 – Nonindustrial Sewage Disposal Service
Sewer Rate No. 2 – Industrial Sewage Disposal Service
Sewer Rate No. 3 – Fats, Oil, and Grease Charge (FOG)
Sewer Rate No. 4 – Septic and Grease Hauler Rates
Appendix A – Miscellaneous Nonrecurring Charges
Appendix B – Connection Fee

All of these services are currently being offered by the Sanitary District and the rules remain unchanged. As Ms. Prentice explains, the charges included in Appendix A are based on either the Sanitary District's existing charges or charges for the same type of activity assessed by Citizens Gas. The connection fee set forth in Appendix B is based on the Sanitary District's existing charges.

[3] This testimony does not address any tracking mechanisms requested by Joint Petitioners.

Q: Does the OUCC accept these proposals?

A: The OUCC accepts the proposal to approve annual 10.75% increases to user rates through the year 2013. The OUCC does not agree or accept the proposed increases to the "connection" fees as discussed below. Further, the OUCC believes that the "connection" fee currently included in the wastewater utility's tariff is really a SDC and should be treated accordingly. Finally, the OUCC has some comments on Exhibit LSP-4 as well as some concerns about rate-related conditions imposed by the Wastewater Asset Purchase Agreement.

3. Connection Fee

Q: Please explain the connection fee currently being collected by the wastewater utility.

A: Currently, the Sanitary District collects a "connection" fee of $2,500 per equivalent dwelling unit ("EDU") for each new customer connected to the sanitary sewer system. Per a Memorandum dated October 20, 2005 (MAS Attachment 7),

> The Connection Fee is intended to help compensate the City for its past investments and equity in the existing sanitary sewer system (collection and treatment facilities) as well as to cover a portion of the City's actual cost of capacity and availability at the time that capacity allocations are requested for those that desire City sewer service.
>
> The Connection Fee is not intended to offset user fee increases related to addressing the City's combined sewer overflow (CSO) mitigation program, nor operation, maintenance & replacement costs that benefit only existing users.

Q: How was the current connection fee calculated?

A: The October 20, 2005 memorandum discusses the various rationales and methodologies considered to calculate this type of fee, although it doesn't specifically state how the fee was finally determined. It appears that the Sanitary District decided on a $2,500 fee after considering all of the various methods, with a heavier weighting being given to competitiveness with surrounding communities. Per the memorandum, there are three basic rationales or methodologies used to calculate this type of fee.

1) Base the fee on the current cost of additional capacity due to new growth and development. Using this method, the Sanitary District estimated that new capacity would cost in excess of $10 per gallon per day, multiplied by 310 gallons per day per EDU yielded a fee of $3,100.

2) Base the fee on historical capital costs funded by existing customers. Under this rationale, the Sanitary District estimated current capital costs in excess of $1 billion and 320,000 current EDUs, which yielded a current plant investment of $3,125 per EDU.

3) Base the fee to be competitive with other markets. Under this rationale, the Sanitary District compared the proposed $2,500 fee to similar fees charged both by surrounding communities and similar sized cities in the region such as St. Louis and Louisville.

Q: Does the OUCC consider that the current "connection" fee reimburses the wastewater utility for the costs of connecting a customer to the sanitary sewer?

A: No. The OUCC considers the fee, which the Sanitary District calls a "connection" fee, to actually be what is generally called a SDC.

Q: Why doesn't the OUCC consider this fee to be a "connection" fee?

A: A connection fee is generally a cost-based charge to cover the costs of physically connecting a customer to the water or wastewater system and is sometimes called

a tap fee or an inspection fee. The current "connection" fee is clearly not cost based per the October 20, 2005 memorandum discussed above. Further, based on this same memorandum, the rationale and method to calculate this fee is similar to the guidelines provided by both the American Water Works Association ("AWWA") (MAS Attachment 8) and the Water Environment Federation's "Financing and Charges for Wastewater Systems" (MAS Attachment 9) to calculate a system development fee.

Q: What is a SDC?

A: An "SDC" is a method of funding capital projects through cash contributions to the utility. SDCs are also sometimes referred to as development fees, impact fees, availability fees, contribution fees, and capacity charges. SDC proceeds are typically used to pay for capital projects related to growth. Typical uses are to pay for expansion of or additional treatment plants, collector mains, interceptor mains, and lift stations.[4] It is a one-time charge to customers paid when each new customer connects to the system, or to developers as part of the permitting or planning process. Application of these fees assists the utility in implementing a "growth for growth" policy. Capital projects required to meet the demands of growth are often a burden on existing customers who would be required to pay a return on and of the utility's investment in plant. Through the use of SDCs, costs associated with growth may largely be shifted to the new customers and away

[4] *Financing and Charges for Wastewater Systems, WEF Manual of Practice No. 27,* Water Environment Federation, McGraw-Hill, pages 181-197

from the existing customers.[5] In the case of a non-profit or municipal utility, the burden on existing customers comes from the inclusion of debt service in rates for debt incurred to finance the necessary capital projects.

Q: How are SDCs recorded on a utility's books?

A: SDCs are treated and recorded as CIAC. When an SDC is collected, the utility debits cash and credits CIAC, which is a contra-account to Utility Plant in Service ("UPIS"). The CIAC account is generally reflected in or near the equity section of a utility's balance sheet. Generally, CIAC funds are recorded to a restricted cash account because the funds are approved for a particular purpose and should not be used to fund general operations. Specifically, SDC funds are used to pay for growth-related capital projects, such as expansion of a treatment plant, booster station, or collector main.

Q: Does the OUCC have any issues with the inclusion of an SDC on the Authority's wastewater tariff?

A: No. The OUCC has no issue with appropriate SDCs and was supportive of the SDC approved for DOW in Cause No. 43056. However, the Sanitary District refers to its SDC as a "connection" fee. As noted by OUCC witness Roger Pettijohn, a "connection fee" typically refers to a fee designed to recover a utility's actual direct costs in making the connection to the customer. Therefore, the OUCC recommends that the "connection" fee currently reflected on the Authority's wastewater tariff be re-designated as an SDC or in the alternative, a contribution fee. Further, the OUCC recommends the Authority be required to

[5] *Id.*

record any such fees as CIAC and restrict the use of such funds to pay for growth related capital projects, which would include costs related to the Septic Tank Elimination Program ("STEP").

Q: Do Joint Petitioners address SDCs or make any proposals in their testimony?

A: No. Joint Petitioners did not discuss SDCs in their case-in-chief.

Q: Does the OUCC have any recommendations regarding the amount of the SDC to be included in the wastewater tariff?

A: Yes. The OUCC recommends that the initial SDC be $2,500 and that it be reviewed by the Commission periodically to verify the charge is still appropriate. This review could be performed during future rate cases but should be done at least every five years. In determining the appropriateness of the SDC, several factors should be considered. There should be a "rational nexus" or reasonable connection between the following[6]:

- The new development that will pay the fees and the need for the facilities,
- Identified costs and the fee level,
- Identified costs and the amount of revenue generated by the fee, and
- The cost to the utility of new development and the amount of the fee collected.

Further, there are several principles the utility needs to satisfy in developing the calculation of the fee, including[7]:

- Fee is proportionate to proposed impact,

[6] *Financing and Charges for Wastewater Systems, WEF Manual of Practice No. 27,* Water Environment Federation, McGraw-Hill, pages 185-186.

[7] *Ibid.,* p. 187

- Fee proceeds are used to provide infrastructure serving the growth area,
- Fee methodology is uniform and consistent,
- Other sources of funding are considered, and
- Fee includes only eligible growth-related costs.

Q: Does the OUCC oppose the proposed annual escalation of this fee?

A: Yes. Although the City County Council has previously approved escalation of the current "connection" fee, the OUCC believes this is inappropriate for a utility regulated by the Commission. As we have established, the "connection" fee is really an SDC and the amount of the fee should be based on one of the accepted methods described by the WEF or the AWWA. These methods generally include the equity buy-in approach, the incremental approach, and the combined approach. Each of these methods is based on estimated or historical costs, but in no case do any of the authorities recommend an arbitrary escalation of the fee based on an index. Annual escalation is not necessary or recommended, especially an escalation based on the CPI. Changes to the CPI bear little or no relation to the costs to be considered when estimating utility infrastructure costs. The better approach is a periodic review of the estimated costs to serve growth in wastewater usage.

4. Exhibit LSP-4 – Comments and Issues

Q: Please explain the comments and issues the OUCC has regarding Exhibit LSP-4.

A: The OUCC has identified several charges it recommends be reviewed and updated as necessary, including the reconnection fee and the late reporting charge.

Q: Please explain the OUCC's concerns with the proposed reconnection fee.

A: The OUCC is concerned with the amount of the fee, especially in comparison with a similar fee included in the water tariff. Additionally, the OUCC is concerned that the services this fee represents are actually performed by the water utility. Finally, the OUCC is concerned that customers are being charged a reconnection fee from both the water and the wastewater utilities for essentially the same service.

Q: Please elaborate on these OUCC concerns.

A: The water utility's reconnection fee is currently $25, compared to the wastewater utility's reconnection fee of $44. Therefore, the sewer utility is charging nearly twice as much as the water utility for this service. Moreover, the wastewater utility generally has no shut-off valves and typically relies on disconnection of water service to accomplish disconnection of wastewater service. In contrast, water utility personnel actually go to a customer and physically shut-off that customer's water service. As with all non-recurring charges, these fees should reflect the utility's current costs to provide these services so that the customers that cause the expense pay for it. Otherwise all other customers are burdened by subsidizing these services. Finally, it appears a customer could be charged two reconnection fees if both water and sewer service has been "disconnected." The wastewater utility has no means to disconnect a sanitary sewer customer, much less "reconnect" them. This implicates the fairness of such approach, even if it is the current state of affairs. Based on these observations, the OUCC recommends that the wastewater reconnection fee be eliminated prior to approval of the

wastewater tariff. Once both the water and wastewater utilities are transferred to CEG and the Authority, they will be managed jointly with only one reconnection fee per customer necessary. The OUCC recommends the water reconnection fee be reviewed and revised as necessary to recover only the actual costs of this activity.

Q: Please explain the OUCC's concerns with the late reporting charge included in Exhibit LSP-4.

A: The OUCC has two concerns with the late reporting charge. The first concern is with the amount of the charge. The wastewater utility allows an industrial customer two incidences of late filed reports without incurring a fee and then charges $100 for each subsequent late report. Based on my experience reviewing water and wastewater utility tariffs, $100 does not appear to be a cost-based charge for this service. As such, this fee amount appears to be punitive. The OUCC recommends that this fee be removed from the tariff and replaced with a cost-based fee approved in a manner consistent with the Commission's Rules and the final order that may be issued in this Cause.

The second concern is with the description of the charge. The description establishes that the charge applies "[i]n the event that an Industrial Customer fails to submit the report required under Section 7 of the Utility's Terms and Conditions for Sewage Disposal Service...." A review of Section 7 of these Terms and Conditions shows that this section relates to Deposits, which does not fit the fee being charged. Further review of the Terms and Conditions reveals that the Authority may have intended to refer to Section 8.3.2 rather than Section 7.

The OUCC recommends that the description of this fee be corrected prior to submission for approval of the proposed wastewater tariff.

5. Rate-Related Conditions Imposed on Proposed Transfer of Wastewater Utility

Q: Are there any rate related conditions included in the proposed transactions being imposed by Joint Petitioners or the Wastewater Asset Purchase Agreement?

A: Yes. As discussed previously, the Water Asset Purchase Agreement included Section 8.14 which discusses adequate rates. The Wastewater Asset Purchase Agreement includes a similar section, 8.15, discussing adequate rates and includes relief the OUCC considers unacceptable and not properly recoverable in rates. In as much as Joint Petitioners are requesting the Commission approve the Wastewater Asset Purchase Agreement, they may be asking the Commission to approve this section of the agreement.

> **Section 8.15. Adequate Rates**. To the extent necessary, Purchaser shall from time to time request IURC approval of rates and charges that produce sufficient revenues to pay and fulfill its indemnification obligations, the CSO Control Measures, PILOT Payments and all other Assumed Liabilities and other statutory obligations and obligations under this Agreement.

To the extent this provision influences how rates are determined in future rate cases, the OUCC finds this clause objectionable because its inclusion in this agreement, and the subsequent request for Commission approval of the agreement, would mean that rates for this utility could be determined differently from other municipal or non-profit wastewater utilities and amounts to pre-approval of certain additional costs in future rates. Costs incurred to indemnify

the previous owner of a utility, among other things, are not necessarily costs recoverable through rates. To the extent that this section seeks to include in future rates those costs not normally recoverable from customers, the OUCC recommends that the Commission decline to approve this section or clarify that approval of the purchase agreements, in part or as a whole, shall not be construed as binding on the Commission to decrease its discretion or allow recovery in rates of expenses it considers unreasonable, imprudent, unlawful or excessive, or otherwise not conforming with Indiana ratemaking principles. Moreover, based on my review of Joint Petitioners' case, it is unclear what statutory mechanism Joint Petitioners rely on for approval of any aspect of the asset purchase agreement that would embrace any special rate making. As discussed above, Cause No. 43435 (Re: Hamilton Southeastern Utility's application for CTA), the Commission declined to approve in its entirety a wholesale wastewater agreement, choosing instead to approve only those parts of the agreement it deemed necessary. Similarly, it is not necessary for the Commission to approve every aspect of the wastewater asset purchase agreement, particularly when it may contain suggestions contrary to sound regulatory practice.

Q: Is there a proposed rate moratorium for the wastewater utility?

A: Yes. Section 13.05 of the Wastewater Asset Purchase Agreement provides that "…rates shall increase no more than 10.75% annually through 2013…" As noted above, the OUCC accepts this proposal. The OUCC recommends that the wastewater utility file a general rate case in 2013 using a test year ended December 31, 2012. The OUCC recommends that the Authority file its rate case

no later than 2013 for several reasons. First, the wastewater utility's rates have never been reviewed by the Commission. Therefore, there has been no assurance that the rates as currently configured should be considered fair and reasonable according to the Commission's own methodologies. Second, by 2013 the Authority should have better estimates of the costs to comply with the consent decree, allowing the utility to include these costs in a general rate case. Finally, a rate case filed in 2013 will incorporate the cost savings and synergies of the proposed transactions and reflect the corresponding reduction in user rates.

V. RULES AND REGULATIONS

A. Water

Q: Please explain Joint Petitioners' proposal regarding water rules and regulations.

A: Per pages 3-4 of her testimony, Ms. Prentice explains that Joint Petitioners are requesting approval of the proposed Terms and Conditions for Water Service. Most of the proposed rules are identical to the current DOW rules, with most of the changes intended to make the proposed Terms and Conditions consistent with CEG's other regulated utilities, including new customer service provisions. Minor modifications to the existing Terms and Conditions include changing references to "Department" to "Utility." However, it was necessary to make more substantive changes, including:

- Adding a definition for the term "hydrant meter",

- Adding a provision addressing claims regarding oral agreements prior to CEG's ownership,
- Changing the remedy for unauthorized use of water service,
- Revising deposit and deposit refund rules,
- Adding provision for Automatic Bank Deduction Plan,
- Adding provision for Duplicate Notice Plan, and
- Clarifying that a disconnected water customer must only pay unpaid water service bills, and not charges that might be owed for other utility services, as a condition for reconnection.

Exhibit LSP-1 reflects the updated water rules and regulations in the form proposed by CEG.

Q: Does the OUCC accept any of these proposals?

A: The OUCC can accept certain aspects of Joint Petitioners' proposals, such as the provisions addressing unauthorized use of water service and the Duplicate Notice Plan. However, there are other aspects that the OUCC finds unacceptable, such as the changes made regarding non-residential deposits and the interest rate to be paid on deposits.

Q: Please explain the OUCC's concerns about the rules regarding non-residential deposits.

A: As proposed, Rule 2.1.1 is discriminatory based on customer class. Joint Petitioners provide no explanation or reason why the deposit rules for non-residential customers should be different from the rules for residential customers. The OUCC notes that the Commission's rules regarding deposits contained in 170 I.A.C. 6-1-15 do not differentiate based on customer class. Besides being discriminatory, this rule is unacceptable for several other reasons. The rule as proposed allows CEG to require a cash deposit at any time regardless of a

customer's credit history or payment record. The rule also may require a proportionately larger deposit from non-residential customers than from residential customers. Per Rule 2.1.1, CEG could collect a deposit equal to any three consecutive months known or estimated to have the highest water consumption and grants CEG complete discretion. In contrast, the rules for a residential customer allow CEG to require a deposit only under certain situations and limit the amount of the deposit to $1/6^{th}$ of a customer's expected annual billings. Rule 2.1.1 states "[t]he Utility [CEG] will determine the appropriate deposit." During cross examination, Mr. Strohl was asked how CEG would make that determination. Mr. Strohl was unable to explain how that determination would be made.

In addition to concerns about the requirement and calculation of a deposit for non-residential customers, the OUCC has concerns about Rule 2.3, which contains the guidelines for refunding deposits. Rule 2.3 states "[t]he deposit of any nonresidential customers....may be retained by the Utility until Water Services are discontinued." Again, this is vastly different from the rules for residential customers, who get their deposits back once they have established an acceptable payment record.

Q: Please explain the OUCC's concerns about the rule regarding the payment of interest on deposits.

A: Joint Petitioners propose to change the interest rate on which interest is calculated from the 6% per annum included in 170 I.A.C. 6-1-15(f) to the rate paid by Citizens Gas. On pages 14-15 of his testimony, Mr. Strohl explains that this

change is needed in order to accommodate CEG's billing system limitations and avoid "…significant and costly modifications to the….billing system." He further states that the current billing system cannot differentiate deposits paid as being specifically for water, wastewater, or gas service.

All of these explanations are applicable only after the implementation of combined billing which Joint Petitioners indicated will occur nearly two years after the closing of the proposed transfers of the water and wastewater utility assets. Until that time, CEG should be able to follow the current rules regarding interest paid on deposits. On page 15, lines 6-8, of his testimony, Mr. Strohl stated that the Commission's rules allow interest to be calculated based on a methodology the Commission may prescribe following a public hearing. Mr. Strohl is correct that 170 I.A.C. 6-1-15(f)(1) provides that interest on customer deposits may be based on "…such other rate of interest as the commission may prescribe following a public hearing." However, the OUCC does not consider the hearings held in this proceeding to meet the requirement or the intent behind this code section. On cross examination, Mr. Strohl stated that paying a 6% rate on customer deposits disadvantaged CEG. The OUCC would note that the funds collected from customers are not generally restricted and most utilities use these monies to fund operations and capital projects. In response to discovery question 34-8, Mr. Brehm confirmed that CEG places customer deposits in its operating funds where there is no restriction on their use. In this light, the most appropriate criteria to consider in whether CEG's disadvantage would be CEG's cost of borrowing rather the rate paid on short-term investments. Finally, it doesn't seem

"fair" to other water and wastewater utilities for Citizens to be allowed to pay .5% (current rate per Mr. Strohl on cross examination) on customer deposits while others are required to pay 6%. Moreover, to the extent CEG is using customer deposits to fund operations, rather than using short-term borrowings, it is likely that the short-term interest rate CEG might be subject to would exceed .5%. The sub-docket the OUCC is recommending is the better forum for reviewing the issues and making these determinations.

Q: Does this discussion represent all of the OUCC's issues and concerns with the proposed Water Rules and Regulations?

A: No. The issues discussed above are examples of some of the most troubling rules identified by the OUCC. Issues and concerns with the water rules and regulations are also discussed by OUCC witness Harold Rees. As discussed in more detail below, the OUCC recommends a thorough review be conducted prior to approval of these proposed water rules and regulations.

B. Wastewater

Q: Please explain Joint Petitioners' proposal regarding wastewater rules and regulations.

A: Joint Petitioners are requesting approval of the proposed Terms and Conditions for Wastewater Service. Per pages 8-9 of her testimony, Ms. Prentice explains that the Sanitary District does not currently have rules and regulations that the Authority could adopt as its own but has adopted a number of ordinances governing certain aspects of the wastewater utility's operations. The ordinances adopted by the Sanitary District do not completely cover all aspects of operation

of a wastewater system and, in some instances, cover issues not typically included in a utility's rules and regulations. The proposed rules and regulations are based on a combination of current Sanitary District ordinances, the Commission's regulations for "Sewage Disposal Services" as set forth in 170 I.A.C. 8.5-1 *et seq.*, and Citizens Gas Terms and Conditions for Gas Service. (Exhibit LSP-3 reflects the updated wastewater rules and regulations in the form proposed by the Authority.)

Q: Does the OUCC accept the proposed wastewater rules and regulations?

A: No. In addition to the concerns expressed with the proposed water rules and regulations, the OUCC has several additional concerns and issues with the proposed wastewater rules and regulations. Although the OUCC believes that certain proposals, such as budget billing; duplicate notice protection; and senior services package will be beneficial for customers, most of these benefits will not be available for 18 to 24 months. There are other provisions that the OUCC considers could be expanded to other customers. In addition, the OUCC has concerns about the combined billing proposal and how that might affect certain customers, including the application of partial payments and customer deposits. In addition, there are some unnecessary differences between the water and wastewater rules and regulations as proposed that should be resolved before they are approved. Finally, the OUCC is concerned that CEG does not have a complete understanding of how it will implement some of the procedures it has conceived.

Q: Please explain the OUCC's concerns regarding when certain programs and services will be available.

A: On pages 5-6 of his testimony, Mr. Strohl discusses the various new services and programs that will be available for both water and wastewater customers. These services and programs are currently enjoyed by Citizens Gas customers and include budget billing, the senior services package, which includes the duplicate notice protection and deferred late payment charge plan, and a number of bill payment options. However, Mr. Strohl stated "[w]e expect the additional services and payment options to be available to customers of the water and wastewater systems within 18 to 24 months form the acquisition of the water and wastewater assets." The OUCC questions why it will take so long for customers to receive these benefits from the transfer of the water and wastewater assets to CEG. CEG should be prepared to explain why it is necessary to have a combined bill before any of these additional services are made available. None of these services appear to be directly related to combined billing or require a combined bill to be provided.

Q: Please explain the programs or services the OUCC considers could be expanded to other customer groups.

A: One of the programs identified is the deferred late payment charge plan. Currently this plan is available to seniors through the Senior Services Package and is intended "...to allow more time in situations where a bill cannot be paid because the due date conflicts with the timing of the receipt of a pension or Social Security check." The OUCC recommends that this program be available to all CEG and Authority customers. There are other customers besides seniors with

limited resources to pay their utility bills including low-income or other customers needing assistance spreading utility payments out due to timing of assistance payments or pay checks. The availability of a program like this could allow these customers to spread their combined bill over more than one payment during the month. Currently, customers are receiving a gas bill and a combined water/sewer bill, which have separate due dates. Customers currently have two due dates, which allows them some flexibility to budget their limited or fixed funds. Most customers will not need this flexibility, but for some it could be the difference between retaining access to all their utilities or having one or more of them turned off.

Q: Please explain the OUCC's concerns with the combined billing proposal.

A: The OUCC has numerous concerns regarding the implementation of combined billing and how it will affect customers. These concerns include the application of partial payments, customer deposits, and the imposition of bad check charges and reconnection fees. The OUCC believes that all of these issues require more discussion and development before finalizing the rules and regulations. For instance, it needs to be determined whether customers who pay a combined bill with a dishonored check will be charged one bad check fee or three fees. In response to OUCC discovery question 34-3 (MAS Attachment 10), Mr. Strohl responded to the following question as indicated below:

Q-34-3: After the closing of the transactions contemplated in this Cause, what bad check fee(s) will be charged to a combined water/wastewater customers who pays their bill with a dishonored check? Will the customer be charged one fee or two? If only one fee will be charged, which tariff will the fee be based on – water or wastewater?

Response: As currently proposed, the Terms and Conditions set forth in Petitioner's Exhibits LSP-2 and LSP-4 allow for separate returned check charges for each service. As Ms. Prentice stated during her cross-examination, combined water/wastewater bills would receive one bad check charge, as they do today. If a customer is only a wastewater customer, the CWA bad check charge would apply.

Although it appears that CEG and the Authority intend to charge only one bad check charge, this isn't at all clear in the proposed rules and regulations. As the rules and regulations are written, it appears certain fees could be charged multiple times for a single transgression. A similar issue may exist related to reconnection fees. If CEG turns all utilities off at the same time (one trip), it is unclear whether there will be one or more reconnection fees. Further, it is unclear whether additional costs are involved to turn off more than one utility during the same trip.

Since these types of fees are cost-based, it is imperative that they be accurately charged so that CEG does not materially over-recover or under-recover for these services. Also, it's possible that certain Citizens Gas rules and regulations may need some adjustment once a combined bill is provided to customers. Again, all of these issues are best addressed in a sub-docket before finalizing any proposed rules and regulations.

Q: Please explain the OUCC's concerns regarding the application of partial payments.

A: Currently, if a customer is having difficulty paying utility bills, the customer has some choice in how much to apply to each bill, determining for themselves which utility service will be in "danger" of being shut-off. With the advent of a combined gas/water/sewer bill and the proposed partial payment rules, a customer has much less control over this process and could have utility service shut-off post-combined bill that would not have happened pre-combined bill. For example, currently certain customers' gas service cannot be disconnected during winter months (i.e. those that qualify for low income energy assistance). Pre-combined bill, a customer having difficulty paying their utility bills in the winter does not have to worry about losing gas service, so they can pay their water/sewer bill fully and pay what they can on the gas bill. Under this scenario, no utility service will be lost at that time. However, post-combined bill, this same customer will most likely lose their water service because they will be considered late paying all three utilities. Customers in difficult straits should retain the ability to make legitimate decisions that will lessen their difficulties.

Q: Please elaborate on the differences the OUCC has identified between the water and wastewater rules and regulations.

A: An example of these differences can be found in the rules regarding customer deposits. The OUCC notes that the water rules and regulations specify that a water deposit could be requested under certain situations when a customer has been late paying their bill or have had their service shut-off. However, the water rules don't appear to allow the utility to require a deposit of an applicant as a

condition for receiving initial utility service. The only criteria mentioned for requiring a deposit is the customer's payment history with the utility. In contrast, the wastewater rules and regulations (Rule 7.1) state that "...the Utility may require a Residential Customer or *Applicant* to pay a cash deposit as a condition of receiving or continuing to receive Sewage Disposal Service, if the Utility determines that the Customer or Applicant does not meet the criteria for creditworthiness." (Emphasis added.) The wastewater rules and regulations also contain the unacceptable and possibly discriminatory rules (7.2 and 7.4) regarding deposits from non-residential customers. There is nothing in Joint Petitioners' testimony to explain why the wastewater deposit rules would be more stringent than the water rules and regulations. The OUCC recommends that deposit rules be thoroughly reviewed in a sub-docket before being approved. One of the goals would be to strive for simplicity and uniformity among the rules.

C. Sub-Docket Recommendation

Q: What does the OUCC recommend to resolve the issues identified with the proposed water and wastewater rules and regulations?

A: During cross-examination, CEG witness LaTona Prentice acknowledged that even if the Commission grants Joint Petitioners' proposal regarding water and wastewater rules and regulations, CEG intends to implement changes to those same rules and regulations. Ms. Prentice could not identify with specificity what those changes would be, and there is no specific information regarding future changes to rules and regulations in Joint Petitioners' testimony or responses to the OUCC's data requests.

The OUCC's review of the evidence, as discussed above, indicates that there are crucial unresolved issues regarding important sections of the proposed rules and regulations. In the absence of this information, the OUCC cannot render an opinion on whether unknown future changes by CEG to the rules and regulations being proposed for the water and wastewater utilities are or are not in the public interest. The matters of consumer deposits and billing are among the most important issues in the OUCC's determination of whether a particular proposed rule is in the public interest. Consequently, the OUCC recommends that, should the Commission approve the proposed transaction, the matter of water and wastewater rules and regulations be deferred to a sub-docket. This will allow for the necessary review of all changes proposed by CEG for its rules and regulations, once CEG has determined what it believes those necessary changes to be.

VI. OUCC RECOMMENDATIONS

Q: Please summarize your recommendations to the Commission in this cause.

A: I recommend the following:

- The Commission require CEG and the Authority to record the acquisition of water and wastewater assets in the same detail, both classification and value, as reflected in the City's books and records at closing
- The Commission require CEG to record the amount of CIAC and amortized CIAC that exists on DOW's balance sheet at the date of closing on the acquisition
- The Commission require CEG to amortize CIAC in the same manner that DOW employed

- For the water utility, the Commission require CEG to record contributions of plant and cash in accordance with NARUC guidelines and DOW's current practice.

- The Commission require that total "connection fees" (SDC) collected as of the closing date be recorded on the Authority's books as CIAC along with any other known contributions of plant or cash.

- The Commission require the Authority to amortize CIAC at 2.5% per annum.

- The Commission require that immediately after the acquisition the Authority begin recording CIAC in accordance with NARUC guidelines and maintain property records that can be reviewed by the Commission and the OUCC

- The Commission require CEG and the Authority to record as an acquisition adjustment the difference between net utility plant recorded at closing and the pre-determined purchase price.

- The Commission require CEG and the Authority to amortize any resulting acquisition adjustments according to GAAP guidelines and prohibit CEG and the Authority from including this amortization as part of their revenue requirements in future rate cases.

- The Commission require CEG and the Authority to maintain their books and records in accordance with NARUC's USOA

- The Commission find that any customer deposits held by the City at closing should either be paid back to customers or transferred to CEG or the Authority.

- The Commission approve the proposed 10% limitation on the total amount of allocated shared costs to the Authority

- The Commission require review of the shared cost allocations every three to five years to verify that they continue to be appropriate.

- The Commission prohibit CEG from contracting with an affiliated for-profit unregulated company to operate or provide shared services to the water or wastewater utilities.

- The Commission require that water meter reading costs be allocated to the wastewater utility as well as the water utility.

- The Commission require CEG's water utility to make the recommended corrections to the Swimming Pool Filling Service Fee (Appendix A) and to the Delinquent Account Collection Charge (Appendix B) or file a thirty day filing with the Commission to change them.

- The Commission require CEG's water utility to reclassify The "Connection Charges" included on page 102B of Appendix A and reflect them in Appendix A.

- The Commission require CEG's water utility bad check charge to be based upon CEG's current bad check charge of $11

- The Commission prohibit the water utility from filing a general rate case prior to January 1, 2014 except for emergencies.

- The Commission decline to approve section 8.14 of the Water APA or section 8.15 of the Wastewater APA, or clarify that approval of the purchase agreements shall not be construed as binding on the Commission to decrease its discretion or allow recovery in rates of expenses it considers unreasonable, imprudent, unlawful or excessive, or otherwise not conforming with Indiana ratemaking principles.

- The Commission approve annual 10.75% across-the-board increases to user rates through 2013.

- The Commission prohibit the escalation of the "connection fee" based on annual changes to the CPI.

- The Commission require the "connection" fee currently reflected on the Authority's wastewater tariff be re-designated as an SDC and the Authority be required to record any such fees as CIAC

- The Commission restrict the use of SDC funds to pay for growth related capital projects, which would include costs related to the STEP.

- The Commission set the initial SDC at $2,500.

- The Commission require the water reconnection fee be reviewed and revised as necessary to recover only the actual costs of this activity.

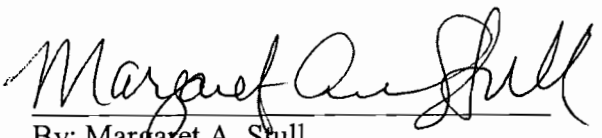
- The Commission require the wastewater reconnection fee be eliminated prior to approval of the wastewater tariff.
- The Commission require the wastewater late reporting charge be removed from the tariff and replaced with a cost-based fee and that the description of this fee be corrected.
- The Commission require the wastewater utility to file a general rate case in 2013 using a test year ended December 31, 2012.
- The Commission establish a sub-docket to address the proposed water and wastewater rules and regulations.
- The Commission require the City's current rules and regulations be in effect until the sub-docket process is complete.
- The Commission require that the deferred late payment program be available to all CEG and Authority customers.

Q: Does this conclude your testimony?

A: Yes. However, the Commission may issue an order in Indianapolis DOW, Cause No. 43645, which contains findings that may influence some of my recommendations in this case. Should an order in that case be issued prior to the hearing in this case, some of my recommendations may need to be revised.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



By: Margaret A. Stull
Indiana Office of
Utility Consumer Counselor

1/14/2011
Date

Cause No. 43936

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Twenty-Eighth Set of Data Requests

DATA REQUEST NO. 2: As acknowledged in response to Q5-29, Citizens will be acquiring both water and wastewater assets that were originally either contributed to the City or paid for from funds contributed to the City.

a) How will CEG or its affiliates record this acquired CIAC utility plant (water or wastewater)? Please provide the proposed accounting entry to record these assets.

b) If this utility plant will be classified as CIAC, will CEG or any of its affiliates amortize these CIAC balances?

c) How will the resulting "negative" acquisition adjustment, if any, be recorded and amortized on the books of CEG or any of its affiliates?

d) Will CEG or any of its affiliates seek recovery of any resulting acquisition adjustment when setting future rates?

RESPONSE:

OUCC DR 5-29 asked "[d]oes Citizens propose to acquire the net Contributions in Aid of Construction (CIAC) that are recorded on the Department of Public Works and transfer it to Citizens as part of the Purchase Agreement?" OUCC DR 5-29 does not mention water assets or contributed property or funds. Citizens and the Authority did not state in response to OUCC DR 5-29 that it "will be acquiring both water and wastewater assets that were originally either contributed to the City or paid for from funds contributed to the City." The response with respect to the Wastewater System, stated "The acquisition will include *any such property* that was financed through contributions in aid of construction." (Emphasis added) Consequently, the response did not "acknowledge" that such property actually existed. Citizens and the Authority respond as follows:

a) According to the City's most recent audited financial statements (12/31/09), contributions in aid of construction for the Waterworks at 12/31/09 amounted to $54,338,000. Such audited financial statements also state $54,318,000 of contributions in aid of construction represent the amount that was recorded by the Waterworks prior to its acquisition by the City and was carried forward to the City's books under regulatory accounting requirements. As Mr. Brehm indicated in his direct testimony (page 38, lines 10-21), Citizens and the Authority have not developed opening balance sheets for the Water System and the Wastewater System. Under Generally Accepted Accounting Principles, CEG and the Authority will have one year following closing to finalize their respective opening balance sheets. Consequently, Citizens and the Authority do not have the requested proposed accounting entries at this time.

b) See the response to OUCC DR 28-2, subpart (a).

c) See the response to OUCC DR 28-2, subpart (a).

d) It is not known whether an acquisition adjustment will be "resulting" from the transaction or whether any such acquisition adjustment will be positive or negative. However, to the extent Citizens ever requests that revenue requirements include I.C. 8-1.5-3-8(e) it does not intend to include the acquisition adjustment in the amount of the utility plant.

WITNESS:

John R. Brehm

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Fifth Set of Data Requests

DATA REQUEST NO. 29: Does Citizens propose to acquire the net Contributions in Aid of Construction (CIAC) that are recorded on the Department of Public Works and transfer it to Citizens as part of the purchase agreement?

RESPONSE:

As described in Section 2.02 of the Wastewater Asset Purchase Agreement, the Authority will acquire all real and personal property of the Wastewater System, except for the "Excluded Assets," which are noted in Section 2.02 of the Wastewater Asset Purchase Agreement. The acquisition will include any such property that was financed through contributions in aid of construction.

WITNESS:

John R. Brehm

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Twenty-sixth Set of Data Requests

Q 26-1: When R.W. Beck completed its valuation of the Indianapolis DOW water assets, Utility Plant in Service (UPIS) did R.W. Beck take into consideration the Contributions in Aid of Construction (CIAC)? If so, what is the Replacement Cost Less Depreciation (RCLD) value of CIAC of the Indianapolis DOW's water assets? Please provide all inputs and calculations used to derive this figure.

Answer: R. W. Beck did not determine what, if any, CIAC was included in the UPIS. The RCNLD was based on actual plant in service at the time of the appraisal.

Michael Lane*

* Sources of information are indicated at the end of answers. Such sources are not necessarily witnesses.

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Twenty-sixth Set of Data Requests

Q 26-2: When R.W. Beck completed its valuation of the Sanitary District's wastewater assets, Utility Plant in Service (UPIS) did R.W. Beck take into consideration the Contributions in Aid of Construction (CIAC)? If so, what is the Replacement Cost Less Depreciation (RCLD) value of CIAC of the Sanitary District's wastewater assets? Please provide all inputs and calculations used to derive this figure.

Answer: R. W. Beck did not determine what, if any, CIAC was included in the UPIS. The RCNLD was based on actual plant in service at the time of the appraisal.

Michael Lane

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Thirty-first Set of Data Requests

Q 31-1: Please state the amount of "connection fees" collected annually by the wastewater utility for each year since the fee was established.

Answer: The Connection Fee was approved in 2005, and was implemented in 2006. The annual collected revenue since that time as recorded in FAMIS (City Accounting software) is located in the chart below:

	2006	2007	2008	2009	2010(YTD)
Connection Fee	$1,817,594	$2,505,169	$6,458,605	$4,056,078	$3,591,039

Service Level Agreement for Fiscal Year 2010
Corporate Support Services and Citizens Resources

Background and Scope
Corporate Support Services (CSS) provides a combination of centralized support services and general Trust support to the operating divisions and selected affiliates of Citizens Energy Group. CSS also provides services to fellow CSS departments.
CSS includes executive administration, human resources, information systems and services, sales and marketing, finance and treasury, purchasing, safety, regulatory, corporate and environmental affairs, customer services, billing, risk management, and legal support.

Purpose of the Service Level Agreement
This Service Level Agreement (SLA) is intended to document the scope of professional services and support to be provided, the associated fees/costs, performance level expectations and measures. The customer and provider will periodically review this agreement and any revisions will be incorporated.

Term
The term of this agreement shall be from October 1, 2009 to September 30, 2010.

Communication
Periodic meetings will be conducted between CSS Service Providers and the customer to review SLA performance (CSS Scorecard and Departmental Scorecards) and identify new/changing customer needs. An internal customer survey will be conducted annually to quantify satisfaction levels and identify opportunities for improvement.

Responsibilities of the Customer
The customer of CSS services will be responsible for providing timely and accurate data to the appropriate CSS provider in order for the CSS provider to perform its services in the most efficient manner. The customer is also responsible for clearly identifying any information need, expected completion date, or perceived performance issue to the CSS provider as soon as possible so that appropriate action may be taken.

Service Costs
The costs associated with each service contain direct costs and indirect costs, i.e. all costs related to providing the service, including facility costs, support costs, and overheads. Any favorable or unfavorable cost variances incurred by the CSS departments will be allocated to the operating divisions each quarter.

Attachments
A. Detailed list of CSS Services provided and associated costs
B. Addendums for individual CSS Provider's performance expectations

The signatures below signify that the parties have read and agree to abide by the terms of this agreement.

Barbara Q. Smith Date 4-29-10
Barbara Q. Smith
Director-Operations
of Citizens Resources

Robert J. Hummel Date 4/30/10
Robert J. Hummel
VP of Human Resources
(on behalf of all CSS Departments)

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Sixth Set of Data Requests

DATA REQUEST NO. 5: On page 37 of his testimony Mr. Brehm asserts that satisfactory resolution of Cause No. 43645 is a condition precedent to CEG's obligation to consummate the transaction. How much of an increase in Cause No. 43645 is necessary to meet CEG's requirement of "satisfactory resolution of Cause No. 43645"? What other Commission findings are necessary in Cause No. 43645 to meet CEG's requirement of "satisfactory resolution of Cause No. 43645"? Please provide all analyses or studies that CEG has performed to reach its conclusion on what represents satisfactory resolution of Cause No. 43645.

RESPONSE:
Mr. Brehm did not merely "assert" that satisfactory resolution of Cause No. 43645 is a condition precedent to CEG's obligation to consummate the transaction. It is a fact of the transaction that is part of the Water System asset purchase agreement:

> **Section 13.04 IURC Approval of Purchaser Items**
> (b) The Rate Case shall have been resolved in a manner reasonably acceptable to Purchaser

The term "resolved" means more than merely the amount of the rate increase. The question is unanswerable absent an Order being issued by the Commission that can be studied by CEG. Mr. Brehm's prepared testimony on page 37, lines 14 – 19, states:

> given the Water System's current financial stress, absent sufficient rate relief in Cause No. 43645 no owner of the system, including CEG, would have the financial ability to operate, maintain and improve the Water System in order to provide adequate and reliable service to customers while maintaining sufficient financial flexibility to raise necessary debt capital across a variety of market conditions.

Mr. Brehm's prepared testimony on page 37, lines 5 – 12, further states:

> it is important for financial flexibility that a sufficient cushion above minimum [debt service coverage] criteria is consistently maintained. Consequently, rating agencies expect coverage levels in excess of these minimum legal requirements. This prudent operating practice and rating agency expectation is reflected in debt service coverage ratios of similarly rated wastewater issuers nationwide. Petitioner's Exhibit JRB-6 shows that the financial projections of the Water System result in maintaining a sufficient excess over the minimum debt service coverage ratio requirements for each year of the projections.

WITNESS:
John R. Brehm

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Fourth Set of Data Requests

Q 4-2: Please provide the Sanitary District's current tariff.

A. See Attachment 4-2, PDF labeled Marion County Code of Ordinances, Title III, Chapter 671.

Darrell Fishel
Stephen Nielsen

CITY-COUNTY GENERAL ORDINANCE NO. 32, 2009
Proposal No. 82, 2009

PROPOSAL FOR A GENERAL ORDINANCE to amend the Revised Code with respect to sewer connection permit fees, and sewer user rates and charges.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND MARION COUNTY, INDIANA:

SECTION 1. Section 671-22 of the "Revised Code of the Consolidated and County," regarding sewer connection permits, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 671-22. Connection permits.

(a) *Permit required.* It shall be unlawful to cause or allow the repair, modification or connection of a building sewer to a public sewer or another building within the sanitary district without a valid sanitary sewer connection permit issued by the division of compliance, and the fine imposed for a violation of this provision shall not be less than one hundred dollars ($100.00) for each day the violation continues; the city controller shall cause any fines collected under this section to be deposited into an account for the use and benefit of the division of compliance. Permits will not be granted for connections to sewers not dedicated and accepted in accordance with section 671-161 of this chapter. This shall in no way limit the issuance of a building permit subject to the approval of a sanitary sewer connection permit application.

(b) *Minimum elevations for gravity connection.* A sanitary sewer connection permit will not be granted to homes or buildings where the lowest elevation to have gravity sanitary service is less than one (1) foot above the top of manhole casting elevation of either the first upstream or downstream manhole on the public sewer to which the connection is to be made. If the first upstream or downstream manhole is at a higher elevation due to the natural topography of the area, an alternate manhole will be selected for the purpose of determining this measurement.

(c) *Grease interceptors.* A grease interceptor meeting the requirements of the Indiana Fire Prevention and Building Safety Commission shall be installed in waste lines (building sewers) from establishments delineated in section 671-4(g). The design and location of the grease interceptor shall be submitted to the division of compliance for approval.

(d) *Permit fees; refunds.* The following permits and payment of the associated fees are required to make a connection to the city's sanitary or combined sewer system. The board of public works shall establish the amount of the following fees by regulation and may revise the amount of such fees but not more often than once each calendar year:

(1) The building sewer permit inspection fee shall cover the costs of mandatory inspection by the division of compliance of the building sewer and its connection, and any reinspection that may be necessary because of remedial construction;

(2) The plan review fees shall cover the costs for the amount of time that is required for the division of compliance to administer and review plans submitted under this article for conformance with the department's standards and specifications;

(3) The administrative fee shall cover the department's costs related to administration, planning, and review for the sewer service agreement; and

(4) The <u>baseline</u> connection fee of two thousand five hundred dollars ($2,500.00) per EDU, will be assessed for all new connections to the sanitary or combined sewer system at the time of acquiring a building permit. A new connection would include new sewer service or modification of an existing sewer service agreement; however, replacement or repair of an existing individual building sewer that does not increase EDU's would not constitute a new connection.

The permit fee paid under this article shall not be refunded except upon request and in instances where the permit was issued in error, either because it was not required by law, or because a permit for the same activity previously had been issued and was in force at the time the second permit was applied for and issued.

(e) *Modification of connection fee.* The board of public works may modify the connection fee by regulation as provided in subsection (d) of this section. The connection fee per EDU shall change annually subject to the automatic rate adjustment procedures outlined herein. To the extent that the Consumer Price Index increases from year to year, indexing of connection fees shall occur automatically. Increases shall be based upon annual average percent changes for the twelve (12) month period ending in October of each year for "The All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U. S. City Average, 1982-84=100" as published on an unadjusted basis by the U. S. Bureau of Labor Statistics in November of each year, and shall become effective on January 1 of the ensuing calendar year. In no event shall the increase be less than zero (i.e., a negative value for the adjustment). The first increase in the connection fee, based on indexing, shall occur in 2010.

Example Increase Calculation: October Previous Year (PY)CPI 208.936

October Current Year (CY)CPI 216.573

$$\text{Annual Increase \%} = \frac{\text{October CY CPI} - \text{October PY CPI}}{\text{October PY CPI}}$$

$$3.66\% = \frac{216.573-208.936}{208.936}$$

Next Year Connection Fee = $2500 * 1.0366 = $2,591.50 = $2,590.00*

**The connection fee will be rounded to the nearest $10 increment.*

(f) *Applications.* An application for such connection permit shall be made on a form prescribed by the division of compliance and may require the following information:

(1) Name and address of the owner;

(2) The name, address and telephone number of the contractor;

(3) Address and, if necessary, the legal description of the premises where the work is to be done;

(4) Plans for the building sewer and connections, which at a minimum must consist of drawing(s) of the building, the parcel boundaries, the connection detail, including grease interceptor connection detail where applicable, materials of construction and installation method; and

(5) Any other information as may be deemed reasonable and necessary by the administrator of the division of compliance to carry out the provisions of this chapter.

(g) *Who may apply.*

(1) Application for a sewer connection permit shall only be made by the following:

a. A plumbing contractor licensed by the state and registered in accordance with Chapter 875 of this Code; or

b. A contractor (other than a plumbing contractor) who has met the surety bond and insurance requirements of the department of metropolitan development. Surety bond requirements are met if the building sewer contractor has filed and maintains with the city a surety bond, as set forth in Chapter 875 of this Code. Insurance requirements are met if the contractor has secured and maintains a public liability and property damage insurance policy as set forth in Chapter 875 of this Code.

(2) The division of compliance may deny permits to any applicant who is currently in violation of this chapter or any other applicable regulations.

(h) *Conformance with Indiana Fire Prevention and Building Safety Regulations.* All sewer work and other construction actually performed on or associated with the building drain, building sewer and the connection of the building sewer to the public sewer shall be in accordance with the rules and regulations of the Indiana Fire Prevention and Building Safety Commission and standard specifications of the department of public works.

(i) *Expiration of permit by operation of law; extensions.* The connection permit shall expire by operation of law and shall no longer be of any force or effect if work is not initiated within one hundred eighty (180) days from the date of issuance of the permit. The administrator of the division of compliance may, however, for good cause shown in writing, extend the duration of the permit for an additional period which is reasonable under the circumstances to allow commencement of the construction activity. In no event shall the extension exceed a period of sixty (60) days. If the construction activity has been commenced but only partially completed, and thereafter substantially no construction activity occurs on the construction site over a period of one hundred eighty (180) days, the permit shall expire by operation of law and no longer be of any force or effect; provided, however, the administrator may, for good cause shown in writing, extend the validity of any such permit for an additional period which is reasonable under the circumstances to allow resumption of construction activity. The fee for an extension under this subsection shall be thirty dollars ($30.00), and the extension shall be confirmed in writing.

(j) *Provisions of chapter supplemental to other construction ordinances.* This chapter shall not be construed as contravening any ordinances of the city relating to construction within public streets, roads or rights-of-way but rather shall be supplemental thereto.

(k) *Enforcement of bond.* Any action may be initiated in a court of competent jurisdiction relative to the bond provided for in subsection (g)(1)b. as follows:

(1) The corporation counsel of the city may initiate proceedings to forfeit a bond:

a. As a penalty for repeated Code violations by a contractor, his agents or employees; or

b. To indemnify the city against any loss, damage or expense sustained by the city by reason of the conduct of the contractor, his agents or employees.

(2) A person, partnership or corporation which holds a property interest in the real estate on which sewer work has occurred may bring an action against the bond for expenses necessary to correct code deficiencies therein after written notice of the code deficiency has been given to the contractor and after the contractor has been given a reasonable opportunity to correct performance. If such a person, partnership or corporation prevails in any action brought under this section, he may also be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended as determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

(l) *Variance procedure.* The administrator of the division of compliance, after consultation with the engineering division of the department of public works, shall have the power to modify or waive any minimum sanitary sewer design standard found in this article or in any regulations promulgated by the board pursuant to section 671-15 of this Code, which pertain to permits issued under this article. The administrator may grant such a variance if an applicant for a construction permit submits the request in writing and makes a substantial showing that:

(1) A minimum sanitary sewer design standard or regulation is unfeasible or unreasonably burdensome; and

(2) An alternate plan submitted by the applicant will achieve the same objective and purpose as compliance with minimum sewer design standards and regulations of the department.

If the administrator fails to respond within twenty (20) days from receipt of a written request for modification or waiver, such request shall be deemed to be denied. An applicant may appeal to the board a decision of the division of compliance which denies or partially denies a requested variance. The appeal of such a decision shall be filed with the board within twenty (20) days following the date of the

decision. The board shall hear the request for the variance de novo, and in making a decision shall apply the standards set forth above.

(m) Exemption relative to work accomplished by or for certain governmental units. Permits as required by this section shall be obtained for sewer connection activity in the city accomplished by or for a governmental unit, and inspections relative to such sewer connection activity shall be allowed. Fees shall be required as specified by the board of public works, except for the following:

(1) Sewer connection activity for which a fee cannot be charged by the municipality because of federal or state law; or

(2) Sewer connection activity accomplished by a unit of local government, or by its employee or contractor in the course of such employee's or contractor's performance of duties for a unit of local government.

(n) *Notice of change in permit information.* After a permit has been issued, the permittee shall give prompt written notice to the division of compliance of any addition to or change in the information contained in the permit application.

(o) *Amendment of permits and plans.* After a permit has been issued, any material deviation or change in the information contained in the permit application or the plans shall be considered an amendment subject to approval by the administrator of the division of compliance. Prior to the time construction activity involving the change occurs, the permittee shall file with the division of compliance a written request for amendment, including a detailed statement of the requested change and the submission of any amended plans. The division of compliance shall give the permittee written notice that the request for amendment has been approved or denied, and if approved, copies of the amended application or plans shall be attached to the original application or plans. The fee for the amendment of a permit shall be thirty dollars ($30.00). Reinspection fees and other fees which are occasioned by the amendment shall be assessed and paid in the same manner as for original permits or plans.

(p) *Transfer of permit.* A sanitary sewer connection permit may be transferred with the approval of the administrator of the division of compliance to a person, partnership or corporation which would be eligible to obtain such construction permit in the first instance (hereinafter called "transferee"), after both the payment of a fee of thirty dollars ($30.00) and the execution and filing of a form furnished by the division of compliance. Such transfer form shall contain, in substance, the following certifications, release and agreement:

(1) The person who obtained the original construction permit or a person who is employed by and authorized to act for the obtainer (hereinafter called "transferor") shall:

a. Certify under penalties for perjury that such person is familiar with the sanitary sewer construction activity accomplished pursuant to the construction permit; such person is familiar with the construction standards and procedures provided in this article; and to the best of such person's knowledge, information and belief the construction activity, to the extent performed, is in conformity with all standards and procedures provided in this article; and

b. Sign a statement releasing all rights and privileges secured under the construction permit to the transferee.

(2) The transferee shall:

a. Certify that the transferee is familiar with the information contained in the original construction permit application, the design plans and specifications, and any other documents filed in support of the application for the original construction permit;

b. Certify that the transferee is familiar with the present condition of the premises on which the construction activity is to be accomplished pursuant to the construction permit; and

c. Agree to adopt and be bound by the information contained in the original application for the construction permit, the design plans and specifications, and other documents supporting the

original construction permit application; or in the alternative, agree to be bound by such application plans and documents modified by plan amendments submitted to the director for approval.

The transferee shall assume the responsibilities and obligations of and shall comply with the same procedures required of the transferor, and shall be subject to any written orders issued by the administrator of the division of compliance. A permit for construction activity at a specified location may not be transferred to construction activity at another location.

(q) *Revocation of permits.* The division of compliance may revoke a permit when:

(1) The application, plans or supporting documents contain a false statement or misrepresentation as to a material fact; or

(2) The application, plans or supporting documents reflect a lack of compliance with the requirements of this article.

The sanction provided in this subsection shall in no way limit the operation of penalties provided elsewhere in this chapter.

(r) *Stop-work order.* The administrator of the division of compliance is empowered to issue an order requiring the suspension of the pertinent construction activity ("stop-work order") whenever the administrator determines that:

(1) Construction activity is proceeding in an unsafe manner;

(2) Construction activity is proceeding in violation of a requirement of this article;

(3) Construction activity is proceeding in a manner which is materially different from the application, plans, or supporting documents; or

(4) Construction activity for which a sanitary sewer connection permit is required is proceeding without such a permit being in force. In such an instance, the stop-work order shall indicate that the effect of the order terminates when the required permit is issued.

The stop-work order shall be in writing and shall state to which construction activity it is applicable and the reason for its issuance. The stop-work order shall be posted on the property in a conspicuous place and, if conveniently possible, shall be given to the person doing the construction and to the owner of the property or his agent. The stop-work order shall state the conditions under which construction may be resumed. The sanction provided in this subsection shall in no way limit the operation of penalties provided elsewhere in this chapter.

SECTION 2. Section 671-102 of the "Revised Code of the Consolidated and County," regarding the basis and calculation of sewer user charges, hereby is REPEALED.

SECTION 3. Chapter 671, Article IV of the "Revised Code of the Consolidated and County," regarding sewer user rates, charges and billing, hereby is amended by the addition of a NEW Sec. 671-102, to read as follows:

Sec. 671-102. Basis for charge; how calculated.

(a) The sewer user charge imposed by this article shall be based upon the monthly rates and charges as provided in this section.

(b) All retail users of the City's wastewater collection and treatment facilities shall pay a fixed monthly base charge per connection and a variable treatment charge per 1,000 gallons as noted below. Each customer will pay a minimum monthly charge if the combined base and treatment charges are less than the monthly minimum charge.

Non-Industrial User Rates

	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
Metered Monthly rates:						
Minimum Charge (per month)	$ 13.74	$ 15.22	$ 16.86	$ 18.67	$ 20.68	$ 22.90
Base Charge	$ 5.13	$ 5.68	$ 6.29	$ 6.97	$ 7.72	$ 8.55
Treatment Charges / 1,000 gallons						
First 7,500 gallons	$ 2.3758	$2.6312	$2.9141	$3.2274	$3.5743	$3.9585
Over 7,500 gallons	$ 2.4976	$2.7661	$3.0635	$3.3928	$3.7575	$4.1614

The non-industrial rates and charges shall be applied to all Residential, Commercial, Institutional and all non-industrial customers of the Sanitary District. The monthly base charge, together with the variable treatment charges, are subject to the minimum monthly charge noted above.

Industrial User Rates

	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
Metered Monthly rates:						
Minimum Charge (per month)	$ 14.15	$ 15.67	$ 17.35	$ 19.22	$ 21.29	$ 23.58
Base Charge (per month)	$ 5.13	$ 5.68	$ 6.29	$ 6.97	$ 7.72	$ 8.55
Treatment Charges / 1,000 gallons	$ 2.4976	$2.7661	$3.0635	$3.3928	$3.7575	$4.1614
Industrial Surveillance Rate - per 1,000 Gallons	$ 0.1189	$ 0.1317	$ 0.1459	$ 0.1616	$ 0.1790	$ 0.1982
Total Treatment & Surveillance Rate - per 1,000 Gallons	$ 2.6165	$ 2.8978	$ 3.2094	$ 3.5544	$ 3.9365	$ 4.3596

Excessive Strength Surcharges - Per Pound:	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
BOD in excess of 250 mg/l	$ 0.1621	$0.1795	$0.1988	$0.2202	$0.2439	$0.2701
SS in excess of 300 mg/l	$ 0.1831	$0.2028	$0.2246	$0.2487	$0.2754	$0.3050
NH^3 in excess of 20 mg/l	$ 0.8441	$0.9348	$1.0353	$1.1466	$1.2699	$1.4064

The Industrial rates and charges shall be applied to all Industrial customers of the Sanitary District. The monthly base charge, together with the variable treatment charges, are subject to the minimum monthly charge noted above.

Septic Hauler and Fats, Oil & Grease Charges

Septic Hauler Rates	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
In County Septic Waste:: All usage - per 1000 gallons	$50.12	$ 55.51	$ 61.48	$ 68.09	$ 75.41	$ 83.52
In County Grease Waste:: All usage - per 1000 gallons	$253.33	$ 280.56	$ 310.72	$ 344.12	$ 381.11	$ 422.08
Out of County Septic Waste:: All usage - per 1000 gallons	$75.10	$ 83.17	$ 92.11	$ 102.01	$ 112.98	$ 125.13
Out of County Grease Waste:: All usage - per 1000 gallons	$278.41	$ 308.34	$ 341.49	$ 378.20	$ 418.86	$ 463.89

Fats, Oil & Grease (FOG) Charges:	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
All Licensed Food/Cooking Facilities - Monthly Charge	$ -		$ 15.00	$ 20.00	$ 25.00	$ 30.00

(Description of Septic Hauler and FOG charges is noted below)

Septic Haulers:
Septic Haulers shall pay the above-noted metered rates and charges for septic waste and grease based upon the applicable In-County and Out-of-County customer rate classifications.

FOG – Licensed Food / Cooking Facilities:
Sanitary District customers that are by Ordinance required to be licensed as a food / cooking establishment shall be subject to a monthly charge for "Fats, Oil & Grease" ("FOG"). FOG charges (as noted in the table above) will support the additional costs of administering, monitoring, and treating the excessive strength waste associated with these establishments.

SECTION 4. Section 671-110 of the "Revised Code of the Consolidated and County," regarding exceptions to rates and charges for sewer users, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 671-110. Exceptions.

(a) In the case of one-, two- or multi-family residences, the billing for sewage service for the months of May, June, July, August and September shall be based upon the monthly average of the water used or delivered for the previous twelve (12) months of ~~March and~~ May through April. In the event the monthly average of the water used or delivered for such previous twelve (12) months ~~of March and April~~ is greater than the water used or delivered for the months of May, June, July, August and September, then the billing for sewage service shall be computed on the actual water used in the month for which the sewage service bill is being rendered.

(b) Where a metered water supply is used for fire protection as well as for other uses, the director may, at his/her discretion, make adjustments in the sewer user charge as may be equitable. In such cases the burden of proof as to the type of water usage shall be upon the user.

(c) Where a metered water supply is used for fire protection only, the sewer user charge shall not apply.

SECTION 5. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 6. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 7. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this 13th day of April, 2009, at 8:08 p.m.

ATTEST:

Bob Cockrum
Bob Cockrum
President, City-County Council

Melissa Thompson
Melissa Thompson
Clerk, City-County Council

Presented by me to the Mayor this 16th day of April, 2009, at 10:00 a.m.

Melissa Thompson
Clerk, City-County Council

Approved and signed by me this 24th day of April, 2009.

Gregory Ballard, Mayor

STATE OF INDIANA, MARION COUNTY)
) SS:
CITY OF INDIANAPOLIS)

I, Melisssa Thompson, Clerk of the City-County Council, Indianapolis, Marion County, Indiana, do hereby certify the above and foregoing is a full, true, and complete copy of Proposal No. 82, 2009, a Proposal for GENERAL ORDINANCE, passed by the City-County Council on the 13th day of April, 2009, by a vote of 26 YEAS and 3 NAYS, and was retitled General Ordinance No. 32, 2009, which was signed by the Mayor on the 24th day of April, 2009, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Indianapolis, Indiana, this 24th day of April, 2009.

Melissa Thompson
Clerk, City-County Council

(SEAL)

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Fourth Set of Data Requests

Q 4-3: For the Sanitary District, please provide the balance sheet, income statement, and statement of cash flow for 2007, 2008, and 2009.

A. See Attachment 4-3, PDF labeled Sanitary District Financials, 2007, 2008, 2009.

Darrell Fishel
Stephen Nielsen

Chapter 671 - SEWERS AND SEWAGE DISPOSAL

Cross reference—Disposal of matter from privies, § 391-116; streets, sidewalks and public ways, ch. 431; buildings and construction, ch. 536; environmental public nuisances, ch. 575; garbage, trash and refuse, ch. 601; public rights-of-way, ch. 645.

ARTICLE I. - IN GENERAL
ARTICLE II. - BUILDING SEWERS
ARTICLE III. - INDUSTRIAL DISCHARGE PERMITS
ARTICLE IV. - RATES, CHARGES AND BILLING
ARTICLE V. - PRIVATE DISPOSAL FACILITIES
ARTICLE VI. - WASTEWATER HAULING
ARTICLE VII. - SANITARY SEWER CONSTRUCTION PERMITS
ARTICLE VIII. - CITY SEWER CONSTRUCTION; PRO RATA COST SHARING

ARTICLE I. - IN GENERAL

Sec. 671-1. - Purpose and policy.
Sec. 671-2. - Definitions.
Sec. 671-3. - Unlawful disposal of wastes.
Sec. 671-4. - Regulation of discharges to public sewers.
Sec. 671-5. - Modification of federal categorical pretreatment standards.
Sec. 671-6. - State and federal requirements.
Sec. 671-7. - City's right of revision.
Sec. 671-8. - Baseline report.
Sec. 671-9. - Excessive discharge.
Sec. 671-10. - Accidental discharge.
Sec. 671-11. - Liability for damage.
Sec. 671-12. - Special agreements.
Sec. 671-13. - Monitoring devices; metering equipment.
Sec. 671-14. - Right to inspect.
Sec. 671-15. - Rules and regulations.
Sec. 671-16. - Penalties.
Sec. 671-17. - Recordkeeping requirement.
Secs. 671-18—671-21. - Reserved.

Sec. 671-1. - Purpose and policy.

This chapter sets forth uniform requirements for discharges into, the construction of and additions to the City of Indianapolis Wastewater Collection and Treatment System. These requirements enable the city to protect public health, ensure a sound sewer infrastructure system in the future, and comply with all applicable local, state and federal laws relating thereto.

The objectives of this chapter are:

(1)

To prevent the introduction of pollutants into the city wastewater system which will interfere with the normal operation of the system or contaminate the resulting municipal sludge;

(2)

To prevent the introduction of pollutants into the city wastewater system which do not receive adequate treatment in the POTW and which will pass through the system into receiving waters or the atmosphere;

(3)

To improve the opportunity to recycle and reclaim wastewater and sludge from the system;

(4)

To prevent the introduction of infiltration and inflow into the wastewater collection system which will occupy capacity reserved for community growth;

(5)

To discourage the construction of new sanitary sewers that do not accommodate future growth and lack the quality expected of the city's infrastructure;

(6)

To discourage the construction of privately owned sanitary sewers; and

(7)

To disallow the issuance of sanitary sewer connection permits for gravity service to buildings with inadequate elevation.

This chapter provides for the regulation of discharges into the city's wastewater system through the issuance of industrial discharge and building permits, the execution of special agreements, and the enforcement of administrative regulations.

In furtherance of these objectives, this chapter details the general regulation of discharges to public sewers; the issuance of connecting permits for building sewers; the inspection of building sewers; the issuance of construction permits for sewer expansions; the issuance of discharge permits for industrial users of the system; the establishment of a system of rates, charges and billings for the use of the system; and regulations for private disposal facilities.

(G.O. 27, 1991, § 1)

Sec. 671-2. - Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section unless the context specifically indicates otherwise.

ASTM means the American Society for Testing and Materials.

Accidental discharge means an unintentional release of a material that could potentially violate the requirements of subsection 671-4(c), (d) or (e).

Act means the Federal Water Pollution Control Act, as amended as of January 1, 1995, 33 USC 1251 et seq., also known as the Clean Water Act or CWA.

Administrative fee means a fee assessed to all parcels that require a new or modified sewer service agreement with the city.

Administrator means the Regional Administrator of Region V, U.S. Environmental Protection Agency or Commissioner of the Indiana Department of Environmental Management or its successor, provided such state agency has a pretreatment program approved by the EPA.

Applicable pretreatment standard means, for any specified pollutant, the city's prohibitive discharge standards, the city's specific limitations on discharges, the State of Indiana pretreatment standards, or the federal general or categorical pretreatment standards (when effective), whichever standard is most stringent.

Approval authority means the administrator.

Authorized representative of industrial user means:

(1)

A responsible corporate officer if the industrial user is a corporation. A responsible corporate officer means:

a.

A president, vice-president, treasurer or secretary of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation; or

b.

A manager of one (1) or more manufacturing, production or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000.00) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to such manager in accordance with corporate procedures.

(2)

A general partner or proprietor if the industrial user is a partnership or sole proprietorship, respectively.

(3)

For a municipality, state, federal or other public agency, by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(4)

An individual duly authorized by the person designated in subsection (1), (2) or (3) above, provided:

a.

The authorization is made in writing by the individual described in subsection (1), (2) or (3) above;

b.

The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the discharge originates, such as the position of plant manager, plant engineer, superintendent, or a position of equivalent responsibility or having overall responsibility for environmental matters for the company; and

c.

The written authorization is submitted to the city.

Board means the board of public works.

BOD (denoting biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system that receives the discharge from solid waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (one and one-half (1.5) meters) outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal and shall include that portion of the drain within the public right-of-way.

Bureau of license and permit services or *bureau* means the bureau of license and permit services of the department of code enforcement.

Categorical pretreatment standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act that apply to a specific category of industrial user.

City sewer means a sewer owned and operated by the city.

Combined sewer means a sewer that has been designed or intended to receive both surface runoff and sewage.

Composite sample means a twenty-four-hour composite sample. Samples may be done either manually or automatically, and continuously or discretely, with not less than twelve (12) samples to be composited.

Connection fee means an assessment to compensate the city for all the costs of capacity for the city's sewer including the entire combined sewer system and its treatment facilities.

Cooling water means the water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.

Department means the Department of Public Works, City of Indianapolis.

Direct discharge means the discharge of treated or untreated wastewater directly to the surface waters of the state.

Director means the director of the department of public works or his or her authorized deputy, agent or representative.

Division of inspections means the division of inspections of the department of code enforcement.

Discharge report means any report required of an industrial user by section B.2. of the industrial discharge permit.

Domestic wastewater means wastewater of the type commonly introduced into a POTW by residential users.

EDU's means equivalent dwelling unit, and shall be determined in accordance with industry standards and shall reflecting the greater of the actual daily flow requirements (per 327 IAC 3), the area ratio of the water meter size serving a particular user, or such means of determination deemed appropriate by the director. One (1) EDU shall be estimated as equal to equal three hundred ten (310) gallons per day.

EPA means the U.S. Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of such agency.

Foundation drains means any network of pipes, pumps or drainage mechanism located at, near or under a footing, foundation or floor slab of any building or structure that intentionally or unintentionally conveys groundwater away from a building or structure.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

General pretreatment regulations means "General Pretreatment Regulations for Existing and New Sources of Pollution," 40 CFR Part 403.

Grab sample means a sample that is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

Heat pump discharge means water discharged from a heat pump or other device that uses water as a heat source or heat sink.

Indirect discharge means the discharge or the introduction of nondomestic pollutants from any source regulated under section 307(b) or (c) of the Act (33 USC § 1317) into the POTW (including holding tank waste discharged into the system).

Industrial surveillance section means the industrial surveillance section of the department of public works.

Industrial user means any user of the POTW who discharges, causes or permits the discharge of nondomestic wastewater into the POTW.

Industrial wastewater means a combination of liquid and water-carried waste discharged from any industrial user's establishment and resulting from any trade or process carried on in that establishment, including the wastewater from pretreatment facilities and polluted cooling water.

Infiltration means the groundwater entering the sewer system from the ground through such means as, but not limited to, defective or poorly constructed pipes, pipe joints, connections and manholes or from drainage pipes constructed to remove groundwater from areas such as building foundations and farm fields.

Inflow means the stormwater and surface water entering directly into sewers from such sources as, but not limited to, manhole covers, roof drains, basement drains, land drains, foundation drains, cooling/heating water discharges, catch basins or stormwater inlets.

Interference means any discharge that, alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Lift station means any arrangement of pumps, valves and controls that lifts wastewater to a higher elevation.

NH3-N (denoting ammonia nitrogen) means all of the nitrogen in water, sewage or other liquid waste present in the form of ammonia, ammonia ion or in the equilibrium NH+4 NH3 + H+.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

New source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

(1)

The building, structure, facility or installation is constructed at a site at which no other source is located;

(2)

The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3)

The production or wastewater-generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of (2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.

Construction of a new source has commenced if the owner or operator has:

(1)

Begun or caused to begin as part of a continuous on-site construction program:

a.

Any placement, assembly or installation of facilities or equipment; or

b.

Significant site preparation work, including clearing, excavation or removal of existing buildings, structures or facilities that is necessary for the placement, assembly or installation of new source facilities or equipment; or

(2)

Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Nonindustrial user means all users of the POTW not included in the definition of "industrial user."

Pass-through means a discharge that exits the POTW into waters of the state in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation.)

Person means any individual, partnership, trust, firm, company, association, society, corporation, group, governmental agency including, but not limited to, the United States of America, the State of Indiana and all political subdivisions, authorities, districts, departments, agencies, bureaus and instrumentalities thereof, or any other legal entity or any combination of such.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Pollutant means, but is not limited to, any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical materials, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water.

Pollution means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

POTW means all publicly owned facilities for collecting, pumping, treating and disposing of wastewater, including sewers, lift stations, manhole stations and the wastewater treatment plants.

Pretreatment or treatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes or process changes or other means, except as prohibited by 40 CFR section 403.6(d).

Pretreatment standard or regulation means any substantive or procedural requirement related to pretreatment contained in this chapter.

Process wastewater means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (") inch (one and twenty-seven one-hundredths (1.27) centimeters) in any dimension.

Public sewer means any combined or sanitary sewer or lift station located within the public right-of-way or a dedicated easement and that is controlled by public authority.

Radioactive material means any material (solid, liquid or gas) that spontaneously emits ionizing radiation and that is regulated by the Nuclear Regulatory Commission (NRC) or the Indiana State Board of Health. This may include naturally occurring radioactive material, by-product material, accelerator produced material, source material or special nuclear material.

Sanitary district means that area incorporated into the Marion County Liquid Waste Sanitary District.

Sanitary sewer means a sewer that carries sewage and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

Sewage normally discharged by a residence means the liquid waste contributed by a residential living unit and shall not exceed a volume of ten thousand five hundred (10,500) gallons per month, thirty (30) pounds of BOD per month, and thirty-five (35) pounds of suspended solids per month.

Sewer means a pipe or conduit for carrying sewage.

Sewer work means the connecting of any building sewer to a city sewer, the making of a significant alteration to or significant repair of a building sewer, the connecting of a building sewer to a building drain or the altering or repairing of a city sewer.

Shall is mandatory; may is permissive.

Significant industrial user (SIU) means any industrial user that is:

(1)

A facility regulated by a national categorical pretreatment standard and generates a process discharge;

(2)

A noncategorical facility with a process wastewater discharge greater than an average of twenty-five thousand (25,000) gallons per day;

(3)

Any industrial user with a reasonable potential to adversely affect the POTW, its treatment processes or operations, or its sludge use or disposal or for violating any pretreatment standard or requirement;

(4)

Any other industrial user deemed to be significant by the director on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement; or

(5)

Any other industrial user that contributes process wastewater that makes up five (5) percent or more of the dry weather average hydraulic or organic capacity of the POTW treatment plant.

Upon a finding that an industrial user meeting the criteria of paragraphs (2), (3), (4) and (5) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the director may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR § 403.8(f)(6), determine that such industrial user is not a significant industrial user.

Slug means any discharge of wastewater that, in concentrations of any given constituent, as measured by a grab sample, exceeds more than five (5) times the allowable discharge limits as specified in this chapter and/or in quantity of flow exceeds more than five (5) times the user's average flow rate as authorized in the user's industrial discharge permit, for a period of duration longer than fifteen (15) minutes.

Storm drain or *storm sewer* means a sewer that carries stormwaters and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Stormwater means any flow occurring during or following any form of natural precipitation and resulting therefrom.

Suspended solids (SS) means solids that either float on the surface of or are in suspension in water, sewage or other liquids and that are removable by laboratory filtering.

Toxic pollutant means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provisions of CWA §§ 307(a) or 405(d) or other Acts.

Upset means an exceptional incident in an industrial user's facility, in which there is unintentional and temporary noncompliance with applicable pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

User means any person who contributes, causes or permits the contribution of wastewater into the city's POTW.

Wastewater means a combination of the liquid and water-carried pollutants from residences, commercial businesses, institutions and industrial establishments, together with such groundwaters, surface waters and stormwaters as may be present.

Wastewater treatment plant means any arrangement of devices and structures used for treating wastewater.

Wastewater works means all facilities for collecting, pumping, treating and disposing of wastewater.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Abbreviations. The following abbreviations shall have the designated meanings:

BOD or BOD5:	Biochemical oxygen demand
CFR:	Code of Federal Regulations (July 1, 1994 edition)
COD:	Chemical oxygen demand
CWA:	Clean Water Act
G.O.:	General Ordinance
IC:	Indiana Code
IAC:	Indiana Administrative Code (as amended as of December 1, 1994)
IDEM:	Indiana Department of Environmental Management
ISBH:	Indiana State Board of Health
l:	Liter
mg:	Milligrams
mg/l:	Milligrams per liter

NPDES:	National Pollutant Discharge Elimination System
SIC:	Standard industrial classification
SS:	Suspended solids
SWDA:	Solid Waste Disposal Act, 42 USC § 6901 et seq.
TSS:	Total suspended solids
40 CFR 136:	"Guidelines Establishing Test Procedures for the Analyses of Pollutants"

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1; G.O. 3, 2002, § 40; G.O. 107, 2005, § 1: G.O. 63, 2009, § 85)

Cross reference—Definitions generally, ch. 102.

Sec. 671-3. - Unlawful disposal of wastes.

(a)

It shall be unlawful to discharge to any natural outlet or watercourse within the city any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with the laws of the United States, the State of Indiana and the city.

(b)

Except where a valid NPDES permit exists, the owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a city sewer, is hereby required at his/her expense to connect such facilities directly with the proper city sewer in accordance with the provisions of this chapter within ninety (90) days after the day of official notice to do so, provided that such city sewer is within one hundred (100) feet (30.5 meters) of the property line, notwithstanding whether or not the facilities are served by any private sewage disposal system and within conditions as hereinafter provided.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-4. - Regulation of discharges to public sewers.

(a)

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff or subsurface drainage into any sanitary sewer.

(b)

Stormwater and all other unpolluted drainage may be discharged through existing structures to such sewers as are specifically designated as combined sewers or storm sewers. No additional flow shall be introduced. Industrial cooling waters or unpolluted process waters may be discharged, on approval of application as provided in section 671-41.

(c)

No person shall discharge or cause to be discharged to any city sewer wastewater or pollutants which cause, threaten to cause or are capable of causing, either alone or by interaction with other substances:

(1)

Fire or explosion hazard;

(2)

Corrosive structural damage to the POTW but in no case water with a pH lower than 5.0 or higher than 12.0;

(3)

Obstruction to the flow in city sewers or other interference with the proper operation of the POTW;

(4)

An interference;

(5)

A pass-through.

(d)

No person shall discharge or cause to be discharged to any city sewer:

(1)

A slug or a flow rate and/or pollutant discharge rate which is excessive over a relatively short time period so that there is a treatment process upset and subsequent loss of treatment efficiency;

(2)

Heat in amounts which will inhibit biological activity at the wastewater treatment plant but in no case greater than sixty (60) degrees centigrade (one hundred forty (140) degrees Fahrenheit) or heat in such quantities that the temperature at the wastewater treatment plant exceeds forty (40) degrees centigrade (one hundred four (104) degrees Fahrenheit);

(3)

Any wastewater containing toxic pollutants or any discharge which could result in toxic gases, fumes or vapors in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed applicable categorical pretreatment standards;

(4)

A wastewater with a closed cup flash point of less than one hundred forty (140) degrees Fahrenheit or any liquids, solids or gases which, by reason of their nature or quantity, are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious or hazardous in any other way to the POTW or to the operation of the wastewater treatment plant. At no time shall a discharge cause a reading on a meter capable of reading L.E.L. (lower explosive limit) to be greater than ten (10) percent at the point of discharge to the POTW or at any point in the POTW;

(5)

Any noxious or malodorous liquids, gases or solids which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair;

(6)

Solid or viscous substances and/or other pollutants which may cause obstruction to the flow in a sewer or other interference with the operation of the POTW such as, but not limited to, grease, improperly shredded garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, tar, asphalt residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes, or tumbling and deburring stones;

(7)

Any substance which may cause the POTW's effluent or any other product of the wastewater works such as residues, sludges or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under section 405 of the Act;

(8)

Any substance which will cause the POTW to violate its NPDES permit or the receiving stream's water quality standards;

(9)

Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes, inks and vegetable tanning solutions;

(10)

Any wastewater containing radioactive material above limits contained in regulations, licenses or orders issued by the appropriate authority having control over their use. The disposal of any licensed radioactive material must meet applicable local, state or federal requirements;

(11)

Any wastewater containing a total petroleum hydrocarbons concentration as determined by a procedure deemed appropriate by the director in excess of two hundred (200) mg/l. This limitation shall apply at the point of discharge to the city sewer system and is the maximum concentration allowed in any single grab sample collected from the waste stream;

(12)

Any gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, carbides, hydrides, stoddard solvents, sulfides, epoxides, esters, amines, polynuclear aromatic hydrocarbons, pyridines, new and used motor oil, or antifreeze, except at concentrations which do not exceed levels of such substances which are routinely present in the normal wastewater discharge and do not otherwise violate any section of this chapter or the conditions of an industrial discharge permit or a special agreement; and

(13)

Polychlorinated biphenyls (PCBs) in any detectable concentrations.

(e)

No person shall discharge or cause to be discharged a wastewater which has a twenty-four-hour composite value in excess of the values shown on table 1.

TABLE 1

NONCATEGORICAL DISCHARGE LIMITS

Pollutant	Maximum Allowable Concentration 24-Hour Composite Sample Value (mg/l)
Arsenic	4.0
Cadmium	1.2
Chromium (total)	24.0
Chromium (hex)	3.4
Copper	2.2

Cyanide (amenable)	0.4
Lead	4.7
Nickel	7.3
Phenol	46.0
Pentachlorophenol	0.012
Zinc	38.0
Mercury	0.025
Silver	4.2

(f)

The limitations set forth in table 1 above apply at the point of discharge to the city sewer system. The limitations for amenable cyanide, total cyanide and phenols apply to twenty-four-hour composite samples only in those cases where the composite sample is preserved according to EPA approved methods prior to collection. Otherwise, the values set forth for amenable cyanide, total cyanide and phenols or, with the approval of the director, any other listed pollutants shall apply to an instantaneous grab sample taken during prevailing discharge conditions and representative of the facility's discharge in general. The limitations and requirements imposed in subsections (c) and (d) of this section shall apply at the point of discharge to the city sewer unless specified otherwise.

(g)

A grease interceptor shall be installed in the waste line leading from sinks, drains and other fixtures or equipment in restaurants, cafes, lunch counters, cafeterias, bars and clubs; hotel, hospital, sanitarium, factory or school kitchens; or other establishments where grease may be introduced into the drainage or sewage system in quantities that can affect line stoppage or hinder sewage treatment. The characteristics, size and method of installation of the grease interceptor shall meet the requirements imposed by the department of fire prevention and building services and shall be reviewed and approved by the department of public works prior to the commencement of installation. Approval of proposed facilities or equipment does not relieve the person of the responsibility of enlarging or otherwise modifying such facilities to accomplish the intended purpose. On a showing of good cause, the director may waive this requirement. A grease interceptor is not required for individual dwelling units or for any private living quarters.

(h)

No user shall change substantially the character or volume of pollutants discharged to the POTW without prior written notification to the city.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1; G.O. 177, 1996, § 1)

Sec. 671-5. - Modification of federal categorical pretreatment standards.

When the city demonstrates consistent removal of pollutants limited by federal categorical pretreatment standards, as required by 40 CFR 403.7, the city may apply to the administrator of the EPA, or the state if it has an approved pretreatment program, for authorization to give a removal credit to reflect removal of toxic or other regulated pollutants by the city's wastewater treatment system.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-6. - State and federal requirements.

Federal categorical pretreatment standards or state requirements and limitations on discharges shall apply in any case where they are more stringent than those in this chapter. To the extent the federal regulations contain stricter standards, the categorical pretreatment standards, found in 40 CFR Chapter I, Subchapter N, Parts 405—471, are hereby incorporated by reference into this chapter. To the extent the state regulations contain stricter standards, the pretreatment standards found in 327 IAC 5-12-6 are hereby incorporated by reference into this chapter.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-7. - City's right of revision.

The city reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the wastewater system than those in this chapter if deemed necessary to comply with the objectives presented in section 671-1 of this chapter or to comply with federal or state laws.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-8. - Baseline report.

Within one hundred eighty (180) days after the effective date of a federal categorical pretreatment standard, or one hundred eighty (180) days after the final administrative decision made on a category, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to the POTW will be required to submit to the director a report containing the following information as required by 40 CFR 403.12(b):

(1)

Identifying information. The user shall submit the name and address of the facility, including the name of the operator and owners.

(2)

Permits. A list of any environmental control permits held by or for the facility.

(3)

Description of operations. User shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the wastewater works from the regulated processes.

(4)

Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a.

Regulated process streams; and

b.

Other streams as necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e).

The director may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5)

Measurement of pollutants. The pretreatment standards applicable to each regulated process and concentration and nature (or mass) as measured according to 40 CFR 403.12(b)(5).

(6)

Report of compliance. The report shall state whether the applicable pretreatment standards or regulations are being met on a consistent basis. If not, then the report shall state what operation and maintenance and/or pretreatment is necessary to bring the user into compliance and the shortest schedule by which the user will provide such additional operation and maintenance and/or pretreatment, provided that the completion date shall not be later than the compliance date established for the applicable categorical pretreatment standard. This statement shall be signed by an authorized representative of the industrial user and certified by a professional engineer licensed in the State of Indiana.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-9. - Excessive discharge.

No industrial user shall ever increase the use of process water or other flows to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards or in any other pollutant-specific limitation developed by the city or state.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-10. - Accidental discharge.

(a)

Each industrial user shall provide protection from accidental discharge of substances regulated by this chapter. Facilities to prevent accidental discharge shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be available to the city for review. All existing industrial users shall complete such a plan within six (6) months after the effective date of this chapter. No industrial user who commences contribution to the POTW after the effective date of this chapter shall be permitted to introduce pollutants into the system until accidental discharge procedures are available. Such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the industrial user's facility as necessary to meet the requirements of this chapter.

(b)

In the case of an accidental discharge, it is the responsibility of the industrial user to immediately telephone and notify the director of the incident. The notification shall include:

(1)

Name of company;

(2)

Location of discharge;

(3)

Type of waste discharged;

(4)

Concentration and volume of waste discharged;

(5)

Corrective actions taken to minimize the impact of the discharge to the POTW.

(c)

The industrial user shall notify the city if it is unable to comply with any requirement of this chapter because of a breakdown of its treatment equipment, accidents caused by human error, or upsets. The notification should include the information required in subsection (b) above.

(d)

Within five (5) working days, unless extended by the director in writing, the industrial user shall submit to the director a detailed written report describing the accidental discharge, including:

(1)

The cause of the accidental discharge;

(2)

The period of the accidental discharge, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

(3)

Steps being taken and/or planned to reduce, eliminate or prevent recurrence of the accidental discharge.

(e)

Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the wastewater works or aquatic life, fish kills, or any other damage to persons or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this chapter or other applicable law.

(f)

An affirmative defense of upset may be available to an industrial user in an enforcement proceeding. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that:

(1)

An upset occurred and the industrial user can identify the specific cause(s) of the upset;

(2)

The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(3)

The industrial user has submitted to the city the information required in subsections (c) and (d) above;

(4)

The industrial user complied with any reasonable remedial measures to minimize or prevent any discharge or sludge use or disposal in violation of this chapter which has a reasonable likelihood of adversely affecting human health or the environment.

Any upset defense is only available for violations of categorical pretreatment standards or technology-based permit effluent limitations.

(g)

A notice shall be permanently posted on the user's bulletin board or other prominent place advising affected employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-11. - Liability for damage.

If any person discharges or causes to be discharged a waste which causes interference, pass-through, obstruction, damage or any other impairment to the POTW, the director may assess a charge against such person for:

(1)

The work required to clean or repair the POTW;

(2)

Any civil penalty, fine or cost of compliance with injunctions or other orders of a court or governmental authority imposed against the city as a result of such interference, obstruction, damage or impairment; and

(3)

All other costs incurred by the city as a result of such interference, pass through, obstruction, damage or impairment including but not limited to expert, consultant and attorneys' fees;

and add such charges to such person's regular charge.

A person shall have an affirmative defense to any charge assessed against it under this section where the person can demonstrate that it did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference, and:

(1)

A local limit designed to prevent pass through and/or interference, as the case may be, has been developed for each pollutant in the person's discharge that caused pass through or interference, and the person was in compliance with such local limit directly prior to and during the pass through or interference; or

(2)

If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed for the pollutant(s) that caused the pass through or interference, the person's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the person's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-12. - Special agreements.

Special agreements and arrangements between the department and any person may be established when, in the opinion of the director, unusual or extraordinary circumstances compel special terms and conditions. The director shall consider the total cost of application of technology in relation to the pollutant reduction benefits to be achieved from such application, the quality of pollutants that will be included in the discharge, the impact of those pollutants on the POTW and the receiving stream, and such other factors as the director deems appropriate. A violation of a term of a special agreement shall be considered a violation of this chapter. There cannot be special agreements and arrangements where federal categorical pretreatment standards and requirements apply.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Sec. 671-13. - Monitoring devices; metering equipment.

(a)

Installation and maintenance at industrial user's expense. The director may require, as is necessary to carry out the requirements of this chapter, any industrial user to construct at his/her own expense monitoring facilities to allow inspection, sampling and flow measurement of the building drain or sewer and may also require sampling or metering equipment to be provided, installed and operated at the industrial user's expense. The monitoring facility should normally be situated on the industrial user's premises, but the director may, when such a location would be impractical or cause undue hardship, upon his/her approval allow the facility to be constructed in the public right-of-way; provided, however, the department of public works shall be the authority, through the street maintenance, traffic and street engineering divisions, to determine the locations on the public right-of-way on or below which the monitoring device and facility shall be placed.

(b)

Temporary right-of-way use permit. The owner of the property abutting the public right-of-way to be used for the installation of the monitoring device shall submit to the appropriate city agency a temporary right-of-way use permit request. The maintenance, traffic and street engineering divisions staff of the department of public works shall review the temporary right-of-way use request and site plan prior to issuing the permit.

(c)

Industrial users. Industrial users subject to categorical pretreatment standards shall have the option to designate a sampling location at a point containing only regulated process wastewaters or at a point containing the combined waste stream to demonstrate compliance with the applicable standard. The industrial user shall prove to the satisfaction of the director that the selected self-monitoring location contains all regulated waste streams. This option does not relieve the industrial user of the requirements specified in subsection (a) of this section.

(d)

An industrial user shall obtain written approval of the director prior to changing the point of self-monitoring activities.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1; G.O. 15, 2001, § 121)

Sec. 671-14. - Right to inspect.

Whenever required to carry out the objectives of this Code, the director or his/her authorized representative, upon presentation of his/her credentials, shall have a right of entry to, upon or through any premises for purposes of reviewing relevant records or inspecting, measuring and sampling of the discharges. This right of entry shall include, but not be limited to, any equipment necessary to conduct such inspections, measuring and sampling. It shall be the duty of the person to provide all necessary clearance before entry and not to unnecessarily delay or hinder the director in carrying out the review of relevant records, inspection, measuring and sampling. The right of entry shall exist at any time.

(G.O. 27, 1991, § 1)

Sec. 671-15. - Rules and regulations.

After the passage of this chapter, and from time to time thereafter as may be needed, both the board of public works and the board of code enforcement may, by resolution, promulgate rules and regulations necessary to implement and carry out the provisions of this chapter and not inconsistent therewith. Before any such rules and regulations shall become effective, the board of public works and the board of code enforcement shall follow the procedures provided in Chapter 141 of this Code.

(G.O. 27, 1991, § 1; G.O. 15, 2001, § 122; G.O. 63, 2009, § 86)

Sec. 671-16. - Penalties.

(a)

Notwithstanding any other section, any person who violates any provision or discharge limit of this chapter may be fined an amount not to exceed two thousand five hundred dollars ($2,500.00). A violation of any permit issued under this chapter or special agreement entered into under the authority of this chapter shall constitute a violation of this chapter. Each day's violation shall constitute a separate offense.

(b)

Nothing in this chapter shall restrict any right which may be provided by statute or common law to the city to bring other actions, at law or equity, including injunctive relief. Violations of this chapter may be resotved through administrative adjudication as provided in Article V, Chapter 103.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1; G.O. 181, 1997, § 3)

Sec. 671-17. - Recordkeeping requirement.

(a)

Any industrial user subject to the reporting requirements established in this chapter shall maintain records of all information resulting from any monitoring activities required by this chapter. Such records shall include for all samples:

(1)

The date, exact place, method and time of sampling and the name(s) of the person or persons taking the samples;

(2)

The dates analyses were performed;

(3)

Who performed the analyses;

(4)

The analytical techniques/methods used; and

(5)

The results of such analyses.

(b)

Any industrial user subject to the reporting requirements established in this chapter shall be required to retain for a minimum of three (3) years any records of monitoring activities and results and shall make such records available for inspection and copying by the director, the EPA and the IDEM. The city may extend the record-keeping retention requirement beyond three (3) years during periods of litigation, in anticipation of litigation, or as requested by the approval authority.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 1)

Secs. 671-18—671-21. - Reserved.

ARTICLE II. - BUILDING SEWERS

Sec. 671-22. - Connection permits.
Sec. 671-23. - Prohibition against clear water discharges.
Sec. 671-24. - Dewatering discharge to a combined sewer.
Sec. 671-25. - Mandatory inspection.
Sec. 671-26. - Building sewer maximum length.

Sec. 671-27. - Maximum number of connections.
Sec. 671-28. - Building sewer responsibility.
Sec. 671-29. - Existing foundation drains, roof drains, defective building sewers and sump pumps.
Sec. 671-30. - Penalties.
Sec. 671-31. - Appeal.
Secs. 671-32—671-40. - Reserved.

Sec. 671-22. - Connection permits.

(a)

Permit required. It shall be unlawful to cause or allow the repair, modification or connection of a building sewer to a public sewer or another building within the sanitary district without a valid sanitary sewer connection permit issued by the bureau of license and permit services, and the fine imposed for a violation of this provision shall not be less than one hundred dollars ($100.00) for each day the violation continues; the controller shall cause any fines collected under this section to be deposited into an account for the use and benefit of the bureau. Permits will not be granted for connections to sewers not dedicated and accepted in accordance with section 671-161 of this chapter. This shall in no way limit the issuance of a building permit subject to the approval of a sanitary sewer connection permit application.

(b)

Minimum elevations for gravity connection. A sanitary sewer connection permit will not be granted to homes or buildings where the lowest elevation to have gravity sanitary service is less than one (1) foot above the top of manhole casting elevation of either the first upstream or downstream manhole on the public sewer to which the connection is to be made. If the first upstream or downstream manhole is at a higher elevation due to the natural topography of the area, an alternate manhole will be selected for the purpose of determining this measurement.

(c)

Grease interceptors. A grease interceptor meeting the requirements of the Indiana Fire Prevention and Building Safety Commission shall be installed in waste lines (building sewers) from establishments delineated in section 671-4(g). The design and location of the grease interceptor shall be submitted to the bureau of license and permit services for approval.

(d)

Permit fees; refunds. The following permits and payment of the associated fees are required to make a connection to the city's sanitary or combined sewer system.

(1)

The board of code enforcement shall establish the amount of the following fees by regulation and may revise the amount of such fees but not more often than once each calendar year:

a.

The building sewer permit inspection fee shall cover the costs of mandatory inspection by the division of inspections of the building sewer and its connection, and any reinspection that may be necessary because of remedial construction;

b.

The plan review fees shall cover the costs for the amount of time that is required for the bureau of license and permit services to administer and review plans submitted under this article for conformance with the department's standards and specifications; and

c.

The administrative fee shall cover the department's costs related to administration, planning, and review for the sewer service agreement.

(2)

The baseline connection fee of two thousand five hundred dollars ($2,500.00) per EDU, will be assessed for all new connections to the sanitary or combined sewer system at the time of acquiring a building permit. A new connection would include new sewer service or modification of an existing sewer service agreement; however, replacement or repair of an existing individual building sewer that does not increase EDU's would not constitute a new connection.

The permit fee paid under this article shall not be refunded except upon request and in instances where the permit was issued in error, either because it was not required by law, or because a permit for the same activity previously had been issued and was in force at the time the second permit was applied for and issued.

(e)

Modification of connection fee. The board of public works may modify the connection fee by regulation as provided in subsection (d) of this section. The connection fee per EDU shall change annually subject to the automatic rate adjustment procedures outlined herein. To the extent that the Consumer Price Index increases from year to year, indexing of connection fees shall occur automatically. Increases shall be based upon annual average percent changes for the twelve (12) month period ending in October of each year for "The All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U. S. City Average. 1982-84=100" as published on an unadjusted basis by the U. S. Bureau of Labor Statistics in November of each year, and shall become effective on January 1 of the ensuing calendar year. In no event shall the increase be less than zero (i.e., a negative value for the adjustment). The first increase in the connection fee, based on indexing, shall occur in 2010.

Example Increase Calculation: October Previous Year (PY)CPI 208.936
October Current Year (CY)CPI
216.573

Annual Increase % = October CY CPI - October PY CPI
October PY CPI
3.66% = 216.573-208.936
208.936
Next Year Connection Fee = $2500 * 1.0366 = $2,591.50 = $2,590.00*
**The connection fee will be rounded to the nearest $10 increment.*

(f)

Applications. An application for such connection permit shall be made on a form prescribed by the bureau of license and permit services, and may require the following information:

(1)

Name and address of the owner;

(2)

The name, address and telephone number of the contractor;

(3)

Address and, if necessary, the legal description of the premises where the work is to be done;

(4)

Plans for the building sewer and connections, which at a minimum must consist of drawing(s) of the building, the parcel boundaries, the connection detail, including grease interceptor connection detail where applicable, materials of construction and installation method; and

(5)

Any other information as may be deemed reasonable and necessary by the administrator of the bureau of license and permit services to carry out the provisions of this chapter.

(g)

Who may apply.

(1)

Application for a sewer connection permit shall only be made by the following:

a.

A plumbing contractor licensed by the state and registered in accordance with Chapter 875 of this Code; or

b.

A contractor (other than a plumbing contractor) who has met the surety bond and insurance requirements of the department of code enforcement. Surety bond requirements are met if the building sewer contractor has filed and maintains with the city a surety bond, as set forth in Chapter 875 of this Code. Insurance requirements are met if the contractor has secured and maintains a public liability and property damage insurance policy as set forth in Chapter 875 of this Code.

(2)

The bureau of license and permit services may deny permits to any applicant who is currently in violation of this chapter or any other applicable regulations.

(h)

Conformance with Indiana Fire Prevention and Building Safety Regulations. All sewer work and other construction actually performed on or associated with the building drain, building sewer and the connection of the building sewer to the public sewer shall be in accordance with the rules and regulations of the Indiana Fire Prevention and Building Safety Commission and standard specifications of the department of public works.

(i)

Expiration of permit by operation of law; extensions. The connection permit shall expire by operation of law and shall no longer be of any force or effect if work is not initiated within one hundred eighty (180) days from the date of issuance of the permit. The administrator of the bureau of license and permit services may, however, for good cause shown in writing, extend the duration of the permit for an additional period that is reasonable under the circumstances to allow commencement of the construction activity. In no event shall the extension exceed a period of sixty (60) days. If the construction activity has been commenced but only partially completed, and thereafter substantially no construction activity occurs on the construction site over a period of one hundred eighty (180) days, the permit shall expire by operation of law and no longer be of any force or effect; provided, however, the administrator may, for good cause shown in writing, extend the validity of any such permit for an additional period that is reasonable under the circumstances to allow resumption of construction activity. The fee for an extension under this subsection shall be provided in section 131-501 of the Code, and the extension shall be confirmed in writing.

(j)

Provisions of chapter supplemental to other construction ordinances. This chapter shall not be construed as contravening any ordinances of the city relating to construction within public streets, roads or rights-of-way but rather shall be supplemental thereto.

(k)

Enforcement of bond. Any action may be initiated in a court of competent jurisdiction relative to the bond provided for in subsection (g)(1)b. as follows:

(1)

The corporation counsel of the city may initiate proceedings to forfeit a bond:

a.

As a penalty for repeated Code violations by a contractor, his or her agents or employees; or

b.

To indemnify the city against any loss, damage or expense sustained by the city by reason of the conduct of the contractor, his or her agents or employees.

(2)

A person, partnership or corporation that holds a property interest in the real estate on which sewer work has occurred may bring an action against the bond for expenses necessary to correct code deficiencies therein after written notice of the code deficiency has been given to the contractor and after the contractor has been given a reasonable opportunity to correct performance. If such a person, partnership or corporation prevails in any action brought under this section, he or she may also be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended as determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

(l)

Variance procedure. The administrator of the bureau of license and permit services, after consultation with the engineering division of the department of public works, shall have the power to modify or waive any minimum sanitary sewer design standard found in this article or in any regulations promulgated by the board pursuant to section 671-15 of this Code, which pertain to permits issued under this article. The administrator may grant such a variance if an applicant for a construction permit submits the request in writing and makes a substantial showing that:

(1)

A minimum sanitary sewer design standard or regulation is unfeasible or unreasonably burdensome; and

(2)

An alternate plan submitted by the applicant will achieve the same objective and purpose as compliance with minimum sewer design standards and regulations of the department.

If the administrator fails to respond within twenty (20) days from receipt of a written request for modification or waiver, such request shall be deemed to be denied. An applicant may appeal to the board of code enforcement a decision of the bureau that denies or partially denies a requested variance. The appeal of such a decision shall be filed with the board of code enforcement within twenty (20) days following the date of the decision. The board shall hear the request for the variance de novo, and in making a decision shall apply the standards set forth above.

(m)

Exemption relative to work accomplished by or for certain governmental units. Permits as required by this section shall be obtained for sewer connection activity in the city accomplished by or for a governmental unit, and inspections relative to such sewer connection activity shall be allowed. Fees shall be required as specified by the board of public works and board of code enforcement as provided in subsection (d), except for the following:

(1)

Sewer connection activity for which a fee cannot be charged by the municipality because of federal or state law; or

(2)

Sewer connection activity accomplished by a unit of local government, or by its employee or contractor in the course of such employee's or contractor's performance of duties for a unit of local government.

(n)

Notice of change in permit information. After a permit has been issued, the permittee shall give prompt written notice to the bureau of license and permit services of any addition to or change in the information contained in the permit application.

(o)

Amendment of permits and plans. After a permit has been issued, any material deviation or change in the information contained in the permit application or the plans shall be considered an amendment subject to approval by the administrator of the bureau of license and permit services. Prior to the time construction activity involving the change occurs, the permittee shall file with the bureau a written request for amendment, including a detailed statement of the requested change and the submission of any amended plans. The bureau shall give the permittee written notice that the request for amendment has been approved or denied, and if approved, copies of the amended application or plans shall be attached to the original application or plans. The fee for the amendment of a permit shall be provided in section 131-501 of the Code. Reinspection fees and other fees that are occasioned by the amendment shall be assessed and paid in the same manner as for original permits or plans.

(p)

Transfer of permit. A sanitary sewer connection permit may be transferred with the approval of the administrator of the bureau of license and permit services to a person, partnership or corporation that would be eligible to obtain such construction permit in the first instance (hereinafter called "transferee"), after both the payment of a fee of provided in section 131-501 of the Code and the execution and filing of a form furnished by the bureau. Such transfer form shall contain, in substance, the following certifications, release and agreement:

(1)

The person who obtained the original construction permit or a person who is employed by and authorized to act for the obtainer (hereinafter called "transferor") shall:

a.

Certify under penalties for perjury that such person is familiar with the sanitary sewer construction activity accomplished pursuant to the construction permit; such person is familiar with the construction standards and procedures provided in this article; and to the best of such person's knowledge, information and belief the construction activity, to the extent performed, is in conformity with all standards and procedures provided in this

article; and

b.

Sign a statement releasing all rights and privileges secured under the construction permit to the transferee.

(2)

The transferee shall:

a.

Certify that the transferee is familiar with the information contained in the original construction permit application, the design plans and specifications, and any other documents filed in support of the application for the original construction permit;

b.

Certify that the transferee is familiar with the present condition of the premises on which the construction activity is to be accomplished pursuant to the construction permit; and

c.

Agree to adopt and be bound by the information contained in the original application for the construction permit, the design plans and specifications, and other documents supporting the original construction permit application; or in the alternative, agree to be bound by such application plans and documents modified by plan amendments submitted to the administrator of the bureau of license and permit services for approval.

The transferee shall assume the responsibilities and obligations of and shall comply with the same procedures required of the transferor, and shall be subject to any written orders issued by the administrator of the bureau. A permit for construction activity at a specified location may not be transferred to construction activity at another location.

(q)

Revocation of permits. The bureau of license and permit services may revoke a permit when:

(1)

The application, plans or supporting documents contain a false statement or misrepresentation as to a material fact; or

(2)

The application, plans or supporting documents reflect a lack of compliance with the requirements of this article.

The sanction provided in this subsection shall in no way limit the operation of penalties provided elsewhere in this chapter.

(r)

Stop-work order. The administrator of the bureau of license and permit services is empowered to issue an order requiring the suspension of the pertinent construction activity ("stop-work order") whenever the administrator determines that:

(1)

Construction activity is proceeding in an unsafe manner;

(2)

Construction activity is proceeding in violation of a requirement of this article;

(3)

Construction activity is proceeding in a manner that is materially different from the application, plans, or supporting documents; or

(4)

Construction activity for which a sanitary sewer connection permit is required is proceeding without such a permit being in force. In such an instance, the stop-work order shall indicate that the effect of the order terminates when the required permit is issued.

The stop-work order shall be in writing and shall state to which construction activity it is applicable and the reason for its issuance. The stop-work order shall be posted on the property in a conspicuous place and, if conveniently possible, shall be given to the person doing the construction and to the owner of the property or his or her agent. The stop-work order shall state the conditions under which construction may be resumed. The sanction provided in this subsection shall in no way limit the operation of penalties provided elsewhere in this chapter.

(G.O. 27, 1991, § 1; G.O. 51, 1996, § 1; G.O. 168, 1999, § 22; G.O. 15, 2001, § 123; G.O. 3, 2002, § 41; G.O. 107, 2005, § 2; G.O. 32, 2009, § 1; G.O. 63, 2009, § 87)

Sec. 671-23. - Prohibition against clear water discharges.

(a)

Except as provided in subsection (c) of this section, it shall be unlawful to cause or allow the connection of a building sewer to a public or other building sewer when such building sewer has any of the following sources of clear water connected to it:

(1)

Foundation/footing drains;

(2)

Sump pumps with foundation drains connected;

(3)

Roof drains;

(4)

Heat pump discharge;

(5)

Cooling water; or

(6)

Any other sources of clear water.

(b)

In addition to any other provision provided herein, any person found violating any provision listed in subsection (a) above may be required to correct such connections at his expense.

(c)

In the event an industrial or commercial entity finds it necessary to discharge clear water consisting of cooling water and/or steam condensate into the public sewer and the sewer has capacity to receive such clear water without affecting existing or future users, the department may enter into an agreement for such discharge that will define a merging system and any other requirement deemed necessary to measure the flow. The user rate for such discharge shall be calculated as provided in section 671-102.

(G.O. 27, 1991, § 1)

Sec. 671-24. - Dewatering discharge to a combined sewer.

(a)

It shall be unlawful to discharge the water resulting from dewatering activity to a combined sewer, whether such activity is temporary or permanent, without a valid sanitary sewer connection permit issued by the bureau of license and permit services. As a condition to the issuance of a permit, the applicant shall install, maintain and operate at the user's expense a metering device to measure the flow associated with such discharge.

(b)

Based upon the volumes determined by the measurements, the user will be charged appropriate user fees in accordance with Article IV of this chapter.

(c)

The user shall be required to submit monthly reports, subject to verification if authorized by the bureau, to serve as the basis for billing, with any necessary adjustments in the amount made after verification.

(G.O. 27, 1991, § 1; G.O. 3, 2002, § 42; G.O. 63, 2009, § 88)

Sec. 671-25. - Mandatory inspection.

(a)

Notification. It shall be the duty of the holder of a connection permit to notify the division of inspections in the manner described on the sanitary sewer connection permit that the sewer work is available for inspection. The division of inspections will conduct inspections on building sewer connections from 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, except for observed city holidays. The building sewer, in its entirety from the foundation to the connection with the public sewer or existing lateral, must be exposed for inspection and be properly bedded in accordance with the department's standard specifications to one-half (") the diameter of the building sewer. It is further the duty of the permit holder to install safety barricades, fences or other safety measures while waiting for an inspection. The permit holder may backfill the building sewer trench if the division of inspections has not made an inspection within a four-hour period after notice has been given to the division of inspections. In the event the building sewer is not completed and ready for inspection upon the inspector's arrival or if the notification is made after 1:00 p.m., local time, Monday through Friday, the permit holder shall make the building sewer and connection available for a four-hour period on the following department work day. An inspection may be waived with or without conditions with the approval of the bureau of license and permit services.

(b)

Right of entry. The division of inspections and the department shall each have the right of entry to, upon or through any premises for purposes of inspection of sewer work and any other construction activity performed on or associated with the connection of the building sewer to the city sewer including inspection for clear water discharges into the sewer.

(G.O. 27, 1991, § 1; G.O. 3, 2002, § 42; G.O. 63, 2009, § 88)

Sec. 671-26. - Building sewer maximum length.

Except for building sewers serving single- or double-family residences or single-owner industrial facilities, connection permits will not be issued for building sewers exceeding six hundred (600) feet in length as measured from the outside of the building to the center of the public sewer, unless the sewer is constructed in a dedicated easement or right-of-way in accordance with article VII. No more than one hundred (100) feet of a building sewer shall exist within a public right-of-way.

(G.O. 27, 1991, § 1)

Sec. 671-27. - Maximum number of connections.

No more than one (1) building will be permitted to connect to a building sewer. Sewers with more than one (1) connection must be constructed as a public sewer in a dedicated easement in accordance with Article VII, unless the administrator of the bureau of license and permit services determines that an exception is justified.

(G.O. 27, 1991, § 1; G.O. 3, 2002, § 43; G.O. 63, 2009, § 89)

Sec. 671-28. - Building sewer responsibility.

It shall be the responsibility of the property owner(s) whose property is benefitted to provide for, install and make private connections for the use of their premises to an existing public or building sewer. Further, it shall be the responsibility of the owner to make all necessary repairs, extensions, relocations, changes or replacements thereof, and of any accessories thereto. These requirements may be altered, modified or waived at the discretion of the administrator of the bureau of license and permit services when it is shown that compliance is not possible due to extenuating circumstances.

(G.O. 27, 1991, § 1; G.O. 3, 2002, § 43; G.O. 63, 2009, § 89)

Sec. 671-29. - Existing foundation drains, roof drains, defective building sewers and sump pumps.

In the event the bureau of license and permit services determines that a violation of section 671-4(a) exists, the bureau shall notify the violator, by certified mail, that such violation exists. The notice shall describe the nature of the violation and the corrective action(s) that must be taken. Such corrective action shall be taken within thirty (30) days of receipt of such notice.

(G.O. 27, 1991, § 1; G.O. 3, 2002, § 43; G.O. 63, 2009, § 89)

Sec. 671-30. - Penalties.

Any person violating any provision of this article shall be subject to the penalties of this chapter in accordance with sections 671-16 and 671-22 and further, at the discretion of the administrator of the bureau of license and permit services, may be required to correct such violation at his or her expense.

(G.O. 27, 1991, § 1; G.O. 3, 2002, § 43; G.O. 63, 2009, § 89)

Sec. 671-31. - Appeal.

Any person affected by the exercise of any discretionary authority delegated by this article to any official of the bureau of license and permit services, and who objects to the decision made or action taken by such official, shall be entitled to a hearing upon such objection before:

(1) The board of public works , if the decision made or action taken involves the application of a standard established by the department of public works; or

(2) The board of code enforcement, for all other matters.

The person desiring such hearing shall file a written request for a hearing, including a statement of his or her objections, with the director of the appropriate department, who shall call the same to the attention of his or her department board. Such requests must be filed with the director within ten (10) days from the date of the action being appealed. The appeal shall be scheduled before the board within thirty (30) days after such request is filed. Notice shall be given to the appellant identifying the time, place and date of the appeal at least ten (10) days prior to the scheduled date. The board may hear any evidence it deems relevant. After the hearing, the board may confirm, reverse or modify the decision or action. The order of the board shall be final. Such order shall be made within ten (10) days after the hearing and shall be in writing and sent to the appellant.

(G.O. 27, 1991, § 1; G.O. 3, 2002, § 43; G.O. 63, 2009, § 89)

Secs. 671-32—671-40. - Reserved.

ARTICLE III. - INDUSTRIAL DISCHARGE PERMITS

Sec. 671-41. - Permit required.
Sec. 671-42. - Application.
Sec. 671-43. - Term.
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Sec. 671-60. - Signatory requirements.
Sec. 671-61. - Violation of permit requirements.
Sec. 671-62. - Discharge of hazardous wastes.
Secs. 671-63—671-74. - Reserved.

Sec. 671-41. - Permit required.

(a)

All industrial users proposing to connect to or discharge into a city sewer must complete an application for an industrial discharge permit before connecting to or discharging into a city sewer. All industrial users connected to or discharging into a city sewer, who do not currently have an industrial discharge permit, must complete an application for an industrial discharge permit within ninety (90) days after the effective date of this chapter. All significant industrial users (SIU's), including those users subject to federal standards, users not subject to federal standards but deemed significant by the director, or which otherwise meet the criteria of a significant industrial user shall obtain a permit from the department before connecting to or discharging into a city sewer.

(b)

No person shall knowingly make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or the industrial discharge permit. Nor shall any person falsify, tamper with or knowingly render inaccurate any monitoring device or method required under this chapter.

(G.O. 27, 1991, § 1)

Sec. 671-42. - Application.

(a)

The director shall have the authority to prescribe an industrial discharge permit application form. The application form may require the following information:

(1)

Name, address and standard industrial classification number.

(2)

Volume of wastewater to be discharged.

(3)

The wastewater characteristics including, but not limited to, BOD, suspended solids, ammonia and pH.

(4)

Description of daily, weekly and seasonal variations in discharges.

(5)

Location of building drain and/or building sewer.

(6)

Pretreatment standards applicable to the discharge.

(7)

If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall provide it by the shortest possible compliance schedules. The completion date in the schedule shall not be later than the compliance date established for any applicable federal pretreatment standard. The following conditions shall apply to this schedule:

a.

The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

b.

No increment referred to in paragraph a. shall exceed nine (9) months.

c.

No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the director.

(8)

Any other information as may be deemed by the director to be necessary to evaluate the industrial discharge permit application.

(b)

The industrial discharge permit application shall be signed and sworn to by an authorized representative of the industrial user.

(G.O. 27, 1991, § 1)

Sec. 671-43. - Term.

The industrial discharge permit shall be for a term of no more than five (5) years. Any person wishing to continue to discharge to a city sewer beyond the term of the industrial discharge permit shall apply for renewal of the industrial discharge permit at least sixty (60) days prior to the expiration of such permit using forms prescribed by the director, which forms may require the information set forth in section 671-42.

In the event the permittee does not receive permit renewal prior to the expiration date due to circumstances beyond the control of the permittee, the standards and requirements set forth in the expired permit shall remain in full force and effect until such renewal is received by the permittee.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-44. - Conditions.

The director may prescribe conditions to the industrial discharge permit which may include the following:

(1)

Applicable federal and/or state laws, regulations or orders, including national categorical pretreatment standards for new and existing sources promulgated in 40 CFR parts 401 through 471.

(2)

Limits or prohibitions on the wastewater characteristics other than those in section 671-4 including, but not limited to, polychlorinated biphenyls and polybrominated biphenyls for the protection of public health or the POTW. The director shall apply applicable federal categorical pretreatment standards, or, in the absence of such standards, limits may be based on the best practical technology.

(3)

The unit charge or schedule of user charges and fees for the wastewater to be discharged to a city sewer, as established by the city-county council.

(4)

Limits on the average and maximum wastewater constituents and characteristics.

(5)

Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization.

(6)

Requirements for installation and maintenance of inspection and sampling facilities.

(7)

Specifications for monitoring programs, which may include sampling locations, frequency of sampling, number, types and standards for tests, and reporting schedule.

(8)

Compliance schedules.

(9)

Requirements for submission of technical reports or discharge reports.

(10)

Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city, and affording the city access thereto.

(11)

Requirements for prior notification of the city of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the POTW.

(12)

Requirements for notification of slug discharges and the submittal and implementation of a slug control program.

(13)

Other conditions as deemed appropriate by the city to ensure compliance with this chapter.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-45. - Permit modifications.

Within nine (9) months of the promulgation of a categorical pretreatment standard, the industrial discharge permit of users subject to such standard shall be revised to require compliance with such standard within the time frame prescribed by such standard. In addition, the user with an existing industrial discharge permit shall submit to the director, within one hundred eighty (180) days after the promulgation of an applicable categorical pretreatment standard, the information required by section 671-42. Industrial discharge permits of users who must comply with federal categorical pretreatment standards prior to the effective date of this chapter shall be revised immediately upon the effective date of this chapter to reflect applicable pretreatment standards.

Modification of an industrial discharge permit may also be accomplished at any time during the term of the permit when in the opinion of the director a modification is necessary to accurately characterize changes in industrial contribution, wastewater constituents or characteristics, ordinance requirements or any other applicable condition. An industrial user shall be given a thirty-day notice of the impending modification. Compliance deadlines with the modified requirements shall be determined on a case-specific basis.

(G.O. 27, 1991, § 1)

Sec. 671-46. - Fees.

There shall be an application fee of one hundred fifty dollars ($150.00) for an individual discharge permit. This fee shall apply to original and renewal permit applications and modifications of existing permits initiated by the permittee. Payment of the fee shall accompany submission of the completed application. The board of public works may revise the amount of such fee in accordance with Chapter 261 of this Code but not more often than once each calendar year.

(G.O. 27, 1991, § 1)

Sec. 671-47. - Nonassignability.

The industrial discharge permits are issued to a specific person for a specific facility and do not constitute a property interest nor shall the industrial discharge permit be assigned, conveyed or sold to a new owner, new user, different premises or a new or changed operation, except as follows: Industrial discharge permits may be reassigned or transferred to a new owner and/or operator if the permittee gives at least thirty (30) days advance written notice to the director and the director approves the industrial discharge permit transfer in writing. The notice to the director must include a written certification by the new owner and/or operator which: (1) states that the new owner and/or operator has no immediate intent to change the facility's operations and process; (2) identifies the specific date on which the transfer is to occur; and (3) acknowledges full responsibility for complying with the existing industrial discharge permit and all applicable laws and regulations. Failure to provide advance notice of a transfer renders the industrial discharge permit voidable on the date of facility transfer.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-48. - Pretreatment.

Industrial users shall provide necessary wastewater treatment as required to comply with this chapter and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided, operated and

maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review and shall be acceptable to the city before final review and approval of such plans by the Indiana Department of Environmental Management and construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this chapter. Any subsequent significant modifications in the pretreatment facilities or method of operation affecting its discharge shall be reported to and be acceptable to the city prior to the user's initiation of the changes.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-49. - Compliance date report.

Within ninety (90) days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the system, any user subject to pretreatment standards or regulations shall submit to the director a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards or regulations and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or regulations. The report shall state whether the applicable pretreatment standards or regulations are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment are necessary to bring the user into compliance with the applicable pretreatment standards or regulations. This statement shall be signed by an authorized representative of the industrial user and certified by a professional engineer licensed in the State of Indiana.

(G.O. 27, 1991, § 1)

Sec. 671-50. - Periodic compliance reports.

Any user subject to a pretreatment standard set forth in this chapter, after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the director, during the months of June and December, unless required more frequently in the pretreatment standard or by the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all daily flows which, during the reporting period, exceeded the average daily flow reported in section 671-49. At the discretion of the director and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the director may agree to alter the months during which the above reports are to be submitted.

Reports of permittees shall contain the results of sampling and analyses of the discharge, including the flow and the nature and concentration, or production and mass where requested by the director, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All analyses shall be performed in accordance with 40 CFR Part 136 or with any other test procedures approved by the director. Sampling shall be performed in accordance with the techniques approved by the director. Where 40 CFR Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analyses shall be performed in accordance with the procedures set forth in the EPA publication, "Sampling and Analysis Procedures for Screening of Industrial Effluent for Priority Pollutants," April, 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the administrator of the EPA.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-51. - Confidential information.

The director shall protect any information (other than effluent data) contained in the application forms or other records, reports or plans as confidential upon showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such persons.

Information accepted by the city with a claim for confidentiality shall be safeguarded by the city and shall not be transmitted to the public until and unless a fifteen-day notification is given to the user. During the fifteen-day period, the user shall submit a justification of confidentiality to the director. A determination of confidentiality shall be made by the director pursuant to regulations used by the EPA for acquisition of and public access to agency information, 40 CFR § 403.14.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-52. - Emergency suspension of service and industrial discharge permit.

Notwithstanding any other provisions of this chapter, the director may, without notice or hearing, suspend the wastewater treatment service and/or an industrial discharge permit when such suspension is necessary, in the opinion of the director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or

welfare of persons or to the environment, or causes interference to the POTW, or causes the city to violate any condition of its NPDES permit.

Any user notified of a suspension of the wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW or endangerment to any individuals. The director shall reinstate the industrial discharge permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge. The user shall pay all costs associated with disconnecting from and reconnecting to the city sewer. A detailed written statement submitted by the user describing the cause(s) of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the director within five (5) days of the date of occurrence.

(G.O. 27, 1991, § 1)

Sec. 671-53. - Revocation.

The director may revoke the industrial discharge permit of any person for any of the following:

(1)
Violation of any provisions of this chapter or of any applicable state and/or federal law including regulations;

(2)
Failure to timely file any discharge reports;

(3)
Failure to factually report wastewater characteristics;

(4)
Refusal of reasonable access to the user's premises for the purpose of review of records, inspection or monitoring; or

(5)
Violation of any condition of the industrial discharge permit.

(G.O. 27, 1991, § 1)

Sec. 671-54. - Notice of revocation.

Except in cases of willfulness or those in which public health interest or safety require otherwise, the revocation, withdrawal or suspension of an industrial discharge permit is lawful only if, before the institution of proceedings thereof, the permittee has been given:

(1)
Notice by the director, in writing, of the facts or conduct which may warrant the action.

(2)
Opportunity to demonstrate or achieve compliance with all lawful requirements.

(G.O. 27, 1991, § 1)

Sec. 671-55. - Notification of violation.

Whenever the director finds that any user has violated or is violating this article or any conditions of its industrial discharge permit, the director may serve upon such person a written notice stating the nature of the violation. Within fifteen (15) days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the city by the user.

(G.O. 27, 1991, § 1)

Sec. 671-56. - Show-cause hearing.

The director may order any user who causes or allows an unauthorized discharge to enter the POTW to show cause at a departmental hearing why the proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held before the director or an appointed hearing officer, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail at least ten (10) days before the hearing.

(G.O. 27, 1991, § 1)

Sec. 671-57. - Appeals.

A user may file with the director a written request for reconsideration within fifteen (15) days of any action, decision or determination taken as part of the department's administrative enforcement program. The request shall set forth in detail the facts surrounding the request. The director shall respond within ten (10) days of receipt of the request and shall make his/her final determination within thirty (30) days of receipt of the request.

The user may further appeal to the board of public works within fifteen (15) days of any final decision of the director.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-58. - Publication of significant noncompliance.

During January of each year, the city shall publish in the largest city newspaper a list of the users which at any time during the previous calendar year were in significant noncompliance with applicable pretreatment requirements. The list shall be published in January of each year summarizing the noncompliance of the previous calendar year.

Significant noncompliance shall be chronic violations of discharge limitations in which sixty-six (66) percent or more of all measurements taken during a six-month period exceed by any magnitude the daily maximum for any given parameter; violations of technical review criteria (TRC) as set forth in 40 CFR § 403.8(f)(2)(vii) in which thirty-three (33) percent or more of all measurements for each pollutant parameter taken during a six-month period exceed the daily maximum or average limit multiplied by the applicable TRC; violations of an effluent limit that the director has determined have caused interference or pass-through at the POTW or endangerment to POTW personnel or the public; discharge of a pollutant causing imminent endangerment to human health, welfare or the environment; failure to meet, within ninety (90) days after a scheduled date, a compliance schedule milestone contained in a compliance schedule or order; failure to provide a required report within thirty (30) days after the due date; failure to accurately report noncompliance; or any violation which the director determines will adversely affect the operation or implementation of the city's pretreatment program.

(G.O. 27, 1991, § 1; G.O. 22, 1995, § 2)

Sec. 671-59. - Submission of self-monitoring reports.

Any industrial user required to complete self-monitoring reports as a condition of an industrial discharge permit shall submit the required reports to the industrial surveillance section of the department of public works. The reports shall be postmarked no later than the date specified in the permit. The reports shall be signed by an authorized representative of the industrial user as defined in section 671-2.

(G.O. 27, 1991, § 2)

Sec. 671-60. - Signatory requirements.

Reports and sworn statements required by sections 671-8, 671-10(c), 671-42(b), 671-49, 671-50, 671-59, and 671-61(b) shall be made by an authorized representative as defined in section 671-2 of this chapter. The reports and sworn statements which relate to the actual operation of or discharge from a pretreatment facility shall be prepared by or under the direction of a wastewater treatment plant operator certified under the provisions of 327 IAC 8, if the industrial user is required to have such a certified wastewater treatment plant operator.

If an authorization allowed under this section is no longer accurate due to changes in the person or position designated, a new authorization satisfying the requirements of this section shall be submitted to the city prior to or together with any applicable report.

Such reports and sworn statements shall be made as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(G.O. 27, 1991, § 2; G.O. 22, 1995, § 2)

Sec. 671-61. - Violation of permit requirements.

(a)

In the case of noncompliance with industrial discharge permit limitations, standards or requirements, the industrial user shall contact the industrial surveillance section within twenty-four (24) hours of knowledge of the noncompliance. The person representing the industrial user shall provide the following information:

(1)

Name of the company;

(2)

Facility location;

(3)

Limitation, standard or requirement in violation; and

(4)

Corrective actions taken to eliminate, prevent and/or minimize the violation.

(b)

The industrial user shall provide a detailed written report describing the violation to the industrial surveillance section. The report shall be submitted within five (5) working days subsequent to knowledge of the noncompliance incident. The director may grant an extension in writing to the report deadline in consideration of special circumstances. The report shall contain the following information:

(1)

Description of the discharge and cause of the violation;

(2)

Parameters in violation; and

(3)

The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue and the steps being taken to reduce, eliminate and prevent recurrence of the noncomplying discharge or violation.

(c)

Within thirty (30) days of knowledge of a violation from self-monitoring activities, the industrial user shall sample and analyze for the parameter(s) found in violation to demonstrate that compliance has been achieved. The results shall be submitted to the department of public works on the appropriate self-monitoring report.

(d)

A violation of a monthly average limitation which is derived from federal categorical pretreatment standards shall constitute a separate violation for each day the facility operates during a given month unless actual daily analyses are demonstrated to be less than the applicable monthly average limitation.

(G.O. 27, 1991, § 2)

Sec. 671-62. - Discharge of hazardous wastes.

Any industrial user which discharges a substance, which if disposed of otherwise would be a hazardous waste under 40 CFR Part 261, shall give prior written notification to the director, the Indiana Department of Environmental Management, and U.S. EPA Region V of such discharge, in accordance with the requirements of 40 CFR Part 261 and 40 CFR § 403.12(p).

(G.O. 22, 1995, § 2)

Secs. 671-63—671-74. - Reserved.

ARTICLE IV. - RATES, CHARGES AND BILLING

DIVISION 1. - GENERALLY
DIVISION 2. - WATER SERVICE TERMINATION
DIVISION 3. - ELIMINATION OF UNCOLLECTIBLE ACCOUNTS

DIVISION 1. - GENERALLY

Secs. 671-75—671-100. - Reserved.

Sec. 671-101. - Sewer user charge imposed.
Sec. 671-102. - Basis for charge; how calculated.
Sec. 671-102.5. - Reserved.
Sec. 671-102.7. - Reserved.
Sec. 671-103. - Charges and fees for city's pretreatment program.
Sec. 671-104. - Billing estimates and reports.
Sec. 671-105. - Contract for billing by the Indianapolis Water Company.
Sec. 671-106. - Use by other political subdivisions.
Sec. 671-107. - Applicable to sewer service agreements.
Sec. 671-108. - Rules and regulations authorized.
Sec. 671-109. - Appeals to the board.
Sec. 671-110. - Exceptions.
Sec. 671-111. - Rate review.
Sec. 671-111.1. - Advanced wastewater treatment facilities reserve fund.
Sec. 671-112. - Charges not duplicated; repeal of divisions 1 and 2 upon this article becoming effective.

Secs. 671-75—671-100. - Reserved.

Sec. 671-101. - Sewer user charge imposed.

Effective November 1, 1977, there is hereby imposed a sewer user charge payable to the department of public works upon each person owning or occupying real estate that is connected with and uses the POTW whether or not real estate taxes are imposed pursuant to IC 36-9-25 upon such real estate.

(G.O. 27, 1991, § 3)

Sec. 671-102. - Basis for charge; how calculated.

(a)

The sewer user charge imposed by this article shall be based upon the monthly rates and charges as provided in this section.

(b)

All retail users of the city's wastewater collection and treatment facilities shall pay a fixed monthly base charge per connection and a variable treatment charge per 1,000 gallons as noted below. Each customer will pay a minimum monthly charge if the combined base and treatment charges are less than the monthly minimum charge.

Non-Industrial User Rates

Metered Monthly rates:	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
Minimum Charge (per month)	$13.74	$15.22	$16.86	$18.67	$20.68	$22.90
Base Charge Treatment Charges/1,000 gallons	$5.13	%5.68	$6.29	$6.97	$7.72	$8.55
First 7,500 gallons	$2.3758	$2.6312	$2.9141	$3.2274	$3.5743	$3.9585
Over 7,500 gallons	$2.4976	$2.7661	$3.0635	$3.3928	$3.7575	$4.1614

The non-industrial rates and charges shall be applied to all Residential, Commercial, Institutional and all non-industrial customers of the Sanitary District. The monthly base charge, together with the variable treatment charges, are subject to the minimum monthly charge noted above.

Industrial User Rates

	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
Metered						

Monthly rates:						
Minimum charge (per month)	$14.15	$15.67	$17.35	$19.22	$21.29	$23.58
Base charge (per month)	$5.13	$5.68	$6.29	$6.97	$7.72	$8.55
Treatment charges/1,000 gallons	$2.4976	$2.7661	$3.0635	$3.3928	$3.7575	$4.1614
Industrial Surveillance Rate—Per 1,000 gallon	$0.1189	$0.1317	$0.1459	$0.1616	$0.1790	$0.1982
Total Treatment and Surveillance Rate—Per 1,000 gallons	$2.6165	$2.8978	$3.2094	$3.5544	$3.9365	$4.3596
Excessive Strength Surcharges—Per pound:						
BOD in excess of 250 mg/l	$0.1621	$0.1795	$0.1988	$0.2202	$0.2439	$0.2701
SS in excess of 300 mg/l	$0.1831	$0.2028	$0.2246	$0.2487	$0.2754	$0.3050
NH^3 in excess of 20 mg/l	$0.8441	$0.9348	$1.0353	$1.1466	$1.2699	$1.4064

The Industrial rates and charges shall be applied to all Industrial customers of the Sanitary District. The monthly base charge, together with the variable treatment charges, are subject to the minimum monthly charge noted above.

Septic Hauler and Fats, Oil & Grease Charges

Septic Hauler Rates	Current Eff. 1/1/08	Phase I Eff. 5/1/09	Phase II Eff. 1/1/10	Phase III Eff. 1/1/11	Phase IV Eff. 1/1/12	Phase V Eff. 1/1/13
In County Septic Waste: All usage - per 1,000 gallons	$50.12	$55.51	$61.48	$68.09	$75.41	$83.52
In County Grease Waste: All usage - per 1,000 gallons	$253.33	$280.56	$310.72	$344.12	$381.11	$422.08
Out of County Septic Waste: All usage - per 1,000 gallons	$75.10	$83.17	$92.11	$102.01	$112.98	$125.13
Out of County Grease Waste: All usage - per 1,000 gallons	$278.41	$308.34	$341.49	$378.20	$418.86	$463.89
Fats, Oil & Grease (FOG) Charges:						
All licensed food/cooking facilities - Monthly charge			$15.00	$20.00	$25.00	$30.00

(Description of septic hauler and FOG charges is noted below)

Septic haulers: Septic Haulers shall pay the above-noted metered rates and charges for septic waste and grease based upon the

applicable in-county and out-of-county customer rate classifications.

FOG - Licensed food/cooking facilities: Sanitary District customers that are by Ordinance required to be licensed as a food/cooking establishment shall be subject to a monthly charge for "Fats, Oil & Grease" ("FOG"). FOG charges (as noted in the table above) will support the additional costs of administering, monitoring, and treating the excessive strength waste associated with these establishments.

(G.O. 27, 1991, § 3; G.O. 157, 1993, § 1; G.O. 15, 1994, § 1; G.O. 44, 2001, § 1; G.O. 107, 2005, § 3; G.O. 32, 2009, §§ 2, 3)

Sec. 671-102.5. - Reserved.

Editor's note—

G.O. 107, 2005, § 4, repealed § 671-102.5 in its entirety. Formerly, said section pertained to supplemental charge for area previously served by the private utility, Fairwood Utilities, Inc., as enacted by G.O. 50, 1996, § 1.

Sec. 671-102.7. - Reserved.

Editor's note—

G.O. 107, 2005, § 4, repealed § 671-102.7 in its entirety. Formerly, said section pertained to supplemental repair charge for area previously served by the private utility, Southside Utilities, Inc., as enacted by Code 1975, § 27-102.5.

Sec. 671-103. - Charges and fees for city's pretreatment program.

Charges and fees shall be established with council approval to provide for the recovery of costs from industrial users of the city's wastewater treatment system to recover the cost of the pretreatment program. The applicable charges or fees shall be set forth in the city's schedule of fees and charges and may include:

(1)

Fees for reimbursement of costs of setting up and operating the city's pretreatment program.

(2)

Fees for monitoring, inspections and surveillance procedures.

(3)

Fees for reviewing accidental discharge procedures and construction.

(4)

Fees for filing appeals.

(5)

Fees for consistent removal (by city) of pollutants otherwise subject to federal pretreatment standards.

(6)

Other fees as the city may deem necessary to carry out the requirements contained herein.

(G.O. 27, 1991, § 3)

Sec. 671-104. - Billing estimates and reports.

(a)

In the event a nonindustrial user subject to such charges and fees is not served by a public water supply or water used is not completely metered, the director shall have the authority to estimate the volume and strength of the waste and use such estimate for the purposes of billing rates and charges. The estimates shall be based upon analyses and volumes of a similar installation or the volume and analysis as determined by measurements and samples taken by the director or an estimate determined by the director or by any combination of the foregoing or other equitable method.

(b)

Unless otherwise established by the director, each industrial user subject to the charges and fees shall report to the director by the twenty-fifth day of the following month on a form prescribed by the director an estimate of the volume discharged in the prior month and a representative value of the strength of the waste including, but not limited to, BOD, SS and (ammonia) nitrogen. All measurements, tests and analyses of the characteristics of such waste shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Sewage" as published jointly by the American Public Health Association and the Water Pollution Control Federation consistent with 40 CFR Part 136 or by other methods generally accepted under established sanitary engineering practices and approved by the director. The reports submitted shall be subject to verification by the director but may serve as the basis for billing with all necessary adjustments in the amounts to be made after verification. In the event an analysis and volume of the industrial waste are not furnished to the director by the aforementioned time, the charges shall be based upon estimates made by the director, as provided in subsection (a) of this section.

In the event that an industrial user fails to submit the report required by this subsection (b) by the twenty-fifth day of the following

month, the industrial user shall pay late reporting charges according to the following schedule:

Late Reports Filed in any Year	Charge
First late report	No charge
Second late report	No charge
Each subsequent late report	$100.00

These late reporting charges shall be due and payable as provided in this article. The imposition of such late reporting charges shall in no way limit the operation of penalties provided elsewhere in this chapter.

(c)

The director shall have the right to enter upon the land of the industrial user and to set up such equipment as is necessary to certify the reports submitted. It shall be the duty of the industrial user to provide all necessary clearance before entry and not to unnecessarily delay or hinder the director in carrying out the measuring and sampling. The right of entry shall exist during any time the industrial user is operating or open for business.

(d)

In cases where measurements are difficult to make, or the industrial waste composition changes frequently, or representative samples are difficult to get, or where other methods of measurement are necessitated for other sound engineering reasons as determined by the director, the director shall have the authority to use such other basis for determining such charges as shall be reliably indicative of volume and BOD, SS and (ammonia) nitrogen strengths of particular industrial waste, such as, but not limited to, water purchase or usage, character of products, comparisons between the industrial user data and collected data from like industries.

(e)

The cost of all tests, measurements and analyses taken by the director pursuant to the department of public works' responsibility to perform industrial monitoring programs, defined and directed by local, state and federal agencies, shall be charged to the industrial user tested in an amount equal to the actual average cost of such test, measurement or analysis as determined at the close of each calendar year. These costs shall be due and payable as provided in this article.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 3)

Sec. 671-105. - Contract for billing by the Indianapolis Water Company.

(a)

The board is authorized to enter into a contract with the Indianapolis Water Company for the use of its services in ascertaining water volume to be utilized in determining charges imposed by this article and in billing for and collecting such charges and for the payment to it of just and reasonable compensation for its services.

(b)

Billings for such rates and charges provided for by this article shall be made in a cycle which coincides with the billing procedure of the Indianapolis Water Company, or in the case where the person subject to such rates and charges is not a customer of the Indianapolis Water Company, such billing cycle shall be determined by the director.

(c)

Rates and charges shall be due to the department of public works within seventeen (17) days after mailing of billings, with the exception that rates and charges assessed against or to be paid by a federal, state, county or municipal governmental unit shall be due within sixty (60) days. All payments made by a person based upon the reports submitted as provided for in this article shall become final unless verification is made and notice given by the director of necessary adjustments within one (1) year of such payment. Underpayment of charges based on errors in users' reports and estimates shall be billed on ascertainment thereof. Overpayment of charges arising from any cause shall first be applied to unpaid billings.

(G.O. 27, 1991, § 3)

Sec. 671-106. - Use by other political subdivisions.

No use of the POTW shall be allowed by any other political subdivision of the state unless and until the director shall have determined that all rates and charges, including industrial cost recovery of such political subdivision, are consistent with this article, the laws of the United States and regulations of the U.S. Environmental Protection Agency.

(G.O. 27, 1991, § 3)

Sec. 671-107. - Applicable to sewer service agreements.

All sewer service agreements to which the department of public works is a party shall be amended to reflect the rates and charges as provided for in this article.

(G.O. 27, 1991, § 3)

Sec. 671-108. - Rules and regulations authorized.

After the passage of General Ordinance No. 63, 1977, and from time to time thereafter as may be needed, the board may, by resolution, promulgate rules and regulations necessary to implement and carry out the provisions of this article and not inconsistent therewith. Before any such rules and regulations shall become effective, the board of public works shall follow the procedures provided in IC 36-9-25.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 3)

Sec. 671-109. - Appeals to the board.

(a)

Any person subject to this article may appeal the charges assessed against him to the board and shall have a hearing upon the following conditions:

(1)

That the person submits billing estimates or authorizes the director to make such estimates;

(2)

That the person has good cause to believe that charges assessed are in error;

(3)

That notice in writing has been given to the board within sixty (60) days of receipt of the charges in question.

(b)

The board is directed to notify the person making appeal of the time and place when his/her appeal will be heard. Upon evidence sufficient to the board submitted at the hearing establishing that the charges are in error, the board shall make adjustments in the charges. Adjustments may be in the form of a refund or a credit against subsequent assessments of the charges provided for in this article.

(G.O. 27, 1991, § 3)

Sec. 671-110. - Exceptions.

(a)

In the case of one-, two- or multi-family residences, the billing for sewage service for the months of May, June, July, August and September shall be based upon the monthly average of the water used or delivered for the previous twelve (12) months of May through April. In the event the monthly average of the water used or delivered for such previous twelve (12) months is greater than the water used or delivered for the months of May, June, July, August and September, then the billing for sewage service shall be computed on the actual water used in the month for which the sewage service bill is being rendered.

(b)

Where a metered water supply is used for fire protection as well as for other uses, the director may, at his/her discretion, make adjustments in the sewer user charge as may be equitable. In such cases the burden of proof as to the type of water usage shall be upon the user.

(c)

Where a metered water supply is used for fire protection only, the sewer user charge shall not apply.

(G.O. 27, 1991, § 3; G.O. 32, 2009, § 4)

Sec. 671-111. - Rate review.

At such time as deemed appropriate by the director, the director shall cause a financial study to be conducted to determine the various costs identified in the foregoing, and report to the city-county council the need for any necessary adjustments in the rates and charges.

(G.O. 27, 1991, § 3)

Sec. 671-111.1. - Advanced wastewater treatment facilities reserve fund.

(a)

Effective in fiscal year 1985, there is hereby created a special fund to be designated as the "advanced wastewater treatment facilities reserve fund," in the division of finance, under the controller.

(b)

This fund shall be a continuing fund with all balances remaining therein at the end of each calendar year, and no such balances shall lapse into the city or county general funds or ever be diverted, directly or indirectly, in any manner to any other uses than for capital expenditures for the repair, remodeling, addition to or replacement of major facilities at the city's

advanced wastewater treatment plant. Such "major facilities" shall be limited to capital equipment with an anticipated usable life in excess of at least fifteen (15) years, the replacement cost of which is in excess of two hundred thousand dollars ($200,000.00).

(c)

The fund shall be created and maintained by the transfer from sanitation general of revenues from the sewer user fees and pretreatment charges established under this chapter, in an amount not to exceed one million two hundred thousand dollars ($1,200,000.00). The accumulated fund balance shall not exceed fifteen million dollars ($15,000,000.00).

(d)

Moneys from this reserve fund shall be appropriated in accordance with IC 36-3-6-6.

(G.O. 27, 1991, § 3)

Sec. 671-112. - Charges not duplicated; repeal of divisions 1 and 2 upon this article becoming effective.

(a)

Article IV is intended to confirm and effectuate the sewer user and industrial cost recovery charges provided for in the confirming rate resolution of the board of public works, Resolution No. 2622 adopted September 25, 1984, and does not impose any charges duplicating or in addition to the identical charges provided for in that resolution. Such charges shall be payable under that resolution if it is legally effective to impose the charges and not under this article. If such resolution is not legally effective to impose the charges, then the charges shall be imposed by this article.

(b)

Article IV of Chapter 671, Revised Code of Indianapolis and Marion County, Indiana, as set forth herein, is intended to confirm and effectuate the sewer user charge and industrial cost recovery system of funding mandated by regulation of the U.S. Environmental Protection Agency and is designed to replace charges established by divisions 1 and 2 of article IV of chapter 27, Code of Indianapolis and Marion County, Indiana. Such charges established by divisions 1 and 2 of article IV are hereby expressly repealed when the charges set forth in Article IV of this chapter become legally effective. If, for any reason, this ordinance does not become legally effective, then the charges of divisions 1 and 2 of article IV of chapter 27, Code of Indianapolis and Marion County, Indiana, shall be preserved and remain in full force and effect.

(G.O. 27, 1991, § 3)

DIVISION 2. - WATER SERVICE TERMINATION

Sec. 671-113. - Termination of service procedures.
Sec. 671-114. - Termination of services not exclusive remedy.

Sec. 671-113. - Termination of service procedures.

(a)

Pursuant to IC 36-9-25, the department of public works may order the termination of water service to a sewer service address on account of nonpayment of a delinquent account which is not less than thirty (30) days delinquent. When so ordered, the water utility shall terminate such service in accordance with the terms of their agreement with the department.

(b)

The fee for terminating services shall be a minimum of twenty-five dollars ($25.00), which shall include charges assessed against the department by the water utility for effecting the termination. Fees for terminating commercial and industrial services shall be determined in an agreement between the department and the water company. This fee shall be assessed against the customer and added to the delinquent bill.

(c)

The department may not terminate under this section if the Marion County health department has found and certified to the department that the termination of water service will endanger the health of the user and others in the municipality.

(d)(1)

Prior to the termination of water service because of sewer user fee delinquency, the department must first give notice of such delinquency and impending termination at least seven (7) calendar days prior to the proposed termination, by first class mail addressed to the user to whom the service is billed, which notice shall contain the following:

a.

The delinquent amount due, together with any penalty and fees;

b.

The date of the notice of termination;

c.

The date on and after which termination shall be made, which shall be at least seven (7) calendar days from the date of the notice of termination;

d.

Notice that water service may be disconnected if, prior to the earliest possible date of termination given in the notice, the user does not pay the delinquency together with any penalty and fees, or disputes the amount or makes other provisions for payment pursuant to this section;

e.

A procedure as provided in subsection (d)(2) for resolving a disputed bill.

(2)

The director of the department shall appoint an account review officer (ARO) to review and resolve disputes. Before the earliest possible date of termination of water service as specified in the notice, a user may request a hearing before the ARO of the department to dispute the correctness of all or part of the amount(s) shown in accordance with the provisions of this section. A user shall not be entitled to dispute the correctness of all or part of the amount(s) if all or part of the amount(s) was (were) the subject of a previous dispute under this section.

(e)

The procedure for a hearing on a user dispute shall be as follows:

(1)

Before the earliest possible date of termination as specified on the notice of termination, the user shall notify the ARO in writing that he (she) requests a hearing to dispute the correctness of all or part of the amounts shown on the notice of termination, stating as completely as possible the basis for the dispute.

(2)

An informal hearing before the ARO shall be held within fifteen (15) days of the ARO's receipt of the user's written request for a hearing on a disputed bill.

(3)

At the hearing, the user shall be entitled to present all evidence that is, in the ARO's view, relevant and material to the dispute.

(4)

Based on the evidence presented at the hearing, the ARO, within ten (10) days of the completion of the hearing, shall issue a written decision formally resolving the dispute. The ARO's decision shall be final and binding.

(f)

The ARO shall be authorized to resolve any disputed sewerage bill and shall be authorized to order the termination of water service under appropriate circumstances. Upon approval by the ARO, the user may enter into an agreement to amortize the unpaid balance of his/her account over a reasonable period of time, not to exceed six (6) months. No termination shall be effected for any user complying with any such amortization agreement, provided the user also keeps current his/her account for sewer service as charges accrue in each subsequent billing period. If a user fails to comply with an amortization agreement, the ARO may terminate water service provided notice is given to the user at least forty-eight (48) hours prior to such termination and the notice includes conditions the user is required to meet to avoid termination.

(g)

Utilization of this hearing procedure shall not relieve a user of the obligation to timely and completely pay all other undisputed water and sewerage bills or charges. Failure to timely and completely pay all such undisputed amounts shall subject the user to the termination of service in accordance with the provisions of this division.

(h)

Until the date of the ARO's decision, the department shall not terminate water service of the user. If the ARO determines that the customer must pay some or all of the disputed amount(s), the department, or the ARO in his written decision, shall notify the user of the following:

(1)

The amount to be paid;

(2)

The date on or after which services will be terminated; and

(3)

Notice that, unless the department receives complete payment of the amount shown prior to the earliest possible date of termination given in the notice, water service shall be terminated.

(i)

A "user" for the purpose of this section is defined as:

(1)

A person who requests, either orally or in writing, water and/or sewerage service from the city or water utilities;

(2)

A person in whose name water and/or sewerage service is billed for the rendering of such service.

(G.O. 27, 1991, § 3)

Sec. 671-114. - Termination of services not exclusive remedy.

The remedy provided herein for the collection of delinquent sewer user charges or benefits shall not be construed to abridge

or in any manner interfere with the right and power of the department to enforce a collection thereof by any other action or as otherwise provided by statute, but the remedy provided in such section shall be taken and held as an additional means to enforce payment of sewer service charges or benefits.

(G.O. 27, 1991, § 3)

Indianapolis - Marion County, Indiana, Code of Ordinances >> TITLE III - PUBLIC HEALTH AND WELFARE >> Chapter 671 - SEWERS AND SEWAGE DISPOSAL >> ARTICLE IV. - RATES, CHARGES AND BILLING >> DIVISION 3. - ELIMINATION OF UNCOLLECTIBLE ACCOUNTS >>

DIVISION 3. - ELIMINATION OF UNCOLLECTIBLE ACCOUNTS

Sec. 671-115. - Procedure.
Secs. 671-116—671-119. - Reserved

Sec. 671-115. - Procedure.

(a)

As used in this section, the term "final account" shall have the following meaning: a closed account for which sewer service is no longer being provided to the named customer at that service location.

(b)

The department shall prepare a semiannual schedule of sewer user final accounts which it has determined to be uncollectible. The schedule shall consist of the following:

(1)

a.
For bills becoming due prior to July 1, 1988, a certified list of all sewer user final accounts for which the outstanding fees and penalties together are twenty-five dollars ($25.00) or less and which are at least one hundred twenty (120) days delinquent and which the department has determined to be uncollectible;

b.

For bills becoming due after July 1, 1988, a certified list of all sewer user final accounts for which the fees and penalties together are twenty-five dollars ($25.00) or less and which are at least one hundred twenty (120) days delinquent and which are not subject to liening under IC 36-9-23-31 through IC 36-9-25-11 and which the department has determined to be uncollectible;

(2)

A statement setting forth the efforts that have been made to collect such accounts and a statement that all such efforts have been unsuccessful;

(3)

A statement, including the reasons therefor, that the department believes it is economically not feasible to pursue collection measures on such accounts.

(c)

The semiannual schedule shall be submitted to the board of public works, which by resolution may declare accounts listed in the schedule as uncollectible and may authorize the department to cease further collection procedures and expense the amounts outstanding on the accounts as bad debts.

(d)

The semiannual schedule prepared by the department and the resolution adopted by the board shall be forwarded to the city-county council for final approval. A sewer user account may be deemed uncollectible only if the council shall approve the board's resolution.

(G.O. 27, 1991, § 3)

Secs. 671-116—671-119. - Reserved.

Indianapolis - Marion County, Indiana, Code of Ordinances >> TITLE III - PUBLIC HEALTH AND WELFARE >> Chapter 671 - SEWERS AND SEWAGE DISPOSAL >> ARTICLE V. - PRIVATE DISPOSAL FACILITIES

ARTICLE V. - PRIVATE DISPOSAL FACILITIES

Sec. 671-120. - Conformity with this article required.
Sec. 671-121. - When use required.
Sec. 671-122. - Permit required; fee.
Sec. 671-123. - Approval of the division of compliance required; inspections.

Sec. 671-124. - Conformity with health regulations required.
Sec. 671-125. - Authority of health department not impaired.
Sec. 671-126. - Maintenance.
Sec. 671-127. - Abandonment of facilities.

Sec. 671-120. - Conformity with this article required.

Except as provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.

(G.O. 27, 1991, § 3)

Sec. 671-121. - When use required.

Where a public sanitary or combined sewer is not available under the provisions of this chapter, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

(G.O. 27, 1991, § 3)

Sec. 671-122. - Permit required; fee.

Before the commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit therefor signed by the administrator of the division of compliance. The application for the permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the administrator. A permit and inspection fee of one hundred dollars ($100.00) shall be paid to the city at the time the application is filed.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 44)

Sec. 671-123. - Approval of the division of compliance required; inspections.

A permit for a private wastewater disposal system as required by this article shall not become final until the installation is completed to the satisfaction of the division of compliance; the division shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the division of compliance when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the division of compliance.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 44)

Sec. 671-124. - Conformity with health regulations required.

The type, capacities, location and layout of a private sewage disposal system shall comply with all regulations of the ISBH and of the Marion County health department. No septic tank or cesspool shall be permitted to discharge into any natural outlet in any circumstance.

(G.O. 27, 1991, § 3)

Sec. 671-125. - Authority of health department not impaired.

Nothing contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Marion County health department.

(G.O. 27, 1991, § 3)

Sec. 671-126. - Maintenance.

The owner of private wastewater disposal facilities shall operate and maintain such facilities in a sanitary manner at all times, at no expense to the city.

(G.O. 27, 1991, § 3)

Sec. 671-127. - Abandonment of facilities.

When a private wastewater disposal system is abandoned, any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with clean bankrun gravel or dirt.

(G.O. 27, 1991, § 3)

ARTICLE VI. - WASTEWATER HAULING

Cross reference—Traffic, ch. 441; motor vehicles, ch. 611.

Sec. 671-128. - Definitions.
Sec. 671-129. - Wastewater hauler criteria.
Sec. 671-130. - Registration.
Sec. 671-131. - Discharging procedures.
Sec. 671-132. - Testing requirements.
Sec. 671-133. - Administration procedures.
Sec. 671-134. - Enforcement.
Sec. 671-135. - Permit revocation.
Secs. 671-136—671-149. - Reserved.

Sec. 671-128. - Definitions.

For the purposes of this article, the following definitions shall apply:

Commercial wastewater shall mean the liquid or liquid-borne wastes from commercial establishments including, but not limited to, restaurants, dry cleaners, service stations or auto repair facilities and retail establishments or public or private nonresidential buildings; and shall include any grease, oil, solvents, sludge or other material removed from any sewage disposal system or wastewater treatment plant.

Domestic wastewater shall mean the liquid-borne wastes resulting from normal residential water-consuming activities including, but not limited to, disposal.

Industrial wastewater shall mean the liquid or liquid-borne waste from industrial manufacturing process, trades or businesses.

Land application shall mean the process of disposing of wastewater by burial or incorporation into the soil.

Sewage disposal system shall mean and include septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units and other equipment, facilities or other devices used to store, treat, render inoffensive or dispose of human excrement or liquid-borne wastewater.

Tank shall mean any container when placed on a vehicle to transport wastewater.

Vehicle shall mean that device used to transport a tank.

Wastewater hauler shall mean any person who engages in the activity, service, business or leasing of vehicles for the purpose of transporting domestic wastewater to another location for disposal.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 4)

Cross reference—Definitions generally, ch. 102.

Sec. 671-129. - Wastewater hauler criteria.

Any wastewater hauler whose legal business address is in Marion County or any wastewater hauler whose legal business

address is outside Marion County but who engages in business in Marion County must comply with all of the following provisions of this article.

(G.O. 27, 1991, § 3)

Sec. 671-130. - Registration.

(a)

Any wastewater hauler as defined in section 671-129 must be registered with and receive a permit from the department and must display a valid decal issued by the department in the lower corner of the driver's side windshield of each vehicle. The charge for the permit and decal for each vehicle shall be established by rule or regulation of the board. Such charge shall be due and payable at the time of filing. Such charges may be revised by the board no more than once each calendar year in accordance with Chapter 261 of this Code.

(b)

Each wastewater hauler shall update his/her permit application as required by the director and shall include the following information:

(1)

Proof of ownership of each vehicle, including owner's name and legal address.

(2)

Proof of a current valid ISBH permit.

(3)

Proof of insurance as specified in subsection (d) of this section.

(4)

The wastewater hauler's legal address and legal business address, type of business, i.e., domestic and/or industrial wastewater hauler.

(5)

The number of wastewater hauling vehicles, tank capacity in gallons of each vehicle, and license and vehicle identification numbers of all vehicles.

(6)

Any other information as may be deemed by the director to be necessary to evaluate the wastewater hauler's permit.

(c)

Each vehicle shall be equipped with an entry port, which allows sampling of the contents of the tank from top to bottom by department personnel. This port shall have a minimum diameter of six (6) inches and shall be tightly secured to prevent leakage. Each vehicle must have the company name, address, telephone number, capacity in gallons, displayed in a manner similar to that required by the ISBH.

(d)

Each wastewater hauler shall be insured in an amount set forth by rule or regulation of the board. The insurance coverage shall cover all work performed by the wastewater hauler while transporting and discharging wastewater and shall include, but not be limited to, liability arising out of disposal of any hazardous waste, spilled material on public property, and fines or any other costs incurred by the city as a result of the wastewater hauler's activities. The city shall be named as an additional insured. A certificate of such policies shall be delivered to the department prior to commencement of hauling. The insurance carrier shall give notice to the city at least thirty (30) days before such insurance is either canceled or not renewed, and the certificate shall state this obligation.

Wastewater haulers permitted at the time of the effective date of this provision shall submit proof of adequate insurance coverage with the next permit application or upon expiration of their bond, whichever is sooner. Potential wastewater haulers applying for a permit subsequent to the effective date of this provision shall secure the proper insurance coverage at the time of filing.

(e)

After the application has been received and reviewed by the director, and has been determined to satisfy the conditions above, a permit and decal for each vehicle shall be issued for a period not to exceed five (5) years from date of issuance. The director may prescribe additional permit conditions, including but not limited to:

(1)

Approved charges and fees;

(2)

Limits on the wastewater characteristics;

(3)

Restrictions on the times and days of discharge;

(4)

Requirements for the completion, submittal and retention of customer receipts and other documents and reports related to wastewater hauling;

(5)

Type of wastewater allowed to be hauled and disposed of at POTW;

(6)

Location of approved discharge sites;

(7)

Any other condition as deemed appropriate by the director to assure compliance with this chapter.

(f)

A wastewater hauler's permit is issued to a specific person at a specific location and does not constitute a property interest nor shall the permit be assigned, conveyed or sold to a new owner, different premises or new or changed operation.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 4)

Sec. 671-131. - Discharging procedures.

(a)

All discharging of wastewater from the wastewater hauler's vehicle tanks must be done at designated sites approved by the department. The department shall have the right to limit the hours of the day and the days of the week during which discharging shall be allowed.

(b)

Any unpermitted discharging of wastewater into the POTW at any location under the jurisdiction of the department is prohibited unless approved by the department prior to discharging.

(c)

Any disposal of wastewater by land application must be approved by the department. Written permission of the owner of the property used for disposal and written approval by the ISBH and IDEM must be submitted to the department before any approval may be granted and prior to discharging any wastewater.

(d)

The wastewater hauler shall be responsible for the cleanup to the satisfaction of the director for any and all spills on city streets, rights-of-way and property.

(e)

The director may require any wastewater hauler to correct any defective equipment including hoses, valves, tanks, piping and permanent or flexible connections which may result in the leakage or spilling of wastewater from the vehicle. Defective equipment shall be repaired before the wastewater hauler is allowed to discharge at the site designated by the department.

(f)

Any disposal of wastewater into the POTW must be performed by a wastewater hauler having the permit described in section 671-130(a). Disposal of domestic wastewater or restaurant grease trap waste generated inside or outside Marion County requires no further approval. A wastewater hauler disposing of industrial or commercial wastewater generated inside or outside Marion County must obtain special approval as specified by the department.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 4)

Sec. 671-132. - Testing requirements.

(a)

The contents of all wastewater haulers' vehicles are subject to preliminary sampling and testing by the department before discharging into the approved site at the department's wastewater treatment facility. The test results on any sample must be within a specified range for the specific test parameters established by the department in order not to inhibit the performance of the wastewater treatment plant into which the wastewater is discharged.

(b)

Any wastewater hauler's tank contents that do not pass the preliminary testing procedures will be subject to additional specific testing to determine the nature of the contents. If the contents of the tank are deemed by the department to be an inhibitory substance, and unsatisfactory for discharging into the wastewater treatment plant, the wastewater hauler must arrange for proper disposal of the tank contents and submit to the director proof, by affidavit and receipt, of proper disposal. Until the director has determined that the conditions of proof have been satisfied, the wastewater hauler is prohibited from using all designated disposal sites approved by the department.

(c)

The department shall notify the ISBH of the status of any wastewater hauler whose tank contents are determined to be unsatisfactory for discharging into a designated disposal site approved by the department.

(d)

The director may refuse to accept any wastewater if, after testing, it is deemed unsatisfactory for discharge into the wastewater treatment plant.

(e)

The wastewater hauler shall reimburse the department for all costs associated with the treatment, testing and disposal of any prohibited wastes.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 4)

Sec. 671-133. - Administration procedures.

(a)

All wastewater haulers shall maintain accurate business records pertaining to wastewater hauling, available to the director, EPA, IDEM and ISBH upon request, including names, addresses, and telephone numbers of the generators of all wastewater being transported and/or disposed of, county of origin, type of waste, volume of waste, and disposal site, customer receipts required under subsection (b) of this section, and approvals, permits and certifications issued by federal, state and local authorities. All records required to be retained under this article shall be retained for a minimum of three (3) years.

(b)

The driver of each vehicle delivered to the wastewater treatment plant site for discharging shall have dated customer receipts for each source of wastewater showing the names and addresses of the customers, the nature of the wastewater, amount of wastewater in gallons, wastewater hauler's name and legal business address and telephone number, and vehicle driver's name.

(c)

All wastewater haulers shall compensate the department for the full cost of all sampling, laboratory analysis and treatment costs. Fees shall reflect the costs associated with sampling and testing, treatment and administering the program and shall be based on a fee schedule published by the department.

(d)

Whenever required to carry out the objectives of this article relating to the control of the discharging of wastewater or the collection of dump fees, the director shall have a right of entry to, upon or through any premises for purposes of inspection, measuring and sampling. This right of entry shall include, but not be limited to, any equipment necessary to conduct such inspections, measuring and sampling. It shall be the duty of the wastewater hauler to provide all necessary clearance before entry and not to unnecessarily delay or hinder the director in carrying out the inspection, measuring and sampling. The right of entry shall exist at any time.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 4)

Sec. 671-134. - Enforcement.

(a)

Any person who fails to comply with any provision of this article may be fined not more than two thousand five hundred dollars ($2,500.00) for each offense. A violation of a permit issued under this article or a special agreement entered into under the authority of this article shall constitute a violation of this article. Each violation of this article shall constitute a separate offense. In addition, the department shall be entitled to all reasonable expenses including court costs and attorney fees.

(b)

Nothing in this article shall restrict any right which may be provided by statute or common law to the city to bring other actions, at law or in equity, including injunctive relief.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 4)

Sec. 671-135. - Permit revocation.

(a)

The director may revoke, suspend or modify the permit for any of the following reasons:

(1)

A violation of any provision of this article or of any applicable state or federal statute or regulation related to wastewater hauling;

(2)

Failure to report the characteristics of any load, including the furnishing of false information or misrepresentation of any material fact related to wastewater hauling;

(3)

Refusal of reasonable access to the wastewater hauler's premises for the purpose of inspecting records, inspection, sampling or monitoring;

(4)

Noncompliance with any condition of the permit or special agreement entered into under the authority of this article.

(b)

The director shall send written notice of facts underlying the proposed revocation, suspension or modification to the wastewater hauler.

(c)

The director shall grant a hearing upon the receipt of the wastewater hauler's written request made within fifteen (15) days of the notice of revocation. The director shall hold the hearing within ten (10) days of the receipt of the written request. If the wastewater hauler does not request a hearing as provided by this article, the revocation, suspension or modification shall be effective upon the date of the notice.

(d)

At the hearing, the wastewater hauler may present any evidence which the director finds relevant and material to the issues underlying the proposed revocation, suspension or modification. Based on the evidence presented at the hearing, the director shall make a written determination either revoking, suspending, modifying or reinstating the permit.

(e)

If the wastewater hauler objects to the decision made by the director, the wastewater hauler shall be entitled to a hearing before the board of public works upon such objection. The wastewater hauler shall file a written statement of his objections with the director, who shall call the same to the attention of the board. The appeal shall be scheduled before the board within thirty (30) days after such objections are filed with the director. Notice shall be given to the wastewater hauler identifying the time, place and date of the appeal hearing at least ten (10) days prior to the scheduled date. The board may hear any evidence it finds relevant. After the hearing, the board may confirm, reverse or modify the decision of the director. The order of the board shall be final. Such order shall be made within ten (10) days after the hearing and shall be in writing and sent to the wastewater hauler.

(G.O. 22, 1995, § 4)

Secs. 671-136—671-149. - Reserved.

ARTICLE VII. - SANITARY SEWER CONSTRUCTION PERMITS

Sec. 671-150. - Purpose and territorial application.
Sec. 671-151. - Requirements for construction permits; enforcement.
Sec. 671-152. - Application procedures; design plans and specifications.
Sec. 671-153. - Capacity and depth maintained.
Sec. 671-154. - Economic analysis for lift stations.
Sec. 671-155. - Right to limit sewer capacity.
Sec. 671-156. - Posting of bond.
Sec. 671-157. - Execution of covenant.
Sec. 671-158. - Dedication of easement.
Sec. 671-159. - Expiration of construction permit by operation of law; extensions; certificate of completion and compliance.
Sec. 671-160. - Inspection of construction of sanitary sewers.
Sec. 671-161. - Requirements for project acceptance and dedication to the city.
Sec. 671-162. - Dedication and rehabilitation of existing sewers.
Sec. 671-163. - General authority for investigations and inspections.
Sec. 671-164. - Variance procedure.
Sec. 671-165. - Plan review fee.
Sec. 671-166. - Exemption relative to sewer construction activity accomplished by and for certain governmental units.
Sec. 671-167. - Notice of change in permit information; amendment of permits and plans.
Sec. 671-168. - Stop-work order; revocation of permits.
Sec. 671-169. - Appeals.
Sec. 671-170. - Transfer of permit.

Sec. 671-150. - Purpose and territorial application.

(a)

The purpose of this article is to protect the safety, health and general welfare of the citizens of Indianapolis by requiring compliance with standards and practices which will result in proper sanitary sewer and sanitary sewer lift station design and construction in the Indianapolis sanitary district.

(b)

The provisions of this chapter shall be applicable throughout the Indianapolis sanitary district including areas outside of such district where agreements are executed to provide sanitary sewer service.

(G.O. 27, 1991, § 3)

Sec. 671-151. - Requirements for construction permits; enforcement.

(a)

It shall be unlawful to cause or allow the construction or modification of any sanitary sewer or sanitary sewer lift station without first obtaining a valid construction permit issued by the bureau of license and permit services and the Indiana Department of Environmental Management, if necessary; provided, however, a sanitary sewer construction permit shall not be required for maintenance work performed by or on behalf of the department.

(b)

The bureau may deny permits to any applicant who is currently in violation of this chapter or any applicable regulations.

(c)

A violation of this section is subject to the enforcement procedures and penalties provided in section 103-3 of this Code; provided, however, the fine imposed for such violation shall not be less than one hundred dollars ($100.00), and each day that an offense continues shall constitute a separate violation. The controller shall cause any fines collected under this section to be deposited into an account for the use and benefit of the bureau.

(d)

Construction of new combined sewers is prohibited. "Construction of new combined sewers" does not include the following:

(1)

Rehabilitation or repair of existing combined sewers;

(2)

Rehabilitation or repair of sewers that connect to existing combined sewers;

(3)

Connection of sanitary and/or storm sewers to existing combined sewers;

(4)

Construction of any new combined sewer designed to reduce overflows from existing combined sewers; or

(5)

Construction of any new combined sewer associated with redevelopment within an area serviced by pre-existing combined sewers.

(G.O. 27, 1991, § 3; G.O. 168, 1999, § 23; G.O. 3, 2002, § 45; G.O. 33, 2004, § 1; G.O. 63, 2009, § 90)

Sec. 671-152. - Application procedures; design plans and specifications.

(a)

Applications shall be submitted in accordance with procedures established by the bureau of license and permit services and revised from time to time. Design plans and specifications for the construction of sanitary sewers shall be developed by or under the direction of a professional engineer registered in accordance with IC 25-31-1 and shall have a title sheet that includes the professional engineer's seal and signature. The approval of design plans and specifications by the bureau under this article shall be valid for a period of one (1) year from the date such approval was granted, or until the construction permit for which the design plans and specifications were submitted is issued, whichever occurs first. However, prior to the issuance of the construction permit, if there are any material changes to approved design plans and specifications, or circumstances that cause the design plans and specifications to be inaccurate or incomplete, then new or corrected design plans and specifications shall be submitted to the bureau as a precondition for obtaining a construction permit.

(b)

The following permits and payment of the associated fees are required when building a sanitary sewer. The board of public works shall establish the amount of such fee by regulation and may revise the amount of such fee but not more often than once each calendar year.

(1)

The plan review fees shall cover the costs for the amount of time that is required for the bureau to administer and review plans submitted under this article for conformance with the department's standards and specifications.

(2)

The administrative fee shall cover the department's costs related to administration, planning, and review for the sewer service agreement.

The fees paid under this article shall not be refunded except upon request and in instances where the permit was issued in error, either because it was not required by law, or because a permit for the same activity previously had been issued and was in force at the time the second permit was applied for and issued.

(c)

Applications for construction permits shall be submitted at least sixty (60) days in advance of the proposed start of construction, provided, however, that a shorter time period may be approved by the bureau.

(d)

Applications shall include a certificate of sufficiency of plan filed by a professional engineer registered in accordance with IC 25-31-1.

(e)

The administrator of the bureau may, as a prerequisite to the issuance of a construction permit, require developers, wherever applicable, to send written notification to property owners whose properties abut the route of the proposed sewer.

(f)

Applications shall include any additional information deemed necessary by the bureau to carry out the provisions of this

chapter.

(G.O. 27, 1991, § 3; G.O. 51, 1996, § 2; G.O. 168, 1999, § 23; G.O. 15, 2001, § 124; G.O. 3, 2002, § 45; G.O. 107, 2005, § 5; G.O. 63, 2009, § 90)

Sec. 671-153. - Capacity and depth maintained.

Sewer lines that are to be extended shall have the same hydraulic capacity and be constructed on the same grade line as the existing sewers unless the department determines that a reduction of capacity is justified. Sewers shall be sized with capacity for the contiguous service area which is defined as the undeveloped and/or unsewered land capable of a gravity connection to the proposed sanitary sewer or lift station, unless it is shown that such contiguous area may be equally served by an alternate existing sewer.

(G.O. 27, 1991, § 3)

Sec. 671-154. - Economic analysis for lift stations.

A construction permit shall not be issued for a sanitary sewer lift station until an economic analysis identifies to the satisfaction of the department that the lift station exhibits a lower fifty-year life cycle cost than a gravity sewer, both of which shall be sized to serve the service area as described in section 671-153.

(G.O. 27, 1991, § 3)

Sec. 671-155. - Right to limit sewer capacity.

Except to the extent that it may be preempted by state or federal laws, rules or regulations, the bureau of license and permit services may deny the issuance of a construction permit if it is demonstrated that there is insufficient dry or wet weather capacity in any or all downstream sewers, lift stations, force mains and treatment plants, including capacity for pollutants, to accommodate the waste load expected to be generated as a result of the proposed development.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 46; G.O. 63, 2009, § 91)

Sec. 671-156. - Posting of bond.

(a)

The administrator of the bureau of license and permit services may, as a prerequisite to the issuance of a construction permit, require the posting of a performance bond from a company licensed by the State of Indiana to provide such surety. Such bond shall be equal to one hundred (100) percent of the contract amount or an amount established by the administrator to provide surety for the satisfactory completion of the improvements required by the construction permit and shall name the City of Indianapolis and County of Marion as parties who can enforce the obligations thereunder. Such bond may be a part of the total bonding required by the plat committee of the metropolitan development commission.

(b)

The administrator of the bureau may as a prerequisite to acceptance of a sanitary sewer or lift station require the posting of a maintenance bond in an amount not to exceed twenty (20) percent of the contract amount or, subject to the approval by such administrator, provision for maintenance for a period of three (3) years from the date of acceptance by the bureau. Such bond shall name the City of Indianapolis and County of Marion as parties who can enforce the obligations thereunder.

(c)

In instances where the administrator of the bureau has required a bond pursuant to this section, the administrator may as an alternative to the posting of such bond accept other appropriate security, such as a properly conditioned irrevocable letter of credit, which meets the same objectives as the bonds described in this section, subject to approval of any other department or agency whose interests are protected by the same bonding requirement.

(d)

If the surety on any bond furnished to the bureau becomes a party to a supervision, liquidation, rehabilitation action pursuant to IC 27-9 et seq., or its right to do business in the state is terminated, it shall be required that, within thirty (30) days thereafter, a substitute bond and surety be provided, both of which must be acceptable to the city. Failure to obtain a substitute bond within the stated time frame shall be cause for revocation or suspension of the construction permit until such time that the bond is furnished to the bureau.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 46; G.O. 63, 2009, § 91)

Sec. 671-157. - Execution of covenant.

(a)

The administrator of the bureau of license and permit services may, as a prerequisite to the issuance of a construction permit, require the execution of covenants and/or easements running in form to the City of Indianapolis and County of Marion by the owner or owners of such parcel. As a minimum in such cases, such administrator shall require that the following covenant be executed by the owner or owners of such parcel that shall be included in a recorded plat:

(b)

It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the sanitary sewer construction plan approved by the bureau, and the requirements of all sanitary sewer construction permits for this plan issued by such division.

(c)

Owner further covenants that no building, structure, tree or other obstruction shall be erected, maintained, or allowed to continue on the portion of the owner's real estate in which the easement and right-of-way are granted without express written permission from the bureau. Such permission, when duly recorded, shall run with the real estate. The department of public works and the bureau and their agents shall have the right to ingress and egress, for temporary periods only, over the owner's real estate adjoining said easement and right-of-way, when necessary to construct, repair or maintain sanitary sewer facilities.

(d)

Any person who violates a covenant required under this section, and/or the owner of any parcel of land who permits such a violation, who is notified in writing by the department of code enforcement or bureau that a violation exists, shall be given a reasonable period of time, not to exceed thirty (30) days, in which to correct such violation. The notice shall specify the nature of the violation and shall stipulate a required correction date.

(G.O. 27, 1991, § 3; G.O. 22, 1995, § 5; G.O. 3, 2002, § 46; G.O. 63, 2009, § 91)

Sec. 671-158. - Dedication of easement.

Whenever possible, sanitary sewers shall be constructed in the public right-of-way. When sewers are proposed to be constructed in easements and when unsewered or undeveloped property adjoins the applicant's property, the applicant may be required to extend the sewer and/or an easement dedicated to the department or its assignee, to the upstream property line. Such easements shall be accessible to vehicular traffic. Easements along public rights-of-way shall be contiguous with such rights-of-way.

(G.O. 27, 1991, § 3)

Sec. 671-159. - Expiration of construction permit by operation of law; extensions; certificate of completion and compliance.

(a)

If construction activity has not been commenced within one hundred eighty (180) days from the date of issuance of the sanitary sewer construction permit, the permit shall expire by operation of law and shall no longer be of any force or effect; provided, however, the administrator of the bureau of license and permit services may, for good cause shown in writing, extend the validity of any such permit for an additional period that is reasonable under the circumstances to allow commencement of the construction activity. In no event shall the extension exceed a period of sixty (60) days.

(b)

If the construction activity has been commenced but only partially completed, and thereafter substantially no construction activity occurs on the construction site over a period of six (6) months, the permit shall expire by operation of law and no longer be of any force or effect; provided, however, the administrator of the bureau may, for good cause shown in writing, extend the validity of any such permit for an additional period that is reasonable under the circumstances to allow resumption of construction activity.

(c)

The fee for an extension granted under this section shall be provided in section 131-501 of the Code, and the extension shall be confirmed in writing.

(d)

Within fourteen (14) days after satisfactory completion of tests on the sanitary sewer or lift station for which a construction permit was obtained, the professional engineer contracted in accordance with section 671-160 shall execute and file with the bureau a certificate of completion and compliance, in a form prescribed by the division.

(G.O. 27, 1991, § 3; G.O. 168, 1999, § 24; G.O. 3, 2002, § 47; G.O. 63, 2009, § 92)

Sec. 671-160. - Inspection of construction of sanitary sewers.

(a)

Execution of inspection agreement. Prior to the commencement of construction, the applicant shall execute an agreement with the bureau of license and permit services that will provide that:

(1)

The division of inspections and bureau of license and permit services will contract for construction inspection services to ensure that such construction meets the requirements of the approved construction plans;

(2)

The contracted engineer will be responsible for submitting and certifying air pressure or infiltration test results for all pipe and deflection test results for all flexible pipe;

(3)

The applicant will reimburse the bureau of license and permit services for the cost of such inspection services, which shall be determined at the time of execution of the agreement and verified by the applicant or his or her representative throughout construction;

(4)

Upon completion of construction, the contracted engineer shall execute and file with the bureau of license and permit services a certificate of completion and compliance certifying to the bureau and the applicant as to the compliance of such construction with the requirements of the approved construction plans and/or approved change orders; and

(5)

No action with regard to the acceptance of the construction and release of the improvement bond pursuant to this article shall be taken until the applicant has reimbursed the bureau of license and permit services in full for the inspection services.

(b)

Inspection of construction:

(1)

All construction of sanitary sewers intended for dedication to the city shall be inspected and certified pursuant to the agreement executed under subsection (a);

(2)

The applicant shall furnish the bureau of license and permit services necessary copies of the approved construction plans; and

(3)

If construction has already commenced on the effective date of General Ordinance No. 63, 1987, adopted July 20, 1987, the applicant must then furnish, along with a written request for acceptance, a certification by a professional engineer registered in the State of Indiana that the construction has met the requirements of the approved construction plans; further, the construction will be inspected by the division of inspections, and all deficiencies shall be corrected prior to acceptance by the bureau of license and permit services.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 47; G.O. 63, 2009, § 92)

Sec. 671-161. - Requirements for project acceptance and dedication to the city.

Sanitary sewers and lift stations will not be accepted and building sewer connection permits shall not be issued until all documents, as required by the department's standard specifications, are submitted to the bureau of license and permit services, including the following:

(1)

Maintenance bond as required in section 671-156(b);

(2)

Recorded covenant and easement documents as required in sections 671-157 and 671-158;

(3)

Certificate of completion and compliance as required in section 671-159(d);

(4)

The completion of a final inspection as required in section 671-160 that confirms that the sewer has been constructed and tested in accordance with the department's standard specifications; and

(5)

Sanitary sewer record ("as built") drawings in accordance with the department's standards that shall be stamped and signed by a land surveyor registered in accordance with IC 25-31-1.

(G.O. 27, 1991, § 3; G.O. 168, 1999, § 25; G.O. 3, 2002, § 47)

Sec. 671-162. - Dedication and rehabilitation of existing sewers.

(a)

The owner of a sanitary sewer may apply to the division of inspections for dedication of the sewer, providing that the application is made in writing.

(b)

Dedication of such sewer may be subject to the requirements outlined in sections 671-160(b) and 671-161 of this article and further, at the discretion of the administrator of the division of inspections, may require the following:

(1)

Proof of legal ownership;

(2)

Flow monitoring results;

(3)

Television results; and

(4)

Any other requirements as may be deemed reasonable and necessary by the administrator of the division of inspections.

(c)

In addition, the owner may, at his or her expense, be required to correct any deficiencies or remove any sources of clear water found as a result of any inspection, flow monitoring, television and/or other related testing.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 47; G.O. 63, 2009, § 92)

Sec. 671-163. - General authority for investigations and inspections.

(a)

The power to make investigations and inspection of sanitary sewer and/or lift station construction shall be vested in the division of inspections.

(b)

Investigation and inspection of sanitary sewer and/or lift station construction may be made at any time by going upon, around or about the affected property.

(c)

Such investigation and inspection may be made either before, during or after the construction is completed and shall be made for the purpose of determining whether the construction has been accomplished in a manner consistent with the approved plans and specifications and the minimum requirements of the department.

(d)

Persons working on or having control of the construction shall cooperate fully with the inspectors and shall have available a copy of the approved plans and specifications used to obtain the construction permit.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 47; G.O. 63, 2009, § 92)

Sec. 671-164. - Variance procedure.

(a)

The administrator of the bureau of license and permit services shall have the power to modify or waive any minimum sanitary sewer design standard found in Article VII of this chapter or any regulations promulgated by the board of public works pursuant to Article VII of this chapter. Such administrator, after consultation with the engineering division of the department of public works, may grant such a modification or waiver if an applicant for a construction permit submits the request in writing and makes a substantial showing:

(1)

That a minimum sanitary sewer design standard or regulation is unfeasible or unreasonably burdensome; and

(2)

That an alternate plan submitted by the applicant will achieve the same objective and purpose as compliance with minimum sewer design standards and regulations of the department.

(b)

If the administrator shall fail to respond to such request for variance within twenty (20) days from such written request, it shall be deemed to be denied.

(c)

An applicant may appeal to the board of public works the decision of the administrator denying or partially approving a requested variance. The appeal of such a decision shall be filed with the board within twenty (20) days of the decision. The board shall hear the request for the variance de novo and in making a decision shall apply the standards set forth above.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 47; G.O. 63, 2009, § 92)

Sec. 671-165. - Plan review fee.

Application fees are intended to compensate for the cost of the examination of detailed plans and specifications to determine consistency with the department's standards and specifications. Issuance of a construction permit relative to plans which do not comply with the department's minimum requirements shall not relieve the applicant of the responsibility of complying with all department standards and specifications.

(G.O. 27, 1991, § 3)

Sec. 671-166. - Exemption relative to sewer construction activity accomplished by and for certain governmental units.

Construction permits shall be obtained for sanitary sewer construction accomplished by or for a governmental unit, and inspections as specified in this chapter shall be required. Fees shall be required as specified in sections 671-160 and 671-152 except for the following:

(1)

Sanitary sewer construction for which a fee cannot be charged by the municipality because of federal or state law; or

(2)

Sanitary sewer construction accomplished by a unit of local government, or by its employee or contractor in the course of such employee's or contractor's performance of duties for a unit of local government.

(G.O. 27, 1991, § 3; G.O. 168, 1999, § 26)

Sec. 671-167. - Notice of change in permit information; amendment of permits and plans.

(a)

After a permit has been issued, the permittee shall give prompt written notice to the bureau of license and permit services of any addition to or change in the information contained in the permit application.

(b)

After a permit has been issued, any material deviation or change in the information contained in the permit application or the design plans and specifications shall be considered an amendment subject to approval by the administrator of the bureau. Prior to the time construction activity involving the change occurs, the permittee shall file with the bureau a written request for amendment, including a detailed statement of the requested change and the submission of any amended plans.

(c)

The bureau shall give the permittee written notice that the request for amendment has been approved or denied, and if approved, copies of the amended application or plans shall be attached to the original application or plans. A fee for the amendment of a permit shall be provided in section 131-501 of the Code. Reinspection fees, and other fees that are occasioned by the amendment shall be assessed and paid in the same manner as for original permits or plans.

(G.O. 168, 1999, § 26; G.O. 3, 2002, § 48; G.O. 63, 2009, § 93)

Editor's note—

Formerly § 671-168. See the Code Comparative Table.

Sec. 671-168. - Stop-work order; revocation of permits.

(a)

The administrator of the bureau of license and permit services is empowered to issue an order requiring suspension of work ("stop-work order") whenever such administrator determines that:

(1)

Construction is proceeding in an unsafe manner;

(2)

Construction is occurring in violation of the department's standard specifications and requirements and in such a manner that, if construction is allowed to proceed, there is a probability that it will be substantially difficult to correct the violation;

(3)

Construction activity is proceeding in a manner that is materially different from the application, design plans or specifications; or

(4)

Sewer construction for which a construction permit is required is proceeding without a construction permit being in force. In such an instance, the stop-work order shall indicate that the effect of the order terminates when the required permit is obtained.

The stop-work order shall be in writing and shall state to what construction it is applicable and the reason for its issuance. One (1) copy of the stop-work order shall be posted on the property in a conspicuous place, and one (1) copy shall be delivered to the permit applicant, to the person doing the construction and to the owner of the property or his or her agent. The stop-work order shall state the conditions under which construction may be resumed.

(b)

The administrator of the bureau may revoke a sanitary sewer construction permit when:

(1)

The application, design plans or specifications contain a false statement or misrepresentation as to a material fact; or

(2)

The application, design plans or specifications reflect a lack of compliance with the requirements of this article.

(c)

The sanctions provided in this section shall in no way limit the operation of penalties provided elsewhere in this chapter.

(G.O. 27, 1991, § 3; G.O. 168, 1999, § 26; G.O. 3, 2002, § 48; G.O. 63, 2009, § 93)

Editor's note—

G.O. 168, 1999, § 26, passed by the city-county council on Dec. 13, 1999, added provisions as § 671-167 and renumbered former § 671-167 as 671-168. Section 27 of G.O. 168, 1999 repealed former § 671-168, relative to penalties. See the Code Comparative Table.

Sec. 671-169. - Appeals.

(a)

Any person affected by authority delegated by this article to any official of the bureau of license and permit services and who objects to the decision made or the action taken by such official shall be entitled to a hearing before the board of code enforcement upon such objection. The person desiring such a hearing shall file a written statement of his or her objections with the director of code enforcement, who shall call the same to the attention of the board of code enforcement. The appeal shall be scheduled before such board within thirty (30) days after such objections are filed with the director. Notice shall be given to the objector identifying the time, place and date of the appeal at least ten (10) days prior to the scheduled date.

(b)

After hearing testimony of the objector and the official who made the decision or took the action objected to, the board of code enforcement may confirm, reverse or modify such decision or action. The order of such board shall be final. Within ten (10) days of such board's decision a written notice shall be given to the objector confirming such decision.

(G.O. 27, 1991, § 3; G.O. 3, 2002, § 48; G.O. 63, 2009, § 93)

Sec. 671-170. - Transfer of permit.

(a)

A sanitary sewer construction permit may be transferred with the approval of the administrator of the bureau of license and permit services to a person, partnership or corporation that would be eligible to obtain such construction permit in the first instance (hereinafter called "transferee"), after both the payment of a fee provided in section 131-501 of the Code and the execution and filing of a form furnished by the bureau. Such transfer form shall contain, in substance, the following certifications, release and agreement:

(1)

The person who obtained the original construction permit or a person who is employed by and authorized to act for the obtainer (hereinafter called "transferor") shall:

a.

Certify under penalties for perjury that such person is familiar with the sanitary sewer construction activity accomplished pursuant to the construction permit; such person is familiar with the construction standards and procedures provided in this article; and to the best of such person's knowledge, information and belief the construction activity, to the extent performed, is in conformity with all standards and procedures provided in this article; and

b.

Sign a statement releasing all rights and privileges secured under the construction permit to the transferee.

(2)

The transferee shall:

a.

Certify that the transferee is familiar with the information contained in the original construction permit application, the design plans and specifications, and any other documents filed in support of the application for the original construction permit;

b.

Certify that the transferee is familiar with the present condition of the premises on which the construction activity is to be accomplished pursuant to the construction permit; and

c.

Agree to adopt and be bound by the information contained in the original application for the construction permit, the design plans and specifications, and other documents supporting the original construction permit application; or in the alternative, agree to be bound by such application plans and documents modified by plan amendments submitted to the bureau for approval.

(b)

The transferee shall assume the responsibilities and obligations of and shall comply with the same procedures required of the transferor (including, but not being limited to, the requirement of section 671-159 that a certificate of completion and compliance be executed and filed) and shall be subject to any written orders issued by the bureau.

(c)

A permit for construction activity at a specified location may not be transferred to construction activity at another location.

(G.O. 168, 1999, § 28; G.O. 3, 2002, § 48; G.O. 63, 2009, § 93)

ARTICLE VIII. - CITY SEWER CONSTRUCTION; PRO RATA COST SHARING

Sec. 671-801. - Purpose and policy.
Sec. 671-802. - Definitions.
Sec. 671-803. - Procedures; council approval as pro rata project.
Sec. 671-804. - Connection fee.
Sec. 671-805. - Use of connection fee.

Sec. 671-801. - Purpose and policy.

Consistent with the objectives of this chapter, including protecting public health and providing for a sound sanitary sewer infrastructure system, the department is authorized to construct sanitary sewers which are suitable for use by a local area abutting or adjoining the sewers, and the department is authorized to charge property owners in the local area abutting or adjoining the sewers a fee for connecting to such sewers. Pursuant to IC 36-9-23-29, the connection fee shall be a pro rata portion of the department's cost of constructing the sewer.

(G.O. 58, 1999, § 1)

Sec. 671-802. - Definitions.

(a)

Pro rata sewer shall mean a sanitary sewer constructed by the department in accordance with IC 36-9-23-29 and this article.

(b)

Cost of construction shall mean all reasonable costs associated with construction, including materials, labor, design, inspection, property acquisition and finance costs.

(c)

Construction shall mean the original building of the sanitary sewer and shall also mean:

(1)

Construction work directly related to the original sanitary sewer which increases the capacity of the original sanitary sewer; or

(2)

Alteration of the original sanitary sewer which increases the capacity of the sanitary sewer.

(d)

Department shall mean the department of public works.

(e)

All other terms as defined in section 671-2 of this chapter apply in this article.

(G.O. 58, 1999, § 1; G.O. 15, 2001, § 125)

Sec. 671-803. - Procedures; council approval as pro rata project.

(a)

Upon request of the department, made prior to the commencement of any actual work on the proposed project, the city-county council by resolution shall approve or disapprove a department sewer construction project as a pro rata sewer project for which connection fees may be charged as set forth in this article. However, recognizing that the Franklin Township sanitary sewer and lift station projects are currently under construction, approval of the city-county council by resolution may be requested for those projects after commencement of actual work. Design, construction and property acquisition of the pro rata sewer shall comply with all applicable laws and regulations.

(b)

Upon city-county council approval of a sewer construction project as a pro rata sewer project, the department shall record with the Marion County recorder a document and area map designating a fixed geographical area capable of being served by the pro rata sewer. This area shall be known as the designated recoupment area. The recorded document shall also set

forth the obligation to pay a connection fee under this article and shall state how the connection fee is to be calculated for that pro rata sewer in sufficient detail so that a property owner can calculate with reasonable certainty the connection fee applicable to his property.

(c)

The obligation to pay the connection fee does not apply to any property owner of abutting or adjoining property unless the document is recorded before the owner taps into or connects to the pro rata sewer.

(d)

Any city-owned property capable of being served by the pro rata sewer shall be included in the designated recoupment area.

(e)

When all areas in the designated recoupment area have paid to the department their pro rata share of construction of the sewer and/or when the department has received connection fees equal to its cost of constructing the pro rata sewer, the department shall record a release of the document.

(f)

The department shall have the authority to approve requests for connection to the pro rata sewer and shall determine the amount of the connection fee as set forth in section 671-804.

(G.O. 58, 1999, § 1)

Sec. 671-804. - Connection fee.

(a)

No person shall cause or allow the connection of a building sewer or a local sanitary sewer to the pro rata sewer without first having paid to the department the connection fee established by this article.

(b)

The connection fee shall be equal to the abutting or adjoining property's pro rata share of the cost of construction of the pro rata sewer, as determined in subsection (c).

(c)

The pro rata share of the cost of construction shall be calculated based on either:

(1)

The amount of the total peak design capacity, in million gallons per day, of the pro rata sewer allocated to the individual property's use at the time of connection; or

(2)

The individual property area, measured in acres or square feet, compared to the total acreage or square feet in the designated recoupment area.

(d)

If not paid prior to connection, the connection fee shall be a lien on the property for which the connection is made.

(G.O. 58, 1999, § 1)

Sec. 671-805. - Use of connection fee.

The proceeds of connection fees collected by the department under this article shall be a part of the sanitation general fund and may be used as:

(1)

Payment toward the cost of construction of the pro rata sewer; or

(2)

Payment toward the cost of improving the pro rata sewer in the future.

(G.O. 58, 1999, § 1)

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Twenty-seventh Set of Data Requests

Q 27-6: Please answer the following questions regarding the connection fee charged by the Wastewater Utility.

a) Please provide any report or schedules prepared by DPW or its consultants to determine the current connection fee of $2,500 charged by the Wastewater Utility.

Answer: See attached memorandum to James Garrard dated 10/20/05.

b) Is the connection fee based solely upon the actual costs to connect to the wastewater system?

Answer: See attached memorandum.

c) Does any portion of the connection fee include an impact fee, system development charge, or similar charge normally imposed on new customers so that "growth pays for growth"?

Answer: See attached memorandum.

INDIANAPOLIS CLEAN STREAM TEAM
151 N. Delaware St.
Suite 900
Indianapolis, IN 46204

Tel. (317) 327-8720
Fax (317) 327-8699

Memorandum

Date: October 20, 2005

To: James A. Garrard, Department of Public Works

From: Mark C. Jacob, Program Manager, Clean Stream Team

Subject: Connection Fee Explanation – Use of Funds

File Code: EPM-LTCP UAA – Rate Analysis – Connection Fee Explanation.doc

Introduction:

In the development of a connection fee for the City of Indianapolis's use, we derived the level of the connection fee as follows:

The Connection Fee is intended to help compensate the City for its past investments and equity in the existing sanitary sewer system (collection and treatment facilities) as well as to cover a portion of the City's actual cost of capacity and availability at the time that capacity allocations are requested for those that desire City sewer services.

The Connection Fee is not intended to offset user fee increases related to addressing the City's combined sewer overflow (CSO) mitigation program, nor operation, maintenance & replacement costs that benefit only existing users.

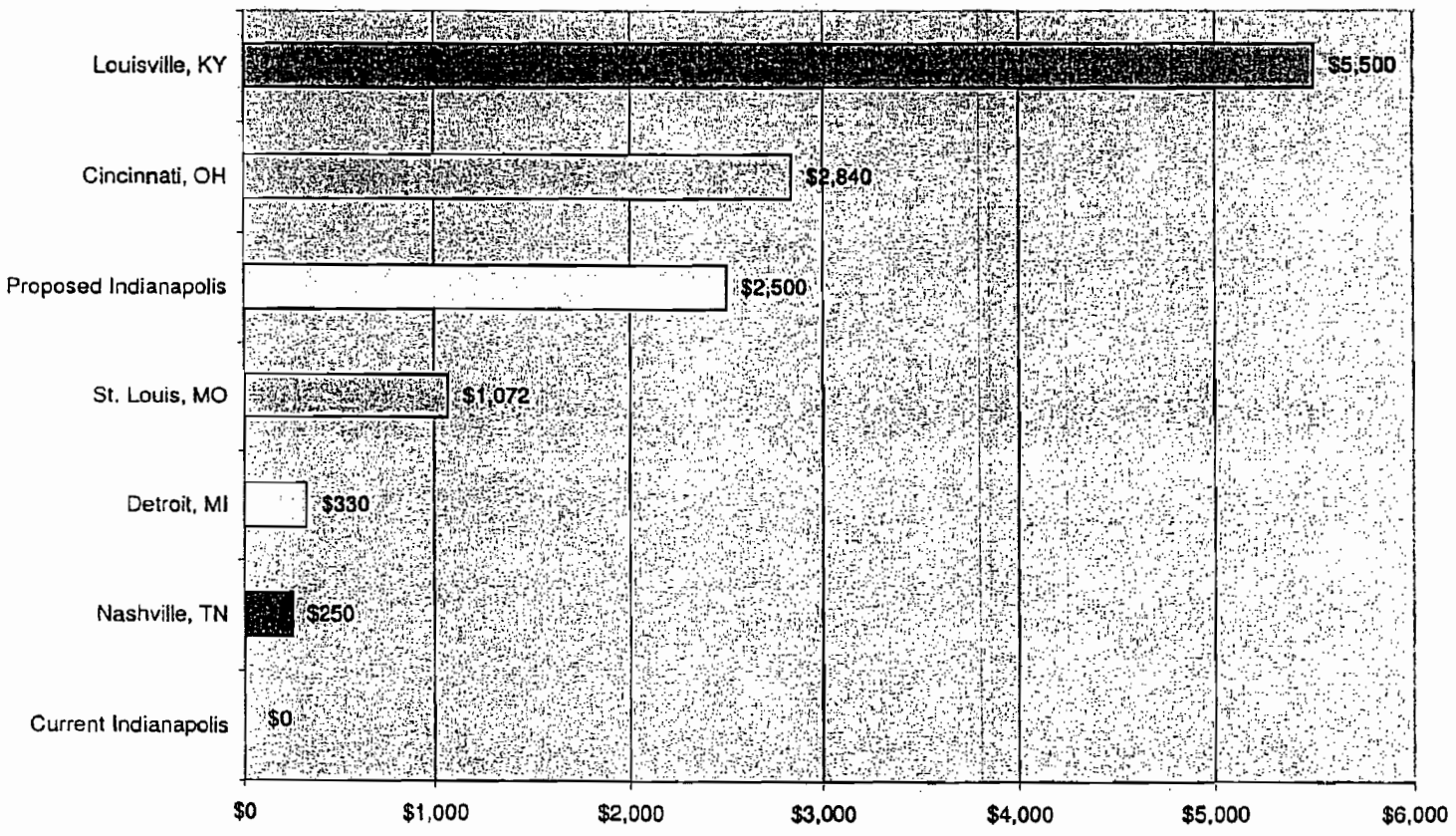
Rationale for Connection Fee:

1. Current cost of additional capacity for both treatment plant and collection system capacity:
One rationale relates to the cost of adding capacity for new growth and development. Each time the City allocates capacity for a new home (or new EDU), the City is giving up approximately 310 gallons per day (327 IAC) of its wastewater treatment capacity. Current construction costs for new wastewater treatment plant capacity of the type required in Indianapolis, including sewage transportation are estimated to cost in excess of $10 per gallon per day. Based upon a usage of the 310 gallons per day, the accompanying connection fee would equate to approximately $3,100 (310 gpd x $10 per gallon per day): far higher than the City's proposed fee of $2,500 per EDU.

2. Historical capital costs that were funded and supported by existing customers:
Existing customers have paid for the existing capital investment in the sanitary sewer system. Based upon historical records maintained by the City, these capital costs exceed $1 billion. There are currently approximately 225,000 individual customer connections to the City's sewerage system that have the equivalency of approximately 320,000 equivalent dwelling units (EDU's). The existing plant investment per customer amounts to nearly $4,445 and the investment per EDU is approximately $3,125: again, far higher than the City's proposed fee of $2,500 per EDU.

DRAFT

Comparison of Indianapolis to Midwestern Communities
New Connection Fees for Single Family Units
2005



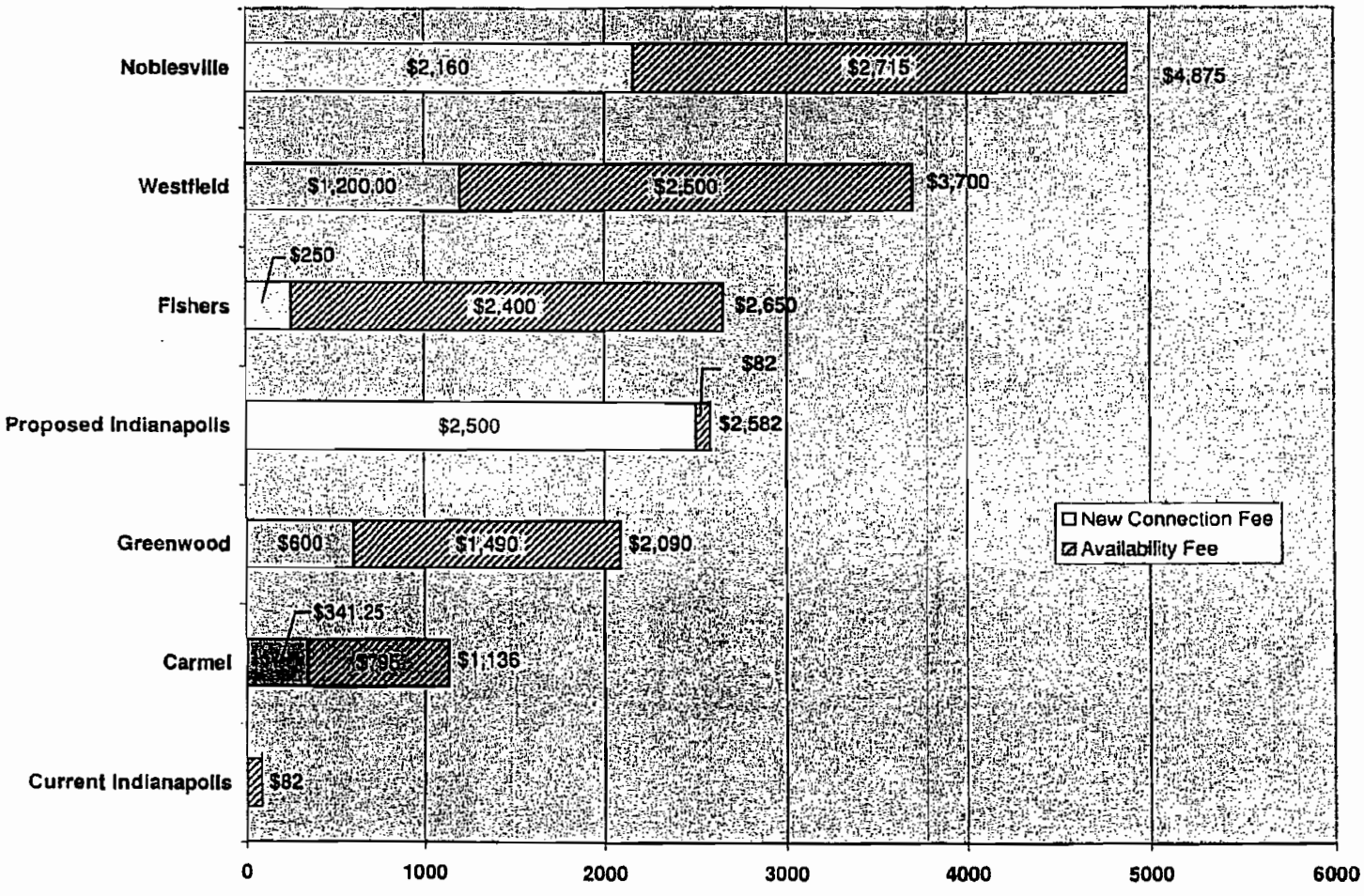
April 27, 2005

Confidential

MAS ATTACHMENT 7
CAUSE NO. 43936
Page 3 of 4

DRAFT

Comparison of Indianapolis to Surrounding Communities
New Connection and Sewer Availability Fees for Single Family Units
2005



April 27, 2005

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MAS ATTACHMENT 7
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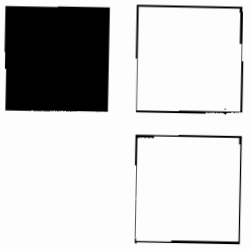
Page 4 of 4

AWWA MANUAL



Chapter 28

System Development Charges

A growing number of water utilities employ *system development charges* to assign to future customers the capital cost responsibility of system capacity that is or will be available for future customers. The financing and construction of water system infrastructure are core water utility functions. Customers expect their local water utilities to provide safe and reliable water service and facilities. Utilities use many different methods for this funding. Five types of water utility capital financing are

- pay-as-you-go financing through user rates
- debt financing
- system development charges (SDCs)
- up-front reimbursement from developers
- stock issuance

Debt financing requires future repayment from revenues, often through user rates, and equity financing is available only to investor-owned utilities.

Throughout the United States, SDCs (also referred to as impact fees or plant investment fees) are used to finance some capital improvements. These charges are designed specifically to pay for the capacity costs associated with growth. Special charges for new developments date back to the 1930s. System development charges are more frequently used as a source of capital financing in large- and medium-sized urban areas, in high-growth locations, and in areas of scarce water supply. Existing customers in regions with extensive growth or potential growth may benefit greatly from these charges. SDCs assign the capacity cost of growth, at least in part, to those causing the growth rather than to existing customers.

Though new development in a water utility's service area may be viewed as positive, the appropriate source of funding for the water system's expansion to support the new development is a recurring debate. During times of extensive system

growth, the utility must make investments to provide service to the new development. An SDC is one method of funding these new facilities. Facilities most commonly financed with SDCs include backbone facilities, such as source of supply, source water transmission, treatment facilities, high-service pumping, and major transmission mains. Depending on local circumstances or applicable state statutes, the costs of distribution mains and other facilities also may be recovered by the SDC.

SELECTING A METHOD BASED ON FINANCIAL GOALS AND OBJECTIVES

The first step in implementing SDCs should be to identify the objectives to be achieved by the management of the water utility's services. These objectives might include to

- have new development pay its own way
- fund major system expansion
- generate sufficient cash to fund a portion of capital improvements
- minimize debt
- equitably recover capital costs from current and future customers
- maintain appropriate level of retained earnings and cash reserves to meet other capital needs of the system

Though SDCs can be used to minimize the amount of debt financing required for capital expansion, these charges may not entirely eliminate the need for future debt issues. The decrease in debt financing needed will, however, reduce debt service costs included in utility rates. Additionally, SDCs may give a utility flexibility in timing debt issuance. For example, with sufficient funds from SDCs, the utility may be able to delay a debt issuance to avoid a period of high interest costs. In most situations, the utility will not collect sufficient funds from SDCs in the short term, or perhaps even in the long term, to fully fund a major system expansion.

Some groups have opposed the use of SDCs. Frequently, opposition results from a lack of understanding of the purpose and use of the charges. Builders and developers have opposed the charges because they add to up-front development costs. However, in some communities, builders and developers support SDCs because the utility could not otherwise finance the facilities needed to accommodate growth.

The implementation of SDCs should be guided by

- compliance with any local and state legal and regulatory requirements
- financial objectives of the utility
- generally accepted water utility industry financing and pricing practices
- maintaining fairness between existing and future customers
- uniform and consistent methodology

An SDC is a financial commitment on the part of both the utility and the development community. Developers are committing funds to provide for utility expansion; the utility is committing to ensure that utility's services are available when needed.

LEGAL ISSUES RELATED TO METHODOLOGY

The preliminary planning to establish an SDC should include a review of the legal authority and issues associated with capital recovery in the utility's operating environment. Legal authority may be granted through enabling legislation, state statutes regarding general law or home rule authorities, local charter, utility operation permits, utility service certifications, or judicial rulings.

Many states govern the system development and impact fee practices of municipal agencies. Some state public utility commissions have rules of practice concerning capital cost recovery and rate making for the jurisdictional investor-owned utilities and, in certain states, for publicly owned water systems. When considering the design and implementation of a system development charge, an analyst should:

- study state statutes or state public utility commission rules of practice (many state legislatures have searchable statutes on their internet sites)
- review the relevant case law for commission and judicial decisions influencing capital charge practices
- seek competent legal advice, particularly when litigation risks are uncertain
- evaluate the underlying criteria important to a specific water system or jurisdictional environment

Table 28-1 provides examples of state statutes governing the use of system development charges and impact fees.

Legal issues addressed in court opinions and rulings help establish procedures for implementing SDCs. The judicial system has provided guidance for establishing SDCs in several states. A primary legal issue related to SDCs is establishing a reasonable connection, or rational nexus, between the amount of the SDC and the cost associated with serving the new development. This rational nexus test is common in both the enabling statutes and court decisions. In short, this test requires that the charge be based on a reasonable connection between the cost to the utility of new development and the amount of the SDC collected.

Some water utilities are under the authority of a regulatory utility commission. Regulatory commissions generally have procedures for instituting various fees and charges. A regulated utility should verify with its regulatory agency the process used for establishing an SDC before initiating the process. The ability of an investor-owned utility to "sell" its assets, along with the taxing of SDC receipts, generally reduces the desirability of implementing SDCs for such systems.

METHODS OF CALCULATING SDCs

The two basic methods for calculating SDCs are the *equity method* and the *incremental cost method.* Either method may be appropriate, depending on the utility's financial circumstances, legal constraints, goals, and objectives. In many instances, particularly where some existing reserve capacity for growth is available and new capacity is planned, a combination of the two methods may be appropriate.

The equity method is based on the principle of achieving capital equity between new and existing customers. Sometimes referred to as the *system buy-in method*, this approach attempts to assess new customers a fee to approximate the equity or debt-free investment position of current customers. The financial goal is to achieve a level of equity from new customers by collecting an SDC representative of the average equity attributable to existing customers.

Table 28-1 Examples of state statutes governing the use of system development charges and impact fees

State	Statute	Effective Date	Description
Arizona	Rev. Stat. Ann. § 9-463.05 (Supp. 1988)	1982	"A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development"...resulting "in a beneficial use to the development." Fees "must bear a reasonable relationship to the burden imposed upon the municipality to provide additional necessary public services to the development."
Georgia	Ga. Code Ann. § 36-71.	1990	"'Development impact fee' means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development." Impact fees: 1) shall not exceed a proportionate share of the cost of system improvements, 2) shall be calculated and imposed on the basis of service areas, 3) shall be calculated on the basis of levels of service for public facilities. This statute does not limit a local government from collecting a proportionate share of the capital cost of water or sewer facilities by way of hookup or connection fees as a condition of water or sewer service to new or existing users.
Indiana	Ind. Code 36-7-4-1300 to 1342 § 4354 (Supp. 1991)	1991	The legislative body of a unit may adopt an ordinance imposing an impact fee on new development in the geographic area over which the unit exercises planning and zoning jurisdiction. The ordinance must aggregate the portions of the impact fee attributable to the infrastructure types covered by the ordinance so that a single and unified impact fee is imposed on each new development. Must adopt a comprehensive plan and establish an advisory committee.
Maine	Me. Rev. Stat. Ann. Title 30-A	1989	"A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. Notwithstanding section 3442, subsection 2, an impact fee may be imposed that results in a developer or developers paying the entire cost of an infrastructure improvement. A municipality may impose an impact fee either before or after completing the infrastructure improvement. The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development."
Oregon	Ore. Stat. § 223.297-314	1989	Municipalities are empowered to impose system development charges at issuance of permit or connection to the capital improvement. Applies to water, wastewater, drainage, transportation, and parks and recreation. Reimbursement fees shall consider the cost of the existing facility or facilities, prior contributions by existing users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other factors. Future system users can contribute no more than an equitable share of the cost of existing facilities.
Virginia	Va. Code Ann. § 15.2-2318-2327	1989	Certain counties, cities, and towns are empowered to impose impact fees to offset the cost for road improvements attributable to the development if supported by needs assessment and road improvement plans and assisted by an advisory committee.

Source: State statutes.

The incremental cost method is based on the concept of new development paying for the incremental cost of system capacity needed to serve new development. This approach proposes to mitigate the cost impact of new growth on existing customers' user rates. The goal is to charge a fee for new customers sufficient to allow customer user rates to be revenue-neutral with respect to growth of the system. However, in systems undergoing rapid and expensive growth, this may be difficult to achieve.

Equity (Buy-in) Method

The goal of the equity method is to achieve an equity position between new and existing customers of the system. The method assumes that existing customers have provided equity in the existing system and that built-up equity should accrue to benefit existing customers. Under the equity method, the base level of the SDC is established at the current level of system equity related to the capacity used to serve an existing equivalent residential customer. This approach is most appropriate where current system facilities adequately serve existing and future customers, where no new significant system investment is anticipated, and where existing facilities are not scheduled for replacement in the near future.

System equity. A key component in developing an equity method SDC is determining system equity. The major components include the valuation of system assets, accumulated depreciation, system liabilities, sources of equity, and system capacity.

System assets. For SDC purposes, one measure of the valuation of the system assets is the original value of the total plant less accumulated depreciation. This valuation may be adjusted to recognize the cost of reproducing or replacing assets, depending on the rules and regulations of the applicable regulatory body. The reproduction cost estimate is an indication of the cost to duplicate the system at current prices. Additionally, reproduction cost valuation reflects equity contributions made by existing customers in terms of current dollars. Whether using original or reproduction costs, asset values are often expressed as net of depreciation to reflect the valuation of the system available to new customers.

System liabilities and equity. Balance-sheet liabilities and equity that are recognized in the equity valuation encompass outstanding long-term debt as well as any applicable contributions, such as grants or other non-SDC contributions, to SDC facilities. Both of those liabilities should reflect book value. In a situation where the SDC is separated in component costs by function (such as source of supply, production, storage, or transmission), any applicable contributions may need to be allocated to these functional categories. For example, if grants were provided specifically for the production facilities, these contributions should be credited to the cost of those specific facilities.

Equity sources. Equity in the water system established by existing customers can accrue from various sources, including the retirement of debt, cash financing of capital improvements, or previous SDC payments. All of these sources are provided by existing customers through annual revenues. It should be noted that the term equity refers to that portion of system value for which there is no offsetting debt. It does not imply ownership of, or title to, utility facilities.

System usage. An analysis of existing system usage is necessary to determine the equivalent units of current customers. System usage is often expressed in terms of equivalent units, such as $^{5}/_{8}$-in.-meter equivalents.

Table 28-2 Equivalent meter factors

Meter Size, *in.*	Maximum Flow, *gpm**	Equivalents Relative to 5/8-in. Meter†
5/8	20	1.0
1	50	2.5
1 1/2	100	5.0
2	160	8.0
3	300	15.0

**Source: AWWA Manual M6,* Water Meters—Selection, Installation, Testing, and Maintenance.

†Using standard maximum meter-flow capacity ratios.

Column 3 of Table 28-2 shows equivalent meter ratios expressed in terms of the ratio of rated meter capacity for each meter size relative to a 5/8-in. meter, as stated in AWWA Manual M6, *Water Meters—Selection, Installation, Testing, and Maintenance.* As an alternative, utilities often analyze their own actual annual water use data, and weight it by applicable maximum-day demand ratios, for each meter size within its service area to establish utility-specific equivalent-meter factors.

SDC determination. For purposes of the example SDC calculation under the equity method shown in Table 28-3, the average equity per equivalent unit in the system is determined by dividing the net system value by the number of 5/8-in.-equivalent customers the system is capable of serving. The applicable SDC is determined by multiplying the average equity per existing equivalent customer ($720) by the appropriate equivalent-meter ratio from Table 28-2.

Though meter-equivalent ratios may be computed for meters larger than 3 in., the use of these ratios as a basis for computing the SDC for larger meters may or may not be indicative of the potential demand requirements of any particular customer. It is recommended that a specific determination of the SDC be made for customers with larger meter sizes. In addition, where the basis of design of certain SDC-related facilities is not based on peak system demands, such as large impounding reservoirs, sole use of meter-equivalent ratios may not provide an equitable basis of allocating such costs.

Incremental Cost Method

The incremental cost method assigns to new development the incremental cost of system expansion needed to serve the new development. The financial objective is to provide system expansion to serve new development without an undue impact on existing user rates. Generally, this method is considered most appropriate when a significant portion of the capacity required to serve new customers must be provided by the construction of new facilities.

Determining SDC. To calculate SDCs under the incremental cost method, the practitioner must determine various factors, including the period of growth, growth rates, type of growth, capacity associated with the various improvements needed to serve the projected growth, and cost of these improvements.

Service area. The service area must be determined before the SDC can be computed. Commonly, the total service area of the utility system is used, but some utilities divide their system into separate service areas. Particular care should be used when dividing a utility system into subsets to ensure that the subsets are based on identifiable differences from the system as a whole.

The delineation of the utility service area is important for growth planning and for assessing capital improvements needed for new development. Though the service

Table 28-3 Illustrative determination of system development charge using the equity method

	Original Cost, *$thous*	Accumulated Depreciation, *$thous*	Net Cost, *$thous*
Plant			
Source of supply	4,000	(1,000)	3,000
Treatment and pumping	7,200	(1,200)	6,000
Transmission system	9,300	(1,300)	8,000
Distribution mains	4,300	(500)	3,800
Services, meters, and hydrants	5,600	(800)	4,800
General structures	1,600	(200)	1,400
Subtotal	32,000	(5,000)	27,000
Less Net Cost of			
Distribution mains			(3,800)
Services, meters, and hydrants			(4,800)
Net investment in plant			18,400
Less			
Outstanding bonds allocable to SDC facilities			(4,000)
Total Equity Investment			14,400

NOTES: Number of equivalent 5/8-in. customers the system is capable of serving: 20,000.
Average net equity investment per equivalent 5/8-in. customers ($14,400,000/20,000) = $720.

area usually is easy to determine, the conclusion is critical to the analysis and development of the SDC. Typical service areas are municipal corporate limits and public utility commission certificated or franchised service areas. The inclusion of extraterritorial jurisdictions may be appropriate where service is currently provided or the provision of service is imminent.

Planning period. The SDC planning period is needed to project the growth and service requirements of the system. Though utilities have used various lengths of time, the planning period for determining SDCs should equal the normal planning period of the utility. Usually, this ranges from 10 to 20 years for distribution and treatment facilities planning, but may exceed 50 years for supply planning. Another criterion for determining a planning period is the financial cycle for long-term financing. For example, the normal financing term for long-term debt is useful in determining the duration of the SDC planning period. This is typically 10 to 30 years. The normal system financial planning period should be the minimum planning period for SDCs; analyzing a shorter period might limit the utility's view of its ability to repay debt on system expansion projects that are to be funded from SDC revenues.

Growth rate and magnitude of expansion. A projection of the future system growth is an integral part of the incremental cost method. The rate and type (customer class) of growth has a direct impact on the type of system expansion needed to serve new development over the planning period. A breakdown of growth by type or class of customer is important because different customer classes have different water demands. For example, types of growth may include residential, commercial, industrial, and institutional. There may be additional subcategories or

fewer types of customers, but a sufficient number of categories should be used to describe the utility's customer base and to identify any expected changes in the customer base.

Growth rates usually are estimated in terms of population, employment, and commercial or industrial floor area. Planned types of growth must be assigned a utilization or equivalency factor, generally stated as a function of an equivalent residential customer. This factor equates growth-rate elements for each type of growth to common terms for estimating capital improvements needed to serve future customers. For example, growth in residential customer demand can be evaluated on the basis of water usage of a single-family unit. Larger commercial, industrial, and institutional growth in demand can be assessed by analyzing existing water usage or by tabulating usable square footage of similar businesses and buildings.

Capital improvements plan for system expansion. After the projected growth and future demands for the system are established, the capital improvements needed to meet new growth can be planned. Capital planning also considers the timing and magnitude of the projected growth. Because growth and related increases in system demand may be incremental or occur in stages over the planning period, care should be used to match the system capacity with the growth in demand and revenue flow from the associated SDCs. A large investment in system capacity without a comparable increase in demand will result in an undesirable under-utilization of the system and will have a negative impact on current rate payers.

SDC-related capital improvements should be restricted to common-use facilities; generally, they do not include site-specific or local facilities. Examples of common-use facilities are supply sources, source water intakes, source water transmission, treatment facilities, and major water transmission mains. Capital costs associated with environmental-regulation compliance are becoming an increasingly significant portion of water utility capital program budgets. Such costs can be included in the SDC. However, it is important to recognize that such costs, generally, are common to existing customers and new customers. In determining SDCs, care should be exercised to charge the new customers only for their proportionate share of these costs.

When long-term financing is required to provide funding for a part of the capital improvement plan, all or a portion of the financing cost (i.e., interest on debt and debt issuance cost) may be included in the incremental cost for SDC determination purposes. This is particularly important where the SDC is intended to be the sole funding source for system expansion. In cases where capital improvement financing is also included in user rate revenue requirements, the utility must be careful to avoid double counting the financing costs in both the SDC and the user rate revenue requirements. For example, to the extent that debt service on bonds issued to finance major capital improvements for SDC facilities in previous years are included in the current year revenue requirements recovered through general water rates, an allowance, or credit, in the level of the current SDC must be recognized to avoid a double cost recovery of the debt service applicable to such SDC facilities.

Excess capacity in the existing system available for future development. The efficient economic expansion of the system often requires that improvements be built in increments that exceed the immediate level of demand. The unused capacity is available for future growth and may be included to determine the incremental cost to serve new development. Including the excess capacity cost in the SDC shifts financing of this excess capacity from the existing rate payers to the new development. If existing facilities are included in the incremental cost method, the

amount of available capacity and investment of these existing facilities should be documented to substantiate the actual cost and value of the facilities.

Determining development units. To calculate the SDC, the projected system growth in demand must be converted into common units. Units used to establish the SDC will vary with available information, timing of the SDC assessment and collection, and the billing practices used by the utility. Units may be derived from the system growth analysis and capital improvements planning.

Most SDC-related facilities are designed on the basis of annual average day use, maximum day demand, or maximum hour demand. After the SDC-related capital investment is determined, it must be divided by the applicable design capacity to obtain a cost per unit of capacity. Each type of customer (i.e., residential, commercial, or industrial) has a particular demand or capacity requirement that, when applied to the unit cost of SDC facilities, provides a measure of the investment in SDC facilities applicable to that type of customer. It is common to develop an SDC for a residential customer, or equivalent residential unit, using this unit cost approach, then develop a schedule of SDCs using common billing determinants that relate potential demands of other types of customers to that of the base, or residential, demand. Among the more frequently used units for this purpose are meter size, fixture units, and land area with associated land-use characteristics. Meter size is the most common determinant for assessing SDCs, and the capacity factors developed in Table 28-2 often are used to establish charges for customers with meters greater than $\frac{5}{8}$-in.

When charges are collected at the time of service initiation, meter size is often used as a basis for computing SDCs although many utilities use alternative approaches in defining the base service unit, including equivalent residential units (ERUs) or fixture units. Usually, equivalent service units are developed for customers with more intense uses or potential demand. For example, charges for larger meters may be based on AWWA-rated meter capacity using a $\frac{5}{8}$-in. meter as the base service unit. Total overall premise use, facility size, capacity requirement, and number of fixtures also are used with ERU-based charges.

The meter size approach may be easiest to explain to customers. It is based on the potential maximum demand that the customer may put on the system, but it does not consider patterns or intensities of customer usage. Meter sizes are expressed in terms of equivalent meters, generally based on the relative capacity of various meter sizes. The ERU approach differentiates among customer classes, but it can be difficult to explain and, in some situations, difficult to determine and apply consistently. The ERU approach is often directly related to the number of fixture units and is based on the potential loading of various fixtures. As a result, the charge for each new customer must be computed individually, which is a disadvantage to this approach.

If collection of the SDC is made at the time of platting, the service unit usually is based on an equivalent dwelling unit. The equivalent dwelling unit is based on the estimated demand of a single-family residential unit in the service area. The charge is then based on the size of the dwelling, the types and number of fixtures, or both. Utility billing records are a data source related to system utilization. Water demand characteristics are normally expressed in terms of equivalent units to quantify the capacities of system expansion projects.

An example of the calculation of an SDC on an incremental cost basis is shown in Table 28-4. For purposes of the example in Table 28-4, it is assumed that all local, on-site facilities, such as distribution mains, meter, services, and hydrants, are contributed by the developer through charges and assessments other than the SDC.

Table 28-4 Illustrative determination of system development charge using the incremental cost method

	Five-Year Capital Improvements Plan,* *$thous*	Maximum-Day Design Capacity, *mgd*	Unit Cost, *$/mgd*
Plant			
Source of supply	7,500	25	300,000
Treatment and pumping	8,000	15	533,000
Transmission system	3,000	10	300,000
Distribution mains	2,000	N/A	N/A
Services, meters, and hydrants	1,800	N/A	N/A
General structures	500	50	10,000
Subtotal	22,800		1,143,000
Less net cost of			
distribution mains	(2,000)	N/A	N/A
Services, meters, and hydrants	(1,800)	N/A	N/A
Net Investment in Plant	19,000		1,143,000

NOTES: Maximum-day demand for average equivalent 5/8-in. customer: 1,100 gpd.

Average investment per equivalent 5/8-in. customers ($1,143,000 × 1,100/1,000,000): $1,257.

*Current-year cost levels.

N/A-not applicable; assumed to be contributed by developer for purposes of this example.

REIMBURSEMENT POLICIES

Utilities frequently require developers to construct facilities that provide service beyond the requirements of the new development. When this occurs, developers should be reimbursed for the facilities constructed in excess of their own requirements. This may be in the form of a reduction in the SDC for the new development. Because the purpose of the SDC is to pay for system expansion, the utility must also consider contributions to system expansion in the form of physical improvements and additions. Payments of SDCs, together with other system contributions for the same facilities, could result in a double contribution to the system. Many utilities remedy this potential double contribution by implementing credits to the SDC or a development agreement where the developer agrees to contribute infrastructure needs in lieu of paying an SDC. In addition, reimbursement contracts for infrastructure contributions help eliminate double counting.

Credits are reductions to all or part of SDCs. The credits may be allowed for any contributed infrastructure or may be limited to specific types of contributions. Credits should not exceed the total amount of the SDCs due.

A development agreement is another method used for contribution of utility infrastructure. The developer contractually agrees to make contributions in place of all or a part of the SDCs. It should be noted that policy objectives regarding credits will affect the range of SDC values.

Reimbursement contracts often are used by water utilities for infrastructure contributions. These contracts typically provide for reimbursement of some contributed

facility costs from SDCs collected from future customers who will use the contributed facility. Limitations on the amount of and the time period for reimbursement are included in the contracts.

ECONOMIC DEVELOPMENT ISSUES

The utility should be aware of the possibility of deterring growth of its service area or customer base. When SDCs are collected at the time service commences, the developer can defer the charges to a time near the end of the development process. In some circumstances the charge is paid directly by the new customer. Usually, SDCs have the greatest negative economic impact on development projects that are in the planning stage. This can be mitigated by phasing in the SDCs over a period of time or setting an effective due date in the future.

The practitioner must consider the effect of SDCs on competition for new development. Some utilities serve an area that is in competition with nearby regions or other major economic centers. Whether competition is local or global, the utility, in conjunction with the local or state government, may wish to promote its competitive standing when considering the implementation of an SDC.

Assessing SDCs

The utility must decide which new customers will be assessed and when the assessment will occur. Some or all of the following should be considered:

- new plats
- unplatted properties
- previously platted properties
- new service
- additional service

Timing Assessments

Timing of the SDC assessment and collection has both financial and administrative impacts. Typical points of time for assessing an SDC are at the time the plat is approved, at the time the building permit is issued, or at the time service begins.

At the time of platting. Many utilities assess and collect SDCs at the time of platting a new development. This approach allows the utility to collect the charges earlier in the project. The disadvantage of this approach is that, often, it is difficult to determine the number of service units the development will demand. Because of the number of estimates that must be made if the SDC is paid early in the development process, the computation is less accurate and more difficult to defend. In addition, the utility is required to make a significant investment in facilities on a somewhat speculative basis.

At the issuance of the building permit. Some utilities assess and collect the SDC at the time the building permit is issued for new developments. This is closer to the time of service, and the new development's impact can be estimated. The disadvantages of this approach are that the exact impact is not known, the utility must invest in facilities on a speculative basis, and the funds may not be available to the utility in time to construct the necessary facilities.

At the time service is requested. Other utilities assess and collect SDCs at the time service is requested. Usually, this is when the certificate of occupancy is issued or when a customer applies for a meter or for service. Utilities receive funds

later with this approach, but the service units are easier to determine and explain to the customer. Most builders and developers favor payment at the time of service because delayed payment lessens their carrying costs during the project. This approach may, in fact, result in homeowners directly paying the charge.

The timing of collection involves two conflicting issues that must be reconciled. First, the utility needs to collect the SDC early enough to make funds available for system improvements. Second, the utility can accurately assess the SDC only later in the development process, when the actual meter size or number of fixture units is known.

Timing differences exist between user rates and SDCs. Many major projects related to system expansion require substantial funds for design and construction before sufficient funds are available from SDC receipts. Therefore, usually some funding from user rates is needed to pay for the facilities, generally in the form of paying for debt service on the bonds to finance facilities. This may result in double cost recovery if user rate funding of debt service on SDC-related facilities is not considered in establishing the level of SDC. For example, debt service payments included in the user rate analysis are partially offset by the projected receipts from the SDC.

ADMINISTRATIVE AND ACCOUNTING PROCEDURES

The utility should adopt general administrative and accounting procedures that assure the collection of SDCs are managed and used for the facilities needed to provide service to new development in the utility's service area. Some state statutes require all such funds to be used for the specific facilities that the SDCs were designed to finance. SDC funds should be identified and segregated from the utility's unrestricted assets. To avoid spending a large portion of revenues on administration, the utility may find it helpful to first document the current development process and try to integrate the SDCs into the existing organization. In no case should SDC funds be used to fund annual O&M expenses.

Administrative Issues

Utility managers should develop procedures to administer the SDC program, including establishing a process for hearing appeals and exceptions to the SDC policies and procedures. In the case of regulated utilities, the regulatory authority may oversee this process. The multitude of development and contribution scenarios require some procedure for dealing with unusual circumstances.

Reimbursements. Some utilities have policies to reimburse contributions when facilities are later used by others. These circumstances usually involve a developer contributing major system facilities without using utility funds. Reimbursements are typically limited in time and for specific situations. For example, reimbursements may be limited to a period of 10 years after the contribution and limited to the same component (i.e., source, treatment, distribution, or transmission) of the SDCs collected in the service area of the contributed facilities.

Refunds. The utility should consider refunds of SDCs under the following circumstances:

- When service is not provided in a reasonable period of time after the charges are paid.
- When collected charges are not spent on system expansion within a reasonable time period.

Interest income. The utility may wish to dedicate interest income from SDCs to the SDC accounts. This helps to offset inflationary cost increases for system expansion projects. In some jurisdictions, such dedication of interest income is a legal requirement.

Income taxes. For investor-owned utilities, SDCs are generally included as ordinary taxable income for federal tax purposes.

Regulatory issues. Under the utility approach to rate making, most regulatory commissions exclude contributions of facilities and the related depreciation on contributed assets from the rate base in the rate-making process. Generally, SDCs would be considered as an offset to plant investment in determining rate base. Typically, any income tax liability generated from the collection of SDCs would be included in the rate base to determine rates for an investor-owned utility, unless such liability is already included in the SDC. When the cash approach to rate making is used, SDCs do not reduce annual revenue requirements. Over the long run, however, annual debt service costs will be less as major capital improvements are financed through SDCs rather than through the issuance of debt.

Accounting Issues

Collection. Because SDCs are imposed to recover the cost of new development, proper accounting of receipts is important to document authorized use of those funds. Assessment and collection records should be maintained by individual lot if charges are collected at the time of platting. This practice requires accounting for each new lot in all subdivisions. Assessment at the time service is requested requires accounting for SDC by service connection. With this approach, collection of SDCs is similar to regular customer service accounting.

Receipts. The utility should account for SDC receipts with the same procedure used for contributed facilities. Specifically, SDCs should not be included as a part of general operating revenues. SDCs should be used for capital-related purposes, including either retiring debt or constructing capital facilities related to system growth.

Expenditures. SDCs should be expended in a manner consistent with the financial goals and basis for which the charges were established. Expenditure accounting for SDCs should be maintained to support the revenues derived from the charges.

UPDATES OF THE SDC ANALYSIS

As development occurs and the economic mix of the community that the utility serves changes, growth and development assumptions also change. At that point, utilities should reassess their initial assumptions and compare the historical development achieved with that originally planned or projected. Utilities that use SDCs as a funding source commonly update their SDC levels at three- to five-year intervals.

Chapter 10

System Development Charges

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INTRODUCTION

A well-conceived financial plan is critical to ensuring that a wastewater utility is adequately prepared for ongoing system operation and replacement requirements, and for future capacity expansion needs. Such a plan should consider the full array of capital funding alternatives available to the utility, as discussed in Chapter 4. One

possible funding source for capital projects is system development charges (SDCs) (also referred to as development fees, impact fees, or capital recovery fees). System development charge proceeds are typically used to pay for capital projects related to growth. Application of these fees assists the utility in implementing a "growth pays for growth" policy.

System development charges have been used since the 1920s, as evidenced by the U.S. Department of Commerce's Standard Planning Enabling Act, enacted in 1922. Capital projects required to meet the demands of growth are often a burden on existing wastewater ratepayers. Through the use of SDCs, costs associated with growth may largely be shifted to the new customers and away from the existing wastewater customers over time. Typically, SDCs are used to pay for backbone wastewater facilities, including treatment plants, collector mains, interceptor mains, outfall sewers, and lift stations. These fees are one-time charges to customers when they connect to the system or by developers as part of the permitting or planning process. Other growth-related charges, including service connection and hook-up fees, acreage fees, and main extension charges, are associated with service to a particular customer, development, or service area.

A great deal of planning needs to take place before the implementation of legally defensible fees. Planning begins with a Capital Planning Process, as noted in Chapter 4, Table 4.1, that determines existing and future system capacity needs and the specific capital projects required to meet those needs. It takes knowledge, time, and effort to create legally sound and politically stable fee programs. Typical actions required by a utility to implement system development charges include the following:

- Determine that the local government has authority to establish such fees by statute or otherwise.
- Adopt a Facility Plan, Master Plan, or other Capital Improvement Plan that projects growth in the service area, identifies the projects or portion of projects required for serving growth, and identifies the anticipated funding source for each project.
- Develop a fee structure or method that is consistent with legal guidelines.
- Monitor programs to ensure that revenues benefit the intended growth area.

This chapter will detail the steps involved in developing and implementing SDCs. It will also discuss the legal guidelines that contributed to the development of

standards in formulating and implementing SDCs, various methodologies and concepts, and implementation issues, including the application of revenues.

PLANNING AND LEGAL REQUIREMENTS

Local governments across the country have varying policies in relation to growth. At one extreme are communities actively pursuing economic development, while others seek to limit or control further growth and development. Although SDCs should not be used as a disincentive for growth, this type of fee is an important tool in ensuring adequate infrastructure to serve growth.

PLANNING. Utilities facing minimal growth may require only minor modifications to the wastewater system for each additional customer. However, other utilities experiencing rapid growth may require significant capital projects to serve planned development. In the latter case, it is particularly important that the utility adopt a capital improvement plan (often part of a master plan or other system infrastructure plan) that includes the following:

- Projected development throughout the planning period;
- Distribution of growth throughout the service area;
- Capacity requirements of growth, in terms of flows and loadings;
- Existing system loadings and facility capacities;
- List of planned capital improvements to address various needs (replacement, rehabilitation, expansion, etc.); and
- Estimated time frame for completion of capital improvements.

Capital planning may be explicitly addressed in master plans or be separate from such plans. Capital improvement plans may address the need for creating new wastewater facility capacity and needed improvements to existing facilities to meet designated service demands or regulatory requirements. The capital improvement plan used to develop the SDCs should identify the costs of the growth-related facilities separate from the improvement and regulatory-related facilities costs for existing customers.

Projected capacity requirements are based on growth assumptions applied to area maps and land-use assumptions such as residential, multifamily, commercial, or

industrial uses. New capacity requirements can also be based on existing development in the area to be served. Once land-use requirements are categorized and the needs of existing development have been estimated, the utility can assess additional capacity requirements. Further, the capital improvement plan should forecast timing of development, enabling sizing and timing of wastewater facilities. Table 10.1 provides examples of improvements required to serve growth.

The use of engineers who specialize in utility master planning is important in the development of detailed capital projects, schedules, cost estimates, and project prioritization. Once a plan has been developed by the utility, it may be advantageous to create a public forum such as citizen committees to provide comments on capital improvement program priorities and alternatives. Because growth-related projects can place a financial burden on existing customers (if fully funded through user rates), utilities often look for other means of funding these projects through direct charges to the benefiting users.

LEGAL GUIDELINES. Before implementing SDCs, the utility should develop its philosophy and capital improvement plan for further development and maintenance of its infrastructure. It should also review pertinent legislation, state statutes, local municipal codes, and judicial rulings related to SDCs. Utilities need to be aware of the legislative authority within the state in which they operate in developing such fees. Authority for charging SDCs generally comes from the following: (1) specific enabling legislation; (2) general home-rule powers, which provide local governments the authority to establish fees and charges for local government facilities; (3) broad police power to protect general health, safety, and welfare of the community through provision of services; and (4) utility rate-setting authority. Laws regarding SDCs can often be vague, and misapplication of concepts and approaches can lead to legal chal-

TABLE 10.1 Examples of growth facilities.

Sewer mains in growth area
Additional lift stations, pumping stations, and force mains
Additional treatment plants or increase in capacity at existing plant
Additional reclamation plants or increases in capacity at existing plant
Residuals processing and outfall sewers
Oversizing of a facility or sewer main

lenges. Utilities should seek competent legal advice, especially when new SDCs are being considered for implementation.

Legal guidelines, dating back to the early 1900s, established the rights of local government to regulate growth. The phenomenon of SDCs as applied in local communities derived from these rights. Over the past 20 years, various courts have addressed SDCs and, in that process, have established various guidelines and standards for establishing such charges. System development charges have increasingly become an accepted revenue source in supporting growth in urban areas. Although SDC statutes and judicial findings are state-specific, leading case law from other jurisdictions can also provide relevant guidelines, as many courts draw on rulings in other jurisdictions, leading to consistency nationwide. General guidelines developed in courts over the last century are described below, and Appendix B provides a sample of nationwide case law covering SDCs.

Right of Local Governments to Regulate Development. State and local governments have the right through the Tenth Amendment of the Constitution to regulate land development. The power of regulation rests with states that generally elect to delegate that authority to local governments for purposes of guiding land developments (Porter, 1997). Opponents of SDCs often have argued that these fees were not authorized by state statute. To address this issue, many states have adopted legislation officially authorizing the use of SDCs. Some of these statutes authorize very specific uses of SDCs, while others have adopted more general authorizing statutes (Nicholas et al., 1991).

Regulation versus Taxation. In the past, SDCs have repeatedly been challenged on the basis that they constitute taxes rather than fees for service. It is now generally, but not totally, accepted that SDCs are user charges rather than taxes. This is based on the rationale that the fee is voluntary and benefits the paying entity based on use of the facility. System development charges for new wastewater users are thus fees distinguishable from taxes as they are related to cost of construction and use of the facilities and are proportionately charged to users who benefit from facilities.

Banberry Factors (Standards of Reasonableness). One of the most influential court cases in the history of development fees was *Banberry Development Corporation v. South Jordan City* (Utah, 1981). In this case, the Utah Supreme Court held that in establishing development fees, local governments must consider the share of capital costs to be borne by newly developed properties relative to the costs already borne by existing properties. Specifically, the court identified seven factors that an entity must consider

(1) Cost of existing capital facilities;
(2) The manner of financing existing capital facilities;
(3) The relative extent to which the newly developed properties and other properties in the municipality have already contributed to the cost of existing capital facilities;
(4) The relative extent to which newly developed properties and other properties in the municipality will contribute to cost of existing capital facilities in the future;
(5) The extent to which newly developed properties are entitled to a credit because the municipality is requiring their developers or owners to provide common facilities that have been provided by the municipality and financed through general taxation or other means in other parts of the municipality;
(6) Extraordinary costs, if any, in servicing the newly developed properties; and
(7) The time–price differential inherent in fair comparisons of amounts paid at different times (Utah, 1981).

Banberry established procedural and substantive guidelines for cases where SDCs are challenged as well as providing guidance for policy makers in establishing an equitable program.

Rational Nexus. *Rational nexus* is the concept that there needs to be a reasonable connection between the following:

- The new development that will pay the fees and the need for facilities,
- Growth needs and levels of cost to meet that need compared to the cost to serve others,
- Identified costs and the fee level,
- Identified costs and the amount of revenue generated by the fee, and
- The cost to the utility of new development and the amount of the fee collected.

This test is referenced in many court cases and provides the guidelines found in state statutes for SDCs.

Good Faith Intent. In 1997, Arizona courts found that a municipality needs only to develop a plan that shows a "good faith" intent to use SDCs to provide growth-related services within a reasonable time. This case suggests the SDC programs are not required to be precise, but do have to be formulated based on sensible planning.

SYSTEM DEVELOPMENT CHARGE CALCULATION

In calculating SDCs, a utility needs to select a fee structure and develop a fee schedule based on selected units of service. Methodological approaches should be evaluated and selected with careful consideration of state regulations, data availability, and local growth policies. Ultimately, there are several principles the utility needs to satisfy in developing the methodology, which are listed below

- Fee is proportionate to proposed impact,
- Fee proceeds are used to provide infrastructure serving the growth area (which may be the entire service area),
- Fee methodology is uniform and consistent,
- Other sources of funding are considered for capital improvements, and
- Fee includes only eligible growth-related costs.

Specific approaches to developing the fee structure and schedule are discussed below.

FEE STRUCTURE. There are three broadly recognized structures of system development charges (Galardi et al., 2004)

(1) System buy-in approach. Based on existing facilities.
(2) Marginal or incremental approach. Based on the projection of capacity-enhancing system improvements.
(3) Combined approach. Considers both existing and planned future facilities.

Each option is discussed in more detail below. It is important to determine the underlying philosophy before adopting a specific methodology and to check applicable state statutes and case laws for permissible methodologies.

Buy-In Approach. Under this approach, new customers are required to "buy-in" to existing system facilities, generally at a rate that reflects the prior investment of existing customers per unit of total capacity (capacity buy-in). A buy-in type approach is fairly easy to administer and is most appropriate where current system facilities have adequate capacity to serve both existing and future customers, the forecast of future system investment is minimal, and where existing facilities are not scheduled for replacement in the near future (AWWA, 2000).

The rationale behind the capacity buy-in approach is that new customers should be charged for existing available capacity at a rate consistent with the average value of available capacity of the existing system (see following subsection System Valuation for considerations related to establishing appropriate system value—the numerator of the buy-in fee equation). To the extent that there is sufficient available capacity in the existing system to serve growth, the capacity buy-in approach is generally a reasonable basis for determining growth-related costs. However, if the existing system has little available capacity, and the cost of providing new capacity (on a per-unit basis) is higher than the existing facilities (because of higher standards and fewer grants, for example), then a capacity buy-in approach may not generate sufficient revenues to fully fund the total capacity needs of growth.

A less common approach to a buy-in structure is the "equity" buy-in approach. The equity buy-in approach differs from the capacity buy-in approach in terms of the denominator of the unit cost calculation. The denominator in the equity buy-in approach is the existing used capacity in the system. In contrast, the denominator of the capacity buy-in approach is the total existing system capacity. To the extent that there is capacity available in the existing system (meaning total capacity is greater than the existing used capacity), the capacity buy-in approach will yield a smaller unit cost and SDC (all other things being equal) than the equity buy-in approach.

Under the equity buy-in approach, SDCs are designed based on the philosophy that new customers will be assessed a charge at the same equity position as existing customers. A key component in developing equity method SDCs is determining system equity based on a utility's capital structure. Equity represents the current value of the utility's capital derived from previous and existing customers and taxpayers who paid user charges, fees, and tax payments to build up wastewater system capacity available to serve growth customers.

The equity buy-in approach will often generate more revenue than the capacity buy-in approach, and may be viewed as more equitable by existing customers who have provided the resources for the utility to invest in capacity. However, this approach may not be consistent with legal requirements in all states. This is particularly true where the methodology must demonstrate consideration of growth-specific capacity requirements and associated costs. The equity buy-in approach may overstate the cost of capacity, particularly when there is substantial excess capacity in the system.

SYSTEM VALUATION. A key methodological decision under a buy-in fee methodology is how to value the utility's system assets. Valuation approaches include the following:

- Original cost. The nominal dollar value paid at the time of construction.
- Net book value. Original cost less accumulated depreciation.
- Replacement cost less depreciation. Original cost less accumulated depreciation further adjusted to reflect the cost of reproducing or replacing the system in current dollars.
- Replacement costs. Original cost adjusted to reflect replacing the system in current dollars.

The valuation method selected depends on the individual system and the objective of the utility managers. For example, it may be appropriate not to subtract accumulated depreciation from the original costs in instances when a utility has constructed a larger facility to accommodate future growth to benefit from economies of scale. Other factors that need to be considered in system valuation include the following:

- Outstanding long-term debt,
- Contributions in aid of construction,
- Grants,
- Ad valorem tax payments, and
- Interest.

Again, knowledge of relevant enabling legislation and case law is helpful in determining which of the above factors may be legally required versus simply consistent with equity objectives. Outstanding debt principal is generally excluded from the development of the buy-in fee valuation to avoid double-charging new customers—first, through SDCs, and again, through general rates and charges for wastewater service, that are used to retire the debt. However, another approach to avoid double-charging new development for debt principal costs is to include debt-funded facilities in the valuation, but to then provide a credit or offset to the SDC. The credit is generally equal to the estimated present value of future rate contributions toward the debt principal. This latter approach is significantly more complex,

as it requires a multiyear cash flow analysis to estimate the future contributions of new customers through rates or other charges, and ongoing administration of the credit system. However, a credit approach may address potential equity issues among new development as a whole, as the level of credit is often tied to when a development connects to the system.

There are instances when a developer will contribute capital for wastewater facilities. This allows the developer to plan the development area without the financial and construction constraints of the utility. Therefore, if a growth-related project is funded with contributions from developers or other sources of funding, like grants, the corresponding amounts are generally excluded from the fee calculation to avoid double recovery of costs. For debt-funded facilities, existing customers have borne interest costs, in addition to repaying a portion of principal costs. Therefore, interest expense may also be considered when valuing the system for purposes of calculating buy-in fees.

Table 10.2 illustrates determination of system value under a buy-in approach. In the example provided, assets are valued based on the net book value (original cost less depreciation) approach, and deductions include outstanding debt principal, federal funding, and developer contributions.

CAPACITY DETERMINATION. The next component in calculating system development charges under a buy-in approach is the determination of system capacity. The appropriate capacity measure under the capacity buy-in method is *total* system capacity (as opposed to *used* capacity for the equity buy-in approach). In either case, capacity may be stated in terms of hydraulic or loading capacity, or in terms of equivalent units served. Equivalent units are the number of units in the system of varying size expressed in terms of a common unit (typically a residential dwelling). In this case, multifamily, commercial, and industrial facilities are assigned multiple equivalent units in proportion to their total contribution to capacity, relative to that of a single-family-dwelling unit.

Total system capacity is generally determined based on facility sizing criteria and wastewater permit requirements. Existing used capacity can be determined from wastewater plant records and billing data. The systemwide unit cost is calculated by dividing the system valuation by the selected capacity measure. Table 10.3 shows these sample calculations under the capacity buy-in approach.

TABLE 10.2 Example of system valuation.

	Net book value
Treatment plant	$93,533,000
Pumps & lift stations	$4,092,000
Collection system	$79,723,000
Residual processing	$3,986,000
Existing system value	$181,334,000
Less (offsets)	
Debt service (outstanding principal)	($40,000,000)
Federal funding (grants)	($1,000,000)
Contributions	(42,630,000)
System valuation for buy-in fee	$97,704,000

TABLE 10.3 Example of capacity buy-in method.

Existing system valuation	$97,704,000
Total capacity in equivalent units	170,000
Average cost per unit	$575

Marginal or Incremental Approach. The marginal or incremental approach is based on the principle that new system users should be responsible for the cost of the latest or next increments of capacity that they cause to be constructed. This fee recovers growth's share of planned additions to the system. A utility generally relies on its capital improvement plan to estimate cost and capacities of growth-related projects. The capacity resulting from the additional facilities will be used in the fee calculation. Selecting the appropriate capacity can be determined by (1) using total new treatment plant capacity or (2) capacity of new projects weighted by individual project costs (Corssmit, 2002). System development charges may be phased in as development in a growth area progresses and capacity use increases by using marginal pricing.

Utilities need to avoid including overlapping cost in both the SDCs and in wastewater user charges used in the area of capital financing. As in the buy-in approach,

capital contributions and grants for additional facilities should not be included in the calculation of the fee. The objective of the marginal method is that system expansion needed to serve new development can be accomplished with limited impact to existing wastewater user rates. This method is appropriate when all or a very significant portion of the wastewater capital improvement program serves growth and available facilities cannot accommodate growth.

Table 10.4 provides an illustration of a marginal or incremental approach. In this case, individual projects are analyzed to determine the portion of costs associated with system expansion and capacity, versus rehabilitation or replacement.

Combined Fee Approach. Increasingly, in response to the stated goal to charge new customers for the full cost of growth, and thereby avoid the subsidization of new customers by existing customers, many state laws allow utilities to implement a combined fee approach. This approach is rapidly gaining favor in many jurisdictions. It generally applies when the current system facilities could serve future customers and a portion of the wastewater capital improvement program is also related to growth. The combined fee approach includes two separate elements

(1) System reimbursement component. Includes a portion for new customer to pay for an equitable share of existing facilities.
(2) Incremental new capacity component (also referred to as growth-related improvement component). Includes future facilities that will be constructed to accommodate growth.

This approach is generally the most technically rigorous of the system development charge calculation approaches. It involves explicit determination of *available*

TABLE 10.4 Example of marginal or incremental approach.

Capital improvement plan	Growth costs
Treatment plant improvements (60% capacity)	$4,000,000
Pipe replacement (0% capacity)	$0
New pump station (100% capacity)	$1,000,000
Cost-of-growth related projects	$5,000,000
Total new system equivalent units	10,000
Unit cost per unit	$500

capacity value in the existing system, and apportionment of future capital costs between existing users and new development. The reimbursement fee component is determined by dividing the value of available capacity in the existing system by the estimated growth units during the planning period. The improvement fee component is determined by dividing the value of future capacity-increasing costs by the estimated growth units. So, unlike the marginal or incremental approach described previously, that only recovers the future capacity costs related to growth, the combined approach also recovers the costs of available capacity of the existing system.

Some states, such as Oregon, explicitly allow for use of a combined fee methodology. Other states have case law that supports this approach. For example, a 2001 Colorado Supreme Court decision found that a SDC methodology including a reimbursement component and a growth-related improvement component was justifiable and defensible. A defensible method requires rational policy, application of appropriate laws, collection and analysis of relevant data, sound asset valuation, and cost-allocation methodology. The Colorado ruling has since been adopted by several other states, and its implications may be useful to utilities elsewhere (Corssmit, 2002).

FEE SCHEDULE. The fee structure is the mechanism for determining the costs to be recovered from new development as a whole. Of equal concern to local governments and the development community alike is how the fees are then assessed to different types, sizes, and location of development. The applicable SDC for a specific development is determined by multiplying the system-wide unit cost (as defined by one of the methods described above) by the estimated capacity requirements (Galardi et al., 2004).

Scaling Measures. At the very least, the fee schedule generally provides one or more scaling measures for assessment of development fees to different types and sizes of developments. The use of scaling measures in calculating development fees is designed to ensure that customers who are larger, or use infrastructure systems more intensively, pay the associated costs of capacity required to serve them. There are several measures used in the wastewater industry to represent use of capacity.

- Wastewater demand measured or estimated by appropriate flow and strength parameters,
- New plumbing fixtures,
- Dwelling unit count,

- Square footage, and
- Meter size.

In developing or choosing a scaling measure for wastewater SDCs, the choice o an indicator must be easy to explain to the public, defensible in courts, and mus have data supporting how the measure was derived. Estimated wastewater deman measured by appropriate flow and strength parameters is, in theory, the most equi table indicator; however, it can be difficult to develop and administer. The mos common indicators used in wastewater to represent capacity use are new plumbin fixtures and meter size because of simplicity, ease of understanding, and ease in fe administration. An example of a SDC schedule based on meter size and the unit cos of capacity from Table 10.4 is illustrated in Table 10.5.

The utility should assess which indicator best apportions capacity cost to cus tomers based on land use and characteristics of the service area. For example, on multifamily unit typically requires less wastewater treatment capacity, measured o either average annual or peak use, than one single family residential unit because i serves, on average, fewer people per unit and, therefore, is generally assigned lower cost per unit. However, multifamily units could be assigned a higher valu based on the class service characteristics of the community. In one instance, a utilit located in a ski resort community, found that the peak season number of occupant in multifamily rental units were typically higher than the single-family residentia unit (Corssmit, 2002). When peak demands are significant in the determination o infrastructure costs, peaking demands at wastewater collection systems and treat ment plants should be considered in the development of fee schedules for variou types of developments.

A utility may choose to determine specific capacity requirements to reflect a cus tomer with more extreme uses or potential demands. For example, if a large indus trial facility is to locate in the service area, the facility size, capacity requirements number of fixtures could be used to establish the fee specifically for that facility. F example, a large airport in a cold climate requiring deicing facilities may impose si nificant biochemical oxygen demand (BOD) loads on the system's treatment capaci Consequently, the utility may choose to compute the total BOD capacity cost for t new user because the BOD capacity cost is substantially higher than the avera system strength. Such exception-type users are recognized in various wastewa

TABLE 10.5 Example of system development charge schedule.

Meter size, mm (in.)	Meter capacity, m^3/d (gal/min)	Capacity ratio	System development charge
15.9 (5/8)	109 (20)	1.0	$500
25.4 (1.0)	273 (50)	2.5	$1,250
38.1 (1.5)	545 (100)	5.0	$2,500
50.8 (2.0)	872 (160)	8.0	$4,000
76.2 (3.0)	1744 (320)	16.0	$8,000
101.6 (4.0)	2726 (500)	25.0	$12,500
152.4 (6.0)	5451 (1000)	50.0	$25,000
203.2 (8.0)	8722 (1600)	80.0	$40,000

utilities. Utilities, in accordance with state laws and regulations, should reserve the option to deal with extreme customers appropriately.

Geographic Area. Fee schedules may also consider the location of the development in computing fees. Location factors may be technically based—in cases where certain geographic areas exhibit unique costs or service characteristics. In this case, it is important that the fee structure calculate separate unit costs for the fee areas, based on the individual area costs and growth requirements. Geographically differentiated fee schedules may also reflect policy objectives, for example, in the case of downtown revitalization incentives.

LOCAL ON-SITE FACILITIES CHARGES APPROACHES

In addition and separate from SDCs, there are a variety of local on-site facility charges that utilities implement to recover the cost of capital improvements not revered through SDCs or user charges. These on-site charges are related to development; specifically, to the actual cost for connection to the systems including mains, taps, and engineering cost. The following describe several fees:

- Front foot benefit charges. Impact fees based on the lineal footage of propert bordering on a facility such as a street or sewer line. Front footage fees may b valid for reimbursement of previous construction but are not appropriate fo SDCs. The most defensible use is to recover the cost of the main serving th premises.
- Service connection and hook-up fees. Cost of the service installation includin labor, equipment, and materials. These fees are paid by contractors for th installation of a new service line, main tap, and, if applicable, meters.
- Acreage fees. Fee for connection to the wastewater system calculated on a pe gross-acre basis for property serviced by the connection.
- Main extension charges. Designed to recover costs associated with installin sewer main extension, including engineering and applicable overhea expenses.
- Engineering plans and review fees. Administrative fees that include cost t review and develop plans for sewer connections.

PROGRAM EVALUATION

The last step in implementing SDCs is to monitor and manage the fee program. A utility may either use SDCs to fund capital expenditures or reimburse itself for an growth-related expenditure where working capital or debt is the funding sourc used, so long as the utility's intentions to do so are established before initiating suc expenditures. Revenues from the SDCs are typically collected when permits ar issued, which happens as the growth takes place. To meet such growth-capacit requirements, however, capital facilities are generally in place and funds alread spent by the time such charges are collected. The timing of collection involves pote tially conflicting issues, because the utility needs to collect the SDC early enough make funds available for system improvements. However, the utility can accurate assess the SDCs only later in the development process when the actual meter siz usage, or number of fixture units is known. To address timing issues, utilities typ cally use bond proceeds to fund large capital projects. The debt service payments these bonds are typically recovered through the wastewater rates and, in some cas SDCs. The level of and repayment means for outstanding debt needs to be cons

TESTIMONY OF OUCC WITNESS CHARLES E. PATRICK
CAUSE NO. 43936
CITIZENS ENERGY GROUP, ET AL.

I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Charles E. Patrick, and my business address is 115 West Washington Street, Suite 1500 South, Indianapolis, Indiana 46204.

Q: By whom are you employed and in what capacity?

A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as a Utility Analyst for the Water/Wastewater Division.

Q: Please describe your educational background and experience.

A: I graduated from Indiana Central College in Indianapolis, Indiana in May, 1972, with a Bachelor of Science degree, majoring in accounting, economics, and business administration. I attended Indiana Central College, Indianapolis, Indiana from September 1973 through May 1977, where I pursued a Master's of Science degree in economics. I attended Kennesaw State College, Kennesaw, Georgia in 1985 through 1987, where I pursued a Masters of Business Administration degree with an emphasis in accounting. I served as chief executive officer for a group of dermatologists. I worked in a variety of industries as a controller. These include medical, forms manufacturing, carpet manufacturing, retail and wholesale distribution, and information systems recruiting and consulting. I have also worked in a variety of accounting positions in banking, Sarbanes-Oxley auditing and documentation, corporate tax, and water, sewer, propane gas, and cable

television utilities. I became Financial Officer in August 1980 for a group of utilities including Florida Cities Water Company, Avatar Utilities, Inc., Poinciana Utilities, Inc., and Avatar Cable Television, Inc. I attended the National Association of Regulatory Utility Commissioners ("NARUC") Rate School in Miami, Florida in May 1982 and in San Diego in May 2008. I also attended several American Water Works Association ("AWWA") and Indiana Rural Water Association ("IRWA") conferences.

Q: Have you previously testified before the Indiana Utility Regulatory Commission?

A: Yes.

Q: What is the purpose of your testimony?

A: I discuss the benefits of and express concerns about various aspects of the proposed acquisition of the water and wastewater assets by Citizens Energy Group ("CEG") and the CWA Authority ("the Authority") or collectively as the context permits ("Citizens" or "CEG").

Q: What aspects of the proposed acquisition do you address?

A: The aspects of the proposed acquisition that I address below include the following: CEG's request for assignment of the Indianapolis Department of Waterworks' ("DOW") Interlocal Agreements and franchise rights; CEG's request for approval of the assumption of outstanding indebtedness; CEG's request for approval of the issuance of new indebtedness related to the acquisition of the waterworks; the Authority's request for approval of the assumption of outstanding indebtedness of the City of Indianapolis Department of Public Works ("Sanitary District"); the Authority's request for approval of the issuance of new

indebtedness related to its acquisition of the Wastewater System; the Authority's request for an adjustment mechanism to allow it rate increases to cover expenditures it will make to comply with the U.S. Environmental Protection Agency ("EPA") Consent Decree; the Authority's request to recover in rates its semi-annual payment to the City of Indianapolis ("City") for the Sanitary District's ("GO Debt"); CEG's request for approval of depreciation rates currently in effect for the DOW; and the Authority's request for approval of the depreciation rate proposed by the Authority in this Cause. I also discuss CEG's proposal for working capital debt and the outstanding notes payable by DOW to the City.

Q: Please list the Sections of your testimony.

A: My testimony is organized into the following sections:

I. Introduction 1
II. Interlocal Agreement and Franchise Rights 6
III. Debt Assumption and New Debt 11
IV. Working Capital 29
V. CWA Authority's Rate Adjustment Mechanism 34
VI. Depreciation Rates 39
VII. DOW's Outstanding Note to the City 41
VIII. Recommendations 42

Q: Please describe the review and analysis you conducted in order to prepare your testimony.

I read the pre-filed testimony provided by CEG, the City, and Veolia Water Indianapolis, LLC ("Veolia"). I reviewed the Memorandum of Understanding

("MOU") between the City and CEG; the Water Asset Purchase Agreement; and the Wastewater Asset Purchase Agreement. I reviewed the R.W. Beck, January 2010, appraisal of the City's waterworks and wastewater systems. I reviewed the Interlocal Agreements and Franchise Rights Agreements. I reviewed the Verified Certificate of Resolution of the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis and the Verified Certificate of Resolution of the Board of Directors for CWA Authority, Inc. I reviewed the Consent Decree ("Consent Decree"), including both of its amendments, entered into between the City, the EPA and the Indiana Department of Environmental Management ("IDEM"), filed with the U.S. District Court for the Southern District of Indiana, on December 19, 2006. I participated in the preparation of many discovery questions issued to CEG and the City and reviewed responses received. I reviewed the testimony of Tyler E. Bolinger and Michael E. Brosch in Cause No. 42767 and the cross-examination of Mr. Donald L. Lindemann in Cause No. 39066. I reviewed my testimony and the OUCC's proposed order in Cause No. 43645, the pending DOW water rate case. I reviewed the final order in Cause No. 43680, Indiana-American Water Company's last water and sewer rate case. I reviewed DOW's Interlocal Agreements, affiliate agreements between CEG entities, summary reports compiled by Walker Information, and customer satisfaction surveys, benchmarking studies and/or safety awards for CEG entities at the 2020 N. Meridian Street facility. I attended the Commission's evidentiary hearing for Joint Petitioners' case-in-chief (conducted on Dec. 6, 7, 8, 10, and 14, 2010.) I attended the January 5, 2010 field hearing held at Crispus Attucks

Medical Magnet School in Indianapolis. Finally, I participated in many meetings with other OUCC staff to identify and discuss the issues in this Cause.

Q: Are you sponsoring any attachments?

A: Yes. I am sponsoring the following attachments:

Attachment CEP - 1	Sample DOW Interlocal Agreement
Attachment CEP - 2	Proposed Water Utility Debt Structure, February 15, 2011, Citizens Energy Group, Exhibit, JPO - 2
Attachment CEP - 3	OUCC Data Request and Response to Q 17-20, Estimated "Working Capital" Borrowing for the Water Utility
Attachment CEP - 4	OUCC Data Request and Response to Q 37-1, Estimated "Capex" Borrowing for the Water Utility
Attachment CEP - 5	OUCC Data Request and Response to Q 5-23, Estimated "Working Capital" Borrowing for the Wastewater Utility
Attachment CEP - 6	OUCC Data Request and Response to Q 12-15, Sanitary District Current Depreciation Rates,
Attachment CEP - 7	Data Request and Response to OUCC Q 27-2, Sanitary District Pro Forma Revenue Requirements to Produce Projected Rate Increases (A portion of the Excel File Provided)
Attachment CEP - 8	Petitioner's Exhibit MGL-3, Fairness Opinion Letter from Mr. Lane to Mr. Cotterill, dated August 3, 2010
Attachment CEP - 9	Citizens' Witness Prentice, Hearing transcript, K-25 - K-33
Attachment CEP - 10	OUCC Data Request and Response Q 6-8, Sanitary District Depreciation Rate
Attachment CEP - 11	OUCC Data Request and Response Q 31-8, Balance of Loan between City and DOW
Attachment CEP - 12	City's Witness Cotterill, Response to Commission Landis' Repayment of the DOW "Working Capital" Debt Question, Hearing transcript, B127 – B-130
Attachment CEP - 13	Data Request and Response to OUCC Q 20-11, Citizen's Repayment of DOW Loan from the City

II. INTERLOCAL AGREEMENTS AND FRANCHISE RIGHTS

Q: What have Joint Petitioners requested with respect to Interlocal Agreements and Franchise Rights?

A: Joint Petitioners ask the Commission to issue an order approving the: (1) DOW's assignment of any DOW Interlocal Agreements and franchise rights to the Board; (2) Board's assumption of DOW's obligations in those Agreements; (3) terms of certain agreements for wastewater treatment and disposal service; and (4) use by the Authority of general terms and conditions of service based on the rules now in effect for wastewater utility service by the Sanitary District.

Q: What statutes govern Interlocal Agreements in Indiana?

A: The Indiana statutes governing Interlocal Agreements are found in Ind. Code § 36-1-7, et seq.

A. Citizens Water Utility

Q: Have you read the Interlocal Agreements that will be transferred from the DOW to CEG?

A: Yes. I have read each of the Interlocal Agreements[1] that the DOW has with the following governmental entities: the Towns of Avon, Beech Grove, Brownsburg, Clermont, Cumberland, Danville, Darlington, Fishers, Lizton, McCordsville, New Palestine, Pittsboro, and Zionsville; the Cities of Carmel, Noblesville, Southport and the Consolidated City of Indianapolis; and the Board of Commissioners of Boone, Hamilton, Hancock, Hendricks, Marion and Morgan Counties. *See,* Att. CEP -1 for a representative sample of a DOW Interlocal Agreement.

[1] The DOW Interlocal Agreements were originally named Intergovernmental Agreements.

Q: Briefly describe the Interlocal Agreements that will be transferred from the DOW to CEG.

A: The above Interlocal Agreements between various water producers and providers and the DOW transferred substantially all of the assets of the aforesaid water entities to DOW. In consideration for these transfers, DOW agreed to establish a Joint Advisory Board to include one member from DOW and one member from each of the cities, towns or counties that entered into these Interlocal Agreements. DOW agreed to manage the newly acquired assets with regards to financing, staffing, and budgeting. DOW also agreed to make payments in lieu of taxes ("PILOT") as a cost of services in any and all rate proceedings before the Commission. These payments were to compensate all cities, towns or counties within the territory for taxes that would have been due on its utility property were the utility privately owned.

Q: Does the OUCC oppose the transfer of the Interlocal Agreements from the DOW to CEG?

A: No. The OUCC does not oppose the transfer of the Interlocal Agreements to CEG.

Q: Does the OUCC oppose the continued PILOT payments by CEG to each party that has an Interlocal Agreement that contains a PILOT provision?

A: No. The OUCC does not oppose the continuation of PILOT as provided in the Interlocal Agreements.

B. <u>CWA Authority</u>

Q: Have you read the Interlocal Agreements that will be transferred from the Sanitary District to CEG, through CWA Authority?

A: Yes. I have read each of the Interlocal Agreements[2] including amendments that the Sanitary District has with the Cities of Beech Grove, Greenwood and Lawrence, the Ben Davis and Tri-County Conservancy Districts, Boone County Utilities, LLC, and Hamilton Southeastern Utilities, Inc. *See,* Joint Petitioners' Exhibits LSP-7 through LSP-13.

These Interlocal Agreements provide that the listed communities and corporations agree to connect to the Sanitary District system in order to improve their present sewage system. They have further concluded that sewage generated within the various entities be transported and treated by the Sanitary District. Each entity named above has established with the Sanitary District a wastewater discharge volume, stated in average gallons per day. These entities have also agreed to a negotiated per thousand gallon charge. In addition, each entity has described the geographical area to be connected to the Sanitary District.

Q: Does the OUCC oppose the continued processing of sanitary wastewater by CEG, through the Authority, from other communities pursuant to Interlocal Agreements?

A: No. The OUCC does not oppose the continuation of sanitary wastewater processing as provided in the Interlocal Agreements by the Authority. This processing is beneficial to the public because it helps ensure that sanitary wastewater is properly treated.

[2] The Sanitary District Interlocal Agreements were originally titled Agreements.

Q: Are there any new Interlocal Agreements involving the Authority?

A: Yes. The Joint Petitioners' filed an Interlocal Agreement that established the Authority as the entity that will receive the assets and liabilities of the Sanitary District.

Q: Please explain your understanding of the Interlocal Agreement created by the Authority.

A: The City, Sanitary District and CEG filed an Interlocal Agreement between them that creates the Authority. As set forth in Joint Petitioners' case-in-chief, both the City and Citizens are political subdivisions, which gives them the power and authority to use the Interlocal Agreement statute. *See*, Ind. Code § 36-1-7-1(2). By creating CWA Authority in this fashion, the resulting new public charitable trust will have all the powers of both "parent" entities. *See*, Ind. Code. § 36-1-7-(2)(a). Joint Petitioners have indicated that through the Interlocal Agreement, CWA Authority will be considered a "non-profit," by which the Joint Petitioners have stated CWA Authority will be subject to Commission jurisdiction.

Q: What is your understanding of the powers that flow from each Joint Petitioner?

A: It is my understanding from reading the Interlocal Cooperation Agreement that the Interlocal Agreement Statute authorizes the City, the Sanitary District and Citizens, as political subdivisions and pursuant to a written agreement authorized by ordinance or resolution of each of them, to jointly exercise powers, and to administer the resulting agreement through a separate legal entity. The City, acting through the District, (a) owns the assets the Authority would acquire under the Purchase Agreement and (b) is permitted, has the power to own and operate the System for the benefit of the City's inhabitants, as set forth in the applicable

statute, ordinance or resolution. Under Ind. Code § 8-1-11.1, *et seq.*, Citizens has the power to provide utility services and own all utility property within or outside the City, within the limits authorized by law. The City-County Council is authorized to create and terminate City departments, divisions, offices and other agencies and, except as otherwise provided by Indiana law, to transfer the powers, duties, functions and obligations to or from such entities. [3]

Q: What is your understanding of the purposes of the Interlocal Cooperation Agreement?

A: As set forth in the Interlocal Cooperation Agreement, the purposes of the agreement are to: (a) establish a separate legal entity organized as an Indiana non-profit corporation to exercise all of the respective rights, powers, functions and duties of the City, the Sanitary District and Citizens that are necessary, useful or appropriate to furnishing wastewater collection and treatment services, excluding in the case of the City and Sanitary District, taxing power and taxing authority; (b) provide for the transfer of the System from the City and the Sanitary District to the Authority to be operated and held to provide wastewater service, as specified in the Purchase Agreement and other relevant documents, in perpetuity in public charitable trust in the same manner and to the same extent in which Citizens has operated and held its gasworks for the benefit of the inhabitants of the City; (c) to transfer or delegate to, and vest in, the Authority all the powers of the City, the Sanitary District and Citizens necessary, useful or appropriate to the acquisition, ownership and operation of the System, excluding in the case of the

[3] See Interlocal Cooperation Agreement for the Provision of Utility Services (Wastewater), p1.

City and the Sanitary District, taxing power and taxing authority; and (d) to allow the Authority to exercise the powers delegated and/or transferred to it on behalf of the City, Sanitary District and Citizens for the benefit of the inhabitants of the City and the customers of the System.[4]

III. DEBT ASSUMPTION AND NEW DEBT

A. Citizens Water Utility

Q: What is the proposal for Citizens' water utility to acquire assets and debt in conjunction with the purchase of the DOW assets?

A: According to the Verified Joint Petition (paragraph 31), the Board

> ...will acquire, except for specifically excluded assets, all of the City's and the DOW's right, title and interest to and under all of the assets used, necessary or important in the operating of the Water System, as defined in Section 2.01 of the Water System Agreement.

Paragraph 32 of the Petition states, the Board

> ...will assume the liabilities of the City and DOW relating to the Water System including without limitation those related to litigation against either the City or DOW relating to the Water System; performance under certain contracts; and certain retiree medical benefits described in the Water System Agreement (referred to in the Water System Agreement as the "Assumed Liabilities").

Additionally, description (n) of the Verified Joint Petition at page 20, asks the Commission issue an order

> ...finding the Board's assumption of outstanding indebtedness of the DOW or City related to the Water System or issuance of any new indebtedness related to the Board's proposed acquisition of the Water System to be reasonable, in the public interest and recoverable in rates.

[4] See Interlocal Cooperation Agreement for the Provision of Utility Services (Wastewater), pp. 1-2.

a. Department of Waterworks' Existing Debt

Q: Is CEG asking for authority to assume the DOW's existing debt?

A: No. In its Verified Joint Petition, CEG seeks a Commission finding that CEG's assumption of indebtedness related to the Board's proposed acquisition of the Water System "to be reasonable, in the public interest, and recoverable in rates." (See Subsection (n) of the Verified Joint Petition at p. 20.) But it does not actually ask the Commission to authorize the assumption of the debt and to authorize the issuance of debt to replace the assumed debt.

Q: Please describe CEG's proposal to assume existing debt in conjunction with the purchase of the DOW assets.

A: Citizens plans to assume DOW's existing long-term debt, and subsequently issue new debt to replace the assumed long term debt. Paragraph 33 of the Petition states:

> In addition to the Assumed Liabilities described in the Water System Agreement, as consideration for its acquisition of the Water System, the Board will issue debt to replace and refund certain Water System long term debt owed by the City and DOW amounting to $915,655,000 as of June 1, 2010.

Q: Is there a more current estimated long term debt that CEG will assume from DOW at the closing?

A: Yes. According to Citizens' witness Mr. Offutt, CEG's water utility will assume approximately $903,965,000 of existing debt at the time of closing on the acquisition of the water assets. *See,* Exhibit JPO-2, p. 12. Table CEP 1 below summarizes the anticipated outstanding debt at closing. These amounts recognize the debt service payments scheduled to be made through February 15, 2011, but no debt service payments beyond that date. *See*, Att. CEP - 2.

Table CEP 1 – Department of Water Acquired Debt

Bond Description	Anticipated Debt At February 15, 2011
2002 Series A	$ 23,040,000
2005 Series F	69,965,000
2006 Series A	77,830,000
2007 Series B	70,410,000
2007 Series L	102,830,000
2009 Series A	559,890,000
Total Anticipated Debt	$ 903,965,000

Q: Does the OUCC agree that DOW's outstanding long-term indebtedness be assumed by CEG?

A: If the Commission approves the acquisition of the DOW assets by CEG, the OUCC agrees the long-term debt should be assumed by CEG in the amount of debt outstanding at the time of closing.

Q: What amount does CEG propose to borrow at closing to replace the existing DOW debt?

A: Mr. Brehm disclosed that CEG plans to borrow the entire $903,965,000 (Petitioner's Exhibit JRB-2) plus transaction costs and issuance costs related to the borrowing. The amounts of the transaction and issuance costs are not yet known.

b. Citizens Water Utility New Debt

Q: Is CEG asking for authority to issue any new debt?

A: No. In its Verified Joint Petition, CEG seeks a Commission finding that CEG's issuance of any new indebtedness related to the proposed acquisition of the Water System "to be reasonable, in the public interest, and recoverable in rates." *See*,

Subsection (n) of the Verified Joint Petition at p. 20. But CEG does not actually ask the Commission to authorize the issuance of any new debt.

Q: Does CEG plan to issue any new indebtedness that is not for refinancing the existing debt?

A: Yes. While not stating a specified amount in his testimony, Mr. Brehm asserted that the CEG water utility will need to borrow funds for working capital (page 35, lines 1-2). In response to OUCC Data Request Q 17-20, CEG states that it intends to borrow $42,070,000 for working capital after the acquisition of DOW assets and debt. *See*, Att. CEP - 3. In response to OUCC Data Request Q 37-1, CEG indicated that it proposes to borrow $37,640,000 for capital spending in 2011. *See*, Att. CEP - 4.

Q: Does CEG plan to issue debt to provide funds for what CEG describes as "working capital" for the water utility?

A: Yes.

Q: How much debt does Citizens plan to issue for "working capital" for the water utility?

A: CEG did not state the total amount of debt it plans to issue for such funds. However, Mr. Brehm's Exhibit JRB-5 on line 17 shows $3.4 million for "Working Capital Financing". The $3.4 million is annual debt service on a bond issue not identified or described elsewhere in Joint Petitioners' case.

Q: Although the bond issuance was not identified by CEG in its case, was the OUCC able to determine the total amount of debt that CEG proposes to borrow to fund what CEG described as "working capital" for the water utility?

A: Yes. In response to OUCC Data Request Q 17-20, Mr. Brehm provided an amortization schedule of the debt service ($3,390,270 annually) that agrees with the amount he shows in Petitioner's Exhibit JRB-5, line 17. *See*, Att. CEP - 3.

This response indicated the total debt to fund "working capital" for the water utility was $42,070,000. I discuss this in more detail in the section regarding working capital below. In Table CEP 2 below, I show the composition of the proposed working capital debt for the water utility.

Table CEP 2 – Water Utility Working Capital Borrowing Detail

Debt Composition	Amount
Working Capital Required	$ 39,952,786
Debt Service Reserve Fund	1,695,135
Cost of Issuance	420,700
Total	$ 42,068,621
Rounded to	$ 42,070,000

Q: In its case in chief, did CEG indicate that it would borrow debt to finance "capital spending"?

A: Yes. However, CEG did not state the total amount of proposed bond borrowings. Mr. Brehm's Exhibit JRB-5 at line 16 indicates $2.6 million in 2011 for Bond Funded Capital Expenditure ("Capex") Debt Service. The Capex Debt Service amount increases in subsequent years to $4.8 million for 2012, $7.3 million for 2013, and $9.7 million per year for the years 2014 through 2025.

Q: Was the OUCC able to determine the total amount of requested "capital spending" for the waterworks that CEG proposes to borrow in 2011, 2012 and 2013?

A: Yes. In response to Data Request 37-1, Mr. Brehm provided amortization schedules for the water utility Capex. *See*, Att. CEP - 4. CEG plans to borrow $37,640,000 in 2011, $31,330,000 in 2012, and $35,450,000 in 2013.

Mr. Brehm provided an amortization schedule of the debt service that agrees with the amount he shows in Petitioner's Exhibit JRB-5, line 16. *See*, Att. CEP - 4. This response also provided the OUCC with the composition of the water utility capital spending debt.

Q: Does the OUCC agree with CEG's plan to borrow long-term debt for "working capital" for the water utility?

A: No. CEG is seeking a guarantee from the Commission that it will be permitted in future rates to include the annual debt service on debt it borrows to provide working capital for its water utility. CEG's planned borrowing for working capital is both excessive and would allow double recovery, as the water utility's working capital needs will be met through the rates authorized by the Commission in Cause No. 43645.[5] (See the "Working Capital" discussion below.) Also, Mr. Brehm's assertion, that the depletion of cash that took place while emergency rates were in place necessitates this request, does not justify the CEG water utility's need for its excessive working capital request. See the "Outstanding DOW Note to the City" discussion below beginning on page 40.

Q: Does CEG need to have cash on hand when it acquires the water utility?

A: Yes. Utilities require cash to operate.

Q: What is "Working Capital"?

A: "Working capital" is a term of art. The Indiana Court of Appeals has stated "the need for working capital arises from the day-to-day expenses which occur during the period between the time of billing and the time customers actually pay for service." *Bd. of Directors for Utils. v. Office of Util. Consumer Counselor*, 473

[5] See the "Working Capital" discussion below.

N.E.2d 1043, 1050 (Ind. App. 1985). There is a recognized Commission process designed to identify a utility's working capital needs in a way that will justify a revenue requirement in rates.

Q: Will CEG provide cash to immediately operate the water utility?

A: No. One of the things that adds to the complexity of the proposed transaction is that CEG does not propose to bring any equity or cash to the operations it plans to acquire. CEG will not acquire any operating cash from the City when it purchases the water utility. Nor does CEG intend to supply its own operating cash through a cash infusion. CEG will need cash to operate immediately and will not have the option of waiting for cash to build up through rates. In light of those facts, CEG plans to borrow the cash it will immediately need to operate the utility. This cash will need to be borrowed either through long term debt or a line of credit. See discussion of Working Capital below.

Q: Is it possible that CEG will need cash for its initial 30 days of operation in addition to its working capital requirement?

A: Yes. It is my understanding the City will retain the accounts receivable and cash of DOW, other than the cash equivalents and invested funds, plus investment earnings, and other amounts in capital improvement, bond and/or construction fund balances and debt service reserve funds. The City will also retain the trade payables. However, CEG will incur cash expenses including payroll, employee benefits including health, dental, vision, and disability insurance, leased property expense, and operational and maintenance ("O&M") expenses including chemicals and routine maintenance expenses during the first thirty (30) days of

operations without receiving cash from revenue to meet such expenses. In its case-in-chief, CEG has not identified these expenses or described a plan tailored to meet such expenses. Because CEG agreed to allow the City to retain the accounts receivable, CEG will experience an immediate cash shortfall that will not be met by the working capital revenue requirement the water utility justified in its rate case. But this does not change the fact that borrowing "working capital" to be recovered in future rates will effectively allow double recovery, since the water utility's working capital revenue requirement is already built into the rates to be established by the final order in Cause No. 43645.

Moreover, even if it were not double recovery, CEG is asking for an excessive amount of cash for its initial operations.

Q: If the cash for initial operations were not double recovery and the debt service was otherwise appropriate to include in rates, what is the appropriate amount of funds that should be financed?

A: If cash for initial operations were to be financed, the amount that would be appropriate should be based on thirty (30) days of operating cash. CEG is essentially asking for nearly eight (8) months of operating cash.

Q: How did you arrive at a figure of $4,392,000 for initial operations?

A: I calculated the appropriate amount by adding (Mr. Brehm's Exhibit JRB-5) 2011 Annual Operations of $48,400,000 plus 2011 Annual Other O&M /Admin Expenses of $4,300,000 and dividing that figure by 12. Since the transaction will not close until an Order in Cause No. 43645 is issued, the rates authorized by the Commission will be statutorily adequate. These rates will include cash for

working capital. Since there is no need to pay debt service on the new debt immediately, thirty days of total O&M should be sufficient for initial operations.

Q: What does the OUCC recommend with regards to borrowing long-term debt for "capital spending"?

A: If the Commission approves the acquisition of the DOW by CEG, the OUCC recommends the Commission deny CEG's long-term debt issuance for "capital spending" as discussed by Mr. Brehm. Mr. Brehm's Exhibit JRB-5 shows an annual debt service of $2.6 million for year 2011; $4.8 million for year 2012; $7.3 million for year 2013; and $9.7 million for years 2014 thru 2025 for Bond Funded Capex Debt Service.

When the Commission issues its Order in Cause No. 43645, DOW will have sufficient funds from rates to fund capital expenditures for 2011. A portion of "capital spending" funds will come from the "Extensions and Replacements" ("E&R") share of the revenue requirement. The OUCC's proposed revenue requirement for "Extensions and Replacements" in Cause No. 43645 is $22,276,000 annually or $1,855,333 monthly. Also, the OUCC recommended debt issuance of long-term debt of $66,600,000 ($111,000,000 times 60%) in Cause No. 43645.[6] Therefore, if the Commission accepts the OUCC's recommendations as described above, CEG will have an Order in Cause No. 43645 that will provide approximately $88,876,000 ($22,276,000 for E&R and $66,600,000 in long-term debt) in capital funds available to support "capital

[6] The OUCC recommended 60% from long term debt and 40% from extensions and replacements to fund the $111 million in requested Extensions and Replacements proposed by the Department of Waterworks over 2 years.

spending" in 2011. Beyond 2011, CEG will have annual capital spending funds from the "Extensions and Replacements" revenue requirement of $22,276,000. When the two year self-imposed moratorium has elapsed, it is anticipated that CEG's water utility will file a rate case in 2013.

B. The Authority

a. The Authority Assumed Debt

Q: What is the estimated existing long term debt that the Authority will acquire from the Sanitary District at closing?

A: According to Citizens Witness Mr. Offutt, the Authority will acquire approximately $497,949,000 of existing debt at the time of closing on the wastewater assets. *See,* Exhibit JPO-2, page 12. My Table CEP 3 below summarizes the anticipated outstanding debt at closing. These amounts recognize the debt service payments scheduled to be made on or before February 15, 2011, but no payments beyond that date. *See*, Att. CEP- 2.

Table CEP 3 – Sanitary District Acquired Debt

Bond Description	Anticipated Debt At February 15, 2011
SRF Bonds	$ 412,654,000
Revenue Bonds	37,445,000
General Obligation "GO" Bonds	47,850,000
Total Anticipated Debt	$ 497,949,000

Q: Is any of the existing debt in Table CEP 3 not being refinanced by CEG through the Authority?

A: Yes. According to Mr. Brehm, the GO Bonds "will remain obligations of the City". Mr. Brehm explained that "CEG, through the Authority, is required to make semiannual payments to the City in the amount equal to the City's debt service obligation on the General Obligation bonds." *See,* Joint Petitioners' Exhibit JRB, p. 10. This debt is estimated by Mr. Brehm to be approximately $47,850,000 at closing.

Q: What does the City's retention of the GO Bonds mean to the Authority?

A: If the Commission approves the sale of the wastewater assets to the Authority, CEG will need to recognize the debt obligation in its public financial statements until the debt obligation is satisfied. Mr. Brehm stated that "[t]he Authority is requesting Commission approval in this proceeding to recover the cost of the foregoing semiannual payment obligations in its annual revenue requirements after the rate moratorium ends in 2013." Thus, pursuant to the purchase agreement, the Authority will assume the City's debt obligation for the GO Bonds until the Authority has satisfied the City's debt obligations.

Q: Should the Authority be allowed to recover the debt service payments on these GO Bonds through rates?

A: Yes. If the Commission approves the acquisition of the Sanitary District wastewater assets by the Authority, the OUCC agrees the Authority should be allowed to recover annual debt service payments for the GO Bonds in any future rate cases until the City's associated debt has been satisfied.

b. The Authority's New Debt

Q: What amount does the Authority propose to borrow to replace the existing Sanitary District debt?

A: According to the Mr. Brehm, the Authority will have long term debt of $682,914,000 after closing and will obtain new debt to replace existing debt. *See*, Petitioner's Exhibit JRB-2. Table CEP 4 below summarizes the anticipated outstanding total debt after closing and refinancing the prior debt and obtaining additional financing for the acquisition. In addition, Mr. Brehm's response to OUCC Request Q 5-23, indicates that there will be an additional $100,630,000 borrowed to complete payment to the City for the acquisition of City wastewater assets. *See*, Att. CEP – 5.

Table CEP 4 – CEG Debt After Acquisition of the Sanitary District

Bond Description	Anticipated Debt After Closing In 2011
SRF Bonds	$ 412,654,000
Revenue Bonds	37,445,000
General Obligation "GO" Bonds	47,850,000
Acquisition Bonds	184,965,000
Total Anticipated Debt	$ 682,914,000

Mr. Brehm proposes that the Authority's "senior debt will include all current outstanding debt of the Wastewater System to be assumed or otherwise satisfied as part of the acquisition with the exception of the outstanding General Obligation bonds of the Wastewater System. . . ." The outstanding Sanitary District wastewater debt obligations, which the Authority proposes to borrow debt to

replace at closing, is approximately $450,099,000. This amount consists of the State Revolving Fund (SRF) debt of $412,654,000 and Revenue Bonds debt of $37,445,000.

Q: What does the OUCC recommend with regards to borrowing long-term indebtedness to replace the Sanitary District's existing long-term debt?

A: If the Commission approves the acquisition of the Sanitary District wastewater assets by CEG, through the Authority, the OUCC does not oppose the Authority's replacement of the current long-term debt with tier one debt in the exact amount outstanding at the date of closing, including associated transaction and issuance costs.

Q: What is the price the Authority will pay to acquire the Sanitary District wastewater assets?

A: The Authority will pay $262.6 million plus the assumption of Sanitary District debt to acquire Sanitary District assets. Mr. Brehm stated that "[t]he assignment of the $262.6 million purchase price to the Wastewater System reflects and is consistent with the relative fair value of the Wastewater System…" *See*, Exhibit JRB, p. 11. While the senior debt described above will constitute a first lien on the Authority's revenues, this $262.6 million will be a second lien on the Authority's revenues after payment of the wastewater system's operating expenses. Mr. Offutt stated that "$262.6 MM will be paid in cash to the City for the assets of the Systems." Mr. Offutt also stated that "$170.6 MM will be paid at closing; $92.0 MM will be paid on October 1, 2011." *See*, Joint Petitioners' Exh. JPO - 2, p. 4.

Q: Is the $262.6 million of debt the only debt the Authority will be issuing as a result of this acquisition?

A: No. The Authority proposes to borrow $99,775,000 for what is designated as "working capital" and $439,895,000 ($54,605,000 for 2010, $106,370,000 for 2011, $149,415,000 for 2012, and $129,505,000 for 2013) for capital expenditures ("Capex".) The annual debt service payments, which it designated "Bond Funded Capex Debt Service" on Petitioner's Exhibit JRB-1, shows $9.1 million, $17.5 million, and $24.9 million in cumulative annual debt service payments for 2011, 2012, and 2013, respectively. These borrowings result in both first and second lien debt.

Q: Please explain a second lien in the context of this Cause.

A: As Mr. Brehm explained "a second lien means the holders of such debt will have a lien on the new revenue of the Wastewater System after payment of the Wastewater System's operating expenses only after payment of all first lien debt service obligations have been satisfied." *See*, Joint Petitioners' Exh. JRB, p. 8. In other words, the debt for the acquisition will be junior or subordinated to the debt held by SRF and the Revenue Bonds.

Q: Will revenues from any other utility be used to secure any of this first lien or second lien debt?

A: No. As Mr. Brehm explained "[s]uch a lien structure means that the security of debt holders is limited to the revenue of the Wastewater System after payment of the Wastewater System's operating expenses." Mr. Brehm further stated that this "is consistent with the separate lien structures of CEG's existing utilities that prevent debt holders of one regulated utility from having a lien on the net revenues of any other regulated utility. This effectively means that each CEG utility must stand on its own from a credit perspective." *See*, Joint Petitioners'

Exhibit JRB, p. 8. Thus, the Authority's debt will be secured only by "net revenues" of the Authority, and none of CEG's other operations.

Q: The Authority plans to borrow approximately $439,895,000 for Capex during the first four years of operation. Does the Authority need to borrow Capex funds for the years projected years of 2010, 2011, 2012, and 2013?

A: No. The DPW Sanitary District Pro Forma Revenue Requirements clearly shows, under the Debt Service section, that the 10.75% rate increases developed by the Sanitary District and approved by the City County Council, for the years 2010, 2011, 2012, and 2013 include annual debt service amounts on projected borrowings of $479,000,000. *See*, Att. CEP - 7.

Q: What does the OUCC recommend with regard to borrowing long-term debt for Capex projects?

A: If the Commission approves the acquisition of the Sanitary District wastewater assets by CEG, through the Authority, the OUCC recommends that the Commission deny CEG's projected Capex borrowings of $439,895,000 ($54,605,000, $106,370,000, $149,415,000 and $129,505,000), as shown on CEG's Stormwater System Debt Service Projection and the associated annual debt service payments of $3,085,183, $6,006,905, $8,441,948 and $7,317,033, respectively, as proposed by Mr. Brehm. See, Att. CEP – 5.

Q: What amount does the Authority plan to borrow for "working capital"?

A: CEG did not propose an amount for "working capital" in its case in chief. Rather, it presented a debt service recovery amount on line 17 of Joint Petitioners' Exhibit JRB-1 that it requests the Commission approve. The $18.4 million amount includes debt service on the acquisition price and working capital. CEG did not disclose in its case-in-chief that it intends to borrow a particular amount of money

for working capital. However, in response to an OUCC data request question, Mr. Brehm indicated the Authority would borrow approximately $90.4 million:

> Petitioner has targeted an opening working capital balance equal to one and a half years of operating expenses, in this case approximately $90.4 million. Conventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case. Consequently for modeling purposes a working capital target of one and one half years of operating expenses was chosen.

See, CEG's response to OUCC Data Request Q 12-15; *See,* Att. CEP - 6.

The "Working Capital Debt Service" amount reflected on Joint Petitioners' Exhibit JRB-3, Line 11 reflects the amortization of long-term borrowing of $90.4 million ($99,775,000, after issuance and establishment of the Debt Service Reserve Fund) as discussed in Mr. Brehm's response to OUCC Data Request Q 12-15. On cross examination, however, Mr. Brehm indicated that the amount of working capital represented by "Working Capital Debt Service" on Exhibit JRB-3, Line 11 will be modified depending upon the circumstances at closing. Mr. Brehm sums up the Authority's proposal by stating, "[t]he authority that we are asking for is to include our cost of working capital in debt service, whatever they end up being." *See*, trans. of December 8, 2010, G-17.

Q: What does the OUCC recommend with regard to borrowing long-term debt for "working capital"?

A: If the Commission approves the acquisition of the Sanitary District wastewater assets by CEG, through the Authority, the OUCC recommends that the Commission deny the request that the Authority be guaranteed the recovery in

future rates of the annual debt service on the requested CEG's debt issuance for "working capital" as described by Mr. Brehm.

Q: Does CEG need to have cash on hand when it acquires the wastewater utility?

A: Yes. As with the water utility, the wastewater utility will require cash to operate.

Q: What is "Working Capital"?

A: "Working capital" is a term of art. The Indiana Court of Appeals has stated "the need for working capital arises from the day-to-day expenses which occur during the period between the time of billing and the time customers actually pay for service." *Bd. of Directors for Utils. v. Office of Util. Consumer Counselor*, 473 N.E.2d 1043, 1050 (Ind. App. 1985). There is a recognized Commission process designed to identify a utility's working capital needs in a way that will justify a revenue requirement in rates.

Q: Will Citizens provide cash to immediately operate the wastewater utility?

A: No. One of the things that adds to the complexity of the proposed transaction is that CEG does not propose to bring any equity or cash to the operations it plans to acquire. CEG will not acquire any cash or accounts receivable from the City when it purchases the wastewater utility. Nor does CEG intend to supply its own operating cash through a cash infusion. CEG will need cash to operate immediately and will not have the option of waiting for cash to build up through rates. In light of those facts, CEG plans to borrow the cash it will immediately need to operate the utility. This cash will need to be borrowed either through long term debt or a line of credit. See discussion of Working Capital below.

Q: Is it possible that CEG will need cash for its initial 30 days of operation in addition to its working capital requirement?

A: Yes. As part of the transfer, the City will not convey to the Purchaser the accounts receivable or cash that had been accrued to operate the utility. However, within the first 30 days of operations, CEG and the Authority will incur payroll expenses, employee benefits expenses (health, dental, vision, and disability insurance), leased property expense, and operation and maintenance ("O&M") expenses. These expenses will be incurred without immediate access to the funds that had been accrued to meet such expenses. In its case-in-chief, CEG has not identified these expenses or described a plan tailored to meet such expenses. Because CEG agreed to allow the City to retain the accounts receivable, CEG will experience an immediate cash shortfall that will not be met by the working capital revenue requirement the wastewater utility has until it concludes a billing and collection cycle. But this does not change the fact that allowing a borrowing of working capital to be recovered in rates will effectively allow double recovery, since the wastewater utility's working capital revenue requirement is already built into the rates established by the City.

Moreover, even if it were not double recovery, CEG is asking for an excessive amount of cash for its initial operations.

Q: If the cash for initial operations were not double recovery and the debt service was otherwise appropriate to include in rates, what is the appropriate amount of funds that should be financed?

A: If cash for initial operations were to be financed, the amount that would be appropriate should be based on thirty (30) days of operating cash. CEG is essentially asking for nearly eighteen (18) months of operating cash.

Q: How did you arrive at a figure of $4,500,000 for initial operations?

A: I calculated the amount of appropriate initial operating cash, by adding (JRB-1) 2011 Annual Operations of $47,200,000 plus 2011 Annual Other O&M /Admin Expenses of $6,800,000 and dividing by 12.

IV. WORKING CAPITAL

A. Citizens Water Utility

Q: Did CEG request "working capital" as part of its proposed debt to acquire the DOW assets?

A: Yes. In his testimony at p. 32, Mr. Brehm stated:

> Under the terms of the Water System Agreement, the consideration given to the City to acquire the Water System is assumption or other satisfaction of such outstanding debt. The projected financing costs also include debt service on debt issued to provide working capital for the Water System.

Q: Did CEG's witness Mr. Brehm identify in his testimony an amount of "working capital" that CEG plans to borrow for the water operations?

A: No. However, in response to an OUCC Data Request Q 17-20, Mr. Brehm provided an amortization schedule that summarizes the total debt CEG plans to borrow for "working capital" for the water utility. Mr. Brehm's amortization schedule shows the total amount of borrowings of $42,070,000. This amount indicates "working capital" of $39,952,786; debt service reserve fund of $1,695,135; and cost of issuance of $420,700. The annual debt service is

$3,390,270. *See*, Att. CEP - 3. The annual amortized portion of the $42,070,000, which matures in 2040, is $3.4 million.

Q: Did CEG's witness Mr. Brehm identify in his testimony a debt service amount for the amount of borrowings for waterworks operations?

A: Yes. Mr. Brehm's Exhibit JRB-5 forecasts rate increases, operating expenses, capital expenditures, debt, and working capital for Citizens water utility for the timeframe 2011 thru 2025. Line 17 of Exhibit JRB-5 shows $3.4 million of debt service for "working capital" for each of the foresaid years.

Q: Does the OUCC believe that Citizens needs to increase its working capital for the water utility?

A: No. In Cause No. 43645, the DOW proposed working capital of $10,947,000 annually.[7] The OUCC modified DOW's request in Cause No. 43645 and asked the Commission to allow $2,386,000 annually for working capital. The difference in the DOW's and the OUCC's calculation of working capital primarily revolved around whether DOW should be allowed to recover its subsequent year cash deficit of $15,658,000 million. Therefore, when an Order is issued in Cause No. 43645, DOW will have been provided with sufficient working capital without increasing the amount of borrowings that ratepayers will be required to repay.

B. <u>CWA Authority</u>

Q: Did Joint Petitioners request working capital as part of its proposed debt to acquire the Sanitary District wastewater assets?

A: Yes. In his testimony at p.7, Mr. Brehm stated:

[7] The Department of Waterworks (DOW) proposed to file a new rate case within two years after the final order in Cause No. 43645.

The projected financing costs also include debt service on debt issued to finance the purchase price paid to the City, as detailed in the Wastewater System Agreement. In addition, the projected financing costs include working capital for the Wastewater System.

Q: Did Mr. Brehm specifically identify the amount of working capital that is being requested for the Authority in the proposed debt in his testimony?

A: No. However, in response to OUCC Data Request Q 12-15, Mr. Brehm stated that "Petitioner has targeted an opening working capital balance equal to one and a half years of operating expenses, in this case approximately $90.4 million." Joint Petitioners' calculation starts with the sum of lines 8-10 of Petitioner's Exhibit JRB-1 for year 2011 (Operations, $47.2 million plus Other O&M/Admin Expenses, $6.8 million plus Bad Debts Expense, $6.2 million) and adds one half of the sum of the same lines for 2012 (Operations, $48.0 million plus Other O&M/Admin Expenses, $7.0 million plus Bad Debts Expense, $5.2 million). *See*, Att. CEP - 6. The sum of this calculation is $90.45 million. The Authority proposes to borrow this initial working capital (before issuance costs) as an addition to the amount required to pay off existing long term debt at the time of closing on the proposed purchase of the Sanitary District's assets.

Q: Does Joint Petitioner propose to include the debt service portion of the $90,449,095 of new debt for "working capital" in rates?

A: Yes. At line 17, Mr. Brehm's Exhibit JRB-1 indicates that additional debt service is estimated to be $18.4 million for the year 2011. This amount is for Acquisition Debt Service of $11,375,348 and "working capital" Debt Service of $6,984,250. *See*, Att. CEP - 5.

Q: How do Joint Petitioners describe working capital in this Cause?

A: Joint Petitioners describes "working capital" in this Cause in terms of rating agencies guidance. In response to OUCC Data Request Q 12-15, Joint Petitioners' state "[c]onventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case. Consequently for modeling purposes a working capital target of one and one half years of operating expenses was chosen." *See,* Att. CEP - 6.

Q: Does the OUCC accept Joint Petitioners' basis for calculating working capital?

A: No. Joint Petitioners' beginning working capital calculation includes total Operations and Maintenance (Operations, Other O&M/Admin Expenses, and Bad Debt Expense) for one and one half years. The OUCC disagrees with this approach. Cash working capital is the amount of revenue needed to bridge the monthly gap between the time when expenditures are required to provide service and the time collections are received for that service.[8] The two most frequently used methods to calculate the amount of working capital needed to bridge that financial gap are the lead/lag study and the 45-day formula.

[8] The Court of Appeals of Indiana has indicated "the need for working capital arises from the day-to-day expenses which occur during the period between the time of billing and the time customers actually pay for service." Board of Directors for Utilities v. Office of Utility Consumer Counselor, (1985) 473 N.E.2d 1043, 1050.

A lead/lag study refers to a survey determining the amount of working capital that a company must reserve. The lead/lag study also compares the time the company has to pay its bills. Lead time is the number of days between the company's receipt and the payment of invoices it receives. Lag time is the average number of days between the company billing of its customers and its receipt of payment.[9] The more popular method for calculating working capital is the use of the 45-day formula method. This method assumes the difference between the lead/lag periods is 45 days and calculates 12.5% (45 days / 360 days) of adjusted annual operating expenses as cash working capital. This methodology typically adjusts operating expenses for those items known to be paid after the receipt of revenues or paid "in arrears."

In response to OUCC Data Request Q 12-15, Mr. Brehm stated:

> Conventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case.

Joint Petitioners' analysis assumes it is acceptable to fund capital projects out of working capital. While it is acceptable to use working capital to cover a short fall because of timing issues, it is not acceptable to establish an amount of working capital that substantially exceeds the statutory mandates. Joint Petitioners' borrowed funds to complete capital projects outlined in the Consent Decree, as

[9] In Office of Consumers' Counsel v Public Utilities Com., 25 Ohio St. 3d 213 (Ohio 1986), it was held that lead-lag study is very expensive and time consuming, but it is the most accurate tool for determining cash working capital.

amended, through long-term debt and will continue to borrow funds to complete capital projects outlined in the consent decree, as amended. These funds should be used for the exclusive payment of accounts payable invoices related to capital projects. Working capital is only needed to meet day to day operational needs. Joint Petitioners' should not be paying for "'Consent Decree" capital projects out of working capital. Such projected use of the funds should not be used to justify CEG's proposed debt service on working capital.

Q: Did the Sanitary District prepare a traditional ratemaking case when it developed its proposed future rate increases in 2008?

A: No. The City did not prepare a traditional ratemaking case for presentation to its rate approval body. In response to Data Request Q 27-2, Darrell Fishel provided an excel spreadsheet that shows the information that Mr. Buzz Krohn, an outside rate consultant, developed to substantiate the required rate increases needed in order to comply with the required Consent Decree improvements. *See*, Att. CEP - 7.

Q: Did the Sanitary District include working capital in its computation of the 10.75% future rate increases that were subsequently authorized by the City County Council?

A: It is not explicit that the City's calculations include a "working capital" revenue component. However, since the City is retaining an estimated $75 million of operating cash that is in the "Wastewater General Fund", it implies that a working capital ratemaking component was previously built into customer rates. *See*, Joint Petitioners' Exhibit MGL-3, Table 1, p.3; Att. CEP - 8.

V. CWA AUTHORITY'S RATE ADJUSTMENT MECHANISM

Q: What is the "rate adjustment mechanism" that CEG is requesting on behalf of the Authority?

A: In the Petition at Paragraph 41, CEG on behalf of the Authority requests "Commission approval of a rate adjustment mechanism, under Ind. Code § 8-1-2-42(a) and/or Ind. Code § 8-1-28-11(a)(2), that, beginning in 2014, will permit it to adjust wastewater rates on an annual basis or more or less frequently as needed by the Authority in order to have funds available to pay for the environmental compliance plan ("ECP") expenditures. The proposed rate adjustment mechanism would be designed to recover the debt service on debt issued to fund ECP expenditures and be subject to periodic reconciliation between general rate cases to ensure that base rates and any approved rate adjustments provide the Authority with "income sufficient to maintain the wastewater system in a sound and financial condition to render adequate and efficient service," Ind. Code § 8-1.5-3-8(d), and to implement the Environmental Compliance Plan in order to "comply in whole or in part with the Safe Drinking Water Act or the Clean Water Act." Ind. Code § 8-1-28-2. Joint Petitioners', Exh. JRB, p. 19.

Q: Mr. Kaufman has previously discussed some of the OUCC's concerns regarding the Authority's proposed Rate Adjustment Mechanism. What is the focus of your testimony?

A: My testimony discusses the Authority's proposed reconciliation (or balancing) mechanism and the OUCC's opposition to include operating expenses as part of the proposed Rate Adjustment Mechanism.

Q: Is the Authority's proposed reconciliation akin to a balancing account?

A: Yes. The Authority proposes to reconcile, or balance, debt service on debt issued and estimated operating expenses on a forward-looking basis. CEG's Witness Prentice discussed the proposed Environmental Compliance Plan Recovery Mechanism ("ECPRM"). See, Joint Petitioners', Exh. LSP, pp. 18-26. Ms. Prentice provided a sample of the proposed ECPRM in Petitioner's Exhibit LSP-6. On the stand during cross examination Ms. Prentice had difficulty explaining the process of reconciliation that is being proposed because of its complexity. See, trans. of December 14, 2010 hearing at K-25-K-33; Att. CEP -9. This complexity is part of the basis for the OUCC's opposition to the reconciliation or balancing concept.

The OUCC believes that approval of new annual debt issuance and approval of debt service on this debt should be handled in as simple and straight forward manner as possible. (See the testimony of Mr. Kaufman.)

The annual operating and maintenance expenses are not different than those for any other utility. These can be addressed during periodic rate cases.

Q: Has the Commission previously ruled on the merits of a "balancing account"?

A: Yes. In Cause No. 43680, Indiana-American Water Company, April 30, 2010, pp. 110-112:

> Mr. Grubb testified that it is a general ratemaking precept that a regulated utility should have the opportunity to recover prudently incurred costs. Normally this is accomplished through timely filing of rate cases. Pension and OPEB costs do not fit the normal expense because of their fluctuation. Implementing the Pension/OPEB Balancing Account would assure ratepayers and the Petitioner that Petitioner recovers only the actual pension and OPEB expense which is incurred…
>
> *F. Commission Discussion and Findings.*
>
> Indiana American's pension expense has fluctuated in recent years, and Petitioner's proposal attempts to mitigate that instability. …the Commission finds that Petitioner's proposal with respect to a Pension/OPEB balancing account should be denied. Factors such as stock market fluctuations, pension asset allocation decisions of the Company, or ERISA funding requirements for rate determination purposes can affect Pension/OPEB costs. If the Commission were to grant Petitioner's request, the ratepayers, not Petitioner, would bear the risk inherently involved with the funding of Pension/OPEB accounts, such as market fluctuations, Company decisions, and funding requirements. Since the ratepayers bear these risks, it is possible that decisions concerning Pension/OPEB funding would not be carefully made. Prudent management of pension and OPEB funds is American Water's responsibility, and prudent investment decisions are a part of that responsibility. When deciding how to invest pension and OPEB funds, a utility may choose to invest aggressively or conservatively. Utilities that choose to properly diversify investments should not need the creation of a Pension/OPEB balancing account, which avoids inappropriately shifting the risk of investment decisions to ratepayers. (Emphasis added.)
>
> Accordingly, based on the evidence presented in this Cause, the Commission finds that *it is not in the public interest to require ratepayers to bear this risk*. In addition, the Commission finds that Indiana American failed to adequately explain how the creation of a Pension/OPEB balancing account would benefit the provision of water and sewer service to its ratepayers. Indiana American's request to implement a Pension/OPEB balancing account is denied.

Order at p. 111 (emphasis added.)

Q: Does the OUCC believe that the proposed reconciliation (balancing account) for Consent Decree projects is similar in effect to the Indiana American proposal in Cause No. 43680?

A: Yes. The OUCC has concerns regarding the Authority's proposed balancing account. As in Cause No. 43680, the Authority's proposal would shift its own risk to the public. But the Authority's testimony in this Cause provides no compelling evidence why these risks should be shifted from the utility to the ratepayers. Moreover, shifting these risks away from the utility to the ratepayers may reduce the Authority's incentive to minimize costs.

Next, O&M cost recovery should not be allowed unless the Commission has had the prior opportunity to scrutinize it. Also, many of the proposed costs that CEG is seeking recovery of, through the Authority, simply are not fixed, known, or measurable. The requirement that an item have a cost that is "fixed, known and measureable" to be included in rates is a bedrock principle of ratemaking. Finally, if too many costs are tracked that may cause an inappropriately long time between general rate cases. A regular review of a utility's costs and charges is important to ensure rates continue to be fair and reasonable.

Q: What is the OUCC's position regarding using a balancing account, as described by CEG, through the Authority?

A: The OUCC recommends against allowing CEG, through the Authority, to institute their proposed Rate Adjustment Mechanism. CEG's Witness Prentice testified, during the evidentiary hearing, that the actual reconciliation discussed in Authority's proposal will be scheduled over several years. Ms. Prentice testified

that the proposed debt and O&M costs associated with year one (1) will not be reconciled until year three (3). *See*, trans. of December 14, 2010 hearing at K-30-K-31; Att. CEP -9. This means that costs allowed to be passed to the ratepayers in 2014 would not be reconciled (accounted for) until sometime in 2017. This is simply not prudent given the magnitude of the expenses and borrowings that will be necessary for CEG, through the Authority, to borrow.

Q: Does the OUCC have an alternate proposal that will allow Joint Petitioner to recover annual debt service payments on debt used to comply with the Consent Decree, as amended?

A: Yes.

Q: Please provide an overview of the OUCC proposed mechanism.

A: The OUCC recommends that the Commission adopt a debt service recovery mechanism that will be filed each year while the Consent Decree is in effect. OUCC Witness Kaufman discusses the details of the OUCC's proposal for recovery of annual debt service payments tied to Consent Decree funding.

VI. DEPRECIATION RATES

A. Citizens Waterworks

Q: What depreciation rate does CEG propose to use to depreciate the acquired water assets by Citizens?

A: According to Citizens witness, John R. Brehm, "CEG proposes to use 2% as its depreciation rate for water assets, which I understand is the current depreciation rate used by DOW." Joint Petitioners' Exhibit JRB, p. 38.

Q: What depreciation rate did the DOW use in its last rate case - Cause No. 43645?

A: DOW used a composite depreciation rate of 2% in Cause No. 43645, which was filed on March 11, 2009.

Q: Does the OUCC agree with the 2% depreciation rate requested by CEG's water utility for depreciating water assets?

A: Yes. According to the last depreciation study completed in 1988, the Commission established a 2% composite depreciation rate for a complete water system that has a treatment plant.

B. CWA Authority

Q: What depreciation rate does the Sanitary District use to depreciate its wastewater assets?

A: In response to an OUCC Data Request Q 6-8, Mr. Brehn stated as follows:

> The current depreciation rate of the wastewater system cannot be stated with precision. The City does not separate depreciation expense for the wastewater system from other components of the Department of Public Works, which includes the stormwater system, streets, curbs, sidewalks, traffic signals, bridges, street lights and related vehicles, building, equipment and property.

See, Att. – CEP - 10.

Q: What depreciation rate does CEG propose to use to depreciate the acquired wastewater assets transferred to the Authority?

A: Mr. Brehm suggested "that the Authority be authorized to use 2.5%, which is consistent with the Commission's guidance for depreciation rates for a wastewater utility that owns a treatment plant." Joint Petitioners' Exhibit JRB, p. 38.

Q: Does the OUCC agree that the 2.5% depreciation rate requested by the Authority be used to depreciate the wastewater assets?

A: Yes. According to the last depreciation study completed in 1988, the Commission established a 2.5% composite depreciation rate for a wastewater system with a treatment plant.

VII. DOW'S OUTSTANDING NOTE TO THE CITY

Q: Please describe how the DOW note to the City occurred.

A: In Cause No. 43645, DOW sought an increase to its rates and charges. In that Cause, DOW's witness John R. Skomp requested working capital of $13,268,000 per year, which included recovery of a $20,297,000 projected cash flow deficit for the calendar year ending December 31, 2009. In its rebuttal case, Petitioner reduced its proposed working capital revenue requirement to $11,125,000, with recovery of a $16,013,000 cash deficit for the year ended December 31, 2009. Subsequently, in January 2010, DOW filed Resolution No. 7, 2010 Approval of an Additional appropriation of Character 3 Funds to the 2009 Budget for $18,390,000 to cover additional debt service cost paid in 2009 related to bond refunding and swap agreement termination as previously approved by the Board. This $18,390,000 request resulted in a note to the City from DOW.

Q: Do you have any current information regarding the amount of debt owed by DOW to the City?

A: Yes. OUCC Data Request Q 31-8 asked the City to "provide the current balance of the working capital loan from the City to the Department of Water." *See*, Att. CEP – 11. The Department responded with the following statement:

> "As of December 2009, the Department had a liability to the City in the amount of $20,471,754.22. Based on the projected cash needs of the Department through the remainder of 2010, this amount is projected by the Department to be $50,247,545.33 on December 31, 2010. The Department projects that by the end of the first quarter of 2011 it will receive cash sufficient to reduce this amount to $36,373,270.05 in March 31, 2011."

Q: Did the City provide any insight into how it wants to proceed with the repayment of the advance for working capital debt to the City?

A: Yes. In response to questions by Commissioner Landis at the evidentiary hearing on Joint Petitioners' case-in-chief, the City's witness, Chris Cotterill stated that he expected the City to be repaid for the outstanding debt owed by DOW. Trans. of December 6, 2010, pp. B-129-B-130. Mr. Cotterill explained that "[a]ny funds that the City of Indianapolis general fund the taxpayers, in effect have loaned, have extended, to the Department of Waterworks to help it during its negative cash balance time, we feel an obligation to the taxpayers to repay that but nothing more." Id., see also Att. CEP – 12.

Q: Did CEG provide any insight into how it wants to proceed regarding the loan for "working capital" debt to the City?

A: Yes. In response to OUCC Data Request Q 20-11, CEG responded "Citizens is not responsible for repayment of the advance from the City's general fund." *See*, Att. CEP – 13.

Q: Does the OUCC have a recommendation with regard to this issue?

A: Yes. If the Commission approves collection of DOW's requested working capital revenue requirement of $11,125,000 in its Final Order in Cause No. 43645, CEG should be required to repay the amount of the outstanding debt that DOW has payable to the City.

VIII. RECOMMENDATIONS

Q: Please summarize your recommendations to the Commission in this cause.

A: I recommend--

- The Commission approve the assignment of any DOW Interlocal Agreements and franchise rights to the Board;
- The Commission approval of the Board's assumption of DOW's obligations in the Interlocal Agreements and franchise rights;

- The Commission approval of the transfer of agreements for wastewater treatment and disposal (Wastewater Interlocal Agreements) to the Authority;
- The Commission approval of the Board's assumption of existing DOW debt;
- The Commission decline to pre-approve debt service payments as a revenue requirement in future rate cases on the estimated debt the water utility will seek for working capital;
- The Commission decline to pre-approve debt service payments in future rate cases on the estimated debt the water utility seeks on estimated Capex;
- The Commission approval of debt service payments for the water utility in future rate cases on $4,392,000 of initial cash;
- The Commission approval of the Board's assumption of existing Sanitary District debt;
- The Commission approval of debt service payments in future rate cases on the purchase price of $262,600,000 ($285,595,000 which includes purchase of Sanitary District wastewater assets, associated costs of issuance and debt service reserve fund);
- The Commission decline to pre-approve debt service payments in future rate cases for the estimated debt the Authority will seek for working capital;
- The Commission decline to pre-approve debt service payments in future rate cases for the estimated debt the Authority seeks on estimated Capex;
- The Commission approval of debt service payments for the Authority in future rate cases on $4,500,000 of initial cash;
- The Commission approval of recovery of the debt service payments on the City's wastewater utility GO Bonds in future Authority rate cases;

- The Commission decline the use of a balancing account in conjunction with the Rate Adjustment Mechanism;

- The Commission approval of a 2.0% depreciation rate for DOW acquired Utility Plant in Service ("UPIS") by CEG;

- The Commission approval of a 2.5% depreciation rate for Sanitary District acquired UPIS by the Authority;

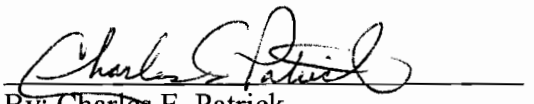
- The Commission require CEG to repay the City for any outstanding short-term DOW debt owed to the City, if the Commission grants recovery of the DOW not in the working capital revenue requirement.

Q: Does this conclude your testimony?

A: Yes.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



By: Charles E. Patrick
Indiana Office of
Utility Consumer Counselor

01/14/2011
Date

Cause No. 43936

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Sample DOW Interlocal Agreement

Attachment CEP - 1

Intergovernmental Agreement

BY THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement"), entered into by the county or municipality listed on the signature line below ("Unit") and the Consolidated City of Indianapolis Department of Waterworks ("Waterworks"), agree as follows:

Whereas, the water utilities of IWC Resources, Inc. ("Water Company") provide public water utility and related water production, transmission, delivery, storage, distribution, and supply services ("Water Services") throughout central Indiana, including services rendered within Unit's territory; and

Whereas, on the effective date (the "Effective Date"), Waterworks will acquire substantially all of the assets and properties of the Water Company including the right and obligation to provide Water Services to residential, commercial, industrial, municipal and other customers ("Customers") located throughout central Indiana, which includes Customers located within Unit's territory; and

Whereas, the parties make this Agreement for the purpose of providing the terms and conditions of their mutual commitment to cooperation in the provision of Water Services within Unit's territory; and

Whereas, Waterworks intends to enter into agreements regarding Water Services with other counties and municipalities located throughout central Indiana ("Other Units" and, together with Unit, "Units") on terms substantially similar to this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1. Administration of this Agreement. The parties acknowledge and agree that mutual cooperation is important for the effective and efficient administration of this Agreement.

   a. Joint Advisory Board. To promote cooperation in the administration of this Agreement, there will be established a joint advisory board (the "Advisory Board") whose members will include a representative from Waterworks and from each of the Units electing to appoint a member to the Advisory Board.

   b. Unit Appointment. If Unit so elects, then it will appoint one member to the Advisory Board. Unit's Advisory Board member serves at the pleasure of

Unit for a term of one year ending on December thirty-first, and until his or her successor is appointed and qualified. Unit's member may be reappointed for successive terms. The chair shall be selected annually by a majority of the members of the Advisory Board.

c. Advisory Board Powers. The Advisory Board has the power to furnish recommendations to the Board of Directors of Waterworks with respect to any of the powers and duties the Waterworks' Board may exercise and perform including, but not limited to, recommendations concerning service, utility service agreements, rates, water quality, system expansion, bonding, and management. The Advisory Board has the power to retain an engineering consultant for a reasonable annual fixed fee. The amount of the fixed fee must be submitted in writing to Waterworks during Waterworks' budgeting process for the applicable fiscal year.

d. Meetings. The Advisory Board may hold meetings at times and places prescribed by its rules or established by resolution. No notice to members is required for holding, or taking any action at, a regularly scheduled meeting. A special meeting of the Advisory Board may be called by the chairperson or by a majority of its members at any place in the Waterworks' jurisdiction as designated in the call. Each member shall be notified of the time and place of a special meeting by written notice delivered at least forty-eight (48) hours in advance of the meeting. The notice requirement may be waived as to a member who attends the meeting, or who executes a written waiver of notice either before or after the meeting. Unless considered unnecessary by the Advisory Board, a representative of Waterworks' operator will attend each meeting.

e. Quorum and Voting. A majority of the total number of members shall constitute a quorum of the Advisory Board. A quorum is required for official Advisory Board action and the Advisory Board shall act by resolution and a majority vote of the quorum is required to pass a resolution.

2. Waterworks Responsibilities.

a. Water Services. On the Effective Date, the Water Company will assign and Waterworks will assume, as authorized by and subject to City-County general ordinance no. 112, 2001, all of the Water Company's rights, powers, privileges, and obligations under one or more franchise permits and/or similar agreements that are attached hereto and incorporated into this Agreement by this reference (collectively, the "Franchise Permits"). Accordingly, Unit hereby consents, approves and permits such assignment by the Water Company and assumption by Waterworks as of the Effective Date. Waterworks' responsibilities under this Agreement and under the Franchise

Permits will include the provision of Water Services to Customers within Unit's territory.

b. Indiana Utility Regulatory Commission Jurisdiction. Waterworks agrees to comply with the regulations of the Indiana Utility Regulatory Commission ("the Commission") set forth in 170 I.A.C. 6-1 and 170 I.A.C. 6-1.5. All rates and charges of Waterworks shall be authorized, to the extent permitted or required by law, by the Commission or its successor regulatory agencies.

c. Financing, Staffing, Budgeting. The financing, staffing, and supplying of Water Services and the establishing and maintaining of a budget for Waterworks shall be determined by the Board of Directors of Waterworks.

d. Supervision of Funds. The City Controller, as the chief fiscal officer to Waterworks, shall be responsible for receiving, disbursing, and accounting for all monies of Waterworks. All monies received from the operation of Waterworks, or received from the disposal of any assets or operation rights thereof, shall be used only for the operation, maintenance, extension, financing, acquisition of professional or expert personnel, payment in lieu of taxes, or as otherwise specifically directed by the Board of Directors of Waterworks for the provision of Water Services.

e. Payments in Lieu of Taxes. Waterworks shall make payments to compensate all units within the territory of Unit for taxes that would have been due on its utility property were it privately owned, subject, however to Waterworks' ability to include such payments in its rates. Waterworks agrees to include the payments in lieu of taxes as a cost of services in any and all rate proceedings before the Commission.

f. Rates. For a period of five (5) years following the Effective Date, Waterworks will use best efforts not to file a rate petition with the Commission seeking a rate increase within Unit's territory.

g. Notice to Unit's Advisory Board Member. Waterworks will provide adequate and reasonable notice to Unit's Advisory Board Member of any proposed water main extension within Unit's territory. The Unit's Advisory Board Member may, within 15 days, direct the Secretary-Treasurer of Waterworks' Board of Directors to enter the proposed water main extension as an item on the agenda of the next regularly scheduled meeting of the Board. At the Board meeting the proposed water main extension will be subject to public discussion and Board consideration.

h. Waterworks Property. In the event of termination of this Agreement, Waterworks retains all right, title and interest in the assets and real and personal property of the Water Company that Waterworks acquires as of the Effective Date and in any and all additions thereto. Further, Waterworks

retains the right to acquire, hold, and dispose of real and personal property used and useful in the provision of Water Services in connection with this Agreement.

3. Miscellaneous.

a. Duration. This Agreement is effective as of the Effective Date and shall be in force and effect until the later of: (a) the Waterworks' Bonds are no longer outstanding; (b) Waterworks assets within the Unit's territorial limits are no longer subject to any lien established by the Waterworks' Bonds; or (c) the expiration without renewal or extension of all of the Franchise Permits.

b. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together and, together with substantially similar agreements of Waterworks and the Other Units, will constitute one and the same instrument.

c. No Effect on Unit's Ability. This Agreement is not intended to, and does not, impinge upon the ability of the Unit to exercise any statutory right it may have to establish a department of waterworks and own a water utility.

d. Restriction of Waterworks' Annexation Rights. The provision or the extension of water utility service by Waterworks shall not be utilized to annex property within the territory of the Unit.

e. Severability. Should any provision (section, paragraph, sentence, clause, or any other portion) of this Agreement be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the parties in entering into this Agreement. To this end, the provisions of this Agreement are severable.

f. Further Assurances. The parties will cooperate with each other and will execute and deliver, or cause to be delivered, all such other documents and instruments, and will take all such other actions, as the other party hereto may reasonably request from time to time to carry out the intent of the provisions and purposes of this Agreement.

g. Approvals:

i. Approval of the Commission. On or before the Effective Date, Waterworks will submit this Agreement to the Commission for approval in connection with the Commission's approval of the Settlement, IURC Cause Number 41821.

ii. Party Approvals. This Agreement shall be in full force and effect as of the Effective Date when approved by the Chairman of the Board of Directors of the Consolidated City of Indianapolis Department of Waterworks and the executive of the Town of Avon.

Consolidated City of Indianapolis Department of Waterworks

By: _____
Chairman, Board of Directors

Date: _____

Attest: _____

Town of Avon

By: _____
~~Executive~~ TOWN MANAGER AS Authorized by Council

Date: 2/14/2

Attest: _____

ATTACHMENT – FRANCHISE PERMIT
TOWN OF AVON, INDIANA

NONE----------

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Proposed Utility Debt Structure

Citizens Energy Group

Exhibit JPO – 2, Page 12

Attachment CEP - 2

Proposed Utility Debt Structure

($000's) as of February 15, 2011

Gas Utility System Bonds 1986 Indenture	Gas Utility Distribution System Bonds 2008, 2009 & 2010 Series	Thermal Energy System Bonds 2001, 2008 & 2010 Series	Water System Bonds	Wastewater System Bonds SRF, Revenue and General Obligation Bonds
• Pledge of Income and Revenues from: • Gas Distribution System • Manufacturing Division (Discontinued Operations) • Citizens Resources Bonds outstanding under 1986 Indenture: •1986 Series B - $60,560	• Pledge of Income and Revenues from: • Gas Distribution System Bonds outstanding : •2008 Series A - $55,850 • 2008 Series B - $55,855 • 2008 Series C - $65,680 •2009 Series A - $29,955 •2010 Series A - $59,975 • Commercial Paper - $50,000	• Pledge of Income and Revenues from: • Steam Division • Chilled Water Division Bonds outstanding: • 2001 Series A - $81,160 • 2008 - $50,070 • 2010 Series A – $10,620	• Pledge of Net Revenues from: • Water Division Bonds outstanding: • 2002 Series A - $23,040 • 2005 Series F – $69,965 • 2006 Series A – $77,830 • 2007 Series B – $70,410 •2007 Series L - $102,830 • 2009 Series A - $559,890	• Pledge of Net Revenues from: • Sewer Division Bonds outstanding: • SRF Bonds- $412,654[1] • Revenue Bonds– $37,445[2] • GO Bonds - $47,850[3]
Total Gas Utility System Debt $60,560	Total Gas Utility Dist. System Debt $317,315	Total Thermal Energy Division Debt $141,850	Total Water Division Debt $803,965	Total CWA Debt $497,949

Total Utility Long-Term Debt: $1,921,639

Morgan Stanley

1) Assumption/replacement of SRF Bonds expected
2) Revenue bonds issued to fund purchase price and defeasance of outstanding market bonds
3) Agreement with the City to pay the debt service on the GO Bonds is subordinate to payment of revenue bonds

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

DOW Working Capital Borrowing

Response to OUCC DR 17-20

Attachment CEP - 3

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Seventeenth Set of Data Requests

DATA REQUEST NO. 20: Line 17 of Citizen's exhibit JRB-5 shows an annual debt service for Working Capital Financing of $3.4 million. How was the $3.4 million figure determined? Please provide all inputs and calculations to derive the $3.4 million figure, including but not limited to the amount of the loan, interest rate(s) and number of periods of the loan.

RESPONSE:

See Attachment OUCC DR 17-20.

WITNESS:

John R. Brehm

Attachment OUCC DR 17-20

	Debt Service
2011	3,390,270
2012	3,390,270
2013	3,390,270
2014	3,390,270
2015	3,390,270
2016	3,390,270
2017	3,390,270
2018	3,390,270
2019	3,390,270
2020	3,390,270
2021	3,390,270
2022	3,390,270
2023	3,390,270
2024	3,390,270
2025	3,390,270
2026	3,390,270
2027	3,390,270
2028	3,390,270
2029	3,390,270
2030	3,390,270
2031	3,390,270
2032	3,390,270
2033	3,390,270
2034	3,390,270
2035	3,390,270
2036	3,390,270
2037	3,390,270
2038	3,390,270
2039	3,390,270
2040	3,390,270

Assumptions:	
Term	30 years
Interest Rate	7.0%
Working Capital Required	39,952,786
Debt Service Reserve Fund	1,695,135
Cost of Issuance	420,700
	42,068,621
Par Amount of Bond Issuance	42,070,000

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Citizens Water Capex Funding

OUCC Data Request and Response to Q 37 - 1

Attachment CEP - 4

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Thirty-Seventh Set of Data Requests

DATA REQUESTS

DATA REQUEST NO. 1: Please provide the amortization schedule that supports Schedule JRB-5, Line 16, "Bond Funded Capex Debt Service." Specifically, identify the proposed $2.6 million in 2011

RESPONSE:

See Attachment OUCC DR 30-14 that was included in the responses to OUCC Data Request Set No. 30.

WITNESS:

John R. Brehm

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Thirtieth Set of Data Requests

DATA REQUEST NO. 14: On pages 32-33 of Mr. Brehm's testimony he indicates that "The projected financing costs also include debt service on debt issued to provide working capital for the Water System. The projected financing costs also reflect debt service on debt issued to finance capital spending." Please provide a detailed breakdown of the total borrowing that will be incurred upon acquisition of the Department of Water assets including, but not limited to, borrowings for debt refunding, debt service reserve, issuance costs, capital spending, and working capital. This breakdown should include the amount of borrowing to be incurred for each item, the maturity date(s), and interest rate(s).

RESPONSE:

The amount of borrowing that "will be incurred upon acquisition" cannot be stated exactly as the date of closing is unknown and, as the OUCC has acknowledged (see, for example, the question posed in OUCC DR 28-5), the amount of debt principal of outstanding debt assumed goes down as the DOW makes debt service payments. See attachment DR 30-14, the Water Asset Purchase Agreement Section 2.04(a) and related schedule 2.04(a), and Petitioner's Exhibit JRB-2.

WITNESS:

John R. Brehm

Project Sullivan
Water
Debt Service Profile

ASSUMPTIONS	
Interest Rate (TIC)	5.65%
Term (years)	30
Second Lien Penalty	0.50%
Taxable Interest Rate	7.00%

	Debt Service-Existing Aggregate	First Lien Debt Service-Capital 2010	First Lien Debt Service-Capital 2011	Second Lien DSRF/Working Capital 2011	First Lien Debt Service-Capital 2012	First Lien Debt Service-Capital 2013	First Lien Debt Service-Capital 2014
2011	63,971,438	-	2,632,890	3,390,270			
2012	63,973,894	-	2,632,890	3,390,270	2,191,510		
2013	63,974,794	-	2,632,890	3,390,270	2,191,510	2,479,701	
2014	63,972,506	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2015	63,971,919	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2016	63,971,519	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2017	63,971,950	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2018	63,969,463	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2019	63,970,975	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2020	63,971,931	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2021	63,971,931	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2022	63,974,838	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2023	63,973,425	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2024	63,971,344	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2025	63,971,475	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2026	63,970,875	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2027	63,969,253	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2028	63,970,481	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2029	63,970,094	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2030	63,971,044	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2031	63,970,644	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2032	63,969,994	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2033	63,970,588	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2034	63,970,306	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2035	63,974,819	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2036	63,970,747	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2037	63,974,331	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2038	-	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2039	-	-	2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2040			2,632,890	3,390,270	2,191,510	2,479,701	2,430,736
2041					2,191,510	2,479,701	2,430,736
2042						2,479,701	2,430,736
2043							2,430,736
Working Capital		$ -	$ -	$ 39,952,786		$ -	$ -
Bond Funded Capex		$ -	$ 35,946,186		$ 29,917,644	$ 33,852,942	$ 33,185,013
Debt Service Reserve Fund		$ -	$ 1,316,445	$ 1,695,135	$ 1,095,755	$ 1,239,850	$ 1,215,368
Capitalized Interest Fund							
Costs of Issuance		$ -	$ 376,400	$ 420,700	$ 313,300	$ 354,500	$ 347,500
Total Par Amount of Bonds		$ -	$ 37,640,000	$ 42,070,000	$ 31,330,000	$ 35,450,000	$ 34,750,000

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Citizens Wastewater Debt Funding

OUCC Data Request and Response to Q 5 - 23

Attachment CEP - 5

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Fifth Set of Data Requests

DATA REQUEST NO. 23: For the environmental compliance plan discussed in Mr. Brehm's testimony and the anticipated debt listed on JRB-1, please provide an anticipated amortization schedule for each piece of debt the wastewater utility anticipates it will issue for each year from 2011 through 2025. If included in your workpapers, please indicate the page number.

RESPONSE:

See attachment OUCC DR 5-23.

WITNESS:

John R. Brehm

CEP ATTACHMENT 5
CAUSE NO. 43936
Page 3 of 4

Stormwater System
Debt Service Projection

	GO DS	First Lien Exist Debt Service-Capital 2013
2011	8,484,220	
2012	8,493,010	
2013	8,495,700	7,317,033
2014	8,487,825	9,182,272
2015	7,955,910	9,182,272
2016	7,957,800	9,182,272
2017	7,960,133	9,182,272
2018		9,182,272
2019		9,182,272
2020		9,182,272
2021		9,182,272
2022		9,182,272
2023		9,182,272
2024		9,182,272
2025		9,182,272
2026		9,182,272
2027		9,182,272
2028		9,182,272
2029		9,182,272
2030		9,182,272
2031		9,182,272
2032		9,182,272
2033		9,182,272
2034		9,182,272
2035		9,182,272
2036		9,182,272
2037		9,182,272
2038		9,182,272
2039		9,182,272
2040		9,182,272
2041		9,182,272
2042		9,182,272
2043		
2044		
2045		
2046		
2047		
2048		
2049		
2050		
2051		
2052		
2053		
2054		

Acquisition Cost	-
Capex Requirements	118,024,177
Bond Funded Capex	119,024,177
Debt Service Reserve Fund	9,182,272
Costs of Issuance	1,295,050
Total Par Amount of Bonds	129,505,000

ASSUMPTIONS	
Interest Rate	5.65%
Term (years)	30
Second Lien Penalty	0.50%
Taxable Interest Rate (Working Capital)	7.00%

First Lien Debt Service-Capital 2014	First Lien Debt Service-Capital 2015	First Lien Debt Service-Capital 2016	n Debt Spital 2025
8,978,686			
8,978,686	16,998,017		
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
8,978,686	16,998,017	14,174,516	4,681,004
	16,998,017	14,174,516	4,681,004
		14,174,516	4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
			4,681,004
$ -	$ -	$ -	$ -
$ 131,218,487	$ 248,415,051	$ 233,047,775	$ 02,809,973
$ 118,094,821	$ 223,573,546	$ 188,438,220	$ 61,585,984
$ 8,978,686	$ 16,998,017	$ 14,174,516	$ 4,681,004
$ 1,283,600	$ 2,430,050	$ 2,026,400	$ 669,200
$ 128,360,000	$ 243,005,000	$ 202,840,000	$ 66,920,000

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Citizens Wastewater Working Capital

OUCC Data Request and Response to Q 12 -15

Attachment CEP - 6

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Twelfth Set of Data Requests

DATA REQUEST NO. 15: The attachment Citizens provided in Response to OUCC Question 5-23 indicates a borrowing of $90,449,095 (before issuance costs) under the column DSRF/Working Capital 2011 (see line reference – "Acquisition Cost). Please explain how that amount was derived and show all calculations.

RESPONSE:
Petitioner has targeted an opening working capital balance equal to one and a half years of operating expenses, in this case approximately $90.4 million. Conventional rating agency guidance for working capital adequacy is six months of operating expenses. However, the Wastewater System will have an extraordinary amount of accounts payable relative to its accounts receivable due to the size of its capital spending program, so conventional rating agency guidance is not necessarily applicable in this case. Consequently for modeling purposes a working capital target of one and one half years of operating expenses was chosen.

WITNESS:
John R. Brehm

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Department of Public Works

Wastewater Financial Summary

OUCC Data Request and Response to Q 27 - 2

Attachment CEP - 7

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Twenty-seventh Set of Data Requests

Q 27-2: According to a phone conversation between Mr. Patrick and Mr. Kaufman and Mr. Fishel, Mr. White, and Mr. Williams on Friday, October 15, 2010, there was a rate study prepared by Mr. Otto Krohn for the Department of Public Works related to the most recent rate increase approved (through 2013) and implemented for the Wastewater Utility. Please provide a copy of this report including all supporting schedules and attachments.

Answer: See response to DR 9 and attached Excel file.

Darrell Fishel

Indianapolis Clean Stream Team
DPW Sanitary District Pro Forma Revenue Requirements

PLAN A

Pro Forma Cash Revenue Requirements - $640 Million CIP thru 2013
Total Projected Add'l Bonds to be Issued $ 483,500,000

	Constr. Funds	Total Bonds	Assumed Rate	Term
SRF Bonds	$ 195,000,000	$ 197,500,000	3.50%	20
Open Market	$ 284,000,000	$ 286,000,000	6.50%	30

	2007 Actual	2008 Budget	2009 10.75%	2010 10.75%	2011 10.75%	2012 10.75%	2013 10.75%	2014 0.00%	2015 0.00%
WREP/UNITED CONTRACT - BASELINE	$ 48,078,503	$ 54,143,860	$ 51,640,333	$ 54,405,465	$ 56,307,434	$ 58,319,670	$ 60,427,377	$ 63,448,746	$ 66,621,183
ADD'L O&M FOR CIP			$ -		$ 240,000	$ 9,530,000	$ 17,558,456	$ 18,436,379	$ 19,358,198
DPW ADMINISTRATIVE									
POLICY AND PLANNING SERVICES	$ 1,151,733	$ 1,499,096	$ 1,555,642	$ 1,617,870	$ 1,682,605	$ 1,749,950	$ 1,820,012	$ 1,911,013	$ 2,006,563
ENGINEERING	$ 984,704	$ 1,123,696	$ 1,158,560	$ 1,204,678	$ 1,252,632	$ 1,302,494	$ 1,354,342	$ 1,422,059	$ 1,493,162
OPERATIONS - OTHER	$ -	$ -	$ 6,855,697	$ 7,006,863	$ 7,436,037	$ 7,797,050	$ 8,176,366	$ 8,585,184	$ 9,014,444
TOTAL O&M COSTS	$ 50,214,940	$ 56,766,652	$ 61,210,232	$ 64,234,876	$ 66,918,708	$ 78,699,164	$ 89,336,553	$ 93,803,381	$ 98,493,550
DEBT SERVICE									
GENERAL OBLIGATION BONDS (CONSTRUCTION FUNDS ONLY)	$ 8,121,725	$ 8,554,490	$ 8,552,725	$ 8,561,205	$ 8,551,493	$ 8,555,608	$ 8,558,235	$ 8,559,300	$ 7,955,510
REVENUE BONDS --- PRE-2008	$ 26,490,453	$ 37,012,958	$ 36,896,865	$ 38,213,639	$ 38,214,679	$ 38,217,585	$ 38,214,988	$ 38,212,938	$ 38,213,838
REVENUE BONDS --- PROPOSED $ 195,000,000 SRF			$ 2,497,818	$ 5,347,442	$ 8,197,066	$ 11,046,690	$ 13,896,314	$ 13,896,314	$ 13,896,314
REVENUE BONDS --- PROPOSED $ 284,000,000 O.M.				$ -	$ 7,351,434	$ 7,351,434	$ 21,901,148	$ 21,901,148	$ 21,901,148
Total Bonds $ 479,000,000 5 Yrs			DOES NOT REFLECT POTENTIAL USE OF COMMERCIAL PAPER TRANSACTIONS						
TOTAL DEBT SERVICE	$ 34,612,178	$ 45,567,448	$ 47,947,408	$ 52,122,286	$ 62,314,672	$ 65,171,317	$ 82,570,685	$ 82,569,680	$ 81,966,810
2013 vs 2008									$ 37,003,237
BOND COVERAGE (130% OF D.S. - PILOT - PayGoCIP's)									
PAYMENT IN LIEU OF TAXES (PILOT)	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000	$ 9,000,000
PAY-GO CIP'S	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000
ADD'L BOND COVERAGE 25%			$ (2,013,148)	$ (969,429)	$ 1,578,668	$ 2,292,829	$ 6,642,671	$ 6,642,420	$ 6,491,703
TOTAL BOND COVERAGE (On Total Debt Service)	$ 14,000,000	$ 14,000,000	$ 11,986,852	$ 13,030,572	$ 15,578,668	$ 16,292,829	$ 20,642,671	$ 20,642,420	$ 20,491,703
TOTAL REVENUE REQUIREMENTS	$ 98,827,118	$ 116,334,100	$ 121,144,492	$ 129,387,734	$ 144,812,048	$ 160,163,311	$ 192,549,909	$ 197,015,481	$ 200,952,062
PRO FORMA OPERATING REVENUE	$ 103,216,805	$ 115,638,199	$ 120,448,791	$ 129,691,039	$ 145,507,509	$ 160,858,772	$ 192,549,909	$ 197,015,481	$ 200,952,062
PRO FORMA OPERATING REVENUE EXCESS (DEFICIT)	$ 4,389,687	$ (695,901)	$ 304,299	$ 303,305	$ 695,461	$ 695,461	$ -	$ -	$ -

Does not reflect issuance costs of bonds or capitalized interest

Current	Proposed
$ 17.96	$ 19.92
Orig Proposal 11.8%	$ 31.40

Revised Rates	5 Yr Total
10.75%	66.61%

Revised Coverage 25.00%

PRO FORMA IMPACT ON FUND BALANCE:	2008	2009	2010	2011	2012	2013	2014	2015
COMPUTED ANNUAL CHANGE IN FUND BALANCE	$ (695,901)	$ 8,349,714	$ 14,589,198	$ 15,916,229	$ 17,324,071	$ 6,745,617	$ 2,153,069	$ (2,013,547)
CUMULATIVE CHANGE IN FUND BALANCE	$ (695,901)	$ 7,653,813	$ 22,243,011	$ 38,159,239	$ 55,493,311	$ 62,238,927	$ 64,391,997	$ 62,378,450

Computed Coverage on Revenue Bonds (Excludes G.O. Bonds from Coverage Calc's)	178.4%	185.3%	171.6%	170.4%	139.6%	133.4%	126.9%

New Bond Detail

		2009	2010	2011	2012	2013	2014	2015	
Proposed SRF	Construction Fund	$ 35,000,000	$ 40,000,000	$ 40,000,000	$ 40,000,000	$ 40,000,000	$ -		$ 195,000,000
	Cost of Issuance	$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ -		$ 2,500,000
	Total New SRF Bond Issues	$ 35,500,000	$ 40,500,000	$ 40,500,000	$ 40,500,000	$ 40,500,000	$ -		$ 197,500,000
Proposed OM	Construction Fund			$ 95,000,000	$ -	$ 189,000,000	$ -		$ 284,000,000
	Cost of Issuance			$ 1,000,000	$ -	$ 1,000,000	$ -		$ 2,000,000
	DSR 0% Assumes DSR pre-funded with Open Market Bonds			$ -	$ -	$ -	$ -		$ -
	Total New Open Market Bond Issues			$ 96,000,000	$ -	$ 190,000,000	$ -		$ 286,000,000

PRELIMINARY
FOR DELIBERATIVE PURPOSES
1/5/2011

CEP ATTACHMENT 7
CAUSE NO. 43936
Page 3 of 4

Indianapolis Clean Stream Team
Sanitary District Pro Forma Operating Revenue

PLAN A

	ACTUAL BILLINGS 12/31/2005	% of total	ACTUAL BILLINGS 12/31/2007	% of total	COMPUTED BILLINGS 2008		PROJECTED 12/31/2008	% of total
RESIDENTIAL:								
METERED	$25,370,912	37.2%	$40,875,350	39.6%	$ 47,725,496	2007 Rev + (27% x 2005 Rev)	$45,052,869	40.7%
NON-METERED	$581,743	0.9%	$894,299	0.9%	$ 1,051,369		$992,492	0.9%
	$25,952,655		$41,769,649		$ 48,776,864		$46,045,361	
COMMERCIAL:								
METERED	$16,016,955	23.5%	$25,182,736	24.4%	$ 29,467,304	2007 Rev + (27% x 2005 Rev)	$27,854,809	25.2%
NON-METERED	$19,749	0.0%	$57,904	0.1%	$ 63,236		$58,408	0.1%
SELF-REPORTING	$189,695	0.3%	$337,678	0.3%	$ 388,894		$367,118	0.3%
	$16,226,399		$25,578,318		$ 29,919,434		$28,281,707	
GOVERNMENT / OTHERS:								
METERED	$1,395,674	2.0%	$2,024,456	2.0%	$ 2,401,130	2007 Rev + (27% x 2005 Rev)	$2,266,864	2.0%
NON-METERED	$912	0.0%	$2,340	0.0%	$ 2,998		$2,482	0.0%
SELF-REPORTING	$69,731	0.1%	$121,553	0.1%	$ 140,381		$132,519	0.1%
	$1,466,317		$2,148,350		$ 2,544,318		$2,401,836	
INDUSTRIAL:								
METERED	$583,314	0.9%	$804,974	0.8%	$ 964,471	2007 Rev + (27% x 2005 Rev)	$910,460	0.8%
NON-METERED	$7,733	0.0%	$639	0.0%	$ 2,727		$2,575	0.0%
SELF-REPORTING	$8,386,981	12.1%	$13,282,070	12.9%	$ 15,519,554		$14,650,459	13.3%
	$8,978,028		$14,089,685		$ 16,486,752		$15,563,494	
INDUSTRIAL SURCHARGES:						Increases		
SUSPENDED SOLIDS	$1,960,775	2.9%	$2,415,614	2.3%	$ 2,837,971	17.0%	[illegible]	2.3%
BOD	$4,770,855	7.0%	$6,806,063	6.7%	$ 8,056,403	17.0%	[illegible]	5.9%
AMMONIA NITROGEN	$804,691	1.2%	$995,702	0.9%	$ 1,059,671	17.0%	[illegible]	0.8%
	$7,536,321		$10,217,381		$ 11,954,338		$9,925,000	
SATELLITE COMMUNITIES (Index @)								
VARIABLE (3.0%)	$3,844,393	5.6%	$4,473,464	4.3%	$ 4,697,137	3% Inc.	[illegible]	3.5%
FIXED (Fixed)	$3,244,872	4.8%	$3,454,714	3.3%	$ 2,574,000	Fixed	$2,574,000	2.3%
	$7,089,265		$7,928,178		$ 7,271,137		$6,439,000	
MISCELLANEOUS	$1,058,827	1.6%	$1,561,820	1.5%	$ 1,561,820		$1,981,800	1.8%
SUB - TOTAL BILLED REVENUES	$68,207,210	100.0%	$103,293,379	100.0%	$118,554,464		[illegible]	100.0%
					[illegible]	[illegible]	[illegible]	
INTEREST INCOME					[illegible]	[illegible]	[illegible]	
CONNECTION FEES (Index @ 3.0%)	$0		$2,505,179		[illegible]	[illegible]	[illegible]	
TOTAL REVENUES	$68,207,210		$105,798,558		[illegible]	[illegible]	[illegible]	

	PROJECTED 12/31/2009	% of total	PROJECTED 12/31/2010	% of total	PROJECTED 12/31/2011	% of total
	10.75%		10.75%		10.75%	
RESIDENTIAL:						
METERED	$49,096,053	40.4%	$55,159,878	40.6%	$61,200,315	40.8%
NON-METERED	$1,099,185	0.9%	$1,317,348	0.9%	$1,348,213	0.9%
	$50,995,237		$56,477,225		$62,548,527	
COMMERCIAL:						
METERED	$30,849,296	25.0%	$34,165,598	25.1%	$37,838,397	25.3%
NON-METERED	$66,112	0.1%	$73,220	0.1%	$81,091	0.1%
SELF-REPORTING	$406,583	0.3%	$450,290	0.3%	$498,697	0.3%
	$31,321,991		$34,689,108		$38,418,184	
GOVERNMENT / OTHERS:						
METERED	$2,510,552	2.0%	$2,780,437	2.0%	$3,079,334	2.1%
NON-METERED	$2,710	0.0%	$3,008	0.0%	$3,331	0.0%
SELF-REPORTING	$146,765	0.1%	$162,543	0.1%	$180,016	0.1%
	$2,660,034		$2,945,987		$3,262,681	
INDUSTRIAL:						
METERED	$1,008,335	0.8%	$1,116,731	0.8%	$1,236,779	0.8%
NON-METERED	$2,851	0.0%	$3,158	0.0%	$3,497	0.0%
SELF-REPORTING	$16,225,384	13.1%	$17,969,613	13.2%	$19,901,344	13.3%
	$17,236,570		$19,089,501		$21,141,613	
INDUSTRIAL SURCHARGES:						
SUSPENDED SOLIDS	$2,768,758	2.2%	$3,060,391	2.3%	$3,396,028	2.3%
BOD	$7,194,750	5.8%	$7,572,616	5.9%	$8,829,872	5.9%
AMMONIA NITROGEN	$1,024,438	0.8%	$1,134,568	0.8%	$1,256,330	0.8%
	$10,991,938		$12,173,571		$13,482,230	
SATELLITE COMMUNITIES						
VARIABLE	$3,980,950	3.2%	$4,100,379	3.0%	$4,223,290	2.8%
FIXED	$4,207,041	3.4%	$4,218,912	3.1%	$3,931,313	2.6%
	$8,187,991		$8,319,291		$8,154,603	
MISCELLANEOUS	$2,194,844	1.8%	$2,450,799	1.8%	$2,692,099	1.8%
SUB - TOTAL BILLED REVENUES	$123,584,604	100.0%	$130,125,469	100.0%	$149,609,946	100.0%
INTEREST INCOME	[illegible]		[illegible]		[illegible]	
CONNECTION FEES	[illegible]		[illegible]		[illegible]	
TOTAL REVENUES	[illegible]		[illegible]		[illegible]	

	PROJECTED 12/31/2012	% of total	PROJECTED 12/31/2013	% of total	PROJECTED 12/31/2014	% of total	PROJECTED 12/31/2015	% of total
	10.75%		10.75%		0.00%		0.00%	
RESIDENTIAL:								
METERED	$67,779,340	41.1%	$75,065,628	41.3%	$75,065,628	41.3%	$75,065,628	41.3%
NON-METERED	$1,493,145	0.9%	$1,653,659	0.9%	$1,653,659	0.9%	$1,653,659	0.9%
	$69,272,484		$76,719,287		$76,719,287		$76,719,287	
COMMERCIAL:								
METERED	$41,906,034	25.4%	$46,410,922	25.5%	$46,410,922	25.5%	$46,410,922	25.5%
NON-METERED	$89,798	0.1%	$99,462	0.1%	$99,462	0.1%	$99,462	0.1%
SELF-REPORTING	$552,307	0.3%	$611,680	0.3%	$611,680	0.3%	$611,680	0.3%
	$42,548,139		$47,122,064		$47,122,064		$47,122,064	
GOVERNMENT / OTHERS:								
METERED	$3,410,362	2.1%	$3,776,976	2.1%	$3,776,976	2.1%	$3,776,976	2.1%
NON-METERED	$3,689	0.0%	$4,086	0.0%	$4,086	0.0%	$4,086	0.0%
SELF-REPORTING	$199,368	0.1%	$220,800	0.1%	$220,800	0.1%	$220,800	0.1%
	$3,613,419		$4,001,861		$4,001,861		$4,001,861	
INDUSTRIAL:								
METERED	$1,369,733	0.8%	$1,516,900	0.8%	$1,516,900	0.8%	$1,516,900	0.8%
NON-METERED	$3,873	0.0%	$4,290	0.0%	$4,290	0.0%	$4,290	0.0%
SELF-REPORTING	$22,040,741	13.4%	$24,410,120	13.4%	$24,410,120	13.4%	$24,410,120	13.4%
	$23,414,347		$25,931,309		$25,931,309		$25,931,309	
INDUSTRIAL SURCHARGES:								
SUSPENDED SOLIDS	$3,761,101	2.3%	$4,165,419	2.3%	$4,165,419	2.3%	$4,165,419	2.3%
BOD	$9,778,812	5.9%	$10,830,009	6.0%	$10,830,009	6.0%	$10,830,009	6.0%
AMMONIA NITROGEN	$1,391,807	0.8%	$1,541,285	0.8%	$1,541,285	0.8%	$1,541,285	0.8%
	$14,931,069		$16,536,713		$16,536,713		$16,536,713	
SATELLITE COMMUNITIES								
VARIABLE	$4,350,093	2.6%	$4,480,594	2.5%	$4,615,012	2.5%	$4,753,462	2.6%
FIXED	$3,944,349	2.4%	$3,697,146	2.0%	$2,907,146	1.6%	$2,117,146	1.2%
	$8,294,441		$8,177,740		$7,522,158		$6,870,608	
MISCELLANEOUS	$2,981,890	1.8%	$3,302,611	1.8%	$3,686,977	2.0%	$4,058,102	2.2%
SUB - TOTAL BILLED REVENUES	$165,058,008	100.0%	$181,761,865	100.0%	$181,486,440	99.8%	$181,233,015	99.7%
INTEREST INCOME	[illegible]		[illegible]		[illegible]		[illegible]	
CONNECTION FEES	[illegible]		[illegible]		[illegible]		[illegible]	
TOTAL REVENUES	[illegible]		[illegible]		[illegible]		[illegible]	

TOTAL BILLED GALLONS (MG)	Calendar Yr 2005	Calendar Yr 2007
	37,464.36	39,070.72
	100.00%	104.29%

	12/31/2009	12/31/2010	12/31/2011	12/31/2012	12/31/2013	12/31/2014	12/31/2015
Pro Forma O&M	$ 61,310,333	$ 64,234,874	$ 66,918,700	$ 78,690,164	$ 89,334,853	$ 93,003,381	$ 96,493,550
Pro Forma NOI	$70,297,122	$80,711,484	$92,240,901	$96,495,308	$103,316,301	$98,712,740	$93,953,361
Pro Forma D.S. (no G.O.)	$39,394,683	$43,581,891	$53,743,170	$54,815,799	$74,012,450	$74,018,380	$74,011,346
Bond Coverage	178%	185%	172%	170%	140%	133%	127%

FOG	$	900,000	COMM
SSMR - 2009 / 2010	$	2,300,000	RES
SSMR ADJUST.	$	1,865,419	RES
RATE BLOCK CONS.	$	-	RES
GROWTH	$	-	RES
TOTAL	$	5,065,419	

Total 2013 Revenue	$	192,652,858

PRO FORMA REVENUE BY RATE CLASS:

	12/31/2005		12/31/2007		BASE YEAR 12/31/2008		PHASE 1 12/31/2009		PHASE 2 12/31/2010		PHASE 3 12/31/2011		PHASE 4 12/31/2012		PHASE 5 12/31/2013	
RESIDENTIAL	$25,952,655	38%	$41,769,649	39%	$46,045,361	40%	$53,763,987	40.9%	$59,343,416	41.1%	$66,044,558	41.4%	$73,833,994	41.7%	$80,884,706	42%
COMMERCIAL	$16,226,399	24%	$25,578,308	24%	$28,281,707	24%	$31,321,991	23.8%	$35,170,105	24.2%	$39,818,184	24.8%	$43,398,139	24.7%	$48,022,064	25%
GOVERNMENTAL	$1,466,317	2%	$2,148,350	2%	$2,401,836	2%	$2,660,034	2.0%	$2,945,987	2.0%	$3,262,681	2.0%	$3,613,410	2.1%	$4,001,861	2%
INDUSTRIAL - FLOW	$8,978,028	13%	$14,089,685	13%	$15,563,494	13%	$17,236,570	13.1%	$19,089,501	13.2%	$21,141,623	13.3%	$23,414,347	13.4%	$25,931,309	13%
INDUSTRIAL - STRENGTH	$7,536,320	11%	$10,217,381	10%	$9,925,000	9%	$10,991,938	8.4%	$12,173,571	8.4%	$13,482,239	8.5%	$14,931,509	8.5%	$16,536,713	9%
OTHER	$1,058,827	2%	$1,561,820	2%	$1,981,800	2%	$2,194,844	1.7%	$2,450,709	1.7%	$2,692,099	1.7%	$2,981,890	1.7%	$3,302,611	2%
TOTAL RETAIL REVENUES	$61,117,945	90%	$95,365,201	90%	$104,199,199	90%	$118,169,363	89.9%	$131,312,569	90.6%	$146,841,371	91.4%	$161,372,560	92.1%	$178,678,744	93%
WHOLESALE REVENUES	$7,089,265	10%	$7,928,178	8%	$6,439,000	6%	$8,187,991	6.2%	$8,319,291	5.7%	$8,154,603	5.1%	$8,294,441	4.7%	$8,177,740	4%
CONNECTION FEES	$0	0%	$2,505,179	2%	$5,000,000	4%	$5,150,000	3.9%	$5,304,500	3.7%	$5,463,635	3.4%	$5,627,544	3.2%	$5,796,370	3%
INTEREST INCOME	$0	0%	$0	0%	$0	0%		0.0%		0.0%		0.0%		0.0%		0%
TOTAL	$68,207,210	100%	$105,798,558	100%	$115,638,199	100%	$131,507,354	100.0%	$144,946,346	100.0%	$159,159,609	100.0%	$175,194,557	100.0%	$192,652,858	99%

PRELIMINARY
FOR DELIBERATIVE PURPOSES
1/5/2011

CEP ATTACHMENT 7
CAUSE NO. 43936
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CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

R. W. Beck Fairness Opinion

Attachment CEP - 8

Petitioners' Exhibit MGL-3

August 3, 2010

R·W·BECK
An SAIC Company

Mr. Chris Cotterill
Chief of Staff to Mayor Gregory A. Ballard
City of Indianapolis
Indianapolis, IN 46204

Subject: **Fairness Opinion**

Dear Mr. Cotterill:

You have requested that R. W. Beck, an SAIC Company, provide you with its opinion as to the fairness, from a financial point of view, of the consideration paid by Citizens Energy Group ("Citizens") to the City of Indianapolis ("City") for the City of Indianapolis' Water Works System (the "Water System") and Wastewater System (the "Wastewater System," together with the Water System collectively referred to as the "Systems") pursuant to the terms and conditions of the Definitive Agreements ("Agreements") entered into by the City, the respective Systems, and Citizens.

Under the Proposed Acquisition, Citizens will acquire all of the assets of the City's Systems as outlined in the Agreements. The acquired assets will be placed into public charitable trust to be held and operated in substantially the same manner as the utility systems currently held by Citizens' existing public charitable trust. The consummation of the Proposed Acquisition is subject to certain closing conditions and the completion of business, financial, legal and similar due diligence with results satisfactory to Citizens in its sole discretion.

In arriving at the opinion set forth below, R. W. Beck has completed the following tasks:

- Performed a Fair Market Value Appraisal of the Systems and relied upon generally accepted valuation methods and procedures in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). (These studies and analyses were required to provide an opinion with respect to the consideration paid to the City by Citizens. The Appraisal Report is attached as Exhibit 1.)
- Performed investigations, general field observations of the subject properties and reviewed applicable documents for the Water and Wastewater Systems, including certain documents, drawings, and other data provided by the City
- Reviewed certain information, including financial forecasts and the capital improvement plan of the Systems, furnished to us by or on behalf of the City
- Conducted discussions with members of the management of the Systems, staff of the Mayor's office, and other parties associated with the preparation of the Agreements and the studies and analyses preformed by or on behalf of the City in support of the Agreements
- Reviewed the Memorandum of Understanding and ancillary agreements thereto
- Reviewed the Definitive Agreements and related disclosures

131 SAUNDERSVILLE ROAD, SUITE 300 HENDERSONVILLE, TN 37075 (P) 615.431.3200 (F) 615.824.7570

In the preparation of this Fairness Opinion and supporting Appraisal Report, we made certain assumptions with respect to conditions that may occur in the future. In addition, we used and relied upon certain information and assumptions provided to us by sources that we believe to be reliable. It is our opinion that the use of such information and assumptions is reasonable for the purposes of the opinions that follow. Some assumptions, however, will invariably not materialize as stated herein or may vary significantly up to the closing date due to unanticipated and unforeseeable events and circumstances. In the event those assumptions change, the results of the analyses and opinions contained in this letter may change.

- In rendering this opinion, R. W. Beck did not assume responsibility for independently verifying and did not independently verify any financial or other information concerning the Systems.
- R. W. Beck has further relied on the assurances of the City's management that they are not aware of any facts that would make such financial or other information inaccurate, incomplete, or misleading. With respect to forecasts and financial projections of the Systems provided by management, R. W. Beck has assumed, for the purpose of this opinion, that the forecasts have been reasonably prepared on bases reflecting the best available estimates and judgments of management at the time of their preparation as to the future performance of the Systems.
- This Fairness Opinion is only valid when considering both Definitive Agreements between the City, the respective System, and Citizens as compensation for the proposed transfer.
- In the event the Definitive Agreements change, the opinions contained herein may change.

For the analysis that R. W. Beck performed to calculate the value of the increase in the payment in lieu of taxes ("PILOT") payments, see PILOT Analysis, also attached to this letter. The Definitive Agreement for the Wastewater System outlines the terms relative to PILOT payments to the City. Citizens has agreed to a schedule of increased PILOT payments, the Net Present Value of which is accretive to the deal and is included as part of the total value of consideration herein.

The appraisal discounted cash flow ("DCF") analysis assumed sufficient operating capital available with no additional input from purchaser; therefore, the value of the operating capital being retained by the City should also be credited to the deal.

As outlined in the Agreements, the value of consideration consists of multiple components consisting of Cash, Assumed Debt Obligations and Excluded Assets. A summarized breakdown of the total consideration paid by Citizens to the City is shown below in Table 1.

Table 1
Summary of Value of Consideration for Transfer of Assets

Cash		
Cash Payment at Closing	$170,600,000	
Cash Payment on Oct. 2011	92,000,000	
Cash Escrow Payment	(40,000,000)	
Excluded Assets		
Wastewater General Fund	75,000,000	Est.
Wastewater Net AR/AP	13,000,000	Est.
PV of Marginal PILOT Payments	172,250,000	
Assumption of Debt		
SRF Debt	1,349,749,250	
GO Debt	53,608,000	
Non-SRF Debt	39,290,000	
Line of Credit [1]	85,000,000	
Adjustments at Closing		
Credit Downgrade	(1,200,000)	
Step Obligations (from City)	(4,700,000)	
Environmental Insurance Costs	(1,000,000)	
Total Value of Consideration	$2,003,597,250	

[1] Line of credit for 2010 and 2011 capital expenditures

In preparation of the attached Appraisal Report, R. W. Beck looked at multiple ownership scenarios in performing the analyses under the Income Approach. Two types of ownership scenarios were considered as a part of the analyses. The first ownership structure is a public ownership scenario where the utility was purchased by a public entity or by a partnership between one or more entities to form a new public entity. The second ownership structure considered was an investor-owned utility. Within the two different ownership scenarios, an analysis was performed assuming the new entity either was to be operated under Indiana Utility Regulatory Commission (IURC) regulation or outside of IURC regulation. These scenarios were developed to represent the most likely purchaser of the Systems and develop a range of values under the Income Approach Table 2 below illustrates R. W. Beck's conclusion of Fair Market Value for the Systems as determined in our Appraisal Report.

Table 2
Fair Market Value

	Range of Values (Million)
Waterworks System	$950 - $1,100
Wastewater System	$980 - $1,100
Land Held for Future Use	$0.55
Total	$ 1,901 - $2,201

The total value of consideration for the transfer of assets, as outlined in the Agreements and shown above in Table 1, fell within that range of values for the Fair Market Value of the Systems and is shown above in Table 2. R. W. Beck's opinion of Fair Market Value was based on the results of our Income Approach analyses; however, R. W. Beck is of the opinion that any offer above Original Cost Less Depreciation (equivalent to net book value) would be reasonable for the Systems. The OCLD estimates of value based on our appraisal are $534 million for the Waterworks System and $700 million for the Wastewater System.

On the basis of and subject to the foregoing, we are of the opinion that the consideration received by the City is reasonable from a financial point of view.

This opinion has been prepared on behalf of the City in connection with the proposed Agreements and is not intended for any other use.

Sincerely,

R. W. BECK, INC.

Michael Lane, ASA
Senior Consultant

MGL/kjg

Attachments:

- Final Appraisal Report
- Definitive Agreements
- PILOT Analysis

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Prentice Direct Testimony, K-25 – K-33

Attachment CEP - 9

that volatile because you're going to be able to budget for them; correct?
A Volatile from the standpoint of not expecting a big jump or something like that, I would agree.
Q Right. From year to year --
A They may be different from year to year, but --
Q Okay. Now, if I read your testimony correctly, you want to through this tracker recover debt service, capital expenses and O&M, operating and maintenance, expenses. Do I understand that correctly?
A That's true with respect to the environmental compliance plan.
Q Which is all we're talking about here; right?
A Right.
Q Do you rely upon any statutory authority which allows Citizens to track these expenses?
A I believe it's 8-1-2-28, I think.
Q Thank you.
A Indiana Code, I guess I should say.
Q Thank you. It's my understanding the way you want to set this up -- Is it an annual filing?
A On this particular instance, I think it would

be at least annual. It could be that if a bond issue needed to happen in a different time frame, then it could be slightly different, but I would expect it to be about once a year.

Q And I assume it would be a fully docketed proceeding.

A I can't really say that for sure. It's my understanding that this would be the first of its kind under this particular statute, this filing would be, so there aren't a lot of rules and precedent established for it.

It's Citizens' hope, my hope, that we could sit down with the UCC and Commission Staff, if they're interested, and others to try to work out the procedural plan that would make the most sense for everybody.

Q Right. Okay, but I guess the thing I'm -- one of the things I'm trying to get at is: There is no need for this to be a summary proceeding like a GCA; I mean, you anticipate that the parties will have an opportunity to fully understand and address the costs that you are proposing for recovery. Is that a fair assumption on my part?

A I think so. Some of the proceedings, I guess, might not be very long if we're just recovering costs that we've already identified as the costs that will happen from year to year to year, so there might not be much need for a very long procedural schedule, but -- especially if we were going to be filing a different environmental compliance plan, I would expect that to be longer.

Q Right. It's my understanding that your proposal is that you are going to -- in essence, when you come in for your first filing, you're going to estimate or project what your first year's costs are going to be, and you are going to seek to recover that, and then at the next filing, you will reconcile to actual costs. Is that your proposal?

A Well, the timing of it would be a little bit different from that just because we wouldn't be all the way through the first year of recovery before we would be filing for the second, so the reconciliation of the first year would actually happen and roll into the calculation for the third year.

Q Okay. Help me; walk me through this. Let's

assume today the Commission approves your request to do this. When would you file -- when would you anticipate filing your first tracker?

A I think the first one would likely be filed in 2013 probably to go into effect January 1 of 2014.

Q So, this would be filed then sometime during the course of the year in 2013, enough time to be able to get an order by January 1, 2014?

A Yes.

Q And in that tracker, you are going to request to recover actual or anticipated costs?

A Well, in the first one, I expect they would be anticipated. I would expect that -- you know, based upon my understanding of Mr. Brehm's testimony, that it would be his desire, I guess, to issue bonds each year in order to cover the costs associated with the construction that year according to the CSO.

So, at the time we make the filing, I would expect that we would know how much we would want the bond issue to cover. We might not know the interest rate exactly, but we could get -- have a pretty good idea so

that we could estimate pretty reasonably what the debt service for that year will be.
Q Okay.
A Same would go for operating expenses, and if there were to be any -- just capital expenditures, and then once --
Q Can I stop you right there?
A Sure.
Q With respect to capital expenditures, when you come in in 2013, are you going to have any actual capital expenditures that you are going to seek recovery of, or are these going to be projected for the following year?
A They would be projected.
Q Okay, and same with O&M?
A Yes, and then they would be reconciled in a subsequent year, and any over- or under-recovery, then, would flow into the next filing.
Q Okay. So, you make a filing in 2013, get an order early in 2014; you will start recovering this -- How do you propose to recover this money? Through what?
A It would be a volumetric rate, I would expect. Is that what you're asking?

Q Yes, thank you, and then in 2014, sometime in 2014, you will make your second filing --
A Yes.
Q -- and in that second filing, what is it you're going to ask the Commission to do?
A In the second filing, we would -- assuming that there would be another new bond issue that would need to be made, we would show the second year -- This is going to get really complicated.

We would show the second year of the debt service on the first bond issue, and that would be known; we would know what the debt service on that would be at that time.

Then there would be a new bond offering that we would know the amount of the bond offering. We would know approximately what the interest rate would be on it, and so we would estimate the second bond issuance's debt service for its first year.

Q Okay. With respect to capital expenditures or O&M, are you going to reconcile in this filing No. 2 or --
A I wouldn't in No. 2. I would in No. 3; I would be reconciling the first year, and then

any over- or under-recoveries would flow into the third year's rate.

Q Would you consider PILOT to be an operating expense that you would seek recovery for in this proceeding?

A No.

Q What would happen to this tracker in years that you have a general rate case?

A For the costs that have already been identified and are known, we would roll those into base rates for recovery, and then it would be removed from this recovery mechanism, and then the sequence would basically start over again.

Q Are the STEP projects that we've heard discussed throughout these proceedings, would you anticipate that those costs be recovered in this tracker mechanism?

A I wouldn't expect so unless they're somehow in the CSO. I think there was a little bit of discussion about that earlier. There might be something that's in there related to STEP but not -- I wouldn't be seeking to recover just the STEP expenditures entirely, no.

Q Help me understand what operating and

maintenance expenses you intend to recover through this tracker.

A They would be the costs associated with operating some part of the CSO work that's been completed, I suppose, and operating, so things like maybe electric expenses, electricity, whatever kinds of costs -- you know, it depends on what the activity would be as to what the costs would be, if there would be any labor associated with it or that kind of thing, so it would be specific to what's gone into service with respect to the CSO work.

Q And also, as we indicated, you want to track capital expenditures in this, too, and is there any reason why you wouldn't recover capital expenditures either through depreciation or E&R? I'm curious why you decided you want to track it.

A The capital expenditures for CSO -- Basically, the way I'm kind of looking at that is there might be -- I don't know what it would be, but there might be a reason that a particular cost we wouldn't necessarily want to be covered through a bond issuance, and so it would be

just kind of a pay-as-you-go capital expense.

I would, however, expect that it would be a capital expenditure that would be outside of just normal capital expenditures for operating the wastewater utility.

Q But when you know these expenditures -- you know what these expenditures are going to be years in advance, why wouldn't you just roll them into your base rates?

A Mostly because of their size, I think. You know, rather than estimating on a forward-looking basis what our expenditures will be for the next two or three years and increasing rates today for something that's going to be expended two or three years from now, I wouldn't want to have to increase customers' rates before it was necessary to do so.

On the other hand, if I'm looking at it from a backward-looking perspective, the capital expenditures are so great that if I'm not recovering the costs of those as they're being incurred, I think the utility could suffer pretty extreme financial harm.

Q I next want to ask you some questions about

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Sanitary District Depreciation Rate Request

OUCC Data Request and Response Q 6-8

Attachment CEP - 10

Cause No. 43936
Responses of Citizens Energy Group and CWA Authority, Inc. to.
Office of Utility Consumer Counselor's
Sixth Set of Data Requests

DATA REQUEST NO. 8: What is the current depreciation rate use by the Sanitary District?

RESPONSE:

The current depreciation rate of the wastewater system cannot be stated with precision. The City does not separate depreciation expense for the wastewater system from other components of the Department of Public Works, which includes the stormwater system, streets, curbs, sidewalks, traffic signals, bridges, street lights and related vehicles, buildings, equipment and property.

WITNESS:

John R. Brehm

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Balance of Working Capital Loan

OUCC Data Request and Response Q 31-8

Attachment CEP - 11

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Thirty-first Set of Data Requests

Q 31-8: Please provide the current balance of the working capital loan from the City to the Department of Water.

Answer: As of December 31, 2009, the Department had a liability to the City in the amount of $20,471,754.22. Based on the projected cash needs of the Department through the remainder of 2010, this amount is projected by the Department to be $50,247,545.33 on December 31, 2010. The Department projects that by the end of the first quarter of 2011 it will receive cash sufficient to reduce this amount to $36,373,270.05 at March 31, 2011.

CITIZENS ENERGY GROUP, ET AL.

CAUSE NO. 43936

Cotterill Direct Testimony, pp. B127 – B-130

Attachment CEP - 12

septic tanks. Our plan was to do at least another 7,000, and so there still is, at least from the experts that advised me and others, you know, several thousand more septic tanks that if we don't do them, eventually the EPA and others might get around to saying, it's time for you to clean these up.

COMMISSIONER ZIEGNER: That's all I have.

JUDGE EARL: Commissioner Landis?

QUESTIONS OF MR. CHRIS W. COTTERILL,
BY COMMISSIONER LANDIS:

Q Good afternoon, Mr. Cotterill.

In your conversation with Mr. Polk, you discussed the trust structure, and my understanding of that structure, subject to correction, is that under that structure, the utility is held in trust for the benefit of the citizens of Marion County. Is that a correct --

A I believe it says -- actually says the citizens of Indianapolis, but --

Q Okay.

A -- basically, yes.

Q But the consolidated city, that would be, in essence, Marion County?
A It would, legally distinct from the City of Lawrence, Beech Grove, Southport and the Town of Speedway.
Q Does that also, therefore, imply a higher level of responsibility comparable to a fiduciary responsibility which would be held by a financial trust trustee?
A I think it would be a -- My feeling is the answer is yes.

You know, Mr. Lykins will be the most articulate about the trust and those sorts of things, but we saw the trust and its nature as a non-profit and its history and its apolitical nature but with local control where it can't be sold, sort of all of those things together, as part of our decision-making process. It wasn't just the history or just the legal nature of the trust, but we saw sort of that multitude of benefits in the final -- in the final analysis.

Q Okay, and am I correct that I heard you to say that when you sought solicitations or sought indications of interest from various parties,

TESTIMONY OF ROGER A. PETTIJOHN
CAUSE NO. 43936
CITIZENS ENERGY GROUP, ET AL.

I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Roger A. Pettijohn, and my business address is 115 West Washington Street, Suite 1500 South, Indianapolis, Indiana 46204.

Q: By whom are you employed and in what capacity?

A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as a Senior Utility Analyst for the Water/Wastewater Division.

Q: Please describe your educational background and experience.

A: After teaching several years for the Department of Defense Dependents Schools in Japan and the Philippines, I accepted an administrative position as Utility Director for the City of Elwood, Indiana in 1976. Subsequently, I assumed the responsibilities of operator in charge of the water and wastewater facilities. In 1980, I accepted a position as Waterworks Superintendent for the City of Marion, Indiana. After taking early retirement from the City of Marion in 1995, I served as a project manager and representative for a firm representing various manufacturing companies in the business of providing water and wastewater treatment equipment to municipalities and industry. I joined the OUCC in 2000. I currently maintain a Class I Wastewater Treatment License, as well as Water

Treatment System 3 and System 5 designations (WTS-3 and WTS-5), which are ground and surface water treatment plant certifications, respectively. I also hold a Distribution System Large (DS-L) license. All licenses were issued by the State of Indiana.

Q: What is the purpose of your testimony?

A: I discuss Joint Petitioners' technical ability to operate a wastewater system. I discuss why approval of the operating agreement between CWA Authority, Inc. ("the Authority") and United Water Service Indiana, LLC ("United") is in the public interest. I comment on the Authority's proposed rules and regulations for sewage disposal services. Finally, I discuss the Authority's request for Certificate of Territorial Authority ("CTA").

Q: Have you previously testified before the Indiana Utility Regulatory Commission?

A: Yes, I have testified both on behalf of utilities for which I worked and as an analyst for the OUCC.

Q: Please describe the review and analysis you conducted in order to prepare your testimony.

A: I reviewed Joint Petitioners' case-in-chief while focusing on documents such as the Wastewater Asset Purchase Agreement, Rules and Regulations, and documents relating to the City of Indianapolis Combined Sewer Overflow ("CSO") Consent Degree and long-term planning. Specific attention was given to Citizens Energy Group ("CEG") and the Authority's witnesses James O. Dillard, David C. Kiesel, William A. Tracey and LaTona S. Prentice. In matters unrelated to this Cause, I have toured the Southport and Belmont waste treatment facilities in general and in particular observed treatment and chemical feed processes at

both facilities. In addition, I attended the Evidentiary Hearing beginning December 6 and continuing to December 14, 2010. Finally, I participated in discovery and attended numerous case team meetings during which we discussed and analyzed the many issues in this case.

II. TECHNICAL ABILITY

Q: Have Joint Petitioners requested that the Commission find that the Authority has the technical ability to operate the Wastewater System?

A: Yes. In the Verified Joint Petition (see page 19, Subsection (i) of the requested relief), the Joint Petitioners have requested that the Commission find that the Authority has the technical ability to operate the Wastewater System.

Q: What does having technical ability mean?

A: In this case, technical ability means having the knowledge, experience, training and resources to properly operate and maintain the wastewater treatment facilities.

Q: Does the Authority have the technical ability to operate and maintain the Belmont and Southport wastewater treatment facilities and associated collection system?

A: No, not by itself. Wastewater treatment requires unique processes that are closely monitored and regulated by governmental units such as the U.S. Environmental Protection Agency ("EPA") and the Indiana Department of Environmental Management ("IDEM"). Although CEG has significant experience providing steam and chilled water services, wastewater treatment is fundamentally different. However, as described on pages 1-2 of Joint Petitioners' Witness William A. Tracy's Verified Supplemental Testimony, the City will at Closing assign the management agreement with United to the Authority (see Joint Petitioners'

Exhibits WAT-2 and WAT-3). CEG also has committed to employing 34 current Department of Public Works ("DPW") employees to ensure that the skills and institutional knowledge are not lost in the acquisition (Tracy Supplemental, pp. 3-4). It is imperative that CEG and the Authority retain the services of United and the DPW employees that currently operate and manage the City's wastewater utility facilities to ensure safe, adequate and reliable service continues to be provided if the transfer of wastewater utility assets is approved. Since being employed by the City since 2002 and being in large part retained by the Authority, United has apparently operated these facilities adequately.

III. CERTIFICATE OF TERRITORIAL AUTHORITY ("CTA")

Q: What CTA area is being requested?

A: The Authority seeks a CTA for a small area in Hamilton County contiguous with the Sanitary District of the City's ("the Sanitary District") northern boundary in Marion County, where the Sanitary District is already providing sewer service. The Authority is requesting that the Commission grant a CTA to continue this service.

Q: What is the OUCC's position regarding the CTA request?

A: Conceptually, the OUCC is not opposed to granting a CTA to the area requested in Hamilton County, and believes continuing service in this area is in the public interest.

Q: What is the normal procedure for a CTA application?

A: An initial CTA requires Articles of incorporation; a legal description of Joint Petitioner's sewage plant; a ten-year feasibility study with pro forma financial

statements; and a personal financial guarantee by a principal of the corporation. All applications require a legal description of the area to be served; a letter of approval from IDEM or the State Board of Health; plans and specifications of treatment plant and sanitary sewers; area maps as outlined in 170 I.A.C. 8.5-3-2; notification to, and acknowledgement of, owners and operators within five (5) miles of the sanitary system; an estimation of construction costs, and other requirements as required in 170 I.A.C. 8.5-3-1(2). Joint Petitioners have not submitted any of these required documents to the OUCC or the Commission.

Q: What is the purpose of these CTA requirements?

A: The requirements generally establish an applicant's legal authority, financial ability, and operational capability. The notice requirement advises interested parties of a prospective provider's intent, and attempts to prevent future territorial disputes.

Q: Does the Commission grant CTAs without requiring wastewater utilities to comply with the applicable Indiana Code and Indiana Administrative Code requirements?

A: During my ten (10) year tenure with the OUCC, I am unaware of the Commission granting a CTA without the requirements included in I.C. § 8-1-2-89 and 170 I.A.C. 8.5-3-1 being met by the applicant.

Q: What is your recommendation?

A: If the Commission approves the acquisition of the City's wastewater utility assets, I recommend that the Authority not be granted a CTA until the requirements identified in I.C. § 8-1-2-89 and 170 I.A.C. 8.5-3-1 are met.

IV. RULES AND REGULATIONS

Q: Have Joint Petitioners submitted Sanitary District Sewage Disposal Terms and Conditions for Commission approval?

A: Yes. In Exhibit LSP-3, CEG witness LaTona Prentice's testimony includes terms and conditions consisting of the City-County Council "Code of Ordinances", supplemented by Commission regulations as set forth in 170 I.A.C. 8.5-1 *et seq.* Also, CEG has incorporated its own terms and conditions of service currently used by Citizens Gas. Page No. 3 of Exhibit LSP-3 titled "Sewage Disposal Service Tariff – Rates, Terms and Conditions" states that the rules set forth have been filed with and approved by the Commission. However, this is not accurate as the request for approval of the terms and conditions are being presented in this Cause for Commission approval.

Q: Do you have any comments or concerns regarding the proposed Sanitary District Rules submitted for Commission approval?

A: Yes. Joint Petitioners request that the Commission allow the Authority to use a combination of the rules and regulations currently in place for the City DPW and some rules currently used by CEG for its gas utility. During the cross-examination of CEG witness LaTona Prentice, she acknowledged that even if the Commission grants that relief, CEG will be implementing changes to those same rules and regulations. Ms. Prentice could not identify with specificity what those changes would be, and there is no specific information regarding changes to rules and regulations in Joint Petitioners' testimony and responses to the OUCC's data requests.

A review of the amalgamation of CEG and DPW's rules and regulations filed

with Joint Petitioners' evidence shows that, as offered, the rules will likely be subject to change as the Authority gains operating experience. A review of the CEG and DPW rules as submitted shows that there are issues that need further examination. Some of these issues are as follows:

Non-Recurring Charges – Reconnection Fee: The reconnection fees for water and wastewater are $25.00 and $44.00 respectively, yet most utilities providing both services simply shut off the water. For sewer only customers, the utility cannot excavate and insert a plug for $44.00 on a cost- neutral basis.

If CEG is granted its requested relief, it will be issuing combined bills for gas, sewer and water. There is no evidence in the record what charge CEG is requesting for reconnection, returned checks collection, late fees and similar tariff items.

Exhibit LSP-4; Appendix B, (1) Connection Fee: A connection fee of $2,500 per equivalent dwelling unit is charged for all new sewage customers or customers that will require a service flow requirement in excess of 310 gallons per day. Typically, a connection fee ("connection fee" or "tap fee") refers to a connection or service tap on the main, but the term in this case appears to be more in the nature of a system development charge ("SDC"). However, in the case of either a tap fee or SDC, the charge should be based on actual or estimated costs approved by the Commission. A tap fee is generally determined by calculating a utility's material, labor and applicable administrative costs. If the utility supplies the materials and labor, a tap fee may be $1,000 or more. However, if the utility simply inspects the tap and has some administrative costs, the fee would be much

less. SDCs are calculated differently and serve a different purpose than a tap or connection fee. SDCs are discussed more fully in the testimony of OUCC witness Margaret Stull. I recommend the Authority review its proposed tariff and add a tap fee or inspection fee as appropriate or necessary. These fees should be approved by the Commission in a thirty (30) day filing.

Exhibit LSP-3; 4.4 Application and Permit for New Connection:

In part, this section addresses plans and specifications of building and sewer construction, including materials of construction and methods of installation. When plans and specifications are requested or provided by the utility, it is advisable for the utility to offer sample construction plans, including specified materials and methodology consistent with utility standards but also the company's preference. For example, some utilities require K-copper be used on the "utility side"[1] of a water service, or use a specific style of meter yoke. With sewer installations, the utility may require that a "T" be cut into the line, rather than a tap for lines of a certain size, or that a certain Class of PVC service pipe be used. Finally, these standards of construction illustrations and material specifications could be made a part of the Authority's Rules and Regulations.

Q: Any final comments regarding Rules and Regulations?

A: Joint Petitioner's proposed Rules and Regulations are substantive, but there remain issues outstanding. However, the OUCC cannot render an opinion on whether unknown changes by CEG in the future to the rules and regulations for the wastewater trust are, or are not, in the public interest. Consequently, the

[1] The "utility side" of a water or sewer service refers to that part of the service the utility is responsible for; i.e., usually from the main and running under the street to the property line or meter pit.

OUCC recommends that should the Commission approve the proposed transaction, the matter of wastewater rules and regulations should be deferred to a sub-docket. This will allow for the necessary review of changes proposed by CEG, once CEG has determined what it believes those necessary changes to be.

V. OUCC RECOMMENDATIONS

Q: Please summarize your recommendations to the Commission in this cause.

A: I recommend that the Commission:

- Affirm the Authority's technical ability to operate the waste treatment facilities through its association and operations contract with United;
- Approve on an interim basis Joint Petitioner's Rules and Regulations as acquired by the City in this Cause until a sub-docket can be convened to address CEG's long-term changes, whatever they may be;
- Advise the Authority to submit a thirty (30)-day filing if it determines the need for a cost-based tap fee, with supporting documentation containing material, labor and administrative costs;
- Require the Authority to submit a CTA application consistent with 170 I.A.C. 8.5-3, et seq., and I.C. § 8-1-2-89 for the CTA area currently being served by the Sanitary District outside its boundaries.

Q: Does this conclude your testimony?

A: Yes.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

By: Roger A. Pettijohn
Indiana Office of
Utility Consumer Counselor

1/12/11
Date

Cause No. 43936

TESTIMONY OF OUCC WITNESS HAROLD L. REES
CAUSE NO. 43936
CITIZENS ENERGY GROUP, ET AL.

I. INTRODUCTION

Q: Please state your name and business address.

A: Harold L. Rees; Indiana Office of Utility Consumer Counselor; 115 West Washington Street; Suite 1500 South; Indianapolis, Indiana, 46204.

Q: By whom are you employed and in what capacity?

A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as a Senior Utility Analyst for the Water/Wastewater Division.

Q: Please describe your educational background and experience.

A: I graduated from Purdue University with a Bachelor of Science degree in Electrical Engineering. I also completed a management development program at Wabash College. I worked for the Indiana Bell Telephone Company from 1960 through 1991 where I was involved in several engineering and management assignments. I began employment with the OUCC in January of 1992. I obtained my Professional Engineer registration in the State of Indiana in 1967.

Q: What is the purpose of your testimony?

A: I discuss how Citizens Energy Group ("CEG") expects to have the technical ability to operate the water system after the transition from the City of Indianapolis Department of Waterworks ("DOW"). Also, I mention some of the technologies and technical aspects of the water utility that could possibly give a new operator some challenges. Further, I discuss the need for CEG to continue a

relationship with such support resources as the Service Advisory Board ("SAB") and the Technical Advisory Group ("TAG"). In addition, I emphasize the importance of a proactive capital improvement program because the emphasis should still be on the funding and implementation aspects which have been lacking; the utility appears to be behind now in meeting priority needs and there may be a risk of further delays. Moreover, in my testimony, I review CEG's projected ability to utilize Value Engineering for some of the water utility's larger replacement/improvement projects. Further, I describe what the utility is planning regarding Automatic Meter Reading ("AMR"). I also provide some comments related to CEG witness LaTona Prentice's testimony concerning the transfer of water rules and regulations to the CEG operation.

Q: Please list the Sections of your testimony.

A: My testimony is organized into the following sections:

I. Introduction..... 1
II. Technical Management Issues..... 4
A. Technical Ability..... 4
B. Role of the Integration Team..... 9
C. Capital Expenditure Program..... 11
D. Value Engineering..... 14
E. Automatic Meter Reading..... 15
III. Proposed Water rules & Regulations..... 16
IV. OUCC Recommendations..... 19

Q: Have you previously testified before the Indiana Utility Regulatory Commission ("Commission")?

A: Yes, I have testified in causes concerning electric, gas, sewer, telephone, and water utilities.

Q: Please describe the review and analysis you conducted in order to prepare your testimony.

A: I studied the Verified Joint Petition filed on August 11, 2010. I read the testimony and associated attachments of several of Joint Petitioners' witnesses – namely Brian Clarke of Veolia Water Indianapolis, LLC ("Veolia"), and Lindsay Lindgren, William Tracy and LaTona Prentice of CEG and CWA Authority, Inc. (the "Authority"). Further, I observed the cross examination of Joint Petitioners' witnesses in the Commission hearings conducted on December 6-8, 10 and 14, 2010. I also participated in meetings analyzing Joint Petitioners' proposals, concerning preparation of my testimony and discussion of specific issues in smaller work groups. In addition, I studied numerous documents including the Asset Purchase Agreement for the DOW, the Settlement Agreement to Transition Management & Operations of the City of Indianapolis Water System from Veolia (the "Settlement Agreement")[1], the Water Service Tariff concerning the proposed Rules and Regulations,[2] and 170 I.A.C. 6, *et seq.*, pertaining to water utilities.

[1] This Settlement Agreement, which is attached to the Supplemental Testimony of Aaron Johnson of CEG, is also Attachment 1 to this testimony for convenience.

[2] Attachment 2 to this testimony is a copy of Exhibit LSP-1 which is useful for multiple references. Exhibit LSP-1, concerning the Rules and Regulations for water service, is also an attachment to the testimony of CEG Witness LaTona Prentice.

II. TECHNICAL MANAGEMENT ISSUES

A. Technical Ability

Q: Has CEG requested that the Commission determine that it has the technical ability to own and operate the water system?

A: Yes. In its Verified Joint Petition (p.18, Subsection (b)), Joint Petitioners have requested the Commission issue an order finding that CEG has the legal, financial, technical, and managerial ability to own and operate the water system. In my testimony, I address only the portion of the request concerning the technical ability.

Q: Explain how CEG is proposing that it will have the technical ability to operate the water system after the transition from Veolia Water.

A: The goal of the parties is to transition the Water System serving about 330,000 customers to CEG in a safe, thoughtful, and organized fashion. This will require that CEG retain the "know-how" for the management and operations of the water system. To accomplish this, the Settlement Agreement (Attachment 1) requires that Veolia, the DOW and CEG cooperate to transition the management and operations of the water system to CEG upon closing of the acquisition. This transition includes the transfer of personnel currently employed by Veolia and the DOW whom CEG desires to hire in order for operations to continue. (See the Direct Testimony of Brian Clarke, p. 10, lines 6-9.) This hopefully will result in the retention of most of the people who have been skillfully and knowledgably operating the water system. The Settlement Agreement also requires Veolia to provide CEG with training on the procedures and techniques employed by Veolia

in doing its job. (See page 3, Item (b), of the Settlement Agreement – Attachment 1 to my testimony.)

Q: If CEG is not able to obtain the number of skilled employees for the water operations that it wants to hire from Veolia, what should it do?

A: Regardless of the quality of the public and employee information programs that Veolia and CEG may conduct associated with the transition process, some of the Veolia employees may not elect to seek employment with CEG. For example, if CEG obtains only 75% of the skilled manpower it requires to successfully operate the water system, it may need to hire new people from the outside, transfer people from some of its other enterprises, or accomplish some combination of these alternatives. It is possible that some candidates working for other water utilities might be interested in a position with the CEG water utility if the information about job opportunities is high quality and the proposed conditions, such as pay and benefits, are attractive.

Q: Would hiring or reassigning many people to help operate the water system cause any other problems?

A: Yes, potentially. Quality and timely training for the additional people will be essential, and the greater the number of people needing training, the greater the difficulty of the training effort. Therefore, CEG should determine what training Veolia has used to get new people up to speed. I believe that some organized training to supplement on-the-job training of new people is desirable. On-the-job training typically involves trial and error, and if too much of that occurs, service quality may deteriorate in the short term, which is not desirable. Contractor training may also be available.

Q: Describe other requirements for the transition of operations of the water system to CEG.

A: These should include the transfer of intellectual property owned by the DOW and used or created by Veolia, to the DOW or CEG. This includes the licenses, data, source codes, and software for the billing and operations systems. Moreover, any formulas, processes, technology, innovations, trade secrets, and other intellectual property owned by Veolia or its affiliates necessary for the operation of the water system are to be transferred. In addition, within sixty (60) days of the Effective Date (defined as October 20, 2010 in the Settlement Agreement – Attachment 1), Veolia shall provide written notice to the DOW and CEG of all outstanding commitments for procurement of motor vehicles, services, and materials and supplies, to be updated periodically until closing as reasonably required by CEG, as well as any other items not mentioned here but contained in Section 2.2 of the Settlement Agreement.

Q: What are some of the challenges of the conditions of the Indianapolis water system?

A: As discussed on pages 3-5 of Mr. Lindgren's direct testimony, the water system consists of over 4,400 miles of pipe, 9 treatment plants, 17 pumping stations, 46,000 valves, 40,700 fire hydrants, and 330,000 meters. In addition, the system produces, treats, and distributes approximately 41 billion gallons of water annually to customers in seven counties in Indiana. Further, the water system has to be capable of providing potable water to many residences with modest volumes at pressures from 20 to 50 pounds per square inch ("PSI"), while concurrently being able to provide larger volumes of water to fire hydrants when there is a fire.

While the utility pumps raw water from 75 wells, about 80% of its source water is taken from streams. Surface water is more difficult to treat because of the range of potential pollutants and seasonal water quality variations which could affect the public health. The filters in the Indianapolis surface water treatment plants are continually monitored for turbidity (automatic alarming is provided through the utility's SCADA or telemetry system).[3] The water system operators have to be able to respond quickly to emergencies such as the serious chemical spills into the White River in recent years. Decisions by the system operators and managers have to be made quickly to protect customers. Plans of action for emergencies need to be prepared in advance and employees should be trained to respond properly.

Q: Do you think that CEG entities can use their energy-related skills and experience to manage the water treatment and other technical demands of a large water system?

A: I think it is possible if CEG aggressively prepares itself. Water treatment for a large utility like Indianapolis's is a 24-hour per day, seven-day per week issue. It is a complex undertaking. The index of American Water Works Association ("AWWA") publications list twelve manuals just for water treatment. One example is the M7 Manual, which is entitled "Problem Organisms in Water: Identification and Treatment."

Q: What are some of the technical issues that CEG and its operations people will be faced with?

[3] Turbidity in drinking water can be an indication of organic particles and algal cell masses that can transport some microbial entities through treatment processes, such as disinfection, reducing the effectiveness of water treatment (see Chapter 18 of the AWWA Handbook on Water Quality Treatment).

A: Following are some items that could cause challenges: active cathodic protection for water storage tanks; chemical feeds; chlorine production, which is trending towards on-site production within the industry; dam maintenance; emergency power generator operation, including automatic start; filtration; frozen fire hydrants; laboratory testing (some water samples are processed daily); reservoir management, such as control of algae growth; response to droughts (both in the short and long term); SCADA systems (supervisory control and data acquisition), which are more complex for larger utility systems; security issues; ultraviolet ("UV") disinfection to protect against Giardia and Cryptosporidium; Variable Frequency Drives ("VFD") for large pump motors; and water conservation opportunities.

Q: Do you believe that continuation of the Service Advisory Board ("SAB") and the Technical Advisory Group ("TAG") could help CEG's proposed technical management role with the water utility to be successful?

A: Yes. As described in Mr. Tracy's direct testimony (p.20, beginning at line 18), the SAB was formed to insure that the surrounding communities which obtain their water service from the Indianapolis Water system receive appropriate communication and input concerning water issues of interest. Topics of interest could include supply, demand, and capacity planning. Mr. Tracy states that CEG believes in the value that advisory groups such as the SAB can add to the process. The TAG is composed of academic and industry experts that have reported to and served the DOW in the past. The purpose of this group has been to provide a regular monthly forum for discussion of key programs and activity related to water quality, source water protection, water management and environmental

stewardship. I believe that the support of both of these organizations would be helpful to CEG in its future technical management of the water utility.

Q: Is it your opinion that CEG will have the managerial and technical ability to operate the water system satisfactorily after the transition?

A: Yes, particularly if the operational requirements in the Settlement Agreement (Attachment 1 to my testimony) are met. In addition, CEG will have to prepare and properly manage the various technical areas found in the operations of the Indianapolis water system. I think CEG will have to periodically monitor whether its people are up to speed with the requirements of the technology and operations.

B. Role of the Integration Team

Q: What is the role of the integration team?

A: Currently, the day-to-day operation and maintenance of the water system is managed by Veolia under the terms of a 2002 Management Agreement with the DOW. The parties have determined that the process of moving to full ownership and management of the water system by CEG would best be accomplished by a plan developed by an integration team. Lindsay Lindgren, who serves as Vice President of Gas and Steam Operations for CEG, is the team leader of the water integration team. On that team are four other CEG employees, in addition to a representative from Malcolm Pirnie (a nationally recognized consulting firm), and Robert Miller, a retired executive of the DOW. The transition plan that they will follow is broken into five primary phases: 1) planning; 2) analysis; 3) design; 4) implementation planning; and 5) implementation execution. In the analysis phase, the team will work to develop an understanding of how Veolia provides service.

In the design phase, the team is expected to design processes, structures, and procedures to address integration of the water system into CEG's operating model. During the implementation planning phase, detailed technical plans for operating the water utility after closing of the DOW-CEG transaction will be developed that address priorities, sequencing, and task planning. Then actual execution will occur. Joint Petitioners have testified that this transition and integration process needs to be completed for a closing as early as April 30, 2011, based on Joint Petitioners' prediction of a Commission Order in March 2011. (See p. 5, lines 6-8, of Mr. Tracy's Supplemental Testimony.)

Q: Do you think that CEG can be ready to operate the water utility in an adequate manner once it takes over?

A: I think CEG can do so if it is prepared. For example, the public health is in many ways dependent on the quality of drinking water that the public consumes. While some of the current CEG entities have been involved with forms of water treatment (such as for steam production), the Indianapolis water system has 9 treatment plants that condition water at the rate of approximately 41 billion gallons per year.[4] In particular, two things help ensure that successful future operation of the water treatment facilities takes place: the governmental regulations and sampling process, and the qualified employees of Veolia that CEG says it will retain (including the certified operators of the treatment plants). I think it will be up to this integration team and CEG to ensure that the transfer of an adequate number of certified operators and other supporting resources actually

[4] The treatment plants are White River, Fall Creek, TW Moses, White River North, White River North GWTP (ground water), Geist, Harding, South Well Field, and Ford Road.

takes place. In addition, the new owner must be willing and able to respond to emergencies.

C. Capital Expenditure Program

Q: How effective have the plans been for the Capital Program for the water utility?

A: While the DOW has used a structured and defined process to develop and administer its plans for the capital budget, it appears that the effectiveness of its efforts has been limited because of funding issues. As discussed in Mr. Lindgren's Direct Testimony at p. 6, Veolia prepared and submitted to DOW its "2010 Five Year Capital Works Program Budget" as required by the Management Agreement with the DOW. The projects described in Veolia's plan represented approximately $127.6 million of spending per year, with a total amount of $638 million projected over the five-year planning period. The DOW engaged Camp Dresser & McKee ("CDM"), an outside engineering firm, to review Veolia's plan.[5] As a consequence of that review, CDM recommended $214 million of capital projects over three years; because of financial limitations, the DOW and CDM refined the list of recommended projects to reduce projected annual spending to an average of $55.5 million. CEG and Malcolm Pirnie subsequently reviewed the planning information and reached an assessment that capital spending under its ownership of the water system could average about $51.2 million per year over the current five-year period for a preliminary total of $258.8 million. During the last several years, the operating and managing entities used several checks to determine the

[5] Karl Tanner worked on this project as discussed in his testimony in Cause No. 43645.

final improvement list. After closing as discussed in this proceeding, the OUCC expects that the administration of the Capital Budget will be somewhat simpler than it has been.

Q: In Cause No. 43645, did you perform a review of the 2010 – 2011 Capital Plan presented by the DOW?

A: Yes, I did. I reviewed the testimony of Karl Tanner and the documentation he provided for the seventy proposed projects that were estimated to cost $111,378,760. Further, I picked a sample from the list for additional review and possible physical inspection, which I participated in on February 3, 2010. In reviewing some of the sampled projects in which work had not started, I was only able to see where the new equipment would be installed, or to see other similar plant which was currently operational. For example, regarding the proposed installation of a new UV disinfection system (with an estimated cost of $6 million) at the Fall Creek Treatment Plant, I was able to see a similar operation already in service at the White River Plant. One of the proposed projects that I also examined was the repair of the Broad Ripple Dam, estimated to cost about $1.1 million. This dam directs water from the White River into the canal, which is the primary source of water for the White River Treatment Plant (the utility's largest). The dam itself, built in the 1870's, still appears to be in good condition, but continued deterioration of the abutment could lead to serious damage to the foundation of the dam. Joint Petitioners' response to Question 23-1 of the OUCC Data Requests (see Attachment 3 to my testimony) indicates that no work has started yet on this dam due to a lack of funding. Because repair work on dams in this area is seasonal, this means that no work, other than design, will be

accomplished for the dam again this winter and spring (2011). During this time ice chunks and wood refuse can pour over the dam and continue to damage the apron located on the output side of the Broad Ripple Dam, where tree roots are already growing into the cracks.

Q: Please summarize the status of the seventy projects proposed in Cause No. 43645 for 2010 and 2011.

A: Of the total projects, only 4% are complete, 43% are considered ongoing, and 53% are being delayed because of lack of funding (see Attachment 3 of my testimony). I assume that after the final order is issued in Cause No. 43645, if a rate increase is ordered, the utility can begin to obtain financing for the capital projects.

Q: What is the most important Capital Project?

A: Aside from the Broad Ripple Dam Project, perhaps the next most important and largest project is the proposed New Intake on White River to provide a back-up raw water route to the White River Plant. This project, which was planned at an estimated cost of $27.6 million, is critical because in an emergency the Riverside Well Field can only supply 10-15% of the White River Plant's needs. This surface water plant is the major source of finished water for Indianapolis, and during my tour last year, the representatives for both Veolia and the DOW were vocal about accomplishing this project. During the last 30 years, the canal has failed during a time when water demand was lower than it is today. If a failure to that degree occurs again, the utility could face a water shortage for some of its service area.

Q: Do you have any critical comments about the effectiveness of the water utility's capital improvement plan?

A: Based on the inspections I have made over the last several years in Cause Nos. 43056 and 43645, as well as this proceeding, I think the water utility is not keeping up with capital improvements fast enough to outpace wear and tear and meet future demands. As a customer of this water utility over the last 40 years, I think the utility is putting out a quality product. However, if the capital improvement logjam is not broken soon, the utility's production and performance may deteriorate.

D. Value Engineering

Q: What is Value Engineering?

A: It is an organized approach to identify and eliminate unnecessary costs that provides no use, life, quality, appearance, or customer features. Value, as defined in the process, is the ratio of function to cost. Therefore, value can be increased by either improving the function, or reducing the cost. Value Engineering in this country is often specified in the Request For Proposal ("RFP") phase for large government and military projects. Value Engineering is particularly useful in evaluating several alternatives that are intended to provide the same basic function. Consultants are available to help companies and utilities to not only reduce cost, but to develop new ideas and innovations for products and services using structured team techniques like Value Engineering.

Q: Has DOW used Value Engineering in the past?

A: Yes. Karl Tanner's direct testimony in Cause No. 43645 indicates that CDM has helped the DOW use Value Engineering to achieve savings in its construction expenditures (refer to page 2 of Mr. Tanner's testimony in Cause No. 43645).

Q: Does CEG possess Value Engineering experience?

A: I believe so. For example, CEG and its joint venture partner BHMM Energy Services, LLC were hired to manage the design and construction of facilities to connect a power plant at the Indianapolis Maintenance Facility with the new Indianapolis airport. (See p. 11, lines 7-14, of the Direct Testimony of William Tracy in this Cause.) The power plant supplies hot and chilled water for the HVAC systems at the new airport terminal. CEG engineers worked with a number of contractors and consultants and, through Value Engineering, reduced the originally projected cost from $45 million to $30 million, a savings of $15 million.

Q: With respect to the use of Value Engineering, do you see compatibility between the water utility and CEG following the closing?

A: Yes. The skills and experience appear to be there if CEG follows through and applies this technique to the plans and problems of the water utility.

E. Automatic Meter Reading

Q: Will Automatic Meter Reading ("AMR") development and planning be sustained after the transition?

A: Mr. Tracy provides some commentary concerning AMR on pages 21 and 22 of his direct testimony. He points out that Citizens Gas currently has an AMR system that provides real-time metering information for certain commercial and industrial users. He also says that Citizens Gas formally evaluated mobile or fixed AMR system deployment in 2007 and found that the payback for either a fixed or mobile system exceeded 10 years. He also states that CEG's plan for potential implementation of AMR for the waterworks system is to continue to monitor the

cost of manual-reads versus an AMR system. I understand that Mr. Klein of the DOW has been studying the possibility of improving the efficiency of automated meter reading and the consolidation of this function for various utilities – water, gas, and perhaps electricity. It will be up to CEG to maintain the momentum of this effort. I believe that a consolidated AMR system could not only have economic benefits but improve customer service as well.

III. PROPOSED WATER RULES & REGULATIONS

Q: Do you have some comments about the water rules and regulations that CEG proposes to adopt from the DOW?

A: Yes. On pages 3 and 4 of her direct testimony, Citizens' witness LaTona Prentice states that it is necessary for some substantive changes to be made so that Citizens Waterworks' Terms and Conditions could be consistent with the terms and conditions of service provided to CEG's other regulated utilities. Briefly, these changes consist of the addition of a definition for the term "Hydrant Meter"; adding a provision regarding oral agreements prior to CEG ownership; replacing the remedy for unauthorized use of water service to be consistent with the CEG version for Gas Service; revising deposit and deposit refund rules to match those for Gas Service; adding a provision for the Automatic Bank Deduction Plan; adding a provision for the Duplicate Notice Protection Plan, and making a clarification that a disconnected water customer must pay unpaid water service bills and not the charges for other utility services. (See, Joint Petitioners' Exhibit

LSP-1 that is attached to my testimony.) Some specific comments that I have on certain sections are as follows:

Section 1.1 states "A customer shall not sell or give away water to anyone not specifically included in its agreement with the Utility for service." I think words need to be added to limit the strict interpretation of this rule applying to practical situations such as allowing a neighbor to use my hose to wash off his driveway. After all, I would still be paying the bill for that water.

Section 2.1.1 states "The Utility shall determine the appropriate deposit." However, it doesn't explain how CEG will determine the appropriate deposit, and what rules might apply.

Section 2.3 doesn't explain if the Utility has to return all or a portion of the deposit in certain situations.

In Section 3.7.2, concerning "Other types of hidden leaks," the application of "only one time" in the third sentence creates circumstances that are essentially unlimited, which may be unreasonable for some customers if the time period is considerable (10, 20, 30 years or longer).

In Section 4.3.2, do other charges include failure to pay a deposit? Ms. Prentice did not know the answer when asked on cross examination. Also for a deposit, can a letter of credit be used instead of cash?

Section 5.1 regarding whether the Utility or the customer is responsible for the meter pit, the meter pit cover, a hand cut-off valve, and other apparatus, the range of choices seems to vary considerably among Indiana water utilities. Is

Indianapolis Water following any known standard for the State? Why do these rules put the entire burden on the customer?

Section 6.1's last part uses a January 1, 1955 date, which seems impractical. Most water utilities in Indiana have a meter replacement program with intervals usually in the range of 10-15 years. A 55 year-old meter should not normally be in the Utility's stock.

Section 12.15 – Fourth Paragraph (in the continuation of the sentence beginning with, "If such bill remains delinquent for 7 days following….."). Should "Utility **has** Partial Owner's Share" be "Utility **his** Partial Owner's Share"?

Q: Regarding evidence presented by Joint Petitioners in this proceeding for the proposed Rules and Regulations for Water Service, do you think the Commission will be in a position to make a blanket approval?

A: No. Concerning the list of proposed substantive changes to the Department's existing Terms and Conditions for Water Service listed on page 4 of LaTona Prentice's testimony, and the list of comments I have made on certain other water rules and regulations, I believe more work will be required on the exact wording and other details. During the cross examination of CEG witness LaTona Prentice, she acknowledged that even if the Commission grants that relief, CEG will implement changes to those same rules and regulations. Ms. Prentice could not identify with specificity what those changes would be, and there is no specific information regarding changes to rules and regulations in Joint Petitioners' testimony and responses to the OUCC's data requests. Joint Petitioners request the Commission allow the proposed CEG water trust to use the rules and

regulations currently in place for the DOW on an interim basis until a full review of all of the rules can be achieved through a sub-docket.

IV. OUCC RECOMMENDATIONS

Q: Please summarize your recommendations to the Commission in this Cause.

A: My recommendations are:

- I recommend that the Commission find that CEG has the technical ability to own and operate the water system.
- Regarding CEG's request that the Commission determine that it has the technical ability to own and operate the water system, I recommend that before granting full approval of the proposed transaction, the Commission should be assured that CEG has responded adequately to the issues and potential problems discussed on pages 4-14 of my testimony either through Joint Petitioners' rebuttal testimony or through another filing. The issues include retention of skilled manpower, retention of technical training support, transfer of intellectual property used by the DOW or Veolia, ability to handle the technology, understanding the needs of the public health, and furnishing the capital resources to make improvements in the system.
- Because the OUCC cannot render an opinion on whether unknown changes in the future to the rules and regulations for the water trust are or are not in the public interest, I recommend that should the Commission approve the proposed transaction, the matter of water rules and regulations should be deferred to a sub-docket. This will allow for the necessary

review of changes proposed by CEG, once CEG has determined what those changes will be. I further recommend that until that time, the current Rules and Regulations be continued on an interim basis.[6]

- I also recommend that Joint Petitioners be required to commit to the ongoing support of the Service Advisory Board ("SAB") and the Technical Advisory Group ("TAG") which should be helpful to CEG in its future technical management of the water utility.

Q: Does this conclude your testimony?

A: Yes.

[6] For the most part, the Rules and Regulations referenced here are those in use when Cause No. 43645 for the DOW was filed with the Commission.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

By: Harold L. Rees
Indiana Office of
Utility Consumer Counselor

1/14/11
Date

Cause No. 43936

EXECUTION VERSION

SETTLEMENT AGREEMENT TO TRANSITION MANAGEMENT & OPERATIONS OF THE CITY OF INDIANAPOLIS WATER SYSTEM FROM VEOLIA WATER

This Settlement Agreement to Transition Management & Operations of the City of Indianapolis Water System from Veolia Water ("**Agreement**") is entered into by and among VEOLIA WATER INDIANAPOLIS, LLC ("VWI"), the CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF WATERWORKS (the "DOW"), and the Department of Public Utilities for the City of Indianapolis, acting through the Board of Directors for Utilities, as trustee, in furtherance of the public charitable trust for the System (as defined below) ("**CEG**") (collectively, the "**Parties**" and each individually, a "**Party**") to assist in the transition of the water system (the "**System**") to CEG. For purposes of compromise and settlement, having been duly advised by their respective counsel, the Parties stipulate and agree that the terms and conditions of this Agreement represent a fair, just and reasonable resolution of the matters set forth below, subject to the approval by the Indiana Utility Regulatory Commission ("**Commission**") as evidenced by a final, non-appealable order ("**Final Order**") without modification or further condition that may be unacceptable to any Party. This Agreement shall become effective at 12:01 a.m., Indianapolis time, on October 20, 2010, which is the date this Agreement has been fully executed ("**Effective Date**"). If the Commission does not approve this Agreement, in its entirety, this Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties and except that the provisions of Section 1.5 and Section 2.13 shall remain in force.

I. BACKGROUND

1.1. Purpose of this Agreement. After months of discussions among the Parties, the Parties have concluded that the transfer of ownership and management of the City's water and wastewater systems to CEG or its affiliates (which also currently operate gas, chilled water and steam facilities) as proposed in the Verified Joint Petition filed with the Commission in Cause No. 43936, requires a change in the management, operations and capital planning for all the utilities which will be operated by CEG and that the Management Agreement (as defined below) between DOW and VWI should be terminated to facilitate this change. The Parties have therefore agreed, as detailed herein, to transition management and operations of the System to CEG upon completion of the DOW-CEG Transaction (as defined below).

1.2. Management Agreement. VWI and DOW are parties to a Management Agreement dated March 21, 2002, and a First Amendment to the Management Agreement dated June 26, 2007 (collectively with all amendments the "**Management Agreement**"), pursuant to which VWI manages and operates the System owned by the DOW. Unless otherwise defined in this Agreement, all defined terms set forth herein shall have the meaning set forth in the Management Agreement.

1.3. DOW-CEG Transaction. DOW has agreed, subject to obtaining the approval of the Commission in Cause No. 43936, to transfer the System to CEG. The potential transaction between the City, DOW and CEG is referred to herein as the "**DOW-CEG Transaction.**" "**Closing**" as used in this Agreement shall mean the closing of the DOW-CEG Transaction.

1.4. Transition of the System. The Parties agree the System must be transitioned to CEG in a safe, thoughtful and organized fashion. The Parties wish to establish and define the Parties' respective obligations through a Transition Period (as defined below), during which (1) the Commission considers approval of the DOW-CEG Transaction, this Agreement and related matters, (2) CEG and DOW complete the DOW-CEG Transaction, and (3) CEG and VWI can coordinate transition of the VWI employees, assets, and operations related to the System to CEG. In the event the DOW-CEG Transaction does not proceed to Closing and the transition contemplated by Section 2.4 becomes effective, the Transition Period also would include the time necessary for the DOW to obtain Commission approval to engage an operator to manage the System through a competitive process and thereafter to contract with and transition management of the System to the operator.

1.5. Termination of Management Agreement. On the Effective Date, the notice of termination as contemplated by Section 10 of the Management Agreement shall be deemed to have been given to VWI by the DOW, triggering: (a) termination of the Management Agreement effective as of September 30, 2010 and giving VWI the right to payment of a termination fee under Section 10.07 as if the Management Agreement had been terminated under Section 10.04 of the Management Agreement subject to and except as otherwise provided in this Agreement; and (b) all of the Parties' respective transition rights and obligations specified in the Management Agreement during the period through March 31, 2011, which may be extended through September 1, 2011, subject to and except as otherwise provided in this Agreement.

1.6. Settlement of Differences. Certain issues have arisen regarding the termination of the Management Agreement and the transition of the System to CEG, and, in accordance with the public policy favoring settlement, the Parties now wish to resolve their differences in accordance with the terms of this Agreement.

II. TERMS AND CONDITIONS

2.1. Transition Period. As used herein, the term "Transition Period" means the period of time from the Effective Date to and including the later of the following:

(a) March 31, 2011; or

(b) The date of the Closing in the DOW-CEG Transaction; or

(c) In the event that either the DOW or CEG terminate the DOW-CEG Transaction or Closing does not occur for any reason, then such date as is necessary for the DOW to engage an operator to manage the System through a competitive process, obtain any necessary approvals from the Commission and transition management of the System to the new operator, but in no event later September 30, 2011. This date may be extended on a month to month basis beyond September 30, 2011 but not beyond March 2012 by the DOW by notice to VWI accompanied by monthly payments of $100,000 for each month of extension.

2.2. Transition Services. Unless otherwise specified by the terms of this Agreement, VWI shall continue to provide the Services required by, and in accordance with, Section 10.09

and the other applicable provisions of the Management Agreement through the Transition Period, including without limitation:

(a) VWI shall continue to perform all of its obligations under the Management Agreement, including, without limitation, its obligations under Section 4.01 of the Management Agreement, recognizing CEG as the DOW's permitted assignee under the Management Agreement, including, without limitation, under Section 13 thereof;

(b) VWI shall cooperate with the DOW and CEG to effectuate the transition of the System to CEG, including the provision of training and "know-how" in the procedures and techniques employed by VWI in meeting its obligations under Section 4 of the Management Agreement;

(c) VWI shall transfer to the DOW or CEG all intellectual property owned by the DOW and used or created by VWI during the term of the Management Agreement, including, but not limited to, the DOW's licenses, data, source codes and software, used in, updated or created for the operation of the System;

(d) VWI shall confirm an irrevocable, unrestricted and royalty-free license in favor of the DOW and, upon Closing, CEG, of any formulas, processes, know-how, technology, innovations, computer software, trade secrets and other intellectual property owned by VWI or its Affiliates and used by VWI and necessary for the operation of the System, including, without limitation, the existing customer billing and collection system. To the extent such property is not otherwise transferable to the DOW, the Parties anticipate that CEG will likely need the cooperation of VWI after Closing regarding access to certain of VWI's computer systems (such as the customer billing and collection system), and VWI shall provide such cooperation and reasonable access after Closing without cost except for payment for any reasonable documented out-of-pocket expenses of VWI, which shall be reimbursed by CEG;

(e) Within sixty (60) days of the Effective Date, VWI shall provide written notice to the DOW and CEG of all outstanding commitments for procurement of vehicles, services, materials and supplies, to be updated periodically until Closing as reasonably required by CEG. VWI shall cancel any such outstanding commitments upon written request from the DOW or CEG. In addition, VWI shall exercise all reasonable diligence to cancel or divert to other activities its outstanding commitments for procurement or personal services, if the DOW or CEG, in either of their sole discretion, so requires;

(f) VWI shall facilitate the transfer and employment of any manager(s) or personnel employed as of the Effective Date or thereafter whom CEG desires to hire and who may desire to be employed by CEG. VWI recognizes and understands that the transition envisioned by this Agreement may well result in the DOW's or CEG's employing or attempting to employ some or all of the managers or personnel employed by VWI. VWI shall have no covenant not to compete or other restrictions on the DOW or CEG hiring any VWI employees who are employed as of the Effective Date or thereafter in connection with the operation of the System;

(g) VWI shall prepare a physical inventory of all Equipment and Inventory as of a date mutually and reasonably acceptable to the Parties;

(h) VWI shall comply with the information and documentation delivery requirements set forth in Section 5.06(c) and (d) of the Management Agreement by a date mutually and reasonably acceptable to the Parties;

(i) VWI shall provide DOW and CEG the reports described on Exhibit 8 to the Management Agreement and such other reports as the DOW or CEG may reasonably request to effectuate a smooth transition, which requests shall not be unreasonably denied;

(j) VWI shall comply with all of the covenants set forth in the Management Agreement that specifically survive termination, except as otherwise expressly provided in this Agreement; and

(k) VWI shall cooperate with the DOW and CEG through the Transition Period regarding any tail or similar insurance coverage that either the DOW or CEG may seek to obtain, at its sole cost and expense, with respect to any possible contractual indemnity or other claims referenced in Sections 2.11 and 2.12.

Promptly following the execution of this Agreement, CEG and VWI will appoint transition teams to work with the Department of Public Works and the DOW to develop a transition plan and to manage the transition process. CEG and VWI will report periodically to the DOW.

2.3. VWI Fixed Fee for Services Rendered Through March 31, 2011. Effective October 1, 2010 through the earlier of Closing or March 31, 2011, the DOW shall pay VWI for performing Services a monthly flat fee of $3.5 million for October 2010 (without duplication) and monthly flat fee of $4.5 million per month for each month from November 2010 through March 2011, payable on the first day of each month commencing November 1, 2010. The amounts paid by the DOW to VWI for management fees to date in 2010 plus the amounts contemplated by this Section, annualized, will not exceed the 2008 test year amount of management fees authorized by the Commission's June 30, 2009 order in Cause No. 43645.

2.4. Additional Transition. The Parties anticipate that Closing may occur after March 31, 2011. Consequently, DOW and VWI agree that VWI shall continue to be responsible for the continued safe and reliable operation of the System pursuant to the applicable operations and maintenance terms and conditions (and, if VWI agrees to perform capital projects, the capital project provisions) of the Management Agreement after March 31, 2011 and through the remainder of the Transition Period. This includes, without limitation, the terms and conditions set forth in Sections 4, 5.05, 5.06, 6, 7, 8, 9, 12 (subject to step down) and 13 of the Management Agreement. The Services to be provided by VWI under the Transition Agreement shall include the Services identified in the subparagraphs to Section 2.2. The fee to VWI for its Services from April 2011 through August 2011 shall be a monthly flat fee of $5.5 million for each month, payable on the first day of each month. If the DOW exercises the extension described in Section 2.1(c), the monthly fee to VWI beginning September 1, 2011 and for each month thereafter shall be VWI's costs plus 3%, with costs determined in the same manner that VWI has historically

determined costs, plus the monthly extension fee of $100,000 described in Section 2.1(c). If the DOW is prevented from paying the full amount due VWI in any month, then any unpaid amount will reduce the $5 million credit otherwise due under Section 2.7 and, if the unpaid amount exceeds the amount of that credit, the remaining unpaid amount shall increase the amount of the DOW Payment due at Closing, if Closing occurs, and, otherwise, at the DOW's election, shall either increase the amount of the termination payment due under Section 2.13 or be forgiven if the DOW releases all claims against VWI.

2.5. Cooperation. In accordance with Section 10.09 of the Management Agreement, VWI and DOW shall cooperate fully through the Transition Period in all aspects of any transition of the management and operation of the System and thereafter shall take such actions concerning transition as are provided in Section 2.4. The transition shall be either to CEG pursuant to the DOW-CEG Transaction or pursuant to a new contract with an operator after the DOW submits a request for proposals if the DOW-CEG Transaction does not close. VWI shall be entitled to submit a response to any such request for proposals. This cooperation shall include, but not be limited to, VWI's providing access to its billing and operations systems and software to CEG or any other operator for a reasonable period on terms that do not involve duplication of any cost contemplated by Section 10.09 of the Management Agreement.

2.6. Termination Payment. At Closing, VWI shall be paid a lump sum payment of $29.0 million in immediately available funds from the Cash Escrow Account (as defined in the DOW-CEG Transaction purchase agreement) (the "**Final Termination Payment**"). In addition, at Closing, the DOW shall pay VWI $5.0 million (the "**DOW Payment**"), subject to the credit in Section 2.7(a). Nothing in this Agreement shall require CEG to bear any amount of the Final Termination Payment beyond payment of $29.0 million out of the Cash Escrow Account.

2.7. Credits.

(a) If the DOW has paid all or a portion of the amounts due VWI under Section 2.3, VWI shall credit up to $5.0 million against the DOW Payment otherwise due under Section 2.6 or against the termination payment due under Section 2.13; provided, however, the credit will equal the amount the DOW paid VWI from November 2010 through March 2011, to the extent the amount the DOW paid exceeds $3.5 million per month.

(b) The DOW and CEG shall receive a credit against the Final Termination Payment equal to 7.5% of the total cost of any Capital Projects, if any, that are (i) awarded to VWI between the Effective Date and the end of the Transition Period, and (ii) ultimately performed by, or managed by, VWI and payable to VWI by DOW or CEG (with appropriate adjustments for Capital Projects in process at the end of the Transition Period).

2.8. Assignments. At the end of the Transition Period, VWI shall assign, and CEG or the DOW, as the case may be, shall assume: (i) the contracts as contemplated by Section 10.09(e) of the Management Agreement; and (ii) the benefit plans and assets and liabilities contemplated by Section 10.13 of the Management Agreement.

2.9. Letter of Credit; Guaranty. VWI affirms and represents that, notwithstanding any provision in this Agreement, the Letter of Credit provided for in Section 12 of the Management Agreement remains in full effect throughout the Transition Period, and may be drawn upon by the DOW for any of the reasons and pursuant to the terms set forth in Section 12 of the Management Agreement. The Letter of Credit provided under Section 12 of the Management Agreement shall be released when any monetary obligations of VWI to the DOW as of the end of the Transition Period have been discharged. VWI also reaffirms that the Guaranty remains in full force and effect. As of April 1, 2011, VWI shall provide a guaranty of its obligations under Section 2.2 from Veolia Water North America Operating Services, LLC and the existing guaranty shall be released and the amount of the aforementioned Letter of Credit shall be reduced to the amounts as set forth below:

Month	Amount
April	$35 million
May	$30 million
June	$25 million
July	$20 million
August	$15 million
September	$10 million
Thereafter through the end of the Transition Period	$10 million

The Letter of Credit is not assignable by the DOW.

2.10. Release by VWI. Upon either the Closing or the termination of the DOW-CEG Transaction purchase agreement (**"Release Time"**), VWI, for itself and on behalf of its affiliates, parent corporations, members, partners, principals, subsidiaries, officers, directors, attorneys, employees, representatives, predecessors, assigns and successors (**"VWI Release Parties"**), except as noted below, releases, acquits, and forever discharges the DOW and its officers, directors, attorneys, consultants, employees, representatives, assigns and successors (**"DOW Release Parties"**) and CEG and its officers, directors, trustees, subsidiaries, parents, affiliates, attorneys, consultants employees, representatives, assigns and successors (**"CEG Release Parties"**) from any and all actions, claims, demands, costs, expenses, liability of any kind, obligations, past actions or omissions, deeds or misdeeds, claims and counterclaims, whether arising by statute, tort, contract or otherwise, including, but not limited to, misrepresentations, negligence, and willful and wanton conduct, whether known or unknown, asserted or unasserted, for direct, indirect, special, liquidated, unliquidated, statutory, financial, consequential, or punitive damages or any other relief in law or equity, arising from the beginning of time to the Release Time.

This release, however, shall not apply to (A) any claims by VWI or any VWI Release Parties for amounts properly payable to VWI under the Management Agreement (as amended) as

of September 30, 2010; (B) any appeal from the Commission's Final Order in Cause No. 43645; (C) VWI's rights to receive the consideration to be paid VWI hereunder or any other obligation of the DOW or any DOW Release Parties under or required by this Agreement; or (D) any obligation of the DOW or any DOW Release Parties under any provision of the Management Agreement that in accordance with its terms survives termination of the Management Agreement, including any claim for indemnity, provided that such claim was asserted prior to the Release Time. For the avoidance of doubt, any claims against the DOW or the DOW Release Parties arising under provisions in the Management Agreement that survive termination of the Management, including any claims for indemnity, that are not asserted prior to the Release Time, shall be included in the above release and thus released and waived. For purposes of this Section 2.10 and Sections 2.11 and 2.12, "asserted" shall mean any claim under the Management Agreement or this Agreement that has been submitted in writing by a Party to another Party.

2.11. Release by the DOW. At the Release Time, the DOW for itself and on behalf of the DOW Release Parties releases, acquits, and forever discharges VWI and the VWI Release Parties, from any and all actions, claims, demands, costs, expenses, liability of any kind, obligations, past actions or omissions, deeds or misdeeds, claims and counterclaims, whether arising by statute, tort, contract or otherwise, including, but not limited to, misrepresentations, negligence, and willful and wanton conduct, whether known or unknown, asserted or unasserted, for direct, indirect, special liquidated, unliquidated, statutory, financial, consequential, or punitive damages or any other relief in law or equity, arising from the beginning of time to the Release Time.

This release, however, shall not apply to (A) any obligation of VWI or any VWI Release Parties under or required by this Agreement, or (B) any obligation of VWI or any VWI Release Parties under any provision of the Management Agreement that in accordance with its terms survives termination of the Management Agreement, including any claim for indemnity, but only to the extent that such claim (i) was asserted prior to the Release Time; or (ii) is covered by VWI's insurance or any indemnity of any third party or other obligation of any third party, but only to the extent of such insurance or indemnity or other obligation. For the avoidance of doubt, any claims against VWI or the VWI Release Parties arising under provisions in the Management Agreement that survive termination of the Management Agreement, including any claims for indemnity under Section 6 of the Management Agreement, to the extent not asserted prior to the Release Time or not covered by VWI's insurance, indemnity of a third party or other obligation of a third party shall be included in the above release and thus released and waived.

2.12. Release by CEG. At the Release Time, CEG for itself and the CEG Release Parties releases, acquits, and forever discharges VWI and the VWI Release Parties from any and all actions, claims, demands, costs, expenses, liability of any kind, obligations, past actions or omissions, deeds or misdeeds, claims and counterclaims, whether arising by statute, tort, contract or otherwise, including, but not limited to, misrepresentations, negligence, and willful and wanton conduct, whether known or unknown, asserted or unasserted, for direct, indirect, special liquidated, unliquidated, statutory, financial, consequential, or punitive damages or any other relief in law or equity, arising from the beginning of time to the Release Time.

This release, however, shall not apply to (A) any obligation of VWI or any VWI Release Parties under or required by this Agreement, or (B) any obligation of VWI or any VWI Release Parties under any provision of the Management Agreement that in accordance with its terms survives termination of the Management Agreement, including any claim for indemnity, but only to the extent that such claim (i) was asserted prior to the Release Time; or (ii) is covered by VWI's insurance or any indemnity of any third party or other obligation of any third party, but only to the extent of such insurance or indemnity or other obligation. For the avoidance of doubt, any claims against VWI or the VWI Release Parties arising under provisions in the Management Agreement that survive termination of the Management Agreement, including any claims for indemnity under Section 6 of the Management Agreement, to the extent not asserted prior to the Release Time or not covered by VWI's insurance, indemnity of a third party or other obligation of a third party shall be included in the above release and thus released and waived. VWI, the DOW and CEG agree that upon Closing the DOW shall make an assignment to CEG of VWI's insurance, indemnity of third parties and other obligations of third parties which are excluded from the release by the DOW in Section 2.11 so that CEG has the benefit of any such items. The Parties shall effectuate a risk management transition process to achieve this objective after each Party has had an opportunity to review and study cost effective approaches to doing so, with the understanding that VWI agrees to explore adding CEG as an additional insured on its policies of insurance procured in accordance with the Management Agreement so long as it can be done without material cost or material effort on the part of VWI and its advisors.

2.13. Failure to Approve. If (a) this Agreement is not approved by the Commission through a Final Order effective no later than the later of (i) the last day of the Transition Period or (ii) the day before the Closing, (b) if the Commission refuses to approve this Agreement or (c) if the CEG Transaction purchase agreement is terminated, then (t) the Management Agreement will remain terminated; (u) VWI shall continue to provide the Services required by, and in accordance with, Section 10.09 and other provisions of the Management Agreement through the Transition Period, as contemplated in Sections 2.2 and 2.4 of this Agreement; (v) VWI will provide the Service described in Section 2.4 of this Agreement through the Transition Period; (w) DOW shall make the payments provided for in Sections 2.1, 2.3 and 2.4 of this Agreement in lieu of payments otherwise payable under Section 10.09(b) of the Management Agreement and any make other payments contemplated by Section 10 of the Management Agreement, including the termination payment contemplated by Section 10.07, except as otherwise provided in subparagraph (y) and (z) of this Section 2.13; (x) DOW and VWI shall comply with the other provisions of Section 10 of the Management Agreement; (y) VWI shall credit DOW the amount, if any, provided for in Section 2.7(b), subject to Section 2.4; and (z) the releases provided for in this Agreement shall be void, thus allowing the Parties to assert any claims that would have been released (except any DOW claims if the DOW makes the election to release all claims as permitted by Section 2.4).

2.14. Not Severable. This Agreement is not severable and shall be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Party.

III. REPRESENTATIONS OF THE PARTIES

By signing this Agreement, each Party represents and warrants as follows:

3.1. Due Authorization. The execution of this Agreement by the Parties has been duly and validly authorized by all necessary action on the part of each Party, and no other proceedings on the part of any such Party is necessary to authorize the execution, delivery and performance of this Agreement.

3.2. Valid and Binding. This Agreement has been duly executed and delivered by each Party and constitutes a legal, valid and binding obligation of each Party enforceable against such Party in accordance with its terms, except to the extent that enforceability may be limited by applicably bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally.

3.3. Binding Management Agreement. The Management Agreement is and shall remain a valid and enforceable agreement between the parties thereto as modified by the terms of this Agreement.

3.4. Advice of Counsel and Full Understanding. Each Party has had the benefit of professional advice from its attorneys throughout the negotiation of this Agreement. With the benefit of such professional advice, each Party has been fully informed of the contents, terms, conditions and effects of this Agreement, has read and understood this document and has had its contents fully disclosed and explained to it by its attorneys, and understands the same.

3.5. Assumption of Risk. Each Party expressly assumes the risk of any and all information which exists as of the Effective Date of this Agreement, but is not known or suspected to exist (whether through ignorance, oversight, error, negligence or otherwise), and which, if known, would materially affect its decision to enter into this Agreement.

3.6. Claims Being Released. Each Party is the sole owner of the rights and claims that each is releasing under and by reason of this Agreement and the rights and claims that the Party is releasing under and by reason of this Agreement have not been and may not be, sold, assigned, pledged or otherwise transferred to any person or entity.

IV. PRESENTATION OF THE AGREEMENT TO THE COMMISSION

4.1. Filing with the Commission. The Parties shall support this Agreement before the Commission and request that the Commission expeditiously accept and approve the Agreement. The Parties shall jointly move for leave to file this Agreement and supporting evidence in Cause No. 43936 (or in another Commission proceeding as mutually agreed by the Parties) in accordance with the conditions set forth below. Such evidence shall be admissible into evidence without objection from the Parties and the Parties hereby waive cross-examination of each of their witnesses. If the Commission fails to approve this Agreement in its entirety without any change or with condition(s) unacceptable to any Party, the Agreement shall be void, except for Section 1.5 and 2.13, and the Parties' supporting evidence shall be withdrawn.

4.2. Final Order. Upon entry of a Final Order approving this Agreement, the agreements contained herein shall be unconditional, effective and binding on the Parties.

4.3. Announcements. The Parties shall agree on the form, wording and timing of public/media announcement (if any) of this Agreement and the terms thereof. No Party will release any information to the public or media prior to the aforementioned announcement. The Parties may respond individually without prior approval of the other Parties to questions from the public or media, provided that such responses are consistent with such announcement and do not disparage any of the Parties. Nothing in this Agreement shall limit or restrict the Commission's ability to publicly comment regarding this Agreement or any Order affecting this Agreement.

4.4. Time is of the Essence. The Parties agree to urge the Commission to review the Agreement on an expedited basis and, if it finds the Agreement is reasonable and in the public interest, to approve this Agreement on or before March 31, 2011.

4.5. Support of Payment by the DOW. The DOW covenants and agrees to reasonably support, in the pending rate case (Cause No. 43645), the payment to VWI of any amounts owed VWI under the Management Agreement.

V. OTHER AGREEMENTS OF THE PARTIES

5.1. No Admissions. It is understood that this Agreement is reflective of a negotiated settlement and neither the making of this Agreement nor any of its provisions shall constitute an admission by any Party to this Agreement in this or any other litigation or proceeding. It is also understood that each and every term of this Agreement is in consideration and support of each and every other term.

5.2. Not Precedent. Neither the making of this Agreement (nor the execution of any of the other documents or pleadings required to effectuate the provisions of this Agreement), nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

5.3. CEG's Rights. The Parties agree that nothing in Section 13.18 of the Management Agreement will preclude CEG from enforcing any rights it has under this Agreement.

5.4. Agreement to Arbitrate. The DOW and VWI agree to submit to binding arbitration with William Baten in Indianapolis, Indiana, any claims by VWI for any amounts that VWI contends are owed to VWI under the Management Agreement (as amended) as of September 30, 2010, including any receivables or any portion of any receivable that (a) VWI contends are owed to VWI under the First Amendment to the Management Agreement and (b) are specifically disallowed for ratemaking purposes in the pending rate case (Cause No. 43645). VWI's award for all such claims in any such arbitration shall be a maximum of $3.5 million. If VWI decides to arbitrate, VWI shall initiate any such arbitration within three months of the IURC's Final Order in Cause No. 43645. DOW may oppose VWI's claim on any ground other than VWI's breach of the Management Agreement.

5.5. No Waiver. This Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

5.6. Evidence. The evidence in support of this Agreement constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible after the execution of this Agreement.

5.7. Confidential. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Agreement all relate to offers of settlement and deliberative materials and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

5.8. Further Assurances. Each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the transactions contemplated by this Agreement. The Parties each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement. VWI shall cooperate with the DOW's and CEG's transition planning and procedures and shall provide the DOW and CEG and their representatives with reasonable access to its files and records and to any facilities or properties upon request during normal business hours.

5.9. Rules of Construction. Each Party expressly understands and agrees that this Agreement shall be given a fair and reasonable construction in accordance with the intention of the Parties and without applying a presumption that the terms hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the same, it being agreed that representatives of each party have participated equally in the preparation hereof.

5.10. Controlling Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. The Parties irrevocably agree and consent to the jurisdiction of the courts of the State of Indiana and the federal courts of the United States, sitting in Indianapolis, Indiana, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed exclusively in a state or federal court located in Marion County, Indiana, and all objections as to personal jurisdiction are waived.

5.11. Remedies. The Parties recognize that if any of the Parties refuses to perform under the provisions of this Agreement, monetary damages alone may not be adequate to compensate the other Party for its injury. The Parties may therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement.

The rights and remedies of each Party hereunder shall be cumulative and no failure to exercise any right or remedy shall constitute a waiver thereof as to any default or breach or any subsequent default or breach. Should disputes arise regarding this Agreement or the Management Agreement during the Transition Period, the Parties shall first follow the dispute resolution procedures set forth in Section 7 of the Management Agreement before resorting to any litigation, except that (i) the Coordination Committee referenced therein shall be replaced with a three (3) person committee with a representative from DOW, CEG and VWI (which representatives shall be appointed on or before the Effective Date), and (ii) any Party shall have the right to request injunctive relief to maintain the status quo while any such dispute is being resolved.

5.12. No Appeal or Litigation. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Agreement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Agreement). The Parties shall support or not oppose this Agreement in the event of any appeal or a request for a stay by a person not a party to this Agreement or if this Agreement is the subject matter of any other state or federal proceeding. From the Effective Date and throughout the Transition Period, the Parties covenant and agree not to commence litigation against any other Party in connection with the matters covered by this Agreement or related to acts or omissions related to the Management Agreement, except for any claims by VWI for amounts owed it under the Management Agreement, as amended, as of September 30, 2010 or any appeal of any order entered in Cause No. 43645.

5.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.14. Entire Agreement. This Agreement is an integrated contract, constitutes the entire agreement between the Parties, and supersedes all earlier agreements of the Parties. It may not be modified or amended except in writing signed by all Parties hereto.

6372282v9

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, WE HAVE EXECUTED THIS AGREEMENT THIS 20th day of October, 2010.

Consolidated City of Indianapolis, Department of Waterworks

By: _____
Printed: Matthew Klein
Title: Executive Director
Date: 10/20/10

The Department of Public Utilities for the City of Indianapolis, acting through the Board of Directors for Utilities ("Citizens Energy Group")

By: _____
Printed: _____
Title: _____
Date: _____

Veolia Water Indianapolis, LLC

By: _____
Printed: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, WE HAVE EXECUTED THIS AGREEMENT THIS 20th day of October, 2010.

Consolidated City of Indianapolis, Department of Waterworks

By: _____
Printed: _____
Title: _____
Date: _____

The Department of Public Utilities for the City of Indianapolis, acting through the Board of Directors for Utilities ("Citizens Energy Group")

By: Aaron A. Johnson
Printed: Aaron A. Johnson
Title: VP- Integration
Date: 10/20/10

Veolia Water Indianapolis, LLC

By: _____
Printed: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, WE HAVE EXECUTED THIS AGREEMENT THIS 20th day of October, 2010.

Consolidated City of Indianapolis, Department of Waterworks

By: _____
Printed: _____
Title: _____
Date: _____

The Department of Public Utilities for the City of Indianapolis, acting through the Board of Directors for Utilities ("Citizens Energy Group")

By: _____
Printed: _____
Title: _____
Date: _____

Veolia Water Indianapolis, LLC

By: _____
Printed: Blake J. Clarke
Title: EVP
Date: October 20, 2010

Petitioners' Exhibit LSP-1

WATER SERVICE TARIFF
RATES, TERMS AND CONDITIONS
FOR WATER SERVICE WITHIN
MARION COUNTY, INDIANA

Issued By The

Department of Public Utilities for
The City of Indianapolis, acting by
and through The Board of Directors for Utilities,
as Trustee, in furtherance of a Public Charitable Trust for
the Water System d/b/a Citizens Waterworks
2020 North Meridian Street
Indianapolis, Indiana 46202

Martha D. Lamkin
President of
Board of Directors

Carey B. Lykins
President, and
Chief Executive Officer

Petitioners' Exhibit LSP-1

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2020 N. Meridian Street
Indianapolis, Indiana 46202 **ORIGINAL PAGE NO. 1**

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RULES

APPLICATION

The terms and conditions for service, as set forth here and as amended and supplemented from time to time, shall govern all water service rendered or to be rendered by the Utility. They shall be binding upon every Customer and constitute a part of the terms and conditions of every contract for water service, whether expressly incorporated therein or not.

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Indianapolis, Indiana 46202

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DEFINITIONS

The following terms as used in these rules have the following meanings:

ACTIVE SERVICE -	Service is on from the main to the Premises, and water service is being billed.
BRANCHED SERVICE PIPE -	A pipe connected to the primary Service Pipe that supplies water to a Premises.
COMMISSION -	Indiana Utility Regulatory Commission.
COMMISSION'S RULES -	Rules, Regulations and Standards of Service for Utilities Rendering Water Service in Indiana, adopted by the Commission on September 27, 1977, in Cause No. 34805, as revised, supplemented and replaced from time to time.
CUSTOMER -	An individual, firm, corporation, government agency or other entity being supplied with water utility service by the Utility.
EASEMENT -	An interest in land owned by another that entitles the Utility to a specific, limited use.
FIRE METER -	A device owned by the Utility which measures and records the quantity of water supplied to the Customer both for private fire service and for use other than private fire service.
HYDRANT METER -	A device owned by the Utility which temporarily is connected to one of its hydrants and measures and records the quantity of water supplied to the Customer on a temporary basis.
INACTIVE SERVICE -	Water service is available from the main to the Premises, but water service is not being billed.
MAIN -	A pipe owned by the Utility, located within a public right-of-way or an easement granted to the Utility or reserved for utilities, which delivers water to fire hydrants and Service Pipes.
METER -	A device owned by the Utility which measures and records the quantity of water supplied to the Customer.
PERSON -	An individual, firm, corporation, governmental agency or other entity.
PLUMBER -	A person performing plumbing service and bonded to the Utility's satisfaction.

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Indianapolis, Indiana 46202

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POTABLE WATER SUPPLY - Water meeting the drinking water quality standards enumerated in 327 IAC 8-2.

PREMISES - The whole or part of a dwelling, building, or structure owned, leased or operated by a single legal entity located on a single parcel or contiguous parcels of real estate and receiving water service as approved by the Utility. Examples of buildings and the corresponding number of Premises are as follows:

Example	No. of Premises
Residential House	1
Commercial Building(s)	1 per building
Double	2
Condominium	1 per owner
Apartment Complex	1 per complex

Each lot or service building will be considered a Premises, and therefore, served by a separate Service Pipe. Any exception to this must be approved by the Utility. If the situation is not described by one of the above examples or is unusual, the Utility will give such special consideration as the circumstances require in its judgment.

PRIMARY SERVICE PIPE - A pipe connected to a Utility Main that supplies water to more than one Premises.

PUBLIC RIGHT OF WAY - The entire right-of-way of a road, street or way which has been dedicated for use by the public and accepted by the appropriate governmental authority.

RESIDENTIAL CUSTOMER - A person being supplied with water service by the Utility exclusively for residential purposes.

SERVICE PIPE - A supply line connecting a Premises directly to the Utility's Main located (a) in a Public Right-of-Way adjacent to the real estate upon which such Premises is located, (b) in an Easement on, over or under the real estate upon which such Premises is located, (c) in an Easement adjacent to the Public Right-of-Way adjacent to the Customer's Premises, or (d) in an isolated Premises in a commercial/industrial complex.

SERVICE STOP - A valve inserted in the Service Pipe between the Main and the Meter for the purpose of turning water on and off.

TAP - A fitting owned and installed by the Utility in order to connect a Service Pipe to the Main.

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Indianapolis, Indiana 46202

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UTILITY -	The Department of Public Utilities for the City of Indianapolis, acting by and through the Board of Directors for Utilities, as trustee of a public charitable trust for the water system, doing business as Citizens Waterworks, 2020 N. Meridian Street, Indianapolis, Indiana 46202, or any professional management firm that has been retained by Citizens Waterworks to operate its water utility facilities and that is acting in its capacity as the agent or representative of the Citizens Waterworks.
UTILITY'S RATE SCHEDULES -	The Utility's schedules of rates and charges as approved by the Commission and may be revised, supplemented, and replaced from time to time.

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Citizens Waterworks
2020 N. Meridian Street
Indianapolis, Indiana 46202

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RULE 1. COMMENCEMENT OF SERVICE

1.1 General. A prospective Customer shall not connect or reconnect service, nor employ any person to do so, without authorization by the Utility. All service rendered by the Utility shall be solely for the uses and Premises designated by the prospective Customer at the time service is requested and subject to, and in accordance with, these rules and regulations and the Utility's Rate Schedules. A Customer shall not sell or give away water to anyone not specifically included in its agreement with the Utility for service.

1.1.1 No promises, agreements or representations of any agent, employee or authorized representative of the Utility, or its predecessor, shall be binding upon the Utility unless the same shall have been incorporated in a written contract or application.

1.2 Metered Domestic and Fire Service. A prospective Customer desiring metered water service to a Premises connected by an existing Service Pipe to a Main shall notify the Utility either in writing or by telephone at least three days before the desired connection date. A prospective Customer desiring metered water service to a Premises not connected by a Service Pipe to a Main shall have his Plumber submit to the Utility a written application for plumbing permit, allowing at least three working days for the application approval before calling to schedule the Tap. After the application for service is approved, all Taps will be scheduled in the order received by the Utility. The connection shall not be made until the Utility authorizes the Plumber to connect a Service Pipe to the Tap. For ¾-inch and 1-inch service lines, the Utility shall install a Meter at the time of the service connection. Service commences for the Customer when the Meter is set. For service lines larger than 1-inch, the prospective Customer may request and obtain service in accordance with these rules.

1.3 Unmetered Fire Service. The Utility will commence public or private unmetered fire service after a prospective Customer application has been approved and a confirmation letter has been sent to the applicant. The Utility will not furnish unmetered fire service to a Premises unless metered water service for use other than fire service is also being supplied to the Premises. Unmetered fire service commences for the Customer when the Service Stop is turned on.

1.4 Emergency Service. When necessary for the health or safety of a Customer or his/her property, the Utility may authorize temporary emergency water service in any manner appropriate to the circumstances and consistent with sound engineering practice and will charge the Customer involved in such service, during the period of emergency, the appropriate charges prescribed in the Utility's Rate Schedules for the water usage and size of Meter through which they receive water service.

1.5 Unauthorized Use of Water. Unless authorization for water service has been granted by the Utility, water shall not be turned on at any Premises by anyone other than the Utility's representatives, except that a Plumber authorized by the Utility to connect a Service Pipe to a Tap may temporarily turn on the water to test his work. The Plumber shall turn the water off immediately after testing. Before and after such test, the Utility may lock the valve on the upstream side of the Meter in the closed position until commencement of service is authorized by the Utility. If the water is turned on or left on, in violation of this or any other applicable rule, the Customer or other person determined by the Utility to be responsible shall pay the cost of water service for the Premises for such time as the water was on without authority from the Utility.

1.5.1 Upon detecting a device or scheme which has been utilitzed to avoid or attempted to avoid full payment for water service, the Utility may, after estimating the volume of water service so used.

Petitioners' Exhibit LSP-1

1.5.1.1 Immediately disconnect such water service without notice pursuant to Rule 4.2.

1.5.1.2 Bill and demand immediate payment from the person benefiting from such device or scheme the actual costs of water used, corrections and repairs, or two hundred dollars ($200.00), whichever is more.

1.5.1.3 Bill any and all damages as provided by Indiana Code 34-24-3-1 et seq. based upon the Utility's reasonable and customary estimate thereof.

RULE 2. CUSTOMER SECURITY DEPOSITS

2.1 Deposit Requirements. The Utility may require a cash security deposit ("deposit" in this Rule 2) in an amount not to exceed one-sixth (1/6) of the expected annual billings for the Premises served if the Residential Customer has (1) been mailed disconnect notices for two consecutive months or any three months within the preceding twelve months or (2) had service discontinued for nonpayment of bills. If the deposit required is in excess of $70, it may be paid in equal installments over a period not to exceed eight weeks, except where the deposit is required as a result of disconnection of service for nonpayment of bills, in which case full payment of the deposit will be required prior to reconnection.

2.1.1 The Utility may require Customers or Applicants for Water Services that are not Residential Customers to make a cash deposit at any time to assure payment of bills, and as a condition of receiving or continuing to receive Water Services. Such deposit shall not be less than forty dollars ($40.00), nor more than the amount of the bill for any three (3) consecutive months known or estimated to have the highest water consumption. The Utility shall determine the appropriate deposit.

2.2 Interest on Deposits. A deposit made pursuant to this Rule 2 and held for more than thirty (30) days will earn interest calculated monthly at the authorized rate of interest for the current month from the date the deposit is paid in full to the Utility. The rate of interest will be established by the commission in a general administrative order for each calendar year.

2.3 Refunds of Deposits to Continuing Customer. Deposits from Residential Customers will be refunded after the Residential Customer has established an acceptable payment record in accordance with the Commission's Rules. The deposit of any non-residential Customer or the deposit of a Residential Customer who fails to establish an acceptable payment record may be retained by the Utility until Water Services are discontinued.

2.4 Refunds Upon Disconnection. Upon disconnection of Water Services, the deposit and earned interest, if any, will be applied to the payment of any outstanding bills. The unapplied portion, if any, of the deposit and earned interest will be refunded to the Customer. The Customer will be billed for any balance due the Utility. The balance of any deposit and interest, after being applied to any outstanding bills which cannot be returned to the Customer after termination of service, shall be reported and disposed of as required by the Uniform Disclaimer of Property Interests Act (Indiana Code 32-17.5, et seq).

RULE 3. METER READINGS AND BILLINGS

3.1 Billings, Meter Readings and Estimates. All metered accounts will be billed monthly. All Meters will be read bi-monthly, unless the Customer requests regular monthly readings at the charge provided in the

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Utility's rate schedules. Readings shall be prima facie evidence of the amount of water used. Customers will be billed on the basis of estimated consumption for the first month of the reading period, and the second month will be billed on the basis of actual consumption for the total reading period, less the estimated consumption billed in the first month. Bills based on estimated consumption may also be rendered at the request of the Customer or where circumstances beyond the Utility's reasonable control require estimates, including, but not limited to, inclement weather, labor disputes, inaccessibility of a Customer's Meter or remote counter where the Utility has reasonably attempted to read it, and failure of the Meter or remote counter to register.

Estimated monthly consumption for interim billings will be based on a 12-month moving average or a seasonal average for the Premises whenever such data are available. In those circumstances where 12 months of consumption history or a seasonal moving average is not available, the estimate shall be based on the average monthly consumption for the Customer's classification, as determined for the previous calendar year, unless there is evidence currently available which would indicate that such an estimate would be inapplicable, in which case the Utility will estimate the bill based on such known circumstances.

Bills for municipal uses will be rendered monthly. Annual unmetered municipal consumption will be estimated, based on consultations, and treated as consumed evenly throughout the year as metered water.

Bills for unmetered fire service will be rendered monthly. If a Customer receives unmetered fire service through a Service Pipe in which a detector check with a bypass Meter is installed, as provided for in Rule 9.7, the Utility will read the Meter at the time of the annual fire service inspection, and the consumption shall be treated as consumed evenly over the period since the previous reading.

3.1.1 The Utility may provide an Automatic Bank Deduction Plan for Nonindustrial Customers, which will be a payment plan whereby the billed amount is deducted each month from the Nonindustrial Customer's checking account by the Nonindustrial Customer's authorized financial institution. The Utility shall continue to provide to the Nonindustrial Customer a Monthly bill.

3.2 Adjustments Following Estimated Bills. Where the Utility has billed based on estimated consumption, the first charge after a Meter reading is obtained shall be adjusted by averaging consumption over the period from the last reading, or from the date service through the Meter was begun if the Meter had not been previously read, charging for each period in accordance with the Utility's Rate Schedules for the periods and allowing credit for the amount of estimated billings.

3.3 More Frequent and Requested Readings. Any Customer may, upon written request to the Utility, obtain regular monthly readings of his Meter for such additional charge as prescribed in the Utility's Rate Schedules. Upon request of a Customer, the Utility will make a special reading of the Customer's Meter at a time other than the time of a regularly scheduled reading for the charge prescribed in the Utility's Rate Schedules. The Utility, however, shall have no duty to issue a special bill based on such off-cycle reading.

3.4 Delinquent Bills. Each bill shall be due upon receipt and payable at the Customer service office of the Utility or at such other places as may be designated by the Utility. Bills which remain unpaid for more than seventeen days following the mailing of the bill shall be delinquent, and a late payment charge in the amount set forth in the Utility's Rate Schedules will be added to the bill and owed by the Customer.

3.5 Charges Follow Customer. All charges follow the Customer and moving from one Premises to another in no way absolves the Customer from any unpaid charges incurred at a previous location. In the case of leased property, the landlord shall be responsible to the Utility for payment of the bill, even though the tenant may

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pay it. A Customer's service may be discontinued for failure to pay for service rendered to him at a previous location if such bill has remained unpaid for more than 45 days. There will be no abatement of charges by reason of the extended absence of the Customer from the Premises unless the Utility has been notified to discontinue service.

3.6 Remote Meter Reading Service. Remote Meter reading service is available to Customers being served through 5/8-inch, 3/4-inch or 1-inch Meters which are installed indoors. This service allows the Utility to read Meters located inside a structure without entering the structure. A small, weatherproof totalizer will be mounted on the outside of the structure and connected by a cable to a register mounted on the Meter. The equipment to accomplish this service will be furnished, installed, maintained and replaced, if necessary, and owned by the Utility. A remote meter reading device is a fixture at the Premises where it is installed and will not be moved to another location without the Utility's written consent.

Whenever the Utility, during normal working hours, is unable to read a Customer's Meter for twelve consecutive months, the Utility shall require installation of a remote meter reading device. Once a remote meter reading device is installed, it will remain in service until the Service Pipe to the Premises is replaced, in which event the inside Meter shall be relocated to an outside meter pit approved by the Utility and located on the Customer's property adjacent to or near the Public Right-of-Way or Easement line.

3.7 Leakage Allowance.

3.7.1 Underground leaks. Allowance for underground Service Pipe leaks or leaks in crawl spaces or concrete floors (but not leaks in underground irrigation systems) will be 75 percent of the charge for wasted water estimated from the beginning date of the leak to the date of repair, which period shall not exceed two regular reading periods unless extended by missed readings. The Utility will inspect the Premises to determine the cause of the leak. Wastage will be considered as the excess consumption over normal usage, obtained by reference to the Customer's consumption record. If there is no consumption record, the average consumption for the previous calendar year for the appropriate customer classification will be used as the normal consumption. An adjustment will be given only after the Customer has corrected the condition causing the leak and the Premises has been inspected by the Utility to determine that repairs have been properly made.

3.7.2 Other types of hidden leaks. Allowance for other types of hidden leaks (but not leaks in underground irrigation systems) will be 50 percent of the charge for wasted water. The period adjusted shall not exceed one regular reading period unless extended by missed readings. Such allowance will be considered only one time per Customer per service address, and only when all the following conditions exist: (a) consumption is at least double normal usage, (b) consumption is at least 2,000 cubic feet more than normal, (c) total consumption for the reading period exceeds 2,800 cubic feet, (d) circumstances indicate that a leak exists or had existed, (e) the leak shall have been hidden from open view, including toilet leaks and other concealed plumbing leaks, and (f) repairs have been made. Wastage will be determined as indicated in Rule 3.7.1. An adjustment will be given only after the Customer has corrected the condition causing the leak to the Utility's satisfaction.

3.8 Billing Errors. All billing errors, including incorrect tariff applications, will be adjusted by the Utility to the known date of error or for a period of one year, whichever period is shorter.

3.9 Adjustments Due to Meter Error. If a Meter is found to have a percentage of error greater than two percent during a test conducted by the Utility or the Commission at the request of the Customer, in accordance with these rules, the following adjustments of bills shall be made:

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3.9.1 Fast Meters. When a Meter is found to have a positive average error – i.e., is fast, in excess of two percent, the Utility will refund or credit to the Customer's account the amount in excess of that determined to be an average charge for one-half of the time elapsed since the previous test, or one year, whichever is shorter. This average charge shall be calculated on the basis of units registered on the Meter over corresponding periods, either prior to or subsequent to the period for which the Meter is determined to be fast. No part of a monthly service charge will be refunded.

3.9.2 Slow Meters. When a Meter is stopped or found to have a negative average error – i.e., is slow, in excess of two percent, the Utility will charge the Customer an amount estimated to be the average charge for one-half of the time elapsed since the previous test, or one year, whichever period is shorter. This average charge shall be calculated on the basis of units registered on the Meter over corresponding periods, either prior to or subsequent to the period for which the Meter is determined to be slow or stopped. Such charge will be made only in cases where the Utility is not at fault for allowing the stopped or slow Meter to remain in service.

3.10 Aggregated Meter Reading. Meter readings for a Premises will be aggregated for billing purposes, in lieu of installation of a master meter, where the Customer would be entitled to a master meter for the Premises under the Utility's current rules but was previously unable to install a master meter due to rules of the Utility then in effect. The monthly charge for this service will be pursuant to the Multiple Meter Aggregated Billing Charge as reflected on Appendix A. This rule is applicable only with respect to Service Pipe and Meter installations for which a written request for aggregated Meter readings and billings was made to, and approved by, the Utility's predecessor, the Department of Waterworks of the City of Indianapolis.

3.11 Adjustment for Water Used Through a Fire Meter. If a Customer receives water service through a Service Pipe in which a Fire Meter is installed, and water is needed and used because of a fire, the Utility, upon written notice of and within 30 days after such use, will adjust the charges owed by the Customer for the metered water service to reflect water used solely for non-fire service purposes. The adjustment will be based upon the Customer's average monthly consumption for non-fire service purposes during the previous twelve months or for such period as the Customer has received water service from the Utility for non-fire service purposes if less than twelve months.

RULE 4. DISCONNECTION OF SERVICE

4.1 Upon Customer's Request. A Customer desiring disconnection of service must notify the Utility at least three days in advance of the day on which disconnection is desired. The Utility will endeavor to disconnect the service within three working days of the requested disconnection date. The Customer shall remain responsible for all service used and the related billings until service is disconnected pursuant to the Customer's notice, except that the Customer shall not be liable for any service rendered more than three working days after the requested disconnection date.

4.2 Without Customer's Request and Without Notice. The Utility may disconnect service to a Customer without request by, or prior notice to, the Customer if:

4.2.1 there exists an unapproved cross-connection of a Customer's water pipes to any other source of water supply or any other condition about the Customer's Premises that might cause contamination of the public water supply or otherwise be dangerous or hazardous to life, physical safety or property;

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4.2.2 there is an outstanding order of a court, the Commission or other duly empowered authority directing disconnection;

4.2.3 a fraudulent or unauthorized use of water is detected by the Utility, and the Utility has reasonable grounds to believe the Customer is responsible for such use;

4.2.4 the Meter or any of the Utility's regulating or measuring equipment has been tampered with, and the Utility has reasonable grounds to believe that the Customer is responsible for such tampering; or

4.2.5 the Customer fails to meet the terms of the Utility's 24-hour payment arrangement described in Rule 4.4.

4.3 Without Customer's Request But With Notice. The Utility may disconnect service to a Customer for any of the following reasons, provided it notifies the Customer as set forth here:

4.3.1 the Customer fails to repair any leak in the Service Pipes or appurtenances between the Public Right-of-Way or Easement in which the Main is located and the Meter, or in any private fire system or unmetered facilities;

4.3.2 the Customer vacates the Premises or fails to pay his/her water bills or other charges related to his water utility service installations or facilities in accordance with these rules and the Utility's Rate Schedules, or otherwise violates any of these rules;

4.3.3 the Customer fails to provide free and nonhazardous access to the Premises and Meter so that the Utility's representatives may make meter readings and necessary inspections and maintain, replace, or remove the Meter, or fails to maintain approved Meter settings, including pits and vaults;

4.3.4 the Customer installs a new Service Pipe or appurtenances or alters or removes the existing Service Pipe or appurtenances, including the Meter, without the Utility's written consent; or

4.3.5 the Customer fails to remedy a condition or use on his Premises which, in the Utility's judgment, endangers the Utility's distribution system.

If service is to be disconnected for any of the foregoing reasons, the Utility will, at least five days (seven days in the case of a Residential Customer) prior to the proposed disconnection, mail or personally deliver notice to the Customer or a responsible person on the Premises, at the address of the Customer shown on the records of the Utility. The notice will state the date of the reason for the proposed disconnection, and the Utility's telephone number which the Customer may call during regular business hours for further information. In the case of disconnection of a Residential Customer, the notice will also contain a reference to the pamphlet furnished by the Utility to each of its Customers for information as to the Residential Customer's rights.

4.4 Procedure for Involuntary Disconnection of Residential Customers. Immediately preceding the disconnection of service to a Residential Customer, the Utility's employee designated to perform such function will attempt to identify himself/herself to the Residential Customer or other responsible person then at the Premises. The employee will announce the purpose of the visit, and a record of the visit will be maintained for at least thirty (30) days. The employee will also attempt to inform the Residential Customer or other responsible person of the reason

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for disconnection including, if the reason for disconnection is nonpayment, the amount of any delinquent bill. The employee will request from the Residential Customer any available verification that the reason for disconnection of service is no longer valid (such as, but not limited to, written evidence that the delinquent bill has been paid or evidence that the conditions, circumstances or practices which caused the disconnection have been corrected) or that the reason of disconnection is currently in dispute and under review, pursuant to Rule 11. The employee will not be required to accept payment in order to prevent the service from being disconnected for nonpayment; however, the Utility's 24-hour payment arrangement may be offered as an option to disconnection should the Customer or other responsible party offer such payment. Upon the presentation of satisfactory evidence or acceptance by the Customer or other responsible party of the Utility's 24-hour payment arrangement, service will not be disconnected. When the employee has disconnected the service, he/she will give to a responsible person at the Residential Customer's Premises, or if no one is at home, will leave at an entry way on the Premises, a notice stating that service has been disconnected and the address and telephone number of the Utility where the Customer may arrange to have service reconnected.

4.5 Duplicate Notice Protection Plan. A Residential Customer may request the Utility notify a predesignated third party of a water service disconnection notice issued to the Residential Customer. Such request shall be made in writing in the form of a Duplicate Notice Protection Plan Enrollment Application. When requested, the Utility shall notify the predesignated third party, by mail, of the pending service disconnection at the time the Utility renders the disconnection notice to the Residential Customer. The Utility may restrict the use of the Duplicate Notice Protection Plan to its Residential Customers who are elderly, handicapped, ill, or otherwise unable to act upon a service disconnection notice, as determined by the Utility.

4.6 Postponement of Disconnection of a Residential Customer for Medical Reasons. Except in the case of disconnection for any of the reasons set forth in Rule 4.2, the Utility will postpone the disconnection of service to a Residential Customer for ten days if, prior to the disconnect date specified in the disconnect notice, the Customer provides the Utility with a medical statement from a licensed physician or public health official stating that such disconnection would be a serious and immediate threat to the health or safety of a designated person in the household of the Residential Customer. The postponement of disconnection will be continued for one additional 10-day period upon the Customer furnishing the Utility an additional medical statement dated on or before the end of the first 10-day period.

4.7 Other Circumstances Postponing Disconnection of Residential Customer. The Utility will not disconnect service to a residential Customer who:

4.7.1 fails to pay for service rendered at a different Premises, metering point, residence, or location, unless such bill has remained unpaid for at least forty-five (45) days, or

4.7.2 fails to pay for service to a previous occupant of the Premises served, unless the Utility has reason to believe the Customer is attempting to defraud the Utility by using another name, or

4.7.3 establishes to the Utility's satisfaction the existence of a financial hardship as the reason for his inability to pay the full amount due and (a) pays at least $10 or one-tenth (1/10) of the delinquent bill, whichever is less, (b) agrees to pay the remainder of the outstanding bill within three months, (c) agrees to pay all undisputed future bills for service as they become due and (d) has not breached any similar agreement with the Utility within the past twelve months. The terms of the agreement must be in writing. The Utility may add to the Residential Customer's outstanding bill a late payment charge in the amount prescribed in the Utility's Rate Schedules, or

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4.7.4 is unable to pay a bill which is unusually large due to prior incorrect reading of the Meter, incorrect application of the Utility's rates schedules, incorrect connection or functioning of the Meter, prior estimates where no actual reading was taken for over two months, a stopped or slow Meter or remote meter reading device, or any human or mechanical error of the Utility, and (a) pays an amount at least equal to the Customer's average bill for the twelve (12) bills immediately preceding the bill in question, (b) agrees to pay the remainder within three months, and (c) agrees to pay all undisputed future bills for service as they become due. The terms of the agreement must be in writing. The Utility may not add to the Customer's outstanding bill any late payment charge.

4.8 Time of Disconnection. In cases of disconnection, the Utility will disconnect service between the hours of 8:00 a.m. and 3:00 p.m., prevailing local time, except that requested disconnections and disconnections for any reasons set forth in Rule 4.2, above, may be made at any time. Disconnections of service for nonpayment will be made on days on which the Utility's office is open to the public and before twelve noon (12:00 noon) of the day immediately preceding a day on which the Utility's office is to be closed to the public.

4.9 Remedies Not Exclusive. The remedies provided to the Utility in this Rule 4 shall not be exclusive and shall be in addition to any other remedies which the Utility has at law or in equity.

4.10 Reconnection. After disconnection of water service to a Premises in accordance with these rules, the Utility will reconnect the service to a Premises if (1) all conditions, circumstances or practices which caused the disconnection have been corrected, (2) all unpaid bills for water service have been paid, (3) the deposit, if required by the Utility in accordance with Rule 2.1 above, has been made by the Customer, (4) a responsible person is present in the Premises to see that all water outlets are closed to prevent damage from escaping water, and (5) the Customer has paid the Utility's Reconnection Charge as prescribed in the Utility's Rate Schedules on Appendix B.

RULE 5. METERS

5.1 Ownership and Size of Meter and Pit. All Meters shall be owned, installed, removed and maintained by the Utility. The Utility shall determine the kind and size of Meter to be used in connection with any Service Pipe. Except as provided in Rule 5.3, all meter pits, meter pit covers and other materials comprising the meter pit facilities shall be purchased, owned, installed, removed, and maintained in a safe manner by the Customer.

5.2 Location and Protection of Meter and Pit. Meters larger than 1-inch shall be installed in an approved meter pit or inside the structure served. However, if, in the Utility's judgment, a backflow prevention device is required, it shall be located adjacent to the Public Right-of-Way or Easement line unless otherwise approved by the Utility prior to installation. Meters shall always be placed upstream of backflow devices. See Rule 8 for more details. Unless otherwise approved by the Utility, Meters 1-inch and smaller shall be installed in a meter pit approved by the Utility located on the Customer's property adjacent to or near the Public Right-of-Way or Easement line.

Upon request of a Customer and before installation, the meter pit will be located at the point requested by the Customer if practicable and in accordance with sound utility standards. The meter pit must be constructed to protect the Meter from freezing and damage from vehicular traffic and located to be convenient and accessible for the Utility representatives. The pit location should be designed to prevent an inflow of surface water.

Meters which cannot be installed in outside pits shall be located inside the structure served as approved by the Utility. An inside Meter shall be as near as possible to the point where the Service Pipe enters the building in a

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clean, dry, safe place, protected from freezing and hot water and not subject to wide temperature variations. In case of damage to a Meter or any of its immediate attachments by reason of any act, neglect or omission on the part of the Customer (including, but not limited to, the freezing of an inside meter), the Customer shall pay the Utility the Damaged Meter Replacement charge prescribed in Appendix B of the Utility's Rate Schedules for repair and replacement of the Meter.

The Meter shall at all times be accessible for reading, inspection and removal for testing. The Utility reserves the right to put seals on any water Meter or on its couplings for any Premises, and may turn off the supply if such seals are found broken or removed.

5.3 Change in Location. All changes in the location of a Meter shall be approved by the Utility and, except as hereinafter provided, at the Customer's expense. Whenever the Service Pipe to a Premises having an inside Meter is replaced, the Meter shall be relocated in a meter pit approved by the Utility located on the Customer's property adjacent to or near the Public Right-of-Way or Easement line, in which case the Utility, at its expense, will provide the Customer with the Meter connection, pit cover, lid and service stop, to be installed by the Customer at his/her expense.

5.4 Multiple Meters. Where water for a Premises is metered at more than one Service Pipe for the convenience or at the request of the Customer, each location shall be billed separately except as provided in Rule 3.10. If the Utility determines that water for a Premises should be metered through more than one Service Pipe for the convenience of the Utility, meter readings shall be aggregated and billed as if from a single Meter. In no event will meter readings be aggregated for two or more Premises.

5.5 Temporary Hydrant Meters. Where temporary water service is requested from one of the Utility's hydrants, the Customer will receive this service through a Hydrant Meter assembly after executing a contract with the Utility and paying the required deposit and connection charge as prescribed in the Miscellaneous Service Charges tariff of the Utility's Rate Schedules. The Hydrant Meter will be issued by the Utility and secured to the hydrant by the Customer. The Utility reserves the right to remove its hydrant connection and Meter and terminate this service at any time it deems necessary or appropriate, without prior notice. The deposit is refundable upon service termination as provided in Rule 2.4.

Each temporary Hydrant Meter depositor shall report to the Utility by the first day of each month the amount of water which passed through the Meter during the prior month. The reports may be subject to verification by the Utility and will serve as the basis for billing for water service. In the event no report of water usage is furnished to the Utility, the charges for water service will be based on estimates as provided in Rule 3.1. Any temporary Hydrant Meter depositor who fails to report water usage for any two months during the preceding 12-month period shall pay a late reporting charge for each subsequent late reporting, as prescribed in the Non-Recurring Charges tariff of the Utility's Rate Schedules.

RULE 6. METER TESTING

6.1 Records and Procedure. Whenever a Meter in service is tested, a record will be kept of the location of the Meter, the reason for making the test and the readings of the Meter before and after the test. For the determination of Meter accuracy, the Utility will use the test flows for the various types of Meters specified from time to time in the Commission's rules. These test flows for displacement-type cold-water Meters currently are:

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Nominal Meter Size	Minimum Test Flow Gallons per Minute	Normal Test Flow Limit Gallons per Minute
5/8-inch	1/4	1 - 20
3/4-inch	1/2	2 - 30
1-inch	3/4	3 50
1 1/2-inch	1 1/2	5 – 100
2-inch	2	8 – 160
3-inch	4	16 – 300
4-inch	7	28 – 500
6-inch	12	48 – 1,000

Displacement Meters will be tested at three or more test flows. One will be at the minimum test flow. One will be at not more than 10% of the maximum normal test flow. One will be at not less than 35% of the maximum normal test flow limit.

A Meter will not be placed in service if it registers less than 95% of the water passed through it at the minimum test flow or over or under registers more than 1 1/2% in the normal test flow limits, with the exception that a repaired Meter will register not less than the following appropriate percentage of the water passed through it at the minimum test flow, and shall not over or under register more than 2% in the normal test flow limits:

If manufactured on or after January 1, 1955 — 90%
If manufactured prior to January 1, 1955 — 85%

6.2 Frequency of Testing. Meters will be inspected and tested by the Utility in accordance with the following program, known as the "Statistical Quality Control Program:"

6.2.1 The Statistical Quality Control Program shall be based on Military Standard No. 105-D, Sampling Procedures and Tables for Inspection by Attributes. Sample size code letters will be taken from Table I, General Inspection Level II. Sample size and acceptance-rejection numbers will be determined from Table II A, single sampling plan for normal inspection, using Acceptance Quality Level (AQL) 10.

6.2.2 The Meters for quality control sampling will be separated into homogenous groups by manufacturer, model, design, or other distinguishing characteristics by year set. The sample for each group will, as far as possible, be taken from routine Meter exchanges, removals, and field tests for each year, except that these Meters removed or exchanged because of known or suspected defects or for special tests may be excluded from the quality control sample.

6.2.3 If an inadequate sample of Meters is routinely exchanged or removed, the balance of Meters required for sampling will be obtained from Meters in service by removal on a randomly selected basis.

6.2.4 Beginning in the year indicated in the table below and continuing through subsequent service years, Meter groups will be sample tested annually, being allowed to continue in service until an annual sample reaches its rejection number of deviant Meters. The service life of Meter groups may be

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extended by this quality control program as long as ninety percent of the Meters in a sample group does not exceed an accuracy figure of 102.0 percent when tested at not less than 35% of its rated capacity.

5/8-inch Meters	9th year
3/4-inch Meters	7th year
1-inch Meters	5th year
1 1/2-inch Meters	3rd year

A Meter may be inspected and tested by the Utility at any time that the Utility suspects it of registering inaccurately.

6.3 Meter Tests Requested by Customers. The Utility will test the accuracy of a Meter upon written request by a Customer. The Customer shall pay the charge set forth in the Miscellaneous Service Charges tariff of the Utility's Rate Schedules for any Meter test after the first test of such Meter if (1) the test is requested within thirty-six (36) months after the last test and (2) any error of the Meter is found to be in compliance with Rule 6.1. A written report giving the results of the test will be made to the Customer within 10 days after the test has been completed.

6.4 Tests Under Commission Supervision. A test will be made of a Customer's Meter by the Utility under the supervision of an employee of the Commission upon appropriate direction by the Commission.

RULE 7. SERVICE PIPES AND OTHER FACILITIES

7.1 Installation and Ownership of Service Pipes. The Service Pipe shall be installed and owned by the Customer. The type, kind and quality of all pipe and materials installed between the Main and the Meter connection shall be subject to approval by the Utility. The Meter and Tap will be furnished, installed, maintained and replaced, if necessary, by the Utility and are its property. If the Tap is installed by the Utility outside regular working hours for the convenience of the Customer, the Customer shall be charged the actual cost to the Utility of labor and equipment used in the work. The Customer or his Plumber shall install the Meter connection, which will be furnished, owned, repaired and replaced, if necessary, by the Utility. If the connection is damaged or lost by the Customer or his Plumber, the Customer shall pay the Utility the cost thereof, but the Customer will not be held responsible for loss or damage if he/she has used reasonable care to protect the Utility's property.

7.2 Maintenance of Service Pipes. The Utility will maintain, repair or replace the portion of the Service Pipe and appurtenances between the Main and the Public Right-of-Way line made necessary by leaks.

The Customer will maintain, repair or replace the portion of the Service Pipe, and appurtenances from the Public Right-of-Way line to the Premises.

The Utility shall have no duty to maintain, repair or replace Service Pipes which are connected to a pipe in a Public Right-of-Way, which pipe, prior to the dedication of the Public Right-of Way, was a Service Pipe not owned by the Utility.

For Mains and Service Pipes installed in Easements, the Utility will maintain the Main and Tap but will not maintain the Service Pipe.

The Utility shall have no duty to maintain, repair or replace Service Pipes within a vacated Public Right-of-Way or Easements unless the Service Pipe crosses a Public Right-of-Way adjacent to the Easement.

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7.3 Disconnection of Old Service Pipes. The Utility will disconnect, at its expense, inactive Service Pipes at the Tap under the following conditions: (1) when the Utility receives a "wrecking" notification for a Premises; (2) when an active Service Pipe serves the Premises; (3) when a Customer installs a new Service Pipe; or (4) when there are no existing on-site needs for water service. If the situation is not described by one of the above conditions or is unusual, the Utility will give such special considerations as the circumstances require in its sole judgment.

All Service Pipe disconnections will be scheduled by the Utility. The Utility is under no obligation to disconnect inactive Service Pipes prior to construction of new or modified Service Pipes.

Any damages to inactive Service Pipes in the Public Right-of-Way or Easement, prior to disconnections performed by the Utility, shall be the responsibility of the property owner.

7.4 Service Pipe Installation Requirements. Service Pipes, including branches, shall be installed according to the following specifications:

7.4.1 The minimum inside diameter of the Service Pipe shall be 3/4-inch (or in accordance with the building code applicable to the area).

7.4.2 The Service Pipe shall run in a straight line perpendicular to the Main or from the Main to the property line or Easement line of the Premises being served. Any exceptions to this practice must be approved by the Utility.

7.4.3 The Service Pipe shall be installed and maintained with a minimum cover of 4 1/2 feet from the Main to a point where the Service Pipe is otherwise protected from freezing.

7.4.4 The Service Pipe shall include a Service Stop of the type approved by the Utility. Service Pipes for Meters one-inch or smaller installed in an outside meter pit shall have a Service Stop with a locking device, which is a part of the meter-holding connection furnished by the Utility. Service Pipes for Meters one-inch or smaller which cannot be installed in an outside pit shall have a Service Stop approved by the Utility placed between the curb and the Public Right-of-Way line. Unless otherwise approved, the service stop shall be placed in the unpaved portion of the Public Right-of-Way near the curb edge of the sidewalk and shall be in front of the structure served. In streets where there are no sidewalks or curbs, such Service Stops, as a general rule, shall be placed in the Public Right-of-Way 5 1/2 feet from the right-of-way line. All Service Pipes 1 1/2-inch or larger shall have a Service Stop installed within three feet of the Main. In no case shall Service Stops be placed in vaults under the sidewalk.

7.4.5 Each Service Stop except those installed in pits shall be provided with an approved box. The top of the box shall be set level with the grade of the surrounding street, sidewalk, or ground. This box shall be originally installed and owned by the Customer and if located on private property shall be maintained and kept to proper grade by the Customer.

7.4.6 Each Service Pipe shall contain an approved shut-off valve. Where the Meter is located in a building, the valve shall be located where the Service Pipe first enters the building and on the street side of the Meter. Where the Meter is located in an outside pit, the valve shall be installed either in the basement or in a riser pipe just above the first floor so that all outlets are controlled. A drawing showing the proposed layout of Branched Service Pipes and valves shall be submitted to, and have been approved by, the Utility prior to installation of said Service Pipes and valves.

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7.4.7 Any Service Pipe laid in proximity to an existing or proposed sewer or drain line shall be installed in accordance with the current plumbing rules and regulations of the State of Indiana applicable to such installation.

7.4.8 Every Premises shall receive water utility service through a separate Service Pipe unless the Utility approves and authorizes the provision of water utility service to two or more separate Premises through a primary Service Pipe and related Branched Service Pipes in accordance with Rule 7.12.

A Service Pipe shall not extend from one Premises to another across a Public Right of-Way.

A Service Pipe shall not extend across a property, lot or Easement line except in those instances where the Main to which the Service Pipe is connected is installed in a Public Right-of-Way or in an Easement parallel to the Public Right-of-Way.

7.4.9 The Utility, upon request, will review a Customer's plans and specifications with respect to the type, location and arrangement for the service, Service Pipe and other facilities downstream from the Meter, but the Utility is not responsible for the adequacy of such Service Pipe and facilities downstream from the Meter or for selection by the Customer of the best or most economical type of service or Metering arrangement.

7.5 Replacement of Service Pipes. The Utility recommends against extending or reconnecting a previously installed Service Pipe to a building if such Service Pipe is or may be of inadequate capacity and invites the Customer or Plumber to obtain the advice of the Utility regarding the size of the Service Pipe which would be adequate for the proposed service. If the Customer elects to install a new Service Pipe, the installation shall be made by the Customer.

7.6 Metering Points. Unless the Customer requests additional metering points and the request is approved by the Utility, service shall be supplied through a separate Service Pipe and Meter for each Premises.

In new or unusual situations or situations not described by the existing rules, service and metering points must be reviewed and approved by the Utility prior to installation.

7.7 Relocation of Service Pipes. The Utility shall not be liable for the cost of moving or relocating a Service Pipe or related appurtenances to serve the convenience of the Customer.

If the Utility relocates a Main in connection with a public improvement project, the Utility will, at its expense, reconnect the Service Pipe from the old Main to the new Main.

If a Service Pipe must be relocated or lowered in connection with a public improvement project not involving a Utility Main relocation, the Service Pipe will be relocated or lowered at the expense of the public improvement project agency.

7.8 Undersized Service Pipes. The Utility is not responsible for inadequate or unsatisfactory service due to an undersized Service Pipe. Replacement of an undersized Service Pipe and appurtenances shall be at the Customer's expense.

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7.9 Thawing Frozen Service Pipes. The Utility shall not be required to attempt to thaw Service Pipes.

7.10 Irregularly Located Service Pipes. A Service Pipe which is irregularly located shall, at the Utility's expense, be relocated and connected to a new Main abutting the Premises when subsequently installed for other purposes.

The Utility shall not be under any obligation to permit connection or to supply service to any Customer whose Premises does not abut a Main.

7.11 Modification of Facilities. Where modification of the Customer's facilities, or the type or arrangement of service is required in the Utility's judgment because of changes in the use of the Premises or because of the Customer's operations which affect the Utility's distribution system, such as the causing of pressure fluctuations which affect service to other Customers or damage to the Utility's system, the necessary modification shall be made at the Customer's expense at the request of the Utility. The Utility shall also be entitled to recover from such a Customer the costs of repairing its distribution system.

7.12 Association of Customers. The Utility may contract, in its judgment, with two or more prospective Customers for water service from one primary Service Pipe, provided the Customers have entered into a written contract with the Utility and with each other to provide for the maintenance of the primary Service Pipe and all related branches, and to pay all associated private fire service charges.

A Service Pipe to an isolated Premises shall not extend across a property, lot or Easement line to a Main until the prospective Customer and the owner(s) of adjacent land between the isolated Premises and the Main have entered into a written contract with the Utility and with each other to provide for the maintenance of the Service Pipe and to pay all associated private fire service charges.

RULE 8. PLUMBING RESTRICTIONS

8.1 Lawn Irrigation System and Yard or Post Hydrant Installation Requirements. Customers shall construct an air gap or install a reduced pressure principle backflow preventer or pressure type vacuum breaker in accordance with Indiana Department of Environmental Management Rule 327 IAC 8-10-6, on the water line connecting the public water supply to any lawn irrigation facility buried below ground which has a sprinkling outlet located less than six (6) inches above grade and which is constructed after July 19, 1985.

Vacuum breakers installed on all yard or post hydrants shall be of the self-draining, nonfreezing type.

A drawing of each such proposed lawn irrigation and hydrant installation shall be submitted to, and have been approved by, the Utility prior to installation.

8.2 Prevention of Contamination of Utility's Distribution System. No interconnection or plumbing arrangement shall be permitted that could allow contamination to enter the Utility's distribution system. Backflow prevention devices shall be installed in Customer facilities in accordance with Indiana Department of Environmental Management Rule 327 IAC 8-10. Utility-approved backflow prevention devices as required by Indiana Department of Environmental Management Rule 327 IAC 8-10 shall be installed in the primary Service Pipe serving an association of Customers, as described in Rule 7.12. Utility approved backflow prevention or detector check devices shall be installed in all unmetered private fire service lines as described in Rule 9. Backflow prevention devices

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approved by the Utility shall be installed in any other Service Pipe where the Utility, in its judgment, determines that such protection is necessary.

All backflow prevention devices shall be installed at locations approved by the Utility. These devices will be selected and installed in accordance with 327 IAC 8-10-7. No connection to a Service Pipe shall be made between the Main and the backflow prevention device without the Utility's prior approval.

8.3 Prevention of Circulation in Looped Systems. Service Pipes which form a complete loop and connect to a Main at two or more points shall have double check valve assemblies installed in them. The devices shall be installed near the property line at each point of connection to the Main.

8.4 Potable Secondary Water Supply. Customers having a potable secondary water supply shall install and maintain, at their expense, proper backflow prevention devices in accordance with Indiana Department of Environmental Management Rule 327 IAC 8-10-5. This will include tanks constructed to store water furnished by the Utility's distribution system.

8.5 Non-Potable Water Supply. Where a Premises has a non-potable secondary or private fire service water supply, no connection will be allowed to the potable water piping system. This is to comply with 327 IAC 8-10-5(b).

8.6 Booster Pump Installations. All plans for booster pump installations shall be submitted to the Utility prior to installation. A booster pump must be equipped with pressure sensing controls to provide shut down when the Main pressure drops below 20 psi. Requirements for backflow prevention devices, metering or flow detection will be considered at this time.

8.7 General Requirements. Backflow prevention devices shall be installed and inspected per Indiana Department of Environmental Management Rule 327 IAC 8-10. If the Utility finds noncompliance with these rules, it will report such noncompliance to the Indiana Department of Environmental Management per Rule 327 IAC 8-10-10. The Utility may also disconnect service to the Customer in accordance with Rule 4.2.1.

RULE 9. FIRE SERVICE

9.1 Design and Installation Requirements. The type, kind and quality of all pipe and materials installed underground for fire service shall be subject to approval by the Utility. Fire service water shall pass through a Fire Meter, double check detector check assembly or detector check with a bypass Meter unless, in the Utility's judgment, fire service water is allowed to pass through a domestic Meter. A Fire Meter shall be installed only in a Service Pipe which supplies water to a Premises both for fire service use and use other than fire service. A detector check with a bypass meter or double check detector check assembly will be installed where required by Rule 9.7. All fire service lines within buildings shall be installed in such a manner that all pipes will be easily accessible for inspection at any time. Underground pipes outside of buildings must be placed and maintained with a minimum cover of four and one-half feet. Unmetered connections with fire service systems are prohibited.

In the event that an additional Service Pipe for supplying water to the Premises solely for use other than fire service is branched from a Service Pipe supplying water to the Premises for fire service, the Customer may elect to install separate Meters in each such Service Pipe branch, in lieu of a Fire Meter in the primary Service Pipe for the combined services. Where a fire service system is maintained under pressure from a jockey pump, the water serving the jockey pump shall be drawn from the line serving the fire pump and a separate Meter shall be installed on this line.

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9.2 Alarms and Check Valves. Private fire service systems without tanks shall be equipped with a flow alarm and a double check valve assembly. Systems with tanks shall have one flow alarm and an approved backflow prevention device. Water from the Utility's supply used for filling storage tanks or reservoirs shall be metered.

9.3 Seals on Hydrants and Other Fixtures. Hydrants and other fixtures connected to a private fire service line may be sealed by the Utility, and such seals shall be broken only incase of fire or as specially permitted by the Utility. The Customer must immediately notify the Utility of the breaking of any such seal.

9.4 Discontinuance of Service. Water service for a Customer's private fire service system may be discontinued for (1) any of the reasons set forth in Rules 4 or 9.1, except vacancy of Premises, (2) the Customer's failure to notify the Utility promptly in the case where the Utility's seals on valves, fittings, or hydrants are broken, or (3) waste or unauthorized use of water by the Customer through fire service lines.

Water service for a Customer's private fire service system located in Marion County will not be disconnected at the Customer's request, unless the fire department having jurisdiction of the district in which the Premises is located has approved the disconnection. Until the fire department approves the disconnection, the Customer will continue to be obligated to pay for such service. If the Customer fails to pay for their unmetered fire service, the Utility may discontinue the metered water service as set forth in Rule 4.

If the Premises is located outside of Marion County, the Utility will not discontinue private fire service at the Customer's request, and the Customer will continue to be obligated to pay for such service, unless the Utility has received a return mail receipt showing that the fire department having jurisdiction of the area in which the Premises is located has received the Utility's notice that such service will be discontinued. If the Customer fails to pay for their unmetered fire service, the Utility may discontinue the metered water service as set forth in Rule 4.

9.5 Fire Meters. A Fire Meter shall be installed whenever a single Service Pipe is installed for the purpose of supplying water to a Premises both for fire service and for use other than fire service. The Fire Meter and Tap in the Main shall be furnished, installed and owned by the Utility. The meter pit and all other facilities within the meter pit shall be subject to the Utility's approval prior to installation and be constructed and installed by, and be the responsibility of, the Customer.

9.6 High Volume – High Pressure Industrial Systems. In the case of a private fire service system to serve an industrial complex owned and operated as a single entity by one Customer which will have significant water storage and high volume/high pressure pumping facilities, such system shall be installed in accordance with plans submitted to, and approved by, the Utility prior to installation. In the event that it is necessary that any part of such system cross or be located within a Public Right-of-Way or a Utility-owned Easement, such system shall not be deemed to violate Rule 7.4.8 if the Customer has entered into a written agreement with the Utility in which the Customer has agreed to:

9.6.1 install all of the Customer's pipes within the Public Right-of-Way or Easement in a tunnel or casing pipe extending five (5) feet onto the Customer's property on each side of the Public Right-of-Way or Easement, all details of which shall be subject to the Utility's approval,

9.6.2 pay the costs incurred by the Utility to replace with an approved pipe material any Utility Main which, in the Utility's judgment, is put in jeopardy and is located within the area disturbed by the installation of the Customer's pipes within the Public Right-of-Way or Easement,

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9.6.3 maintain and repair, at the Customer's sole expense, the Customer's private fire service system, including the Customer's pipes installed within the Public Right-of-Way or Easement,

9.6.4 compensate the Utility for any and all damage to the Utility's facilities located in the Public Right-of-Way or Easement caused by the Customer, its system, installation or use,

9.6.5 indemnify the Utility against any and all liability and claims arising from damage to property or injury (whether or not alleged to be the result of the Utility's negligence) caused by the Customer's system or its installation, maintenance or use, and

9.6.6 relocate, at no expense to the Utility, its facilities installed within the Public Right-of-Way if such relocation is necessitated by a public improvement.

9.7 Detector Checks. An Underwriters Laboratory-approved detector check with a bypass Meter or double check detector check assembly shall be installed in all new private fire system Service Pipes. In addition, detector checks with bypass Meters or double check detector check assemblies shall be installed where existing private fire system Service Pipes are being modified, replaced or relocated, where existing private fire systems are being extended, and when a Customer being served has been found by the Utility to be using water, without authorization from the Utility, from an existing unmetered Service Pipe for purposes other than fire service. The detector check or double check detector check assembly shall be located after all metered Branched Service Pipe connections. The bypass Meter around the detector check or double check detector check assembly shall be sized, purchased, installed and owned by the Utility. The detector check or double check detector check assembly, meter pit or vault, and all other piping facilities within the meter pit or vault, shall be subject to the Utility's prior approval and be constructed and installed by, and the responsibility of, the Customer.

RULE 10. UTILITY'S RESPONSIBILITY FOR SERVICE

10.1 Interruptions, Pressure, and Volume. The Utility will use reasonable care and diligence to avoid interruptions and fluctuations in its service, but it cannot and does not guarantee that interruptions and fluctuations will not occur. Variations in pressure or volume of flow are to be expected. In the Utility's judgment, Customers requiring uniform service, an uninterrupted supply, or uniform pressure or volume shall make their own special provisions on their Premises. Customers needing special provisions for uninterrupted service may also be required to install multiple meters or multiple backflow devices to allow the Utility to test Meters and backflow devices or repair Meters during the Utility's normal business hours and to allow the Customer to repair its backflow devices.

10.2 Liability for Damages on Customer's Premises. The Utility shall not be liable for any damage done or inconvenience caused by reason of any break, leak or defect in, or by water escaping from, Service Pipes or fixtures on the Premises of the owner or Customer.

RULE 11. COMPLAINT PROCEDURE

11.1 Complaint. A Customer may complain to the Utility at any time about any bill which is not then delinquent, a security deposit, a disconnection notice, or any other matter relating to the Utility's service and may also request a conference about such matters. The complaints may be made in person, in writing, or by completing a form available from either the Commission or from the Utility at its business office. A complaint shall be considered filed upon receipt by the Utility, except mailed complaints shall be considered filed as of the postmark date. In

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making a complaint or requesting a conference (hereinafter "complaint"), the Customer shall state his/her name, service address and the general nature of his/her complaint.

11.2 Investigation of Complaint and Notification of Proposed Disposition. Upon receiving each such complaint, the Utility will investigate the matter, confer with the Customer when requested and notify him/her, in writing, of its proposed disposition of the matter. Such written notification will advise the Customer that he/she may, within seven days following the date on which such notification is mailed, request a review of the Utility's proposed disposition by the Commission. If the Customer requests a special Meter reading, the first reading of the Customer's Meter by the Utility during its investigation shall not be subject to the charge for a special Meter reading prescribed in the Utility's Rate Schedules. Subsequent readings, however, if requested by the Customer, will be subject to the charge.

11.3 Service During Review of Complaint. If the Customer is receiving service at the time the complaint is received by the Utility, his/her service will not be disconnected until at least ten days after the date on which the Utility mails the notification of its proposed disposition of the matter to the Customer. If the Customer, within seven days after the mailing by the Utility of its proposed disposition of the matter, requests the Commission to review the Utility's proposed disposition of the complaint, the Utility will not disconnect the Customer's service until at least three days after the date of the mailing of the Commission's decision on the matter, provided the Customer has paid and continues to pay all undisputed bills, portions of disputed bills as specified hereinafter, and all future undisputed bills prior to their becoming delinquent. If the Customer and the Utility cannot agree as to what portion of a bill is undisputed, the Customer shall pay on the disputed bill an amount equal to his average bill for the twelve months immediately preceding the disputed bill, except in those cases where the Customer has received fewer than twelve bills, in which event the Customer shall pay an amount equal to 1/12 of the Utility's estimate of its annual cost of rendering service to such Customer.

11.4 Record of Complaints. The Utility's record of complaints under this rule will be available during normal business hours upon request by the concerned Customer, his agent possessing written authorization, or the Commission.

RULE 12. MAIN EXTENSIONS

12.1 Definitions. The following terms as used in this rule have the following meanings:

12.1.1 "Completion date of the Main extension" means the date the Utility declares the Main extension to be in service and releases it for Taps.

12.1.2 "Cost of the Main extension" means the estimated cost of installing the Main or the actual cost of a developer-installed extension.

12.1.3 "Deposit" means the amount required to be deposited by or on behalf of each prospective Customer for a Main extension prior to the Utility commencing construction of the Main extension.

12.1.4 "Main extension" means the Mains, hydrants and appurtenances installed by the Utility to provide the water utility service requested by or on behalf of the prospective Customer or Customers, but does not include the Customer's Service Pipe.

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12.1.5 "Original depositor" means a prospective Customer who enters into a Main extension agreement with the Utility and makes a deposit with the Utility prior to the completion date of the Main extension.

12.1.6 "Parcel" means a lot as platted or if the area to be served is not platted, the equivalent of a "lot" as determined in accordance with the Commission's Rule 170 IAC 6-1.5-30.

12.1.7 "Prospective Customer" or "applicant" means the person requesting the Main extension in order to receive water utility service from the Utility.

12.1.8 "Subsequent connector" means a person who was not an original depositor and who connects to the Main within 10 years after the completion date of the Main extension.

12.1.9 "Subsequent connector's fee" means the amount required to be paid to the Utility by each subsequent connector prior to his being permitted to connect to the Main.

12.1.10 "Total required deposit" means the amount by which the cost of the Main extension exceeds the amount equal to three times the estimated annual revenue to be received by the Utility from the prospective Customer or Customers less the Utility's costs of connecting said prospective Customer or Customers to the Main.

12.2 Written Agreement and Scheduling of Projects. Persons desiring Main extensions shall apply therefore in writing to the Utility. All Main extensions require a prior written agreement between the Utility and the prospective Customer or Customers, who shall contract to connect to the Main within nine months after the completion date of the Main extension and receive service from the Main extension for a period not less than three years.

All Main extension projects will be carried out in accordance with the Commission's Rule 170 IAC 6-1.5 and this Rule 12. They will be scheduled for construction in the order in which the Utility receives the total required deposit under the Main extension agreement or the executed Main extension agreement if there is no required deposit.

12.3 Design of Main Extension. All Main extensions installed to provide domestic water service shall also provide fire protection service. Unless otherwise specifically provided for in the Main extension agreement, the Main extension will be designed to deliver domestic water service at a rate sufficient to serve the number of parcels abutting the main extension and public fire protection service at a minimum rate of 1,000 gallons per minute at 20 pounds per square inch residual pressure. In addition to the above, the Utility will determine the size of Main reasonably necessary to serve the applicant without degrading the integrity of the Utility's distribution system.

12.4 Determination of Cost of Main Extension.

12.4.1 General. The cost of a Main extension may be either (a) the actual cost of a developer-installed extension; or (b) the estimated cost of the extension. The estimated cost of the Main extension to satisfy the design characteristics set forth in Rule 12.3 or such other design characteristics as are specifically requested by the prospective Customer or Customers will be based on the length of the Main and unit cost for installing the appropriately sized Main. All such costs will be determined annually by the Utility, based on the Utility's actual average cost to install Mains during the previous calendar year,

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adjusted for known increases or decreases in materials, equipment, special construction, overhead and labor costs. The total of such estimated costs shall be the cost of the Main extension for all purposes under the Main extension agreement. If, however, one or more of the prospective Customers requests special service, such as higher flow or pressure, which the Utility determines requires the installation of a Main larger than that which would otherwise be necessary to serve the domestic and fire protection requirements of the prospective Customers generally, the Utility will compute the cost of an alternative Main extension which would meet the needs of the prospective Customer or Customers assuming no one of them required any special service, which cost will be used to determine the deposit required from each of the original depositors other than those requesting the special service and the subsequent connector's fees.

The applicant shall be required to pay the cost of the Main extension and the full gross-up any applicable state and federal taxes associated with the cost of the extension, and the applicant shall receive refunds as provided in this Rule 12.

12.4.2 Length and Location of Main Extension.

12.4.2.1 Extension of Main to Intersection or Parcel Adjacent to Parcel Having Available Service. The Main extension shall run to the end of the lot or frontage of the most remote original applicant to be served. However, if such lot or frontage abuts an intersecting street, the terminal point of the extension shall be located so that the Main to be installed ties into the existing Main in the intersecting street. If there is no Main in the intersecting street, the cost of the Main extension shall be computed on the basis of an extension of the Main to the center of the street. If the Main to be extended terminates within a parcel served thereby and the extension of such Main is to serve only the immediately adjacent parcel, the Utility, at its expense, will extend the existing Main to the mutual property line and such line will be considered the beginning point of the Main extension.

12.4.2.2 Termination of Main Extension in Permanent Cul-De-Sac. If the public thoroughfare in which the Main is to be installed dead ends in a permanent cul-de-sac, the Main will be installed to wrap around the cul-de-sac in the unpaved portion of the Public Right-of-Way, so that the Service Pipe to serve each parcel abutting the public thoroughfare may be connected to the Main without disturbing the paved portion of the public thoroughfare in the cul-de-sac and without crossing any property line other than the right-of-way line.

12.4.2.3 Termination of Main Extension Against Natural or Physical Barrier. If the public thoroughfare in which the Main is to be installed dead ends against a railroad, creek, river or other physical or natural barrier, or if the Main is to serve the last lot or last facing pair of lots in a street, the Main to be installed may terminate at the physical or natural barrier, at the point where the most remote Service Pipe is to be connected to the Main, or at a point perpendicular to the farthest corner of the house or structure located on the parcel adjacent to the barrier, whichever the Utility in its reasonable engineering judgment determines is the most appropriate under the circumstances.

12.4.2.4 Mains to be Installed in Public Thoroughfare. The Utility shall not have a duty to locate a Main other than in a public thoroughfare. In its discretion, the Utility may install a Main in an Easement or right-of-way granted to the Utility where installation of the Main in the public thoroughfare is impracticable or installation of the Main in an Easement will, in the Utility's engineering judgment, benefit the Utility's distribution system.

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12.5 Determination of Revenue Allowance. The revenue allowance for each Main extension shall be equal to three times the estimated annual revenue to be received from the Customer or Customers to be attached to the Main less the estimated cost of connecting the prospective Customer or Customers to the Main, which cost shall be based on the size of the Tap and Meter through which the prospective Customer or Customers will receive service. If the revenue allowance exceeds the cost of the Main extension, the Main extension shall be a "free extension," subject to the terms and conditions described in Rule 12.6.

In determining the revenue allowance, the Utility will estimate the annual revenue to be received by it from each of the prospective Customers based on the average annual revenue received from Customers of the same classification having similar characteristics during the previous calendar year. If there is evidence available that would indicate that such an estimate would be inapplicable, the Utility will estimate the annual revenue based on such evidence.

Where the Main extension will serve Residential Customers, an immediate revenue allowance will be allowed only for existing residences or residential units where construction of the building containing the units has commenced above the first floor and where the prospective Customer or developer, as the case may be, agrees to take service within nine months following the completion date of the Main extension. Where the Main extension is to serve a proposed commercial or industrial real estate development, no immediate revenue allowance will be allowed for prospective commercial or industrial Customers unless, in the Utility's judgment, sufficient construction has commenced and pertinent data is available to the Utility to permit it to identify the prospective commercial or industrial Customers in order to determine anticipated water demands and estimate the annual revenue to be received from such prospective Customers.

12.6 Guarantee to Insure Connection to Free Extension. If the Main extension is estimated to be a "free extension," as identified in Rule 12.5, the Utility may require each prospective Customer to make a reasonable deposit, not to exceed three years' estimated revenue from such Customer, to guarantee that such prospective Customer connects to, and takes service from, the Main extension within nine months after the completion date of the Main extension. Each such deposit will be returned as soon as practicable after the prospective Customer commences service from the Main extension. If a prospective Customer fails to connect to and take service from the Main extension, the Utility will retain the deposit as liquidated damages for the loss resulting to it from the prospective Customer's failure to commence service as anticipated and relied upon by the Utility, unless a sufficient number of other prospective Customers become Customers so as to qualify the Main extension as a free extension.

12.7 Allocation of Total Required Deposit Where There is More Than One Prospective Customer. Unless otherwise agreed upon among the prospective Customers, each shall pay to the Utility his proportionate share of the total required deposit based on the ratio of the number of parcels for which each Customer requests water service to the total number of parcels for which water service is requested by all of the prospective Customers. When a prospective Customer owns more than one parcel but does not elect to arrange for service to all parcels, he may designate which of the parcels are to be served and shall make deposits for each of the parcels to be served. A separate Main extension agreement shall be entered into with respect to each parcel for which water service is requested.

12.8 Cash or Secured Deposits. A prospective Customer's deposit shall be made in cash or, in lieu of cash, it may be secured by an irrevocable letter of credit acceptable to the Utility and issued by a national bank or a bank chartered under the laws of the State of Indiana. In all cases, said letter of credit shall permit the Utility upon request to draw funds for the purchase of materials to be used for the Main extension and unconditionally guarantee payment of the remainder of the deposit within three days after the completion date of the Main extension.

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12.9 When Deposits Collected are Less than Total Required Deposit. In the event that the amount of deposits collected by the Utility from the original depositors is less than the total required deposit when the Utility is ready to commence installation of the Main, the Utility may elect either to cancel the project and return all deposits or to proceed with the Main extension. If the Utility elects to proceed with the Main extension, the amount by which the total required deposit exceeds the deposits collected shall be identified as the Utility's "repayable investment," and no refunds will be made to depositors until the Utility has recovered all of its repayable investment, with interest at the annual rate of one percent (1%) over local prime at the time the proposed written agreements for the Main extension are sent by the Utility to the prospective Customer or Customers.

12.10 Return of Deposits Upon Failure to Commence Construction. Upon receipt and retention by the Utility of the total required deposit, no refund of any deposit will be made unless within 180 days after the Utility's receipt of the total required deposit, construction of the Main extension shall not have begun. In the event that the Utility has not commenced installation of the Main extension within 180 days after receipt of the total required deposit from the original depositors, the Utility shall, upon written request from an original depositor, refund his/her deposit. Unless such refunded deposit and all other refunded deposits are replaced by the same or other original depositors within 90 days thereafter, the Utility may cancel the project and refund all remaining deposits thereon. The Utility shall not be liable for damage to any person, firm, corporation, organization or other entity for failure to install the Main extension within any particular period of time, regardless of the type of damage claimed.

12.11 Connection and Service. An original depositor shall be entitled to one Service Pipe connection for each parcel for which a deposit is made. An original depositor shall connect to and receive water service from the Main extension within nine months after the completion date of the Main extension and shall use and pay for such service for a period of at least three years. In the event the original depositor fails to connect to and take service from the Main extension within nine months after the completion date of the Main extension, the revenue allowance for such prospective Customer shall be identified as the Utility's repayable investment and no refunds will be made to the original depositors until the Utility has recovered all of its repayable investment, with interest at the annual rate of one percent (1%) over local prime at the time the proposed written agreements for the Main extension are sent by the Utility to the prospective Customer or Customers. The Utility may also require a bond to enforce the faithful performance of the prospective Customer's connection and service obligations.

12.12 Utility May Install Larger Mains. The Utility may install Mains larger than the size of Mains used to determine the cost of the Main extension in order to provide for future extensions. The additional cost of installing such larger Mains shall be the Utility's expense.

12.13 Subsequent Connector's Fee. If the owner or occupant of any unconnected parcel abutting the main but not included in the original application for the Main extension, requests water service any time within ten years after the completion date of the Main extension, the owner shall, prior to the Utility permitting the connection of said parcel to the Main, pays a subsequent connector's fee for each parcel for which service is requested. The amount of the subsequent connector's fee shall be the cost of the Main extension divided by the number of parcels abutting the Main used to compute the cost per parcel in determining the amount of the total required deposit from the original depositors for the Main extension, unless otherwise determined in accordance with Rule 12.4.1. If the owner of land which abuts the Main extension and was unplatted on the completion date of the Main extension and said owner or his heirs, successors or assigns (hereinafter, collectively the "owner") subdivides said land within 10 years after the completion date of the Main extension in such a manner that some or all of the parcels will not require service directly from the Main extension, and the owner requests a lateral Main extension from the Main extension to serve such land, the owner shall pay to the Utility a subsequent connector's fee for each parcel abutting the earlier Main extension, regardless of whether such parcels are to be served by the earlier Main extension or by

Petitioners' Exhibit LSP-1

the lateral Main extension. Applicants for service connections for parcels within subdivision developments included in a Main extension agreement shall not be required to pay a subsequent connector's fee. The subsequent connector's fee shall be in addition to any other charges which the subsequent connector must pay to the Utility in order to connect to and receive service from the Utility.

12.14 Provisions Regarding the Refund of Deposits.

12.14.1 All Main extensions are the Utility's property. The Utility shall have the right to make further extensions therefrom without the original depositors being entitled to any refund by reason of such further extensions or connections thereto, except as provided in Rule 12.13.

12.14.2 No refund shall be based on connections to the Main extension made more than 10 years after the completion date of the Main extension. In no event shall the total amount of the refunds to an original depositor exceed the amount of his deposit. No interest shall be paid on any deposit made pursuant to this Rule 12.

12.14.3 No refund of any deposit shall be made on account of any Customer connecting to the Main extension for whom a final revenue allowance was allowed in establishing or adjusting the amount of such deposit, or whose property does not directly abut upon the particular section of the public thoroughfare in which the Main extension is installed.

12.14.4 In the event that more than one party contributes to the total required deposit, refunds shall be divided among the parties making the total required deposit in the same proportion as their contributions bear to the total required deposit, unless otherwise provided for in the Main extension agreement.

12.14.5 The Utility shall notify the original depositor or depositors of the completion date of the Main extension. Within 30 days after the first anniversary of said completion date, and within 30 days after the next nine anniversaries of said completion date, the Utility shall compute credits toward its repayable investment, if any, and the refunds due the original depositor or depositors. Such credits shall consist of the sum of the following:

(a) The subsequent connector's fees collected by the Utility from Customers connected to the Main extension after the completion date of the Main extension and for whom no credit has been previously allowed.

(b) A revenue allowance in the amount specified in the Main extension agreement for each single family residential Customer who connected to the Main after the completion date of the Main extension and for whom no credit has previously been allowed.

(c) A revenue allowance for each non-residential or multi-dwelling complex Customer for whom no credit was previously allowed in the amount of three times the first normal 12-months' Metered and private fire protection service bills paid by such Customer within four years after connection to the Main, less the Utility's cost of so connecting them. If the connection occurs in the tenth year after the completion date of the Main extension, the credit under this subparagraph (c) shall be based on the Utility's estimate of the first normal 12-months' revenue from that Customer for each nonresidential or multiple dwelling unit complex Customer who connected to the Main extension and for whom no credit has previously been allowed.

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(d) A revenue allowance for each non-residential or multi-dwelling complex Customer for whom a partial credit was previously allowed in the amount of three times the first normal 12-months' metered and private fire protection service bills paid by such Customer, less the amount of the partial credit previously allowed.

12.14.6 All credits shall first be applied to pay the Utility its repayable investment and accrued interest thereon, if any. After the Utility's repayable investment and interest thereon has been fully paid, all further credits shall be refunded to the original depositor or depositors by check mailed to the original depositor's last known address, as shown on the Utility's books and records. Any refund which cannot be made after the refund becomes due and payable because the Utility is unable to locate the intended recipient will be reported as unclaimed property to the State of Indiana in accordance with the Disclaimer of Property Interests Acts (Indiana Code 32-17.5, et. Seq.), as the same may be amended from time to time.

12.14.7 In the case of a phased residential real estate development where the preliminary plat of the entire development, in a form satisfactory to the Utility, is provided the Utility at the time of the first request by the developer for a Main extension, refunds may be aggregated as follows: During the ten-year period, beginning with the date that the first Main extension for that development is placed in service, the amount of any refunds generated in excess of the deposit made on any phase of the development shall be applied against the deposit made for any earlier phase of the development, so long as the total amount of refunds to the original depositor does not at any time exceed the total amount of his deposits during such period.

12.15 Optional Surcharge Main Extension in Developed Residential Area. The Utility will install a Main extension for owners of single or double family dwellings along an existing street in a developed residential area in accordance with the terms and conditions hereinafter described, provided each of said owners enters into a Main extension agreement with the Utility in which said owners, for themselves and their successors in interest in the Premises (hereinafter the "owner"), agree to become and remain Customers of the Utility for at least 60 consecutive months following the completion date of the Main extension and abide by the terms and conditions set forth in this Rule 12.15. Upon request by the Utility, applicants for such a Main extension shall provide the Utility with proof of their property ownership.

The cost of the Main extension shall be determined in accordance with Rule 12.4.1. To determine each owner's share of that cost, the Utility will divide the cost of the Main extension by the number of dwellings whose owners enter into the Main extension agreement. That amount, plus the estimated cost of connecting the owner to the Main, will be the responsibility of each owner and is hereinafter referred to as the "Full Owner's Share". Each owner entering into the Main extension agreement will have the option of either paying to the Utility for each affected dwelling at the time of the execution of the Main extension agreement (1) the Full Owner's Share," less the Utility's revenue allowance, for each dwelling or (2) a "Partial Owner's Share," which shall be equal to the greater of (a) 10% of the Full Owner's Share or (b) the percentage of the Full Owner's Share required so that the monthly Main extension surcharge (as hereinafter described) will not exceed a maximum amount fixed by the Utility from time to time. For those owners paying a Partial Owner's Share, the remainder of the Full Owner's Share (the "Remaining Balance") shall be paid to the Utility through a "main extension surcharge" on his monthly water bill, over a 60-month period commencing the month following that in which the main is placed in service. The amount of such monthly Main extension surcharge will be approximately 1/60th of the Remaining Balance. The Utility shall not be entitled to any interest on the Remaining Balance, and an owner electing the Partial Owner's Share option shall not be entitled to a revenue allowance.

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Subsequent connectors to a Main extension installed pursuant to this Rule 12.15 within 10 years following the in-service date of the Main extension shall pay to the Utility a subsequent connector's fee in an amount computed in accordance with Rule 12.13. Until such time as the Utility has recovered its investment in the Main extension, less any revenue allowances made for a Full Owner's Share (Utility's "investment"), the Utility will not be obligated to refund any subsequent connector's fees or revenue allowances connected therewith. The Utility shall review all projects as of each anniversary of the in-service date of the Main extension. If at that time the Utility has recovered its investment, the Utility will thereafter, until the end of the contract term, make refunds from subsequent connector fees and related revenue allowances, and from Main extension surcharge payments as hereinafter described. Such fees, allowances and payments will be divided equally, per dwelling, among all depositors of Full and Partial Owner's Shares. Those who have deposited a Full Owner's Share will be refunded the resulting amounts. The same amounts will be credited against the unpaid portion of the Remaining Balance on the contract obligation of the current owner of a Premises for which a Partial Owner's Share was deposited. No owner, however, shall be refunded, or credited for, amounts in excess of the sum of deposits and any payments made by such owner ("owner's investment"). When the Utility has recovered its investment and all owners have recovered their owners' investment, the Main extension contract shall terminate and no further refunds will be made or subsequent connector fees collected.

An owner that pays a Partial Owner's Share, but does not connect a Service Pipe to the Main, shall be known as a "surcharge Customer". Since such a Customer will not be receiving a monthly water bill, the Utility will send the surcharge Customer a separate monthly bill for the Main extension surcharge. A monthly Main extension bill which remains unpaid for a period of more than 17 days following the mailing of the bill by the Utility shall be delinquent. If such bill remains delinquent for 7 days following the Utility's mailing of a delinquency notice, said Customer shall be deemed to have forfeited to the Utility has Partial Owner's Share and all monthly surcharge payments previously made to the Utility. During the term of the Main extension contract, any subsequent applicant for water service to the owner's Premises, including a defaulting surcharge Customer as provided for in the foregoing sentence, shall be deemed a subsequent connector and pay a subsequent connector's fee for such service.

An owner that occupies a dwelling served by a Service Pipe connected to the Main extension installed pursuant to this Rule 12.15 must pay all Main extension surcharges by the due date of the accompanying water bill. A monthly Main extension surcharge which remains unpaid for a period of more than 17 days following the mailing of the bill by the Utility shall be delinquent. If such bill remains delinquent for 7 days following the Utility's mailing of a disconnect notice, the Utility may declare the entire unpaid amount of the owner's Remaining Balance immediately due and payable, and upon non-payment thereof, may disconnect water service to the owner's Premises. An owner leasing to others a dwelling served by a Service Pipe connected to the Main extension shall agree with the Utility, for the years that the monthly surcharge payment will remain in effect, that the owner is the Customer and will receive and pay the monthly bills for water service and the Main extension surcharges. Said owner shall further agree that if the monthly Main extension surcharges are not received by the Utility within 7 days following the Utility's mailing of a disconnect notice, the Utility may declare the entire amount of the owner's unpaid Remaining Balance immediately due and payable, and upon non-payment thereof, may disconnect water service to the owner's Premises with notice and in accordance with Rule 4. In the event of a disconnection of water utility service under this Rule 12.15, such service may thereafter be restored only when the entire amount of the owner's Remaining Balance and the Utility's disconnect and reconnect charges have been paid.

The failure of one or more owners that paid a Partial Owner's Share to pay all of his or their monthly Main extension surcharges shall not preclude the Utility from collecting monthly Main extension surcharge payments from other owners and subsequent connector fees until its repayable investment has been recovered.

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12.16 Special Contracts for Rate Surcharge in Developed Residential Area. Pursuant to 170 IAC 6-1.5-40, the Utility will make a Main extension to an unserved, developed residential area ("designated area") if the owners of at least 50% of the dwellings in the area contract ("Special Contract") for service, on terms acceptable to the Utility, providing for the Utility's recovery of the cost of the Main extension ("main extension cost") and its cost of connecting Customers' Service Pipes to the Main through Monthly Area Rate Surcharges and Area Rate Tap fees, as prescribed in the Miscellaneous Service Charges tariff of the Utility's Rate Schedules, applicable to all Customers and potential Customers in the designated area until the Utility has recovered the Main extension cost. If owners of fewer than 50% of the dwellings in an area enter into a Special Contract for the area, the Utility may elect not to proceed with a Main extension under this rule.

The Monthly Area Rate Surcharge will be determined by dividing the Main extension cost by the number of potential Customers in the designated area and dividing the resulting remainder by no fewer than 120 months.

An owner who contracts for service and pays the Area Rate Tap fee, but fails to connect to the Main within six months after the date the Main is placed in service, or one who does not contract for service and does not pay such fee before a Main is installed, shall, prior to commencement of service, pay the Utility at the time the owner connects to the Main and in addition to the Area Rate Tap fee, the Secondary Connector Fee prescribed in the Miscellaneous Service Charges tariff of the Utility's Rate Schedules for the designated area which fee will be credited against the Main extension cost.

12.17 Other Rules. All Main extensions shall be installed, service connections made and water service rendered by the Utility in accordance with all applicable rules and standards prescribed by the Commission and the Utility's rates, charges and rules approved by the Commission as revised, supplemented, and replaced from time to time.

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
Twenty-third Set of Data Requests

Q-23-1: In Cause No. 43645, the DOW requested approval for 70 capital improvement projects (CP10-001 through CP10-802) to be completed by the water utility in 2010 or 2011 at an estimated cost of $111,378,760. (See the attached Exhibit from the testimony of Karl Tanner in Cause No. 43645.)

a. Identify any of these projects that are now complete.

Response: Project Nos. 2010-228, 2010-245, and 2010-259 are substantially complete at this time. These projects were bundled together with Project No. 2009-760 – T.W. Moses Technical Upgrades.

b. Identify any of these projects which have been eliminated, suspended, or delayed and explain why this has occurred.

Response: None of the projects listed in the OUCC's attached exhibit have been eliminated or suspended. Attached as an exhibit to this data response is a spreadsheet identifying which projects are ongoing, have been completed, or have been delayed. All delayed projects have been delayed because the DOW lacks the funding necessary to implement those projects at this time.

	DELAYED FUNDING	ONGOING	COMPLETE	TOTAL
COUNT:	37	30	3	70
PERCENT:	53%	43%	4%	100%

Matthew Klein*

* Sources of information are indicated at the end of answers. Such sources are not necessarily witnesses.

Cause No. 43936
City of Indianapolis and its Department of Waterworks
and its Sanitary District ("City of Indianapolis")
Responses to Office of Utility Consumer Counselor's
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IURC CAUSE NO. 43645 PROPOSED 2010-11 CAPITAL PROJECTS		
CP10-001	Elevator repair	Delayed - Funding
CP10-281	Facility refurbishments	Delayed - Funding
CP10-043	Building, Pump Station, Tank and Plant Refurbishments	Ongoing
CP10-044	Asbestos and Lead Paint Removal	Ongoing
CP10-047	Stage two sampling/monitoring requirements	Ongoing
CP10-091	B Jobs	Ongoing
CP10-092	C Jobs	Ongoing
CP10-093	D Jobs	Ongoing
CP10-094	E Jobs	Ongoing
CP10-095	F Jobs	Ongoing
CP10-096	G Jobs	Ongoing
CP10-097	I Jobs	Ongoing
CP10-098	L Jobs	Ongoing
CP10-099	Easements	Ongoing
CP10-100	Meters, Valves, and Hydrants	Ongoing
CP10-114	Well Closures	Ongoing - Design
CP10-209	Bleeder Valve Operator Replacement	Delayed - Funding
CP10-238	GWTP Process Engineering and Construction to meet Groundwater Rule	Delayed - Funding
CP10-271	Control Valve-Nora	Delayed - Funding
CP10-273	Control Valve-Hoffman	Delayed - Funding
CP10-293	Level Monitoring Network and Individual Flow Metering on Wells	Ongoing - Design
CP10-323	Main Breakers at Edmondson Station	Delayed - Funding
CP10-324	WQ Monitoring Wells (Complete 2007 Project Request)	Ongoing - Design
CP10-339	Riverside Pump Station Switchgear	Ongoing - Design
CP10-383	Roof Replacement and Refurbishment	Ongoing - Design
CP10-401	Backflow Devices	Delayed - Funding
CP11-356	Riverside Pump Emergency Pumping Source	Ongoing - Design
CP10-301	Well Rehab	Delayed - Funding
CP10-303	Replace Chemical storage, fill and feed lines, and chemical containment areas	Delayed - Funding
CP10-406	Watson Marlow pump replacements	Delayed - Funding
CP10-003	Caustic Soda Storage	Delayed - Funding
CP10-282A	Phase I Upgrades - Install UV	Ongoing - Design
CP10-300	FC Freight Elevator Replacement (Design)	Delayed - Funding
CP10-312	FC Carbon System Upgrade Projects	Delayed - Funding
CP10-404	FC Well 17 Relocation	Ongoing - Design

Cause No. 43936
City of Indianapolis and its Department of Waterworks
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CP10-420	High Service #4 Pump Rebuild	Delayed - Funding
CP10-421	High Service #5 Pump Rebuild and VFD Installation	Delayed - Funding
CP11-361	Covered Settling Basin Drag Drive	Ongoing - Design
CP11-365	Flocculation Mixer Replacement	Ongoing - Design
CP10-168	Replace Filter Effluent Flow Control Valve and Electric Actuator	Delayed - Funding
CP10-170	High Service Pump #1 and #2 Impeller Replacement	Delayed - Funding
CP10-438	Ground Storage Tank Refurbishment	Delayed - Funding
CP10-228	Install Diesel Storage Tank for Generator	Complete
CP10-245	Install Containment Area at Garage Delivery Area	Complete
CP10-259	TWM Install Pumps and Pipeworks for Basin Draining	Complete
CP10-402	Permanganate Installation	Delayed - Funding
CP11-189	Route Floor Drains at Intake to Sanitary Sewer	Delayed - Funding
CP10-265	Automatic Spray System at Intake	Delayed - Funding
CP10-285	Replace BRT and SRT Residual Pumps	Delayed - Funding
CP10-329	Replace Individual Filter Turbidity Meters	Delayed - Funding
CP10-335	Residuals Tanker Unloading Station	Delayed - Funding
CP10-330	Upgrade/Replace HS Pump Switchgear	Ongoing - Design
CP10-387	Install Screen on Gravity Thickener	Delayed - Funding
CP10-396	New Alum Storage Facility	Delayed - Funding
CP11-071	New Intake on White River	Ongoing - Design
CP11-332	Filters 7-12 Install Control Valve on Main Wash Water Control Line	Delayed - Funding
CP10-309	Carbon System Upgrade	Delayed - Funding
CP10-328	WRN Replace Turbidity Meters	Ongoing
CP10-200	Route Building Drains and Sumps to Sanitary Sewer	Delayed - Funding
CP10-264	Upgrade UV (24 mgd)	Ongoing
CP12-437	Technical Upgrades (Preliminary Engineering)	Ongoing
CP10-116	Security Bucket-Annual (lighting, cameras, fencing, etc.)	Delayed - Funding
CP10-103	Replace Overflow Screen Air Break and Install New Flap Gate	Delayed - Funding
CP10-118	Safety Tank Upgrades	Delayed - Funding
CP10-354	Tank Coating and Repair	Ongoing
CP11-409	New McCordsville Tank	Delayed - Funding
CP10-106	Broad Ripple Dam Repair	Delayed - Funding
CP10-317	Fall Creek Dam Repair -- Phase II (Design)	Delayed - Funding
CP10-101	AMR Pilot Program	Delayed – Funding
CP10-802	Large Meter Replacement Program	Ongoing

From: Pope, James R. [James.Pope@bakerd.com]
Sent: Monday, November 15, 2010 4:15 PM
To: Levay, Daniel; Hitz-Bradley, Lorraine; UCC Info Mgt; Cracraft, Michael; pmckiernan@hhclaw.com; Krohne, S.; Allen, Michael E.; Prentice, LaTona; Bette Dodd; tstewart@lewis-kappes.com; Morton, Teresa; jpolk@polk-law.com
Cc: Schlegel, Fred E.; Sharrow, Regina M.; Hatton, Peter L.
Subject: DR23 Response
Attachments: City of Indpls Response to Data Request 23.PDF

Dan, here's the City's response to Request 23

Any questions, give me a call

Pope

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