

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF EASTERN RICHLAND SEWER)
CORPORATION FOR APPROVAL OF THE EXPANSION)
OF ITS TERRITORIAL AUTHORITY IN CERTAIN RURAL)
AREAS OF MONROE COUNTY CURRENTLY SERVED BY)
SOUTH CENTRAL REGIONAL SEWER DISTRICT AND)
THE TRANSFER OF A PORTION OF ITS CURRENT)
TERRITORIAL AUTHORITY TO SOUTH CENTRAL)
REGIONAL SEWER DISTRICT; FOR APPROVAL OF)
RATES, CHARGES, TARIFFS AND REGULATIONS FOR)
SERVICE WITHIN THE EXPANDED TERRITORY.)

CAUSE NO. 44394

APPROVED: **AUG 27 2014**

ORDER OF THE COMMISSION

Presiding Officers:

Carolene Mays-Medley, Commission Vice-Chair

Gregory R. Ellis, Administrative Law Judge

On September 12, 2013, Eastern Richland Sewer Corporation (“ERSC” or “Petitioner”) filed its Verified Petition (“Petition”) with the Indiana Utility Regulatory Commission (“Commission”) seeking authority to transfer a portion of its Certificate of Territorial Authority (“CTA”) to South Central Regional Sewer District (“SCRSD”) and to receive in exchange a portion of the territory SCRSD is authorized to service in certain rural areas of Monroe County. The portion of ERSC’s territory it proposes to transfer to SCRSD consists of approximately 140 acres (referred to herein as “Transfer Area”), and the portion of SCRSD’s territory that is proposed to be transferred to ERSC consists of approximately 4,805 acres (referred to herein as “Expansion Area”). ERSC is also seeking approval of rates, charges, tariffs, and regulations for service within the expanded territory. Notice of the Petition was published and provided as required by law.

On October 11, 2013, the Town of Ellettsville (“Ellettsville”) filed its Petition to Intervene, which was granted on October 16, 2013. On November 8, 2013, the City of Bloomington (“Bloomington”) filed its Petition to Intervene, which was granted on November 19, 2013. ERSC filed its case-in-chief on November 18, 2013, consisting of the prefiled testimony and exhibits of Larry D. Barker and Otto W. Krohn. ERSC also prefiled the testimony and exhibits of Glen E. Morrow on November 19, 2013. On November 20, 2013, Monroe County filed its Petition to Intervene, which was granted on December 2, 2013. On December 12, 2013, SCRSD filed its Petition to Intervene, which was granted on December 20, 2013. The Indiana Office of the Utility Consumer Counselor (“OUCC”) filed the testimony and exhibits of Harold L. Rees on January 3, 2014. SCRSD filed its case-in-chief on January 3, 2014, consisting of the prefiled testimony and exhibits of Chad Reitmeyer and Rick Coppock. Monroe County filed its case-in-chief on January 3, 2014, consisting of the prefiled testimony and exhibits of Iris Kiesling and Larry Wilson. On January 6, 2014, Ellettsville prefiled the testimony and exhibits

of Michael Farmer and Douglas L. Baldessari. ERSC submitted the rebuttal testimony of Larry D. Barker, Otto W. Krohn, Glen E. Morrow, and Roy Shannon Reed on January 13, 2014. On January 17, 2014, ERSC filed the corrected rebuttal testimony and exhibits of Roy Shannon Reed. ERSC filed a Motion for Administrative Notice of various Commission Orders, an Order of the Stream Pollution Control Board of the State of Indiana, and an Ordinance of the Lake Monroe Regional Waste District on February 24, 2014, which was granted at the evidentiary hearing without objection.¹

An evidentiary hearing was conducted in this Cause on February 24, 2014, at 10:00 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, Ellettsville, SCRSD, Monroe County and Bloomington were present and participated. The testimony and exhibits of Petitioner, the OUCC, Ellettsville, SCRSD, and Monroe County were admitted into the record without objection. No members of the public appeared or sought to testify.

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

1. Notice and Jurisdiction. Proper, legal, and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the hearing notice have been incorporated into the record of this proceeding. ERSC is a public utility as defined in Ind. Code § 8-1-2-1 and holds a CTA issued by the Commission pursuant to Ind. Code § 8-1-2-89 to provide sewage disposal service to customers in rural Monroe County, Indiana. While SCRSD is organized and exists pursuant to Ind. Code art. 13-26, the Commission has jurisdiction over the proposed exchange of territory between SCRSD and ERSC pursuant to Ind. Code § 8-1-2-89. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics and Background. ERSC is a public utility organized and existing as not-for-profit Corporation under the laws of the State of Indiana. ERSC operates a wastewater collection system in Richland Township, Monroe County, Indiana. ERSC provides wastewater utility service to approximately 2,080 customers in rural Monroe County, Indiana.

ERSC was formed in 1970 and received a CTA to service a rural territory located generally southeast of Ellettsville in Cause No. 32783, which CTA was expanded on at least two occasions in Cause Nos. 32982 and 43383. The former Northern Richland Sewer Corporation ("NRSC") was also formed in 1970 and received a CTA to service a rural territory located generally north of Ellettsville in Cause No. 32784. NRSC was merged into ERSC effective June 22, 2011 in Cause No. 43921.

3. Relief Requested. ERSC seeks to expand its CTA to provide sewage disposal service into areas of Monroe County, Indiana currently within the territory of SCRSD and to

¹ Cause No. 43791U (IURC 7/28/10); Cause No. 43291 (IURC 6/22/11); Cause No. 40446 (IURC 7/16/97); Cause No. 44271 (IURC 6/26/13); Findings of Fact and Final Order and Determination of the Stream Pollution Control Board of the State of Indiana in Cause No. B-222; and Ordinance No.2 dated October 15, 1975 approved by the Board of Trustees of the Lake Monroe Regional Waste District.

transfer a portion of ERSC's existing CTA to SCRSD, as described in Petitioner's Exhibits LDB-2, LDB-3, and LDB-5. In addition, ERSC seeks approval of the application of its rates, charges, tariffs, and rules and regulations for service in the expansion area.

4. Evidence of the Parties.

A. ERSC's Case-in-Chief. ERSC offered, as its case-in-chief, the testimony of witnesses Larry D. Barker, Otto W. Krohn, and Glen E. Morrow. Along with the testimony of the witnesses, ERSC submitted exhibits in support of its Petition.

i. Larry D. Barker. Larry D. Barker, the President of the Board of Directors of ERSC, testified in support of the expansion of ERSC's territorial authority into certain areas currently within the territory of SCRSD and the transfer of a portion of ERSC's current certificated territory to SCRSD. Mr. Barker sponsored exhibit LDB-2, which identifies the service territory of ERSC and the territory served by SCRSD. The legal descriptions for territories to be exchanged are set forth in Mr. Barker's Exhibit LDB-5.

Mr. Barker testified as to several economical and operational reasons for supporting the proposed territory change. He indicated that in late 2012, it was discovered that an area within ERSC's CTA was being developed to include a nursing home, with other possible development. ERSC was not notified nor requested to provide sewage service, and upon investigation, ERSC determined that SCRSD was proposing to provide sewage service to the new facilities. ERSC contacted SCRSD and objected to SCRSD providing service in ERSC's CTA. Thereafter, ERSC and SCRSD worked together to resolve the territorial issue.

Mr. Barker stated that ERSC engaged Burgess & Niple, Inc. ("B&N") to study ERSC's provision of sewage service to the area being developed as a nursing home and for the estimated costs. The report ERSC received from B&N indicated that, due to the topography, ERSC would be required to install a lift station and forced mains to serve the developed area, as ERSC could not gravity feed that area from any existing interceptor lines. The report indicated SCRSD could already provide service to the Transfer Area without the additional cost of a lift-station.

He stated that ERSC also engaged B&N to assist in determining the feasibility of serving the Expansion Area that is proposed to be transferred from SCRSD to ERSC. This area can be served by ERSC by gravity without the necessity to add a lift station. Information provided by B&N supported that ERSC could serve this area through installation of certain sewer interceptors. The interceptors would connect to ERSC's current collection system which flows to be treated at a sewage treatment plant for which ERSC has a right to receive treatment.

Mr. Barker also testified that the development in the Transfer Area will provide SCRSD adequate gravity sewage flow to its sewage treatment plant, which is currently idle due to insufficient sewage to operate. He indicated that based upon ERSC's investigations and the discussions between ERSC and SCRSD, the parties entered into the Sewer Service Area Agreement that led to this proceeding and would result in ERSC giving up territory currently being developed with a large known customer base in exchange for a larger area of territory that is currently largely undeveloped.

With respect to ERSC's current sewage treatment arrangement, Mr. Barker testified that Ellettsville and the former NRSC and ERSC entered into sewage treatment purchase contracts that have a 60 year term and have been amended from time to time. Under the contracts, Ellettsville is paid in two components, one representing the fixed cost for the right to a certain level of plant capacity and the other variable costs of operation and maintenance. This cost is currently set at \$2.45 per thousand gallon of water used by ERSC's customers. Mr. Barker testified that the sewage treatment plant has a 2.3 million gallons per day capacity, equating to 7,700 Equivalent Dwelling Units ("EDUs") and that, per the contracts, ERSC has the right to 4,000 EDUs of capacity, or approximately 52% of the plant's capacity. Mr. Barker testified that ERSC is currently using only 2,086 of its available 4,000 EDUs of capacity, leaving ERSC a substantial amount of treatment capacity to serve the Expansion Area.

Mr. Barker noted that ERSC has general funds available for maintenance, repairs, and capital improvements to serve the expanded CTA. He testified that ERSC has recently been diligently directing its attention to inflow and infiltration problems that occur on its system and has purchased video equipment and a Vactor truck to locate problem areas and make repairs expeditiously. Many of the inflow and infiltration problems have now been corrected, and ERSC is working on maintenance issues in the remainder of its territory. Further, he stated that payment of fixed costs on the sewage treatment plant will change in the near future, as the bonds issued for the sewage treatment plant are nearly paid off and, upon repayment, ERSC will have additional funds for the payment of capital expenses.

Mr. Barker testified that, in the Expansion Area, ERSC will provide sewage disposal service to areas that are not currently being provided sewage disposal service. He noted there is a small area which is currently served by Bloomington and will continue to be served by Bloomington.² He indicated the exchange of territory and expansion of ERSC's CTA is in the public interest and serves the public convenience and necessity. He noted this area is in need of a sewage disposal service provider because there are concerns with septic systems falling into a state of disrepair, creating a potential for leaching untreated sewage into the water systems. Mr. Barker testified that there is also potential for development in the area, and ERSC economically and efficiently will meet the expected sewage disposal service requirements of such development and residents. With respect to the territory ERSC is transferring, SCRSD already has facilities in place to serve such area and the current development. Mr. Barker indicated that notice of the proposed territory exchange described in the Petition was provided to any owner-operator of any sanitary system within five miles of ERSC's system as required by law.

ii. Otto W. Krohn. Otto W. Krohn, Executive Partner of O.W. Krohn & Associates, LLP, a firm of certified public accountants ("CPAs") and consultants, was retained by ERSC to assist with the proposed territory exchange with SCRSD. Mr. Krohn testified that he assisted ERSC with the preparation of accounting exhibits related thereto and prepared testimony for this proceeding. The purpose of the reports and exhibits is to: (1)

² Mr. Barker testified this small area is located in the north half of Section 26 of Township 9N, Range 2W of the Transfer Area.

demonstrate ERSC's financial capability to serve the proposed expanded CTA and to meet the statutory financial requirements associated with the exchange/expansion of its CTA.

Mr. Krohn testified that virtually all of ERSC's fixed assets are invested in collection system mains (\$5.3M) and tools and equipment (\$.2M) and that ERSC's total utility plant in service at December 31, 2012 amounted to \$5,515,973. Mr. Krohn testified that his firm's 10-year projections demonstrate that ERSC has the financial capability of completing the sewer renovation and extension projects identified in the B&N report that are necessary to rehabilitate ERSC's existing collection systems, as well as having the wherewithal to serve customers throughout its present and proposed CTA in the Expansion Area.

He testified that the sewer purchase treatment contracts between ERSC and Ellettsville sets forth the capacity allocations (EDUs) and ratemaking formula (O&M costs, extensions and replacements and debt service allocations). Mr. Krohn further testified that ERSC has approximately 1,800 additional EDUs available for their existing and proposed CTA expansion area. He opined that ERSC could nearly double its existing user base before running out of capacity at Ellettsville's wastewater treatment plant ("WWTP").

Mr. Krohn testified that ERSC has sufficient cash resources to begin construction of main extension projects and will fund portions of these main extensions on a "pay-go" basis during calendar years 2013 through 2015 with capital outlays of approximately \$300,000 per year. He indicated that once the debt service charges from Ellettsville drop off in 2016, ERSC may consider financing larger portions of its capital plan. He testified that ERSC can easily allocate \$300,000 per year toward projects and/or to debt service payments on potential construction loans if demands warrant a faster build-out.

Mr. Krohn testified that ERSC has both the financial and managerial capability of extending its service as proposed in this Petition and stated that the territory exchange makes good sense for several reasons. He indicated that ERSC has very little long-term debt. He noted that ERSC has more than three million dollars in cash reserves and is in the process of rehabilitating most of all of its existing physical assets (collection mains and interceptors). He further testified ERSC provides a regional solution to the present and future wastewater collection and treatment requirements of the Expansion Area, offering monthly charges that are very competitive with the municipal systems operating adjacent to it.

iii. Glen E. Morrow. Glen E. Morrow, a registered professional engineer with B&N, testified that B&N has provided ERSC certain engineering services since August 2011, and provided information regarding plans and cost estimates for construction of collection sewers to service the territory for which ERSC is seeking an expansion of its CTA in this Cause. He sponsored Exhibits GEM-1 through 4.

Mr. Morrow testified that in April 2013, ERSC contacted him concerning SCRSD's construction within the ERSC service area to serve a nursing home. He stated that B&N was engaged to investigate ERSC serving the nursing home and that he reviewed topography and determined that for ERSC to serve the area a lift station would be needed. Mr. Morrow testified that he prepared a report to the ERSC Board with the details of his investigation, such report

being Exhibit GEM-1. Mr. Morrow indicated that after preparing the April 2013 report, he was asked to investigate whether ERSC could serve certain SCRSD territory areas by gravity. He estimated the project costs to be \$2.5 million for the interceptors in the southern section of the Expansion Area and \$2.2 million for the interceptors in the northern section of the Expansion Area based on approximately 25,319 feet of new interceptor sewers in the southern section and approximately 22,208 feet of new interceptor sewers in the northern section. Mr. Morrow stated that he does not foresee any additional substantial costs of construction for the sewage disposal plant and that the corridors B&N has proposed for interceptor sewers show that the basins can be served by gravity because of the topography.

Mr. Morrow testified that ERSC has demonstrated the ability to proactively and effectively manage its collection system, stating that one of B&N's first task orders from ERSC was to review inspection videos and rate the segments and then prepare contract bid documents to rehabilitate over 30,000 feet of pipe. He stated that the work included relining all of the older vitrified clay pipe that was acquired in the NRSC merger and also areas in the original ERSC area identified by inspection that needed repair and stated that since the original project was completed by Miller Pipeline, ERSC has purchased a video camera inspection truck and has engaged a contractor to systematically clean and inspect additional sewer segments. Mr. Morrow testified that ERSC has purchased three flow meters, the information from which will be used in the development of a master plan that will include areas to target rehabilitation. He indicated that best practices for collection systems require a full cleaning and inspection of sewer mains on a five-year cycle, and ERSC's progress is consistent with best practices. Mr. Morrow indicated that he is not aware of any other entity providing wastewater service in the Expansion Area.

B. OUCC's Case-in-Chief. The OUCC offered, as its case-in-chief, the testimony and exhibits of its witness Harold L. Rees, a Senior Utility Analyst for the Water/Wastewater Division of the OUCC. He testified that ERSC sends its wastewater to the Ellettsville WWTP for processing. ERSC's collection system includes 30-year old clay tile, which has contributed to an ongoing Inflow and Infiltration ("I&I") problem. However, the utility is in the midst of a five-year program to locate (televise) and rehabilitate its clay tile lines. He testified that the budgeted amount for the program has been \$100,000 per year. Mr. Rees testified that ERSC has been assigned approximately 50% of the capacity of the Ellettsville WWTP, for which it pays \$30,815 per month, in addition to a usage fee of \$2.45 per thousand gallons of wastewater.

Mr. Rees indicated that ERSC and SCRSD propose exchanging a portion of their existing service territories. He stated that as proposed, SCRSD would receive about 140 acres of territory, including a 100 bed nursing home under construction, using a gravity flow system and its 300,000 gallon WWTP. He stated that in exchange, ERSC would add approximately 4,805 acres of land to its territory that has the potential for future development and includes some residences that have septic systems that may need to be replaced at a future date. Mr. Rees noted that no current customers of SCRSD will be served by ERSC as a result of the proposed transfer, and no current customers of ERSC will be served by SCRSD.

Mr. Rees further testified as to the benefits of the territorial transfer as proposed in the Petition, indicating that the transfer will alleviate the need to construct a lift station to serve the nursing home. In addition, Mr. Rees stated that Bloomington has a line serving a few customers in the territory, but ERSC is willing to enter into a consent agreement allowing Bloomington to continue to serve those customers and certain additional customers on the line. Mr. Rees testified that he agreed with ERSC's proposal to apply its existing rates, charges, rules, and regulations to future utility customers in the proposed Expansion Area.

Mr. Rees also provided testimony as to the SCRSD treatment plant's capabilities. Mr. Rees opined that SCRSD's WWTP is capable of providing good service to wastewater customers and should be capable of handling the load associated with reasonable growth for some time.

With respect to ERSC's use of the Ellettsville WWTP, Mr. Rees testified that the WWTP appears to be in excellent condition. Mr. Rees testified that the WWTP is designed for treatment flows up to 2.3 million gallons per day and that based on current EDUs being served and current flows, the WWTP should not have difficulty serving additional customers that might be added as a result of the transfer proposed by this Petition.

Mr. Rees concluded that transfer of territory to SCRSD as described in the Petition should be considered in the public interest, stating that the transfer will avoid otherwise necessary costs to construct lift stations that would be borne by ratepayers. He stated that the OUCC supports the transfer proposed by the Petition and agrees that approval should be given for ERSC to apply its rates, charges, tariffs, rules, and regulations in the acquired territory.

C. SCRSD's Evidence. The Intervener SCRSD offered, as its case-in-chief, the testimony of witnesses Chad Reitmeyer and Rick Coppock.

i. Chad Reitmeyer. Chad Reitmeyer, President of SCRSD's Board of Trustees, testified that SCRSD was formed in 1973 and provides wastewater collection and treatment services in the unincorporated portions of Monroe County where other entities do not have jurisdiction. He stated Monroe County, through its Redevelopment Commission, built a plant and collection system approximately ten years ago that was designed to accommodate the needs of Monroe County's State Road 46 Corridor Economic Development Area ("46 Corridor EDA"). He indicated that SCRSD agreed, at the request of Monroe County, to take over and operate the plant, but that SCRSD was under the mistaken assumption that the entire 46 Corridor EDA was included in SCRSD's jurisdiction, including the Transfer Area.

Mr. Reitmeyer testified that the 46 Corridor EDA has not grown as expected and that due to lack of adequate flow, the treatment facility built by Monroe County has not operated and, instead, the 300 gallon per day flow has been pumped at a loss for SCRSD. He stated the new nursing facility is being placed on parcels within the EDA, but splits the SCRSD and ERSC jurisdiction. The nursing home facility is expected to have a 10,000 gallon a day flow, which would allow the treatment facility to become operational and make that district no longer an operating loss for SCRSD. He testified that SCRSD and ERSC agreed to transfer certain territories as described in the Petition. Mr. Reitmeyer indicated the Transfer Area can be served by gravity and that the treatment plant has capacity to serve the Transfer Area. He testified that

the Expansion Area does not have any SCRSD assets in place to serve at this time and that considerable expense on the part of SCRSD would be required to serve the area, both in a collection system and a processing plant. He stated SCRSD has never planned on servicing the Expansion Area because other sewer districts can provide service to these areas in a more cost effective manner.

ii. Rick Coppock. Rick Coppock, Senior Project Engineer for Bynum Fanyo & Associates and a partner in Bynum Fanyo Utilities, Inc., testified that Monroe County, through its Redevelopment Commission, built a WWTP and collection system to accommodate projected needs of the 46 Corridor EDA and that, upon request of Monroe County, SCRSD agreed to take over and operate the WWTP. Mr. Coppock testified that the SCRSD WWTP has the capacity to process 100,000 gallons of flow per day and was designed to be expandable to 600,000 gallons to meet/exceed the estimated capacity for the 46 Corridor EDA. He testified that the SCRSD WWTP is the only plant that can serve the Transfer Area by gravity flow, which is the most efficient method for transporting the waste. He indicated the nursing home project has been connected to the SCRSD collection system and no additional infrastructure will be required at this point in time. He noted that any other treatment provider would need to expend considerable funds in order to provide service.

D. Monroe County's Evidence. The Intervener Monroe County offered, as its case-in-chief, the testimony of witnesses Iris Kiesling and Larry Wilson.

i. Iris Kiesling. Iris Kiesling, President of the Board of Commissioners of Monroe County, Indiana, testified regarding Monroe County's two EDAs in the northwest quarter of Monroe County. She stated the statutory purposes of these EDAs include promoting opportunities for the gainful employment of Monroe County citizens, retaining existing employers, and attracting new major business enterprises to these EDAs. One of the surest ways to promote these purposes is to ensure that reliable, low cost utility infrastructure and service is available. She stated that promoting development within Richland Township, in particular, will increase the assessed value of property in the township and will generate additional revenues for government services.

Ms. Kiesling testified that Monroe County, as part of its economic development area approval process, has developed wastewater infrastructure plans. She stated that the Monroe County infrastructure was designed to serve the area using gravity flow, and infrastructure has been constructed according to those plans. Ms. Kiesling expressed a concern that the cost saving objectives of the gravity flow infrastructure design will be undermined if the lower cost service provider is not granted jurisdiction over the area. She opined that Ellettsville would be able to provide services at a lower cost to system users than ERSC would. She further indicated that Monroe County does not have a position as to who is the best service provider, as both entities use the same wastewater treatment plant and have interconnected lines and billing.

ii. Larry Wilson. Larry Wilson, Director of the Monroe County Plan Commission, testified that the Transfer Area is zoned Planned Unit Development, which calls for a mix of uses, while the Expansion Area is primarily zoned Agricultural/Rural Reserve, which allows for agricultural and single family residential uses, although the comprehensive plan

anticipates some of the land being used for commercial and industrial activities. He noted the Monroe County Plan Commission has required, to the extent feasible, sewer service for new developments. He stated that it is unlikely that any large-scale development will be approved in the future without the provision of sewer service. He indicated that the Planning Department is concerned that transfer of the Expansion Area to ERSC may discourage future annexation by Bloomington or Ellettsville and prevent urban services from being provided. Second, he opined that increased sewer charges may encourage new housing units to be built on private sewer systems in areas further out in Monroe County.

E. Ellettsville's Direct Testimony. The Intervener Ellettsville offered, as its case-in-chief, the testimony and exhibits of witnesses Michael Farmer and Douglas L. Baldessari.

i. Michael Farmer. Michael Farmer, Director of Utilities for the Town of Ellettsville and the Water Division Director for Bynum Fanyo Utilities, testified regarding his understanding of the technical and practical aspects of ERSC's proposed CTA expansion. Mr. Farmer described Ellettsville's WWTP and noted that it treats ERSC's waste pursuant to the contracts between Ellettsville, ERSC, and the former NRSC.

Mr. Farmer testified that without the ability to review ERSC's detailed master plan, he could make only general comments about the transfer described in the Petition because, by way of example, he did not know where individual pipelines would be located or the exact location of connections to the WWTP and capacity requirements for the yet to be developed area. He indicated that he was concerned about ERSC's proposal to serve the Expansion Area with a gravity based waste collected system due to the topography of the area. Mr. Farmer noted that ERSC will serve primarily existing residences by extensions of gravity sewer lines in the Expansion Area and opined that gravity sewer service in rural areas is often not appropriate for existing developments. He suggested that the more appropriate approach for serving existing developments would be a low pressure force main rather than a gravity fed system.

Mr. Farmer testified that he did not believe ERSC could feasibly treat waste from the Expansion Area at the Ellettsville WWTP. He opined that the existing residential housing units in the areas adjacent to the proposed interceptor extensions do not, on their own and without additional development, support the investments proposed by ERSC. He noted that, to his knowledge, there have been no requests for or interest in receiving sewer service in this area.

Mr. Farmer testified as to his understanding of the proposed territorial exchange. He indicated that ERSC would need to install a lift station to serve the Transfer Area and that SCRSD needs the flow from the Transfer Area to operate its WWTP. He proposed that ERSC could serve the nursing home using SCRSD as its wholesale treatment provider. ERSC would then have been able to serve the nursing home without a lift station, and SCRSD would have had the flow to operate its treatment plant. Mr. Farmer noted that part of the Expansion Area is currently served by Bloomington.

Next, Mr. Farmer testified about I&I, explaining that inflow is the direct connection to the sanitary sewer system including storm drains, sump pumps, and other means that divert storm

water from its natural course into the sanitary sewers, while infiltration is ground water that enters the sewer system through defects in the pipes. He stated that ERSC has had I&I problems that he does not believe have been addressed. He testified that ERSC has invested large sums of money since 2011 to correct I&I issues. Mr. Farmer opined the work done by ERSC in 2011 and 2012 was not properly completed. Lastly, Mr. Farmer testified that ERSC has not adequately maintained its system and should not be allowed to expand its territorial area and that ERSC's expansion plan should not be approved.

Mr. Farmer stated that Ellettsville was not contacted by ERSC prior to the Petition being filed. He indicated Ellettsville is the sole provider for the treatment of waste generated by ERSC and the failure of ERSC to seek input from Ellettsville prior to filing this Petition demonstrates poor managerial judgment. He stated ERSC has failed to adequately maintain its system. Mr. Farmer concluded his testimony by opining that the proposed CTA expansion is inappropriate and would not serve in the public interest because ERSC does not have the managerial or technical ability.

ii. Douglas L. Baldessari. Douglas L. Baldessari, a CPA with H.J. Umbaugh & Associates, testified that his firm was retained by Ellettsville to analyze the financial filings and situation of ERSC. Mr. Baldessari testified that after reviewing ERSC's 10 Year Pro Forma accounting report labeled as Exhibit OWK - 1 to Mr. Krohn's testimony (the "Projection Report"), he noticed a cash balance of over \$3,000,000 as of December 31, 2012. He opined that the cash balance of ERSC is excessive. He stated that rates and charges for not-for-profit utilities are set to recover its revenue requirements. He stated that cash balances for a not-for-profit utility would normally provide for a 45-day working capital balance, or \$148,805 for ERSC based on its Annual Report for 2012, plus a reasonably required debt service reserve based on the average annual debt service payment on the outstanding Rural Development loan of about \$14,000 and an allowance for one-year's capital improvements of \$300,000 to \$350,000 based on the amounts in the Projection Report. He further testified that a total cash balance of approximately \$515,000 was required, assuming the highest years of the proposed capital improvement expenditures of \$350,000 in the Projection Report. Mr. Baldessari stated it appears that ERSC has charged excessive rates over many years in building such a reserve and has not invested enough funds in capital replacements to its collection system. While advocating the reduction of cash balances on one hand, Mr. Baldessari noted ERSC operated at a net operating loss in 2012 and a projected annual net loss for 2013 and the next two years, depending on the growth.

Mr. Baldessari opined that ERSC does not have the financial and managerial capability to serve the Expansion Area. He testified that ERSC has demonstrated poor managerial and financial judgment by planning to charge excessive rates to their users to fund growth related capital costs. Growth related costs should be funded by growth related capital charges. He stated ERSC's plan only appears to work because they plan to overcharge their existing users to pay for the growth. At the evidentiary hearing, the Presiding Officers questioned Mr. Baldessari about his testimony regarding the cash balances of ERSC being excessive while also indicating that ERSC does not have the financial and managerial capability to service the proposed expanded CTA. Mr. Baldessari testified that ERSC has the financial capability to serve the Expansion Area.

F. **ERSC's Rebuttal Testimony.** ERSC presented the rebuttal testimony and exhibits of witnesses Larry D. Barker, Otto W. Krohn, Glen E. Morrow, and Roy Shannon Reed in support of its Petition.

i. **Larry D. Barker.** Mr. Barker offered rebuttal testimony to address certain positions taken by Intervenor Ellettsville and Monroe County. With respect to Ms. Kiesling and Mr. Wilson's testimony regarding cost of service, Mr. Barker testified that it is most likely that ERSC would be the lower cost service provider for the Expansion Area. He stated that on average, ERSC's residential rates are lower than Ellettsville's rates. He indicated that for 3,000 gallons, which is the average residential bill, the ERSC charge would be \$26.28, while the Ellettsville charge would be \$37.04 and for 5,200 gallons of usage ERSC's charge would be \$44.08 while Ellettsville's would be \$44.92. Mr. Barker testified that as usage exceeds 6,000 gallons/month, Ellettsville's rate would be lower than ERSC's rate, indicating that Ellettsville has a base charge of \$26.30 per month and a lower volume charge of \$3.58/1,000 gallons, while ERSC charges \$8.76 per 1,000 gallons for the first 3,000 gallons/month, \$8.09 for 1,000 gallons and then \$5.95 per subsequent 1,000 gallons. Mr. Barker acknowledged that for commercial and industrial use, the Ellettsville rates could potentially be more favorable. However, Mr. Barker indicated that a majority of the Expansion Area is planned for residential use, not commercial. In addition, Mr. Barker testified that ERSC is willing to review and analyze its commercial rate and potentially add a separate rate class for commercial usage; particularly if Monroe County plans change such that the area to be served is expected to be mostly commercial.

Mr. Barker testified in response to Ellettsville's concerns about I&I and indicated that ERSC has made substantial progress in addressing I&I issues and repairing and maintaining its system and plans to continue to do so in the future. Mr. Barker also noted that Ellettsville and ERSC entered into a Sewer System Repair Agreement on September 7, 2011, whereby Ellettsville and ERSC agreed that if one party feels that the other party is not maintaining or repairing its facilities to the industry standards, then the party that thinks the standards are not being met may call in a third party to inspect any facility or workmanship or repair, but to date Ellettsville has not requested a third party to inspect any ERSC facility, workmanship, or repair.

Responding to Ellettsville's concerns about ERSC's technical ability to provide service to the Expansion Area, Mr. Barker stated that ERSC has made substantial progress with its system, is financially sound and has the technical ability and/or engages qualified contractors with the technical ability to productively serve current customers and serve the proposed expansion area. He further noted the territorial exchange is in the public interest and is reasonable, indicating that SCRS will be serving a commercial customer which will allow it to utilize its WWTP. He indicated that ERSC is getting more territory in the exchange, but it is undeveloped territory which is well-situated for its sewage to be treated at the Ellettsville WWTP for which ERSC has the largest capacity allocation and has paid for the unused capacity. In response to concerns about ERSC serving certain parts of the Expansion Area that are currently served by Bloomington, Mr. Barker noted that ERSC and Bloomington have reached an agreement in principal for Bloomington to serve the area as evidenced by the minutes of the Bloomington's December 16, 2013 meeting, Exhibit LDB-R2.

ii. Otto W. Krohn. Mr. Krohn offered rebuttal testimony to address certain concerns raised by Ellettsville and to address certain points raised by Monroe County.

Mr. Krohn testified regarding Ellettsville's concerns that ERSC does not have the financial and managerial capability to serve the Expansion Area. He stated that from his review of ERSC's books and financial practices, ERSC has prudently managed its cash and investments over the years (first by having the membership/connection fees to obtain resources from new customers and second by prudently investing those funds), resulting in ERSC being in the comfortable position of being able to address I&I issues, main extensions, replacements, and territory expansions without having to increase its retail rates to do so. He noted that ERSC's cash balances were accumulated from customer growth that occurred primarily between 2001 and 2006, and the ERSC Treasurer prudently invested its cash reserves and earned a substantial amount of interest over the years that contributed to ERSC's financial success. He stated that since 2011, and in accordance with the Commission's Order in Cause No. 43921, ERSC has used a portion of the accumulated cash reserves to improve its collection system and intends to continue to do so, repairing, replacing, and renovating the majority of its sanitary sewer collection system. Mr. Krohn testified that in 2011 and 2012, ERSC invested nearly \$1.2 million in sewer rehabilitation, repairs, and replacements in response to the Commission's Order in Cause No. 43921 to improve its collection system. Mr. Krohn indicated that similar expenditures were made during 2013 and are expected to continue in the years to come because ERSC is serious about addressing the quality and integrity of its collection system and has the financial resources and the will to do so.

With respect to Monroe County's concerns regarding economic development, Mr. Krohn testified that ERSC offers the best opportunity for making Monroe County more competitive for future economic development within the Expansion Area because property taxes are less than inside Ellettsville's corporate limits. He also stated that for residential rates, ERSC's rates are favorable when compared to Ellettsville's rates because Ellettsville has a high "base charge" of \$26.30 per month and a lower "volume charge" of \$3.58 per 1,000 gallons. He noted that for an average usage of 3,000 gallons, ERSC's bill would be \$26.28 as compared to \$37.04 for Ellettsville. He stated that Ellettsville's rates do not become more favorable than ERSC's until usage exceeds 6,000 gallons per month. He indicated that ERSC recognizes and agrees that to be competitive for commercial development; it may need to update its overall rate structure to provide a more competitive commercial and industrial wastewater rate.

iii. Glen E. Morrow. Mr. Morrow offered rebuttal testimony in response to concerns raised by Ellettsville. First, Mr. Morrow testified regarding the level of detail in ERSC's plans to serve the Expansion Area. He indicated that ERSC has not done a master plan for the Expansion Area because it would not be prudent to unnecessarily spend resources on consultant services for a master plan until the area is transferred to ERSC. In preparing his reports for ERSC, he indicated that he started with the boundary maps provided by SCRSD, which he understood were from their engineer, Bynum Fanyo and which indicated that the territory could drain by gravity to the Ellettsville/ERSC collection and treatment systems. He indicated that B&N verified that interceptor sewers could reach the outer limits of this boundary

by gravity but indicated that it would not be prudent to provide detailed engineering plans for the interceptor sewers before sewer service is needed.

In response to Ellettsville's concerns, Mr. Morrow stated that it is technically feasible for ERSC to serve the Expansion Area. However, he noted there is a lot more work to determine which alternatives are optimal. He stated that if technically possible, gravity sewers are preferred to lift stations since they have less annual ownership and maintenance expenses. Mr. Morrow also disagreed with Mr. Farmer's assertion that there was no current need for ERSC's service in the proposed area, in stating that the Monroe County Health Department has had a number of septic failures and repairs within the proposed area. He also stated that ERSC's service would help protect soil and water from contamination from aging and leaking septic systems.

In response to Mr. Farmer's testimony asserting that the nursing home should be served by ERSC sending sewage treatment to SCRSD's WWTP, Mr. Morrow stated that while this would be technically possible, it does not make logical sense. He indicated ERSC does not have capacity allocation at the SCRSD WWTP as it does, and is currently paying for, at the Ellettsville WWTP. He stated that regardless of whether the sewer service to the existing and potential customers in the Expansion Area is provided by ERSC, SCRSD, Ellettsville or another entity, unless a new WWTP is constructed, the only logical treatment facility is the current one operated by Ellettsville. He testified that ERSC owns over half of the capacity allocation of the Ellettsville WWTP and the WWTP could be expanded if needed.

Mr. Morrow also noted that the substantial steps taken by ERSC to address I&I issues and overflow problems and repair its system have been reasonable and prudent. He stated that since 2011, ERSC has hired qualified contractors, televised and relined substantial amounts of its system, and continues to move forward with repairs and maintenance on the remainder of its system.

Mr. Morrow concluded his rebuttal testimony by opining that ERSC has the requisite technical and managerial ability to provided service to the Expansion Area. He stated that ERSC is continually addressing its I&I issues and performing other monitoring and maintenance activities in accordance with industry accepted methods. He stated ERSC has reserved treatment capacity at the Ellettsville WWTP and has demonstrated that it has the financial ability to properly fund its operations.

iv. Roy Shannon Reed. Roy Shannon Reed, President of Reed & Sons Construction, Inc. ("Reed & Sons"), offered rebuttal testimony based upon the services Reed & Sons has performed for ERSC and in response to Ellettsville's testimony. Mr. Reed testified that in the fall of 2011 ERSC purchased a 2006 Sterling Vacuum Truck. He stated that the truck is vital for cleaning and unclogging sewer mains to maintain the most efficient sewer system possible. In addition, he stated that ERSC purchased a 2003 Freightliner Sprinter Van with sewer camera system, which allows ERSC to survey its sewer system pipe integrity on a regular basis to be shared with engineers for further evaluation. He testified that both pieces of equipment are vital and necessary for a sewer corporation like ERSC to effectively maintain its system.

Mr. Reed also testified about the overall condition of the ERSC system, stating that in the fall of 2011, Miller Pipeline began a relining of approximately 14,000 lineal feet of sewer line pipes in the old NRSC territory that was merged into the territory of ERSC, as well as relining another approximately 20,600 feet of sewer line pipes in the remaining ERSC territory. He stated that the project was completed in January 2012. Mr. Reed stated that Reed & Sons performed spot repair work prior to the lining, which included installing some new manholes and manhole covers for access points for the lining to be completed. Since the project was completed, he stated that ERSC has not had any sewer overflows to report in these areas. He also noted that ERSC purchased and placed three flow meters to identify additional potential I&I problems.

5. Commission Discussion and Findings.

A. Statutory Considerations. The Commission is authorized pursuant to Ind. Code § 8-1-2-89 to issue CTAs to utilities offering sewage disposal service, such as ERSC. Ind. Code § 8-1-2-89(e) provides that if the applicant for CTA proves the following, the Commission shall grant applicant a CTA:

- (1) that the applicant has the lawful power and authority to apply for said certificate and to operate said proposed service;
- (2) that the applicant has the financial ability to install, commence and maintain said proposed service; and
- (3) that the public convenience and necessity require the rendering of this proposed service in the proposed rural areas by this particular sewage disposal company.

Therefore, the Commission will consider these basic requirements in determining whether ERSC's current CTA shall be modified in such a manner to remove the Transfer Area and add the Expansion Area.

i. Lawful Power & Authority. ERSC presented sufficient evidence demonstrating that it is an Indiana corporation that has been providing sewage disposal services in rural areas in Monroe County, Indiana since 1971 when the Commission granted its original CTA in Cause No. 32783. The evidence of record also indicates that ERSC and SCRSD entered into a Sewer Service Area Agreement which provides ERSC the authority to serve the Expansion Area, if approved by the Commission. In addition, a resolution from ERSC's Board of Directors was presented approving the territory exchange with SCRSD. While Monroe County and Ellettsville raised or noted concerns with the territory exchange, no relevant evidence was introduced that would call into question ERSC's lawful power and authority to provide sanitary sewer disposal service in the Expansion Area. Therefore, based on the evidence, the Commission finds that Petitioner has lawful power and authority to serve the Expansion Area that is currently part of SCRSD's territory.

ii. Financial Ability. ERSC presented evidence demonstrating that it could serve the Expansion Area through installation of certain sewer interceptors and estimated project costs to be \$2.5 million for the interceptors in the southern section of the Expansion Area and \$2.2 million for the interceptors in the northern section of the Expansion Area. ERSC's witness Krohn testified that ERSC has the financial ability to initiate and continue construction in the Expansion Area through either cash reserves or borrowing. The evidence indicates that ERSC currently utilizes about half of its allocated capacity at the Ellettsville WWTP and would not need to purchase additional capacity anytime soon. Mr. Krohn stated that ERSC should have sufficient resources to ensure that its Interceptor Capital Plan is constructed and that sewer service is provided through the ERSC CTA. We further note that the evidence demonstrates that ERSC currently has more than three million dollars in cash reserves. Once more, while Monroe County and Ellettsville raised or noted concerns with the territory exchange, no relevant evidence was introduced that would call into question ERSC's financial ability to install, commence and maintain sanitary sewer disposal service in the Expansion Area. Based upon the financial information presented, we accordingly find that ERSC has the financial ability to install, commence and maintain the proposed service in the expanded CTA area.

iii. Public Convenience & Necessity. Pursuant to Ind. Code §8-1-2-89(e)(3), ERSC must show that the public convenience and necessity require the rendering of this sewage disposal service in the Expansion Area by ERSC. The evidence in this Cause clearly demonstrates that the Expansion Area over which ERSC seeks to obtain a CTA is not currently receiving service from another sewage disposal utility, except for the limited portion served by Bloomington with respect to which an agreement has been reached for Bloomington to continue to serve. No evidence was presented to the Commission to indicate that either Bloomington or Ellettsville has plans of annexing or intends to serve any portion of the proposed Expansion Area and no relevant evidence was offered demonstrating the Expansion Area would be better served by SCRSD instead of ERSC. In addition, the evidence indicates the Expansion Area includes territory that is considered to be EDAs. The Monroe County Plan Commission has, required new developments to have sewer service and it is unlikely that any large-scale development will be approved in the future without the provision of sewer service. There is also evidence that the Expansion Area is in need of a sewage disposal service provider because of aging and ineffective septic systems creating a potential for leaching untreated wastewater. Therefore, we find there is a need for sewer service that is not currently being provided in the Expansion Area which ERSC is capable of providing.

In regard to rates to be charged to customers in the Expansion Area, the evidence demonstrates that ERSC's rates are lower than other providers that could possibly provide service, such as Ellettsville, for residential uses that are expected in the Expansion Area. Further, ERSC has expressed its willingness to consider rate changes to encourage commercial and/or industrial development in the area if needed. The OUCC's evidence recommends that approval be granted for the rates, charges, tariffs, rules and regulations for ERSC's service in the Expansion Area. We find the public convenience and necessity require the rendering of this proposed service in the Expansion Area by ERSC. Accordingly, the rates, charges, tariffs, and rules and regulations for service of ERSC should be applied to the Expansion Area.

Further, the OUCC's evidence supports the request to serve the Expansion Area by ERSC described in this Cause and indicated it should be considered to be in the public interest because it will avoid otherwise necessary costs to construct lift stations that would be borne by ratepayers; such lift stations would be required if SCRSD, which currently has the right to serve the territory, developed infrastructure to serve the Expansion Area. We also note the evidence record indicates that ERSC does not have the ability to serve the Transfer Area without constructing a lift station at considerable expense. The evidence also demonstrates that SCRSD can provide, and is providing, the needed service in the Transfer Area through without the need to construct a lift station. Therefore, the Commission finds the territory exchange between ERSC and SCRSD is reasonable and in the public interest.

For the above reasons, the evidence establishes that granting ERSC's requested CTA to serve the Expansion Area will serve the public convenience and necessity. Accordingly, the Commission finds that ERSC's existing CTA shall be amended to remove the Transfer Area and include the Expansion Area except for the portion currently served by Bloomington. In addition, we find ERSC shall be required to submit a copy of its executed agreement with Bloomington and updated maps to the Commission, once they are finalized.

B. Other Considerations. We note that pursuant to 170 IAC 8.5-3-1(2), a sewage disposal company seeking an expansion of its CTA is required to submit certain exhibits in support of its petition where appropriate. The relevant items that Petitioner submitted included: a legal description of area to be served, maps of the area, and evidence indicating that each owner-operator of a sanitary sewer system within five miles of ERSC's system was provided notice of Petition that is the subject of this Cause. We note that because any sewage to be treated coming from the Expansion Area or the Transfer Area will be treated by a WWTP already approved by the Indiana Department of Environmental Management and because there are no immediate development plans for the Expansion Area, the other items required to be submitted in accordance with 170 IAC 8.5-3-1(2) are not necessary. Accordingly, we find that Petitioner's evidence has satisfied these requirements.

C. Commission Consent for Use of Public Right-of-Way. Ind. Code § 36-2-2-23 provides that the County Executive may grant licenses, permits, or franchises for the use of county property to install sewer and water lines and provide water service to a particular area. The County Executive may only grant such a license, permit, or franchise with the consent of the Commission. Based upon the findings above that public convenience and necessity is served by the issuance of an amended CTA to Petitioner to provide sewage disposal service in the Expansion Area, the Commission hereby consents, to the extent necessary, to the use of Monroe County property, including the right-of-way, to install sewer facilities in the Expansion Area.

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

1. The acquisition by ERSC of a portion of SCRSD's territorial authority is approved. ERSC's existing CTA is amended to include the Expansion Area as identified in the Petition, and as described and depicted in the attached territorial descriptions.

2. The transfer of a portion of ERSC's existing CTA to SCRSD as identified and described in the Petition is hereby approved. ERSC's CTA shall be amended by the removal of the Transfer Area as identified in the Petition, and as described and depicted in the attached territorial descriptions.

3. ERSC's request for approval of the application of its existing rates, charges, tariffs, rules and regulations for service in the Expansion Area is approved.

4. ERSC has the consent of the Commission, as contemplated in Ind. Code § 36-2-2-23, to use Monroe County property, including the right-of-way, to install sewer facilities.

5. This order shall be effective on and after the date of its approval.

STEPHAN, MAYS-MEDLEY, WEBER, AND ZIEGNER CONCUR:

APPROVED: AUG 27 2014

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



Brenda A. Howe
Secretary to the Commission

Legal description: For ERSC CTA Expansion-Territory to be transferred from SCRSD to ERSC

- * N 1/2 of NW 1/4 Sec 25, T 9 N, R 2 W
- * N 1/2 Section 26, T 9 N, R 2 W
- * NE 1/4 Sec 27, T 9 N, R 2 W
- * N 1/2 Sec 22, T 9 N, R 2 W
- * SE 1/4 Sec 22, T 9 N, R 2 W
- * NE 1/4 Sec 21, T 9 N, R 2 W
- * NW 1/4, SW 1/4 & SE 1/4 of Sec 15, T 9 N, R 2 W except for the area within the current Town Limits of Ellettsville
- * NW 1/4 & NE 1/4 Sec 16, T 9 N, R 2 W except for the area within the current Town Limits of Ellettsville
- * NE 1/4 Sec 17, T 9 N, R 2 W
- * SE 1/4 Sec 8, T 9 N, R 2 W
- * NE 1/4 Sec 8, T 9 N, R 2 W except for the area within the current Town Limits of Ellettsville
- * NE 1/4 Sec 4, T 9 N, R 2 W except for the area within the current Town Limits of Ellettsville
- * NW 1/4 & SW 1/4 Sec 3, T 9 N, R 2 W except for the area within the current Town Limits of Ellettsville
- * NE 1/4, SE 1/4 & SW 1/4 Sec 33 except for the area within the current Town Limits of Ellettsville
- * Sec 34, T 10 N, R 2 W
- * Part of Sec 35 Bounded on the west by the west line of Sec 35, Cowden Road on the north and east and Delap Road on the south
- * SW 1/4 of Sec 28 T 10 N, R 2 W
- * E 1/2 SW 1/4 Sec 28, T 10 N, R 2 W
- * SW 1/4 and SE 1/4 of Sec 27, T 10 N, R 2 W
- * S 1/2 SE 1/4 Sec 21, T 10 N, R 2 W
- * Part of the S 1/2 SW 1/4 Sec 22 bounded by the west line of Sec 22 to Mt Tabor Road on the east, the south line of Sec 22 and the north line of the S 1/2 of the SW 1/4 of Sect 27, T 10 N, R 2 W

All in Richland Township, Monroe County, Indiana

LEGAL DESCRIPTION:

Territory to be transferred by ERSC to SCRSD

South one-half of the northeast one quarter of the northeast one quarter of Section 24, Township 9 North, Range 2 West;

Southeast one quarter of the northeast quarter of Section 24, Township 9 North, Range 2 West;

East one-half of the southeastern quarter of Section 24, Township 9 North, Range 2 West;

All located in Richland Township, Monroe County, State of Indiana.