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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE MUNCIE SANITARY)
DISTRICT FOR APPROVAL OF A) CAUSE NO. 45055
REGULATORY ORDINANCE COVERING)
UNINCORPORATED AREAS OF) APPROVED: NOV 27 2019
DELAWARE COUNTY, INDIANA.)

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

David E. Veleta, Senior Administrative Law Judge

On February 27, 2018, Muncie Sanitary District (“MSD”) filed its Petition for Approval with the Indiana Utility Regulatory Commission (“Commission”), seeking approval of Muncie City Ordinance 2015-16 (“Regulatory Ordinance” or “Ordinance”), to become the exclusive provider of sanitary sewage service¹ in certain unincorporated areas of Delaware County, Indiana, pursuant to Ind. Code ch. 8-1.5-6.

On March 26, 2018, Delaware County Regional Wastewater District (“DCRWD”) filed a Petition to Intervene, which the Commission granted on April 11, 2018. Also on March 26, 2018, MSD and the Town of Yorktown, Indiana (“Yorktown”) filed a Stipulation between Muncie Sanitary District and the Town of Yorktown.²

On April 19, 2018, Liberty Regional Waste District (“Liberty” or “LRWD”) filed a Petition to Intervene. The Commission has not acted on Liberty’s Petition to Intervene. However, Liberty fully participated in this case as an intervening party, including submitting evidence and participating at the evidentiary hearing, and no party objected to Liberty’s participation in the case. Based on our review of Liberty’s Petition to Intervene, we find that it satisfies the requirements of 170 IAC 1-1.1-11 and that it should be granted. We further find that the failure to grant Liberty’s Petition to Intervene earlier in this case was an unintentional and harmless oversight and that no party has been prejudiced by the failure to formally allow the intervention sooner. Therefore, we grant Liberty’s Petition to Intervene.

On April 20, 2018, MSD, the Indiana Office of Utility Consumer Counselor (“OUCC”), DCRWD, and Yorktown filed a Stipulation as to Procedural Matters, which included an agreed procedural schedule for this case. The Commission adopted the agreed procedural schedule on April 24, 2018.

¹ Throughout the Petition and evidence submitted by parties, several terms have been used to indicate sanitary sewer service including sewage service, sewer service, and wastewater service. In the Commission Discussion and Findings, the term wastewater service will be used except when referring to a specific statute.

² At the time of the filing, Yorktown was not a party to the case. Counsel for Yorktown had filed an Appearance on March 16, 2018. Yorktown filed its Petition to Intervene on July 30, 2018, which the Commission granted on August 8, 2018. Yorktown refiled the stipulation on May 22, 2018, labeling it Town of Yorktown Exhibit 1.

On May 22, 2018, DCRWD filed a Motion to Dismiss or to Stay Procedural Schedule. The motion asserted that although MSD had filed its Petition with several attached exhibits, it had not filed any case-in-chief testimony supporting its requested relief or authenticating its exhibits. DCRWD moved for the case to be dismissed or in the alternative for the Presiding Officers to convene an attorney's conference to discuss a new procedural schedule. No party filed a response to the motion.

On May 25, 2018, prior to MSD filing any case-in-chief testimony, the OUCC filed the prefiled testimony and exhibits of Carl N. Seals, Utility Analyst in the OUCC's Water/Wastewater Division.

On June 14, 2018, MSD filed the testimony and exhibits of Michael Cline, P.E., member of MSD's Board. On June 15, 2018, DCRWD filed a Motion to Strike and for Default Ruling on Motion to Dismiss, requesting that MSD's June 14, 2018 filing be stricken under 170 IAC 1-1.1-8(d) and that the Commission issue a default ruling on DCRWD's motion to dismiss.

On June 18, 2018, the Commission issued a docket entry converting the then-scheduled evidentiary hearing into an attorney's conference to discuss DCRWD's pending motions to dismiss and to strike. The Commission held the attorney's conference on May 22, 2018, at which the Parties and the Commission discussed and resolved motions by resetting the procedural schedule in this Cause. Thereafter, on August 20, 2018, MSD properly filed the testimony and exhibits of Mr. Cline.

On September 28, 2018, Yorktown filed the testimony and exhibits of Pete Olson, Town Manager. On October 15, 2018, the OUCC filed the Supplemental Testimony of Mr. Seals. Also on October 15, 2018, DCRWD filed the testimony and exhibits of John Brooke, member of the Board of Trustees, and Liberty filed the testimony and exhibits of attorney Mark Abrell; Kathy May, Liberty's Office Manager; and Jerry Zearbaugh, Liberty's Superintendent.³

On December 31, 2018, MSD filed the rebuttal testimony of Mr. Cline.

The Commission held an evidentiary hearing in this Cause at 9:30 a.m. on January 17, 2019, in Room 222, 101 West Washington Street, Indianapolis, IN 46204. MSD, the OUCC, Yorktown, DCRWD, and Liberty appeared at and participated in the hearing. During the hearing, counsel for MSD waived the requirement of Ind. Code § 8-1.5-6-9(c) that the Commission issue its order in this Cause within 300 days of MSD's petition.

On July 18, 2019, DCRWD filed its Petition to Reopen the Record ("Motion to Reopen the Record") in the above-captioned Cause. DCRWD requested that the Commission reopen the record in this Cause to allow the presentation of additional evidence that has come to light since the January 17, 2019 Evidentiary Hearing. On July 26, 2019, MSD and DCRWD, filed their Joint Motion for Enlargement of Time ("First Motion"). On July 30, 2019, the Presiding Officers granted the First Motion. On August 8, 2019, MSD filed its Second Motion for Enlargement of Time ("Second Motion"). On August 15, 2019, the Presiding Officers granted the Second Motion. On August 23, 2019, the Parties submitted an Agreed Procedural Schedule. On August 30, 2019, DCRWD submitted the supplemental testimony of John Brooke. On September 11, 2019, MSD submitted the

³ MSD filed a motion to strike Mr. Abrell's testimony on October 18, 2018, which the Commission denied on November 1, 2018.

Supplemental Rebuttal testimony of Michael Cline, P.E. On September 19, 2019, MSD submitted its Notification to Commission (“Notification”). On September 25, 2019, the Presiding Officers granted the Motion to Reopen the Record. The Evidentiary Hearing commenced at 10:30 a.m. on October 21, 2019, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.

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

1. **Notice and Jurisdiction.** Notices of the hearings in this Cause were given and published as required by law. MSD is a special unit of government created pursuant to an Ordinance of the City of Muncie adopted under Ind. Code § 36-9-25-1(b) in 1968. MSD operates as an executive department of the municipality under Ind. Code § 36-9-25-3(a).

MSD is a municipal utility as that term is defined in Ind. Code § 8-1.5-6-1. Muncie Ordinance 2015-16 is a Regulatory Ordinance as that term is defined in Ind. Code § 8-1.5-6-3. The Regulatory Ordinance was adopted after December 31, 2012, and MSD does not, or is not eligible to, file a wholesale sewage petition. Under Ind. Code § 8-1.5-6-9, the Commission has authority to approve the Regulatory Ordinance. Therefore, the Commission has jurisdiction over MSD and the subject matter of this proceeding.

2. **MSD’s Characteristics.** MSD currently provides sewer service to over 27,000 residential, institutional, industrial, and commercial customers within MSD’s service territory. MSD also provides sewer service to a limited number of customers in the unincorporated areas of Delaware County for which it is seeking approval of the Regulatory Ordinance. MSD provides sewage treatment service to DCRWD and Liberty. MSD owns 91 miles of combined sewer pipe, 245 miles of separate storm sewer pipe, and 306 miles of separate sanitary sewer pipe. MSD has one treatment plant, 26 lift stations, and four Army Corps of Engineers Flood Stations. MSD’s treatment plant is a Class 4 plant, with 24 million gallons per day capacity and is about 40 acres in size. MSD has approximately 200 employees.

3. **Intervenor’s Characteristics.**

A. **DCRWD.** DCRWD is a regional sewer district created in 1976 by order of the Indiana Stream Pollution Control Board (“SPCB”). The SPCB order defined DCRWD’s service territory as “all territory in Delaware County except the territory currently being serviced by Muncie Sanitary District, the two areas proposed to be annexed by the Muncie Sanitary District, and the territory within the corporate limits of the Towns of Eaton, Yorktown, Albany, Gaston, and the sewer service area of the Town of Selma, Delaware County, Indiana.” MSD Exh. 2.

DCRWD serves over 3,000 customers located in rural areas of Delaware County. Its collection system comprises over 187,000 lineal feet of gravity sewer lines, over 114,000 lineal feet of force main, over 20,000 feet of 8-24” pipe, and over 140 lift stations and grinder pumps. DCRWD contracts with three providers to treat collected wastewater: Chesterfield, Yorktown, and MSD. DCRWD is governed by a seven-member Board of Trustees—three trustees are appointed by the Delaware County Commissioners, one trustee is appointed by the Yorktown Town Board, one trustee is appointed by the Delaware County Council, one trustee is appointed by the agreement of the Towns of Chesterfield and Daleville, and one trustee is appointed by the executive of the City of Muncie.

B. Liberty. Liberty is a regional sewer district created in 1977 by order of the SPCB. Liberty serves approximately 1,623 customers. Liberty's collection system comprises 31 miles of pipe, 19 lift stations, and approximately 553 manholes.

C. Yorktown. Yorktown is a municipal utility. Yorktown owns and operates approximately 70 miles of pipe, 8 lift stations, 8 miles of force main, and a wastewater treatment plant.

4. Relief Requested. MSD seeks Commission approval of its Regulatory Ordinance, which would grant it an exclusive license to furnish sewer service in certain areas within four miles outside of its corporate boundaries ("Regulated Territory") as set forth in the Regulatory Ordinance and the further clarifications and amendments set forth and described in MSD's rebuttal evidence. The Regulated Territory will not include customers connected to and receiving sewer service from other existing sewer utilities, as of the date the Regulatory Ordinance is adopted.

5. Evidence Presented.

A. MSD's Direct Evidence. Michael Cline, P.E., member of MSD's Board, testified regarding MSD's Regulatory Ordinance, their sewer utilities, their customers, and territory. Mr. Cline testified that Ordinance 2015-16 was passed by the Common Council of the City of Muncie and directed MSD to seek approval of the Ordinance with the Commission. He testified the Regulatory Ordinance was passed in anticipation of the MSD needing to expand its service area to the statutorily defined 4-mile area outside of the corporate boundaries of the City of Muncie. He testified that the MSD was seeking the approval of the Regulatory Ordinance granting it an exclusive license to furnish sewer service in that area. This exclusive license is necessary, he testified, because the infrastructure, capital, and increased operation costs that will be required in order to serve customers in that area are significant, and an exclusive license will allow MSD to recover those costs over time. He also testified that because of the multiple sewer utilities that already operate in the 4-mile unincorporated area, an exclusive license will prevent the duplication of services and provide certainty to customers in that area.

Mr. Cline further testified that MSD began operating as a sanitary district in 1968 when it was created by Ordinance of the City of Muncie and that MSD is a unique type of sanitary district created under the authority of Ind. Code ch. 36-9-25. Mr. Cline testified that MSD has operated an efficient and prosperous utility that currently serves in excess of 27,000 residential, institutional, industrial, and commercial customers within the MSD boundaries, and in excess of 3,000 customers outside the boundaries of the MSD. Customers outside the boundaries of the MSD include LRWD and DCRWD. Mr. Cline testified that MSD has been treating 100% of flow from LRWD's customers since 1978 and DCRWD's customers since approximately 1995. Per the 2011 Combined Sewer Overflow Long-Term Control Plan ("CSOLTCP"), MSD owns 91 miles of combined sewer, 254 miles of separate storm sewer, and 306 miles of separate sanitary sewer pipe. He testified MSD also has one Wastewater Treatment Plant, 26 lift stations, and four Army Corps of Engineers Flood Stations. Nikki Grigsby is the current District Administrator and MSD currently employs over 200 people.

Mr. Cline went on to testify that MSD has already extended sewer service on a limited basis to customers in the 4-mile area. He stated that MSD currently serves customers in the Old Town Hill and Nanci Lane areas outside of the City of Muncie as well as the Cowan Community Schools and existing homes along Cowan Road. He also stated MSD extended service to these areas in response

to requests from those customers and from the Delaware County Health Department (“DCHD”). Mr. Cline testified that the DCHD wrote a letter to MSD asking them to provide service to homes in the Old Town Hill Estates area of Muncie, which is in the 4-mile unincorporated area. MSD, therefore, began expanding service to that area. Mr. Cline testified that on July 20, 2018, the DCHD sent another letter to MSD noting their original confusion as to whether DCRWD operated in that area, and inquiring who they should have contacted or who had jurisdiction. However, the letter again reiterated the situation of many homeowners along South Burlington Drive who needed a public utility to provide sewer service because the homeowners had failing septic systems that discharged directly into the river. He testified that MSD anticipates there will be additional customers in the 4-mile area that will need services as the community continues to grow and expand, and as the older septic systems and infrastructure start to fail.

Mr. Cline testified that there are currently two other utility providers, LRWD and DCRWD, which operate within the 4-mile area outside of the corporate boundaries of the City of Muncie. LRWD provides service to customers in Liberty Township, and DCRWD provides service to customers in pockets across Delaware County. However, neither of these utilities has the capability to provide for the treatment of the sewage generated from the customers in the 4-mile area. LRWD and DCRWD do not have treatment plants. Both have treatment contracts with MSD whereby the MSD treats their sewage. He also stated that Yorktown operates a sewer utility and treatment plant that currently provides sewer services to the Town of Yorktown and the immediate surrounding area. He testified that MSD is the only utility that realistically has the treatment and infrastructure capacity to handle the customers in the 4-mile area without having to expand the capacity of their treatment plant.

Mr. Cline then testified regarding the rates and charges for MSD customers, how they are set, and how new customers are connected. He stated that current MSD rates and fee schedules for MSD are set by resolutions passed by the Board from time to time. The current rates were set by Resolutions 2016-10 and amended by Resolution 2016-11. The rate structure was further clarified and amended in Resolution 2017-1. These Resolutions were attached as Petitioner’s Exhibits 1-F, 1-G, and 1-H to his testimony. Mr. Cline testified that customers in the 4-mile area would be charged rates just like any other customers. He stated that MSD sets rates and fees for all customers through resolutions. These would be the rates that apply to any customers of MSD in the 4-mile area. He further testified that service extensions would be handled on a case-by-case basis. Mr. Cline testified that recently collections of property owners came to MSD board meetings and requested that MSD extend service to their area because they have been told that their septic systems are failing. In another circumstance, the MSD was contacted by Cowan Community Schools because their treatment plant was in disrepair and they had no economically feasible solution to upgrade their plant. MSD extended service to the school system in that case. Mr. Cline testified that his Exhibit 1-I depicts a chart showing that MSD’s rates and charges are average for the type and size of utility it is. He informed the Commission that MSD is not looking to expand just for expansion’s sake, but is trying to protect the public interest and provide for the growth and future development of the Muncie community. He stated that MSD is always willing to work with the other utilities that operate in Delaware County if it would be mutually beneficial to in provision of service to certain customers.

Mr. Cline testified that if the Ordinance is approved, then any development in the 4-mile area would be supported by sewer service infrastructure. Developers, companies, and prospective homeowners would no longer have to worry about failing septic systems or sewer utilities as potential costs or prohibitive factors with new or planned development or expansion. With dependable sewer

service utilities, economic growth in that area would be encouraged, workforces could begin to live in that area, and new construction would be supported by sewer service infrastructure capable of supporting increases in population as the Muncie community expands outwards. Approval of the Ordinance would allow the MSD to meet the needs of the public in that area currently and remedy some of the failing sanitary situations, and also allow the MSD to adapt to future growth and development in those areas.

Mr. Cline testified that the Ordinance will have possible impacts on the territory of other utilities in Delaware County, however, MSD is willing to work with those other utilities when necessary or mutually beneficial as it pertains to the 4-mile unincorporated area. He stated that, to his knowledge, there is no current plan for either LRWD or DCRWD to expand their territory. It is not the goal of MSD to in any way negatively impact regional districts or other utilities, rather it is their goal to positively impact the community, promote economic growth, and provide for the public interest.

Finally, Mr. Cline testified that Ordinance 2015-16 was drafted concisely and with the needs of the community in mind. He testified that MSD is not attempting to take customers already being served by any of the utilities that currently operate in the 4-mile unincorporated area. He stated that MSD is trying to address a growing need in the community. He opined that the General Assembly of Indiana clearly wants municipalities that are in the position of MSD to plan for and provide for the future economic development and growth of their communities. He stated that MSD has identified a need in its community and is trying to address that need. The need for solutions to sanitary issues outside of MSD's current territory increases every year, and these needs have to be met in order for the communities to grow and prosper. Mr. Cline testified that MSD is the only utility with the infrastructure, finances, and capital to provide the services needed in that area.

B. Liberty's Direct Evidence. Mr. Abrell, LRWD's attorney, testified on behalf of LRWD. Mr. Abrell testified that his testimony is meant to assist the Commission in determining the boundaries of LRWD. Mr. Abrell stated he wants the Commission to see what areas are currently within LRWD's boundaries and are, thus, not areas that the Muncie Sanitary District's Petition for Approval seeks to claim jurisdiction. He testified to the extent that the MSD Petition does seek to claim jurisdiction over any territory within the boundaries of LRWD, Mr. Abrell means to assist the Commission in determining the Petition should not be approved.

Mr. Abrell identified and briefly described certain exhibits to his testimony. Exhibit A-1 is the Final Order and Determination of the Stream Pollution Control Board of Indiana (the predecessor to the Indiana Department of Environmental Management ("IDEM")) dated June 30, 1977, which created the LRWD and included a map of the original territory of the LRWD.

Exhibit A-2 is the De-Annexation and Annexation into the Liberty Regional Waste District dated July 24, 1979, which essentially removed the excluded area referred to in Exhibit A-1 from the MSD and placed it within LRWD.

Exhibit A-3 is a letter to him from IDEM dated June 25, 1990, with two different Applications for Inclusion in Regional Waste District executed by the DCRWD which were approved by the LRWD Board, which, Mr. Abrell stated, essentially moved territory from the DCRWD to LRWD.

Exhibit A-4 is a color coded map which he prepared, that he stated was based upon the original color coded map, which was sent with his letter (Exhibit A-3), showing the addition (Exhibit A-2), another addition (included with Exhibit A-3) and a further addition (also included with Exhibit A-3). Mr. Abrell stated when these additions are taken together with the original territory, as shown in his Exhibit A-1, it makes up the current territory of LRWD.

Exhibit A-5 is a copy of a letter sent on behalf of DCRWD to Mark McKinney, an attorney for the MSD, dated December 14, 2016, objecting to MSD's intention to extend sewage service to the Cowan Schools.

Exhibit A-6 is a picture which he took on July 7, 2016, of a slide presented at a MSD public hearing purporting to show the projected costs of various construction projects. Mr. Abrell states these construction projects were to be paid for by an across-the-board increase in sewage rates, including those paid by both LRWD and the DCRWD.

Exhibit A-7 is a rate study dated June 6, 2016, which was provided to him by counsel for MSD. Mr. Abrell stated the rate study was the basis of the across-the-board sewage rate increases adopted by MSD referred to in the Direct Testimony of MSD Witness Michael Cline. Mr. Abrell testified these increases in rates were charged to both LRWD and DCRWD.

Mr. Abrell stated that his Exhibit A-8 is a copy of a legal notice which he observed in the June 24, 2016, Muncie Star Press noticing a public hearing to consider and adopt proposed rates.

Mr. Abrell pointed out that in MSD's Petition, MSD does not claim jurisdiction over new or existing customers within LRWD's service area. He stated this indicates to him that MSD is not claiming jurisdiction over customers within LRWD. However, Mr. Abrell stated the language of the actual Ordinance does not make such distinction. He also states that the map included with that Ordinance does not accurately show LRWD's territory.

Mr. Abrell contended that he is aware of legal authority which indicates that MSD's Ordinance has no jurisdiction over existing regional sewer district service areas. He states that during his representation of DCRWD, he notified MSD's counsel of his opinion in that regard.

Mr. Abrell stated that it is not in the public interest to approve MSD's Ordinance. He goes on to give several reasons. Initially, he expressed concern that customers located outside of the Muncie city limits would not have any political input as to how they would be treated by MSD. Mr. Abrell also expressed concern because he believes MSD has calculated its sewer rates including costs that are not related to providing service to all of its customers. Mr. Abrell then referred to his Exhibit A-6 which he believes showed that a customer specific project was financed by an across-the-board increase in sewage rates. He believed that many such costs had nothing to do with providing sewage treatment services to either LRWD or DCRWD.

Mr. Abrell stated that his concerns regarding MSD's rate calculation has led to LRWD and DCRWD joining together to pursue construction of their own wastewater treatment plant, thus eliminating their treatment service provided by MSD. He stated the DCRWD Board is expected to adopt an inter-local agreement with LRWD for that purpose. Mr. Abrell also noted that both LRWD and DCRWD, pursuant to Ind. Code § 13-26-11-15, must send notices to their customers advising them of appeal rights whenever they attempt to raise sewer rates more than 5% per year. Mr. Abrell

notes there is no mention of what, if any, rights of appeal “new customers” of MSD would have in the event its Ordinance is approved.

Kathy May, LRWD’s Office Manager, testified on behalf of LRWD. Ms. May stated that LRWD bills 1,623 customers. However, some of those customer billings are for multiple residential units, and for businesses or schools, which for billing purposes are equivalent to multiple residential units. LRWD’s total equivalent residential units exceeds 1,700. Ms. May stated that she operates LRWD’s business office and is responsible for supervising the billing of LRWD’s customers. She also stated that she attends the Trustee Board meetings and implements rate increases to LRWD’s customers. Ms. May testified that since 2012, LRWD has had to raise the rates it charges to its customers six times. She stated each rate increase was the direct result of an increase in rates charged by MSD to LRWD for sewage treatment.

She stated that, generally speaking, all of LRWD’s customers have the right to vote for the people who appoint the members of LRWD’s Board of Trustees. Ms. May opined that very few, if any, of LRWD’s customers have the right to vote for the mayor of Muncie who appoints the members of the MSD Board. It is Ms. May’s opinion that it is not in the public interest to allow MSD to expand its territory and jurisdiction to provide sewer service into the service area of LRWD.

Jerry Zearbaugh, LRWD’s Superintendent, testified on behalf of LRWD. Mr. Zearbaugh had two Exhibits to his testimony. Exhibit C-1 is a map of the areas where LRWD’s sewage collection system is located. Exhibit C-2 is a spreadsheet showing rate increases which MSD implemented in the rate MSD charges to LRWD for treatment services. Exhibit C-2 also shows an amount which he believes is an overpayment in what LRWD has paid to MSD contrary to its contract with MSD.

Mr. Zearbaugh described LRWD’s current collection system. He stated the collection system includes 31 miles of pipe, 19 lift stations, and approximately 553 manholes. Mr. Zearbaugh states that LRWD has 9 permanent generators and 3 portable generators to provide power to certain lift stations in the event of a power outage. He also stated that LRWD provides some repair service to customers who have failing grinder pumps.

Mr. Zearbaugh opined that the Commission should not approve MSD’s Ordinance which he believes is not in the public interest. He stated as a customer and resident of the LRWD territory, he has the right to vote for the people who appoint LRWD’s Trustee Board members. Mr. Zearbaugh stated that he does not have the right to vote for the mayor of Muncie who appoints the MSD Board. Mr. Zearbaugh stated that LRWD has the ability to provide sewer service to those who need it within the LRWD territory.

Mr. Zearbaugh stated that he was present at some of the public hearings which MSD held for the purpose of considering sewage rate increases. Specifically, he testified that he was present at the March 2012 public hearing when MSD proposed and adopted rates which he believes included paying for the separation of MSD’s combined storm water/wastewater sewers. He stated that LRWD’s attorney objected in that meeting, that such an increase was contrary to the terms of the contract between MSD and LRWD. Finally Mr. Zearbaugh testified that LRWD and MSD are involved in a lawsuit over increases in the rates charged to LRWD by MSD.

C. **Yorktown’s Direct Evidence.** Pete Olson, the Town Manager of Yorktown, testified on behalf of Yorktown. He stated that his testimony is meant to assist the Commission in

determining Yorktown's boundaries so the Commission can clearly see what areas are within its boundaries and, thus, are not areas subject to MSD's Ordinance.

Mr. Olson described two exhibits to his Direct Testimony. Exhibit A-1 is the Stipulation between Muncie Sanitary District and the Town of Yorktown and Exhibit A-2 is a plat map depicting Mount Pleasant Township.

Mr. Olson described his duties as Town Manager. He testified that he is responsible for the administration of the day-to-day functions of Yorktown and implementing the policies of the Town Council. Mr. Olson also oversees all of the town departments.

Mr. Olson testified that he had reviewed the Stipulation between MSD and Yorktown. Mr. Olson stated the purpose of the Stipulation was to establish that MSD does not claim jurisdiction over any territory within Yorktown's boundaries. He also testified that the Stipulation does not completely describe the territory located within Yorktown's boundaries. Mr. Olson explained that Yorktown has consolidated with Mount Pleasant Township. He testified the Stipulation, with attachments, and the Mount Pleasant Township plat map, together, completely describe the territory located within Yorktown's boundaries. Mr. Olson finally testified that it is his understanding that by entering into the Stipulation, MSD does not intend to claim jurisdiction over the entire boundary of Yorktown, including the Mount Pleasant Township.

D. DCRWD's Direct Evidence. Mr. Brooke, member of the Board of Trustees, testified that DCRWD was created in 1976 when the Board of County Commissioners and the County Council of Delaware County petitioned the IDEM to form DCRWD. Mr. Brooke testified that DCRWD's district includes all the territory in Delaware County except the territory that was already being serviced by the Muncie Sanitary District when DCRWD was created and two defined areas that were in the process of being annexed by MSD. DCRWD is governed by a seven-member Board of Trustees, three are appointed by the Delaware County Commissioners, one is appointed by the Yorktown Town Board, one is appointed by the Delaware County Council, one is appointed by agreement of the Towns of Chesterfield and Daleville, and one is appointed by the executive of the City of Muncie.

Mr. Brooke testified that DCRWD currently serves over 3,000 customers located in rural areas of Delaware County, including the Daleville, Westbrook, Royerton, and DeSoto areas. DCRWD's collection system comprises over 187,000 lineal feet of gravity sewer lines, over 114,000 lineal feet of force main, over 20,000 feet of 8-24" pipe, and over 140 lift stations and grinder pumps. Contrary to Mr. Cline's testimony that MSD treats all of the wastewater collected by DCRWD, DCRWD actually contracts with three service providers to treat collected wastewater. Chesterfield treats wastewater generated by Daleville. Yorktown treats wastewater generated by Westbrook. MSD only treats wastewater generated by Royerton and DeSoto.

Mr. Brooke testified that DCRWD currently charges residential customers a monthly flat rate for service based on its four geographical service areas: \$47 per month in Daleville; \$97.79 per month in Royerton; \$83.04 per month in DeSoto; and \$48.90 per month in Westbrook.

Mr. Brooke testified that DCRWD and Liberty have been engaged in ongoing discussions with the intent to construct a joint wastewater treatment facility that would serve both districts. DCRWD's Board contracted Commonwealth Engineering, Inc. to complete a revised Preliminary

Engineering Report (“PER”). That report showed that DCRWD and Liberty’s customers could save approximately \$44 million over the 20-year project planning period by building and utilizing a new wastewater treatment plant versus continuing with contractual wastewater treatment through MSD. DCRWD and Liberty have drafted a proposed interlocal agreement regarding the plant, which DCRWD’s Board approved on October 15, 2018. Liberty’s Board was expected to also approve the interlocal agreement.

Mr. Brooke testified that based on the map and description provided by MSD in its case-in-chief, the proposed 4-mile area outside of its municipal boundaries encroaches on DCRWD’s defined service territory and would completely encircle those areas where DCRWD currently provides service to customers. Although the Regulatory Ordinance excludes those areas where DCRWD is already providing service, it would prevent DCRWD from adding any additional customers, thus preventing DCRWD from fulfilling its legally defined purpose of collecting and treating of sewage and all other lawful activities as permitted by statute within its defined service territory.

Mr. Brooke expressed his concern with MSD, rather than DCRWD, serving customers outside of Muncie’s corporate boundaries. He testified that MSD has a three-member board, all of whom are appointed by the mayor of Muncie. Residents who live in the proposed Regulated Territory do not live within Muncie’s municipal boundaries and, thus, are not allowed to vote for the mayor. As such, these residents have no control, either direct or indirect, over the appointment of MSD’s Board, and MSD’s Board has no political accountability to those residents. By comparison, the residents living in the proposed Regulated Territory are able to vote for one or more of the bodies who appoint members of DCRWD’s Board, and therefore, DCRWD’s Board is politically accountable to those residents.

Regarding DCRWD’s financial means, Mr. Brooke testified that DCRWD has over \$1 million set aside for future projects and development and also has a bond reserve for the same purpose. According to the PER for the proposed joint treatment plant with Liberty, DCRWD would save approximately \$27 million over 20 years and would realize day one net savings of over \$400,000 per year.

Mr. Brooke testified that MSD is currently undertaking a 20-year, \$168 million long-term control plan (“LTCP”) approved by IDEM to address combined sewer overflows into the White River and Buck Creek. Mr. Brooke also testified that MSD is currently the subject of a nearly two-year investigation by the Federal Bureau of Investigation resulting in the recent indictment of its Superintendent of Sewer Maintenance and Engineering on charges of conspiracy to commit wire fraud, falsification of documents in a federal investigation, and witness tampering. Mr. Brooke attached a U.S. Department of Justice Press Release that accused Mr. Barton of abusing his position of authority and influence by fraudulently steering contracts to preferred contractors and soliciting and accepting kickbacks in the form of cash, cash equivalents, or contributions. Mr. Brooke testified that although the investigation and indictment are not proof of any guilt or misconduct, they raise serious concerns about whether it is in the public interest to allow MSD to expand its service to the proposed Regulated Territory, especially given the fact that MSD would not be politically accountable to residents living there.

E. OUCC’s Direct Evidence. Carl N. Seals, a Utility Analyst in the OUCC Water/Wastewater Division, testified on behalf of the OUCC. He stated according to the Petition initiating this proceeding, MSD seeks authority “to assume jurisdiction over certain unincorporated

areas of Delaware County, Indiana, and for approval of Muncie City Ordinance 2015-16 (“Regulatory Ordinance”), regulating the provision of sanitary and sewer service to the fullest extent of the law,” pursuant to Ind. Code ch. 8-1.5-6. Mr. Seals stated that, based on the information which he reviewed, the OUCC has no concerns with MSD’s request to extend its territory.

He stated that he reviewed MSD’s Petition and attachments, certain reports pertaining to IDEM, researched online news articles regarding MSD, and issued data request questions to better understand MSD’s current operations and request. Mr. Seals noted the OUCC’s review did not include testimony filed by MSD since it was not filed before the OUCC filing date.

Mr. Seals described the requirements of an entity seeking approval of a regulatory ordinance pursuant to Ind. Code ch. 8-1.5-6. He stated that according to Ind. Code § 8-1.5-6-9(c), a petition for this type of request must include the following:

- (1) A description of the service territory established in the regulatory ordinance.
- (2) Proposed rates and charges for the services to be provided in the service territory.
- (3) A list of any administrative or judicial proceedings involving the regulatory ordinance.
- (4) A list of any utilities actually or potentially affected by the regulatory ordinance.

Mr. Seals explained how MSD’s Petition satisfied the requirements of Ind. Code § 8-1.5-6-9(c). He stated that MSD filed its proposed Ordinance, as its Exhibit 1, which is a graphic depiction of the service territory established in the Regulatory Ordinance. He stated that in response to OUCC Data Request 1.1 seeking a higher quality map, MSD submitted an electronic map of the proposed service area. Mr. Seals stated this higher quality map is attached to his testimony as Attachment CNS-1. Mr. Seals testified the proposed rates and charges for services to be provided in the service territory are discussed in MSD’s Petition and were confirmed in MSD’s response to OUCC Data Request 1.7. He noted that OUCC Data Request 1 is included in its entirety as Attachment CNS-2 to his testimony. Mr. Seals explained the rates which will be charged by MSD in its proposed service territory “apply to all services for all customers of MSD.” Mr. Seals explained that MSD noted in its response to OUCC Data Request 1.11 that “there are no administrative or judicial proceedings involving Ordinance 16-2015 except for the IURC case 45055.” Mr. Seals stated that in MSD’s Petition, it listed DCRWD and LRWD as utilities actually or potentially affected by the Regulatory Ordinance. He stated in response to OUCC Data Request 1.3, MSD added Yorktown, which has entered into a stipulation with MSD regarding the Ordinance. Mr. Seals stated according to MSD’s response to OUCC Data Request 1.9, MSD has sewage treatment agreements with LRWD and DCRWD to treat 100% of their sewage.

Mr. Seals testified that according to Ind. Code § 8-1.5-6-8(g), the Commission should consider the following when evaluating a proposed regulatory ordinance:

- (1) The ability of another utility to provide service in the regulated territory.
- (2) The effect of a commission order on customer rates and charges for service provided in the regulated territory.
- (3) The effect of the commission’s order on present and future economic development in the regulated territory.
- (4) The history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.

(5) Any other factors the commission considers necessary.

Mr. Seals explained how MSD supported each of these considerations. Mr. Seals explained that, with regard to the ability of another utility to provide service in the regulated area, MSD stated in its response to OUCC Data Request 1.6 none of the affected utilities would be able to provide service in the Regulated Territory. Mr. Seals noted that MSD stated neither LRWD nor DCRWD could provide the service because neither has a sewage treatment plant. Both LRWD and DCRWD have contracts with MSD to receive and treat 100% of their sewage. He stated MSD explained that Yorktown does not have the means or intent to accept any new customers outside of its municipal boundaries.

Mr. Seals explained that regarding the potential impact on customer rates and charges for service in the Regulated Territory, MSD has stated that the rates charged within the Regulated Territory will be the rates charged to its other customers.

Mr. Seals testified that MSD's history includes the provision of sewage treatment to both DCRWD and LRWD. He further notes that MSD's Petition states that MSD was created by the Common Council of Muncie in 1968 and currently serves all customers within the corporate boundaries of Muncie.

Mr. Seals stated that the OUCC recommends the Commission approve MSD's Regulatory Ordinance.

Mr. Seals offered Supplemental Direct Testimony on behalf of the OUCC. Mr. Seals testified that MSD had provided additional information pertinent to this Cause since the filing of his earlier Direct Testimony. He stated MSD had filed testimony responsive to the statutes governing the establishment of a Regulatory Ordinance. He stated much of this information had previously been obtained through data requests issued by the OUCC prior to his earlier testimony. Mr. Seals testified this additional testimony does not change any of his opinions or recommendations set forth in his earlier Direct Testimony.

F. MSD's Rebuttal Evidence. Mr. Cline submitted rebuttal testimony on behalf of MSD, with corrections to his prefiled rebuttal made orally at the evidentiary hearing. Attached to Mr. Cline's rebuttal testimony was Exhibit 2-A which is the SPCB Order 62255405.

Mr. Cline first testified regarding Mr. Abrell's Exhibit A-6. Mr. Abrell's testimony described the picture as evidence that MSD paid for projects associated with the LTCP by enacting what he called "across the board percentage increase in all sewage rates, including those paid by both LRWD and DCRWD." Mr. Cline testified that this statement was unsupported, and that what the exhibit actually showed was a picture from a slide show presented at a MSD public hearing showing MSD bond projects for 2016. He testified that Mr. Abrell makes no showing that he is qualified to analyze utility rates either by training or experience. Further, the rates charged to DCRWD and LRWD by MSD for sewage treatment are based on the contracts that each entity has with MSD. He testified that Mr. Abrell makes no showing that he is qualified to analyze these rates under the operation of the respective contracts. Mr. Cline also testified that the MSD 2016 bond projects, or any assumption that Mr. Abrell made regarding them, is irrelevant to the matter before the Commission. MSD's proposed Ordinance does not relate to, and has no impact on, the rates for service paid by LRWD or DCRWD to MSD. The important issue regarding rates is that MSD is committed to treating and charging its retail customers inside the city, and outside the city in the 4-mile area, the same.

Next, Mr. Cline testified regarding Mr. Abrell's Exhibit A-7. He testified that the exhibit was a draft study that was for internal review only by the MSD Board and was never finalized. Furthermore, he stated that it only relates to rates paid by LRWD, and is therefore not relevant to the proposed Ordinance in the case. He then testified concerning Mr. Abrell's testimony generally. Mr. Cline addressed Mr. Abrell's statement that MSD "will include all of its costs, regardless of whether such costs are related to providing the service to a specific group of customers" in determining the rate it charges its wholesale customers. He testified that was a completely unsubstantiated statement. Mr. Abrell, without consulting a cost of service study, suggested that he somehow knows what costs are or are not related to specific customers or customer groups, and that statement is complete speculation. He went on to testify that even if Mr. Abrell's testimony was accurate, which it is not, the rates charged by MSD to LRWD and DCRWD are set by contract and are in no way related to the proposed Ordinance.

In Mr. Abrell's testimony he testified regarding MSD's extension of service to Cowan Community Schools ("Cowan"), and he classified it as an "invasion" of DCRWD's territory. Mr. Cline testified that, to his knowledge, DCRWD was asked to provide service to Cowan, and had applied and been approved for funding to undertake the project, but decided against extending service to Cowan. That left Cowan with the need for service, with no provider willing to serve to them. He testified that MSD is authorized to provide services to Cowan since MSD can provide service outside its corporate boundaries pursuant to statute. He testified MSD was approached by Cowan, and MSD was willing and able to work out an arrangement to invest in infrastructure in order to provide service to Cowan. He stated that MSD's service extension to Cowan allowed it to stay in operation and clearly served the public interest. He went on to state that the purpose of MSD's Ordinance is to better assure the availability of sewer service, particularly when other utilities are unable or unwilling to serve—just as was the situation for Cowan Community Schools.

Mr. Cline next addressed the testimony of Ms. May. In her direct, Ms. May stated that LRWD had to raise its rates in response to MSD's rate increase to LRWD. Mr. Cline testified that her statement implies that all of the increases in LRWD's retail rates were caused solely by increases in MSD's rates to LRWD. He testified that Ms. May made that statement without any reference to analysis or documentation. In other words, she would have the Commission believe that LRWD's only increase in its costs to serve have been in its treatment costs from MSD. He stated the rates that MSD charges to its wholesale customers are irrelevant to these proceedings. He stated that those rates are set through resolution, but the method of arriving at those rates is provided for by contract, and there are mechanisms available to the wholesale customers to negotiate their rates. The contracts with LRWD and DCRWD have been in force for decades and are not affected by the Ordinance.

Mr. Cline next addressed the testimony of Mr. Zearbaugh. Attached to his Direct Testimony was Exhibit C-2 which Mr. Zearbaugh described as showing how much LRWD overpaid MSD. Mr. Cline testified that the document was not prepared by an accounting or ratemaking professional. Further, the document was not based on any cost of service study or rate study prepared by a competent professional. He testified that he did not believe the document or testimony surrounding it was relevant or helpful to the Commission.

Mr. Zearbaugh also stated that MSD's proposed ordinance is not in the public interest because he does not have the right to vote for the mayor of Muncie. Mr. Cline noted that all of the witnesses for LRWD put forth similar testimony. Mr. Cline contended that this concern was unfounded. The

mayor of Muncie may appoint the members of the Board, but MSD is an independent political entity, and its Board is accountable to the customers that they serve. The customers in the 4-mile area would have the same interests as those within MSD's municipal territory, and they would have the same opportunities to appear before the Board at public meetings and make their concerns known. He testified that because MSD took action to assist customers in the Cowan area, the Burlington area, and other areas just outside of Muncie when none of the other sewage disposal providers were willing or able to do so, shows that MSD cares about its customers and the County. He testified that MSD will continue to act fairly and in the public interest.

Mr. Cline next compared the rates that Mr. Brooke put forth in his Direct Testimony for DCRWD customers to those of MSD customers. He stated DCRWD charges flat monthly rates to their customers. Most of MSD's customers are on metered connections, and therefore pay a rate based on their usage. However, MSD does have a monthly flat rate for unmetered connections. MSD's current flat rate for unmetered connections is \$51.73. The flat rates for DCRWD customers are \$47.00 per month in the Daleville area; \$97.79 per month in the Royerton area; \$83.04 per month in the DeSoto area; and \$48.90 per month in the Westbrook area. Mr. Cline testified that in two of its four service areas, DCRWD's flat rate is double what MSD charges, and MSD's rate is only a few dollars more expensive than DCRWD's flat rate in its other two service areas. Also, DCRWD's customers pay different rates based solely on where they live. This would not be the case for MSD customers in the 4-mile area, they would all pay the same, generally lower, rate.

Mr. Cline addressed the concerns that Mr. Brooke exuded about the composition of MSD's Board and the political representation of potential customers in the 4-mile area. He stated that Mr. Brooke's concerns are unfounded. MSD's Board holds multiple public meetings every month, and they encourage any customers, regardless of where they live, to bring their concerns to the Board at those meetings. He testified that MSD listens, responds, and takes action based on those concerns. He stated MSD takes the issues of their customers very seriously. They are also committed to giving customers in the 4-mile area the same rates and terms of service as those within the municipal boundaries of MSD. He stated the rates MSD charges are set by resolution of the Board. These resolutions would apply equally to all MSD customers regardless of their location. Because the customers in the 4-mile area would be subject to the same rate resolutions and terms of service as those inside the city, their interests would be aligned, and the Board would be equally accountable to those customers.

Mr. Cline next testified regarding LRWD and DCRWD's concerns in their direct testimony that MSD's Ordinance would completely encircle their territory and keep them from expanding. Mr. Cline testified that the Ordinance was not passed for the purpose of taking existing customers from other utilities. He stated MSD is trying to provide service to the public where none currently exists and serve the public interest in accordance with applicable law. He agreed that there was a discrepancy between the service territory for LRWD according to the map MSD attached as Exhibit 1-C and the map attached to Mr. Abrell's testimony as Exhibit A-4. Taking the facts as most favorable to LRWD and a review of Mr. Abrell's territory exhibits, he agreed that it appears the hand drawn map attached to Mr. Abrell's testimony was reasonably correct. However, he stated the map set forth in Mr. Abrell's Exhibit A-4 does not appear to be exact. He stated that if LRWD will confirm its service territory, with documents from IDEM describing its service territory, MSD will amend the Ordinance to clarify that the Ordinance does not operate in LRWD's current service territory, as set forth in IDEM's official records.

Mr. Cline also clarified that MSD does not intend the Ordinance operate within DCRWD's territory as shown on Exhibit 1-C. To the extent MSD's intention in this regard was unclear, he stated MSD will process a clarifying amendment to its Ordinance excluding the area DCRWD is serving as set forth in Exhibit 1-C. However, MSD does not believe that DCRWD has exclusive jurisdiction of all the territory in Delaware County as DCRWD claims, and the Ordinance is meant only to exclude the territory of DCRWD as shown on Exhibit 1-C. Regarding DCRWD's territory, Mr. Cline stated he reviewed Mr. Brooke's Exhibit JB-1 and found it was not an IDEM Order as represented by Mr. Brook. Instead, he found it was a summary of action by the SPCB and the Findings of Fact and Recommendations of William C. Vaughn III Hearing Officer, dated October 21, 1975, in SPCB Case No. B-283, which appears to be DCRWD's original formation request before the SPCB.

Mr. Cline testified that as a professional engineer he reviews SPCB and IDEM documents relating to service territory. He stated he was curious why DCRWD only offered the SPCB Hearing Officer Recommendations to support its service territory claims rather than the SPCB final order. In the IDEM public record website, which is known as the IDEM Virtual File Cabinet ("VFC"), for documents relating to DCRWD's formation, he stated he found IDEM VFC Document No. 62255405 which, among other things, contained the January 20, 1976, SPCB Order in Case No. B-283 that created DCRWD and defined its service territory. He stated that the service territory grant to DCRWD in the SPCB Order was more restrictive than the service territory grant described in the Hearing Officer Recommendations in Exhibit JB-1. The SPCB Order expressly excluded several areas from DCRWD's service territory proposed by the Hearing Officer. The areas excluded from the proposed DCRWD service territory by the SPCB Order are: the Corporate Limits of the Town of Eaton; the Corporate Limits of the Town of Yorktown; the Corporate Limits of the Town of Albany; the Corporate Limits of the Town of Gaston; and the sewer service area of the Town of Selma. He testified that he did not know why DCRWD did not provide that Order to the Commission.

Mr. Cline next stated that MSD is committed to serving the public interest, and if a dispute arose over territory or service extension to customers in need of sewers, that delay would not serve the public interest. To prevent that in the future, MSD is willing to amend its Ordinance to provide carve outs for areas within the 4-mile territory that can be readily and cost effectively served by either DCRWD or LRWD. However, MSD does not believe that waiting on an unknown timeline is in the public interest. For dealing with future events where MSD, DCRWD, or LRWD tries to expand its service, MSD proposes a dispute resolution procedure. MSD is willing to meet and strive to agree on how service should be provided to unserved customers located in that area based upon the expected cost of the connection. MSD would be willing to establish a Joint Committee of Board members from DCRWD, LRWD, and MSD to meet and resolve these disputes in a manner consistent with the public interest.

Mr. Cline then elaborated on his additional concerns on how the 4-mile area is currently being served. He stated that the 4-mile area is currently facing a crisis and is in need of certainty and commitment to service by a sewer provider. He gave Cowan as an example. In 2015, DCRWD made a formal application to the Indiana Finance Authority to receive State Revolving Loan Funds ("SRF") to extend sewers to Cowan. This application was accepted and then DCRWD decided not to complete the new sewer project. At that point in time, the Cowan School Superintendent approached MSD, stating that their small mechanical Wastewater Treatment Facility ("WWTF") was at the end of its useful life. He testified that within a year, the MSD had entered into an agreement to extend a sewer service line some 3½ miles south of its physical sewer system and that service commitment was completed in early 2018. Local Cowan residents expressed interest in connecting to the sewer line,

and with County Board of Health Officials' support, MSD is presently connecting residential customers (at their option). He testified that, essentially, DCRWD chose not to serve Cowan area residents who wished to be served. Mr. Cline noted that DCRWD recently filed for a legal injunction against the MSD in attempt to stop MSD from connecting the residents of Cowan, as DCRWD alleged it was in DCRWD's charter with the Stream Pollution Control Board to serve every part of Delaware County. Mr. Cline believes this shows that currently it is DCRWD's position that they can elect not to serve an area that obviously needs a sewer service provider and then also halt any attempt by MSD to provide that service. His opinion is that this leaves residents in the 4-mile area in a perilous situation that is against the public interest.

Next, Mr. Cline addressed the testimony of Mr. Brooke regarding the WWTF. He stated he was initially surprised, because he knew DCRWD had considered building a plant a few years prior. He stated at that time, DCRWD had retained GRW Engineers, Inc. ("GRW") to develop a plan for a WWTF to replace MSD's service to DCRWD. The GRW plan recommended DCRWD, LRWD, the Town of Eaton, the Town of Parker City, and the community of Shidler join together and jointly construct, own and operate a new Sewage Treatment Plant that would be located approximately one mile north of the Town of Desoto and would discharge into the Mississinewa River. However, he stated this plan was not pursued because those parties never reached an agreement. He testified he first learned about the new proposed WWTF during the course of discovery in this matter. But the only actual details of the new WWTF proposal he received was a Power Point presentation by Commonwealth which was attached to Mr. Brooke's testimony as Attachment JB-3. He testified that no reasonable sewage disposal entity would base its planning for such a major project on a Power Point presentation, so obviously, there had to be more information available.

Mr. Cline testified that DCRWD's proposed WWTF caused him concern. He stated that DCRWD has led the Commission to believe that plans are underway to construct a WWTF in the near future, that DCRWD and LRWD have entered into agreements regarding the WWTF, and that the finances to construct the WWTF are readily available. He stated this is simply not the case based on the materials that he has reviewed from DCRWD and LRWD. He testified that DCRWD currently has a large existing debt of somewhere between seven and eight million for the Royerton Sewer System Construction in the 1990's. This debt has been refinanced several times in an effort to keep the Royerton Sewer Rates under an average of \$100 a month. The average monthly rates for MSD customers in 2019 will be approximately one half that amount. Additionally, he testified that DCRWD's existing debt will likely be spread across any new customers to which it extends sewers.

Mr. Cline also testified that he had concerns over the proposed location of the WWTF. DCRWD and LRWD intend for the WWTF to be located approximately two miles to the west of the Town of DeSoto and located less than one mile north and east of the urbanized area on the boundary of the City of Muncie. The proposed WWTF would discharge into the Muncie Creek. Muncie Creek flows from the northeast in a southeastern direction through almost three miles of dense neighborhoods, commercially developed areas, and a City Park before outletting into the White River. He testified that in 2016, an IDEM Official contacted MSD and wanted to know if MSD would have a major objection to DCRWD building a new WWTF that would be located near and discharge into the Mississinewa River. MSD's reply was that MSD would have no objection to that concept as the Mississinewa is a river in a completely different watershed than the White River. He also stated that during the formation of Mr. Cline's rebuttal testimony, the same IDEM Official contacted MSD again asking about MSD's position regarding the new DCRWD draft PER and the new location of the WWTF that would discharge into the Muncie Ditch just upstream of the City and the White River.

He informed the IDEM Official that MSD had met with the mayor of Muncie regarding this situation and that both entities vehemently oppose this location and will be opposing this revised location with every means available to MSD and the City.

Next, Mr. Cline addressed the claims made by DCRWD in its direct testimony about the financial situation of DCRWD, specifically that they have \$1 million set aside for the WWTF, and that the proposed WWTF would result in \$44 million in savings over the project period. He testified that he cannot agree that the money DCRWD set aside will be sufficient or that the savings they project are accurate, because no PER has been completed upon which to base this contention. He stated that DCRWD wants the Commission to believe they are financially capable of building a WWTF immediately, but DCRWD does not even have a final PER for the WWTF project. He stated that DCRWD does not even know where their WWTF will be located or how much it will cost. Mr. Cline pointed out that DCRWD does not have a finished PER on which to base their budgeting. Mr. Cline pointed out that DCRWD's projected \$44 million in savings was not based on estimates from a final PER, because no final PER exists. He characterized that savings projection as a very optimistic estimate of an estimate. Mr. Cline testified that in his professional experience, the Indiana Finance Authority and the State Revolving Loan fund administrator will not accept a "working draft" of a PER in a formal loan application if that project ever got to them.

He also questioned if DCRWD is so financially stable and has \$1 million to spend on a WWTF, then why does DCRWD continue to have Separate Sewer System Overflows ("SSO"). He testified that the Royerton Sewer System has major SSO problems and has had numerous violations cited by IDEM. This resulted in DCRWD entering into the IDEM Agreed Order 2011-19984-W in 2011 that mandated certain improvements be made to the Royerton Sewer System. He testified that IDEM sent a Letter of Non-Compliance to DCRWD on March 21, 2018, a new Enforcement Letter to DCRWD dated April 11, 2018, and a new mandated Additional Action Plan to DCRWD calling for the elimination of the SSO's by September 21, 2021. Essentially, DCRWD had made no progress on achieving IDEM Compliance with their Royerton Sewer System from 2011 to earlier this year. Mr. Cline also noted that DCRWD's current collection system failed inspection in March 2018, during the pendency of this matter. He also stated that the proposed resolution of those problems was not addressed in the limited materials which were made available to MSD by DCRWD. He testified that MSD specifically requested the PER dealing with the improvements to DCRWD's system in the Royerton/Westbrook area which IDEM required. MSD was told that PER was not yet complete. Mr. Cline's opinion was DCRWD would not know what these improvements will consist of or what they will cost. The only thing they can know for sure is that they have a serious problem and IDEM will require them to fix it.

Mr. Cline next addressed Mr. Brooke's testimony that DCRWD plans to expand its customer base using the Eaton treatment plant and the Gaston treatment plants, which operate in Delaware County. Mr. Cline reiterated that DCRWD's proposed WWTF would only replace the treatment capacity currently provided by MSD and will not expand, and in fact it will limit, DCRWD's capacity to serve any new customers. He stated the only "plan" which DCRWD described for its expansion to serve new customers was to use the treatment facilities of Gaston and Eaton. Despite announcing this "expansion plan" to the Commission, DCRWD has not communicated with Gaston or Eaton on the subject. He also noted that DCRWD has no idea whether Gaston or Eaton has any treatment capacity available for DCRWD's use, and therefore announcing this as their plan for expansion to the Commission was speculative at best and misleading at worst.

Mr. Cline next commented on whether he thought it was in the best interest of the public that DCRWD be solely responsible for sewer service in the 4-mile area as they claim. He testified that he did not believe this was in the best interest. He noted that since DCRWD's formation in 1976, they have only provided service to some 3,000 customers. He testified that nothing presented by DCRWD in this Cause shows any ability or intent by DCRWD to expand its customer base. Even if it is able to build the proposed treatment plant, that plant would only replace the service provided by MSD, not serve additional customers. DCRWD's "expansion plan" using the treatment facilities of Gaston or Eaton was complete speculation. DCRWD's position is that they have the capacity and wherewithal to serve all the areas of Delaware County. However, as it stands, any sewer lines DCRWD would extend in the 4-mile area would have to be connected to MSD for treatment. Mr. Cline testified that with its small customer base, DCRWD has continuing difficulties complying with IDEM requirements. DCRWD was either unable or unwilling to serve Cowan. Although he did not wish to speak ill of DCRWD, Mr. Cline testified that these facts constrain and define DCRWD's ability to expand. Most disturbing to Mr. Cline is that DCRWD complains MSD should not serve customer's needs in areas of Delaware County where DCRWD currently does not, likely cannot, and may never, serve.

G. Supplemental Evidence.

1. **Supplemental Testimony of John Brooke.** Mr. Brooke testified that on July 9, 2019, a U.S. District Court Grand Jury, indicted MSD's District Administrator Debra Nicole Grigsby and Tony Franklin, a third-party contractor with MSD. Further, Mr. Brooke testified that an ongoing federal criminal investigation in which multiple MSD employees have been implicated in the misuse of MSD funds could negatively impact economic development in MSD's proposed regulated territory. Thus, it is not in the public interest to allow MSD to expand its service territory.

2. **Supplemental Rebuttal Testimony of Michael Cline, P.E.** Mr. Cline testified that the investigation is not into MSD or MSD operations, but into individuals in local government who may have acted inappropriately. Further, Mr. Cline noted that Cowan Community Schools have sought and received service from MSD. Additionally, homeowners in proposed expansion area with failing septic systems along Burlington Road continue to sign up for service with MSD during the criminal investigation without hesitation.

6. **Commission Discussion and Findings.** MSD seeks approval of its Regulatory Ordinance under Ind. Code § 8-1.5-6-9. This statute requires MSD to secure Commission approval because the Regulatory Ordinance was adopted after December 31, 2012, and no party has filed or is eligible to file a wholesale sewage petition within the meaning of Ind. Code § 8-1.5-6-9(a)(2).

A. **Sufficiency of the Petition.** Under Ind. Code § 8-1.5-6-9(b), a petition for approval of a regulatory ordinance must contain the following information:

- (1) A description of the service territory established in the regulatory ordinance;
- (2) Proposed rates and charges for the services to be provided in the service territory;
- (3) A list of any administrative or judicial proceedings involving the regulatory ordinance; and

- (4) A list of any utilities actually or potentially affected by the regulatory ordinance.

MSD's Petition was admitted into the record as Petitioner's Exh. 1-A. It includes a description of the proposed Regulated Territory. The Petition states that MSD's proposed rates and charges for customers in the Regulated Territory would be those rates that are approved by the Board. MSD attached its currently effective rate resolutions to the Petition. Both in its Petition and in subsequent notices to the Commission, MSD provided information about current administrative and judicial proceedings involving the proposed Regulatory Ordinance. The Petition lists LRWD and DCRWD as the other utilities affected by the proposed Regulatory Ordinance. While Yorktown is not mentioned in the Petition, the Stipulation resolves the issues between MSD and Yorktown. The Commission finds the oversight in the Petition was resolved by the Stipulation.

Based on our review of the Petition and evidence, we find MSD has satisfied the sufficiency requirements of Ind. Code § 8-1.5-6-9(b).

B. Regulatory Ordinance Territory Amendments. Before proceeding to the Public Interest Factors, we should consider several amendments proposed by the evidence to the territory covered by the Regulatory Ordinance.

1. Regulatory Ordinance Territory Amendment for LRWD. Mr. Abrell explained LRWD's position regarding MSD's proposed Regulatory Ordinance. In his Direct Testimony, Intervenor – Liberty Exhibit No. 1, Mr. Abrell stated, "In addition, to the extent that the Muncie Sanitary District's Petition for Approval does seek to claim jurisdiction, exclusive or otherwise, over any territory within the boundaries of the LRWD, my testimony is meant to assist the Commission in determining that Muncie Sanitary District's Petition for Approval should be denied as against the public interest." LRWD's position is quite clear: if the Regulatory Ordinance is meant to allow MSD to operate within LRWD's territory, LRWD wants the Commission to disapprove the Regulatory Ordinance as contrary to the public interest. Mr. Abrell goes on to testify that although Paragraph 8 of MSD's Petition in this Cause states the Regulatory Ordinance will not operate in LRWD's service territory, the actual Regulatory Ordinance does not exclude LRWD's service territory.

Mr. Cline addressed LRWD's concern in his Rebuttal Testimony, Petitioner's Exhibit No. 2. Mr. Cline explained while there had been some confusion over LRWD's actual service territory, MSD did not intend that its Regulatory Ordinance would allow MSD to operate within LRWD's service territory. Mr. Cline testified that although Mr. Abrell's Exhibit A-4 is a somewhat imprecise, hand drawn depiction of LRWD's service area, MSD generally accepts Exhibit A-4 as accurately depicting LRWD's service territory. Mr. Cline proposed that if LRWD would furnish certified IDEM documents establishing and describing LRWD's service territory to MSD, MSD would amend its Regulatory Ordinance to exclude LRWD's service territory described in the IDEM documents.

The Commission notes that the Regulatory Ordinance contemplates changes based on a Commission Order. Section 8 states:

This Ordinance shall be in full force and effect from and after its passage by the Common Counsel, signature of the Mayor, is approved by the IURC; and is published as is by law required. It is the intention that this Ordinance regulate

the offering and provision of sewer service to the full extent of the law. It acknowledges that this Ordinance will be submitted to the IURC which agency may require changes to this Ordinance before Approval.

Based on LRWD's evidence, the Commission finds that LRWD's objections to MSD's Regulatory Ordinance are predicated on the Regulatory Ordinance allowing MSD to operate within LRWD's service territory. The Commission finds that MSD's proposal to amend the Regulatory Ordinance to exclude LRWD's service territory is reasonable and will resolve LRWD's specific objection regarding service territory, which is contemplated in the Regulatory Ordinance. Therefore, within 30 days of the date of this Order, LRWD should provide certified IDEM documents describing LRWD's service territory to MSD, the Commission and all parties to this Cause. Not later than 90 days after its receipt of the certified IDEM documents describing LRWD's territory, MSD should amend its Regulatory Ordinance to exclude LRWD's service territory as described by the certified IDEM documents. MSD shall submit a copy of the Regulatory Ordinance Territory Amendment for LRWD as a compliance filing in this Cause.

2. Regulatory Ordinance Territory Amendment for Yorktown. Mr.

Olson testified that Yorktown and MSD had entered into a Stipulation that MSD's Regulatory Ordinance does not intend to claim jurisdiction over the entire boundary of Yorktown, including the Mount Pleasant Township. The Stipulation was admitted into evidence as Intervenor-Yorktown's Exhibit 1-A. The Commission was not asked to approve the Stipulation and we will not. However, we can consider the Stipulation as evidence of the intentions of MSD and Yorktown. Paragraph 3 of the Stipulation reads, "MSD's Petition for Approval shall be construed that MSD is not seeking to claim jurisdiction within Yorktown's boundaries or to provide utility service within Yorktown's boundaries." This Commission is not bound by the Stipulation as to how we construe MSD's Petition. However, based on the Stipulation, we find it is MSD's intent through its Regulatory Ordinance not to operate within the boundaries of Yorktown, including Mount Pleasant Township. Therefore, not later than 90 days of the date of this Order, MSD should amend its Regulatory Ordinance to exclude Yorktown, including Mount Pleasant Township. MSD shall submit a copy of the Regulatory Ordinance Territory Amendment for Yorktown as a compliance filing in this Cause.

3. Regulatory Ordinance Territory Amendment for DCRWD. Mr.

Cline testified in his Rebuttal Testimony that MSD did not intend its Regulatory Ordinance to have jurisdiction over DCRWD's service area as depicted in his Exhibit 1-C. Mr. Cline stated that MSD would be willing to amend its Regulatory Ordinance to clarify MSD's intention in that regard. Our review of the Regulatory Ordinance does not disclose an exclusion for DCRWD's service territory depicted in Mr. Cline's Exhibit 1-C. Since it is MSD's intent that its Regulatory Ordinance not operate to have jurisdiction over DCRWD's service area depicted in Petitioner's Exhibit 1-C, we find MSD should amend its Regulatory Ordinance accordingly. Not later than 90 days of the date of this Order, MSD should amend its Regulatory Ordinance to exclude DCRWD's service territory as depicted in Petitioner's Exhibit 1-C. MSD shall submit a copy of the Regulatory Ordinance Territory Amendment for DCRWD as a compliance filing in this Cause.

By the evidence in this Cause MSD proposed, or agreed to, certain exclusions from the territory covered by its Regulatory Ordinance. By our Findings above we accepted those exclusions. The remaining territory covered by, and under the jurisdiction of, the Regulatory Ordinance, after the exclusions accepted, for purposes of this Order should be called the "Amended Regulated Territory."

C. **Public Interest Factors.** In making a determination of whether the proposed Regulatory Ordinance is in the public interest, we must consider the following factors set forth in Ind. Code § 8-1.5-6-8(g):

- (1) The ability of another utility to provide service in the regulated territory;
- (2) The effect of a commission order on customer rates and charges for service provided in the regulated territory;
- (3) The effect of the commission's order on present and future economic development in the regulated territory;
- (4) The history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities; and
- (5) Any other factors the commission considers necessary.

1. **The Ability of Another Utility to Provide Service in the Amended Regulated Territory.** Only two wastewater providers have an interest in the provision of wastewater service in the Amended Regulated Territory: MSD and DCRWD.

The evidence establishes that MSD was formed in 1968, currently serves over 27,000 customers and has over 200 employees. MSD's treatment plant has a 24 million gallon per day capacity and is about 40 acres in size. MSD states it is ready and able to provide service to customers in the Amended Regulated Territory. No party suggested MSD could not provide wastewater service to the Amended Regulated Territory. Both LRWD and DCRWD are wholesale wastewater treatment customers of MSD. Neither LRWD nor DCRWD raised any complaints regarding the adequacy of MSD's service. The evidence establishes that Cowan Schools, several homeowners and others, all of which are located in the Amended Regulated Territory, contacted MSD seeking wastewater service. Cowan and certain homeowners were in critical need of wastewater service. The Delaware County Health Department also asked MSD to provide wastewater service in the Amended Regulated Territory. MSD made the required investment, installed the infrastructure and provided wastewater service to Cowan and others in the Amended Regulated Territory. Based on the uncontroverted evidence of record, the Commission finds MSD is able to provide wastewater service to the public in the Amended Regulated Territory.

The evidence establishes that DCRWD was formed by a 1976 Order of the Indiana Stream Pollution Control Board. DCRWD's service territory was, generally, all of Delaware County except the areas served by MSD and several other municipalities. DCRWD provides wastewater service to about 3,000 customers. DCRWD does not own or operate any wastewater treatment facilities but does own and operate a wastewater collection system. DCRWD's wastewater is treated by MSD and others.

DCRWD did not provide evidence that it can provide wastewater service to the Amended Regulated Territory. DCRWD states that in 2018 it started making general plans for increasing its customer base. DCRWD's future planning appears focused on the construction of a WWTF. DCRWD states that it plans to construct the WWTF jointly with LRWD and discontinue using MSD's treatment

services. The evidence establishes that DCRWD's WWTF planning is very preliminary. DCRWD has no WWTF PER, lender, construction permit, or approved plant site.

Mr. Cline pointed out that DCRWD's Royerton system has had major SSO problems and numerous citations from IDEM. DCRWD entered into an Agreed Order with IDEM in 2011 requiring improvements to the Royerton system. IDEM sent DCRWD a Letter of Non-Compliance on March 21, 2018, a new Enforcement Letter on April 11, 2018, and a new mandated Additional Action Plan on the Royerton issues. DCRWD's current collection system failed an IDEM inspection in March, 2018. MSD questioned why these historic SSO issues continue to go unaddressed when DCRWD indicates it has \$1 million on hand to build a WWTF. DCRWD is now working on a PER for the Royerton repairs, but it is not complete even though it has been under an Agreed Order since 2011. DCRWD does not yet know the details or cost of the IDEM required repairs to its system. DCRWD did not challenge or conduct cross examination on the foregoing evidence.

Mr. Cline states that DCRWD pursued providing service to Cowan, which is located in the Amended Regulated Territory, but ultimately did not do so. Mr. Cline states in 2015 DCRWD made a loan application to the SRF to obtain funds to extend service to Cowan. He states DCRWD's application was accepted and received a favorable ranking on SRF's project priority list. However, DCRWD did not pursue the financing to ultimately obtain a loan. Mr. Cline opined that DCRWD chose not to pursue the project. DCRWD cross examined Mr. Cline on this issue. Mr. Cline responded to cross examination questions regarding the SRF Priority List on which DCRWD's project appeared. The SRF Priority List was DCRWD's Cross Examination Exhibit CX-3. On cross examination, Mr. Cline explained that from Exhibit CX-3 alone, he could not tell the following: when DCRWD made the loan application; whether it was for the Cowan project; the status of DCRWD's loan application; or, that DCRWD chose not to serve Cowan.

Based on the evidence, the Commission cannot find that DCRWD has the ability to provide wastewater service to the public in the Amended Regulated Territory.

2. The Effect of a Commission Order on Customer Rates and Charges in the Amended Regulated Territory. Mr. Brooke described DCRWD's current residential rates. Mr. Brooke stated DCRWD charges its residential customers a monthly flat rate based on its four geographic areas. DCRWD's rates are: \$47.00 per month in the Daleville area; \$97.79 per month in the Royerton area; \$83.04 per month in the DeSoto area; and \$48.90 per month in the Westbrook area. This evidence was uncontroverted and the Commission finds DCRWD's rates to be as described above. Mr. Cline described MSD's current residential rates which would be charged in the Amended Regulated Territory. Mr. Cline stated that most of MSD's customers are on metered rates, however, MSD does have a flat rate for unmetered customers. MSD's flat rate which would be operative in the Amended Regulated Territory is \$51.73 per month. MSD's evidence regarding the rates it would charge in the Amended Regulated Territory is uncontroverted, and we find MSD's rates to be as set forth above. Mr. Cline also testified that MSD would charge its customers in the Amended Regulated Territory the same rates charged to its customers located within Muncie's Corporate Boundaries which testimony was unchallenged. We have also reviewed the Regulatory Ordinance, and Petitioner's Exhibits 1-F, 1-G and 1-H which are a series of recent MSD Rate Resolutions regarding the rates which MSD would charge to customers in the Amended Regulated Territory. We find the Regulatory Ordinance and the MSD Rate Resolutions indicate that MSD would charge the same rates for service to its customers in the Amended Regulated Territory that it charges its customers within Muncie's Corporate Boundaries.

Based on the uncontroverted evidence, the Commission finds that MSD will charge the same rates for service to the customers in the Amended Regulated Territory as its customers within Muncie's Corporate Boundaries. We do not know which of DCRWD's area rates would apply if DCRWD were to provide service in the Amended Regulated Territory because DCRWD did not say. For purposes of this Discussion we find that one of DCRWD's area rates would be the rate applied by DCRWD if it were to provide service in the Amended Regulated Territory. But the evidence does not allow us to find which of DCRWD's rates would apply if DCRWD were to serve in the Amended Regulated Territory.

Based on the foregoing findings, MSD's flat rate for residential service in the Amended Regulated Territory is \$51.73 per month. Based on the findings herein, if DCRWD were to provide service in the Amended Regulated Territory its flat rate for residential service would be \$47.00, or \$97.79, or \$83.04, or \$48.90 per month. We find that MSD's rate for wastewater service in the Amended Regulated Territory to be less than, or comparable to, DCRWD's rate for wastewater service in the Amended Regulated Territory. As a result, the Commission finds the evidence presented on the second public interest factor under Ind. Code 8-1.5-6-8(g)(2) supports approval of the Regulatory Ordinance.

3. Effect of the Commission's Order on Present and Future Economic Development in the Amended Regulated Territory. The evidence establishes that the proposed Regulatory Ordinance seeks to promote the economic growth and welfare of the Amended Regulated Territory by providing for certainty of service to any customers in that area. The evidence establishes that MSD's Regulatory Ordinance would allow developers to plan for their wastewater costs and count on that service being available from a known provider. It would also eliminate the confusion as to what entity would be responsible for fixing any problems that might arise. As testified to by Mr. Cline and stated in the DCHD letter, there was confusion about what entity the DCHD should contact to help provide wastewater service to the Burlington area neighborhoods when their septic systems began to fail. Presently numerous homes in the Burlington area are on pump and haul orders from the DCHD. Because of this, homeowners are incurring additional monthly costs, which is an economic burden. This burden could affect the economic wellbeing and growth of the Amended Regulated Territory. The evidence presented establishes that the only other utility claiming the ability to serve customers in the Amended Regulated Territory, DCRWD, could not do so on a timely basis. This evidence was not controverted. Delay in service to customers in need does not provide for the economic wellbeing of the Amended Regulated Territory. The evidence establishes that DCRWD is either unwilling or unable to provide service to any customers requesting, or in need of, it in the Amended Regulated Territory. The evidence establishes that MSD has the financial capacity, the treatment capacity, and the punctual response time to providing service to customers throughout the Amended Regulated Territory.

DCRWD offered supplemental evidence of the indictment of certain MSD employees. DCRWD believes that because of the indictment, potential developers and businesses would be hesitant to be served by MSD, which would diminish economic development in the Amended Regulated Territory. DCRWD believes it is not in the public interest to allow MSD to expand its service territory. We disagree. The evidence shows customers continuing to sign up for service. Based on the evidence, the present and future economic growth would be best served by MSD acting as a single provider in the Amended Regulated Territory. We find that the effect on present and future economic development favors approval of the Regulatory Ordinance.

4. The History of Utility Service in the Amended Regulated Territory.

The evidence establishes that only MSD is currently providing service in the Amended Regulated Territory. The evidence establishes that Yorktown has its own treatment plant and provides service to the Town of Yorktown, and also treats the wastewater collected by DCRWD from the Westbrook area. The Town of Yorktown and MSD have already stipulated that the Regulatory Ordinance will not be construed to affect Yorktown's service area.

The evidence establishes that LRWD has been in operation since 1978, that they serve the township of Selma and have a contract with the MSD to treat 100% of the wastewater that they collect. The evidence establishes that LRWD does not have its own treatment facilities, has not sought to expand outside of Selma in the past, and has no plans or ability to do so in the future.

The evidence establishes that DCRWD has been in operation since 1976, and since that time, they have expanded their service to different noncontiguous areas within the unincorporated areas of Delaware County. These areas include Royerton, Westbrook, DeSoto, and Daleville. Currently, MSD has a contract with DCRWD to treat all the collected wastewater from Royerton and DeSoto, DCRWD has a contract with Yorktown to treat the wastewater from Westbrook, and DCRWD has a contract with Chesterfield to treat the wastewater from Daleville. DCRWD does not have its own treatment facility, and the testimony given relating to the proposed WWTF is speculative at best. Since its creation in 1976, DCRWD has only been able to expand service to around 3,000 customers.

MSD was created in 1968 and has expanded service to more than 27,000 customers. MSD treats wastewater from DCRWD and LRWD by contract, but those contracts are expiring in the next few years. The evidence establishes that MSD has a treatment plant with capacity of 24 million gallons a day, and that it has approximately 9 million gallons of capacity available. MSD was requested by Cowan and the DCHD to serve Cowan. Therefore, MSD began plans to expand its service to customers in the Amended Regulated Territory in 2015, and in the few years since then has completed a project to serve Cowan when other providers either could not or would not. MSD has also undertaken projects to serve areas in need where customers are on pump and haul order from DCHD. Since MSD began serving customers in need in the Amended Regulated Territory, MSD has entered into contracts with Cowan and has signed up numerous customers in the Nanci Lane and Burlington Road neighborhoods who are ready for connection. The evidence shows that MSD has a history of willingness to invest infrastructure, engineering, and construction money into the Amended Regulated Territory on an expedited basis to provide service. For the foregoing reasons, we find that the history of utility service in the Amended Regulated Territory favors approval of the Regulatory Ordinance.

5. Any Other Factors the Commission Considers Necessary.

Mr. Cline testified that MSD is committed to serving the public interest by assuring that customers requiring service in the Amended Regulated Territory receive service as quickly as possible. Mr. Cline stated that future disputes in the Amended Regulated Territory as to which utility should provide service will cause delay which is not in the public interest. Mr. Cline stated to prevent future delays in the provision of service, MSD is willing to amend the Regulatory Ordinance to "carve out" areas of its territory if DCRWD or LRWD could provide the service quicker or at less cost than MSD. Mr. Cline proposes a dispute resolution process to resolve customer service disputes between MSD, DCRWD and LRWD. Mr. Cline proposed that a committee of board members from MSD, DCRWD and LRWD be formed to promptly resolve customer service disputes between the utilities. No party challenged

MSD's proposed dispute resolution process. Neither DCRWD nor LRWD agreed to participate in MSD's proposed dispute resolution process. We cannot require DCRWD or LRWD to participate in the proposed dispute resolution process. However, we would encourage the Parties to make reasonable efforts to resolve future disputes and the proposed dispute resolution may provide a useful process for resolving future disputes.

D. Conclusion. Ind. Code § 8-1.5-6-9(c) vests the Commission with the authority to resolve all of the issues raised in MSD's Petition, including the enforceability of the Regulatory Ordinance in the manner the Commission determines to be in the public interest. Based on our findings above, we have determined the public interest requires that the Regulatory Ordinance should be amended in several respects. Based upon our findings in paragraph 6B above, inclusive, we determined the Regulatory Ordinance should be amended to exclude certain areas from the territory over which the Regulatory Ordinance has jurisdiction. For purposes of this Order, the Regulatory Ordinance, amended as required herein, should be referred to as the "Amended Regulatory Ordinance." Based upon the evidence and our previous findings, we find the Amended Regulatory Ordinance satisfies the requirements of Ind. Code § 8-1.5-6-9, is in the public interest and should be approved.

Based on the foregoing findings, MSD should proceed with adopting the Amended Regulatory Ordinance, consistent with our findings in paragraph 6B. MSD shall file under this Cause a certified copy of the adopted Amended Regulatory Ordinance with the Commission, and serve all parties to this Cause, within 90 days of the date of this Order. The Amended Regulatory Ordinance should adopt a map depicting the Amended Regulated Territory. We find MSD shall also provide an electronic map that defines the boundaries of the Amended Regulated Territory in shapefile, geodatabase, or mxd format in a definable coordinate system with the Commission's Water and Wastewater Division, within 90 days of the date of this Order.

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

1. MSD's request for approval of its Regulatory Ordinance in regard to wastewater service is approved as set forth herein.
2. MSD shall cause the amendment of the Regulatory Ordinance to adopt the Amended Regulated Territory as the territory over which the Regulatory Ordinance has jurisdiction, consistent with Paragraph 6B. The Regulatory Ordinance amended as required by Paragraph 6D is the Amended Regulatory Ordinance. MSD shall file under this Cause a certified copy of the adopted Amended Regulatory Ordinance with the Commission, serving all parties to this Cause, within 90 Days of the date of this Order. MSD shall provide an electronic map that defines the boundaries of the Amended Regulated Territory in shapefile, geodatabase, or mxd format in a definable coordinate system with the Commission's Water and Wastewater Division, within 90 days of the date of this Order.
3. The Amended Regulatory Ordinance is approved subject to the Filing Requirements and Compliance Filing being made as required under Ordering Paragraph 2, above. The Amended Regulatory Ordinance shall be effective upon making all filings required by Ordering Paragraph 2, above.

4. In accordance with Ind. Code § 8-1-2-70, MSD shall pay within 20 days from the date of this Order and prior to placing into effect the Regulatory Ordinance approved in this Order the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

Commission Charges	\$ 2,181.38
OUCG Charges	\$ 1,301.70
Legal Advertising Charges	\$ 422.84
TOTAL	\$ 3,905.92

MSD shall pay all charges into the Commission public utility fund account described in Ind. Code § 8-1-6-2 through the Secretary of the Commission.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: NOV 27 2019

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



Mary M. Becerra
Secretary of the Commission