ORDER OF THE COMMISSION

Presiding Officers:
David L. Ober, Commissioner
Carol Sparks Drake, Senior Administrative Law Judge

On August 15, 2018, Hamilton Southeastern Utilities, Inc. (“HSE” or “Petitioner”) filed a Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking: (1) authority to increase its System Development Charges (“SDC”) to reflect: (a) increased availability and treatment capacity charges from the City of Fishers, Indiana (“Fishers”); (b) increased costs for availability and treatment capacity associated with development projects in HSE’s Noblesville and Boone County service territories; and (c) increased costs to address the impact of the Tax Cuts and Jobs Act of 2017 (the “TCJA”); (2) authority to modify the SDC applicable to Petitioner’s Flatfork Creek service territory by removing a fee that is no longer applicable; and (3) for approval of new rate schedules and a revised tariff implementing the authorized SDCs on a uniform basis.

On August 17, 2018, HSE filed an Amended Verified Petition and prefilled its case-in-chief. This included the testimony and attachments of Kendall W. Cochran, President of HSE, and Otto W. Krohn, a Certified Public Accountant and executive partner of O.W. Krohn & Associates, LLP. On August 28, 2018, HSE filed proof of its publication of legal notice of this proceeding.

Pursuant to notice and as provided in 170 IAC 1-1.1-15, a prehearing conference was scheduled for October 1, 2018. On September 12, 2018, Petitioner and the Indiana Office of Utility
Consumer Counselor ("OUCC"), consistent with 170 IAC 1-1.1-15(e), filed a proposed agreed procedural schedule requesting this schedule be accepted in lieu of conducting the prehearing conference. On September 14, 2018, a Docket Entry was issued establishing a procedural schedule in this Cause and vacating the scheduled prehearing conference.

On November 14, 2018, the OUCC prefiled the direct testimony of Margaret A. Stull, Chief Technical Advisor in the OUCC’s Water/Wastewater Division. HSE on November 28, 2018, prefiled rebuttal testimony for Mr. Cochran and Mr. Krohn. On December 6, 2018, the OUCC moved to strike Petitioner’s rebuttal testimony or, alternatively, to continue the evidentiary hearing and authorize the OUCC to file sur-rebuttal testimony. On December 11, 2018, a Docket Entry was issued in which the Presiding Officers declined to strike portions of HSE’s rebuttal testimony, granted the OUCC’s request to file sur-rebuttal testimony, and continued the evidentiary hearing to February 22, 2019. The procedural schedule was also modified to afford HSE an opportunity to reply to the OUCC’s sur-rebuttal testimony. In addition, Petitioner was directed to provide a copy of any agreement and/or letter of intent with a wholesale treatment provider for HSE’s Boone County service area. On December 17, 2018, Petitioner filed its responses to this Docket Entry.

On January 15, 2019, the OUCC prefiled the sur-rebuttal testimony of Ms. Stull. HSE then prefiled reply testimony on January 30, 2019, for Mr. Cochran and Mr. Krohn. On February 12, 2019, the OUCC moved to strike portions of HSE’s reply testimony. HSE responded to the OUCC’s motion on February 14, 2019, contending the challenged testimony was responsive to Ms. Stull’s sur-rebuttal testimony and/or supplemented HSE’s response filed on December 17, 2018, to Docket Entry questions. The OUCC filed a reply to HSE’s response on February 21, 2019.

The Commission conducted a public evidentiary hearing in this Cause on February 22, 2019, commencing at 9:30 a.m. in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Proofs of publication of the notice of the evidentiary hearing were incorporated into the record and placed in the official files of the Commission. At the outset, the Presiding Officers denied the OUCC’s pending motion to strike. The testimony and attachments Petitioner and the OUCC prefiled were then admitted without objection.

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

1. **Notice and Jurisdiction.** Notice of the public hearing conducted in this Cause was given and published as required by Ind. Code § 8-1-1-8. Petitioner also demonstrated that HSE published notice of its Petition in accordance with Ind. Code § 8-1-2-61. Petitioner is a public utility as defined by Ind. Code § 8-1-2-1, and the Commission has the authority to approve rates and charges for utility service under Ind. Code § 8-1-2-42; therefore, the Commission has jurisdiction over HSE and the SDCs at issue.

2. **Petitioner’s Characteristics.** HSE is a corporation duly organized under Indiana law with its principal office and place of business in Fishers, Indiana. Petitioner owns, operates, and controls utility plant, property, and equipment for the collection, treatment, purification, and disposal of sewage. HSE was granted a certificate of territorial authority ("CTA") or indeterminate permit by the Commission in Cause Nos. 38685, 38819, 38897, 39567, 40501, 41528, 41745, 41752, 41798, 43435, and 43581. HSE’s service territory includes parts of Fishers (the “Fishers
CTA”), the City of Noblesville (the “Noblesville CTA”), Boone County (the “Boone County CTA”), and the area Flatfork Creek Utilities, Inc. formerly served (the “Flatfork Creek CTA”). These CTAs are all subject to the same tariff on file at the Commission, except the Flatfork Creek CTA has a separate tariff that is $800 higher than the SDC in HSE’s other service areas.

3. Background and Relief Requested. The Commission approved HSE’s current SDCs in Cause No. 44683 in an Order issued on November 9, 2016 (the “44683 Order”). In the 44683 Order, the Commission approved $2,850 as the SDC for all of HSE’s service areas except the Flatfork Creek CTA. A $3,650 SDC was approved for the Flatfork Creek CTA. In this Cause, HSE seeks a uniform SDC of $4,471 for all its CTAs, contending this increase is needed to: (1) incorporate a $1,000 increase in the wholesale treatment costs Fishers charges HSE; (2) the increased costs for availability and treatment capacity charges associated with prospective development in the Noblesville and Boone County CTAs; (3) increased costs due to the TCJA; and (4) removal of the $800 fee that is no longer applicable to the Flatfork Creek CTA. Petitioner also seeks approval of a revised tariff implementing the authorized SDCs on a uniform basis.

4. The Parties’ Evidence.

A. Petitioner’s Direct Testimony. Kendall W. Cochran, HSE’s President, provided an overview of the relief HSE is requesting along with related background information. Mr. Cochran testified that the purpose of HSE’s SDC is to provide a revenue stream outside of HSE’s retail rates and charges that ensures Petitioner’s existing retail customers do not subsidize the cost of new development. He stated that HSE’s SDC has been in existence since 1991, and presently, all new development pays HSE $2,850 per equivalent dwelling unit (“EDU”), except within the Flatfork Creek CTA where the SDC is $3,650.

Mr. Cochran reviewed the SDC applicable in each of HSE’s CTA areas. For the Fishers CTA, he stated this SDC is comprised of two parts: (1) a charge of $1,800 for HSE’s collection system capital costs and (2) a wastewater capacity availability fee (“Fishers SDC”) that HSE pays Fishers, as its wholesale treatment provider, for each EDU of new development for which Fishers provides treatment capacity and service. The Fishers SDC is paid in accordance with two wholesale agreements between HSE and Fishers. Since 1994, Fishers has charged HSE $1,050 for each EDU of new development Fishers treats. In explaining the increase HSE is requesting, Mr. Cochran testified that an increase in the Fishers SDC is necessary to allow for expansion of Fishers’ sewage treatment capacity to meet the demand for projected future growth. After lengthy negotiations, he stated HSE and Fishers agreed to increase the Fishers SDC by $1,000, resulting in a Fishers SDC of $2,050 for each EDU of new development within HSE’s Fishers CTA. Fishers’ Board of Public Works and Safety approved the $1,000 increase on June 11, 2018, as shown in Petitioner’s Attachment KWC-2. Mr. Cochran testified that he believes this $1,000 increase is reasonable and necessary for the continued provision of reliable treatment service by Fishers to meet the demand projected from HSE’s customer growth.

1 170 IAC 1-6-2 (14) defines a system development charge or SDC as a one “time fee assessed to new customers of water or sewer utilities to help finance development of utility systems, mainly those dealing with facilities for production, treatment, or storage necessary to serve those new customers.” The term includes impact, availability, and capacity fees.
Mr. Cochran also discussed the SDC that HSE is proposing for its Noblesville and Boone County CTAs. He explained that although HSE is authorized to serve these areas, HSE has not yet begun actually providing wastewater service. HSE is reviewing developer building plans in these two areas and expects to be rendering service soon. Mr. Cochran testified the SDC currently approved for the Noblesville and Boone County CTAs is $2,850, which is the same SDC applicable to the Fishers CTA. He explained that although these service areas are subject to the same SDC under HSE’s current tariff, each area will have a different wholesale treatment provider. Fishers provides wholesale treatment service to the Fishers and Flatfork Creek service areas. HSE has an agreement with the City of Noblesville (“Noblesville”) to provide wholesale treatment service in the Noblesville CTA. The Noblesville agreement requires HSE to pay a wastewater capacity availability fee of $2,100 or $2,200 for each EDU connected to Noblesville’s system depending on the area being served. For the Boone County CTA, Mr. Cochran stated HSE has been negotiating with a wholesale treatment provider for these services, and once an agreement is finalized, HSE will be required to pay a wastewater capacity availability fee for each EDU this wholesale provider treats.

Mr. Cochran discussed the TCJA and its relevance to HSE’s SDCs. He testified that as a result of the TCJA, contributions in aid of construction (“CIAC”) for investor-owned water and sewer utilities are now treated as taxable gross income for federal income tax purposes. This includes SDC payments HSE collects. Mr. Cochran testified that HSE seeks to increase the SDC for all its service areas to address the portion of HSE’s SDC that will be subject to federal and state income tax as a result of the TCJA. According to Mr. Cochran, the portion of HSE’s SDC collected and remitted to Fishers or HSE’s other wholesale treatment providers is not subject to income tax because HSE does not retain that money for use as CIAC. He testified that HSE seeks to revise its SDC to recover the taxable portion of the SDC that becomes CIAC and stated the tax expense collected on the SDC will be used to pay federal and state tax authorities.

In addressing the SDC applicable to the Flatfork Creek CTA, Mr. Cochran testified the Commission previously approved a settlement agreement wherein HSE agreed to purchase the collection system assets of Flatfork Creek Utilities, Inc. (“Flatfork”), and Fishers agreed to purchase Flatfork’s treatment assets. As part of HSE’s purchase obligations to the seller of Flatfork (the “Seller”), HSE agreed to pay the Seller an $800 per EDU facilities fee (the “Supplemental Fee”) for EDUs related to improvements constructed on property located entirely within the geographic boundaries of the Flatfork Creek CTA until a total of 1,750 EDUs have been built in the Flatfork Creek CTA. Mr. Cochran testified that when the Commission approved HSE’s SDCs in Cause Nos. 43435 and 43761, the Supplemental Fee was included in the SDC applicable to the Flatfork Creek CTA. Thus, the SDC for the Flatfork Creek CTA approved in Cause Nos. 43435 and 43761 and in HSE’s most recent rate case, Cause No. 44683, has been $800 higher than the SDC approved for its other service areas. The approved SDC for the Flatfork Creek CTA, including the Supplemental Fee, is currently $3,650 per EDU. Mr. Cochran testified that HSE’s commitment to the Seller to pay the Supplemental Fee has been satisfied.

Mr. Cochran discussed the relief HSE is requesting. HSE proposes to modify its SDCs so that HSE has one SDC in the amount of $4,471 that applies to all of its CTAs. Mr. Cochran opined that a uniform SDC is appropriate. He stated the costs for development have increased in each of HSE’s CTAs, and HSE expects these costs to be similar in all these areas. He stated the fee payable
by HSE to its wholesale treatment providers should also be similar. Although not yet actually rendering wastewater service in the Noblesville and Boone County CTAs, Mr. Cochran stated HSE is facing increased costs to build new plant and collection facilities, especially in the Noblesville and Boone County CTAs, to extend service for the first time. Mr. Cochran testified that he believes the development costs in each of its CTAs are similar based upon his discussions with developers and wholesale treatment providers. He testified that a uniform SDC will simplify development costs across HSE’s system, and a uniform SDC is consistent with HSE’s present Commission approved tariff, which has a uniform SDC of $2,850 for the Fishers, Noblesville, and Boone County service areas.

Mr. Cochran explained how the requested SDC in the amount of $4,471 was determined. He stated the Fishers CTA was used as a proxy because it is reflective of development costs in all of HSE’s CTAs and is the basis for HSE’s current SDCs. Mr. Cochran testified that the $4,471 HSE proposes consists of the $2,050 Fishers SDC, $1,800 for HSE’s collection system capital costs, and $621 attributable to the TCJA. Also, the Supplemental Fee was removed from the Flatfork Creek CTA since HSE no longer pays this fee, resulting in the SDC applicable to the Flatfork Creek CTA also being the same as in the Fishers CTA.

Mr. Cochran reviewed proposed changes to HSE’s tariff to reflect the changes HSE is proposing to its SDCs. He testified that HSE seeks to consolidate all of its CTAs into one service area schedule in its tariff instead of its tariff being divided into two service area schedules as is now the case. HSE proposes the consolidated tariff for all of its CTAs be identified as “Schedule 1” with a uniform SDC of $4,471 and all other rates and charges remain unchanged from those the Commission approved in the 44683 Order.

Mr. Krohn, an executive partner at O.W. Krohn & Associates, testified about the impact of the TCJA on HSE’s SDCs. He also provided background information on the SDCs applicable to the Fishers, Noblesville, and Boone County CTAs, including the costs for wholesale treatment service in each area. Mr. Krohn testified that since the mid-1990s, CIAC, consisting primarily of contributed plant and cash SDCs, has been exempt from federal income tax, but the TCJA eliminated this exclusion. According to Mr. Krohn, beginning with the 2018 tax year, CIAC is considered to be taxable gross income; therefore, any contributed property or cash SDCs that HSE receives that become CIAC is taxable. He testified this means that the part of the SDC that HSE retains for its own use is subject to federal and Indiana income tax and considered to be taxable gross income beginning with tax year 2018; consequently, HSE is requesting relief to address this impact of the TCJA. Specifically, HSE seeks an increase of $621 to its SDC to address the impact of the TCJA (the “Tax Act Increase”). Mr. Krohn reiterated that only the taxable portion of the SDC is subject to the Tax Act Increase, which is the portion of the SDC that HSE retains that becomes CIAC and is used by HSE (the “Retained SDC”). Mr. Krohn explained that the Tax Act Increase was determined by calculating the SDC that will result in a Retained SDC of $1,800, which is the amount HSE currently retains under the 44683 Order. Using a blended federal and state tax rate of 25.64% and the Fishers SDC of $2,050, Mr. Krohn determined the Tax Act Increase to be $621, which when added to the Fishers SDC of $2,050 and the Retained SDC amount of $1,800 results in a total SDC of $4,471. Mr. Krohn testified that HSE is proposing a uniform SDC of $4,471 in all its CTAs and that having a uniform SDC is advantageous to both
B. **OUCC’s Direct Testimony.** In her direct testimony, OUCC witness Stull accepted HSE’s proposed SDC of $4,471 per EDU for the Fishers and Flatfork Creek CTAs. Ms. Stull did not, however, agree with $4,471 as the SDC for the Noblesville or Boone County service territories. According to Ms. Stull, the costs to be included in HSE’s SDC should be any capacity fees the wholesale treatment provider imposes as well as the estimated capital costs to be incurred by HSE to collect the waste and deliver it to the wastewater treatment facility. With respect to HSE’s Noblesville CTA, Ms. Stull testified the SDC should be limited to the amount passed-through to Noblesville. She recommended HSE’s existing SDC of $2,850 be lowered to $2,200 for Area 5 of the Noblesville CTA and to $2,100 for the remaining portions of the Noblesville CTA. Ms. Stull stated this SDC charge will recoup the costs HSE owes Noblesville for providing wholesale wastewater treatment. She further recommended that once HSE provides a master plan or capital improvement plan for the Noblesville CTA, including estimated costs to provide service in this territory, HSE file a proceeding with the Commission to revise the SDC applicable to the Noblesville CTA. Ms. Stull recommended the existing SDC of $2,850 for the Boone County CTA be reduced to $0 in that she recommended the Commission approve no SDC for HSE’s Boone County service territory until HSE has a wholesale wastewater treatment contract and has provided a master plan or capital improvement plan along with estimated costs to provide this service. According to Ms. Stull, HSE could then petition the Commission to establish the SDC for the Boone County CTA.

Ms. Stull agreed with HSE’s gross-up calculation for income taxes due on its proposed SDC applicable to the Fishers and Flatfork Creek CTAs. She stated the federal tax rate applicable to HSE as a C corporation is now 21%. Including a 5.875% blended state income tax rate yields a gross-up factor of 1.344827. Applying this gross-up factor to HSE’s portion of the SDC of $1,800 results in income taxes of $621. Ms. Stull did not recommend a gross-up for income taxes be included in the SDCs for the Noblesville and Boone County CTAs. While acknowledging that Mr. Cochran expects the costs of development to be similar in the Boone County and Noblesville service areas, Mr. Stull was critical of HSE not providing a master plan or estimated costs to provide service to these territories. She noted HSE has not yet finalized a contract for wholesale wastewater treatment in its Boone County CTA. In her opinion, without this cost information, an accurate SDC cannot be determined at this time for HSE’s Boone County CTA, so Ms. Stull recommended no SDC be approved for this area.

Ms. Stull testified that HSE’s service areas are not interconnected and should be treated as separate and distinct areas. She also discussed concerns regarding HSE’s collection of SDCs. Ms. Stull recommended that once HSE begins providing wastewater service in the Noblesville and Boone County areas, any SDC funds collected be maintained in separate accounts, used only to pay for utility plant within that service area, and not used for other service territories or other purposes.

C. **Petitioner’s Rebuttal Testimony.** In his rebuttal testimony, Mr. Cochran responded to Ms. Stull’s recommendations upon the SDC for the Noblesville and Boone County CTA areas and her assertion that HSE’s CTAs should be treated as separate and distinct areas. Mr.
Cochran testified that Ms. Stull’s proposed SDC of $2,200 for Area 5 of Noblesville, $2,100 for the rest of the Noblesville CTA, and $0 for the Boone County CTA are insufficient to cover the costs associated with serving new development in these areas and could impede that development. Mr. Cochran testified the SDCs Ms. Stull recommended for Noblesville only include the treatment plant capacity element and will not provide funds for Petitioner’s collection system capital costs. Mr. Cochran took issue with reducing the SDC of $2,850 currently in effect for the Boone County CTA, opining that Ms. Stull’s recommendations fail to recognize the need for a higher uniform SDC in all of HSE’s CTAs than those approved in the 44683 Order.

Mr. Cochran testified that discussions with developers interested in the Noblesville service area have intensified, and new development is likely to start in the next few months. He testified that HSE has also had preliminary discussions with developers regarding the Boone County CTA area and opined that prospective developers in the Noblesville and Boone County CTAs need certainty upon what HSE’s SDC will be so they can identify costs up-front to build-out their developments. He testified that a SDC that excludes funds for HSE’s use for collection system capital costs is insufficient. From Mr. Cochran’s perspective, following Ms. Stull’s recommendation that HSE develop a unique SDC for each service area and then pursue the Commission’s approval could take several months, is unreasonable, and could cause developers to delay or abandon prospective projects. He stated development in these areas is likely to commence soon, and HSE needs a SDC that allows Petitioner to pay its pass-through costs to its wholesale treatment providers, pay income tax on its SDC as a result of the TCJA, and gives HSE an additional revenue source to pay for collection system capital costs. From Mr. Cochran’s perspective, a uniform SDC of $4,471 will provide HSE the funds it needs to pay its pass-through costs, pay income taxes resulting from the TCJA, and retain $1,800 for its own use as approved in the 44683 Order.

In responding to Ms. Stull’s assertion that the SDC for the Noblesville and Boone County service areas should be supported by cost information such as a master plan or capital improvement plan, along with estimated costs to provide this service, Mr. Cochran testified that it would be ideal to have comprehensive cost information prior to commencing new development. But, he stated it is not possible to put together a comprehensive plan with known costs for HSE’s entire service territory. He testified there are too many unknown variables to provide detailed cost estimates for the entire service area, including, for example, identifying where development will first occur, the number of EDUs in each area, and a timeline for when those EDUs will need to be served. He stated that because of the undeveloped nature of HSE’s service areas, the only way to provide the cost information Ms. Stull recommends is to estimate costs on a project by project basis, hampering HSE’s ability to pay for the utility plant needed to serve its undeveloped areas.

Mr. Cochran discussed the estimated costs for proposed initial development within the Noblesville CTA. He stated that HSE’s share of the costs is estimated to be in the range of $1.82 million to $2.62 million, and he provided an attachment (Attachment KWC-R1) detailing the cost estimates. Mr. Cochran stated that using the cost information in Attachment KWC-R1, Mr. Krohn prepared a cost analysis of the proposed initial development. This cost analysis, according to Mr. Cochran, shows HSE’s proposed SDC of $4,471 is in the lower part of the range of SDC needed to pay for HSE’s share of the development costs. Mr. Cochran testified that although Mr. Krohn concluded a higher SDC may be justified in the Noblesville service area, Mr. Cochran continues
to believe a uniform SDC of $4,471 for HSE’s service areas is appropriate. He testified that a uniform SDC will simplify development costs across HSE’s system and is consistent with how HSE’s SDC has historically been calculated. Mr. Cochran stated that development costs are well known in the Fisher’s service area, and nothing suggests such costs will not be similar in the areas encompassed within HSE’s Noblesville and Boone County CTAs.

Mr. Cochran disagreed with Ms. Stull’s assertion that HSE’s CTAs should be treated as separate and distinct areas. He testified that HSE’s service areas share many similarities. All of its CTAs are northern suburban areas of Indianapolis and are contiguous to Indianapolis. Mr. Cochran testified that a substantial portion of the Noblesville CTA is contiguous to the Fishers CTA, and all of HSE’s service territories have similar income and housing characteristics, with Hamilton County and Boone County ranking first and second in the State of Indiana in median household income, per capita personal income, and housing median value. Mr. Cochran stated that development in these areas will be similar because the characteristics of the residents living in these areas are similar, and the developers looking to develop in the Noblesville and Boone County CTAs are many of the same developers that have developed projects in the Fishers CTA.

Mr. Cochran disagreed with the recommendation that SDC funds collected in the Noblesville and Boone County service areas be maintained in separate accounts, used only to pay for utility plant within the service territory from which collected, and not be used for other service territories or purposes. Mr. Cochran took issue with characterizing HSE’s system as being separate and distinct CTAs. He testified that HSE is one utility serving one distinct area and that HSE’s financial statements are for one utility. HSE has never been required to keep separate books associated with each of its CTAs, and the Commission has not treated HSE’s service areas as being separate and distinct. Mr. Cochran testified that restricting HSE’s access to CIAC funds by the specific service area could severely hamper HSE’s ability to pay for utility plant needed to serve its undeveloped service areas. Mr. Cochran stated that HSE needs to be able to use SDC funds collected throughout its service area to pay for the significant upfront costs associated with serving the Noblesville and Boone County CTAs as these develop. He testified that restricting HSE’s use of SDC funds to the area from which collected will force HSE to borrow more money and, therefore, negatively impact HSE’s existing ratepayers. Mr. Cochran believes a uniform SDC of $4,471 collected in all of HSE’s service areas will better enable HSE to pay for the upfront costs of new development while minimizing the funds HSE needs to borrow.

Mr. Krohn also responded to Ms. Stull’s recommendation that HSE establish separate SDCs for each of its service areas. Like Mr. Cochran, Mr. Krohn highlighted the similarities between the Fishers, Noblesville, and Boone County CTA areas and stated he thinks it is appropriate for HSE to use the Fishers CTA as a proxy for calculating its SDC. He also discussed the preliminary cost information for the prospective development project in the Noblesville CTA. Using the cost information Mr. Cochran provided in Attachment KWC-R1, Mr. Krohn compared the costs for the initial development in the Noblesville CTA to the uniform SDC of $4,471 that HSE is proposing. Based upon a range of collection system capital costs of $1,820,000 to $2,623,000, a gross-up for income taxes, capitalized interest, the wholesale treatment cost for Area 1 of the Noblesville CTA, and the number of EDUs approximated for the initial development project, Mr. Krohn calculated the range of the SDC for the initial development in the Noblesville CTA to be $4,461 to $5,503 per EDU. Mr. Krohn testified that his cost illustration supports HSE’s
use of the Fishers CTA as a proxy and a uniform SDC of $4,471. He stated that non-contiguous CTAs like HSE’s may, nevertheless, have homogenous characteristics, and it is important HSE have a uniform SDC. This provides a benefit to developers by knowing development costs upfront, and the efficiency of single tariff pricing benefits HSE in dealing with new development.

D. OUCC’s Sur-rebuttal Testimony. After reviewing Petitioner’s rebuttal testimony and related cost information, Ms. Stull recommended HSE’s requested SDC of $4,471 for the Noblesville CTA be allowed. She testified the cost information HSE provided supported $4,471 as the SDC for the Noblesville CTA. Ms. Stull continued, however, to recommend that the approved SDC of $2,850 for the Boone County CTA be reduced to $0. While recognizing that HSE is in negotiations with a wholesale service provider for its Boone County service area, in the absence of capital cost estimates for the collection system capital costs in the Boone County service area, Ms. Stull continued to recommend the Boone County CTA have no SDC at this time because a wholesale treatment agreement has not yet been entered into, and HSE did not provide specific cost information for the Boone County CTA. She also recommended HSE not have a uniform SDC for its service areas. According to Ms. Stull, HSE’s SDC should be based on the best cost information available that reflects the differences in how sewage disposal service is being provided in HSE’s discrete service areas. Ms. Stull stated that the fact the SDC amounts for HSE’s Fishers and Noblesville service areas are the same is convenient for HSE, but she does not consider it appropriate to establish the SDC amount for the Boone County CTA at this time without cost information for that service area.

E. Petitioner’s Reply Testimony to OUCC’s Sur-rebuttal. Mr. Cochran disagreed with Ms. Stull’s recommendation to reduce the SDC applicable to the Boone County CTA from $2,850 to $0. In doing so, he disputed the assertion that HSE failed to provide any cost information for the Boone County CTA. Mr. Cochran testified that as with HSE’s other seven CTAs, there are significant costs for HSE to expand its system into the Boone County CTA area. He testified that $0 as the SDC for this service area is unreasonable, not supported by the evidence, and could delay development in the Boone County CTA.

Mr. Cochran testified that while a final wholesale treatment agreement with Citizens Wastewater of Westfield, LLC (“Citizens Westfield”) has not yet been agreed upon, it is clear from these negotiations that HSE will be required to pay a capacity fee to Citizens Westfield in the amount of at least $1,425 per EDU for wastewater treatment services for its Boone County CTA. He stated this amount has remained consistent throughout HSE’s negotiations with Citizens Westfield. Mr. Cochran testified that this cost information was provided to the OUCC in response to a data request and to the Commission as part of HSE’s response to the Docket Entry questions issued on December 11, 2018. Mr. Cochran reviewed other cost information provided to the Commission and OUCC estimating the cost to construct a force main to the eastern boundary of the Boone County CTA, which HSE estimates to be approximately $5 million. Mr. Cochran stated that construction of this force main is not the only construction necessary for HSE to connect to Citizens Westfield’s wastewater treatment plant (“WWTP”). He stated HSE will also be responsible for the cost to construct a force main that connects to the WWTP. Mr. Cochran testified that HSE’s engineers estimate the full cost to connect to the WWTP will be approximately $7.6 million, as detailed in Attachment KWC-R5. There will also be oversizing costs for the initial proposed development in the Boone County CTA.
Mr. Cochran also testified upon why $4,471 as the SDC for the Boone County CTA is reasonable and appropriate. He stated that Mr. Krohn performed a cost analysis using the cost information in Attachment KWC-R5 to compute the SDC for the Boone County CTA, and his analysis concluded a higher SDC of $6,226 may be warranted. However, Mr. Cochran testified that he continues to believe a uniform SDC of $4,471 is appropriate. According to Mr. Cochran, if the SDC is too high, it could discourage development in the Boone County CTA. He testified a consistent SDC of $4,471 throughout HSE’s service areas will promote development in the Boone County CTA and provide the funds needed for the anticipated infrastructure costs.

Mr. Cochran disagreed with Ms. Stull’s recommendation that HSE not have a uniform SDC and disagreed with her characterizations of HSE’s service areas as being different, separate, and discrete. He stated HSE’s CTAs are neither different nor discrete. Mr. Cochran testified they share many similarities, including significant collection system capital costs and treatment costs. He stated their development costs are similar, and the similarities between each CTA support a consistent SDC of $4,471.

Mr. Krohn also responded to Ms. Stull’s recommendation that no SDC be approved for the Boone County CTA. He disagreed with a $0 SDC for the Boone County CTA and stated such an amount is unreasonable and insufficient for HSE to meet its capital needs to provide sewage disposal service in the Boone County service area. Mr. Krohn provided an analysis of the Boone County CTA cost information Mr. Cochran discussed in his reply testimony (Petitioner’s Exhibit 5). Using the cost information to connect to Citizens Westfield’s WWTP, the oversizing costs for initial development in the Boone County CTA, the capacity fee of $1,425 per EDU that will be payable to Citizens Westfield, and projected EDUs for the first ten years of growth in the Boone County CTA, Mr. Krohn determined $6,226 would be a reasonable SDC for the Boone County CTA, but he agreed with Mr. Cochran that a consistent SDC in all HSE’s service areas is appropriate and, therefore, recommended $4,471 as the SDC for the Boone County CTA. He explained that a uniform SDC is consistent with the methodology HSE used in calculating its SDC in Cause Nos. 43761 and 44683 wherein HSE requested (and the Commission approved) SDCs of $2,400 and $2,850 although the incremental cost method analysis HSE performed arguably supported higher SDCs of $3,363 and $3,326.

5. **Commission Discussion and Findings.** In the 44683 Order, the Commission approved $2,850 as the SDC for all of HSE’s service areas except Flatfork Creek and $3,650 for Flatfork Creek because of the $800 Supplemental Fee then in effect. This uniform SDC was supported by the OUCC and represented a $450 increase in the SDC of $2,400 then in effect throughout HSE’s territory. In this proceeding, HSE seeks to again increase its SDC on a uniform basis, this time to $4,471 using the Fishers CTA as a proxy. The increase proposed includes a $1,000 increase in the capacity availability fee HSE pays Fishers on a per EDU basis and a $621 increase for the income taxes resulting from the TCJA. For the Flatfork Creek CTA, HSE proposes to eliminate the Supplemental Fee and approve the uniform SDC. The OUCC ultimately recommended approving the SDC of $4,471 for the Fishers, Flatfork Creek, and Noblesville CTAs but took issue with approving a uniform SDC for all of HSE’s service areas, contending no SDC for the Boone County CTA should be approved because HSE has not yet entered into a wholesale treatment agreement and failed to provide sufficient cost information. We find the OUCC’s position, however, disregards the similarities HSE identified among its Fishers, Noblesville, and
Boone County CTAs, particularly the demographics and overlapping developer interest, and further find it is unreasonable – indeed, inappropriate, to reduce HSE’s existing SDC from $2,850 to $0 in the Boone County CTA area. Ms. Stull’s sur-rebuttal testimony recommending no SDC be “established” for the Boone County CTA, Public’s Exhibit 2 at p. 3, line 16, overlooks that $2,850 has been the SDC in effect for Petitioner’s Boone County CTA area, with the OUCC’s agreement, since the 44683 Order. This also disregards prior Orders of the Commission, including the 44683 Order and the Order approved on February 11, 2009, in Cause No. 43435, approving a uniform SDC throughout Petitioner’s territory, adjusted to recognize the Supplemental Fee for Flatfork Creek.

Proposing no SDC fails to recognize the development interest in the Boone County CTA area and could impede development by not enabling project costs to be quantified up-front. In addition, HSE demonstrated it will be required to pay a wholesale treatment provider at least $1,425 per EDU and will incur significant capital costs to render service to initial development within its Boone County CTA. Eliminating HSE’s SDC in the Boone County CTA will not facilitate collection of these costs from new development. Based on HSE’s evidence, particularly the testimony upon the similarities between its CTA areas, their developer interest, and prospective development, we find HSE has supported a uniform SDC of $4,471 and approve $4,471 as the SDC for the Fishers, Flatfork Creek, Noblesville, and Boone County CTAs.

HSE’s service territory includes parts of Fishers, Noblesville, Boone County, and the area Flatfork formerly served. HSE witnesses Cochran and Krohn demonstrated new development in each of HSE’s CTAs will come with significant costs, and the costs for development are similar. This testimony shows collection system capital costs are approximately $1,800 across HSE’s CTAs. For the Fishers and Flatfork Creek CTAs, HSE provided testimony and an attachment (Attachment KWC-2) that confirmed an increase of $1,000 in the pass-through portion of the SDC that HSE pays Fishers as its wholesale treatment provider, resulting in a capacity availability fee of $2,050 payable to Fishers for each EDU of new development. For the Noblesville CTA, HSE provided evidence of the costs for wholesale treatment service by Noblesville, which is $2,200 or $2,100 per EDU depending on the area served. HSE also provided cost information for the initial development proposed within its Noblesville CTA and an analysis of that cost information. Mr. Krohn testified that a SDC in the range of $4,461 to $5,503 would be appropriate for the Noblesville CTA. In sur-rebuttal testimony, OUCC witness Stull agreed that the additional cost information HSE provided on rebuttal supported its requested SDC of $4,471 for the Noblesville CTA. Given HSE’s evidence and the OUCC’s agreement, we find the cost information for the Fishers, Flatfork Creek (discussed further below), and Noblesville CTAs supports a SDC of $4,471. With respect to HSE’s Boone County CTA, as discussed above, the OUCC asserts no SDC should be approved while HSE proposed it be the same as in HSE’s other service areas.

We disagree with the OUCC’s assertion that HSE failed to provide sufficient cost information for the Boone County CTA and its recommendation that the SDC applicable to the Boone County CTA be, effectively, reduced from $2,850 to $0. This would eliminate any SDC for the Boone County area, notwithstanding the EDU capacity fee minimum Mr. Cochran testified HSE will be required to pay and the construction necessary to connect to the WWTP. It also disregards recent developer interest that Mr. Cochran shared. We find that reducing this SDC to $0 is not in HSE or its ratepayers’ best interest and overlooks the evidence HSE provided
supporting $4,471 as the SDC for the Boone County CTA. Although we concur that HSE should have provided better cost support for the Boone County CTA in its case-in-chief, including detailing the costs ($1,425) for wholesale treatment service, the estimated costs to construct a force main to interconnect with Citizens Westfield’s WWTP, and the estimated oversizing costs for initial development in the Boone County CTA, this information ultimately was presented and admitted without objection. In addition, we recognize that HSE has been negotiating with Citizens Westfield for wholesale treatment services; consequently some of the information may not have been available when this proceeding was initiated due to these ongoing negotiations. Using this cost information, HSE’s witnesses Cochran and Krohn demonstrated a SDC of $6,226 is justified for the Boone County CTA. Mr. Cochran was, however, sensitive that setting the SDC too high could discourage development in the Boone County CTA. We concur that this is a legitimate concern. He also testified that HSE does not view each of its CTAs as a separate or distinct area. The SDC of $4,471 that HSE proposes was calculated consistent with the methodology used to calculate HSE’s existing SDCs in Cause Nos. 43761 and 44683, and when combined with HSE’s evidence in this Cause upon the similarities among its CTAs, including prospective development in the Noblesville and Boone County CTA areas, supports a uniform SDC of $4,471. Notwithstanding the foregoing, however, we also find merit in the OUCC’s contention that a master plan should be developed for HSE’s undeveloped territory; consequently, HSE is encouraged to develop the recommended master plan before filing its next SDC case.

For the Flatfork Creek CTA, HSE demonstrated the $800 Supplemental Fee included in the existing SDC for this area is no longer applicable because HSE’s commitment to pay the Supplemental Fee has been satisfied. The OUCC did not object to removing the Supplemental Fee. We find that with the Supplemental Fee no longer due, the evidence presented supports the SDC for the Flatfork Creek CTA area being the same as the SDC for the Fishers CTA; therefore, $4,471 is approved as the SDC for the Flatfork Creek service area. HSE also proposed to refund amounts HSE has collected since December 1, 2016, that were earmarked for the Supplemental Fee but collected after HSE’s commitment to pay the Seller an $800 per EDU facilities fee was satisfied. We find HSE should refund these amounts as proposed.

We next address the inclusion of income tax expense in the SDC as a result of the TCJA. HSE’s witnesses testified the proposed uniform SDC of $4,471 includes an increase of $621 to pay income tax expense incurred as a result of the TCJA. Specifically, Mr. Krohn testified the TCJA increase of $621 was calculated by determining the SDC needed to give HSE a retained SDC of $1,800 to use for its collection system capital costs. Using a blended federal and state tax rate of 25.64% and the capacity fee payable to Fishers of $2,050, Mr. Krohn calculated the TCJA increase to be $621. The OUCC agreed with this TCJA increase. Based upon the evidence, we find an increase to HSE’s SDC to address the impact of the TCJA is reasonable, and the evidence supports the requested increase of $621.

In her testimony, OUCC witness Stull recommended that any SDC funds HSE collects be maintained in separate accounts and only used to pay for utility plant within the service area where collected. As HSE’s evidence showed, the Commission has not historically imposed this requirement upon HSE, and in this proceeding, we find Petitioner’s evidence upon the potential increased debt this may cause HSE to incur supports prospectively not requiring separate and distinct accounts. In addition, because the collection system capital costs are approximately $1,800
across all of HSE’s CTAs, any temporary reallocation of SDCs should, assuming growth to be distributed among all the CTAs, average out over time.

HSE also proposed changes to its tariff to reflect the changes proposed to its SDCs. HSE seeks to consolidate its CTAs into one service area schedule in its tariff instead of a tariff that is divided into two service area schedules as is the case with HSE’s current tariff (one schedule for all of HSE’s CTAs except Flatfork Creek and one schedule for the Flatfork Creek CTA). HSE proposed that the consolidated tariff for all of HSE’s CTAs be identified as “Schedule 1” with a uniform SDC of $4,471 and that all other rates and charges remain unchanged from what the Commission approved in its 44683 Order. Having found that $4,471 is an appropriate SDC amount for HSE’s service areas, we find it is also appropriate to approve the requested consolidated tariff for HSE’s CTAs, to be identified as “Schedule 1.” HSE shall file a revised tariff with its new schedule of rates and charges in accordance with this Order.

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

1. HSE is authorized to revise its SDC to $4,471 for the Fishers CTA, Flatfork Creek CTA, Noblesville CTA, and Boone County CTA, consistent with the findings and discussion above, particularly Finding Paragraph No. 5, with a uniform SDC of $4,471 approved for its service territory.

2. Prior to placing into effect the approved revised SDC, Petitioner shall file with the Water/Wastewater Division of the Commission a revised tariff in the form of Petitioner’s Attachment KWC-3. The approved SDC shall be effective on or after the Order date subject to Division review and agreement upon the revised tariff.

3. Within 60 days of the date of this Order, HSE shall refund the amounts over-recovered since December 1, 2016, relating to the Supplemental Fee for the Flatfork Creek CTA.

4. This Order shall become effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, AND OBER CONCUR; ZIEGNER ABSENT:**

**APPROVED:** APR 10 2019

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

Mary M. Begerra
Secretary of the Commission