

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE PETITION OF THE CITY)
OF VALPARAISO, INDIANA, AND VALPARAISO)
CITY UTILITIES FOR APPROVAL OF A)
REGULATORY ORDINANCE ESTABLISHING A) CAUSE NO. 45306
SERVICE TERRITORY FOR THE CITY'S)
MUNICIPAL SEWER SYSTEM PURSUANT TO IND.)
CODE CH. 8-1.5-6.)**

ORDER OF THE COMMISSION

Presiding Officers:

Stefanie N. Krevda, Commissioner

Jennifer L. Schuster, Administrative Law Judge

On October 15, 2019, the City of Valparaiso, Indiana and Valparaiso City Utilities (“VCU”) (collectively “Petitioners” or “Valparaiso”) filed a Petition (“Petition”) seeking approval from the Indiana Utility Regulatory Commission (“Commission”) of Valparaiso’s regulatory ordinance regarding the provision of wastewater service under Ind. Code § 8-1.5-6-9.

On October 29, 2019, the Town of Chesterton, Indiana, (“Chesterton”) filed a Petition to Intervene in this Cause and a Motion to Consolidate this Cause with Cause No. 45312 (“Motion to Consolidate”). Valparaiso opposed Chesterton’s Motion to Consolidate. On November 21, 2019, Aqua Indiana, Inc. (“Aqua”) filed a Petition to Intervene in this Cause. On November 26, 2019, Valparaiso prefiled its case-in-chief.

The Commission held a Prehearing Conference and Preliminary Hearing at 1:30 p.m. on December 3, 2019 in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Also on December 3, 2019, Chesterton filed a Motion to Withdraw its Motion to Consolidate. On December 4, 2019, the Presiding Officers issued a Docket Entry granting Chesterton’s and Aqua’s Petitions to Intervene.

On December 18, 2019, the Commission issued its Prehearing Conference Order in this Cause, establishing a procedural schedule in this Cause and granting Chesterton’s Motion to Withdraw its Motion to Consolidate. On February 11, 2020, the Indiana Office of Utility Consumer Counselor (“OUCC”), Chesterton, and Aqua filed their cases-in-chief.

On February 28, 2020, Valparaiso and Chesterton filed a Notice of Settlement and Motion to Establish a Procedural Schedule to File Settlement and Supporting Testimony, which the Presiding Officers granted by Docket Entry on March 2, 2020. On March 3, 2020, Valparaiso and Chesterton filed their settlement testimony.

The Commission set this matter for a public hearing to be held on 10 a.m. on March 30, 2020, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A docket entry was issued on March 26, 2020 advising that, in accordance with Indiana Governor Holcomb's Executive Order 20-09, the hearing would be conducted via teleconference and providing related participation information. Valparaiso, the OUCC, Chesterton, and Aqua, by counsel, participated in the evidentiary hearing via teleconference. During the hearing, all of the parties' testimony and exhibits were admitted into the record without objection.

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

1. **Notice and Jurisdiction.** Notice of the hearings in this Cause was given and published as required by law. Valparaiso is a municipal utility as that term is defined in Ind. Code § 8-1.5-6-1. Under Ind. Code § 8-1.5-6-9, the Commission has jurisdiction to approve a municipality's regulatory ordinance. Therefore, the Commission has jurisdiction over Valparaiso and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Valparaiso is a municipality that owns and operates plant and equipment for the collection and treatment of sanitary sewage and storm water pursuant to Ind. Code ch. 36-9-23. Valparaiso provides sewer utility service to the public inside its corporate limits and to certain customers outside its corporate boundaries. On December 10, 2019, Valparaiso acquired the sewer utility assets of the Damon Run Conservancy District ("Damon Run") and began providing sewer utility service to the former Damon Run customers.

3. **Relief Requested.** Valparaiso requests Commission approval of its Ordinance No. 27-2019 as amended by Ordinance No. 7-2020 (the "Valparaiso Regulatory Ordinance"). Valparaiso and Chesterton also request approval of their Joint Stipulation and Settlement Agreement ("Settlement"), which was attached to the settlement testimony of Mr. Poulos as Petitioners' Exhibit 21.

4. **Valparaiso's Case-In-Chief.**

A. **Steve Poulos.** Mr. Poulos, VCU's Utilities Director, testified regarding Valparaiso's wastewater utility, Valparaiso's regulatory ordinance, the proposed regulated territory, and the acquisition of Damon Run's sewer utility. VCU provides sewer utility service to approximately 35,000 people and 13,000 accounts, which include residential, commercial, and industrial customers. VCU operates a major wastewater treatment plant, over 225 miles of sewer mains, and 32 sewage pump stations.

Mr. Poulos testified that the Valparaiso Common Council adopted Ordinance No. 27-2019 on October 14, 2019. Ordinance No. 27-2019 states that Valparaiso has the exclusive authority to provide wastewater service within a defined, specified territory that includes all areas within Valparaiso's city limits and a defined territory located within four miles of Valparaiso's corporate boundaries (the "Valparaiso Regulated Territory"). After Valparaiso filed its Petition in this Cause, Aqua contacted Valparaiso regarding three parcels of property for which Aqua had previously been issued a certificate of territorial authority ("CTA"). Mr. Poulos stated that, although two of the three parcels had been annexed by Valparaiso and the Aqua CTA was more than 12 years old,

Aqua and Valparaiso agreed to eliminate the three parcels from the Valparaiso Regulated Territory. Mr. Poulos stated that neither Valparaiso nor Aqua is precluded from serving the three parcels in the future. Mr. Poulos sponsored Petitioners' Exhibit 3, which is a map of the Valparaiso Regulated Territory modified to remove these three parcels.

According to Mr. Poulos, in 2015, Valparaiso and Damon Run began discussing ways in which Valparaiso could assist Damon Run in providing sewer utility service to Damon Run's customers. Initially, Valparaiso and Damon Run discussed entering into an agreement for Valparaiso to operate Damon Run's sewer utility, but Valparaiso and Damon Run eventually agreed that Valparaiso would acquire Damon Run's sewer utility system. Mr. Poulos testified that the Valparaiso Regulatory Ordinance is necessary to protect Valparaiso's investment in the Damon Run system by providing VCU with the exclusive authority to provide sewer utility service to Damon Run's customers and other nearby properties.

Around the same time Valparaiso's negotiations with Damon Run occurred, Valparaiso began preparation of a formalized engineering master plan ("Master Plan"), which considered the feasibility of expanding sewer utility service to customers outside of Valparaiso's corporate boundaries and interconnecting the Damon Run customers to VCU's existing facilities. A copy of the Master Plan was attached to Mr. Poulos's testimony as Valparaiso's Exhibit 13. Mr. Poulos testified that the Valparaiso Regulatory Ordinance is also necessary to provide Valparaiso with the exclusive authority to invest in new facilities to provide sewer utility service to the customers and areas identified in the Master Plan.

Mr. Poulos testified that the Damon Run sewer system is a collection-only system of pump stations, force mains, and gravity sewers. Damon Run conveys collected sewage for treatment by the City of Portage, Indiana ("Portage"). Valparaiso, Damon Run, and Portage agreed to and executed an assignment of the Portage wastewater service agreement to Valparaiso. At least for the short term, Valparaiso intends to continue to operate the Damon Run sewer utility as a stand-alone collection system and utilize Portage's plant for wholesale sewage treatment.

Mr. Poulos testified that, as noted in its Master Plan, Valparaiso plans to extend a sewage transmission main from its existing facilities to interconnect with the Damon Run service area within the next ten years. Valparaiso could expedite the connection depending on the pace of development in the southern half of the Valparaiso Regulated Territory. Once Valparaiso interconnects the Damon Run system to its existing facilities, it will be able to avoid the treatment expense from Portage and offer Damon Run customers more competitive rates. Mr. Poulos opined that Valparaiso needs to be able to serve the customers located between its existing facilities and the Damon Run system to maximize those savings. He also testified that Valparaiso has received inquiries from existing developments that are currently served by semi-public wastewater treatment plants within the Valparaiso Regulated Territory that are interested in connecting to VCU's anticipated facilities.

Mr. Poulos stated that Valparaiso has the technical, financial, and managerial capability to provide sewer utility service in the Valparaiso Regulated Territory. VCU has 68 employees, including mechanical and electrical experts, certified wastewater operators, customer service experts, field division employees, and financial employees. Mr. Poulos testified that VCU can

provide service to the Valparaiso Regulated Territory without adding new employees. He opined that VCU should be able to achieve greater economies of scale, decrease the costs per customer, and offer more competitive rates over time by expanding its service territory, providing long-term benefits to both the Damon Run and VCU customers.

According to Mr. Poulos, Valparaiso and Damon Run are the only current wastewater utilities in the Valparaiso Regulated Territory. Chesterton has also extended a sewer main from the west side of Highway 49 to serve two developments (Fox Chase Farms and Whispering Sands) just north of U.S. Highway 6 along Meridian Road. Valparaiso excluded these two developments from the Valparaiso Regulated Territory and also excluded the areas currently being served by the Valparaiso Lakes Area Conservancy District (“VLACD”), Portage, and Aqua. Mr. Poulos opined that Valparaiso is in the best position to provide service to the Valparaiso Regulated Territory.

Mr. Poulos testified that Valparaiso has two sewer rate ordinances—one for customers served by VCU’s own facilities and the second for customers in the Damon Run service area. A single-family residential customer that is connected to the VCU portion of Valparaiso’s facilities using 5,000 gallons per month pays approximately \$47.79 per month for wastewater service. According to Ordinance 25-2019, a single-family residential customer month that is connected to the Damon Run portion of Valparaiso’s facilities using 5,000 gallons per month pays approximately \$99.63 for wastewater service. Once the Damon Run system is connected to the VCU system, all customers will pay the VCU rates.

Mr. Poulos testified that, on November 14, 2019, Valparaiso, VCU, and Damon Run executed an Asset Transfer Agreement, under which Damon Run transferred all of its sewer assets, including its existing agreements, accounts receivable, and cash equivalents, to Valparaiso and VCU in return for \$4,633,036, all of which will be used to refund a portion of Damon Run’s outstanding debt. In addition, VCU accepted assignments of the out-of-territory sewer and water customers from Damon Run and agreed to collect certain water payments in lieu of taxes (“PILOT”) and deliver the proceeds to Damon Run. Damon Run will use the water PILOT funds to make payments on its water bonds. These out-of-territory customers include the Porter Hospital, Liberty Elementary and Intermediate Schools, and the Porter County Parks Department.

Mr. Poulos testified that Valparaiso intends to issue tax-exempt sewer revenue bonds to finance the Damon Run acquisition. Because Valparaiso has a strong credit rating, it will be able to issue bonds at a much lower interest rate than Damon Run was paying. Damon Run will also be able to pay off its sewer debt and refinance its water debt at a much lower interest rate than it had been paying. The result of the acquisition and refinancing of debt will lower the bills of Damon Run customers.

VCU held two public meetings to inform Damon Run customers about the proposed acquisition, which approximately 100 customers attended. According to Mr. Poulos, the Damon Run customers have been very supportive of the proposed acquisition. Mr. Poulos also testified that the Greater Valparaiso Chamber of Commerce also supports Valparaiso’s acquisition of the Damon Run sewer system and the creation of the Valparaiso Regulated Territory.

B. Anthony Kenning. Mr. Kenning, a Professional Engineer with DLZ Indiana, LLC, testified regarding Valparaiso's ability to serve the Valparaiso Regulated Territory, the ability of other utilities to provide service in the area, and the potential impact of the Valparaiso Regulated Territory on future economic development in the area. Based on his 18 years of working with VCU, he opined that VCU is able to provide safe, efficient, and cost-effective service to the Valparaiso Regulated Territory.

In 2016, Mr. Kenning began working with Valparaiso to develop concepts to extend VCU's facilities to serve Damon Run and also evaluated the capacity of certain Damon Run facilities. He testified that Valparaiso's existing West Side Sewer gravity sewer, pump station, and force main have the capacity to service areas both west of Valparaiso and the Damon Run area. As a result of this work, Mr. Kenning completed a Master Plan that outlines the improvements and extensions that will be necessary to serve the Valparaiso Regulated Territory.

Mr. Kenning testified that Valparaiso intends to use Damon Run's existing infrastructure to serve Damon Run's customers. For the next several years, VCU will operate the Damon Run system as a standalone system, using Portage as the wholesale treatment provider, but plans to interconnect the Damon Run area with VCU's existing facilities within 10 years. The interconnection will require the upgrade or replacement of Damon Run Lift Station #1 and construction of a new force main to discharge southward into VCU's West Side Sewer. With the interconnection in place, Valparaiso will be able to extend its force main and gravity sewer lines to serve other areas in the Valparaiso Regulated Territory.

Mr. Kenning testified that there are no other utilities currently serving in the Valparaiso Regulated Territory except for Damon Run. He noted that it is theoretically possible that Aqua, Chesterton, or VLACD could provide service to a portion of the Valparaiso Regulated Territory, but that would depend on the extent of those utilities' authorized service areas and their abilities to extend infrastructure to the area and whether those utilities have facilities necessary to serve significant portions of the regulated territory.

C. John Julien. Mr. Julien, a partner in the CPA firm of Baker Tilly Municipal Advisors, LLC, testified regarding customer rates and charges for the Valparaiso Regulated Territory and economic development. Mr. Julien has advised Valparaiso and VCU regarding a variety of financial matters for over 20 years. Mr. Julien prepared an accounting report analyzing the required rates for VCU to serve the portion of the Valparaiso Regulated Territory that will utilize the Damon Run facilities, which he attached to his testimony as Petitioners' Exhibit 15. Page 11 of the report contains the proposed schedule of rates and charges for the Damon Run area, which were incorporated into Valparaiso Ordinance 25-2019.

Mr. Julien testified that customers in the Valparaiso Regulated Territory that are connected to and using Valparaiso's existing facilities will pay the same schedule of rates and charges as VCU's existing customers, regardless of whether such customers are located inside or outside of Valparaiso's municipal limits. For existing Damon Run customers, VCU's current rates would not generate sufficient revenues to fund the identified costs associated with serving the Damon Run area. Until that changes, Mr. Julien opined that it is necessary and appropriate for Valparaiso to calculate the rates and charges for the customers served by the Damon Run facilities separately.

from customers directly connected to Valparaiso's existing sewer system. Valparaiso's strategic objective is to change the economics of the Damon Run area to eventually allow the Damon Run customers to be served at the same rates as the other VCU customers, either by connecting additional customers to the Damon Run system or by connecting the Damon Run system to VCU's existing sewer system.

Mr. Julien compared Valparaiso's sewer rates to Damon Run's existing rates and the rate of other nearby utilities. Prior to the acquisition, Damon Run's sewer customers paid a fixed monthly rate of \$12.00 and a volumetric rate of \$5.98 per 1,000 gallons, which was substantially lower than the cost-based rates that Mr. Julien calculated based on the Damon Run system's revenue requirement. The Damon Run customers also paid a semi-annual \$187.66 special benefits tax to cover the sewer and water system debt service charge. Thus, a typical residential customer using 5,000 gallons per month paid a total of \$241.66 in rates and special benefits tax/debt service. Under Valparaiso's rates for the Damon Run area, a typical residential customer using 5,000 gallons per month will pay \$99.63 for sewer rates plus \$52.98 for the special benefits tax, which pays the refinanced water debt service charge. Thus, the total bill is \$152.61, which is a savings of approximately \$89.05 per month over Damon Run's current approximate bill for a residential customer. Mr. Julien presented a table in his testimony comparing Valparaiso's monthly sewer rates, \$99.63 in the Damon Run Area and \$47.79 for all other customers to those of other area utilities, including Chesterton's special utility area ("SUA") (\$99.18 per month), Aqua (\$72.77 per month), and VLACD (\$52.94 per month).

Mr. Julien opined that approval of Valparaiso's Regulatory Ordinance is in the public interest. He stated that Damon Run's small customer base does not provide economies of scale and has a significant negative impact on the amount of debt per customer and the interest rate on that debt. VCU's acquisition of Damon Run will result in reduced operating expenses and reduced annual debt service payments, resulting in a savings to Damon Run customers of nearly \$90 per month. Valparaiso is able to borrow the funds to acquire Damon Run at an interest rate of approximately 2.43% over 20 years, a lower rate than the 6% rate on Damon Run's original bonds. Similarly, once Damon Run uses the proceeds of the acquisition to pay off its sewer debt, it will be able to refinance its water debts at a significantly lower rate of approximately 2.22% over 11 years.

Mr. Julien stated that lowering the high cost of sewer service in the Damon Run area lowers the barrier to growth that such high rates have created. To the extent such growth occurs after Valparaiso's acquisition of the Damon Run system, the addition of new customers will allow Valparaiso to reduce rates even further. He opined that, without the protections of the Valparaiso Regulatory Ordinance, it will not be possible for the Damon Run area customer base to grow adequately.

5. Chesterton's Case-in-Chief.

A. Lawrence Brandt. Mr. Brandt, President of Chesterton's Utility Service Board ("USB"), testified that Chesterton enacted a regulatory ordinance with a four-mile service corridor beyond its municipal boundaries in 2014 (the "Chesterton Regulatory Ordinance"). A conflict exists between certain areas that are covered both by the Chesterton Regulatory Ordinance

and the Valparaiso Regulatory Ordinance (the "Contested Area"). Mr. Brandt testified that Chesterton objected to Valparaiso's Petition in this Cause because it is Chesterton's position that Valparaiso enacted its regulatory ordinance in order to prevent Chesterton from serving in the Contested Area.

Mr. Brandt testified that Chesterton's municipal sewer utility includes approximately 88 miles of collection pipe, 35 lift stations, a 1.2 million gallon holding tank, and a processing plant with a 4.6 million-gallon-per-day ("MGD") capacity currently operating between 55 and 60 percent of its total capacity. Chesterton's sewer utility serves approximately 5,200 customers, has 22 employees, and currently operates with a cash surplus in excess of \$2 million.

Mr. Brandt opined that, to provide wastewater service in the Contested Area, Valparaiso would need to either continue to contract with Portage for treatment or make significant investments in its infrastructure, thus resulting in higher overall user rates in the Contested Area. He testified that the Valparaiso Regulatory Ordinance would eliminate the right of property owners to freely choose their wastewater treatment provider and would thwart efforts by Chesterton to extend its sewer system beyond its southern boundaries, including the extension of wastewater treatment to Fox Chase and Whispering Sands and the joint venture between Chesterton and Porter County to upsize a sewer main along State Road 49.

According to Mr. Brandt, in 2012, Chesterton invested \$1.5 million to extend a sewer main under the Indiana Toll Road to reach recently annexed property. As part of the same project, Porter County invested more than \$750,000 to increase the size of Chesterton's sewer main to allow users in unincorporated Porter County to connect to the Chesterton sewer utility. Mr. Brandt opined that the Valparaiso Regulatory Ordinance would squander the investment by Chesterton and Porter County and leave the new sewer lines potentially abandoned.

In April 2014, Chesterton entered into an agreement with Fox Chase Farms and Whispering Sands for the provision of wastewater treatment. Fox Chase Farms is a subdivision of approximately 90 homes, and Whispering Sands is a mobile home park with 330 lots; both neighborhoods are immediately adjacent to Damon Run. In its Final Order in Cause No. 44475 on June 30, 2015, the Commission granted authority to Chesterton to provide wastewater service to Fox Chase Farms. On June 8, 2015, Chesterton enacted Ordinance 2015-08, which established an SUA and rates and charges for the area. In 2015, Chesterton agreed to provide sewer service to the Preserve subdivision located outside of its southern borders, south of County Road 1050 North.

Mr. Brandt testified that, in January 2020, Chesterton entered into an agreement with the Duneland School Corporation (which had been under contract with Damon Run) to provide sewer utility service to the Liberty Elementary and Intermediate School facilities, located on County Road 900 North, under the same terms as other properties within Chesterton's SUA created by Ordinance 2015-08.

Mr. Brandt opined that Valparaiso's ability to provide service in the Contested Area relies on infrastructure that is not currently installed and will depend on residential or industrial growth in the area that is speculative. He also stated that Valparaiso's ability to provide wastewater service

in the Contested Area also depends on the capacity of the Valparaiso treatment plant, which is currently operating at approximately 83% of its total capacity.

According to Mr. Brandt, Chesterton has the capacity and ability to serve the Contested Area with relatively minor infrastructure improvements. Chesterton's plant operates at approximately 55 to 60 percent capacity. He stated that Chesterton has taken significant steps to plan for the extension of its sewer utility within the Contested Area. Chesterton developed a plan with Porter County for the extension of sewer service to areas within the Contested Area surrounding State Road 49 south of Chesterton to the interchange of State Road 49 and U.S. Highway 6. In addition, Chesterton has extended sewer lines to Fox Chase Farms and Whispering Sands. He testified that, with the installation of the proper infrastructure such as pipes and lift stations, Chesterton has sufficient capacity to service the Contested Area because the main sewer lines currently installed are of a sufficient size to properly handle effluent from the Contested Area. He also testified that Chesterton's connection points are significantly closer to the Contested Area than Valparaiso's connection points.

B. Sharon Darnell. Ms. Darnell, President of the Chesterton Town Council, testified that, when Chesterton adopted the Chesterton Regulatory Ordinance in 2014, it did not seek approval of the ordinance from the Commission because it envisioned using the ordinance as a tool to engage in discussions with other area sewer utilities. She stated that Chesterton had been involved in a dispute with Damon Run over the provision of sewer service to Porter Hospital. Chesterton considered the hospital to be within Chesterton's potential growth and sewer service areas, and Chesterton still considers the hospital to be a potential customer along with the owners of property adjacent to the hospital. Chesterton also spent significant resources to extend sewer lines south of the Indiana Toll Road in 2013 and 2014 to be in a position to provide sewer service to areas adjacent to the hospital.

Ms. Darnell testified that Chesterton has long considered areas south of its municipal boundaries for possible future growth. County Road 700 North is the southern boundary for the Duneland Schools Corporation, which is primarily based in Chesterton, and provides a dividing line between Chesterton and Valparaiso, which are each approximately two miles from this road.

Ms. Darnell testified that Chesterton installed sewer infrastructure in 2014 and 2015 to serve the Fox Chase Farms and Whispering Sands communities. This project cost \$1.5 million and was financed by a State Revolving Fund loan that provided low-interest financing. She opined that, with Chesterton already extending sewer service to Fox Chase and Whispering Sands, which are adjacent to Damon Run, it would be simpler for Chesterton rather than Valparaiso to serve Damon Run.

C. Stephen DeBruler. Mr. DeBruler, a Professional Engineer with Beam Longest & Neff, LLC, testified that, although both Chesterton and Valparaiso are able to serve the Valparaiso Regulated Territory, Chesterton is better able to serve the Contested Area north of County Road 700 North, and Valparaiso is better able to serve the areas in its regulated territory south of 700 North.

Mr. DeBruler testified that Valparaiso owns and operates an 8.0 MGD wastewater treatment plant. He calculated that Valparaiso's plant operated at about 76% of design capacity in 2018 with over 3,500 equivalent dwelling units ("EDUs") of available capacity before the plant would be subject to a sewer ban early warning from the Indiana Department of Environmental Management ("IDEM") if it exceeds 90% capacity. By September 2019, the Valparaiso wastewater plant was utilizing 87.8% of its capacity, leaving only 574 EDUs of available capacity. Mr. DeBruler testified that Valparaiso would need a plant expansion to serve the Valparaiso Regulated Territory, which is an expensive and time-consuming process and which would likely cause Valparaiso's sewer rates to increase significantly.

Mr. DeBruler testified that Portage, which currently treats the wastewater from Damon Run, was operating at 78% capacity in 2018, with 1,882 EDUs of available capacity. However, by September 2019, Portage was utilizing 91.2% of its plant capacity, which would likely make Portage subject to a sewer ban early warning and would impact Valparaiso's ability to serve new developments in the Damon Run area.

Mr. DeBruler testified that both topography and distance work against Valparaiso's proposed extension of sewer mains. Valparaiso is located at a major watershed break between the Lake Michigan basin, where water flows to the north, and the Illinois River basin, where water flows to the south. Water generally flows to the north of Valparaiso in most of the Valparaiso Regulated Territory, including the Contested Area. Gravity sanitary sewers can be installed at lesser depths and for greater lengths before needing to be pumped when the sewers are constructed with the lay of the land. According to Mr. DeBruler, most of the wastewater from the Valparaiso Regulated Territory north of Valparaiso will need to be pumped up to Valparaiso's existing sewer system. He also stated that Valparaiso's master planned gravity sewer west of Meridian Road is not capable of being constructed due to topographical concerns. He testified that the topography of the Contested Area makes it easier and cheaper from a capital cost perspective to construct sewer mains leading to Chesterton rather than Valparaiso, especially in the Contested Area.

According to Mr. DeBruler, no technical reason exists that the Damon Run system could not be connected to Valparaiso's sewer system. However, installing the necessary lift stations and sewer mains will be expensive. He opined that very little development would occur between Valparaiso and Damon Run until sewers are installed.

In addition, Mr. DeBruler stated that Valparaiso experienced 15 sanitary sewer overflows ("SSOs") in its collection system in 2019 that were not caused by problems in private plumbing or private sewer laterals. By comparison, Chesterton only reported one SSO in 2019. Also in 2019, Valparaiso received two Notice of Violation/Non-Compliance letters from IDEM, both of which were related to inadequate preventative maintenance of lift stations. Mr. DeBruler testified that Valparaiso needs to improve its technical and managerial functions, to spend more money to control SSO issues, and to perform maintenance activities in order to remedy these issues.

Mr. DeBruler testified that Chesterton has the technical, financial, and managerial capabilities to serve the Contested Area. He estimated that upgrades to increase capacity at the Fox Chase Farms lift station would cost less than \$150,000. Mr. DeBruler testified that Chesterton is better able to serve the Contested Area because capital costs for sewer service in the Contested

Area will be less expensive where the sewer extension distance is shorter. For these reasons, Mr. DeBruler testified that Chesterton should be the exclusive wastewater utility service provider in the Contested Area.

D. Theodore J. Sommer. Mr. Sommer, a CPA and Partner with LWG CPAs and Advisors, testified that Valparaiso issued \$5,620,000 in revenue bonds to acquire Damon Run's sewer assets. Mr. Sommer calculated Valparaiso's sewer rates per EDU, including the \$60.78 monthly fee, a \$38.85 per 5,000 gallons flow charge, and a \$52.98 debt service charge, totaling \$152.61. He testified that this amount compares unfavorably to Chesterton's monthly rate of \$99.18 in Chesterton's SUA, comprising a \$44.21 monthly user charge and a \$54.97 debt service and reserve charge. Chesterton's debt service and reserve charge recovers costs for grinder pumps and the sewer line run up to Whispering Sands on the west side of Fox Chase Farms. This rate would be charged to all connections to the sewer interceptor running from Chesterton's sewer main located at the Indiana Toll Road and State Road 49 to Fox Chase Farms and Whispering Sands.

Mr. Sommer stated that Chesterton's \$99.18 monthly charge will be reduced to \$90.02 the next time Chesterton adjusts its rates because the debt service reserve on Chesterton's 2015 Series A and 2015 Series B bonds was fully funded in January 2020. When the bonds are fully paid off, the SUA customers will revert to Chesterton's standard rates, which are \$44.21 per month.

6. Aqua's Case-in-Chief. Kari Bennett, Aqua's President, testified that Aqua currently provides wastewater service to approximately 27,904 customers in Indiana, including approximately 4,225 customers in Porter County through its South Haven Division. Aqua's South Haven Division's sewage disposal plant includes one sequential batch reactor wastewater treatment plant with a capacity of two million gallons and over 50 miles of collection and force mains.

Ms. Bennett testified that Aqua has made substantial improvements to the South Haven Division, investing in sewer main and pump station rehabilitation and new sewer construction. Recently, Aqua completed a \$3.2 million improvement to the South Haven Division's treatment plant, including a transition from chlorine gas to ultraviolet light for disinfection, an improved screening system to better manage storm water inflow, and updated energy-efficient blowers.

Ms. Bennett agreed with Mr. Poulos that the three parcels served by Aqua within the Valparaiso Regulated Territory should be removed from the Valparaiso territory, that neither Valparaiso nor Aqua should necessarily be precluded from serving the portions of the three parcels that have been annexed by Valparaiso, and that Aqua continues to have a CTA to serve the non-annexed, rural portions of the parcels. Aqua intends to continue to provide wastewater utility service to all present and future customers located in the three parcels that request service from it. Ms. Bennett described a six-inch main constructed by Aqua that is capable of facilitating service to development within all three parcels. With respect to new customers in the annexed portions of the three parcels, Ms. Bennett stated that Aqua will work with Valparaiso to ensure service is provided in a manner that does not result in the duplication of facilities, that the utility best suited to serve the area does so, and that neither utility extends service in a manner that is wasteful or inefficient.

Ms. Bennett testified that, based on Valparaiso's agreement to remove the three parcels from its proposed regulated territory, Aqua does not object to the approval of the Valparaiso Regulatory Ordinance.

7. **OUCC's Case-in-Chief.** Carl N. Seals, Utility Analyst in the OUCC's Water/Wastewater Division, listed the four elements that a petition filed under Ind. Code § 8-1.5-6-9(b) must include: a description of the service territory, proposed rates and charges, a list of any related administrative or judicial proceedings, and a list of any actually or potentially affected utilities. Mr. Seals testified that Valparaiso filed Ordinance 27-2019 with its Petition, which included a graphical depiction of the proposed regulated territory. He also stated that Valparaiso's Petition indicated that there were no other administrative or judicial proceedings involving its regulatory ordinance. The Petition also listed potentially affected utilities (Aqua, Portage, Damon Run, Chesterton, and VLACD) and excludes these utilities from the proposed regulated territory. Mr. Seals concluded that Valparaiso appears to have fulfilled all of the requirements provided in Ind. Code § 8-1.5-6-9(b).

Mr. Seals testified that, when evaluating the public interest of a proposed regulatory ordinance, the Commission should consider the factors set forth in Ind. Code § 8-1.5-6-8(g). Regarding the ability of another utility to provide service in the Valparaiso Regulated Territory, Mr. Seals testified that Valparaiso and Damon Run are currently the only wastewater utility providers in the Valparaiso Regulated Territory and that Chesterton may have limited capacity in the area to serve additional customers. He also testified that Valparaiso's rates in the proposed regulated territory, excluding Damon Run, will be the same rates charged to Valparaiso's other customers. Damon Run customers will see a decrease in total cost when debt service collected through residential tax bills is taken into consideration.

Mr. Seals stated that economic development in the area will be served by providing greater certainty to potential developers in the Valparaiso Regulated Territory and that Valparaiso will have a clearly defined area in which to anticipate and plan for future growth. He further testified that reducing rates to Damon Run customers may encourage growth in that community, and this may be enhanced when Valparaiso is able to extend sewer mains to Damon Run, further reducing costs and rates. Valparaiso already serves approximately 2,000 customers outside of its corporate limits and has been in discussions with Damon Run since 2015 to find a way to assist Damon Run in providing sewer service.

Mr. Seals testified that the OUCC received customer comments supporting Valparaiso's provision of service to Damon Run.

8. **Settlement Evidence.**

A. **Mr. Poulos.** Mr. Poulos testified that, in the Settlement (attached to his testimony as Petitioners' Exhibit 21), Valparaiso and Chesterton have agreed to a division of service territory and other modifications of their respective regulated territories. The amended Valparaiso Regulated Territory is depicted in the map attached to the Settlement as Exhibit 1 and comprises the areas originally requested by Valparaiso south of U.S. Highway 6, all existing

Damon Run customers, and the area marked on the map directly south of the Damon Run area. The Porter County Recapture Area and Liberty Elementary and Intermediate Schools are excluded from the Valparaiso Regulated Territory. The Chesterton Regulated Territory is depicted in the map attached to the Settlement as Exhibit 2 and comprises all areas north of U.S. Highway 6 that are not included in the Valparaiso Regulated Territory and the Porter County Recapture Area.

Mr. Poulos testified that the Settlement requires both Valparaiso and Chesterton to amend their regulatory ordinances to reflect the terms of the Settlement. Valparaiso approved its amended ordinance, Ordinance 7-2020, on March 9, 2020 and submitted a copy of the amended ordinance as Petitioners' Exhibit 28. Chesterton will submit its amended ordinance for approval in Cause No. 45312, and Valparaiso has agreed not to oppose approval of Chesterton's ordinance as long as it is consistent with the terms of the Settlement. In addition, Valparaiso and Chesterton have agreed not to provide service in each other's regulated territories, and Chesterton has agreed to engage in good faith negotiations to provide wholesale sewer service to Valparaiso's Damon Run system upon request.

Mr. Poulos testified that he discussed Portage's treatment plant capacity with Portage officials and was assured that Portage has made repairs and increased its capacity, which would address the issues raised by Mr. DeBruler. Mr. Poulos also testified that Valparaiso has alternative plans if Portage is unable to meet its contractual treatment obligations, including seeking damages for breach of contract, the possibility of contracting with Chesterton for wholesale treatment service, and interconnecting Damon Run to the Valparaiso system sooner than expected.

Regarding the issues raised by Mr. DeBruler about VCU's treatment plant capacity, Mr. Poulos testified that the increases in influent flows noted by Mr. DeBruler were due in part to a failing raw influent meter that was measuring significantly higher than the final effluent meter. Valparaiso replaced the sensor in the meter, which corrected the disparity between recorded influent and effluent flows. The influent flows since December 2019 show that the treatment plant is operating at approximately 69% of its treatment capacity on a daily basis and has sufficient capacity to provide service to the Valparaiso Regulated Territory.

Regarding operational concerns, Mr. Poulos testified that VCU operates a combined sewer/storm water collection system, consisting of 202 miles of sewer lines, 5,000 manholes, 32 lift stations, and an 8.0 MGD treatment plant with a peak capacity of 18 MGD. He stated that Valparaiso operates the largest wastewater utility provider in Porter County. Mr. Poulos also testified that Valparaiso reports all SSOs upon discovery, including all basement wastewater backups and all releases caused by a problem with a private sewer lateral. Over the last five years, Valparaiso has averaged 2.97 municipal system SSOs per 100 miles of sewers, which is lower than the national average of 4.5 SSOs per 100 miles of sewers.

Mr. Poulos also testified that VCU satisfied the terms of its long-term control plan in 2012 and has invested approximately \$15 million in strategic sewer separations and the construction of a combined sewer overflow treatment facility, resulting in the removal of over 50 million gallons of storm water within the combined sewer system. In addition, VCU has invested \$12 million in additional capital in sewer main replacements, sewer lining, and additional sewer separation projects. VCU also embedded a financial mechanism to pay for the replacement of aging

infrastructure in its current rates and invested over \$80,000 to upgrade its computerized maintenance management system in 2018.

Mr. Poulos testified that Valparaiso has sufficient facilities and treatment capacity to provide quality sewer service to its current customers and to potential customers in the Valparaiso Regulated Territory. Mr. Poulos also opined that, based on Chesterton's testimony and reputation, he has no reason to believe that Chesterton would be unable to provide quality, safe sewer utility service to existing and potential customers in the Chesterton Regulated Territory.

Mr. Poulos testified that the Settlement is in the public interest because it resolves the issues in this case and provides stability and predictability of service to the current and future customers in the two regulated territories. The Settlement ensures that all customers in the Contested Area will have access to quality, affordable sewer service and supports Valparaiso's plan to bring immediate and long-term rate relief to the Damon Run system customers. The Settlement also allows the Liberty Elementary and Intermediate schools to be served by Chesterton along with the majority of other Duneland Township schools. Finally, the Settlement protects the substantial investments already made by Chesterton and Porter County to potentially provide sewer utility service in the Porter County Recapture Area. For these reasons, Mr. Poulos recommended that the Commission approve the Settlement and Valparaiso's amended regulatory ordinance.

B. Mr. Brandt. Mr. Brandt testified regarding the Settlement on behalf of Chesterton, stating that litigating this matter would have been expensive, exhausted resources, and diminished the reputations of Chesterton and Valparaiso. The Settlement also removes any opposition that Valparaiso might have raised in Cause No. 45312, in which Chesterton is seeking Commission approval of the Chesterton Regulatory Ordinance.

Mr. Brandt testified that the Settlement is in the public interest because it allows Chesterton and Valparaiso to begin planning infrastructure investments to serve their respective areas. Although Aqua did not join the Settlement, Chesterton understands that Aqua will not oppose the Settlement in this Cause or Chesterton's requested relief in Cause No. 45312 as long as the evidence in those cases is consistent with the terms of the Settlement and the maps attached to the Settlement as Exhibits 1 and 2. Mr. Brandt opined that the Settlement promotes regionalism and cooperation by providing that if requested by Valparaiso, Chesterton will enter into good faith negotiations to provide wholesale sewer service to Valparaiso's Damon Run system.

Mr. Brandt testified that Chesterton's Town Council and USB approved the settlement by a joint resolution on February 27, 2020. Mr. Brandt attached a copy of the joint resolution to his settlement testimony as Attachment LB-8.

9. **Commission Discussion and Findings.**

A. **Sufficiency of the Petition.** Under Ind. Code § 8-1.5-6-9(b), a municipality's 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.
- (4) A list of any utilities actually or potentially affected by the regulatory ordinance.

Valparaiso's Petition includes a description of the proposed Valparaiso Regulated Territory and attached a map thereof as Exhibit 1. After agreeing to the Settlement in this Cause, Valparaiso enacted Ordinance 7-2020, which replaced the map attached to Ordinance 27-2019 with a map reflecting the terms of the Settlement.

The Petition provided the rates that would be charged for customers in the Damon Run Area, and Exhibit 2 to the Petition (Ordinance 28-2013) provided Valparaiso's current rates for all other customers. The Petition also stated that the Valparaiso Regulatory Ordinance is not currently the subject of any other administrative or judicial proceedings. Although the Valparaiso Regulatory Ordinance is tangentially related to Chesterton's request for approval of its own regulatory ordinance in Cause No. 45312, we note that Chesterton's case was filed after Valparaiso filed its Petition in this Cause and that all parties had notice of Cause No. 45312 through Chesterton's petition to intervene in this Cause. Finally, the Petition lists the utilities that might be impacted by its regulatory ordinance as Aqua, Portage, Damon Run, Chesterton, and VLACD.

Based on our review of the Petition, the Commission finds that the petition complies with the requirements of Ind. Code § 8-1.5-6-9(b).

B. **Analysis of the Settlement.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). Any settlement agreement that is approved by the Commission "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather, [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406. Any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence, as well as a determination that the decision, ruling, or order is not contrary to law. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition of Indiana, Inc. v. Public Service Co. of Indiana, Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before this Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement

Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, is not contrary to law, and serves the public interest.

At the same time, Indiana law strongly favors settlement as a means of resolving contested proceedings. *See, e.g., Georgos v. Jackson*, 790 N.E.2d 448, 453 (Ind. 2003) (“Indiana strongly favors settlement agreements.”); *Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) (“The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes.”) (citation omitted). A settlement agreement “may be adopted as a resolution *on the merits*, if [the Commission] makes an independent finding supported by substantial evidence on the record as a whole that the proposal will establish just and reasonable rates.” *Mobil Oil Corp. v. Fed. Power Comm’n*, 417 U.S. 283, 314 (1974) (emphasis in original) (internal quotation marks omitted); *see also, e.g., Indianapolis Power & Light Co.*, Cause No. 39938, 1995 WL 735722 (IURC Aug. 24, 1995) (quoting *Mobil Oil Corp.*, 417 U.S. at 314).

C. Public Interest Factors. In this case, as required by Ind. Code § 8-2.5-6-9(c), the Commission must consider Valparaiso’s request for approval of its regulatory ordinance in light of the public interest factors set forth in Ind. Code § 8-1.5-6-8(g), which are the following:

- (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.

i. Other Utilities’ Ability to Serve the Regulated Territory. Both Valparaiso and Chesterton provided evidence demonstrating their respective ability to provide service in the Valparaiso Regulated Territory. Valparaiso has acquired and now operates the Damon Run system, which includes a collection sewer system in the vicinity of the intersection of U.S. Highway 6 and Meridian Road and a sewer main running west along U.S. Highway 6 to connect the Damon Run system to Portage for wastewater treatment. Valparaiso also presented its 2017 Master Plan, which sets forth its proposed plans to serve the areas located between its corporate boundaries and the Damon Run system, eventually allowing Valparaiso to connect to and serve the Damon Run system with its own treatment facility.

Ms. Bennett testified regarding Aqua’s provision of service to three specific parcels located on the west side of Valparaiso’s corporate boundaries. Both Ms. Bennett and Mr. Poulos testified that Valparaiso and Aqua agreed to remove those three parcels from the Valparaiso Regulated Territory and agreed that service to the three parcels should continue to be provided in a manner that does not cause duplication of facilities or the provision of service in a wasteful manner.

We find that the evidence presented in this Cause sufficiently addresses the ability of another utility to provide service in the Valparaiso Regulated Territory and find that this evidence supports our approval of the Settlement and the Valparaiso Regulatory Ordinance.

ii. **Effect on Rates.** With approval of Valparaiso's requested relief, Damon Run customers will experience a significant decrease in their total monthly cost for sewer service and debt service charges. Mr. Julien testified that the total monthly costs to an average Damon Run residential customer using 5,000 gallons per month will be reduced from \$241.66 to \$152.61, a savings of \$89.05 per month. In addition, Valparaiso's plan to eventually connect the Damon Run system to Valparaiso's sewer treatment system should further reduce the monthly rates of Damon Run customers.

Future Damon Run customers that are located outside of the Damon Run Conservancy District will pay an average monthly rate of \$99.63 because they will not have to pay the Damon Run water debt service charge. This rate is nearly identical to Chesterton's current rate for its SUA customers, \$99.18. Future Valparaiso customers located in the Valparaiso Regulated Territory south of U.S. Highway 6 will pay Valparaiso's regular sewer rates, which are currently \$47.79 for an average residential customer using 5,000 gallons per month.

We find that the evidence presented in this Cause sufficiently addresses the effect of Valparaiso's requested relief on customer rates, and we find that this evidence supports our approval of the Settlement and the Valparaiso Regulatory Ordinance.

iii. **Effect on Economic Development.** The ability to obtain reliable and affordable wastewater treatment service is critical to present and future economic development in an area. Valparaiso, Chesterton, and Porter County have each expended considerable resources acquiring and constructing infrastructure to provide sewer utility service in and around the Valparaiso Regulated Territory. In addition, Valparaiso has expended substantial resources to develop a Master Plan to serve those areas of its regulated territory between U.S. Highway 6 and its corporate boundaries. Both Mr. Brandt and Mr. Poulos testified that the Settlement provides stability and predictability of service to the current and future customers in the area while protecting the investments made by Valparaiso, Chesterton, and Porter County. The Settlement also promotes regionalism and cooperation by opening an avenue for Valparaiso and Chesterton to discuss further ways to cooperate in the provision of sewer treatment service in the Damon Run area.

We find that the evidence presented in this Cause sufficiently addresses the effect of Valparaiso's requested relief on economic development, and we find that this evidence supports our approval of the Settlement and the Valparaiso Regulatory Ordinance.

iv. **History of Utility Service.** Valparaiso, Chesterton, and Damon Run have had past conflicts regarding the provision of wastewater service to customers north of U.S. Highway 6 and between Meridian Road and State Road 49. The Settlement is a reasonable resolution of these disagreements and promotes the future cooperation of Valparaiso and Chesterton in a regional approach to providing sewer utility service. In addition, the Valparaiso

Regulatory Ordinance will allow Valparaiso to extend municipal sewer utility service to the existing developments south of U.S. Highway 6.

We find that the evidence presented in this Cause sufficiently addresses the history of utility service in the Valparaiso Regulated Territory, and we find that this evidence supports our approval of the Settlement and the Valparaiso Regulatory Ordinance.

v. **Other Factors.** In addition to the division of service areas, the Settlement also provides that Valparaiso will not oppose the Commission's approval of the Chesterton's requested relief in Cause No. 45312 as long as Chesterton's requested relief in Cause No. 45312 is consistent with the terms of the Settlement. Thus, the Settlement resolves the disputes between Valparaiso and Chesterton in this Cause and also assists with the resolution of the issues in Cause No 45312. Valparaiso and Chesterton have also agreed not to provide sewer utility service in each other's service territories, including their respective proposed regulated territories.

Although Aqua and the OUCC are not parties to the Settlement, neither entity objects to the Settlement or to the approval of the Valparaiso Regulatory Ordinance, as amended by the Settlement.

D. Approval of the Settlement and the Valparaiso Regulatory Ordinance. Based on the evidence presented, we conclude that the Settlement is reasonable, just, and consistent with the purposes of Ind. Code ch. 8-1-2. We further conclude that the Settlement is in the public interest. Based on our consideration of the public interest factors discussed above, we also conclude that Valparaiso Regulatory Ordinance, as amended by the Settlement, and the Valparaiso Regulated Territory comply with Ind. Code § 8-1.5-6-9 and that our consideration of the public interest factors support approval of both. We therefore, approve the Valparaiso Regulatory Ordinance as amended by the Settlement (Ordinance Nos. 27-2019 and 7-2020) and find that Valparaiso shall have an enforceable Regulated Territory as described in Ordinance Nos. 27-2019 and 7-2020 and as depicted in the map attached to Ordinance 7-2020 and as Exhibit 1 to the Settlement in this Cause.

E. No Precedential Value. The parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849, at *7-8 (IURC March 19, 1997).

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

1. The Joint Stipulation and Settlement Agreement, which is attached to and incorporated into this Order by reference, is approved.

2. The Valparaiso Regulatory Ordinance, as set forth in Ordinance No. 27-2019 and amended by Ordinance No. 7-2020, is approved subject to the terms of the Joint Stipulation and Settlement Agreement.

3. Valparaiso shall have an enforceable Regulated Territory as described in Ordinance Nos. 27-2019 and 7-2020 and depicted in the map attached to Ordinance No. 7-2020 and to the Settlement in this Cause.

4. In accordance with Ind. Code § 8-1-2-70, Valparaiso shall pay the following itemized charges within 20 days from the date of this Order into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges	\$ 3943.02
OUCG Charges	\$ 2915.98
Legal Advertising Charges	\$ 174.78
TOTAL	\$ 7033.78

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

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

APPROVED: JUN 03 2020

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


Mary M. Becerra
Secretary of the Commission

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE)
CITY OF VALPARAISO, INDIANA, AND)
VALPARAISO CITY UTILITIES FOR)
APPROVAL OF A REGULATORY ORDINANCE) CAUSE NO. 45306
ESTABLISHING A SERVICE TERRITORY FOR)
THE CITY'S MUNICIPAL SEWER SYSTEM)
PURSUANT TO IND. CODE CH. 8-1.5-6)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On October 15, 2019, the City of Valparaiso, Indiana, and Valparaiso City Utilities (together, "Petitioner" or "Valparaiso") filed with the Indiana Utility Regulatory Commission (the "Commission") its Petition initiating this Cause. Petitions to intervene filed by the Town of Chesterton, Indiana, acting by and through the Town of Chesterton Utility Service Board (together, "Chesterton"), and Aqua Indiana, Inc. ("Aqua Indiana"), respectively, were granted by a Docket Entry issued on December 4, 2019. Chesterton also filed a Petition for an exclusive sewer service area in Cause No. 45312. The Indiana Office of the Utility Consumer Counselor ("OUCC") and Aqua Indiana are also parties to Cause No. 45312. Chesterton and Valparaiso (collectively, the "Parties", and individually, a "Party") have after arms-length settlement negotiations reached an agreement with respect to all of the issues before the Commission in this Cause. The Parties therefore stipulate and agree for purposes of resolving all of the issues in this Cause, to the terms and conditions set forth in this Joint Stipulation and Settlement Agreement (this "Settlement").

1. Valparaiso Exclusive Sewer Service Territory.

- A. Modified Regulated Territory. The Parties stipulate and agree that Valparaiso should be granted an exclusive sewer service territory (the

“Valparaiso Area”) over a modified area from that contained in its Petition initiating this Cause as depicted on Exhibit 1 attached hereto and made a part hereof. The Valparaiso Area includes those areas originally requested by Valparaiso that are south of U.S. Highway 6, with the exception of the Porter County Recapture Area. North of U.S. Highway 6, the Valparaiso Area includes all existing Damon Run customers, with the exception of Liberty Intermediate and Elementary Schools, and the marked area located directly south of the Damon Run service area.

- B. Valparaiso Common Council Action. Valparaiso agrees to use its best efforts to have the Common Council of the City of Valparaiso approve modifications to Ordinance 27-2019 consistent with this Settlement, and to submit the amended regulatory ordinance along with this Settlement for approval by the Commission.

2. Chesterton Exclusive Sewer Service Territory in Cause No. 45312.

- A. Modified Exclusive Service Area. The Parties stipulate and agree that Chesterton will submit evidence in Cause No. 45312 covering a modified exclusive sewer service territory as depicted as the “Chesterton Utility Service Area” on Exhibit 2 attached hereto and made a part hereof. The “Chesterton Utility Service Area” includes, but is not limited to, the Porter County Recapture Area and all disputed areas north of U.S. Highway 6 not included in the Valparaiso Area.
- B. No Opposition to Chesterton’s Requested Relief in Cause No. 45312. Valparaiso stipulates and agrees that it will not oppose Chesterton’s requested relief in Cause No. 45312, as modified by this Settlement.
- C. Action by Town Council of Town of Chesterton. Chesterton agrees to use its best efforts to have the Town Council of the Town of Chesterton approve modifications to Ordinance 2014-11 consistent with this Settlement, and to submit the amended regulatory ordinance for approval in Cause No. 45312.

3. No Sewer Service in Other’s Area.

- A. No Sewer Service by Valparaiso in Chesterton Utility Service Area. Valparaiso stipulates and agrees that it will not provide sewer service in the “Chesterton

Utility Service Area” as depicted on Exhibit 2 attached hereto and made a part hereof, whether or not Chesterton is granted an exclusive sewer service territory over such area in Cause No. 45312.

B. No Sewer Service by Chesterton in Valparaiso Area. Chesterton stipulates and agrees that they will not provide sewer service in the Valparaiso Area, whether or not Valparaiso is granted an exclusive sewer service territory over such area in this Cause.

4. **Future Wholesale Service to Damon Run System**. If requested by Valparaiso, Chesterton agrees to enter into good faith negotiations to provide wholesale sewer service to Valparaiso’s Damon Run system on terms mutually agreeable to Valparaiso and Chesterton.
5. **Submission of Evidence in Cause No. 45306**. The Parties stipulate to the admission into evidence in this Cause of the testimony each previously filed (Valparaiso’s case-in-chief and supplemental direct testimony and Chesterton’s case-in-chief), and any testimony in support of this Settlement offered by the Parties or any of them. Further, each Party waives cross-examination of the other’s witnesses with respect to such testimony. The Parties shall not offer any further testimony or evidence in this proceeding, other than this Settlement and the above-identified testimony and exhibits. If the Commission should request additional evidence to support the Settlement, the Parties shall cooperate to provide such requested additional evidence.
6. **Proposed Final Order**. The Parties agree to cooperate on the preparation and submission to the Commission of a proposed order that reflects the terms of this Settlement and the settlement testimony submitted pursuant to Section 5 hereof.
7. **Sufficiency of Evidence**. The Parties stipulate and agree that the evidentiary material identified immediately above constitutes a sufficient evidentiary basis for the issuance of a final order by the Commission adopting the terms of this Settlement, and granting the relief as requested herein by Valparaiso and agreed to by the Parties.
8. **Commission Alteration of Agreement**. The concurrence of the Parties with the terms of this Settlement is expressly predicated upon the Commission’s approval of this Settlement. If the Commission alters this Settlement in any material way, unless

that alteration is unanimously and explicitly consented to by the Parties, this Settlement shall be deemed withdrawn.

9. **Authorization.** The undersigned represent that they are fully authorized to execute this Settlement on behalf of their respective clients or parties, who will be bound thereby.

10. **Non-Precedential Nature of Settlement.** The Parties stipulate and agree that this Settlement shall not be cited as precedent against Chesterton or Valparaiso in any subsequent proceeding or deemed an admission by any party in any other proceeding, except as necessary to enforce the terms of this Settlement or the final order to be issued in this Cause before the Commission or any court of competent jurisdiction on these particular issues and in this particular matter. This Settlement is solely the result of compromise in the settlement process and, as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceeding, and, failing approval by the Commission, shall not be admissible in any subsequent proceeding.

11. **Counterparts.** This Settlement may be executed in one or more counterparts (or upon separate signature pages bound together into one or more counterparts), all of which taken together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Settlement on the dates set forth below.

City of Valparaiso, Indiana

By: Matthew R. Murphy
Matt Murphy
Mayor

Dated: 2/26/2020

Valparaiso City Utilities

By: David Bengs
David Bengs
President of Board

Dated: 2/25/2020

Town of Chesterton, Indiana

By: Sharon Darnell
Sharon Darnell
Town Council President

Dated: 2/27/2020

Town of Chesterton Utility Service Board

By: Lawrence Brandt
Lawrence Brandt
President

Dated: 2/27/20

EXHIBIT 2

