

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)
TOWN OF DEMOTTE, INDIANA, FOR)
APPROVAL OF A REGULATORY ORDINANCE) CAUSE NO. 45444
ESTABLISHING A WATER REGULATED)
TERRITORY AND A SEWER REGULATED) APPROVED: JUL 28 2021
TERRITORY)**

ORDER OF THE COMMISSION

Presiding Officers:

David L. Ober, Commissioner

Jennifer L. Schuster, Administrative Law Judge

On October 19, 2020, the Town of DeMotte, Indiana, (“DeMotte” or “Petitioner”) filed a Verified Petition seeking approval from the Indiana Utility Regulatory Commission (“Commission”) of DeMotte’s regulatory ordinance establishing a water regulated territory and a sewer regulated territory under Ind. Code § 8-1.5-6-9 (“Petition”). On December 4, 2020, DeMotte filed its case-in-chief. On January 11, 2021, DeMotte and intervenor Community Utilities of Indiana, Inc. (“CUII”) filed an Agreement for Sewer and Water Service (“Settlement”) with supporting testimony from witnesses from DeMotte and CUII. On March 2, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its case-in-chief.

The Commission set this matter for an evidentiary hearing at 2:30 p.m. on April 9, 2021, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. On April 7, 2021, the Presiding Officers issued a docket entry indicating that, due to the ongoing COVID-19 pandemic, the hearing would be conducted electronically via WebEx. DeMotte, CUII, and the OUCC participated in the evidentiary hearing, by counsel. During the hearing, the Presiding Officers admitted all of the parties’ testimony and exhibits into the record without objection.

Based on the applicable law and the evidence of record, the Commission finds:

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published as required by law. DeMotte owns and operates 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 DeMotte and the subject matter of this proceeding.

CUII is a public utility as that term is defined in Ind. Code § 8-1-2-1(a). Under Ind. Code § 8-1-2-89 and 170 IAC 8.5-3, the Commission has jurisdiction over CUII’s Certificate of Territorial Authority (“CTA”) for sewage disposal service, and, under Ind. Code § 8-1.5-6-9(c), the Commission has authority to issue an order resolving all issues presented in a petition to approve a regulatory ordinance, including the enforceability of the regulatory ordinance in a

manner the Commission determines is in the public interest. Therefore, the Commission has jurisdiction over CUII and the subject matter of its proposed surrender of its CTA expansion.

2. Petitioner’s Characteristics. DeMotte is a municipality that owns and operates plant and equipment to collect and treat sanitary sewage and stormwater under Ind. Code ch. 36-9-23. DeMotte provides wastewater utility service to the public inside and outside of its corporate boundaries. DeMotte also provides water utility service to the public inside and outside of its corporate boundaries through the Northwest Jasper Regional Water District (“NORWEJ”).

3. Relief Requested. DeMotte requests Commission approval of its Ordinance No. 10052020-2 (the “Regulatory Ordinance”) as amended by Ordinance No. 12282020-7.¹ In the Settlement, DeMotte and CUII also request that the Commission approve CUII’s surrender of the extension of its CTA for sewage disposal service granted in Cause No. 44926.

4. DeMotte’s Case-In-Chief.

A. Mark Boer. Mr. Boer, a member of DeMotte’s Town Council and NORWEJ’s Board of Trustees, testified regarding DeMotte’s sewer utility, NORWEJ’s water utility, the circumstances leading up to the adoption of the Regulatory Ordinance, and support for the approval of the Regulatory Ordinance.

Mr. Boer testified that DeMotte’s current sewer utility system was established in 1975 and serves approximately 1,600 residential, commercial, and industrial customers located inside and outside of DeMotte’s corporate boundaries. The utility operates over 23.5 miles of gravity sewer mains. It has a single wastewater treatment plant with an average design flow of 0.496 million gallons per day (“MGD”) and a peak design flow of 1.515 MGD.

Mr. Boer testified that NORWEJ’s water utility system serves approximately 1,031 residential, commercial, and industrial customers. NORWEJ obtains water from a single well in its North Well Field with a production capacity of 440 gallons per minute (“gpm”), capable of meeting NORWEJ’s current peak demands. NORWEJ is currently constructing a second well field containing three additional wells with a planned production capacity of 450 gpm and a total possible capacity of 750 gpm. NORWEJ treats raw water using a water treatment plant (“WTP”) located at its North Well Field, which can treat water at a rate of 650 gpm. NORWEJ plans to construct a second WTP at the new well field site, almost identical to the current WTP. NORWEJ distributes water to customers through 23 miles of PVC mains and distribution lines and one pump station.

Mr. Boer testified that, beginning in July 2020, DeMotte and NORWEJ began discussing a regional solution to providing sewer and water utility service in areas of Jasper County in and around DeMotte and near the intersection of Interstate 65 (“I-65”) and State Road 10 (“SR 10”) (the “Interlocal Service Area”). On October 5, 2020, DeMotte, NORWEJ, the Jasper County Commissioners, the Jasper County Council, and the Jasper County Redevelopment Commission (collectively, the “Interlocal Parties”) entered into an Interlocal Agreement in which they agreed

¹ Ordinance No. 12282020-7 amended the map of the sewer and water regulated territories to comply with the Settlement. It did not otherwise materially change the Regulatory Ordinance.

to support DeMotte and NORWEJ extending sewer and water utility service to the Interlocal Service Area.

Mr. Boer testified that the purposes of the Interlocal Agreement are (1) to authorize and grant to DeMotte and NORWEJ all powers necessary to extend, operate, and maintain sewer and water facilities within the Interlocal Service Area and (2) to create a tax increment financing (“TIF”) area and pledge a portion of the TIF revenues to assist in the estimated \$11.33 million (\$6.895 million for wastewater and \$4.435 million for water) in funding for the construction of sewer and water facilities necessary to serve the Interlocal Service Area. The Interlocal Parties agreed to take all necessary actions to ensure that DeMotte and NORWEJ are the exclusive sewer and water utility service providers in the Interlocal Service Area and ensure that DeMotte and NORWEJ receive some benefit of development in the Interlocal Service Area. The Interlocal Parties expressed their desire for DeMotte and NORWEJ to provide a systematic, regional solution for sewer and water service in the Interlocal Service Area.

Mr. Boer testified that DeMotte adopted the Regulatory Ordinance on October 5, 2020. The Regulatory Ordinance provides DeMotte the exclusive authority to provide or regulate water utility service and sewer utility service in the water and sewer regulated territories. The Regulatory Ordinance defines the water and sewer regulated territories as those areas within four miles and ten miles, respectively, outside of DeMotte’s corporate boundaries, as depicted on the maps attached to the Regulatory Ordinance. Both regulated territories exclude those customers served by another utility or located within the boundaries of another municipality. NORWEJ adopted Resolution No. 10052020-2, in which it consented and agreed to cooperate with DeMotte in regulating and providing water utility service in the Water Regulated Territory. Mr. Boer testified that DeMotte adopted the Regulatory Ordinance to allow it to carry out the responsibilities and obligations assigned to DeMotte and NORWEJ by the Interlocal Agreement, to extend the sewer and water utility systems to provide service to the Interlocal Service Area, and to provide service to other interested customers.

Mr. Boer testified that DeMotte and NORWEJ have a workforce that includes trained and certified wastewater and water system operators. DeMotte and NORWEJ will not need to add additional employees to provide service in the regulated territories for the foreseeable future. Mr. Boer testified that this would allow DeMotte and NORWEJ to achieve greater economies of scale by adding additional customers without incurring employee expense.

Mr. Boer testified that he is not aware of any other utility capable of providing service in the portion of the water and sewer regulated territories located east of DeMotte. DeMotte has extended sewer mains to serve some customers east of the town, but the remaining residents, schools, and businesses east of DeMotte have private wells and septic systems.

Mr. Boer testified that, in the portion of the water and sewer regulated territories located west of DeMotte, to his knowledge, only CUII could potentially provide sewer or water utility service. He stated that, before adopting the Regulatory Ordinance, DeMotte reached out to NORWEJ’s counsel to open discussions about who can best provide service to customers in the Interlocal Service Area, and both utilities expressed a desire to determine a course of action that

would best benefit the existing and potential customers in the Interlocal Service Area and the sewer and water regulated territories west of DeMotte.

Mr. Boer testified that DeMotte's and NORWEJ's existing user rates are very competitive with the rates and charges of neighboring utilities, including CUII. He stated that DeMotte and NORWEJ will review their respective rates and charges after completion of all projects to ensure that the rates and charges are just, equitable, and based on the cost of serving their customers. He explained that approval of the Regulatory Ordinance would allow DeMotte and NORWEJ exclusivity to achieve the desired economies of scale necessary to secure the financial viability of the project.

Mr. Boer testified that recent development and expansion of Fair Oaks Farms located on State Road 14 (the next I-65 interchange south of the Interlocal Service Area) have brought increased traffic and visitors to the area. He stated that DeMotte expects several travel stop businesses and potentially a hotel to develop in the Interlocal Service Area. He testified that the Kankakee Valley School Corporation, residential communities, commercial customers, and an industrial park located east of DeMotte have contacted the town and NORWEJ about connecting to the water and sewer systems. To the west, Love's Travel Stop, TA Travel Stop, and the Indiana Department of Transportation ("INDOT") Kankakee Rest Areas have contacted DeMotte and NORWEJ about connecting to the water and sewer systems. Mr. Boer testified that DeMotte and NORWEJ will seek Indiana State Resolving Fund ("SRF") funding to extend their respective utility systems to serve the Interlocal Service Area, supported by the pledged TIF revenues. He stated that this will allow DeMotte and NORWEJ to extend their systems at competitive rates and charges to the newly served areas. He stated that the extension of the utility systems supports the regionalization of utility service by ensuring that new customers will have access to safe, clean drinking water and reasonably priced, environmentally safe sewage disposal service.

Mr. Boer testified that, to the best of his knowledge, no other utility is currently providing service in the sewer or water regulated territories and that all residents, schools, and businesses in the areas currently have private wells and septic systems or receive sewer and water utility service from DeMotte and NORWEJ, respectively. In addition, he stated that although the Commission expanded CUII's sewer CTA to include the INDOT rest areas, to his knowledge, CUII has not yet extended its sewer system to serve the rest areas.

Mr. Boer concluded that approval of the Regulatory Ordinance is in the public interest because it will further the public policy favoring the regionalization of water and sewer utility service and enable DeMotte and NORWEJ to implement the desire and purpose of the Interlocal Agreement.

B. Daryl Knip. Mr. Knip, Chief Executive Officer of Abonmarche Consultants, Inc., testified regarding DeMotte's and NORWEJ's respective sewer and water utility systems and planned upgrades; the ability of DeMotte and NORWEJ to provide utility service in the regulated territories; the ability of another utility to provide utility service in the regulated territories; and the potential impact of the Regulatory Ordinance on present and future economic development in the area.

Mr. Knip testified that Abonmarche has provided engineering consulting services to DeMotte since 1999 and to NORWEJ since its inception in 2003. Mr. Knip began acting as DeMotte's engineer in 2004 and has assisted DeMotte and NORWEJ on various projects. Specific to this case, DeMotte and NORWEJ asked Abonmarche to prepare preliminary engineering reports ("PER") related to expanding their respective sewer and water utility systems in the proposed regulated territories. Mr. Knip attached to his testimony the PER for DeMotte's west-side sewer expansion ("Sewer PER"), the PER for NORWEJ's west-side water expansion ("Water PER-West"), and the PER for NORWEJ's east-side water expansion ("Water PER-East").

Mr. Knip testified that DeMotte's sewer system was constructed in 1975 and was upgraded and expanded in 2000. The treatment plant has an average design flow of 0.495 MGD with a peaking factor of 3.05 and a peak design flow of 1.515 MGD. The collection system comprises 23.5 miles of primarily 8-inch diameter gravity sanitary pipe within DeMotte's corporate boundaries and extending eastward along SR 10 to the Kankakee Valley Intermediate, Middle, and High Schools.

Mr. Knip testified that NORWEJ constructed its water system in 2012. NORWEJ currently has one operating well field (the "North Well Field"), originally constructed with three wells. The current system has a design capacity of 650 gpm and current average water usage of approximately 99 gpm with a recorded peak of 314 gpm. At the North Well Field, Well 1 was never put into service because of bacterial issues, and Well 3, which supplies 250 gpm, is used only occasionally since October 2018 because of high ammonia levels. Therefore, Well 2 currently supplies all of NORWEJ's capacity, and with a production capacity of 400 gpm, it has sufficient capacity to meet the current system's average and peak demands. However, with Well 3 offline, the system has no pumping redundancy, and bringing Well 3 online, while possible, would create a significant challenge to maintain adequate chlorine residuals. NORWEJ's existing distribution system includes 23 miles of PVC C900 and PVC SDR 21 water main and has an estimated useful life of 80 years.

Mr. Knip testified that NORWEJ currently has one WTP located at the North Well Field. The WTP has a total storage of 20,750 gallons and can treat 650 gpm of water for iron and manganese. The filtered water is then treated with chlorine and orthophosphates and enters the distribution system. NORWEJ also has a 500,000-gallon elevated storage tank, constructed in 2012 with a useful life of 80 years. Mr. Knip testified that NORWEJ's WTP is adequately sized for NORWEJ's current system, and there are no known operational problems with the WTP or the storage tower.

Mr. Knip testified that NORWEJ will soon begin construction on a second well field containing three wells with a planned production capacity of 450 gpm and a total possible capacity of 750 gpm. The new well field will connect to NORWEJ's system through a new WTP and water main extension. The new WTP will be similar to NORWEJ's existing WTP at the North Well Field. Raw water will pass through an aerator and be stored in a detention tank with two 9,000-gallon compartments and a 4,700-gallon pump chamber. The raw water will then pass through three pressure filters to remove iron and manganese. Finally, the filtered water will be treated with chlorine and orthophosphates and enter the distribution system.

Mr. Knip testified that DeMotte's wastewater plant has sufficient capacity to serve the Interlocal Service Area without the need to expand the plant or modify its effluent limits. However, DeMotte will need to extend approximately 15,600 lineal feet of sanitary sewer from the southern town limits parallel with SR 10 to the Intersection of SR 10 and SR 110. DeMotte will also need to install two lift stations and extend approximately 16,600 lineal feet of force main and gravity sewer west from the intersection of SR 10 and SR 110 parallel with SR 10 to the I-65 and SR 10 interchange. A detailed plan for the extension is outlined in the Sewer PER.

Mr. Knip testified that NORWEJ's existing water supply and treatment plant has an average design flow of 370,080 gpd, a peak design flow of 936,000 gpd, and an average daily demand of approximately 142,882 gpd. However, as discussed above, NORWEJ's system does not currently have supply redundancy because it receives supply from a single well. The addition of the three new wells and the new WTP in the new well field will add approximately 648,000 gpd in average design flow and 1.08 million gpd in peak design flow for a total average design flow of 1.018 million gpd and a total peak design flow of 2.016 million gpd. The estimated 20-year average and peak flows for the system, including the Water Regulated Territory, are well within the capacity of the upgraded system.

Mr. Knip testified that NORWEJ will extend approximately 16,000 lineal feet of C900 PVC water main south from DeMotte parallel to SR 10 to the intersection of SR 10 and SR 110. NORWEJ will then extend approximately 22,500 lineal feet of C900 PVC water main west from the intersection of SR 10 and SR 110 parallel to SR 10 to the I-65 and SR 10 interchange. NORWEJ will also construct a new 150,000-gallon elevated storage tank and chemical feed station near the I-65 and SR 10 interchange.

Mr. Knip testified that, to the east of DeMotte, NORWEJ will extend approximately 9,150 lineal feet of C900 PVC water main parallel to SR 10 to the new well field and WTP. NORWEJ will then extend approximately 11,400 lineal feet of C900 PVC water main east from the new well field parallel to SR 10 to the Kankakee Valley High School. Mr. Knip stated that the sewer and water main extensions and the upgrades to NORWEJ's water supply and treatment facilities will allow DeMotte and NORWEJ to provide safe, efficient, and affordable sewer and water utility service in the sewer and water regulated territories.

Mr. Knip testified that approval of the Regulatory Ordinance would have a positive impact on present and future economic development in the regulated territories. He stated that approval of the Regulatory Ordinance promotes the regionalization of utility service by ensuring that existing and new customers will have access to safe, efficient, and affordable sewer and water utility service. Second, DeMotte and NORWEJ will have access to SRF financing, which should allow them to issue bonds to fund the extensions and upgrades at competitive interest rates and to utilize TIF revenues to assist with repayment of the financing. Mr. Knip provided details regarding the timeline for financing and constructing the extensions and upgrades discussed above.

Mr. Knip testified that NORWEJ currently provides water service to approximately 40% of DeMotte's population and that there are 1,023 potential water service connections inside DeMotte's corporate boundaries, which could be served using the additional capacity from the new well field and WTP. The proposed sewer and water main extensions will enable further new

residential connections. Mr. Knip testified that many of the residences in the DeMotte area are served by shallow sand wells that will soon expire. As those wells fail, the residential customers are expected to connect to the NORWEJ water system. Similarly, those same customers currently have private septic systems, and they can be expected to connect to the DeMotte sewer system as those septic systems fail. As more customers connect to the utility systems, the operating and maintenance expenses and debt service costs are spread over a larger customer base, allowing DeMotte and NORWEJ to maintain rates and charges as low as possible. Mr. Knip stated that this encourages commercial and industrial business stability and growth and supports residential real estate values.

C. John M. Seever. Mr. Seever, a CPA, Registered Municipal Advisor, and partner at Baker Tilly Municipal Advisors (“Baker Tilly”), testified regarding the effect of the Commission’s order on customer rates and charges in the regulated territories, present and future economic development in the regulated territories, and the method of funding the expansion of DeMotte’s and NORWEJ’s utility systems into the regulated territories.

Mr. Seever testified that he and other members of Baker Tilly have acted as DeMotte’s financial and rate advisor for over 20 years. He stated that, based on this experience, he is very familiar with DeMotte’s and NORWEJ’s financial capabilities, financial needs, and financial ability to extend and provide utility service in the regulated territories.

Mr. Seever testified that DeMotte and NORWEJ will initially charge new customers in the regulated territories the same rates for sewer and water utility service as they currently charge to their existing customers. Once construction of the proposed facilities is complete, both DeMotte and NORWEJ intend to review or true-up their rates to reflect the actual cost of constructing the facilities to serve the regulated territories, the actual revenues received from the new customers, and the TIF revenues. In addition, the Interlocal Agreement requires DeMotte and NORWEJ to review the sewer and water rates and charges for the regulated territories every two years.

Mr. Seever testified that DeMotte currently charges a flat rate of \$37.65 per EDU for sewer utility service. NORWEJ currently has a minimum monthly charge of \$47.70 based on a usage of 4,500 gallons per month. This minimum charge includes a \$1.80 customer charge (for a 5/8-inch or 1-inch meter) and a metered rate of \$10.20 per 1,000 gallons. NORWEJ also charges a fire protection charge of \$10.00 per month for all property owners within 800 feet of a fire hydrant.

Mr. Seever testified that DeMotte’s \$37.65 per EDU for sewer utility service is lower than neighboring utility CUII, which he understood to charge \$57.56 for a monthly usage of 4,500 gallons. Similarly, Mr. Seever compared NORWEJ’s \$47.70 monthly charge for residential service of 4,500 gallons per month on a 1-inch meter to CUII’s rate for the same usage and meter charge of \$53.24. Mr. Seever testified that DeMotte’s and NORWEJ’s rates and charges in the regulated territories are reasonable and comparable to other utilities in the area. He also stated that the terms of the Interlocal Agreement ensure that the rates and charges are reviewed regularly, calculated using statutorily set parameters, and are based on the costs of providing utility service.

Mr. Seever testified that he prepared an accounting report summarizing the total cost and anticipated revenues associated with extending sewer and water service to the Interlocal Service

Area. The report details proposed project costs provided by consulting engineers, including construction costs, contingencies, and estimated non-construction costs of \$5,370,000 and \$6,075,000 for the sewage and water utilities, respectively. The report assumed that, in addition to the SRF long-term bonds, approximately \$2,300,000 will be contributed from new users.

Mr. Seever testified that the SRF bonds are anticipated to have a term of up to 35 years at an assumed fixed interest rate of 2.3%, which reflects SRF's current 2% rate tier, plus a 30 basis point add-on for 35-year financing. Mr. Seever stated that this method of financing is the most favorable available and will allow the utilities to maintain the lowest user rates possible over time. Mr. Seever testified that, based on his accounting report, DeMotte and NORWEJ should be able to issue bonds and extend and provide service to the regulated territories without changing their existing rates.

Mr. Seever testified that approval of the Regulatory Ordinance will bring certainty of the availability of water and sewer utility service and the rates and charges for such service to existing and potential development in the Interlocal Service Area and other entities near DeMotte's corporate boundaries. He stated that DeMotte and NORWEJ have a solid history of providing safe, efficient, reliable, and affordable sewer and water utility service to their customers, and both have a reputation of operating well maintained and managed utilities at competitive prices. He stated that these factors should positively impact present and future economic development in the regulated territories.

Mr. Seever testified that DeMotte and NORWEJ will issue long-term debt in the form of sewer and water revenue bonds to fund the expansion of service to the regulated territories. DeMotte and NORWEJ have been in constant communication with the SRF, and Mr. Seever stated that it is his understanding that the SRF supports the plan of the Interlocal Agreement and Regulatory Ordinance to regionalize water and sewer utility service. If SRF funding is not available or sufficient, DeMotte and NORWEJ will also consider other sources, including the SRF's pool program and the open market, both of which are offering interest rates very competitive with the SRF's traditional subsidized loan program.

Mr. Seever testified that the Interlocal Agreement pledges TIF proceeds to DeMotte and NORWEJ to help pay the new debt. In addition, DeMotte and NORWEJ will use revenues from customers located in the regulated territories for payment of the debt and other related costs of operating and maintaining the extended facilities. Mr. Seever stated that, although the TIF revenues could be material over time as economic development occurs, he did not include TIF revenues in his accounting report because they are not currently known and measurable. DeMotte and NORWEJ will also charge new customers in the regulated territories the same connection fee as they charge new customers in their existing service areas. The funds from these connection charges will offset the cost to connect and provide service to the new customers, freeing up other revenues to pay the debt service costs on the bonds.

Mr. Seever concluded that DeMotte and NORWEJ have the financial capability to provide sewer and water service in the proposed regulated territories. He stated that approval of the Regulatory Ordinance is in the public interest because it will support present and future economic development and regionalize the orderly provision of water and sewer utility services in the area.

5. Settlement Testimony.

A. **Mr. Boer.** Mr. Boer testified regarding the Settlement between DeMotte, NORWEJ, and CUII (collectively, the “Settling Parties”). Mr. Boer testified that the Settlement reflects the Settling Parties’ agreement regarding the provision of water and sewer utility services in the Interlocal Service Area. The Settlement addresses three primary issues: (1) the provision of water and wastewater utility service to the INDOT Kankakee rest areas; (2) CUII’s consent to the Regulatory Ordinance, as amended by the Settlement; and (3) the provision of water and sewer utility service to the Compass Truck Stop.

Mr. Boer testified that, in Cause No. 44926, the Commission granted CUII a CTA to provide sewer utility service to the INDOT rest areas, but CUII has not yet extended its system to serve the INDOT rest areas. Before the execution of the Interlocal Agreement and the adoption of the Regulatory Ordinance, INDOT requested that NORWEJ extend its system to provide water utility service to the INDOT rest areas. The Settling Parties agreed that DeMotte and NORWEJ will extend their respective sewer and water utility systems to serve the INDOT rest areas. CUII agreed to surrender the extension of its sewer CTA granted in Cause No. 44926, and in return, DeMotte agreed to pay CUII \$30,000 to reimburse CUII for its legal fees to obtain the CTA extension. The Settling Parties agree that the surrender of CUII’s CTA extension can be accomplished in this Cause. Mr. Boer testified that DeMotte and NORWEJ do not require a CTA to provide utility service to the INDOT rest areas; therefore, transfer of the CTA to DeMotte would not be appropriate. Finally, regarding the INDOT service areas, Mr. Boer testified that, because DeMotte and NORWEJ will be simultaneously extending their sewer and water utility systems to the Interlocal Service Area, it would be practical and economical for DeMotte and NORWEJ to also extend their systems simultaneously to the INDOT rest areas. This plan prevents the duplication of facilities in the area.

Mr. Boer testified that, after reviewing the maps of the originally proposed regulated territories, CUII determined that the map included a portion of CUII’s existing certificated service area located west of I-65 and north of SR 10. Therefore, the Settling Parties agreed that DeMotte would amend its Regulatory Ordinance to exclude CUII’s service territory. On December 28, 2020, DeMotte adopted Ordinance No. 12282020-7, which amended the map of the western portion of the regulated territories as required by the Settlement. With this change, CUII has agreed that it will not oppose the approval of the Regulatory Ordinance.

Mr. Boer testified that DeMotte and NORWEJ have agreed that CUII will have the exclusive right, under the Settlement, to provide sewer and water utility service to the Compass Truck Stop on behalf of DeMotte and NORWEJ for not less than 12 years (the “Exclusive Period”). CUII will collect its own rates and charges from the Compass Truck Stop customers. After the Exclusive Period, DeMotte and NORWEJ have the option to either extend the Exclusive Period or connect the Compass Truck Stop to their respective utility systems and take over the provision of service. Mr. Boer testified that the Settling Parties chose a 12-year period because had CUII obtained an expansion of its CTA to serve the Compass Truck Stop, it would have acquired an exclusive right to provide service for 12 years even if DeMotte subsequently annexed the area.

Mr. Boer testified that the Compass Truck Stop is at an advanced stage of development and construction and requires sewer and water utility service as soon as possible. The developer initially approached CUII about extending utility service because CUII's water and sewer systems are adjacent to the property, and CUII can quickly make the required connections. Conversely, DeMotte and NORWEJ would have to extend their utility systems from within DeMotte's corporate boundaries, which would take at least several months. Mr. Boer testified that the 12-year Exclusive Period ensures that CUII will have sufficient time to collect revenues from the Compass Truck Stop customers to compensate it for extending its utility systems to connect the property. In addition, the Exclusive Period allows DeMotte and NORWEJ sufficient time to analyze and consider which of the options above will best achieve the goals of the Interlocal Agreement.

Mr. Boer testified that the Settling Parties, through their counsel, engaged in extensive arms-length discussions regarding the provision of service in the Interlocal Service Area, keeping in mind how best to serve existing and new customers in the Interlocal Service Area and the INDOT rest areas.

B. Michael A. Miller. Mr. Miller, Director of Business Development of Utilities, Inc. (of which CUII is a subsidiary), testified regarding the Settlement and CUII's request to voluntarily surrender its CTA granted in Cause No. 44926.

Mr. Miller testified that, prior to intervening in this Cause, CUII was preparing an application to expand its existing CTA in Jasper County, Indiana, to serve the Compass Truck Stop development at the intersection of SR 10 and I-65. Compass had requested that CUII provide water and sewer utility service to the truck stop, and the parcel abuts CUII's existing service territory. However, when CUII notified utilities in the area of its intent to expand its CTA, DeMotte and NORWEJ indicated to CUII that they were also interested in serving the Compass Truck Stop. To avoid the potential for costly litigation and simultaneous requests to serve the same area, the Settling Parties believed it would be most efficient, both for themselves and for potential customers, to reach an agreement on how service would be provided in the area.

Mr. Miller testified that CUII originally applied for the CTA expansion in Cause No. 44926 to serve the INDOT rest areas because INDOT, at the time, specifically requested that CUII provide sewer service to the rest areas. Although CUII was prepared to extend sewer service to the INDOT rest areas, Mr. Miller stated that he understands that new personnel at INDOT have indicated a preference for DeMotte and NORWEJ to serve the rest areas. CUII does not oppose DeMotte and NORWEJ providing service so long as CUII is reimbursed for legal fees incurred to obtain the CTA expansion, which DeMotte has agreed to pay.

Mr. Miller testified that CUII is requesting authority to voluntarily surrender the CTA expansion granted in Cause No. 44926 in this case. He stated that the Settling Parties and INDOT, the customer at issue, believe it is in the public interest for DeMotte and NORWEJ to serve the rest areas. Mr. Miller further stated that in his opinion, both the surrender of CUII's CTA expansion and the Settlement are in the public interest.

6. **OUCC's Case-in-Chief.** Kristen Willoughby, Utility Analyst in the OUCC's Water/Wastewater Division, discussed the factors established by Ind. Code § 8-1.5-6-8(g) to be considered by the Commission when determining if a regulatory ordinance is in the public interest. Regarding the ability of another utility to provide service in the area, Ms. Willoughby discussed Mr. Knip's testimony supporting CUII's ability to provide service west of DeMotte and declaring his belief that no other utilities east of DeMotte that could provide service. Regarding the potential effect on customer rates, Ms. Willoughby noted that DeMotte and NORWEJ will charge the same rates to new customers in the regulated territory as they charge to existing customers. Regarding economic development, Ms. Willoughby summarized Mr. Knip's supportive testimony regarding the Regulatory Ordinance's potential impact on utility service in the regulated territories.

Ms. Willoughby discussed the requirements of Ind. Code § 8-1.5-6-9(b) and concluded that she was unaware of any fact indicating that DeMotte has not met those requirements. She recommended that the Commission approve DeMotte's request for approval of the Regulatory Ordinance.

7. **Docket Entry Responses.** On April 6, 2021, Petitioner provided responses to the Commission's April 1, 2021 docket entry, which, in part, requested information about discrepancies found in several of Petitioner's exhibits describing project costs and the amount of funding required to complete construction of the proposed facilities needed to serve the regulated territories. The docket entry also requested documentation in support of the operating receipts and disbursements found on page 9 of Petitioner's accounting report.

Regarding the funding required to complete construction of facilities, Petitioner explained in its response that the Interlocal Agreement (Petitioner's Exhibit 3) was negotiated in the summer and fall of 2020 and was executed in October 2020. Section 3.4 memorializes DeMotte's intent to issue bonds in an amount of approximately \$6,895,000 for the sewer project, and the estimates in the Interlocal Agreement are based on discussions with the Town Engineer regarding project cost estimates. Mr. Seever completed his accounting report on December 4, 2020. The response indicated that the \$4.845 million reflects updated cost estimates and, in some cases, the results of bids received for certain projects. The sewer bonds closed on February 23, 2021 with an actual bond amount of \$6,560,000.

The April 1, 2021 docket entry also requested that Petitioner provide an amortization table for the "East Side Proposed 2021 SRF Bonds" shown on page 8 of its accounting report. Petitioner responded that the column labeled "East Side Proposed 2021 SRF Bonds" shows the bond amortization requested.

Regarding the project costs for the water facilities, DeMotte responded that the \$11,143,350 reflected on Tables 12 and 13 of Petitioner's Exhibit 8 was a preliminary figure based on engineering estimates. The costs were continuously refined during discussions between the utility, the Town Engineer, and the Town Accountant. While those refinements were ongoing, Mr. Seever prepared his accounting report, using then-current costs of approximately \$6,075,000. Ultimately, Mr. Knip and his team revised the project PER in February 2021 to an estimated cost of \$6.52 million.

Regarding support for the operating receipts and disbursement listed on page 9 of Petitioner's accounting report, Petitioner responded that Mr. Seever and his team created the schedule on page 9 of its accounting report based on information provided by the utilities. Petitioner provided Attachment 6a (DeMotte's Appropriations Report and Detail) and Attachment 6b (NORWEJ's Appropriations Report and Detail) (collectively, "Appropriations Reports").

Because the Appropriations Reports appeared to be inconsistent with the amounts of receipts and disbursements shown on Petitioner's accounting report, the Presiding Officers issued a second Docket Entry on April 8, 2021 requesting that Petitioner provide the workpaper developed from the Appropriations Reports that supports Petitioner's accounting report. Petitioner responded on April 9, 2021 that the Appropriation Reports provide all appropriations for DeMotte and NORWEJ. This information was used to construct the utilities' cash disbursements, which were then used in the development of the revenue and revenue requirements. According to the response, the development of the cash receipts and disbursements was an iterative process, and the purpose of the accounting report was to assist DeMotte and NORWEJ in its consideration of expanding its wastewater and water systems, respectively, not for the purpose of determining or supporting a change in the utility's rates and charges. Petitioner also provided four worksheets that appeared to be excerpts of a larger report that was not provided.

8. 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.

DeMotte's Petition includes a description of the proposed Water Regulated Territory and Sewer Regulated Territory and attached maps of the eastern and western portions of the regulated territories as Ordinance Exhibit A. After agreeing to the Settlement in this Cause, DeMotte enacted Ordinance No. 12282020-7, which replaced the map attached to the Regulatory Ordinance with a map reflecting the terms of the Settlement.

The Petition provided the rates that would be charged to customers in the regulated territories, which are DeMotte's and NORWEJ's rates for existing customers. The Petition also stated that the Regulatory Ordinance is not the subject of any other administrative or judicial proceedings. Finally, the Petition lists the utilities that might be impacted by the Regulatory Ordinance, including CUII.

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. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coal. of Ind., 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 Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind. V. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that such agreement serves the public interest.

C. Public Interest Factors. Under Ind. Code § 8-1.5-6-9(c), the Commission must consider DeMotte’s request for approval of the Regulatory Ordinance in light of the public interest factors outlined in Ind. Code § 8-1.5-6-8(g), which follow:

- (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 municipalities, municipal utilities, or utilities.
- (5) Any other factors the commission considers necessary.

i. Other Utilities’ Ability to Serve the Regulated Territory. Based on the evidence of record, we find that, other than DeMotte and NORWEJ, only CUII has the ability to serve the regulated territories west of DeMotte, and no utility has the ability to serve the regulated territories east of DeMotte. The existing residents and businesses throughout the regulated territories obtain water from private wells and have private septic systems. Therefore, we find that the evidence presented in this Cause sufficiently addresses the ability of another utility to provide service in the regulated territory, and we find that this evidence supports our approval of the Settlement and the Regulatory Ordinance.

ii. **Effect on Rates.** Based on Petitioner’s accounting report, DeMotte and NORWEJ anticipate charging customers in the regulated territories the same rates for wastewater and water utility service as they currently charge existing customers. However, Petitioner’s financial evidence was inconsistent and lacking certain information, making it difficult to determine the effect on rates.

However, once the construction of the extensions and upgrades to the sewer and water systems are completed, and new customers have been connected, DeMotte and NORWEJ will review their rates to ensure they reflect the actual cost to serve and the actual revenues received from the regulated territories. The Interlocal Agreement requires DeMotte and NORWEJ to review the wastewater and water rates at least every two years and to utilize the statutorily defined parameters as a basis for such review. Similarly, CUII will charge the Compass Truck Stop customers the same rates as its existing customers. Therefore, we find that the evidence presented in this Cause sufficiently addresses the effect of the Regulatory Ordinance on customer rates, and we find that this evidence supports our approval of the Settlement and the Regulatory Ordinance.

iii. **Effect on Economic Development.** The evidence shows that one of the primary purposes of the Interlocal Agreement, the Regulatory Ordinance, and the Settlement is to effectively regionalize the provision of water and wastewater utility service to promote economic development. The extension of DeMotte’s and NORWEJ’s sewer and water utility systems into areas that currently do not have wastewater or water utility service, where wells and septic systems are of such age that they can be expected to fail soon, will ensure that both existing and new residences and businesses in the regulated territory will have access to safe, efficient, and affordable wastewater and water utility service. Finally, the Settling Parties addressed the Compass Truck Stop’s need to receive wastewater and water utility service as soon as possible by empowering CUII to expediently connect the property to its system, which abuts the property. Therefore, we find that the evidence presented in this Cause sufficiently addresses the effect of the Regulatory Ordinance and the Settlement on economic development, and we find that the evidence supports our approval of the Settlement and the Regulatory Ordinance.

iv. **History of Utility Service.** To the east of DeMotte, residents and businesses primarily obtain water from private wells and have private septic systems. DeMotte has extended its wastewater collection system east of its corporate boundaries to serve some customers, but NORWEJ has not yet extended its water system in that direction. Similarly, residents and businesses to the west of DeMotte obtain water from private wells and have private septic systems, from DeMotte’s corporate boundaries to CUII’s certificated service area. Even within DeMotte’s corporate boundaries, the evidence shows that NORWEJ currently only provides service to about 40% of the population, with the remainder using private wells. We find that the Regulatory Ordinance and the Settlement will provide for the efficient and affordable extension of water and wastewater utility service into areas where previously none was available. Therefore, we find that the evidence presented in this Cause sufficiently addresses the history of utility service in the regulated territories, and we find that this evidence supports our approval of the Settlement and the Regulatory Ordinance.

v. **Other Factors.** Public policy supports the regionalization of water and wastewater utility services where it is feasible. The creation of the Interlocal Agreement, the adoption of the Regulatory Ordinance, and the negotiation of the Settlement demonstrates how utilities, municipalities, counties, and regional entities can work together to regionalize wastewater and water utility service to an area of the state. The evidence reflects that, in negotiating a resolution of the issues in this Cause, DeMotte, NORWEJ, and CUII considered the best interest of existing and new residents and businesses in the regulated territories and the interest of supporting and furthering economic development in the area.

D. Approval of the Settlement and 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 and therefore approve it. Based on our consideration of the public interest factors discussed above, we also conclude that the Regulatory Ordinance, as amended to comply with the Settlement, and the regulated territories 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 Regulatory Ordinance, as amended to comply with the Settlement, and we find that DeMotte shall have an enforceable Water Regulated Territory and Sewer Regulated Territory as described in Ordinance Nos. 10052020-2 and 12282020-7 and as depicted in the map attached to Ordinance No. 12282020-7.

E. Authority for CUII to Surrender CTA Expansion. In Cause No. 44926, the Commission expanded CUII's existing CTA to provide sewer service to the INDOT rest areas. Under Ind. Code § 8-1-2-89(k), the Commission may, after notice and hearing, revoke any CTA for the failure of the holder to furnish reasonably adequate wastewater disposal service within the certificated area. While the evidence in this Cause shows that, since obtaining the CTA expansion to provide wastewater service to the INDOT rest areas, CUII has not extended such service, the evidence also shows that this was not due to any failure or inability of CUII to extend service. Instead, the evidence shows that INDOT determined that it would prefer to receive wastewater and water utility service from DeMotte and NORWEJ, respectively. Considering these facts, we agree with Messrs. Boer and Miller that Ind. Code § 8-1.5-6-9(c) permits us to address this issue in this Cause.

Based on the evidence presented, we find that it is in the public interest for the Commission to allow CUII to voluntarily surrender the CTA expansion granted in Cause No. 44926. As discussed above, this will allow DeMotte and NORWEJ to extend both wastewater and water utility service to the INDOT rest areas in an efficient and economical manner and will avoid the unnecessary duplication of two utilities installing facilities in the area. Therefore, we authorize CUII to voluntarily surrender the CTA expansion granted in Cause No. 44926 and revoke CUII's CTA.

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

1. The Agreement for Sewer and Water Service, which is attached to and incorporated into this Order by reference, is approved.
2. The Regulatory Ordinance, as set forth in Ordinance No. 10052020-2 and amended by Ordinance No. 12282020-7, is approved, subject to the terms of the Agreement for Sewer and Water Service.
3. DeMotte shall have an enforceable Regulated Territory as described in Ordinance Nos. 10052020-2 and 12282020-7 and as depicted in the map attached to Ordinance No. 12282020-7, consistent with the Settlement in this Cause.
4. The CTA expansion granted to CUII in Cause No. 44926 is revoked.
5. This Order shall be effective on and after the date of its approval.

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

APPROVED: JUL 28 2021

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

**Dana Kosco
Secretary of the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE TOWN OF DEMOTTE, INDIANA, FOR APPROVAL OF A REGULATORY ORDINANCE ESTABLISHING A WATER REGULATED TERRITORY AND A SEWER REGULATED TERRITORY.

CAUSE NO. 45444

AGREEMENT FOR SEWER AND WATER SERVICE

This Agreement for Sewer and Water Service (“Agreement”) is entered into by and between the Town of DeMotte, Indiana, (“DeMotte”), Northwest Jasper Regional District (“NORWEJ”), and Community Utilities of Indiana, Inc. (“CUII”) (each, individually, a “Party” and collectively the “Parties”).

RECITALS

- A. On October 5, 2020, DeMotte and NORWEJ entered into an Interlocal Agreement with Jasper County, Indiana, the Jasper County Regional Water and Sewer District, and the Jasper County Redevelopment Commission, with the desire to provide a systematic, regionalized solution for sewer and water service in the area in and around the Interstate 65 (“I-65”) interchange with State Road 10 (“SR 10”) in Jasper County, Indiana (the “Interlocal Service Area”).
- B. The Interlocal Agreement authorizes and grants to DeMotte and NORWEJ all powers necessary to extend, operate, and maintain sewer and water facilities within the Interlocal Service Area.
- C. Also on October 5, 2020, DeMotte adopted Ordinance No. 10052020-2, which is a regulatory ordinance creating sewer and water regulated territories in certain areas outside of DeMotte’s corporate boundaries, including the Interlocal Service Area (the “Regulatory Ordinance”).
- D. The Regulatory Ordinance states that upon approval by the Indiana Utility Regulatory Commission (“Commission”), DeMotte shall have the exclusive authority to provide or regulate water and sewer utility service in the water and sewer regulated territories, including the Interlocal Service Area.
- E. On October 19, 2020, DeMotte filed a Verified Petition with the Commission in Cause No. 45444 for approval of the Regulatory Ordinance.

- F. DeMotte and NORWEJ have developed preliminary engineering plans for the extension of their respective sewer and water utility systems to the Interlocal Service Area.
- G. Prior to the execution of the Interlocal Agreement and DeMotte's adoption of the Regulatory Ordinance, the developers of a new truck stop in the Interlocal Service Area ("Compass") requested that CUII connect the new truck stop to CUII's water and sewer utility systems.
- H. On July 22, 2020, CUII sent a letter to DeMotte indicating CUII's intention to apply to expand its water and sewer certificate of territorial authority ("CTA") areas to provide water and sewer utility service to an area described in Exhibit A (the "Compass Truck Stop"). The Compass Truck Stop lies within the jurisdictional boundaries of NORWEJ. If CUII's CTA expansion were to be granted by the Commission prior to the Commission approving DeMotte's Regulatory Ordinance, the CTA would guarantee CUII the right to provide water and sewer utility service to the Compass Truck Stop for at least twelve (12) years.
- I. The developer of the Compass Truck Stop has indicated a desire for water and sewer connections to be completed as soon as possible, both of which are needed prior to the ability for the Commission to determine either DeMotte's regulatory ordinance or a CTA expansion that would be filed by CUII. CUII's water and sewer utility systems are adjacent to the proposed truck stop's location, whereas DeMotte and NORWEJ would need to extend their respective sewer and water utility systems from DeMotte to the proposed location. As such, CUII is better suited to provide water and sewer utility service to the Compass Truck Stop within the developer's requested timeline.
- J. Prior to the execution of the Interlocal Agreement and the adoption of the Regulatory Ordinance, the Indiana Department of Transportation ("INDOT") requested that NORWEJ extend its system to provide water utility service to INDOT's Kankakee Rest Areas, which are located along I-65 in the Interlocal Service Area.
- K. In Cause No. 44926, the Commission previously granted CUII's request to expand its sewer CTA area to provide sewer utility service to the Kankakee Rest Areas. CUII has not yet extended its sewer system to serve the Kankakee Rest Areas.
- L. Because DeMotte and NORWEJ plan to simultaneously extend their respective sewer and water utility systems to the Interlocal Service Area, it would be practical and economical for DeMotte to extend its sewer utility system to provide sewer utility service to the Kankakee Rest Areas at the same time that NORWEJ extends its water utility system to the rest areas, especially considering the need to connect the two rest areas underneath I-65.
- M. The Parties wish to work together to effectuate the purpose of the Interlocal Agreement to provide a systematic, regionalized solution for sewer and water service in the Interlocal Service Area.

- N. The Parties wish to avoid the potential of costly litigation should they file simultaneous requests (in the form of DeMotte's request for approval of its Regulatory Ordinance and CUII's request to expand its CTA) to provide water and sewer utility service in the Interlocal Service Area.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

ARTICLE 1 – SERVICE TO INDOT KANKAKEE REST AREAS

- 1.1 The Parties agree that DeMotte and NORWEJ shall extend their respective sewer and water utility systems to provide sewer and water utility service to the Kankakee Rest Areas.
- 1.2 CUII agrees to surrender the extension of its CTA area granted in Cause No. 44926, which includes the Kankakee Rest Areas.
- 1.3 CUII agrees to take such action with the Commission as may be necessary to surrender the extension of its CTA area granted in Cause No. 44926. The parties agree that this surrender can be accomplished by CUII's intervening in Cause No. 45444 and seeking such surrender in conjunction with the approval of DeMotte's Regulatory Ordinance as provided herein.
- 1.4 DeMotte agrees to pay CUII the sum of thirty thousand dollars (\$30,000) to reimburse CUII for its legal fees to obtain the CTA extension in Cause No. 44926. DeMotte will reimburse CUII upon receipt of an order from the Commission acknowledging CUII's surrender of, or otherwise terminating, the CTA granted in Cause No. 44926.

ARTICLE 2 – CONSENT TO REGULATORY ORDINANCE

- 2.1 DeMotte will amend its Regulatory Ordinance to exclude the territory that is covered by CUII's existing CTAs except for the territory covered by the CTA granted in Cause No. 44926. CUII agrees that it will not oppose DeMotte's request for approval of its Regulatory Ordinance as so amended in Cause No. 45444.
- 2.2 CUII acknowledges and agrees that the water and sewer regulated territories created by DeMotte's Regulatory Ordinance include the proposed location of the Compass Truck Stop and the Kankakee Rest Areas.
- 2.3 DeMotte acknowledges and agrees that the water and sewer regulated territories created by its Regulatory Ordinance as amended will exclude CUII's existing CTA areas, with the exception of CTA expansion areas approved in Cause No. 44926, which CUII will surrender.
- 2.4 The Parties agree to take such action with the Commission as may be necessary to obtain the approval of DeMotte's Regulatory Ordinance.

ARTICLE 3 – SERVICE TO THE COMPASS TRUCK STOP

- 3.1 CUII agrees that it will not seek an extension of its CTA to provide water and sewer utility service to the Compass Truck Stop.
- 3.2 DeMotte and NORWEJ agree that CUII will have the exclusive right to provide sewer service to the Compass Truck Stop on behalf of DeMotte and water service on behalf of NORWEJ for a period of no less than twelve (12) years (the “Exclusive Period”). As compensation for providing such services on behalf of DeMotte and NORWEJ, CUII shall collect from customers located in the Compass Truck Stop CUII’s rates and charges for water and sewer service as approved by the IURC, as the same may be changed from time to time.
- 3.3 The Parties agree that at the conclusion of the Exclusive Period, DeMotte and NORWEJ shall have the option to extend the Exclusive Period for CUII to provide service or to connect DeMotte’s and NORWEJ’s sewer and water utility systems to the Compass Truck Stop and take over the provision of sewer and water utility service. Any facilities constructed or to-be-constructed on the current Compass Truck Stop (e.g. a water storage tank) shall be transferred at no cost to DeMotte and/or NORWEJ if DeMotte and/or NORWEJ interconnect and directly serve the Compass Truck Stop with either sewer or water service. Demotte and/or NORWEJ in the course of installing their service lines to and connecting customers in the Compass Truck Stop will disconnect service from the CUII system to the Compass Truck Stop area at a location designated by CUII at the time of disconnection. Work performed on CUII’s lines, which are to be continued in service by CUII is subject to observation and approval by a CUII designated representative.

ARTICLE 4 – MISCELLANEOUS PROVISIONS

- 4.1 Effective Date. This Agreement shall take effect upon the date of its execution by both Parties.
- 4.2 Applicable Law. This Agreement and the respective rights of the Parties shall be subject to Indiana Law.
- 4.3 Modifications. This Agreement may not be modified except by a written amendment, making specific reference to this Agreement, approved and executed by each Party in the same manner as this Agreement. Any amendment or modification of this Agreement shall take effect immediately upon its execution by both Parties unless the amendment or modification specifically designates another effective date.
- 4.4 Notices. Any notices, requests, demands, claims, and other communications related to this Agreement shall be in writing and shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) one (1) business day after being sent to the recipient by facsimile transmission or electronic mail; or (d) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt

requested and postage prepaid. All notices, requests, demands, claims or other communications related to this Agreement shall be addressed to the intended recipient as set forth below:

To DeMotte: Town of DeMotte, Indiana
112 Carnation Street SE
DeMotte, IN 46310
Attention: Town Council President

With Copy to: Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Attention: J. Christopher Janak
cjanak@boselaw.com
and Jeffery A. Earl
jearl@boselaw.com

To CUII: Community Utilities of Indiana, Inc.
500 W. Monroe, Suite 3600
Chicago, IL 60661

With Copy to: Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204
Attention Nicholas Kile
nicholas.kile@btlaw.com
and Lauren Box
lauren.box@btlaw.com

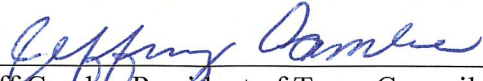
or at such other addresses as the Parties may indicate in writing to each other.

- 4.5 Execution and Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 4.6 Entire Agreement. This Agreement sets forth the entire agreement between the Parties and fully supersedes any prior agreements or understandings between the Parties pertaining to the subject matter of the Agreement.
- 4.7 Authority of the Parties. Each Party and signatory to this Agreement has authority to enter into this Agreement and at all times has full authority to perform this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the dates set forth below:


TOWN OF DEMOTTE, INDIANA



Jeff Cambe, President of Town Council
for Town of DeMotte, Indiana

Date: December 28, 2020

**NORTHWEST JASPER REGIONAL
DISTRICT**



Andrew Andree, President of the Board of Trustees

Date: December 28, 2020

COMMUNITY UTILITIES OF INDIANA, INC.

Steven M. Lubertozi, President

Date: _____

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the dates set forth below:

TOWN OF DEMOTTE, INDIANA

Jeff Cambe, President of Town Council
for Town of DeMotte, Indiana

Date: _____

**NORTHWEST JASPER REGIONAL
DISTRICT**

Andrew Andree, President of the Board of Trustees

Date: _____

COMMUNITY UTILITIES OF INDIANA, INC.



Steven M. Lubertozzi, President

Date: **December 28, 2020**