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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF NEW ALBANY, )  
INDIANA FOR APPROVAL OF A REGULATORY ) CAUSE NO. 44860  
ORDINANCE FOR SANITARY SEWAGE )  
SERVICE COVERING UNINCORPORATED ) APPROVED: APR 25 2018  
AREAS OF FLOYD COUNTY, INDIANA )

ORDER OF THE COMMISSION

**Presiding Officers:**  
**James F. Huston, Commission Chairman**  
**Lora L. Manion, Administrative Law Judge**

On September 30, 2016, the City of New Albany, Indiana (“Petitioner,” “New Albany” or the “City”) filed its Petition initiating this Cause seeking approval pursuant to Ind. Code § 8-1.5-6-9 of New Albany’s regulatory ordinance No. G-14-06 (“Regulatory Ordinance”) to become the exclusive provider of sanitary sewage service covering certain unincorporated areas of Floyd County, Indiana (“Regulated Territory”).

On December 6, 2016, Aqua Indiana, Inc. (“Intervenor” or “Aqua Indiana”) filed a petition to intervene which was granted by the Commission’s Docket Entry dated January 10, 2017. Aqua Indiana provides wastewater utility service in Indiana, including approximately 696 customers located in Floyd County. Aqua Indiana holds four certificates of territorial authority (“CTAs”) within New Albany’s proposed Regulated Territory.

On December 7, 2016, New Albany and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed their Submission of Agreed Procedural Schedule and Waiver of Prehearing Conference. On January 10, 2017, the Commission established the procedural schedule.

At the time New Albany’s Petition was filed in this Cause, a petition by Aqua Indiana was pending in Cause No. 44772 whereby Aqua Indiana was seeking a CTA permitting it to provide wastewater utility service within a portion of Greenville and Lafayette Townships in Floyd County. The proposed CTA area in that Cause and the Regulated Territory covered by New Albany’s Regulatory Ordinance partially overlapped. On March 1, 2017, the Commission issued a Dismissal Order in Cause No. 44772, dismissing the case without prejudice upon motion by Aqua Indiana.

On February 3, 2017, New Albany filed the direct testimony of Mr. Robert Sartell and Mr. Wesley Christmas and exhibits constituting Petitioner’s case-in-chief. On March 24, 2017, Aqua Indiana filed the direct testimony of Mr. Thomas M. Bruns, constituting its case-in-chief. On April 24, 2017, the OUCC filed the testimony of Mr. James T. Parks, constituting its case-in-chief. On May 11, 2017, Aqua Indiana supplemented its case-in-chief, providing the 2016 Annual Report of

Aqua America, Inc., Aqua Indiana's parent company. On May 16, 2017, New Albany filed the rebuttal testimony and attachments of Mr. Robert Sartell.

On June 8, 2017, an evidentiary hearing was held at 9:30 a.m. in Room 222, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and Aqua Indiana appeared and participated at the hearing, and the parties' pre-filed evidence was offered and admitted in evidence without objection. New Albany's requests for administrative notice were also granted. The parties waived cross-examination.

On December 1, 2017, New Albany and Aqua Indiana (collectively, the "Settling Parties") jointly filed a Stipulation and Settlement Agreement (the "Settlement Agreement") and supplemental testimony in support thereof. On January 12, 2018, the OUCC filed the supplemental testimony of Mr. James T. Parks in response to the Settlement Agreement.

On February 20, 2018, a settlement hearing was conducted where the Settlement Agreement and supporting testimony were admitted into the record of this Cause.

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

1. **Notice and Jurisdiction.** Notice of the hearings held in this Cause was given and published by the Commission as required by law. New Albany is a "utility" as defined by Ind. Code § 8-1.5-6-4. New Albany adopted its Regulatory Ordinance on or about April 8, 2014. Under Ind. Code § 8-1.5-6-9, if a municipality adopts a regulatory ordinance after December 31, 2012, and the municipality's utility has not filed a wholesale sewage petition, the Commission has jurisdiction to approve the regulatory ordinance. Therefore, the Commission has jurisdiction over New Albany and the subject matter of this Cause.

2. **Petitioner's Characteristics.** New Albany is a municipality which owns and operates plant and equipment for the collection and treatment of sanitary sewage pursuant to Ind. Code ch. 36-9-23. New Albany provides sanitary sewage service to the public throughout the corporate limits of New Albany and to various customers outside the corporate limits.

3. **Relief Requested.** On or about April 8, 2014, New Albany adopted Ordinance No. G-14-06. The ordinance is a regulatory ordinance, as defined by Ind. Code § 8-1.5-6-3, establishing a regulated territory for exclusive sewer service and jurisdiction over the area surrounding the corporate limits of New Albany (the "Regulated Territory"), pursuant to Ind. Code § 36-9-2-16, -17, and -18. Initially, Aqua Indiana objected to New Albany's Regulatory Ordinance and its attempt to become the exclusive sanitary sewage provider to the unincorporated areas. However, after the evidentiary hearing was held, New Albany and Aqua Indiana negotiated over their respective service areas and reached a compromise position. New Albany and Aqua Indiana now seek Commission approval of their Settlement Agreement, including New Albany's Amended Regulated Territory. The Amended Regulated Territory includes the area described in the Regulatory Ordinance and the additional territory agreed upon between Georgetown and New Albany in 2015. However, the existing Aqua Indiana and Deerwood CTA areas and the designated area Aqua Indiana is permitted by New Albany to seek a CTA to serve (the "Aqua Indiana Expansion Area") are excluded. New Albany also seeks approval to adopt an Amended Regulatory Ordinance post-Order, reflecting New Albany's Amended Regulated Territory and the

authorizing statute to provide municipal sewer service up to ten miles outside a municipality's corporate boundaries, Ind. Code § 36-9-23-36.

**4. Pre-Settlement Positions of the Parties.**

**A. New Albany's Case-in-Chief.** Mr. Robert Sartell, Director of New Albany Wastewater Utility, testified in support of the City of New Albany's Regulatory Ordinance. Mr. Sartell generally described New Albany's wastewater utility, which currently provides service throughout the corporate limits of New Albany and throughout certain unincorporated areas surrounding New Albany. He testified that the utility is in the final design stage of constructing a new pump station and force main to serve Floyd Central High School and additional growth in that area. Mr. Sartell testified that New Albany adopted the Regulatory Ordinance on April 7, 2014, in order to give clear guidance and boundaries for customers and providers of sewer services in the Regulated Territory without the need for future litigation. He stated that New Albany did not file its petition seeking approval of the Regulatory Ordinance when it was adopted. New Albany was not aware that House Enrolled Act ("HEA") 1187, which was passed shortly before final adoption of the Regulatory Ordinance, would require Commission approval of the Regulatory Ordinance.<sup>1</sup> Mr. Sartell explained that, because the Governor signed into law HEA 1187 requiring approval of ordinances adopted after December 31, 2012, at approximately the same time New Albany adopted its Regulatory Ordinance, New Albany was not aware of the application of HEA 1187 to its Regulatory Ordinance until Aqua Indiana filed for a CTA in Cause No. 44772. Mr. Sartell testified that both New Albany and the Town of Georgetown, Indiana ("Georgetown") agreed to the territory boundaries included within the Regulatory Ordinance and operated as if the Regulatory Ordinance were in full effect. Mr. Sartell testified that Georgetown and New Albany modified the boundaries in the map attached to the Regulatory Ordinance in 2015 to permit New Albany to serve the high school. He noted that Aqua Indiana subsequently withdrew its petition in Cause No. 44772, requesting that it be dismissed without prejudice.

Mr. Sartell testified regarding the service providers for the Regulated Territory and the opportunity to gain new customers. Mr. Sartell explained that with the exception of areas served by existing CTAs carved out in the Regulatory Ordinance and the agreed upon areas served by Georgetown, much of the Regulated Territory is served by septic systems or, in the case of Floyd Central High School, package plants. Mr. Sartell testified regarding the possibility of the City gaining new customers in the Regulated Territory, stating that the City was in discussions with the New Albany Floyd County Consolidated School Corporation to enter into a contract to dismantle the package plant and serve Floyd Central High School. He further testified that the City had also been contacted by a representative of Dan Cristiani Excavating Co., Inc. regarding service to the proposed Danny's Farm subdivision (the "Cristiani development") located approximately 0.5 miles due north of Floyd Central High School.

Mr. Sartell testified that no other existing utility could serve any of the territory described in the Regulatory Ordinance. Mr. Sartell explained that the anticipated flow from the planned Cristiani development specified in Mr. Bruns's testimony in Cause No. 44772 would exceed Aqua Indiana's current capacity at its Galena Area plant, thus requiring Aqua Indiana to expand that

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<sup>1</sup> House Enrolled Act 1187, (P.L. 213-2014), added Ind. Code ch. 8-1.5-6, Utility Service in Regulated Territories.

plant's capacity or otherwise utilize capacity from one of its other plants in conjunction with its Galena Area Plant. Mr. Sartell further testified that Aqua Indiana would need to secure Indiana Department of Environmental Management ("IDEM") approval to expand the capacity of its Galena Area plant and may need to obtain IDEM approval if it decided to utilize its other treatment plants.

Mr. Sartell further testified regarding New Albany's proposal to extend service to the proposed Cristiani development and stated that New Albany had more than enough capacity to serve the new subdivision. He stated that in order to extend service to the subdivision, New Albany would also need IDEM approval.

Mr. Sartell testified that the City has been serving in the area since 2005 and has worked with the County to plan for and address service needs, as well as eliminate package plants in the area. Mr. Sartell further testified that New Albany is in a better position than any other entity to serve the Regulated Territory, and its plan to extend service to the area, by way of its extension to Floyd Central High School, will allow for the elimination of an additional package plant. Mr. Sartell testified that the monthly residential rate for an outside City customer is \$78.33 and he does not expect the City's rate to be susceptible to significant increase in the foreseeable future as a result of the Commission's Order in this Cause.

In concluding his testimony, Mr. Sartell explained that New Albany has the financial, technical, and managerial ability to serve the Regulated Territory and that future economic development in the area would be positively impacted by approval of the Regulatory Ordinance. Mr. Sartell further testified that the engineer of the Cristiani development expressed a preference that the City serve the development. For all of these reasons, Mr. Sartell testified, New Albany should be the exclusive wastewater utility service provider in the Regulated Territory.

Mr. Wesley Christmas, P.E., Vice President and Regional Director with Clark Dietz, Inc. ("Clark Dietz") also testified in support of New Albany's request for approval of its Regulatory Ordinance. Mr. Christmas testified that Clark Dietz was contracted to design a new pump station, force main, and gravity sewer that will allow New Albany to serve Floyd Central High School. Mr. Christmas testified that he expects the new pump station and force main to be completed late fourth quarter 2017 or first quarter 2018, depending on the exact bid date, land acquisition, and issuance of notice to proceed for construction.

Mr. Christmas further testified that the new pump station and force main would permit New Albany to serve additional residences and businesses in the vicinity of Floyd Central High School, including the proposed Cristiani development. He stated that future development potential was reviewed with Mr. Don Lopp, Floyd County Planner, to ensure that New Albany's planned service area was consistent with the County's plans and anticipated growth. He further testified that, upon completion of these improvements, New Albany will immediately be prepared to handle the wastewater from the proposed development, as New Albany will be capable of receiving flow from the area surrounding Floyd Central High School up to a capacity equivalent to 700 single family dwellings. New Albany will have the opportunity to upgrade the capacity equivalent to approximately 1,400 single family dwellings. He noted that, as planned, the proposed Cristiani development will have less than 100 single family dwellings.

Mr. Christmas also testified regarding the history of utility service in the Regulated Territory and stated that with the exception of areas served by Georgetown and existing CTAs, the majority of sewer service outside of the City's limits is provided by residential or local on-site septic systems. Mr. Christmas further testified that New Albany should be the exclusive wastewater utility service provider in the Regulated Territory because New Albany already serves commercial customers in the area and has funded 75% of the design costs associated with its proposed improvements to serve Floyd Central High School and surrounding areas. He testified that these improvements will allow New Albany to provide service to additional customers in the Regulated Territory and ultimately eliminate a package plant operated by the school corporation. Mr. Christmas stated that the proposed improvements will allow New Albany to provide service in additional areas in the Regulated Territory. Mr. Christmas further stated that the improvements will foster reliable and modern centralized wastewater treatment, which will benefit the residents of Floyd County and better position the area for any future development and economic activity.

**B. Aqua Indiana's Case-in-Chief.** Mr. Thomas M. Bruns, President of Aqua Indiana, testified that the Commission should not approve the Regulatory Ordinance to allow New Albany to become the exclusive provider of wastewater service within the Regulated Territory. Mr. Bruns testified that Aqua Indiana objects to New Albany's attempt to become the exclusive provider in the Regulated Territory. Mr. Bruns testified that the City's evidence does not sufficiently support a conclusion that New Albany should be the exclusive provider of wastewater services throughout the Regulated Territory. Mr. Bruns also stated that he believes New Albany should have addressed its First Amended Consent Decree with the United States Environmental Protection Agency ("EPA") and Justice Department in its testimony, but this information was not included in the City's case-in-chief. Mr. Bruns stated that the Consent Decree limits the number of connections that the City can make to its system for new and expanded sources of wastewater.

Mr. Bruns testified generally about Aqua Indiana and its operations in Indiana and specifically, Floyd County. He stated that Aqua Indiana is currently providing wastewater service to 700 customers in four distinct areas of Floyd County pursuant to CTAs previously granted by the Commission. Mr. Bruns stated that he believes Aqua Indiana is the largest supplier of wastewater service within the Regulated Territory. Mr. Bruns described the four areas comprising its Floyd County operations where Aqua Indiana has CTAs: Wymberly Area, Scenic Valley Area, Chimneywood Area, and Galena Area. He described the facilities located in each area. He stated that Aqua Indiana's Floyd County facilities are in compliance with all applicable environmental requirements and its Floyd County Division is not the subject of any federal or state enforcement actions. Mr. Bruns further testified regarding Aqua Indiana's current rates and charges for wastewater service in Floyd County approved by the Commission in Cause No. 42877-U. He stated that the funding for any improvements to Aqua Indiana's Floyd County facilities would come from Aqua America.

Mr. Bruns also testified that Aqua Indiana is capable of providing adequate and reliable service within the Regulated Territory, as shown by its service within a large portion of the Regulated Territory where it holds Commission-issued CTAs to serve. Mr. Bruns cited Aqua Indiana's cooperative effort with the Floyd County Commissioners in 2015 to extend sewer service to the Scenic Valley Area as an example of its ability to provide and to expand service. Mr. Bruns explained how Aqua Indiana planned to extend its services to customers in the Regulated Territory. Mr. Bruns testified that the Wymberly Area and Scenic Valley Area treatment plant, the

Chimneywood Area treatment plant, and the Galena Area treatment plant are operating at approximately 55%, 78%, and 68% of total capacity, respectively. He explained that a combination of these plants would provide adequate treatment capacity to serve Aqua Indiana's current and future customers within the Regulated Territory for the foreseeable future.

Mr. Bruns also expressed his view of the potential adverse impacts of approving the Regulatory Ordinance. He testified that residents in the Regulated Territory may have to pay higher rates and charges if the Regulatory Ordinance is approved. He stated that the effect of New Albany's Ordinance No. G-16-16, adopted on December 15, 2016, would be to raise New Albany's rates slightly above Aqua Indiana's. He noted that the City adopted a 3% increase to its rates and charges effective July 1, 2017, which when implemented would make the City's monthly rate \$0.68 higher than Aqua Indiana's current rate. Mr. Bruns stated that New Albany Ordinance No. G-16-16 provides that the City's rate is subject to annual increases reflecting increases in certain customer prices. He pointed out that New Albany's witnesses did not discuss Ordinance No. G-16-16 in its case-in-chief. Mr. Bruns testified that while a rate increase is inevitable at some time in the future, Aqua Indiana does not see an immediate need to make any significant investments in the Floyd County Division's treatment facilities. Therefore, Aqua Indiana is not planning to raise rates and charges in the foreseeable future. Mr. Bruns stated that unlike New Albany's rates and charges, any future rate increase by Aqua Indiana would be subject to the jurisdiction of the Commission and a showing that the increase is justified by the costs to provide service.

Mr. Bruns testified that enforcement of the Regulatory Ordinance could disadvantage residents and customers in other ways. Specifically, Mr. Bruns noted that New Albany's new customer connection charge is \$200 more than Aqua Indiana's charge. Mr. Bruns also expressed concern that Aqua Indiana would be adversely impacted due to limitations imposed by the Ordinance on its ability to expand its CTA areas and customer base. Mr. Bruns explained that a lost opportunity for Aqua Indiana to expand was the Cristiani development, whose developer had initially requested that Aqua Indiana provide service. As a result, Aqua Indiana initiated its CTA case in Cause No. 44772, but later requested that the case be dismissed.

Mr. Bruns further testified that while he agrees with Mr. Sartell that the availability of sewer utility service is critical to economic development, New Albany has not sufficiently demonstrated that it has the ability to provide service throughout the Regulated Territory. Mr. Bruns concluded his testimony by stating that Aqua Indiana can provide such service and the Regulatory Ordinance would restrict customers' choices. He recommended that the Commission reject New Albany's requested relief for approval of the Regulatory Ordinance.

**C. OUCC's Case-in-Chief.** The OUCC offered the testimony of Mr. James T. Parks, Utility Analyst II, in the Water/Wastewater Division. Mr. Parks testified regarding New Albany's wastewater utility and operations. He noted that although Mr. Sartell's pre-filed testimony indicated that the wastewater treatment plant ("WWTP") is designed to treat a maximum of 45 million gallons per day ("MGD") for rain events and 70 MGD for wet weather peak, the facility's 2003 Construction Permit No. L-0175 lists the average design peak flow as 66.0 MGD. He testified that peak wet weather flows above 40.0 MGD are diverted to protect the biological system. Mr. Parks testified that all sanitary sewer overflows ("SSOs") are prohibited by

New Albany's National Pollutant Discharge Elimination System Permit No. IN0023884, which expired May 31, 2017.

Mr. Parks testified that New Albany's WWTP is currently operating at approximately 70% of its 12.0 MGD design average-flow capacity and New Albany has sufficient dry weather capacity to serve additional customers. Mr. Parks testified that New Albany does not currently have excess capacity to serve additional customers during wet weather because its sewers continue to have excessive infiltration and inflow ("I/I"), resulting in SSOs. Mr. Parks stated that while approximately 13 SSO locations currently exist in New Albany's sewer system, New Albany has successfully reduced overflow volumes by 97%. He further stated that New Albany plans to address these remaining SSO locations through \$13.5 million in capital improvements. Mr. Parks testified that New Albany's SSOs have led to enforcement actions by EPA and IDEM in the past. He testified that New Albany is on its third round of system improvements to reduce SSOs pursuant to an original and subsequent consent decree. Mr. Parks testified further that New Albany is subject to a sewer connection ban which restricts new sanitary connections to its collection system pursuant to an EPA Consent Decree and State of Indiana Agreed Order, which require New Albany to undertake I/I efforts to compile sewer ban waiver credits. Mr. Parks testified that New Albany currently has a positive number of sewer ban waiver credits for its collection system, allowing it to connect additional sewer users after obtaining EPA approval.

Mr. Parks testified that New Albany's proposed Regulated Territory exceeds four miles beyond the City's corporate boundaries to serve Floyd Central High School, Highland Hills Middle School, and the proposed Cristiani development. Mr. Parks stated that Ind. Code § 36-9-2-18 does not permit a municipality's proposed Regulated Territory to extend beyond four miles outside of the municipality's corporate boundaries. He further testified that New Albany's proposed Regulated Territory does not overlap with that of any other wastewater utility.

Mr. Parks stated that while New Albany currently has sewers and lift stations outside of its corporate limits, New Albany is not currently capable of providing wastewater services to the entire proposed Regulated Territory and will need to construct new sewers and lift stations to serve additional areas outside its corporate boundaries and comply with the terms of its Consent Decree. He testified that the Regulatory Ordinance is silent as to a property owner's right to install a private on-site well or water system. He recommended that New Albany revise the Regulatory Ordinance to state that it does not prevent the use of on-site private water systems where the City does not yet have wastewater infrastructure available. Mr. Parks testified that while the demand for wastewater services in the entire Regulated Territory appears to be unknown, New Albany is routinely connecting new customers.

Mr. Parks testified that the sewer rates and charges to customers outside the City limits may be adjusted by the City upon recommendation from its Sewer Board, noting the City recently approved raising sewer rates annually based on the consumer price index. He stated that the OUCC had received no consumer comments on New Albany's request, but noted that Aqua Indiana has advocated retaining the status quo on providing sewer service within the proposed Regulated Territory.

Mr. Parks concluded his testimony by recommending that, in assessing whether to grant a municipal utility such as New Albany the ability to exclude other utilities from providing service

in the Regulated Territory, the Commission consider the demand for such service and the municipality and other wastewater utilities' relative abilities to timely provide service at fair and reasonable rates. He recommended that New Albany be required to file updated maps with sufficient detail to clearly identify areas subject to existing CTAs. Mr. Parks also recommended that New Albany amend its Regulatory Ordinance to allow landowners in areas not served by the City to continue to be able to use or install private on-site wastewater systems. He also recommended that New Albany commit to relinquishing the exclusivity of service rights in the Regulated Territory if it is unable to timely meet requests for service at reasonable rates, if other wastewater utilities are able to do so.

**D. New Albany's Rebuttal.** Mr. Sartell responded to Mr. Bruns's and Mr. Parks's questioning of New Albany's ability to provide service throughout the Regulated Territory as a result of the limitations imposed under the First Amended Consent Decree with the EPA. Mr. Sartell testified that the Consent Decree does not restrict New Albany's ability to be the exclusive service provider in the Regulated Territory. Mr. Sartell explained that New Albany is in the design phase of constructing planned improvements to be completed late 2017 or early 2018. The improvements will allow New Albany to request credits for additional customer connections and likely lead to the termination of the sewer connection limitation program after a one-year demonstration period. Mr. Sartell testified that it may have been helpful to explain the Amended Consent Decree in his direct testimony. However, it does not change New Albany's ability to serve the Regulated Territory. He testified that New Albany has plenty of capacity to serve future development in the area and the Consent Decree will be terminated long before any development takes place.

Mr. Sartell responded to Mr. Bruns's contention that residents located in the Regulated Territory could be disadvantaged if New Albany prevents Aqua Indiana from expanding its current CTAs. Mr. Sartell reiterated that the City's current monthly rates are lower than Aqua Indiana's and, after the July 1 rate increase, the City's rates will only be \$0.68 higher than Aqua Indiana's rate. Mr. Sartell testified that if a utility, including Aqua Indiana, is better suited to serve an area, he is confident New Albany would work with the utility and the Commission could amend its Order with respect to the enforceability of the Regulatory Ordinance in that instance.

Mr. Sartell addressed mistakes in the information Mr. Parks gleaned from the 2003 Construction Permit L-0175. He noted that 40 MGD is the increased capacity at the new addition of the wastewater plant. The peak hourly flow Mr. Parks states as 66.0 MGD does not take into account the addition of excess flow basins in 2004, which increased the peak hourly flow to 70.0 MGD. He noted that Mr. Parks's statement that any flows above 40.0 MGD receive limited treatment is false. He testified that the maximum wet weather treatment is 45.0 MGD.

In response to Mr. Parks's testimony regarding New Albany's proposed Regulated Territory exceeding four miles beyond the City's corporate boundaries, Mr. Sartell asserted that Ind. Code § 36-9-23-36 permits a ten-mile limit for a municipality's exercise of powers related to municipal sewage works. Mr. Sartell agreed that a clearer map of the Regulated Territory would be useful, and he suggested that the Commission refer to the map in Petitioner's exhibit in its final Order. He further testified that he did not object to Mr. Parks's recommendation regarding owners of private, on-site wastewater systems within the Regulated Territory, but he believed an

amendment to the Ordinance was not necessary, and any acknowledgement to this point could be included in the Commission's Order.

Mr. Sartell concluded his testimony by stating that the Commission should approve New Albany's Regulatory Ordinance because New Albany and Georgetown agreed on the boundaries, existing CTAs are excluded, and this approach would permit the Commission to revisit the Regulatory Ordinance in the event an existing CTA owner wanted to expand its CTA to serve new development. Mr. Sartell testified that such approach is in the public interest.

**5. Post-Settlement Positions of the Parties.**

**A. New Albany's Supplemental Testimony.** Mr. Christmas testified that following the evidentiary hearing in this Cause, New Albany and Aqua Indiana met in July 2018 to discuss how the area within the Regulated Territory could be best served. He said that their meeting was productive and they remained in communication about potential settlement. Prior to the time for New Albany to file its reply to the proposed Order exceptions, New Albany and Aqua Indiana reached an agreement in principle. Mr. Christmas testified that their agreement was memorialized in the Settlement Agreement that is now before the Commission for consideration and approval.

Mr. Christmas testified that the Settling Parties stipulated that they should request approval from the Commission of an Amended Regulated Territory. Additionally, Aqua Indiana should be permitted to seek expansion of its existing CTAs identified in the Settlement Agreement, allowing Aqua Indiana to consolidate several of its Floyd County CTA service areas. Mr. Christmas testified that the Settlement Agreement acknowledges that Commission approval is required for Aqua Indiana to revise its existing CTA; however, New Albany stipulates that it will not oppose a request.

Mr. Christmas testified that the Settling Parties propose that the Commission approve the Settlement Agreement and order New Albany to amend its Regulatory Ordinance, incorporating the Amended Regulated Territory, and file it with the Commission as a compliance filing. Mr. Christmas explained that this is similar to what *Huntertown* was ordered to do in Cause No. 44519 when the Commission approved a Joint Stipulation wherein the parties agreed to a modified territory. *Huntertown*, 2015 WL 3617839, Cause No. 44519 (IURC May 4, 2016).<sup>2</sup>

**B. Aqua Indiana's Supplemental Testimony.** Mr. Bruns testified regarding the substantive terms of the Settlement Agreement. Mr. Bruns testified that the Settlement Agreement applies to an Amended Regulated Territory which captures the area described in the Regulatory Ordinance and the additional territory which Georgetown in 2015 agreed that New Albany could serve. The Settling Parties agreed that the Amended Regulated Territory would exclude Aqua Indiana and Deerwood CTA areas. Mr. Bruns testified that the Settlement Agreement provides that Aqua Indiana should be permitted to seek an expansion of its existing CTA areas in an area specified on Exhibit A to the Settlement Agreement; however, Commission

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<sup>2</sup> The Commission did not approve the Regulatory Ordinances initially adopted by *Huntertown* and ordered *Huntertown* to modify its Regulatory Ordinances. The ordered modifications include changes to the regulated service territory.

approval would be required for Aqua Indiana to expand its existing CTAs. The Settlement Agreement also provides that in the event New Albany or Aqua Indiana seek to expand service outside of New Albany's Amended Regulated Territory or the Aqua Indiana Expansion Area, respectively, they will meet and attempt to agree on how to serve the unserved customers and endeavor to include any other provider in the area with the ability to provide service. Mr. Bruns further testified that the Settlement Agreement states that Aqua Indiana shall have the exclusive right to provide service within its current and future CTA areas. Finally, Mr. Bruns explained that one of the central issues in this Cause related to service to the proposed Cristiani development. Aqua Indiana now understands that there will be no issues with New Albany's ability to serve the Cristiani development. Mr. Bruns recommended that the Commission approve the Settlement Agreement in its entirety as consistent with the public interest.

C. **OUCC's Supplemental Testimony.** Mr. Parks explained how the proposed Settlement Agreement between New Albany and Aqua Indiana addressed the recommendations in his testimony. Mr. Parks supported the Settling Parties' agreement that, if neither of them could promptly meet future service requests in New Albany's expansion areas at reasonable rates, they would collaborate with other nearby wastewater utilities to identify a utility better positioned to meet those future service needs.

Mr. Parks discussed the OUCC's original concern that owners of private, on-site wastewater systems not be required to connect into new wastewater utility facilities in New Albany's expanded service areas absent environmental or public health concerns due to failing private, on-site wastewater systems. Mr. Parks testified that this concern was already adequately addressed in New Albany's rebuttal testimony. Mr. Parks recommended that the Commission confirm New Albany's agreement to abide by that commitment as a condition of the Commission's approval of the Settlement Agreement.

Mr. Parks originally expressed concern about New Albany's ability to add new wastewater utility customers to its system because of restrictions previously imposed by the EPA and IDEM due to an existing I/I problem. Mr. Parks explained that those concerns were adequately addressed and resolved in New Albany's rebuttal testimony concerning the progress that has been made in resolving the underlying I/I problems through a capital improvement project expected to be completed around the end of 2017.

Finally, Mr. Parks testified that the greatly improved service territory map New Albany provided to support its proposed Settlement Agreement addressed his original concerns regarding the initial map.

## 6. **Commission Discussion and Findings.**

A. **Approval of Settlement Agreement.** We have previously discussed our policy with respect to settlements:

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., Inc. v. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1.5-6, and that such agreement serves the public interest.

The Settling Parties reached an agreement about how they would each provide sewage service to unincorporated areas of Floyd County. New Albany presented evidence that it will provide service to the Amended Regulated Territory at reasonable rates and charges that are similar to Aqua Indiana’s rates and charges. By clearly delineating their respective service areas, the Settling Parties avoid making costly capital expenditures to provide services to overlapping areas. This cost avoidance is beneficial to the Settling Parties and to customers. New Albany presented evidence that it has sufficient plant capacity to serve the Amended Regulated Territory. As a result of the Settlement Agreement, New Albany will make public sewage service available to Floyd Central High School and future nearby developments, including the proposed Cristiani development. As discussed further below, we find that all of these outcomes are reasonable and just. The Settlement Agreement serves the public interest and constitutes a lawful resolution of the issues presented in this Cause. Therefore, we find that the Settlement Agreement is consistent with the purposes of Ind. Code ch. 8-1.5-6, and we approve the Settlement Agreement.

We further find that the parties should comply with the terms of the Settlement Agreement as a part of this Order. 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 that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (*Ind. Util. Reg. Comm’n*, March 19, 1997).

**B. 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:

- (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.

New Albany provided a description of the service territory established in the Regulatory Ordinance, and the service territory is referred to as the Regulated Territory. After the evidentiary hearing concluded, New Albany and Aqua Indiana reached an agreement regarding their respective service territories, and that agreement changed aspects of Petitioner's originally proposed Regulated Territory. The Settling Parties' agreements were memorialized in the Settlement Agreement, describing New Albany's new Amended Regulated Territory. In regard to the sufficiency of the petition, we consider herein the petition, as revised by the terms and conditions of the Settlement Agreement.

The Amended Regulated Territory includes the area described in Regulatory Ordinance G-14-06 and an additional territory Georgetown agreed New Albany could serve in 2015. It excludes the existing Aqua Indiana and Deerwood CTA areas and the Aqua Indiana Expansion Area. The Amended Regulated Territory is reflected on the map attached as Exhibit A to the Settlement Agreement. Settling Parties Ex. 1.

Regarding the proposed rates and charges for the services to be provided in the service territory, New Albany proposes to continue charging its existing rates and charges until such time as said rates are lawfully changed. A schedule of rates was provided by New Albany in its petition.

Regarding the list of any administrative or judicial proceedings involving the Regulatory Ordinance, a previous petition by Aqua Indiana was pending in Cause No. 44772. It was regarding a CTA over a partially overlapping area with New Albany. However, on March 1, 2017, the Commission issued a Dismissal Order in Cause No. 44772, dismissing the case without prejudice upon motion by Aqua Indiana. In its petition, New Albany recited that there are no pending administrative or judicial proceedings.

Concerning a list of any utilities actually or potentially affected by the Amended Regulatory Ordinance, the other municipalities located in Floyd County are Georgetown and Greenville. Georgetown is a party to the territorial agreement embodied in the Amended Regulatory Ordinance. Greenville operates a very small treatment plant, and Petitioner did not expect that Greenville would be affected by the Amended Regulatory Ordinance. There are a number of entities possessing CTAs to provide sewer service in Floyd County. The CTAs have been issued to Aqua Indiana; Wastewater One, LLC; Wymberly Sanitary Works, Inc.; Deerwood Environmental, Inc.; The Reynolds Group, Inc.; M.E.K.A., Inc.; and Canyonlands Homeowner's, Inc. M.E.K.A has been administratively dissolved by the Indiana Secretary of State. New Albany testified that it mailed a copy of its petition to the CTA holders.

Finally, as discussed above, the Commission considered the evidence provided by New Albany to demonstrate that its petition for approval of its Amended Regulatory Ordinance meets the sufficiency requirements of Ind. Code § 8-1.5-6-9(b). New Albany satisfactorily addressed each requirement. The Commission finds that New Albany's petition, as revised by the Settlement Agreement, for its Amended Regulatory Ordinance meets the sufficiency requirements of Ind. Code § 8-1.5-6-9(b).

**C. Public Interest Factors.** Under Ind. Code § 8-1.5-6-9(c), prior to approving the Amended Regulatory Ordinance, we must consider the public interest factors set forth in Ind. Code § 8-1.5-6-8(g), which are:

- (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.

We address each of these factors below:

New Albany presented extensive evidence regarding its ability to provide service to current and future customers in the Amended Regulated Territory. The Settlement Agreement reflects the Settling Parties' agreement to cooperate with respect to providing service and to support the orderly development and rendering of sewage disposal service in rural areas pursuant to Ind. Code § 8-1-2-89(b). Based upon the evidence regarding New Albany's ability to serve, as well as the evidence in support of the settlement, this factor weighs in favor of approval of the Amended Regulatory Ordinance.

Further, the rates and charges that would be in effect in the Amended Regulated Territory are the New Albany rates and charges as approved by the City. New Albany will not have to undertake any major, unbudgeted capital improvements in the foreseeable future to serve the area. Mr. Christmas offered testimony explaining that the current rates available to customers of New Albany and Aqua Indiana are comparable and the terms of the Settlement Agreement help to ensure that (1) the respective stipulated areas will be served by the party best positioned to serve in that area (including with respect to the rates and charges applicable to such service) and (2) for unserved customers outside those areas, the parties will meet and endeavor to agree on how service should be extended to those developments. As a result, we find that the lack of effect on customer rates and charges in the foreseeable future as a consequence of the Amended Regulated Territory supports its approval.

Additionally, we conclude from the evidence of record in this case that the Amended Regulatory Ordinance will support present and future economic development around New Albany. New Albany stated that one of the primary drivers for instituting this proceeding was to maintain the orderly development of service. It is our belief that future economic development would be best served by approval of the Amended Regulatory Ordinance. We find that the effect on present and future economic development favors approval of the Amended Regulatory Ordinance.

Moreover, in terms of the history of utility service in the area, New Albany testified that the history revolves around package plants and private, on-site wastewater systems. The Settling Parties testified that the Settlement Agreement is a result of their efforts to cooperate to achieve a comprehensive, planned approach to wastewater service and to ensure the availability of reliable and safe wastewater service in the territory in the future. Moreover, New Albany did not object to Mr. Parks's recommendation that owners of privately-owned, on-site wastewater systems not be required to connect in New Albany's wastewater system, absent environmental or public health

concerns. The Settling Parties' agreement with respect to how service in the Amended Regulated Territory should be extended appears to be an effective and efficient resolution of that question. In this respect, we find that the history of utility service in the Regulated Territory favors enforcement of the Regulatory Ordinance subject to the conditions outlined in the Settlement Agreement.

Finally, the governing statute allows us discretion to consider additional factors. We find it relevant that the parties have worked together to develop a cooperative approach to serving the area. We observe that the approach in the Amended Regulatory Ordinance will improve communication with potential customers about which utility is their designated provider and will help developers plan better for future construction projects. Additionally, having the defined service areas established by the Amended Regulatory Ordinance will help the parties prudently plan for future capacity and avoid incurring costs associated with providing duplicative service to areas. We find that these additional factors support approval of the Amended Regulatory Ordinance.

Therefore, each of the public interest factors set forth in Ind. Code § 8-1.5-6-8(g), has been satisfactorily addressed in this case. Accordingly, we find that the Amended Regulatory Ordinance is in the public interest and shall be approved.

7. **Other Matters.** New Albany initially proposed Regulatory Ordinance G-14-06 in its petition. New Albany subsequently revised its proposed Regulated Territory as memorialized in the Settlement Agreement negotiated by the Settling Parties. The Settlement Agreement provides that, if so directed by the Commission in approving the terms of the Settlement Agreement, New Albany shall formally amend its Regulatory Ordinance No. G-14-06 to reflect the Amended Regulated Territory and submit the Amended Regulatory Ordinance as a compliance filing in this Cause.

Accordingly, New Albany's Regulatory Ordinance G-14-06 is not approved by the Commission. Upon approval by the Commission of this Order, New Albany shall adopt an Amended Regulatory Ordinance, which includes the Amended Regulated Territory and references the authorizing statute to provide service up to ten miles outside of a municipality's corporate boundaries, Ind. Code § 36-9-23-36. Following adoption of such amendment, New Albany shall file the Amended Regulatory Ordinance with the Commission as a compliance filing in this Cause.

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

1. The attached Settlement Agreement is approved consistent with the findings made in this Order.
2. New Albany is granted a Certificate of Territorial Authority to render sewage disposal service to the Amended Regulated Territory, subject to New Albany complying with the requirements in Ordering Paragraph No. 3 below.
3. New Albany's Regulatory Ordinance No. G-14-06 is not approved. New Albany shall adopt an Amended Regulatory Ordinance, incorporating the Amended Regulated Territory

and referencing Ind. Code § 36-9-23-36. New Albany shall file the Amended Regulatory Ordinance with the Commission as a compliance filing in this Cause.

4. New Albany shall file under this Cause in shapefile, geodatabase or mxd format and in a definable coordinate system, the boundaries of its Amended Regulated Territory.

5. Absent environmental or public health concerns with failing private sewage systems, New Albany shall not require owners of private, on-site sewage systems to connect to New Albany's sewage disposal system in its Amended Regulated Territory.

6. In accordance with Ind. Code § 8-1-2-70, New Albany shall, within 20 days from the date of this Order, pay into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

IURC Charges:	\$ 3,291.99
OUCG Charges:	\$ 1,943.74
Legal Advertising Charges:	\$ <u>125.76</u>
Total:	\$ 5,361.49

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

**HUSTON, FREEMAN, OBER, WEBER, AND ZIEGNER CONCUR:**

**APPROVED: APR 25 2018**

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

  
\_\_\_\_\_  
**Mary Becerra**  
**Secretary of the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF NEW ALBANY, )
INDIANA FOR APPROVAL OF A )
REGULATORY ORDINANCE FOR SANITARY ) CAUSE NO. 44860
SEWAGE SERVICE COVERING )
UNINCORPORATED AREAS OF FLOYD )
COUNTY, INDIANA )

STIPULATION AND SETTLEMENT AGREEMENT

Petitioner City of New Albany, Indiana ("Petitioner," "New Albany" or the "City") and Intervenor Aqua Indiana, Inc. ("Intervenor" or "Aqua Indiana") enter into this Stipulation and Settlement Agreement. New Albany and Aqua Indiana (hereafter sometimes "the Settling Parties") agree that the terms and conditions set forth below represent a fair and reasonable resolution of all issues, subject to incorporation into a final order of the Indiana Utility Regulatory Commission ("Commission") without any modification or condition that is not acceptable to New Albany or Aqua Indiana. The Settling Parties stipulate as follows:

- 1. On or about April 8, 2014, New Albany adopted Ordinance No. G-14-06, which is a regulatory ordinance (as defined by Ind. Code § 8-1.5-6-3 and referred to hereinafter as the "Regulatory Ordinance") establishing New Albany's Wastewater Service Area throughout the area within four (4) miles surrounding the corporate limits of New Albany, but not including the areas agreed upon between New Albany and the Town of Georgetown, Indiana ("Georgetown") (the "Regulated Territory") and regulating the furnishing of sanitary sewage service therein pursuant to Ind. Code §§ 36-9-2-16, and -18. The Regulatory Ordinance also carves out of the

Regulated Territory the areas served by existing certificates of territorial authorities (“CTAs”).  
New Albany seeks Commission approval of its Regulatory Ordinance.

2. An evidentiary hearing was held in this Cause on June 8, 2017, and after such hearing, the Settling Parties engaged in informal discussions, which culminated in this Stipulation and Settlement Agreement. The Settling Parties agree the relief requested by New Albany should be granted, subject to the conditions stated herein.

3. For purposes of compromise and settlement, the Settling Parties agree that the Commission should approve the Regulatory Ordinance. In addition, the Commission should recognize and accept that the Regulatory Ordinance should be applied to an amended regulated territory for New Albany that includes: (i) the area described in the Regulatory Ordinance; and (ii) the additional territory the Town of Georgetown, Indiana agreed New Albany could serve in 2015 (the “Amended Regulated Territory”); provided, however, existing Aqua Indiana and Deerwood CTA areas shall be excluded from the Amended Regulated Territory and Aqua Indiana should be permitted to seek an expansion of its existing CTA areas as described in Paragraph 4 below.

4. New Albany shall have the exclusive right to provide service within its corporate boundaries and the Amended Regulated Territory (as defined herein and reflected on the map attached hereto as Exhibit A) except for the area outlined in yellow with yellow hashmarks on Exhibit A (the “Aqua Indiana Expansion Area”). Aqua Indiana shall be permitted to seek a CTA to extend its system and provide service without any opposition (including but not limited to at the Commission, or before any court, board, agency or commission) from New Albany within the Aqua Indiana Expansion Area.

5. In the event New Albany or Aqua Indiana seeks to expand service outside of the Amended Regulated Territory or the Aqua Indiana Expansion Area, respectively, Aqua Indiana and New Albany shall meet and endeavor to agree on how service should be extended to unserved customers/developments located in such proposed expanded area based on the respective estimated main extension and connection costs without regard for the source of payment. New Albany and Aqua Indiana shall endeavor to include in such meetings any other provider in the area with the ability to serve such unserved customers/ developments. In the event Aqua Indiana and New Albany cannot agree on how service should be extended to such unserved customer/development, Aqua Indiana may seek a CTA to extend its system and provided service to such customer/development in the proposed expanded area, but New Albany shall be permitted to oppose the granting of such CTA.

6. Aqua Indiana shall have the exclusive right to provide service within its current and future CTA areas.

7. New Albany shall adopt an amendment to the Regulatory Ordinance to amend the regulated territory established therein to conform to the area stipulated in Paragraph 3 above, and shall file the amendment upon issuance by the Commission of a final order approving this Stipulation.

8. The Settling Parties stipulate to the issuance by the Commission of a final order in the form attached hereto as Exhibit B.

9. The Settling Parties agree that all evidence that has been filed in this Cause with respect to the relief provided herein, including the testimony filed in support of this Stipulation,

is admissible in evidence and that such evidence constitutes a sufficient evidentiary basis for the issuance of a Commission Order approving this Stipulation.

10. If this Stipulation is not approved in its entirety by the Commission, the Settling Parties stipulate that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding. Moreover, the concurrence of the parties with the terms of this Stipulation is expressly predicated upon the Commission's approval of this Stipulation in its entirety by issuance of the Order in the form set forth in Exhibit B without any material modification or any material condition deemed unacceptable by any of them. If the Commission does not approve the Stipulation in its entirety or if the Commission makes modifications to the final order that are unacceptable to either Settling Party, the Stipulation shall be null and void and deemed withdrawn upon notice in writing by either Settling Party within 15 days after the date of the final order stating that a modification made by the Commission is unacceptable to such Settling Party. If the Stipulation is withdrawn, either Settling Party may request, and the other Settling Party shall not oppose, the convening of an attorneys' conference to establish a procedural schedule for the continued litigation of this proceeding.

11. The Settling Parties agree this Stipulation reflects a fair, just and reasonable resolution, and is without prejudice to the ability of either party to propose a different term in future proceedings.

12. The Settling Parties agree that neither party shall cite as precedent this Stipulation or the order approving it. The Settling Parties further agree neither party shall assert this stipulation or agreed order is an admission by the other party except as necessary to enforce its terms before the Commission or a court of competent jurisdiction.

13. The undersigned represent and stipulate that they are fully authorized to execute this Stipulation on behalf of the respective parties who will be bound thereby.

*(signature page follows)*

City of New Albany, Indiana

Date: 11/28/17

By: 

City of New Albany, Indiana

Aqua Indiana, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas Bruns, President  
Aqua Indiana, Inc.

City of New Albany, Indiana

Date: \_\_\_\_\_

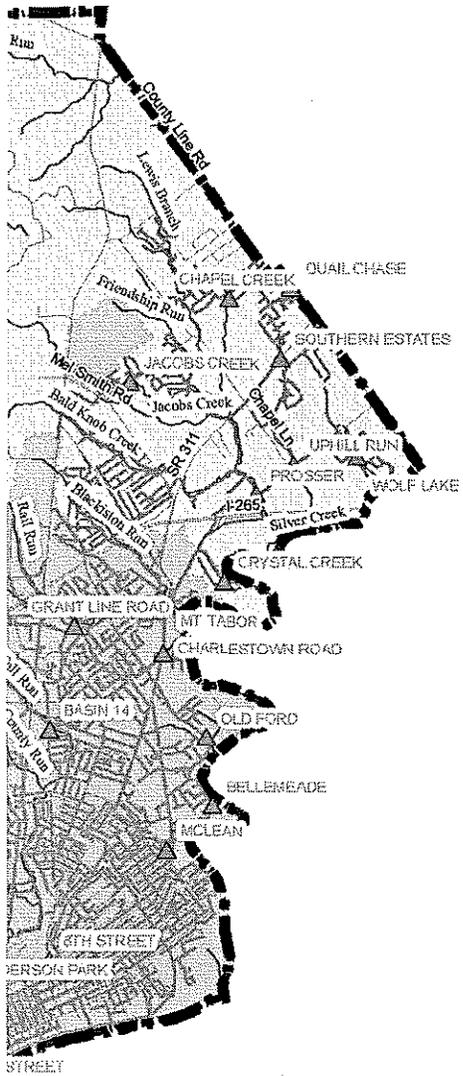
By: \_\_\_\_\_

City of New Albany, Indiana

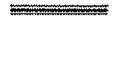
Aqua Indiana, Inc.

Date: 12/1/2017

By: Thomas M. Bruns  
Thomas Bruns, President  
Aqua Indiana, Inc.



# LEGEND

-  Aqua Indiana Expansion Area  
(as described in the attached)
  -  Floyd County Boundary
  -  New Albany 4 Mile Regulated Boundary
  -  Georgetown 4 Mile Regulated Boundary
  -  2015 New Albany Regulated Area Expansion
  -  CTAs
  -  Corporate Limits
  -  Georgetown Current Service Area
  -  Cristiani Development
  -  Proposed OVR Lift Station
  -  Proposed OVR Force Main
  -  Streams
- New Albany Sanitary Sewer**
-  New Albany Sanitary Sewer
  -  New Albany Sanitary Lift Stations

ted Sewer Territory Map

The Aqua Indiana Expansion Area shall consist of the following, which area connects to Aqua Indiana's existing Wymberly CTA as approved in Cause No. 42764, Aqua Indiana's existing Scenic Valley CTA as approved in Cause No. 44631, Aqua Indiana's existing Chimneywood CTA as approved in Cause No. 43606, and Aqua Indiana's existing Galena CTA as approved in Cause No. 36467 and Cause No. 43779:

In Township 2 South, Range 6 East, of Floyd County, Indiana, all of Section 12, the part of Section 11 lying north of U.S. 150, a small portion of Section 14 lying north of U.S. 150, that part of the northwest  $\frac{1}{4}$  of Section 13 lying north of U.S. 150, the southeast  $\frac{1}{4}$  of Section 13, and the northeast  $\frac{1}{4}$  of Section 24.  
In Township 2 South, Range 7 East, of Floyd County, Indiana the northwest  $\frac{1}{4}$  of Section 19.

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF NEW ALBANY, )  
INDIANA FOR APPROVAL OF A )  
REGULATORY ORDINANCE FOR SANITARY ) CAUSE NO. 44860  
SEWAGE SERVICE COVERING )  
UNINCORPORATED AREAS OF FLOYD ) APPROVED:  
COUNTY, INDIANA )

ORDER OF THE COMMISSION

Presiding Officers:

**James F. Huston, Commissioner**

**Lora Manion, Administrative Law Judge**

On September 30, 2016, the City of New Albany, Indiana (“Petitioner,” “New Albany” or the “City”) filed its Petition initiating this Cause seeking approval pursuant to Indiana Code § 8-1.5-6-9 of New Albany’s regulatory ordinance for sanitary sewage service covering unincorporated areas of Floyd County, Indiana.

On December 6, 2016, Aqua Indiana, Inc. (“Intervenor” or “Aqua Indiana”) filed a petition to intervene which was granted by the Commission’s Docket Entry dated January 10, 2017.

At the time New Albany’s Petition was filed in this Cause, a petition by Aqua Indiana was pending (Cause No. 44772) whereby Aqua Indiana was seeking a certificate of territorial authority permitting it to provide wastewater utility service within a portion of Greenville and Lafayette Townships in Floyd County, Indiana. The proposed CTA area in that Cause and the regulated territory covered by New Albany’s regulatory ordinance partially overlapped. Cause 44772 was later dismissed without prejudice upon motion by Aqua Indiana.

New Albany and the Indiana Office of Utility Consumer Counselor (“OUCC”) agreed on a procedural schedule as reflected in the Submission of Agreed Procedural Schedule and Waiver of Prehearing Conference filed on December 7, 2016 and approved by the Commission on January 10, 2017.

New Albany filed the Direct Testimony of Robert Sartell and Wesley Christmas and Exhibits constituting Petitioner’s case-in-chief on February 3, 2017. Aqua Indiana filed the Verified Direct Testimony of Thomas M. Bruns, constituting its case-in-chief on March 24, 2017 and the OUCC filed the Testimony of James T. Parks, constituting its case-in-chief on April 24, 2017. On May 11, 2017, Aqua Indiana supplemented its case-in-chief in order to provide the 2016 Annual Report of Aqua America, Inc., Aqua Indiana’s parent company. New Albany filed the rebuttal testimony and attachments of Robert Sartell on May 16, 2017.

An evidentiary hearing was held on June 8, 2017, at 9:30 a.m. in Room 222, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC and Aqua Indiana appeared and participated at the hearing, and the parties' pre-filed evidence was offered and admitted in evidence without objection. New Albany's requests for administrative notice were also granted. The parties waived cross-examination. No members of the general public appeared

Following post-hearing submissions made by New Albany on July 10, 2017 and Aqua Indiana and the OUCC on August 15, 2017, New Albany and Aqua Indiana (collectively, the "Settling Parties") jointly submitted a Stipulation and Settlement Agreement (the "Settlement Agreement") on December 1, 2017 along with testimony in support thereof, which settlement presented the Settling Parties' proposed resolution of all issues raised between them in this proceeding. On \_\_\_\_\_, 2017, a settlement hearing was conducted where the Settlement Agreement and supporting testimony were admitted into the record of this Cause.

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

1. **Notice and Jurisdiction.** Notice of the hearings held in this Cause was given and published by the Commission as required by law. New Albany is a "utility" as defined by Ind. Code § 8-1.5-6-4. New Albany adopted its regulatory ordinance on or about April 8, 2014. Under Ind. Code § 8-1.5-6-9, if a municipality adopts a regulatory ordinance after December 31, 2012 and the municipality's utility has not filed a wholesale sewage petition, the Commission has jurisdiction to approve the regulatory ordinance. Therefore, the Commission has jurisdiction over New Albany and the subject matter of this Cause.

2. **Petitioner's Characteristics.** New Albany is a municipality which owns and operates plant and equipment for the collection and treatment of sanitary sewage pursuant to Indiana Code ch. 36-9-23. New Albany provides sanitary sewage service to the public throughout the corporate limits of New Albany and to various customers outside the corporate limits.

3. **Relief Requested.** On or about April 8, 2014, New Albany adopted Ordinance No. G-14-06. The ordinance is a regulatory ordinance (as defined by Ind. Code § 8-1.5-6-3 and referred to hereinafter as the "Regulatory Ordinance") establishing a regulated territory for exclusive sewer service and jurisdiction over the area within four (4) miles surrounding the corporate limits of New Albany, except as outlined in the "Georgetown-New Albany Agreed Sewer Regulatory Boundary Map" attached to the Regulatory Ordinance and except for areas served by existing certificates of territorial authority ("CTAs") which have been duly authorized by the State of Indiana and its agencies (the "Regulated Territory") and regulating the furnishing of sanitary sewage service therein pursuant to Ind. Code §§ 36-9-2-16, -17, and -18. New Albany seeks Commission approval of its Regulatory Ordinance on the terms set forth in the Settlement Agreement.

4. **Pre-Settlement Positions of the Parties.**

A. **New Albany's Case-in-Chief.**

Mr. Robert Sartell testified in support of the City of New Albany's Regulatory Ordinance. Mr. Sartell generally described New Albany's wastewater utility which currently provides service throughout the corporate limits of New Albany and throughout certain

unincorporated areas surrounding New Albany. He testified that the utility is in the final design stage of constructing a new pump station and force main to serve Floyd Central High School and additional growth in that area. Mr. Sartell testified that New Albany adopted the Regulatory Ordinance on April 7, 2014 in order to give clear guidance and boundaries for customers and providers of sewer services in the Regulated Territory without the need for future litigation. He stated that New Albany did not file its petition seeking approval of the Regulatory Ordinance at the time the Regulatory Ordinance was adopted, because New Albany was not aware that HEA 1187 which was passed shortly before final adoption of the Regulatory Ordinance, would require Commission approval of the Regulatory Ordinance. Mr. Sartell explained that, because the Governor signed into law HEA 1187 requiring approval of ordinances adopted after December 31, 2012 at approximately the same time New Albany adopted its Regulatory Ordinance, New Albany was not aware of the application of HEA 1187 to its Regulatory Ordinance until Aqua Indiana filed for a CTA in Cause No. 44772 with respect to an area located within New Albany's Regulated Territory. Mr. Sartell testified that both New Albany and the Town of Georgetown, Indiana ("Georgetown") agreed to the territory boundaries included within the Regulatory Ordinance and operated as if the Regulatory Ordinance were in full effect. Mr. Sartell testified that in 2015, Georgetown and New Albany modified the boundaries in the map attached to the Regulatory Ordinance to permit New Albany to serve the high school. He noted that Aqua Indiana subsequently withdrew its petition in Cause No. 44772, requesting that it be dismissed without prejudice.

Mr. Sartell testified regarding who currently serves the Regulated Territory. Mr. Sartell explained that with the exception of areas served by existing CTAs carved out in the Regulatory Ordinance and the agreed upon areas served by Georgetown, much of the Regulated Territory is served by septic systems or, in the case of Floyd Central High School, package plants. Mr. Sartell testified regarding the possibility of the City gaining new customers in the Regulated Territory, stating that the City was in discussions with the New Albany Floyd County Consolidated School Corporation to enter into a contract to dismantle the package plant and serve the high school. He further testified that the City had also been contacted by a representative of Dan Cristiani Excavating Co., Inc. regarding service to the proposed Danny's Farm subdivision (the "Cristiani development") located approximately 0.5 miles due north of Floyd Central High School.

Mr. Sartell testified that no other existing utility could serve any of the territory described in the Regulatory Ordinance, and asked the Commission to take administrative notice of the pre-filed direct testimony of Thomas Bruns in Cause No. 44772. Mr. Sartell explained that the anticipated flow from the planned Cristiani development specified in Mr. Bruns's testimony would exceed Aqua Indiana's current capacity at its Galena Area plant, thus requiring Aqua Indiana to expand that plant's capacity or otherwise utilize capacity from one of its other plants in conjunction with its Galena Area Plant. Mr. Sartell further testified that Aqua Indiana would need to secure IDEM's approval to expand the capacity of its Galena Area plant and may also need to obtain IDEM approval if it decided to utilize its other treatment plants.

Mr. Sartell further testified regarding New Albany's proposal to extend service to the proposed Cristiani development and stated that New Albany had more than enough capacity to serve the new subdivision. He stated that in order to extend service to the subdivision, New Albany will need to submit any engineering plans to IDEM for approval.

Mr. Sartell also addressed the factors considered by the Commission in its determination to approve a regulatory ordinance in Cause No. 44519. With respect to the history of utility service in the Regulated Territory, Mr. Sartell testified that the City has been serving in the area since 2005 and, in that time, has worked in concert with the County to plan for and address service needs, as well as eliminate package plants in the area. Mr. Sartell further testified that New Albany is in a better position than any other entity to serve the Regulated Territory, and its plan to extend service to the area, by way of its extension to Floyd Central High School, will allow for the elimination of an additional package plant. Mr. Sartell also testified that a representative of the developer of the Danny's Farm subdivision has contacted the City and indicated its preference for receiving wastewater utility service from the City. He further testified that the terms pursuant to which New Albany extends sewer utility service are provided in Chapter 51 of the City's Code of Ordinances. He stated that the monthly residential rate for an outside City customer is \$78.33, and as a result of the Commission's Order in this Cause, Mr. Sartell testified that he would not expect the City's rate to be susceptible to significant increase in the foreseeable future.

In concluding his testimony, Mr. Sartell explained that New Albany has the financial, technical, and managerial ability to serve the Regulated Territory and that future economic development in the area would be positively impacted by approval of the Regulatory Ordinance. Mr. Sartell further testified that the engineer of the Cristiani development had expressed a preference that the City serve the development. For all of these reasons, Mr. Sartell testified, New Albany should be the exclusive wastewater utility service provider in the Regulated Territory.

Mr. Wesley Christmas, P.E., Vice President and Regional Director with Clark Dietz, Inc. ("Clark Dietz") also testified in support of New Albany's request for approval of its Regulatory Ordinance. Mr. Christmas testified that Clark Dietz was contracted to design a new pump station, force main and gravity sewer that will eliminate the existing package treatment plant operated by the New Albany Floyd County Consolidated School Corporation and allow New Albany to serve Floyd Central High School. Mr. Christmas testified that he expected the new pump station and force main to be completed late fourth quarter 2017 or first quarter 2018 depending on the exact bid date, land acquisition and issuance of notice to proceed for construction.

Mr. Christmas further testified that the new pump station and force main would permit New Albany to serve additional residences and businesses in the vicinity of Floyd Central High School, including the proposed Cristiani development. He stated that future development potential was reviewed with the Floyd County Planner, Don Lopp, to ensure that New Albany's planned service area was consistent with the County's plans and anticipated growth. Mr. Christmas discussed New Albany's proposal to extend service to the proposed Cristiani development and testified that, from a technical standpoint, the proposal should be relatively simple to implement. He further testified that, upon completion of these improvements, New Albany will immediately be prepared to handle the wastewater from the proposed development, as New Albany will be capable of receiving flow from the area surrounding Floyd Central High School up to a capacity equivalent to 700 single family dwellings, and will have the opportunity to upgrade the capacity equivalent to approximately 1,400 single family dwellings. He noted that, as planned, the proposed Cristiani development will have less than 100 single family dwellings.

Mr. Christmas also testified regarding the history of utility service in the Regulated Territory and stated that with the exception of areas served by the Town of Georgetown and existing CTAs, the majority of sewer service outside of the City limits is provided by residential or local onsite septic systems. He testified that while there are existing CTAs in the vicinity of the Regulated Territory, none of these CTAs include the area that New Albany is proposing to serve with the new pump station. Mr. Christmas further testified that New Albany should be the exclusive wastewater utility service provider in the Regulated Territory because New Albany already serves commercial customers in the area and has funded 75% of the design costs associated with its proposed improvements to serve Floyd Central High School and surrounding areas. He testified that such improvements will allow New Albany to provide service to additional customers in the Regulated Territory and ultimately eliminate a package plant operated by the school corporation. Mr. Christmas further stated that the proposed improvements will allow New Albany to provide service in additional areas in the Regulated Territory, and will foster reliable and modern centralized wastewater treatment which will benefit the residents of Floyd County, and better position the area for any future development and economic activity.

**B. Aqua Indiana's Case-in-Chief.**

Aqua Indiana offered the testimony of Thomas M. Bruns, President of Aqua Indiana, Inc., who provided testimony stating why the Commission should not approve the Regulatory Ordinance and not allow New Albany to become the exclusive provider of wastewater service within the Regulated Territory. Mr. Bruns provided some background on the Regulatory Ordinance and testified that Aqua Indiana does not object to New Albany providing wastewater service within the Regulated Territory. Rather, Aqua Indiana objects to New Albany's attempt to become the exclusive provider in the Regulated Territory. Mr. Bruns testified that the City's evidence does not sufficiently support a conclusion that New Albany should be the exclusive provider of wastewater services throughout the Regulated Territory, or that New Albany has the ability to provide service throughout the area. Mr. Bruns further testified regarding areas of New Albany's testimony which he believed were deficient, including with respect to the lack of testimony regarding the sufficiency of the City's facilities to serve throughout the entire Regulated Territory, the lack of information regarding the City's completion of a master plan for serving the Regulated Territory, and the City's failure to demonstrate its commitment to undertake necessary capital improvements to serve the area. Mr. Bruns also stated that he believed New Albany should have addressed its First Amended Consent Decree with the U.S. Environmental Protection Agency and Justice Department in its testimony, but this information was not included in the City's case-in-chief. Mr. Bruns stated that the Consent Decree limits the number of connections that the City can make to its system for new and expanded sources of wastewater.

Mr. Bruns testified generally about Aqua Indiana and its operations in Indiana and specifically, Floyd County. He stated that Aqua Indiana is currently providing wastewater service to 700 customers in four distinct areas of Floyd County pursuant to CTAs previously granted by the Commission, which he believes makes Aqua Indiana the largest supplier of wastewater service within the Regulated Territory. Mr. Bruns described the four areas comprising its Floyd County operations in which Aqua Indiana has CTAs—the Wymberly Area, the Scenic Valley Area, the Chimneywood Area and the Galena Area—and described the facilities located in each area. He stated that Aqua Indiana's Floyd County facilities are in compliance with all applicable environmental requirements and its Floyd County Division is not

the subject of any federal or state enforcement actions. Mr. Bruns further testified regarding Aqua Indiana's current rates and charges for wastewater service in Floyd County approved by the Commission in Cause No. 42877-U, and stated that the source of funding for any improvements needed to Aqua Indiana's Floyd County facilities would come from Aqua America.

Mr. Bruns also testified that Aqua Indiana is capable of providing adequate and reliable service within the Regulated Territory, as shown by its service within a large portion of the Regulated Territory where it holds Commission-issued CTAs to serve. Mr. Bruns also cited its cooperative effort with the Floyd County Commissioners in 2015 to extend sewer service to the Scenic Valley Area as an example of its ability to provide and expand such service. Mr. Bruns explained how Aqua Indiana planned to extend its services to customers in the Regulated Territory and stated he believed that Aqua Indiana's plan would not vary greatly from how the City planned to extend service. Mr. Bruns testified that, while allowing Aqua Indiana to expand its service within the Regulated Territory could theoretically result in a duplication of facilities, the City has not claimed it would, and he did not believe such possibility is a sufficient reason for the Commission to approve the Regulatory Ordinance. He further testified that Aqua Indiana's treatment facilities are adequate to provide expanded service within the Regulated Territory. Mr. Bruns testified that the Wymberly and Scenic Valley Areas treatment plant, the Chimneywood Area treatment plant and the Galena Area treatment plant are operating at approximately 55%, 78% and 68% of total capacity, respectively, and explained that a combination of these plants would provide adequate treatment capacity to serve Aqua Indiana's current and future customers within the Regulated Territory for the foreseeable future.

Mr. Bruns also expressed his view of the potential adverse impacts of approving the Regulatory Ordinance. He testified that residents in the Regulated Territory may have to pay higher rates and charges if the Regulatory Ordinance is approved, and stated that the effect of New Albany's Ordinance No. G-16-16 adopted by the Common Council on December 15, 2016 would be to raise New Albany's rates slightly above Aqua Indiana's. He noted that the City adopted a 3% increase to its rates and charges effective July 1, 2017, which when implemented would make the City's monthly rate \$0.68 higher than Aqua Indiana's current rate. Mr. Bruns cited New Albany Ordinance No. G-16-16 which provides that the City's rate should be subject to annual increases reflecting increases in certain customer prices. He pointed out that New Albany's witnesses did not discuss Ordinance No. G-16-16 in its case-in-chief. Mr. Bruns testified that while a rate increase is inevitable at some time in the future, Aqua Indiana does not see an immediate need to make any significant investments in the Floyd County Division's treatment facilities, and therefore is not planning to raise rates and charges in the foreseeable future. Mr. Bruns stated that unlike New Albany's rates and charges, any future rate increase by Aqua Indiana would be subject to the jurisdiction of the Commission and a showing that the increase is justified by the costs to provide service.

Mr. Bruns testified that enforcement of the Regulatory Ordinance could disadvantage residents and customers in other ways. Specifically, Mr. Bruns noted that the charge that new customers must pay to connect to New Albany's system was \$200 more than the charge Aqua Indiana collected and that, depending on circumstances, main extension and other costs may be higher than they need to be in the event Aqua Indiana's system is closer to the customer's location than the City's. Mr. Bruns also expressed concern that Aqua Indiana, itself, would be adversely impacted due to limitations imposed by the Ordinance on its ability to expand its CTA

areas and customer base. Mr. Bruns explained that a lost opportunity for Aqua Indiana to expand was the Cristiani development, whose developer had initially requested that Aqua Indiana provide service. As a result, Aqua Indiana initiated its CTA case in Cause No. 44772, but later requested that the case be dismissed due to objections raised by Don Lopp, a Floyd County planning official, to Aqua Indiana serving the development based, in part, on the existence of the Regulatory Ordinance, despite the fact that the Regulatory Ordinance had not yet been approved by this Commission.

Mr. Bruns further testified that while he agrees with Mr. Sartell that the availability of sewer utility service is critical to economic development, New Albany has not sufficiently demonstrated that it has the ability to provide service throughout the Regulated Territory. Mr. Bruns concluded his testimony by stating that Aqua Indiana can provide such service, and the Regulatory Ordinance would restrict customers' choices. He recommended that the Commission reject New Albany's requested relief for approval of the Regulatory Ordinance.

### **C. OUCC's Case-in-Chief.**

The OUCC offered the testimony of James T. Parks, a Utility Analyst II in the Water/Wastewater Division. Mr. Parks briefly described the relief requested in this Cause and discussed New Albany's ability to extend wastewater service to the Regulated Territory, some of which appears to be beyond the four-mile Regulated Territory boundary. He testified regarding New Albany's wastewater utility and operations, and noted that although Mr. Sartell's pre-filed testimony indicated that the WWTP is designed to treat a maximum of 45 MGD for rain events and 70 MGD for wet weather peak, the facility's 2003 Construction Permit No. L-0175 lists the average design peak flow as 66.0 MGD and peak wet weather flows above 40.0 MGD are diverted to protect the biological system. Mr. Parks further testified that all sanitary sewer overflows are prohibited by New Albany's National Pollutant Discharge Elimination System (NPDES) Permit No. IN0023884 which expired May 31, 2017.

Mr. Parks testified that New Albany's WWTP is currently operating at approximately 70% of its 12.0 MGD design average flow capacity and therefore New Albany has sufficient dry weather capacity to serve additional customers. Mr. Parks further testified however that New Albany does not currently have excess capacity to serve additional customers during wet weather, as its sewers continue to have excessive infiltration and inflow ("I/I") resulting in sanitary sewer overflows ("SSOs"). Mr. Parks stated that while approximately 13 SSO locations currently exist in New Albany's sewer system, New Albany has successfully reduced overflow volumes by 97% and eliminated all but 13 of 66 SSO locations. He further stated that New Albany plans to address these remaining SSO locations through \$13.5 million in capital improvements. Mr. Parks testified that New Albany's SSOs have led to enforcement actions by the US EPA and IDEM in the past, and New Albany is on its third round of system improvements to reduce SSOs pursuant to an original and subsequent consent decree. Mr. Parks testified further that New Albany is subject to a sewer connection ban which restricts new sanitary connections to its collection system pursuant to an EPA Consent Decree and State of Indiana Agreed Order which requires New Albany to undertake I/I in order to compile sewer ban waiver credits. Mr. Parks stated that New Albany currently has a positive number of sewer ban waiver credits for its collection system which allows it to connect additional sewer users after obtaining EPA approval.

Mr. Parks further testified regarding New Albany's request for approval of its Regulatory Ordinance to become the exclusive provider in the Regulated Territory pursuant to Ind. Code § 8-1.5-6-2. Mr. Parks generally described New Albany's proposed Regulated Territory. He testified that New Albany's proposed territory exceeds four miles beyond the City's corporate boundaries where the Regulated Territory extends into Greenville Township, Floyd County, to serve Floyd Central High School, Highland Hills Middle School and the proposed Cristiani development. Mr. Parks stated that IC 36-9-2-18 does not permit a municipality's proposed Regulated Territory to extend beyond four miles outside of the municipality's corporate boundaries. He further testified that New Albany's proposed Regulated Territory does not overlap with that of any other wastewater utility.

Mr. Parks stated that while New Albany currently has sewers and lift stations outside of its corporate limits, New Albany is not currently capable of providing wastewater services to the entire proposed Regulated Territory and will need to construct new sewers and lift stations to serve additional areas outside its corporate boundaries and comply with the terms of its Consent Decree. He stated further that the Regulatory Ordinance is silent as to a property owner's right to install a private on-site well or water system, and recommended that New Albany revise the Regulatory Ordinance to state that it does not prevent the use of on-site private water systems where the City does not yet have wastewater infrastructure available. Mr. Parks testified that while the demand for wastewater services in the entire Regulated Territory appears to be unknown, New Albany is routinely connecting new customers. Mr. Parks further testified regarding the sewer rates and charges to be charged to customers outside the City limits may be adjusted from time to time by the City upon recommendation from its Sewer Board, noting the City recently approved raising sewer rates annually based on the consumer price index. He stated that the OUCC had received no consumer comments on New Albany's request, but noted that Aqua Indiana has advocated retaining the status quo on providing sewer service within the proposed Regulated Territory.

Mr. Parks concluded his testimony by recommending that, in assessing whether to grant a municipal utility such as New Albany the ability to exclude other utilities from providing service in the Regulated Territory, the Commission consider the demand for such service and the municipality and other wastewater utilities' relative abilities to timely provide service at fair and reasonable rates in the proposed Regulated Territory. He further recommended that, if the Commission approves some or all of the requested relief, New Albany be required to file updated maps with sufficient detail to clearly identify areas subject to existing CTAs. Mr. Parks also recommended that New Albany amend its Regulatory Ordinance to allow landowners in areas not served by the City to continue to be able to use or install their own private on-site wastewater systems, and to commit to relinquishing the exclusivity of service rights in the Regulated Territory if New Albany is unable to timely meet requests for service at reasonable rates when other wastewater utilities are able to do so.

#### **D. New Albany's Rebuttal.**

On rebuttal, Mr. Sartell responded to testimony of Aqua Indiana and the OUCC. Mr. Sartell responded to Mr. Bruns's contention that New Albany's evidence was insufficient to show a need for wastewater service within the Regulated Territory to the exclusion of Aqua Indiana and other providers, and that New Albany is capable and has the necessary facilities to provide such service. Mr. Sartell testified that he disagreed with Mr. Bruns's contentions

regarding what New Albany must show to support its request and the insufficiency of New Albany's evidence. He explained that he disagreed with these contentions because there are certain factors to be considered by the Commission in its determination and his direct testimony, at pages 10-14, addressed each of those factors. Petitioner's Exhibit No. 1, at 10. Mr. Sartell responded directly to Mr. Bruns's contention that New Albany has neither shown a need to be the exclusive provider in the Regulated Territory nor that it is capable of providing service throughout the area, because New Albany's evidence provided detail with respect to only two customers located in the area. Mr. Sartell explained that Aqua Indiana's contention stems from New Albany's decision to focus its direct testimony on these two main customers—Floyd Central High School and the Cristiani development—and New Albany made the decision to focus on service to these two customers because the need for service to these customers is most pressing, and was the subject of Aqua Indiana's CTA case (Cause No. 44772).

Mr. Sartell further responded to claims made by Mr. Parks. Mr. Sartell specifically addressed mistakes in the information Mr. Parks gleaned from the WWTP's 2003 construction permit, and noted that the 40 MGD that Mr. Parks refers to is the increased capacity at the new addition of the wastewater plant, not the daily maximum weather treatment of 45.0 MGD; the peak hourly flow Mr. Parks states of 66.0 MGD does not take into account the addition of excess flow basins in 2004, which increased the peak hourly flow to 70.0 MGD; and Mr. Parks's statement that any flows above 40.0 MGD receive limited treatment is false and, as previously stated, the maximum wet weather treatment is 45.0 MGD.

Mr. Sartell also responded to the OUCC's and Aqua Indiana's questioning of New Albany's ability to provide service throughout the Regulated Territory as result of the limitations imposed under the First Amended Consent Decree with the U.S. EPA. Mr. Sartell testified that the Consent Decree does not restrict New Albany's ability to be the exclusive service provider in the Regulated Territory. Mr. Sartell explained that New Albany is in the design phase of constructing planned improvements to be completed late 2017 or early 2018, and such improvements will: (i) allow New Albany to request several hundred thousand additional "credits" for additional customer connections and (ii) after a one-year demonstration period, likely lead to the termination of the Sewer Connection Limitation Program. Mr. Sartell testified that while, in retrospect, it may have been helpful to explain the Amended Consent Decree in his direct testimony, ultimately it does not change New Albany's ability to serve the Regulated Territory. He reiterated that New Albany has plenty of capacity to serve future development in the area and the Consent Decree will be terminated long before any such development takes place.

Mr. Sartell also responded to Mr. Bruns's contention that Aqua Indiana has the requisite facilities and personnel to provide service in the regulated area outside of the areas it currently serves. Mr. Sartell noted that Aqua Indiana's testimony regarding the adequacy of its facilities provided in this Cause appeared to him to be inconsistent with its testimony in Cause No. 44772. He explained that Mr. Bruns testified in Cause No. 44772 that Aqua Indiana plans to utilize the Galena Area treatment plant to serve in the Regulated Territory, but later quoted flow data in his testimony that indicated anticipated flow from the Cristiani development alone would exceed the Galena treatment plant's capacity. Mr. Sartell explained that while Mr. Bruns suggests using a combination of its Floyd County Division treatment plants to address this capacity issue in this Cause, this "cobbling" together of plant capacity, potentially in conjunction with expansion of

existing package plants, is one of the primary drivers for New Albany to seeking Commission approval of its Regulatory Ordinance.

Mr. Sartell explained that one of the primary drivers for New Albany seeking approval of its Regulatory Ordinance is to ensure the objectives of Ind. Code §8-1-2-89(b) are met, namely “to provide for the orderly development and rendering of sewage disposal service in rural areas within the state of Indiana . . . . [Therefore a] sewage disposal company [seeking a CTA] shall be subject to the comprehensive plan, zoning, and subdivision requirements and regulations of the governmental units having jurisdiction in that area.” He stated further that an additional primary driver is to eliminate package plants in the Regulated Territory. Mr. Sartell noted that Mr. Bruns himself sees the need for such planned development, having testified in Cause No. 44772 that “the provision of a central wastewater utility service is essential for future growth and development in the area.” (Cause No. 44772, Pet. Ex. 1, p. 13). Mr. Sartell questioned whether Aqua Indiana was in fact capable of providing such “centralized” service, and described the problems inherent with package plants, past enforcement actions brought against Aqua Indiana’s Floyd County treatment plants (prior to Aqua Indiana’s ownership of the plants) and his concern that Aqua Indiana’s ownership of the plants does not necessarily eliminate these problems. He noted that his concerns have been echoed by Mr. Don Lopp, Floyd County Planner, and that the City and County have undertaken a mutual goal of implementing a comprehensive approach to wastewater service in the territory and eliminating package plants therein. Mr. Sartell emphasized that the objective of the Regulatory Ordinance is not to prevent Aqua Indiana from operating within its existing CTAs or even expanding its CTA where Aqua Indiana is in a better position to serve a particular need.

Mr. Sartell stated that another primary driver for approval of the Regulatory Ordinance is New Albany’s desire to memorialize its agreed boundaries with the Town of Georgetown. He testified that despite Mr. Parks’s contention that New Albany’s proposed regulated territory exceeds the allowable distance outside its corporate limits, Mr. Sartell asserted that Indiana Code § 36-9-23-36 permits a ten-mile limit for a municipality’s exercise of powers related to municipal sewage works. Mr. Sartell further testified that while he did not believe an amendment to the Regulatory Ordinance was necessary, he agreed that a clearer map would be useful and stated his belief that the Commission should specify in its Order that the map included as Attachment RS-4 to his direct testimony is the best reference for establishing boundaries of the regulated territory. He further testified that he did not object to Mr. Parks’s recommendation regarding owners of private, on-site wastewater systems within the Regulated Territory, but he believed an amendment to the Ordinance was not necessary, and any acknowledgement to this point could be included in the Commission’s order if it chooses to do so.

Mr. Sartell responded to Mr. Bruns’s contention that residents located in the Regulated Territory could be disadvantaged if New Albany is permitted to prevent Aqua Indiana from expanding its current CTAs. Mr. Sartell reiterated that the City’s current monthly rates are lower than Aqua Indiana’s and, even after the July 1 rate increase, the City’s rates will only be \$0.68 higher than Aqua Indiana’s rate. Mr. Sartell further testified that he disagreed with Mr. Bruns’s contention that residents in the Regulated Territory could be disadvantaged, because the effect of having a regulated territory is *not* to prohibit an entity’s ability to obtain a new or expanded CTA, but rather an opportunity for New Albany to be included in these determinations and help prevent the historical problems inherent with package plants previously described. Mr. Sartell testified that if a utility, including Aqua Indiana, is better suited to serve an area, he is confident

New Albany would work with the utility and the Commission could amend its order with respect to the enforceability of the Regulatory Ordinance in that instance. Mr. Sartell noted that this approach is in line with the City's and County's goal of implementing a well-planned, long term strategy for wastewater service in the area, and also addresses Mr. Parks's recommendation that the exclusivity of service under the regulatory ordinance should be revisited in the event New Albany is unable to provide timely service to a customer on reasonable terms. Mr. Sartell concluded his testimony by stating that the Commission should approve New Albany's Regulatory Ordinance because New Albany and Georgetown—the only two entities who presently have authority to serve in the area—agreed on the boundaries, existing CTAs are excluded, and such approach would permit the Commission to revisit the ordinance in the event an existing CTA owner wanted to expand its CTA to serve new development. Mr. Sartell testified that such approach is in the public interest, and that the existence of the Regulatory Ordinance is an important signal that new or expanded package plants are not the preferred approach.

#### **5. Settlement Agreement.**

The Settlement Agreement entered into by New Albany and Aqua Indiana in this Cause is attached hereto as Appendix 1 and incorporated herein by reference. The Settlement Agreement presents a resolution of all matters between New Albany and Aqua Indiana pending before the Commission in this Cause, which the Settling Parties agree is reasonable. The Settlement Agreement represents a compromise between New Albany and Aqua Indiana with respect to each party's Floyd County, Indiana service area and the process by which service to customers shall be decided in the future. For purposes of compromise and settlement, the Settling Parties stipulated that New Albany shall be permitted to serve in an amended regulated territory that includes: (i) the area described in the Regulatory Ordinance; and (ii) the additional territory the Town of Georgetown, Indiana agreed New Albany could serve in 2015 (the "Amended Regulated Territory"); provided, however, existing Aqua Indiana and Deerwood CTA areas shall be excluded from the Amended Regulated Territory, and further subject to Aqua Indiana's rights within the Aqua Indiana Expansion Area, as discussed below. With the exception of the Aqua Indiana Expansion Area, the Amended Regulated Territory corresponds to the area depicted in the map that was entered in evidence as Attachment RS-4, which New Albany sought in its post-hearing filings to have recognized as the Regulated Territory for purposes of the approval and enforcement of the Regulatory Ordinance. The Settlement Agreement provides that, if so directed by the Commission in approving the terms of the Settlement, New Albany shall formally amend its Regulatory Ordinance to reflect the Amended Regulated Territory and shall submit such amendment to the Regulatory Ordinance as a compliance filing in this Cause.

The Settling Parties further stipulated that New Albany shall have the exclusive right to provide service within its corporate boundaries and the Amended Regulated Territory except for the area outlined in yellow with yellow hashmarks on the map attached to the Settlement Agreement as Exhibit A (the "Aqua Indiana Expansion Area"), and that Aqua Indiana shall be permitted to seek a CTA to extend its system and provide service without any opposition from New Albany within the Aqua Indiana Expansion Area.

With respect to future service, the Settling Parties stipulated that in the event New Albany or Aqua Indiana seeks to expand service outside of the Amended Regulated Territory or the Aqua Indiana Expansion Area, respectively, Aqua Indiana and New Albany shall meet and

endeavor to agree on how service should be extended to unserved customers/developments located in such proposed expanded area based on the respective estimated main extension and connection costs without regard for the source of payment. New Albany and Aqua Indiana shall endeavor to include in such meetings any other provider in the area with the ability to serve such unserved customers/developments. In the event Aqua Indiana and New Albany cannot agree on how service should be extended to such unserved customer/development, Aqua Indiana may seek a CTA to extend its system and provided service to such customer/development in the proposed expanded area, but New Albany shall be permitted to oppose the granting of such CTA.

The Settling Parties further stipulated that Aqua Indiana shall have the exclusive right to provide service within its current and future CTA areas.

In support of the Settlement Agreement, the Settling Parties offered settlement testimony from Mr. Christmas and Mr. Bruns explaining how the Settlement satisfies the factors the Commission is to consider in approving a Regulatory Ordinance under Ind. Code § 8-1.5-6-9, addressed the issues raised by the parties in this Cause, and is otherwise in the public interest. The testimonial support for each of those factors is discussed below in connection with our specific findings with respect to those factors.

#### **6. Commission Discussion and Findings.**

New Albany seeks approval of its Regulatory Ordinance pursuant to Ind. Code § 8-1.5-6-9 (“Section 9”). New Albany is required to seek approval of its Regulatory Ordinance under Section 9 because the Regulatory Ordinance was adopted after December 31, 2012, and no party has filed or is eligible to file a wholesale sewage petition.

Pursuant to Section 9(c), we are specifically directed to consider the factors set forth in Indiana Code § 8-1.5-6-8(g), which provides that we are to consider:

- (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.

Indiana Code § 8-1.5-6-8(g).

**A. Sufficiency of the Petition and Commission Jurisdiction to Decide.**

A petition for approval of a regulatory ordinance must contain the following information:

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

Ind. Code § 8-1.5-6-9(b).

The Petition was admitted into the record as Petitioner's Attachment RS-1. It includes a description of the Regulated Territory and a copy of the rate schedules that would apply to the Regulated Territory. It recites that at the time of filing, there were no administrative or judicial proceedings involving the Regulatory Ordinance. As to other utilities, the Petition indicates that the only other municipalities located in Floyd County are the Towns of Georgetown and Greenville. As indicated in the Petition and Petitioner's testimony, Georgetown is a party to the territorial agreement embodied in the Regulatory Ordinance, and Greenville operates a very small treatment plant and Petitioner did not expect it would be affected by the Regulatory Ordinance. The Petition further indicates that there are a number of entities possessing CTAs to provide sewer service in Floyd County, but with various consolidations, it is unknown how many of these entities continue to function as stand-alone entities. Those CTAs have been issued to Aqua Indiana; Wastewater One, LLC; Wymberly Sanitary Works, Inc.; Deerwood Environmental, Inc.; The Reynolds Group, Inc.; M.E.K.A., Inc. ("MEKA"); and Canyonlands Homeowner's, Inc. The Petition further noted that Aqua Indiana was seeking a CTA to provide wastewater utility service within a portion of Greenville and Lafayette Townships in Floyd County in Cause No. 44772, but that Cause has subsequently been dismissed without prejudice. Besides MEKA, which has been administratively dissolved by the Indiana Secretary of State, and Aqua Indiana, which was provided notice via its counsel of record in Cause No. 44772, New Albany mailed a copy of the Petition to the remaining CTA holders at the addresses maintained by the Secretary of State.

In post-hearing briefing, both the OUCC and Aqua Indiana raised questions about the sufficiency of the description of the Regulated Territory in the Petition. Both acknowledged that in New Albany's case-in-chief included a map memorializing Georgetown's and New Albany's amendment to their agreement with respect to the area near Floyd Central High School that was the area most at issue in this case.

HEA 1187 (P.L. 213-2014) under which Section 9 was adopted also adopted a provision regarding the resolution of disputes between two or more utilities as to which utility will provide service in a regulated territory that favors mutual agreement between the utilities. *See* Ind. Code § 8-1.5-6-10. While that section is not directly applicable to a dispute arising under Section 9,

this Commission recognizes the policy expressed by the General Assembly in favor of resolution by mutual agreement. Section 9(c) vests this Commission with the authority to “resolv[e] all issues presented in the petition, including the enforceability of the regulatory ordinance *in the manner that the commission determines is in the public interest.*” *Id.* (emphasis added).

The Settling Parties provided testimony advocating that the Regulatory Ordinance as presented in the Petition should be modified to reflect the service territory reflected on the map attached as Exhibit A to the Settlement Agreement. The Settling Parties provided evidence that such modification is in the public interest. In light of our authority to make modifications to the enforcement of the Regulatory Ordinance as needed to serve the public interest, we find that the Petition requesting approval of the Regulatory Ordinance satisfies each of the four listed requirements in Section 9(b), but that New Albany shall submit, as a compliance filing under this Order, an amended Regulatory Ordinance that adopts the map reflecting the Amended Regulated Territory described herein and in the Settling Parties’ settlement testimony.

**B. The Ability of Another Utility to Provide Service in the Regulated Territory.**

Both New Albany and Aqua Indiana presented evidence of their respective abilities to serve in the area where New Albany seeks to enforce its Regulatory Ordinance. As discussed in the testimony of Mr. Sartell and Mr. Christmas, New Albany’s WWTP is currently operating at about 70% capacity, and once the construction of the new pump station, force main and gravity sewer to serve Floyd Central High School is complete, New Albany will have even greater capacity to serve customers in the Regulated Territory.

We note that while other utilities may be capable of serving in the Regulated Territory, the only real dispute in this Cause was between New Albany and Aqua Indiana. In order to resolve this point, however, we do not need to make a finding whether Aqua Indiana is or is not sufficiently capable of serving in the Regulated Territory. New Albany indicated throughout its testimony that it is not seeking approval of its Regulatory Ordinance for the purpose of being the exclusive provider of wastewater service in the Regulated Territory, but rather so that it can, in conjunction with Floyd County, develop a comprehensive approach to providing wastewater service in the Regulated Territory and ensure the “orderly development of rendering sewage disposal service in rural areas of [Floyd County, Indiana]” as required in Ind. Code § 8-1-2-89(b).

The Settlement Agreement entered into by New Albany and Aqua Indiana in this Cause reflects those parties’ agreement to cooperate with respect to ensuring such orderly development. New Albany will be permitted to serve as the exclusive provider in the Amended Regulated Territory and Aqua Indiana will be permitted to serve as the exclusive provider within its authorized CTA areas. New Albany also agreed it would not oppose an extension of Aqua Indiana’s service within the Aqua Indiana Expansion Area. Both of the Settling Parties offered testimony in support of the Settlement and specifically the process to be used to determine how to best serve customers/development outside of that area. Based upon the evidence regarding New Albany’s and Aqua Indiana’s ability to serve, as well as the evidence in support of the settlement, this factor weighs in favor of approval of the Regulatory Ordinance on the terms set forth in the Settlement Agreement.

**C. The Effect of A Commission Order on Customer Rates and Charges in the Regulated Territory.**

If the Regulatory Ordinance is approved on the terms set forth in the Settlement Agreement, the rates and charges that would be in effect in the Amended Regulated Territory are the New Albany rates and charges as approved by the City and in effect from time to time. As discussed in the testimony of Wes Christmas in support of the Settlement, New Albany has more than enough capacity to serve customers in the Amended Regulated Territory and will not have to undertake any major capital improvements in the foreseeable future to serve the area except for the already budgeted improvement of the Old Vincennes Road lift station and force main improvement that will eliminate the existing package treatment plant owned by the New Albany Floyd County School Corporation, as described previously in this case. In connection with the Settlement, Mr. Christmas offered testimony explaining that the current rates available to customers of New Albany and Aqua Indiana are comparable and the terms of the Settlement Agreement help to ensure that (1) the respective stipulated areas will be served by the party best positioned to serve in that area (including with respect to the rates and charges applicable to such service) and (2) for unserved customers outside those areas, the parties will meet and endeavor to agree on how service should be extended to those developments. As a result, we find that the effect of a Commission Order approving the Settlement Agreement and the Regulatory Ordinance on the terms outlined therein on the rates and charges to apply in the Amended Regulated Territory supports approval of the Settlement Agreement.

**D. The Effect of the Commission's Order on Present and Future Economic Development in the Regulated Territory.**

Both New Albany and Aqua Indiana agreed that providing reliable wastewater service in the Regulated Territory was a critical component of present and future economic development in the area, but Aqua Indiana questioned whether approval of the Regulatory Ordinance served such an objective. As discussed previously, New Albany stated that one of the primary drivers for instituting this proceeding was to maintain the orderly development of wastewater service in the Regulated Territory and apply a comprehensive approach to such service. New Albany testified that, among other reasons, it sought approval of its regulatory ordinance in order to ensure that the objectives of Ind. Code §8-1-2-89(b) are met, including ensuring that entities seeking to provide service in the territory would be subject to the comprehensive plan, zoning, and subdivision requirements and regulations of the City and the County. New Albany further provided evidence regarding the public health and safety issues inherent with package plants, and stated that one of its primary aims is to eliminate package plants and the territory.

It is our belief that future economic development would be best served by enforcement of the Regulatory Ordinance subject to the conditions outlined in the Settlement Agreement. Mr. Bruns said it well when he stated that "the provision of a central wastewater utility service is essential for future growth and development in the area." In our minds, the development of "centralized" service necessitates a comprehensive approach like the approach the Settling Parties seek to maintain through the approval of New Albany's Regulatory Ordinance, as modified by the Settlement Agreement. Further, we believe that the continued formation and operation of package plants in the Regulated Territory would have a significant, negative impact on future economic development in the territory. To the extent the Settling Parties' comprehensive approach aims to eliminate such plants, we think economic development would

be best served by such approach. We find that the effect on present and future economic development favors enforcement of the Regulatory Ordinance on the terms set forth in the Settlement Agreement.

**E. The History of Utility Service in the Regulated Territory.**

As discussed throughout Petitioner's testimony and in our analysis of other factors, the history of utility service in the Regulated Territory revolves around package plants and septic systems. New Albany provided a comprehensive summary in its rebuttal testimony of the issues experienced with respect to package plants in the area. The testimony in support of settlement presented by the Settling Parties is evidence of their efforts to cooperate to achieve a comprehensive, planned approach to wastewater service as the best way to ensure the availability of reliable and safe wastewater service in the territory in the future. The Settling Parties' agreement with respect to how service in the Amended Regulated Territory should be extended appears to be an effective and efficient resolution of that question. In this respect, we find that the history of utility service in the Regulated Territory favors enforcement of the Regulatory Ordinance subject to the conditions outlined in the Settlement Agreement.

**F. Other Factors: Exclusivity.**

New Albany's purpose in adopting the Regulatory Ordinance as explained in its testimony is to: (1) memorialize the agreed upon boundaries of New Albany's and Georgetown's respective service areas and (2) make certain that whoever the service provider in the Regulated Territory is, the system will be operated by an entity with the requisite expertise and viability, and that the City's and County's desire to undertake a comprehensive approach to sewer service in the territory will be maintained. New Albany's interest is not having a proliferation of package plants and small, poorly operated utilities surrounding New Albany, and New Albany has made it clear that it is willing to work cooperatively with Aqua Indiana and other utilities in serving unserved areas. Petitioner's Exhibit 1R, pp. 17-18. The terms of the Settlement Agreement likewise indicate that the New Albany and Aqua Indiana have agreed to cooperate in the future. Accordingly, it is clear from Petitioner's testimony that Petitioner is not seeking the exclusive right to be the service provider, but rather the right to be involved in future determinations regarding what entities have the requisite expertise and viability to serve in the Regulated Territory. The Settlement Agreement is specifically tailored to address these objectives.

Ultimately, we agree with the Settling Parties that approval of the Regulatory Ordinance and the Settlement Agreement is the best approach for addressing each party's concerns in this Cause and for guaranteeing reliable sewer service in the Regulated Territory in the future.

**G. Settlement Agreement.**

We have previously discussed our policy with respect to settlements:

Indiana law strongly favors settlement as a means of resolving contested proceedings. *See, e.g., Manns v. State Department of Highways*, (1989) Ind., 541 N.E.2d 929, 932; *Klebes v. Forest Lake Corp.*, (1993), Ind. App. 607 N.E.2d 978, 982; *Harding v.*

*State*, (1992), Ind. App., 603 N.E.2d 176, 179. 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. FPC*, (1974), 417 U.S. 283, 314 (emphasis in original).

*Indianapolis Power & Light Co.*, Cause No. 39938, p. 7 (IURC 8/24/95); see also *Commission Investigation of Northern Ind. Pub. Serv. Co.*, Cause No. 41746, p. 23 (IURC 9/23/02). This policy is consistent with expressions to the same effect by the Supreme Court of Indiana. See, e.g., *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”); *In re Assignment of Courtrooms, Judge’s Offices and Other Facilities of St. Joseph Superior Court*, 715 N.E.2d 372, 376 (Ind. 1999) (“Without question, state judicial policy strongly favors settlement of disputes over litigation”).

Nevertheless, a settlement agreement will not be approved by the Commission unless it is supported by probative evidence. 170 IAC 1-1.1-1 7. 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 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. Furthermore, any Commission decision, ruling or order — including the approval of a settlement — must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2-1 *et seq.*, and that the agreement serves the public interest.

We note that the Settlement Agreement includes provisions indicating it will be deemed withdrawn if not accepted by the Commission in its entirety unless otherwise agreed to by the Settling Parties and that the terms of the Settlement represent a fair, just and reasonable resolution and compromise. We have made specific findings above with respect to the factors this Commission is to consider in deciding a case brought under Section 9, noting the effect of the settlement on such factors.

Based on our foregoing discussion and findings, we find that the Settlement Agreement is reasonable and in the public interest and the authority and obligations proposed therein should be approved. With regard to future citation of this Order, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 (IURC March 19, 1997).

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

1. The Settlement Agreement shall be and hereby is approved in its entirety.
2. In connection with this Commission's approval of the Settlement Agreement, New Albany's Regulatory Ordinance No. G-14-06 shall be and hereby is approved subject to the conditions outlined in the Settlement Agreement and the compliance filing required under Ordering Paragraph 3 below.
3. New Albany shall adopt an amendment to the Regulatory Ordinance to incorporate the Amended Regulated Territory as specifically described in the Settlement Agreement and the map attached as Exhibit A to the Settlement Agreement, which is incorporated by reference therein. Following adoption of such an amendment, New Albany shall file the Amended Regulatory Ordinance with this Commission as a compliance filing in this Cause.
4. In accordance with Ind. Code § 8-1-2-70, New Albany shall, within 20 days from the date of this Order, pay into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:
5. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:**

**APPROVED:**

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

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**Mary Becerra**  
**Secretary of the Commission**