

FILED

MAR 15 2016

**INDIANA UTILITY
REGULATORY COMMISSION**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE TOWN OF ELBERFELD,)
INDIANA, FOR APPROVAL OF ITS)
ORDINANCE GOVERNING THE PROVISION)
OF WASTEWATER UTILITY SERVICE TO)
CUSTOMERS LOCATED IN THE)
UNINCORPORATED AREAS OF WARRICK)
COUNTY, INDIANA THAT ARE WITHIN)
FOUR MILES OF THE TOWN'S)
INCORPORATED BOUNDARY)

CAUSE NO. 447 66

PETITION

Comes now the Town of Elberfeld, Indiana ("Elberfeld") and petitions this Commission for approval of Elberfeld's utility ordinance governing the provision of wastewater utility service to unincorporated areas of Warrick County, Indiana that are within four miles of Elberfeld's corporate boundary. In support of this petition, Elberfeld states the following:

1. Elberfeld is an incorporated community located in the northwest corner of Warrick County, Indiana. It owns and operates a municipal sewer (wastewater) utility as well as a municipal water utility.
2. In 2013, Elberfeld adopted a regulatory ordinance governing the provision of water and wastewater utility services in a territory that includes all areas within Elberfeld's corporate boundary as well as most of the territory up to 4 miles outside of Elberfeld's corporate boundary. That ordinance, #2013-3 (hereinafter, "Ordinance"), is attached to this petition. Although the Ordinance covers both water and sewer service, this petition seeks approval from this Commission only of the parts of the Ordinance dealing with Elberfeld's provision of sewer service.

3. After Elberfeld's adoption of the Ordinance, the State of Indiana passed a law, codified at chapter 8-1.5-6 of the Indiana Code. Pursuant to that chapter, the offering or provision of service by a utility in a regulated territory is under the jurisdiction of this Commission. The area outside of Elberfeld's corporate boundary qualifies under the definition of "regulated territory" in Ind. Code § 8-1.5-6-2, and the definition of "utility" found in Ind. Code § 8-1.5-6-4 includes Elberfeld's municipal sewer utility.

4. The Ordinance assigns to Elberfeld an exclusive license to furnish sewer service within the Regulated Territory, comprised of the unincorporated areas of Warrick County outside and within four miles of Elberfeld's corporate boundaries. Although the Ordinance contains an exception for other utilities already serving customers inside the Regulated Territory as of March 27, 2013, Elberfeld is not aware of any such utility.

5. Elberfeld has not filed a wholesale sewage petition, as that term is defined in Ind. Code § 8-1.5-6-5. Accordingly, enforcement of its Ordinance requires the approval of this Commission pursuant to Ind. Code § 8-1.5-6-9. This petition is submitted in compliance with subsection (b) of that statute. In particular, Elberfeld includes as exhibits hereto:

- a) A map depicting the service territory established in the Ordinance;
and
- b) A copy of Elberfeld's Ordinance #2007-1 setting rates and charges
for sewer service in the Regulated Territory.

Elberfeld further notes that it is not aware of any pending administrative or judicial proceedings involving its Ordinance, nor is it aware of any sewer utilities actually or potentially affected by its Ordinance.

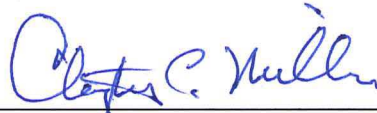
6. This petition is filed by Elberfeld's attorney in this cause, Clayton C. Miller from the law firm of Bamberger, Foreman, Oswald & Hahn, LLP, 201 N. Illinois Street, Suite 1225, Indianapolis, IN 46202. Mr. Miller is authorized to receive service of all pleadings and other papers in this cause.

WHEREFORE, Elberfeld requests that this Commission conduct a hearing and approve its Ordinance granting Elberfeld the exclusive right to provide sewer utility service in the Regulated Territory at the rates and charges set forth in Elberfeld's utility rate ordinances currently in place and as may be amended from time to time.

Respectfully submitted,

TOWN OF ELBERFELD, INDIANA

By



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Indianapolis, IN 46204
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CERTIFICATE OF SERVICE

The undersigned certifies that this Petition was served on the following by hand delivery or U.S. mail, first-class postage prepaid, this 15th day of March, 2016:

Office of Utility Consumer Counselor
National City Center
115 West Washington Street, Suite 1500 S
Indianapolis, Indiana 46204



ORDINANCE 2013- 3

**AN ORDINANCE ESTABLISHING THE REGULATED AREA FOR
THE FURNISHING OF WATER AND WASTEWATER
SERVICE TO THE PUBLIC TO INCLUDE ALL TERRITORY, WITH
SOME EXCEPTIONS, LOCATED INSIDE AND WITHIN
FOUR MILES OF THE TOWN'S CORPORATE BOUNDARIES**

WHEREAS, the Town of Elberfeld, Warrick County Indiana (the "Town") is a "Town" as defined in Indiana Code 36-1-2-21 and therefore, a "municipality" as defined in Indiana Code 36-1-2-11 and therefore, a "unit" as defined in Indiana Code 36-1-2-23;

WHEREAS, the Town Council of the Town (the "Council") is the executive and legislative body of the Town;

WHEREAS, Indiana Code 36-9-2-14 provides that, "A unit may regulate the furnishing of water to the public";

WHEREAS, Indiana Code 36-9-2-16 provides that "A unit may regulate the furnishing of the service of collecting, processing and disposing of waste substances and domestic or sanitary sewage";

WHEREAS, Indiana Code 36-9-2-18 provides that "A municipality may exercise powers granted by {Indiana Code 36-9-2-14 and 36-9-2-16} in areas within four (4) miles outside its corporate boundaries";

WHEREAS, pursuant to Indiana Code 36-9-2-14, 36-9-2-16, and 36-9-2-18, the Town is authorized to regulate the furnishings of water and sewer service to the public inside and within four (4) miles outside its corporate boundaries;

WHEREAS, Indiana Code 36-1-2-15 provides that the term "regulate" includes "license, inspect, or prohibit" and does not expressly limit a local government's regulatory activities to those enumerated actions;

WHEREAS, the Town owns and operates a sewer utility which provides service throughout the area in and around Elberfeld; and

WHEREAS, the Town's sewer bills are generally based upon the amount of water used by each customer; and

WHEREAS, to promote orderly, efficient and well planned installation and expansion of water and sewer infrastructure and service in all areas inside and within four (4) miles of the Town's corporate boundaries, excepting therefrom areas located outside of Warrick County, any area located inside the corporate limits of another municipality and existing end-user connections to other water or sewer utilities (meaning those not granted an exclusive license hereunder) as of the date this Ordinance is adopted (the "Regulated Territory"), and to reduce the potential for duplication of facilities by neighboring water and sewer utilities, the Council deems it to be in

the public interest and in the best interest of the Town and Town's residents that the Town regulate the furnishing of water and sewer service to the public within the Regulated Territory;

WHEREAS, the Council believes that the Town's regulation of water and sewer service in the Regulated Territory enhances and promotes the logical growth of the Town and its sewer utility, represents the most efficient method for providing water and sewer service to future customers within the Regulated Territory, protects the Town's investments in infrastructure and improvements and maximizes the anticipated utilization of the Town's existing sewer utility facilities; and

WHEREAS, the Town's regulation of the furnishings of water and sewer service in the Regulated Territory will not extend beyond the corporate boundaries of Warrick County, Indiana, and will not include customers connected to and receiving service from other existing water or sewer utility as of the date this Ordinance is adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ELBERFELD, INDIANA, as follows:

- Section 1: The Council, after investigation and consideration, has determined that it is necessary to regulate the furnishings of water and sewer service in the Regulated Territory.
- Section 2: This Council finds that the public convenience and necessity requires the Town's regulation of the furnishing of water and sewer service within the Regulated Territory and that the public interest will be served by the Town's regulation of the furnishings of water and sewer service within the Regulated Territory.
- Section 3: Upon the adoption of this Ordinance, the Town shall hold an exclusive license to furnish sewer service within the Regulated Territory, and all other utilities are expressly prohibited from furnishing sewer service within the Regulated Territory, except for those customers located in the Regulated Territory that are connected to another sewer utility as of the date this Ordinance is adopted.
- Section 4: Upon the adoption of this Ordinance, the Town shall hold an exclusive license to furnish water service within the Regulated Territory, and all other utilities are expressly prohibited from furnishing sewer service within the Regulated Territory, except for those customers located in the Regulated Territory that are connected to another water utility as of the date this Ordinance is adopted.
- Section 5: Furnishing water or sewer service within the Regulated Territory, without a specific permit issued by the Town allowing for the provision of such service, is forbidden and all other utilities are expressly prohibited from furnishing water or sewer service within the Regulated Territory, except for those customers located in the Regulated Territory that are connected

to another water or sewer utility as of the date this Ordinance is adopted, without obtaining a permit for such action

Section 6: Attached hereto and incorporated herein is a map depicting the Regulated Territory, a copy of which shall be retained for public inspection at the offices of the Town's sewer utility during regular business hours.

Section 7: This Ordinance shall not be construed to prohibit an individual property owner from providing water service to such property owner's lot through the drilling of a well on such property; provided, however, the water from such well shall not be used to provide water service to owners or lessees of other properties.

Section 8: The Town's existing Rules and Regulations for water and sewer service, as amended from time to time, shall apply to and within the Regulated Territory.

Section 9: All prior Ordinances or parts thereof inconsistent with any term or provision of this Ordinance are hereby repealed. If any one or more of the terms, provisions or portions of the Regulated Territory of this Ordinance shall be deemed by a court of competent jurisdiction to be contrary to law, then such term or provision shall be deemed severable from the remaining terms and shall in no way affect the validity of the other provisions of this Ordinance.


Section 10: This Ordinance shall be in full force and effect from and after its passage by the Council.

Section 10: Any person, firm or corporation who violates this Ordinance shall be subject to a civil penalty of \$2,000 per violation and each day of violation shall be deemed a separate violation.


ADOPTED THIS ____ DAY OF _____, 2013.

TOWN COUNCIL OF THE

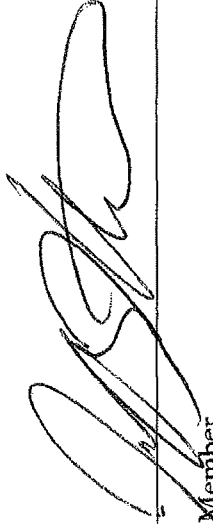
TOWN OF ELBERFELD



President




Member

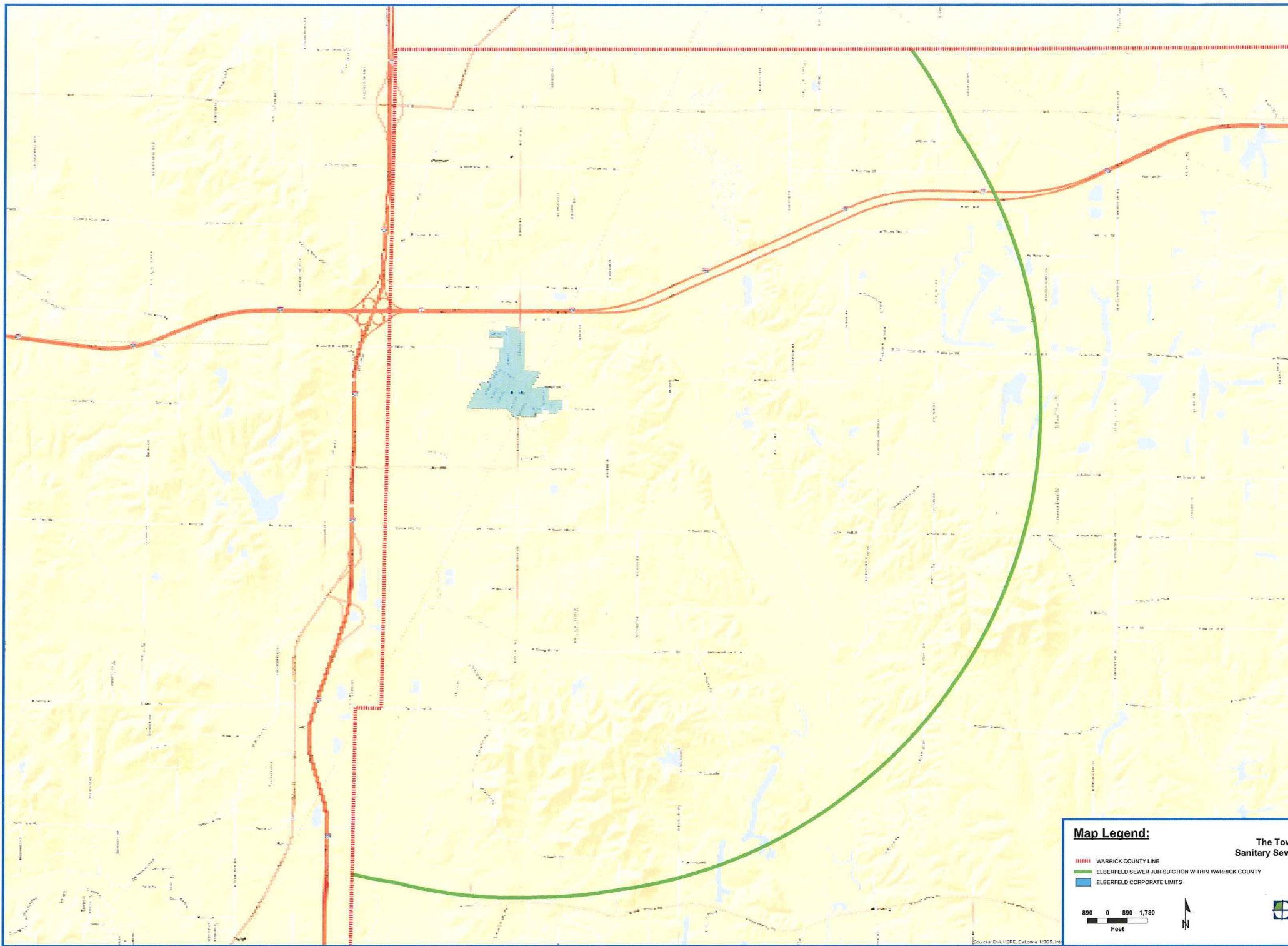


Member

ATTEST:



Clerk-Treasurer



Map Legend:

- WARRICK COUNTY LINE
- ELBERFELD SEWER JURISDICTION WITHIN WARRICK COUNTY
- ELBERFELD CORPORATE LIMITS



The Town of Elberfeld
Sanitary Sewer



ORDINANCE NO. 2007-1

**AN ORDINANCE ESTABLISHING AN AMENDED SCHEDULE OF RATES
AND CHARGES OF THE ELBERFELD SEWAGE WORKS**

WHEREAS, the Town of Elberfeld, Indiana (the "Town") has heretofore constructed and has in operation sewage collection and treatment facilities; and

WHEREAS, the Town has determined it to be necessary to amend its sewer rates and charges so as to produce sufficient revenue to pay expenses in maintenance and operation, to provide funds for necessary replacements and improvements to the Sewage Works and to pay the principal and interest on bonds incurred for improvements to the Sewage Works; and

WHEREAS, Indiana Code 36-9-23 provides that a municipal legislative body shall by ordinance, establish just and equitable fees for the services rendered by the sewage works; and

WHEREAS, the Town finds that, based upon the advise of its financial advisor, existing rates and charges are insufficient to enable the Town to properly operate and maintain its sewage works facilities and fund additions and improvements to the system, and pay the principal and interest on bonds incurred for improvements to the sewage works;

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Elberfeld that:

1. Section 1 of existing Sewer Rate Ordinance shall be amended and modified as follows:

Section 1: There shall be and there is hereby established a sewer service charge for the use of and service supplied by the municipal sanitary sewer system of the Town of Elberfeld, based upon the amount and rate of water consumed as follows:

<u>Meter Consumption Per Month</u>	<u>Rate Per Month</u>
Gallons:	
0 - 3,000	\$ 39.95 per month (Minimum Charge)
3,001 - 10,000	\$ 39.95 and \$8.33 per 1,000 gallons in excess of 3,000 gallons
10,001 - 20,000	\$ 98.26 and \$8.18 per 1,000 gallons in excess of 10,000 gallons
20,001 - 50,000	\$ 180.06 and \$8.02 per 1,000 gallons in excess of 20,000 gallons

50,001 - 100,000	\$ 420.66 and \$7.62 per 1,000 gallons in excess of 50,000 gallons
Over 100,000	\$ 801.66 and \$4.50 per 1,000 gallons in excess of 100,000 gallons

In no case shall the minimum service charge be less than \$39.95 per month, which is necessary to retire the indebtedness, to pay operating and maintenance expenses, and fund a reserve for maintaining the sanitary sewer facility.

Customers of the sanitary sewer facility who are not customers of the municipal water shall pay a minimum charge of \$51.73 per month.

2. All other terms and provisions of the existing Sewer Rate Ordinance as amended and not in conflict herewith shall remain in full force and effect.

3. All terms and provisions of prior Ordinances in conflict with this amendment are hereby repealed.

4. This amended Ordinance shall be in full force and effect from and after its passage and shall apply to all billing periods following passage of this Ordinance.

PASSED AND ADOPTED by the Town Council of the Town of Elberfeld, Warrick County, Indiana on the 19th of February, 2007.

ELBERFELD TOWN COUNCIL

Duane E. Erwin
Duane Erwin, President

Scott Dowers
Scott Dowers, Council Member

Steve Gibson
Steve Gibson, Council Member

ATTEST:

Theresa Freels
Theresa Freels, Clerk/Treasurer