

FILED
May 25, 2018
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE MUNCIE SANITARY DISTRICT,)
FOR APPROVAL OF A REGULATORY ORDINANCE)
COVERING UNINCORPORATED AREAS OF)
DELAWARE COUNTY, INDIANA)

CAUSE NO. 45055

OUCC PREFILED TESTIMONY

OF

IURC
PUBLIC'S
EXHIBIT NO. 1-17-19
DATE REPORTER

CARL N. SEALS - PUBLIC'S EXHIBIT NO. 1

ON BEHALF OF THE

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

MAY 25, 2018

OFFICIAL
EXHIBITS

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

Respectfully submitted,



Jesse James

Attorney No. 29971-33

Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Office of Utility Consumer Counselor's Prefiled Testimony of Carl N. Seal* has been served upon the following counsel of record in the captioned proceeding by electronic service on May 25, 2018.

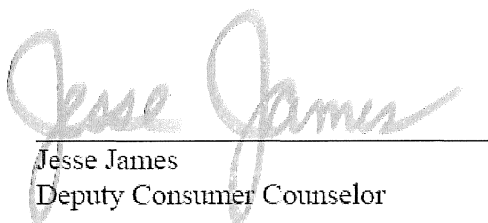
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TESTIMONY OF CARL N. SEALS
CAUSE NO. 45055
MUNCIE SANITARY DISTRICT

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Carl N. Seals, and my business address is 115 West Washington Street, Suite
3 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as a Utility
6 Analyst in the Water/Wastewater Division. My qualifications and experience are set forth
7 in Appendix A.

8 **Q: What is Muncie Sanitary District seeking in its filing?**

9 A: According to the Petition it filed initiating this proceeding, Muncie Sanitary District
10 (hereinafter "MSD" or "Petitioner") seeks authority "to assume jurisdiction over certain
11 unincorporated areas of Delaware County, Indiana, and for approval of Muncie City
12 Ordinance 2015-16 ("regulatory ordinance"), regulating the provision of sanitary and
13 sewer service to the fullest extent permitted by law,"¹ pursuant to Indiana Code § 8-1.5-6.

14 **Q: What is the purpose of your testimony?**

15 A: I discuss the information gleaned from Petitioner's filing and data requests,² and I explain
16 that based on the information contained therein, the OUCC has no concerns with
17 Petitioner's request to extend its territory.

18 **Q: What have you done to prepare your testimony?**

19 A: I reviewed MSD's Petition and Attachments, certain reports pertaining to the Indiana

¹ Petition in Cause No. 45055, page 1.

² No testimony was filed on behalf of Petitioner or Intervenors in this Cause.

1 Department of Environmental Management, researched online news articles regarding
2 MSD and issued data request questions to better understand Petitioner's current operations
3 and pending request. The OUCC's review did not include any pre-filed direct testimony
4 filed on behalf of Petitioner, as it was not filed before the filing date of OUCC and
5 intervenor testimony. For this matter, the OUCC's review and recommendation is based
6 on information provided through the discovery process and the documents filed with the
7 Petition initiating this Cause that are specific to the relief requested. The OUCC may
8 review and respond to any prefiled testimony Petitioner may file at a later date.

9 **Q: What is required of a Petitioner seeking approval of a regulatory ordinance pursuant**
10 **to Indiana Code § 8-1.5-6?**

11 **A:** According to Indiana Code § 8-1.5-6-9(c), the petition for this type of request must include
12 the following:

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

18 **Q: How has MSD satisfied the aforementioned requirements?**

19 **A:** Petitioner filed Exhibit 1 - Ordinance 16-2015, which is a graphical depiction of the service
20 territory established in the regulatory ordinance . Also, in response to OUCC Data Request
21 1.1 seeking a higher-quality map, Petitioner filed an electronic³ map of the proposed
22 service area, which appears as Attachment CNS-1. The electronic version of this map can
23 be "zoomed in" on, showing much greater detail than the map appearing in Exhibit 1.

24 The proposed rates and charges for services to be provided in the service territory

³ Portable document format (.pdf).

are discussed on page 4 of the Petition and were confirmed in MSD's response to OUCC Data Request 1.7.⁴ These rates are "those rates that are approved by the Board of Sanitary Commissioners for The MSD by the passage of rate resolutions" and "apply to all services for all customers of The MSD."⁵

With regard to listing any administrative or judicial proceedings involving the regulatory ordinance, MSD noted in its response to OUCC Data Request 1.11 that "[t]here are no other administrative or judicial proceedings involving Ordinance 16-2015 except for the IURC case 45055."

Finally, in its Petition, MSD listed Delaware County Regional Wastewater District ("DCRWD") and Liberty Regional Wastewater District ("LRWD") as utilities actually or potentially affected by the regulatory ordinance. In response to OUCC Data Request 1.3, MSD added the Town of Yorktown, which has entered into a stipulation agreement with MSD regarding the regulatory ordinance.⁶ According to MSD's response to OUCC Data Request 1.9, MSD currently has treatment agreements with LRWD and DCRWD to treat 100% of their sewage.

Q: What should the Commission consider when evaluating the proposed regulatory ordinance pursuant to Indiana Code §8-1.5-6?

A: According to Indiana Code §8-1.5-6-8(g), the Commission shall consider the following:

- (1) The ability of another utility to provide service in the regulated territory.
- (2) The effect of a commission order on customer rates and charges for service provided in the regulated territory.
- (3) The effect of the commission's order on present and future economic development in

⁴ OUCC Data Request 1 is included in its entirety as Attachment CNS-2 for reference.

⁵ Petition in Cause No. 45055, page 4.

⁶ See *Stipulation Between Muncie Sanitary District and the Town of Yorktown*, filed March 26, 2018, in this proceeding (Commission Cause No. 45055).

1 the regulated territory.

2 (4) The history of utility service in the regulated territory, including any contracts for utility
3 service entered into by the municipality that adopted the regulatory ordinance and any other
4 municipalities, municipal utilities, or utilities.

5 (5) Any other factors the commission considers necessary.

6 **Q: How has MSD supported these considerations?**

7 **A:** With regard to the ability of another utility to provide service in the regulated territory,

8 MSD stated in response to OUCC Data Request 1.6:

9 None of the effected utilities would be able to provide service to the effected areas
10 for the following reasons:

11 LRWD – LRWD does not have a sewage treatment plant. They have a contract with
12 MSD to receive and treat 100% of their sewage.

13
14 DCRWD – DCRWD does not have a sewage treatment plant. They have a contract
15 with MSD to receive and treat 100% of their sewage.

16 Yorktown – They do not have the means or the intent to take on any new customers
17 outside of their municipal boundaries.

18 Regarding the potential impact on customer rates and charges for service provided
19 in the regulated territory, and as I discussed earlier, Petitioner has stated that the rates
20 charged within the regulated territory will be the rates charged to its other customers.

21 As previously noted, MSD's history includes the provision of sewage treatment to
22 both DCRWD and LRWD. MSD's Petition further states that MSD was created by the
23 Common Council of Muncie in Muncie City Ordinance 50.01 in 1968, and currently serves
24 all customers within the corporate boundaries of the City of Muncie, Delaware County,
25 Indiana.

26 **II. RECOMMENDATION**

26 **Q: What the OUCC's recommendation?**

27 **A:** The OUCC recommends the Commission approve MSD's request for approval of its
28 regulatory ordinance.

1 **Q:** **Does this conclude your testimony?**

2 **A:** Yes.

III. APPENDIX A: QUALIFICATIONS

1 **Q: Please describe your educational background and experience.**

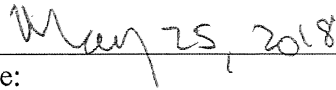
2 **A:** In 1981 I graduated from Purdue University, where I received a Bachelor of Science degree
3 in Industrial Management with a minor in Engineering. I was recruited by the Union Pacific
4 Railroad, where I served as mechanical and maintenance supervisor and industrial engineer
5 in both local and corporate settings. I then served as Industrial Engineer for a molded-
6 rubber parts manufacturer before joining the Indiana Utility Regulatory Commission
7 ("Commission") as Engineer, Supervisor and Analyst for more than ten years. It was during
8 my tenure at the Commission that I received my Master of Health Administration degree
9 from Indiana University. I then worked at Indiana-American Water Company in its rates
10 department. I was then assigned to managing Indiana-American's Shelbyville operations
11 for eight years. Thereafter, I was hired by Veolia Water, where I served as Director of
12 Regulatory Compliance and Contract Management for Veolia Water Indianapolis. I joined
13 Citizens Energy Group as Rate & Regulatory Analyst following the October 2011 transfer
14 of the Indianapolis water utility and joined the Office of Utility Consumer Counselor in
15 April of 2016.

AFFIRMATION

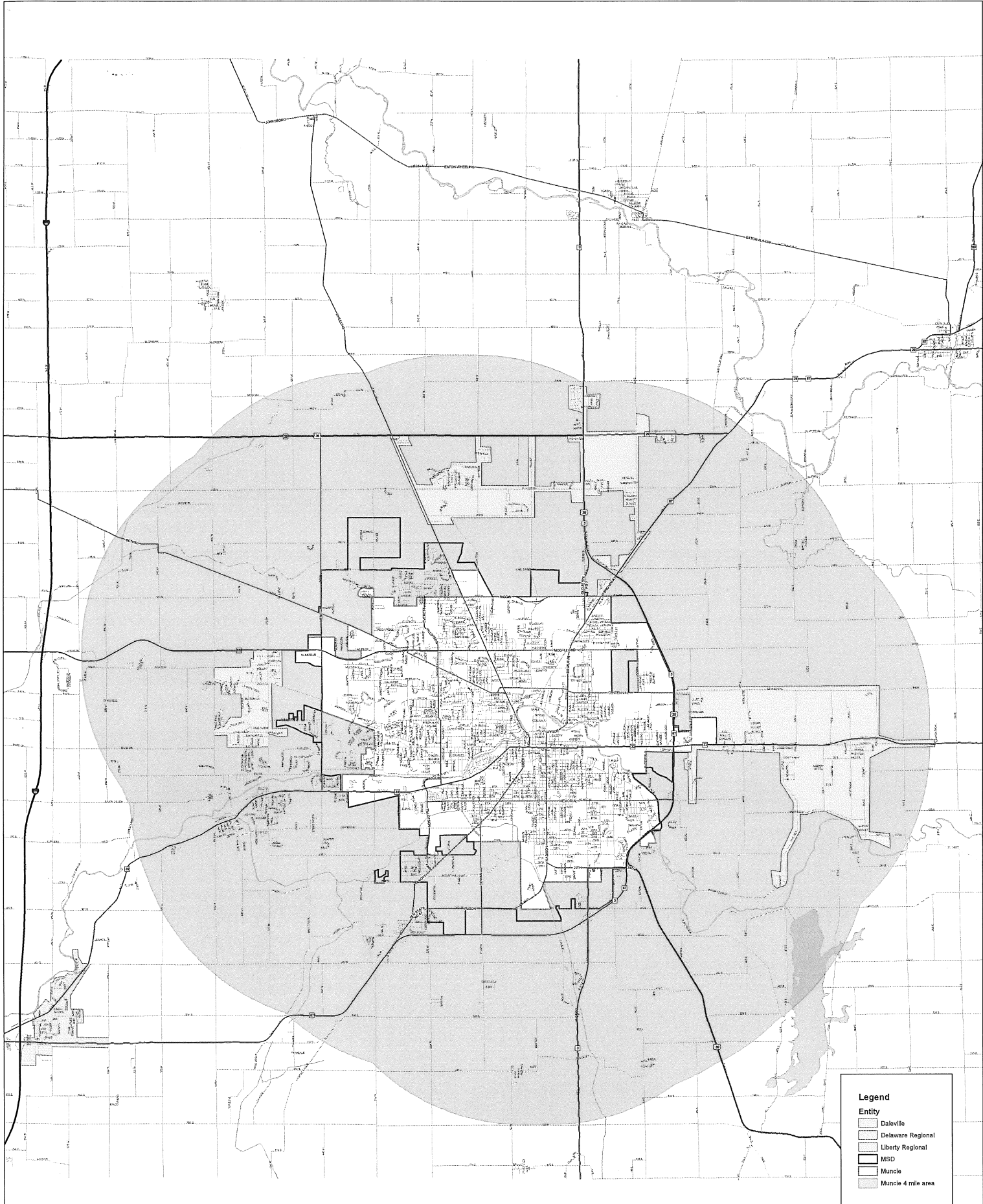
I affirm, under the penalties for perjury, that the foregoing representations are true.



By: Carl N. Seals
Cause No. 45055
Indiana Office of
Utility Consumer Counselor



Date:

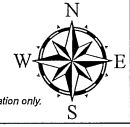


Legend

Entity

- Delaware
- Delaware Regional
- Liberty Regional
- MSD
- Muncie
- Muncie 4 mile area

Muncie/MSD and Regional WW Areas



INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

DATA REQUEST

CAUSE NO. 45055

MSD Data Request Response No. 1Date: April 16, 2018MUNCIE SANITARY DISTRICT'S RESPONSES TO THE INDIANA OFFICE OF
UTILITY CONSUMER COUNSELOR'S DATA REQUESTSI. Responses

- A1. Please see attached electronic file titled ("Map of Service Area") served contemporaneously herewith.
- A2. Please see attached Map labeled as Exhibit A.
- A3. To the knowledge of the MSD, all utilities that currently operate sanitary or storm water services in the four mile area:
- a. The Liberty Regional Waste District
 - b. The Delaware County Regional Wastewater District
 - c. The Town of Yorktown

The MSD's contention is that none of these utilities will be effected. Yorktown and the MSD have already entered a stipulation that the MSD is not seeking expansion, jurisdiction, or control into any area within the Town of Yorktown. Furthermore, the MSD's petition clearly states, "Ordinance 2015-16 does claim exclusive jurisdiction over customers within four miles outside of Muncie's corporate boundaries that were not within an existing district or currently already being served by another utility at the time of the Ordinance's passing", but, "Ordinance 2015-16 does not claim jurisdiction over new or existing customers" of LRWD, DCRWD, or the Town of Yorktown.

- A4. MSD's intention to seek Commission approval of Ordinance 16-2015 was stated in the Ordinance itself which was discussed at a public hearing. Attorneys for all interested utilities were aware of this intent.
- A5. The expansion into the unincorporated area has been limited to the specific following areas:
- a. Cowan
 - b. Burlington Area Neighborhood
 - c. Nancy Lane Neighborhood

Each of these extensions were at the request of the public in that area. Any time MSD was considering expansion into an unincorporated area, the matter was discussed at a public hearing and comments were welcomed. It is the Board's policy to first have petitions or requests from the effected property owners specifically requesting services before considering the expansion at a public hearing.

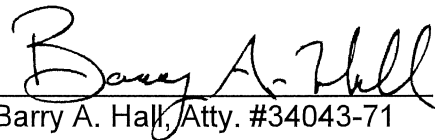
- A6. None of the effected utilities would be able to provide service to the effected areas for the following reasons:
- a. LRWD – LRWD does not have a sewage treatment plant. They have a contract with MSD to receive and treat 100% of their sewage.
 - b. DCRWD – DCRWD does not have a sewage treatment plant. They have a contract with MSD to receive and treat 100% of their sewage.
 - c. Yorktown – They do not have the means or the intent to take on any new customers outside of their municipal boundaries.
- A7. The rates for all customers would be the same as they currently exist. The rates are based on classification of the consumer and are defined in the resolutions passed by the Board of Sanitary Commissioners, the most recent Rate Resolutions are attached hereto. (Rate Resolution 2016-10, 2016-11, and 2017-01)
- A8. MSD's expansion will have a positive effect on future economic development in the unincorporated area covered by Ordinance 16-2015. The original cause of MSD's expansion into the unincorporated area was due to neighborhoods, schools, and homeowners who had failing septic systems, failing treatment plants, and failing sewers that could no longer support the increase in population in that area. The current sanitation situation in those area is not sustainable. In order for growth into those areas of investment, capital, and industry, there needs to be consistent and effect sewage treatment. Connection to the MSD sewer will help increase home values and stabilize the housing market making the area more attractive for development and relocation of workforce which will coincide with the outward growth of the City.
- A9. MSD currently has treatment agreements with Liberty Regional Waste District and Delaware County Regional Wastewater District to treat 100% of their sewage.
- A10. The passing of ordinance 16-2015 was a preemptive measure, at that point MSD had not sought expansion on a general basis, but was extending service reactively to areas that specifically requested it such as Cowan School System and Burlington area neighborhoods. MSD was originally handling these limited extension of service through sewage treatment contracts. However, over the past year, the number of requests has increased and it has become apparent that there are many neighborhoods in the unincorporated area that require assistance. MSD is not seeking to extend service strictly to enlarge its own district, but rather to help

solve problems or crisis areas as they arise. It has become apparent the public interest will be best served if MSD has the authority to extend to wherever needed within the four mile unincorporated area as previously contemplated.

- A11. There are no other administrative or judicial proceedings involving Ordinance 16-2015 except for the IURC case 45055.

Respectfully Submitted,

McKINNEY & MALAPIT LAW

A handwritten signature in cursive script, reading "Barry A. Hall". The signature is written in black ink and is positioned above the printed name and address.

Barry A. Hall, Atty. #34043-71
114 E Washington St.
Muncie, IN 47305
Counsel for Petitioner MSD