

OFFICIAL  
EXHIBITS

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 )

IURC  
INTERVENOR'S - Delaware  
EXHIBIT NO. CK-2  
DATE 1-17-19 REPORTER AT

CAUSE NO. 45055

MUNCIE SANITARY DISTRICT'S RESPONSES TO DELAWARE COUNTY'S  
SECOND SET OF DATA REQUESTS

General Objections

A. Each discovery response is subject to these general objections, all of which are expressly reserved and not waived, regardless of whether it is stated in each individual response.

B. The Muncie Sanitary District (hereinafter the "Petitioner" or "MSD") objects to each request to the extent that it seeks information not relevant to the subject matter of this action, information not reasonably calculated to lead to the discovery of admissible evidence, confidential information, the legal research, theories, opinions or conclusions of Petitioner, their counsel or other materials prepared in anticipation of litigation or for trial, or information otherwise outside the scope and limits of discovery pursuant to the Indiana Trial Rules.

C. Petitioner generally objects to the discovery requests to the extent they require disclosure of information that is not reasonably calculated to lead to the discovery of admissible evidence and which is not relevant to the parties' claims and defenses in this litigation. Petitioner's response to any Request is not intended and should not be construed as an acknowledgment by the Petitioner that the requested information is relevant or likely to lead to the discovery of matters relevant to the subject matter involved in the pending action.

D. Petitioner's response to any document request is not intended, and should not be construed, as an acknowledgment of the existence of the requested document(s) or category of documents.

E. Petitioner's response to DCRWD's discovery requests were prepared with the assistance and advice of counsel. The responses, subject to inadvertent or undiscovered errors, are based on and therefore limited by the records and information still in existence, presently recollected, and thus far discovered in the course of preparation of these responses. Consequently, Petitioner reserve the right to make changes to their

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responses, if it appears at any time that omissions or errors have been made therein or that more accurate information is available.

F. Petitioner bases its response to the DCRWD's discovery requests on the assumption that they do not intend to seek information protected from discovery by the attorney-client privilege, the work product doctrine, or other applicable privileges or immunities from discovery. To the extent that the DCRWD's discovery requests call for such information, Petitioner objects to them and claims the privileges and protections specified above to the fullest extent provided by law.

G. Petitioner objects to the Requests to the extent they request information which is unduly burdensome. Petitioner continues to compile this information as possible, and, according to information and business records presently available to his, these responses are complete and correct. Petitioner reserves the right to object to future discovery on the same or related matters and does not waive any objections by providing the information set forth in these responses. Petitioner further reserves the right to object to the admissibility of any of these responses or related matters in full or in part at trial or other hearing in this action, on any grounds, including but not limited to materiality and relevance.

H. Petitioner incorporates these objections into each of the responses set forth herein. Each response is made subject to and without waiving these objections.

Petitioner reserves the right to update its responses as more information becomes available.

### **Data Requests**

- 2.1 Referencing page 3 of Mr. Cline's Rebuttal Testimony, please provide citations to and copies of all resolutions, ordinances, or other documents showing that MSD currently treats and charges its retail customers outside the city the same as retail customers inside the city.
- 2.1 **RESPONSE: Please see Petitioner's Exhibits B, F, G, and H to MSD's Petition for Approval, as well as the attached contract between MSD and the Cowan Community Schools.**
- 2.2 Referencing page 3 of Mr. Cline's Rebuttal Testimony, please provide all resolutions, ordinances, or other documents showing that MSD is committed to, in the future, treat and charge its retail customers outside the city the same as retail customers inside the city.
- 2.2 **RESPONSE: Please see the Verified Direct Testimony of Mike Cline, the Verified Rebuttal Testimony of Mike Cline, as well as the Response to Data Request 2.1.**

- 2.3 Admit or deny that MSD may adopt a resolution or ordinance creating a schedule of rates and charges for retail customers outside of the city that differ from the rates and charges for retail customers inside of the city.
- 2.3 **RESPONSE: OBJECTION: This Data Request calls for speculation and for legal conclusions to be made about what a Board of Sanitary Commissioners may or may not do pursuant to Indiana law. The witness can neither admit nor deny this, as he cannot speak for what a Board of Sanitary Commissioners may or may not choose to do, and he cannot give legal opinions as to what they may or may not be permitted to do pursuant to Indiana law. Without waiving any objection, and in the spirit of cooperation, it is MSD's intent to amend Ordinance 2016-15 to include that rates will be the same for customers inside the city and outside the city.**
- 2.4 Do MSD's retail customers outside of the city currently pay the same rates as its retail customers inside the city? If no, please provide the schedules of rates and charges for retail customers outside the city and inside the city.
- 2.4 **RESPONSE: Yes, all customers of MSD are subject to the same rate resolutions that are enacted by the Board of Sanitary Commissioners.**
- 2.5 Referencing page 5 of Mr. Cline's Rebuttal Testimony, please provide all cost of service studies performed by or on behalf of MSD supporting or related to all resolutions and/or ordinances creating its current schedules of rates and charges for sewer customers.
- 2.5 **RESPONSE: There are none.**
- 2.6 How many cost of service studies have been performed by or on behalf of MSD in the past 10 years?
- 2.6 **RESPONSE: There was a draft cost of service study done, that was never completed, in or around 2014. Please see MSD's response to DCRWD's data request 1.1.**
- 2.7 Referencing page 6 of Mr. Cline's Rebuttal Testimony, please provide support for Mr. Cline's statement that MSD is authorized to provide service within 10 miles of Muncie's corporate boundaries.
- 2.7 **RESPONSE: OBJECTION: This Request calls for a legal conclusion that the witness cannot make pursuant to the rules of evidence. Without waiving said objection, and in the spirit of cooperation, it is the witness's understanding that Indiana law permits MSD to serve in that area.**

- 2.8 Referencing page 8 of Mr. Cline's Rebuttal Testimony, admit or deny that current and potential customers living in the 4-mile area do not vote for the Mayor of Muncie.
- 2.8 **RESPONSE: OBJECTION: This Request calls for a legal conclusion that the witness cannot make pursuant to the rules of evidence. Without waiving said objection, it is the witness's understanding that that statement is true.**
- 2.9 Admit or deny that the Mayor of Muncie has the sole authority to appoint Commissioners to the MSD Board?
- 2.9 **RESPONSE: OBJECTION: This Request calls for a legal conclusion that the witness cannot make pursuant to the rules of evidence. Without waiving said objection, it is the witness's understanding that that statement is true.**
- 2.10 Admit or deny that once appointed, a Commissioner of the MSD Board may only be removed by the Mayor of Muncie for neglect of duty or incompetence.
- 2.10 **RESPONSE: OBJECTION: This Request calls for a legal conclusion that the witness cannot make pursuant to the rules of evidence. Without waiving said objection, it is the witness's understanding that that statement is true.**
- 2.11 Referencing page 8 of Mr. Cline's Rebuttal Testimony, please provide the dates and meeting minutes for every MSD Board meeting at which an MSD customer living outside of Muncie's boundaries has made an oral, or submitted a written, public comment to the MSD Board.
- 2.11 **RESPONSE: There have been Board Meetings where potential customers who lived outside the City of Muncie came to MSD Board Meetings asking to become customers and requesting service, however, at the time of their appearance at the Board Meeting, they were not current MSD customers. Please see the attached Board Meeting minutes as MSD's response to data request to 2.11.**
- 2.12 Please provide the dates, meeting minutes, and any related resolutions and ordinances for every MSD Board meeting where the MSD Board has taken an action or modified a planned course of action based on the comments of an MSD customer living outside of Muncie's boundaries.
- 2.12 **RESPONSE: As stated above, MSD has not had an existing customer that lived outside the City come to a Board Meeting to make requests. However, there have been potential customers who live outside the city that requested service before they were MSD customers. Based on the requests of those potential customers,**

**MSD extended service to some of those potential customers. See MSD's response to data request 2.11.**

2.13 Referencing pages 14-15 of Mr. Cline's Rebuttal Testimony, please provide copies of all documents, communications, and any other support for Mr. Cline's response to Questions 25, including but not limited to the following statements:

a. In 2015 DCRWD made a formal application to the Indiana Finance Authority to receive State Revolving Loan Funds (SRF) to extend sewers to Cowan and the School.

**RESPONSE: The witness has reviewed the Project Priority List where DCRWD was on the priority list. That list is attached hereto. In my professional experience, I am familiar with the large amount of time, effort, and cost necessary to get on this list, and I find it surprising that DCRWD decided not to go forward with this project.**

b. This application was accepted and then DCRWD decided not to complete the new sewer project.

**RESPONSE: It is the witness's understanding that to get on the priority list, an application to the SRF would need to be completed and accepted, along with other preliminary documents. It is the witness's understanding that the project was never completed, because Cowan approached MSD for service.**

c. The Cowan School Superintendent approached MSD stating...that DCRWD was apparently not going to follow through with their plans to sewer Cowan and the School.

**RESPONSE: The superintendent came to a MSD Board Meeting and sat through the meeting, the superintendent then approached the Board after the meeting to have a discussion. At the time of that discussion, DCRWD was not providing service to Cowan and Cowan was in need of service.**

d. So, the DCRWD chose not to serve the School or the area residents of Cowan who wish to be served.

**RESPONSE: The witness would refer DCRWD to the Project Priority List where DCRWD was on the priority list. However, after fulfilling an application and having SRF priority, DCRWD did not pursue or finalize the financing, and no project was ever undertaken, to the best of the witness's knowledge.**

e. So, it is DCRWD's position that they can elect not to serve an area that obviously needs someone to provide sewer service to them and then also halt

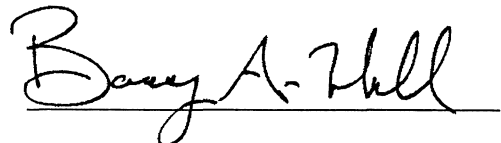
any attempt by MSD to provide that service within the extraterritorial jurisdiction of MSD.

**RESPONSE:** Based on DCRWD Data Request Response 3.1(c), “DCRWD notes that it is charged by IDEM to collect and treat all sewage in its territory. DCRWD is willing and capable of fulfilling this charge”. It is the witness’s understanding from the testimony given in this case on behalf of DCRWD, that it is DCRWD’s position that all of Delaware County is their service area. It is the witness’s understanding that Cowan Community Schools is wholly within Delaware County, and the witness understands that that Cowan Community Schools sought service from DCRWD, but that service was never provided. Since DCRWD is “willing and capable” to provide service anywhere it Delaware County, it is the witness’s understanding it must have elected not to provide service to Cowan Community Schools. It is also a matter of public record that DCRWD has filed for an injunction asking the Court to enjoin MSD as follows, “form digging, excavating, laying and/or burying pipe or in anyway expanding or preparing to expand its services to or near customers of {DCRWD}, and from approaching/soliciting {DCRWD’s} customers to join or use {MSD’s} services”.

- 2.14 Referencing pages 21-22 of Mr. Cline’s Rebuttal Testimony, please provide copies of all documents and communications referenced by Mr. Cline between IDEM and MSD regarding DCRWD’s plan to build a new wastewater treatment facility.
- 2.14 **RESPONSE:** There are no written record of those conversations, as they occurred primarily telephonically, however a summary of those conversations is represented in the Verified Rebuttal Testimony of Mike Cline. The conversations took place with Mr. Higgenbottom from IDEM.

Respectfully Submitted,

McKINNEY & MALAPIT LAW

A handwritten signature in black ink, reading "Barry A. Hall". The signature is written in a cursive style and is positioned above a horizontal line.

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