

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF THE PETITION OF THE CITY)
OF GREENFIELD, INDIANA FOR APPROVAL OF) CAUSE NO. 44799
REGULATORY ORDINANCES ESTABLISHING)
SERVICE TERRITORIES FOR THE CITY'S)
MUNICIPAL WASTEWATER AND WATER SYSTEMS) APPROVED:
PURSUANT TO IND. CODE § 8-1.5-6 ET SEQ.) FEB 22 2017

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Commissioner

Aaron A. Schmoll, Senior Administrative Law Judge

On June 23, 2016, the City of Greenfield, Indiana ("Greenfield") filed its Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission"). On July 11, 2016, Greenfield filed the Direct Testimony and Exhibits of Michael L. Fruth, P.E., P.S.

On August 11, 2016, the Hancock Rural Telephone Corporation d/b/a NineStar Connect ("NineStar") filed its Petition to Intervene. On August 31, 2016, the Citizens Energy Group d/b/a Citizens Water ("Citizens Water") filed its Petition to Intervene, as well as the direct testimony of its Vice President of Water Operations, Jeffrey A. Willman. On the same day, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the Testimony of James T. Parks, Utility Analyst in the OUCC's Water and Wastewater Division. On September 15, 2016, Greenfield filed the Verified Rebuttal Testimony of David Scheiter.

The Commission held an evidentiary hearing in this Cause at 10:00 a.m. on October 19, 2016, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Greenfield, the OUCC, Citizens, and NineStar appeared at and participated in the evidentiary hearing. No members of the general public attempted to participate in the hearing.

Based on the applicable law and the evidence presented, the Commission now finds:

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. Greenfield owns a water and a wastewater utility as that term is defined in Ind. Code § 8-1.5-6-1(3). Subject to Ind. Code § 8-1.5-6-9, the Commission has jurisdiction to approve, rescind, and modify a regulatory ordinance adopted by a municipality after December 31, 2012. Therefore, the Commission has jurisdiction over Greenfield and the subject matter of this proceeding.

2. Greenfield's Characteristics. Greenfield is a municipality located in Hancock County, Indiana. Greenfield owns and operates a municipal water and wastewater utility that

provides water and wastewater service to customers in and outside its corporate boundaries as depicted in Exhibit 7 of the Direct Testimony of Michael Fruth.

3. Relief Requested. Greenfield requested approval of Greenfield Ordinance Nos. 2016-4 and 2016-5 which assert Greenfield’s jurisdiction to provide water and wastewater service to certain areas that are within four miles of Greenfield’s corporate boundaries as described and depicted in the Exhibits C to the regulatory ordinances (Greenfield Ordinance Nos. 2016-4 and 2016-5) presented for approval.

4. Summary of Evidence.

A. Greenfield’s Direct Evidence. Witness Fruth, the Director of Utilities for Greenfield, generally described: (i) Greenfield’s existing water and wastewater facilities; (ii) the Ordinances at issue in this Cause; (iii) the ability of other providers to serve in Greenfield’s proposed service territory; (iv) the rates and charges for service in the proposed service territory; (v) the history of service in the area; and (vi) other factors supporting approval of the Ordinances.

Mr. Fruth specifically described Ordinance No. 2016-4 entitled “An Ordinance Establishing the City of Greenfield’s Water Service Area and Regulating the Furnishing of Water Therein” (“Water Regulatory Ordinance”), as well as Ordinance No. 2016-5 entitled “An Ordinance Establishing the City of Greenfield’s Wastewater Service Area and Regulating the Furnishing of Wastewater Therein” (“Wastewater Regulatory Ordinance”). According to Mr. Fruth, the Water and Wastewater Regulatory Ordinances establish Greenfield’s water and wastewater service areas that include all the property within Greenfield’s corporate boundaries and certain areas within four miles outside its municipal boundaries as identified on the Exhibit C attached to both Ordinances. Mr. Fruth explained that both Ordinances provide that upon approval by the Commission, Greenfield will hold an exclusive license to furnish water and wastewater service within the proposed service areas.

Mr. Fruth also described the agreement between NineStar, Greenfield, and the Hancock County Regional District (“the District”) in which all parties agreed that Greenfield should provide sewer and water service to the areas identified in the Water and Wastewater Regulatory Ordinances. In light of the Agreement and the fact that Greenfield is the only entity with facilities in the area, Mr. Fruth stated his belief that Greenfield was in the best position to provide water and sewer service to the proposed service areas and that such service would promote economic development. Mr. Fruth also presented testimony and exhibits regarding the terms and conditions for water and sewer service, including the rates and charges that would be imposed on users within the regulated territory.

In conclusion, Mr. Fruth testified that having an exclusive water and sewer service area would allow Greenfield to plan for expansion of its utility service without concerns about annexation, and would give Greenfield a planning area that enabled it to plan for the best means of extending service in the short and long term. Mr. Fruth also testified that the proposed water and sewer service areas were coterminous with the City’s comprehensive plan of anticipated development over the next 20 years, which Mr. Fruth believed would allow Greenfield to better

plan for the most efficient, cost-effective means of serving the anticipated development and be able to coordinate and ensure that service is available when the development occurs.

B. OUCC's Direct Evidence. Witness Parks testified that the OUCC does not contest the Commission's approval of the Water and Wastewater Regulatory Ordinances. He said Greenfield has existing water and wastewater facilities and the managerial and technical capabilities needed to extend water and wastewater service to areas beyond its corporate limits.

Mr. Parks briefly described Greenfield's existing water infrastructure and noted that its water treatment plants have a combined capacity of seven million gallons per day ("MGD") with the capability to expand to 11 MGD. Mr. Parks cited to Greenfield's 2015 Consumer Confidence Report which indicated that Greenfield's 2015 water production averaged only three MGD. Mr. Parks concluded that Greenfield has ample capacity to serve additional customers.

Mr. Parks next described Greenfield's wastewater infrastructure. In reliance on Greenfield's National Pollutant Discharge Elimination System ("NPDES") Permit, Mr. Parks testified that Greenfield currently operates a Class III, four MGD activated sludge wastewater treatment plant ("WWTP"). Mr. Parks then described how wet weather flows in excess of seven MGD are diverted to Greenfield's high rate settling system, consisting of two trains, each with a design rating of six MGD for wet weather application. Mr. Parks noted that Greenfield's effluent mass limits are based on a peak flow of ten MGD, and the settled effluent is recombined with effluent from the biological portion of the treatment plant and disinfected in Greenfield's UV disinfection system. Based on his review of Greenfield's Discharge Monitoring Reports ("DMR") submitted to the Indiana Department of Environmental Management, Mr. Park stated that Greenfield treated annual average flows of 3.72 MGD and 3.99 MGD in 2014 and 2015, respectively. According to Mr. Parks, the 3.99 MGD flow in 2015 nearly equals the WWTP's 4.0 MGD design average flow. Mr. Parks concluded that Greenfield does not currently have excess capacity at its WWTP to serve additional wastewater customers.

Mr. Parks stated that Greenfield complies with its NPDES permit effluent limits and last experienced a sanitary sewer overflow on December 21 and 22, 2013, after receiving over five inches of rainfall. Mr. Parks stated that Greenfield's wastewater system is not under any enforcement action or agreed orders, but that Greenfield would likely need to begin the planning process for expansion of its wastewater facilities. He noted Greenfield's existing WWTP has a design year of 2020 and is sized for a design population equivalent of 18,900. Greenfield's estimated 2015 population of 21,497 already exceeds the 2020 design year population by 14%.

Mr. Parks testified that Greenfield currently has water distribution mains and sanitary sewers outside of its corporate limits, and it has extensive water mains and sewers in and around its corporate boundaries that could be extended to serve the service area requested in this case. Mr. Parks said that Greenfield is not currently capable of providing water and wastewater services to the entire proposed regulated territory as it will need to first expand the WWTP and construct new water mains and trunk line sewers to serve the area outside of its corporate boundaries. Mr. Parks noted that the Wastewater Regulatory Ordinance allows customers to install onsite wastewater disposal systems where Greenfield does not have facilities available, but the Water Regulatory Ordinance is silent on whether a customer can install a private well. Mr.

Parks recommended that Greenfield revise Section 4 of the Water Regulatory Ordinance to state that it does not prevent the use of onsite private water systems where Greenfield does not have facilities available. Mr. Park also recommended that the penalty provision be removed on grounds the Commission lacks the ability to impose a civil penalty. Mr. Parks added that the demand for water and wastewater services in the regulatory territory appears to be unknown.

Mr. Parks testified that another factor that should be considered is whether granting exclusivity to such a large area will deter other utilities from extending service to customers that Petitioner is not yet able to serve. He acknowledged it seems unlikely that other utilities will be poised to serve in the regulated territory before Greenfield. But he added that if that should ever be the case, a consumer should not be required to wait for Greenfield to extend service while another provider has the present ability to provide that service at a reasonable cost of connecting. In that event, he suggested the extent of the exclusive Regulated Territory should be revisited.

C. Citizens Direct Evidence. Mr. Jeffrey A. Willman testified on behalf of Intervenor, Citizens Water. Like OUCC witness Parks, Mr. Willman recommended approval of the Water Regulatory Ordinance. He did, however, state that the Commission should not grant an exclusive water service territory to the Intervenor, NineStar. Mr. Willman did not express an opinion regarding the Wastewater Regulatory Ordinance.

Mr. Willman explained that Citizens Water owns and operates water utility assets in western Hancock County which it, in turn, uses to provide water service to approximately 5,100 customers. Witness Willman explained that Citizens has authority to provide service in Hancock County pursuant to the Commission's Orders in Cause Nos. 43936 and 38794. Mr. Willman stated that Citizens relied on these Orders when investing approximately \$4.5 million to extend service to customers in western Hancock County. Witness Willman testified that Citizens has the financial, managerial, and technical ability to further extend service in and around its existing facilities in Hancock County.

Mr. Willman did not object to the approval of the Water Regulatory Ordinance with respect to Greenfield's water service territory, but did raise a concern related to the area identified on Exhibit C to the Water Regulatory Ordinance as the NineStar Connect Territory. Mr. Willman stated that Citizens does not oppose the provision of service by Ninestar to customers in that area, but would have concerns if the Commission were to find in this proceeding that NineStar should be the exclusive provider of water service in the area designated as the NineStar Connect Territory. Mr. Willman testified that such a finding would be inconsistent with the prior Commission decisions authorizing Citizens Water to provide service in this same area on a non-exclusive basis. Mr. Willman also said such a finding could potentially limit economic development and growth in western Hancock County.

D. Greenfield's Rebuttal Evidence. Mr. David Scheiter, Greenfield's Wastewater Superintendent for the past 25 years, addressed OUCC witness Parks' testimony regarding the current capacity of Greenfield's WWTP. Mr. Scheiter testified that contrary to Mr. Parks' testimony, Greenfield currently has excess capacity and does not need to expand its existing WWTP in order to serve new customers in the regulated service territory. Mr. Scheiter explained that Greenfield's existing WWTP is designed to treat four MGD with a separate,

stand-alone, wet weather Actiflo system that can handle 12 MGD of storm water. At present, Mr. Scheiter said Greenfield's dry weather flows average approximately three MGD. Mr. Scheiter explained that due to the relatively low level of Greenfield's dry weather flows, Greenfield has taken one primary and a final clarifier offline to ensure the effective and efficient operation of the WWTP. If at any point in the future Greenfield needs more capacity, it can simply bring these clarifiers back online, which will expand the capacity of the plant.

Witness Scheiter testified that during wet weather events the stormwater and sanitary sewer flows are diverted to Greenfield's Actiflo system which is a chemical and physical treatment facility in which Greenfield adds alum, a polymer, and microsand. According to Witness Scheiter, the sewage adheres to the sand, settles out, and is then treated at the WWTP. Mr. Scheiter next explained that the liquid or effluent from this process is blended with the fully treated biological plant effluent prior to UV disinfection and then discharged within the parameters of Greenfield's NPDES permit. Mr. Scheiter agreed that Greenfield's average annual flow of 3.999 MGD in 2015 nearly equals the WWTP's 4.0 MGD design; however, he noted that this amount included the wet weather flows that are treated by the Actiflo system. Mr. Scheiter confirmed that Greenfield's existing wastewater treatment facilities are more than adequate to handle today's dry and wet weather flows, as well as any flows for the foreseeable future from the regulated territory.

5. Commission Discussion and Findings. Greenfield seeks approval of its Water and Wastewater Regulatory Ordinances. Under Ind. Code § 8-1.5-6-9, a municipality may not enforce a regulatory ordinance until the Commission issues an order approving the ordinance.

A. Sufficiency of the Petition. 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) the 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.
- (See Ind. Code § 8-1.5-6-9(b)).

Greenfield's Petition states that the proposed water and sewer service territory includes all the area within Greenfield's municipal boundaries, as well as certain areas within four miles outside Greenfield's boundaries as described and depicted in Exhibit C to Greenfield Ordinance Nos. 2016-4 and 2016-5. Greenfield included with its Petition copies of the Water and Wastewater Regulatory Ordinances and Exhibits C thereto that specifically delineate the regulated territory as the City of Greenfield Corporate Boundary Water Service Territory and the City of Greenfield Corporate Boundary Wastewater Service Territory (collectively, the "Greenfield Territory"). The Petition also included a schedule of the proposed rates and charges for water and sewer service within the Greenfield Territory, and indicated that Greenfield was not aware of any pending administrative or judicial proceedings involving the water or wastewater regulatory ordinances. Finally, Greenfield provided a list of utilities that are potentially impacted

by either ordinance. Based on our review of the Petition, Greenfield complied with the requirements of Ind. Code § 8-1.5-6-9(b).

B. Public Interest Factors. Under Ind. Code § 8-1.5-6-9(c), prior to approving the Regulatory Ordinance, the Commission 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 order on present and future economic development in the regulated territory;
- (4) the history of utility service in the regulated territory; and
- (5) any other factors the Commission considers necessary.

The evidence suggests that Greenfield is the only utility with the ability to provide service in the Greenfield Territory. Greenfield has adequate capacity to service customers today and the ability to expand its capacity as the need arises. Further, Greenfield is the only entity with facilities in and around the Greenfield Territory and Greenfield, NineStar, and the District have previously agreed in writing that Greenfield should serve the area. There is no other history of any other entity providing service in this area.

Greenfield currently has water and sewer rates in place that will apply to new customers in the Greenfield Territory. By providing potential customers some certainty on the provision of water and wastewater service, the Water and Wastewater Regulatory Ordinances will advance economic development in and around the area.

Finally, the governing statute allows us discretion to consider additional factors. The testimony of record indicated that the exclusive service area would allow Greenfield to plan for expansion of its utility service without concerns about annexation, and would give Greenfield a planning area that enabled it to plan for the best means of extending service over the short and long term.¹ Notably, the Greenfield Territory is coterminous with the City's comprehensive plan which should allow Greenfield to plan for the most efficient, cost effective means of serving the anticipated development within the time needed. Finally, to the extent OUCC witness Parks raised issues concerning a private citizens' self-provision of water and wastewater needs, we interpret the Ordinances, particularly the penalty provision, as applying to potential service by other utilities, not private individuals on their own properties.

Based on the evidence of record, we conclude that each of the factors has been satisfactorily addressed in this case, and we, accordingly, find that the Water and Wastewater Regulatory Ordinances Nos. 2016-4 and 2016-5 shall be approved.

¹ Although Greenfield identified certain territory on its map as Ninestar Connect Territory, this Order does not create any exclusive rights for other utilities outside the Greenfield Territory.

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

1. Greenfield's request for approval of the Water and Wastewater Regulatory Ordinances, Ordinance Nos. 2016-4 and 2016-5, are approved.

2. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days from the date of the Order into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

IURC Charges:	\$ 788.45
OUCG Charges:	\$ 1,316.22
Legal Advertising Charges:	\$ 59.33
Total:	\$ 2,164.00

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

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

APPROVED: FEB 22 2017

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



Mary M. Becerra
Secretary of the Commission