

December 05, 2017

INDIANA UTILITY

REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF WESTEN HANCOCK UTILITIES, )  
LLC, d/b/a AQUA INDIANA, INC., FOR ISSUANCE )  
PURSUANT TO IND. CODE § 8-1-2-89 OF A )  
CERTIFICATE OF TERRITORIAL AUTHORITY )  
PERMITTING IT TO PROVIDE WASTEWATER ) CAUSE NO. 44954  
UTILITY SERVICE WITHIN PORTIONS OF )  
BUCK CREEK AND VERNON TOWNSHIPS OF )  
HANCOCK COUNTY, INDIANA AND FOR THE )  
COMMISSION'S CONSENT PURSUANT TO IND. )  
CODE § 36-2-2-23 TO WESTERN HANCOCK'S )  
USE OF PROPERTY OWNED BY HANCOCK )  
COUNTY, INDIANA. )

**PETITIONER'S SUBMISSION OF PROPOSED ORDER**

Western Hancock Utilities, LLC, d/b/a Aqua Indiana, Inc. respectfully submits for the  
Commission's consideration and use the attached Proposed Order.

Respectfully submitted,

/s/ Mark R. Alson

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*Counsel for Petitioner*

*Western Hancock Utilities, LLC*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing has been served upon the following counsel of record by electronic mail this 5th day of December, 2017:

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**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

<b>PETITION OF WESTERN HANCOCK UTILITIES, ) LLC, d/b/a AQUA INDIANA, INC., FOR ISSUANCE ) PURSUANT TO IND. CODE § 8-1-2-89 OF A ) CERTIFICATE OF TERRITORIAL AUTHORITY ) PERMITTING IT TO PROVIDE WASTEWATER ) UTILITY SERVICE WITHIN PORTIONS OF ) BUCK CREEK AND VERNON TOWNSHIPS OF ) HANCOCK COUNTY, INDIANA AND FOR THE ) COMMISSION'S CONSENT PURSUANT TO IND. ) CODE § 36-2-2-23 TO WESTERN HANCOCK'S ) USE OF PROPERTY OWNED BY HANCOCK ) COUNTY, INDIANA. )</b>	<b>CAUSE NO. 44954  APPROVED:</b>
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**ORDER OF THE COMMISSION**

**Presiding Officers:**

**Sarah E. Freeman, Commissioner**

**Marya E. Jones, Administrative Law Judge**

On June 5, 2017, Western Hancock Utilities, LLC, d/b/a Aqua Indiana, Inc. ("Petitioner" or "Western Hancock") filed its Verified Petition requesting the Commission to (i) issue Western Hancock a certificate of territorial authority ("CTA") permitting the provision of wastewater utility service within portions of Buck Creek and Vernon Townships of Hancock County, Indiana; and (ii) consent to Hancock County, Indiana granting Western Hancock licenses, permits or franchises for the use of county-owned property to provide services to customers in the proposed CTA expansion area.

On July 6, 2017, Hancock Rural Telephone Corporation d/b/a NineStar Connect ("NineStar") filed a Petition to Intervene, which the Commission granted by Docket Entry on July 24, 2017.

The Commission held a public evidentiary hearing in this Cause on October 17, 2017, at 9:30 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the respective cases-in-chief of Western Hancock and the Indiana Office of Utility Consumer Counselor ("OUCC") were admitted into evidence without objection. No members of the general public appeared or participated in the evidentiary hearing.

On November 1, 2017, Western Hancock filed a Verified Motion to Reopen Record to Correct Scrivener's Error. The Commission held a public evidentiary hearing in this Cause on December 5, 2017, at 10:30 a.m., in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the Verified Motion to Reopen Record to Correct Scrivener's Error was granted, and the Verified Supplemental Direct Testimony of Thomas M. Brunns was admitted into evidence without objection. No members of the general public appeared or participated in the evidentiary hearing.

The Commission, based upon the applicable law and evidence herein, now finds as follows:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the scheduled public hearing was caused to be published by the Commission. Western Hancock is a “public utility” within the meaning of the Public Service Commission Act, as amended, for purposes of this CTA expansion request. However, since Western Hancock previously withdrew from IURC regulation, it is no longer subject to the jurisdiction of the Commission in the manner and to the extent provided for most “public utilities” under Indiana law. However, the Commission has jurisdiction over Western Hancock, but only as to the limited subject matter of this proceeding.

2. **Relief Requested.** Western Hancock requests the Commission to issue to it pursuant to Ind. Code § 8-1-2-89 a CTA to provide wastewater utility service within portions of Buck Creek and Vernon Townships of Hancock County, Indiana that are contiguous to areas within which it is currently authorized to provide wastewater utility service (the “Proposed CTA Areas”). Western Hancock also requests that the Commission consent to Hancock County granting Western Hancock licenses, permits or franchises for the use of county-owned property, pursuant to Ind. Code § 36-2-2-23. As shown by Attachment C to Petitioner’s Exhibit 1, Western Hancock has been authorized by the Board of Directors of Western Hancock’s sole member to seek the relief requested in this Cause and, if granted, to serve the CTA Areas.

3. **Petitioner’s Characteristics.** Western Hancock is an Indiana limited liability company duly organized and existing under the laws of the State of Indiana. Western Hancock presently provides wastewater utility services to approximately 812 residential and 72 commercial customers in Hancock County, Indiana. Western Hancock provides such service pursuant to a CTA originally issued to Buck Creek Utilities, Inc. (“Buck Creek”) by the Commission’s September 1, 1993 Order in Cause No. 39681. Western Hancock acquired Buck Creek’s utility assets pursuant to authority granted by the Commission’s August 9, 1995 Order in Cause No. 40147, which Order also recognized Western Hancock as Buck Creek’s successor with full power and authority to provide wastewater utility service pursuant to the CTA originally granted to Buck Creek in Cause No. 39681. The Commission’s August 21, 1996 Order in Cause No. 40376 granted Western Hancock an additional CTA to extend its service into a portion of Hancock County contiguous to the area for which it already held a CTA to serve.

Western Hancock’s system in Hancock County currently includes approximately 24.1 miles of gravity sewers and force mains, as well as four lift stations. Western Hancock also operates a Class II, 0.51 MGD facility, with an effective NPDES permit.

Western Hancock is one of Aqua America, Inc.’s (“Aqua America”) affiliates to which Aqua Indiana, Inc. (“Aqua Indiana”) provides comprehensive administrative and operational support services. Aqua Indiana has a total work force of six individuals available to directly support the operations of Western Hancock, and relies on Aqua America for financial and other support. Attachment G to Petitioner’s Exhibit 1 provides detailed financial information on Aqua America.

4. **Petitioner’s Evidence.** In addition to the background information contained in Finding Paragraphs 2 and 3 above, Western Hancock provided testimony and exhibits related to

the CTA requested in this Cause. Western Hancock's case-in-chief, which is summarized below, was presented by its witness, Mr. Thomas M. Bruns.

Mr. Bruns testified that the Proposed CTA Areas consist of three separate areas in Hancock County's Buck Creek and Vernon Townships that are directly contiguous to areas that Western Hancock presently holds CTAs to serve. The Proposed CTA Areas are shown on the map appearing as Attachment H to Petitioner's Exhibit 1, labeled as "Area A", "Area B", and "Area C". A legal description for each of the Proposed CTA Areas appears on Attachment I to Petitioner's Exhibit 1. Mr. Bruns stated that the Proposed CTA Areas reflect areas where there is current or anticipated customer demand, as well as reflect squared off boundaries and utilize existing roadways and section lines to define their boundaries. Mr. Bruns stated that this approach will lessen or eliminate uncertainty and confusion for potential customers, developers and public officials regarding Western Hancock's authority and obligation to provide service.

Mr. Bruns testified that Western Hancock utilizes and will continue to utilize its existing treatment plant to handle wastewater from the Proposed CTA Areas. Mr. Bruns stated that, over the next few years, Western Hancock anticipates sufficient growth within its existing and Proposed CTA Areas that an expansion of its treatment facilities will be necessitated, and that Western Hancock and Aqua Indiana are committed to increasing Western Hancock's treatment capacity when required to meet such needs.

Mr. Bruns testified that Western Hancock does not require any approval from the Indiana Department of Environmental Management ("IDEM") in connection with its request for a CTA to serve the Proposed CTA Areas, and it is committed to securing future IDEM approval if such is necessary upon expansion of its collection and/or treatment facilities. Furthermore, Mr. Bruns stated that he is aware of no required approval from the Department of Natural Resources in order to extend service into the Proposed CTA Areas.

Mr. Bruns stated that Western Hancock has had multiple discussions with local governmental and other officials regarding the expansion of its current system, including representatives of the Hancock County Regional Water and Sewer District (the "District"), the City of Greenfield, Town of Cumberland, Town of McCordsville, and NineStar. Attachment J to Mr. Bruns' testimony are copies of letters, as well as acknowledgements thereto, that Western Hancock sent by certified mail to wastewater utilities and municipalities within five miles of the Proposed CTA Areas. Mr. Bruns testified that, to his knowledge, no other utility or entity has made plans or possesses the current capacity to provide wastewater utility service within the Proposed CTA Areas.

Mr. Bruns next testified regarding the impetus for Western Hancock to request authority to serve the Proposed CTA Area A. Mr. Bruns explained that in Cause No. 44776, Western Hancock intervened to oppose NineStar's request to obtain a CTA for an area that abutted the eastern boundary of Western Hancock's current CTA area. Mr. Bruns stated that Western Hancock and NineStar subsequently agreed that in the area north of Interstate 70, NineStar's western boundary in Buck Creek Township should be established at County Road 300 West, not 400 West, which the Commission approved in its August 24, 2016 Order in Cause No. 44776. The District also approved the arrangement on April 4, 2017. Mr. Bruns stated that Area A, identified on Attachment H to Petitioner's Exhibit 1, is along the eastern side of Western

Hancock's current CTA area, and fills the gap between County Roads 300 West and 400 West in Buck Creek Township, as well as a small portion of Vernon Township.

Mr. Bruns testified that while Western Hancock has not yet received any requests for service within Area A, it has been identified as the location of potential commercial development. According to Mr. Bruns, Western Hancock is willing to commit to provide service to Area A to proactively define the CTA area so it can plan for growth, and provide developers and potential customers with a known source of service. Mr. Bruns explained that service to Area A would be handled by Western Hancock's current treatment plant.

With regard to Area B and Area C, which are immediately north and south, respectively, of Western Hancock's existing CTA areas, Mr. Bruns testified that during the proceedings in Cause No. 44776, Western Hancock determined that its system had been extended into and it was serving customers without a Commission-approved CTA. Mr. Bruns explained that the extension of service into Area B and Area C was due to inadvertence. Mr. Bruns affirmed that the District had approved Western Hancock's service in Area B in 2000 and Area C in 2011, which it erroneously believed was all that was necessary, since Western Hancock had withdrawn from Commission jurisdiction.

Mr. Bruns stated Western Hancock has gravity sewers and force mains in both Area B and Area C, while serving 125 residences in Area B and 40 residences and 2 commercial customers in Area C. Mr. Bruns stated that he is aware of no other wastewater utility provider that has been granted authority to serve these areas by the District. Mr. Bruns also explained that in regard to Area C, Western Hancock's service is interim and will last only until the Town of Cumberland, Indiana's municipal system is in a position to extend its facilities to Area C, as outlined in Attachment L to Petitioner's Exhibit 1. Therefore, Mr. Bruns requested that any CTA granted to Western Hancock to serve Area C should reflect the interim arrangement.

As part of its evidence Western Hancock provided a map showing the CTA areas that will result if the Commission grants the relief requested in this Cause. The area shown on Attachment M to Petitioner's Exhibit 1 as the "2017 CTA Service Area" is the combination of Western Hancock's existing CTA areas granted in Cause Nos. 39681, 40147 and 40376 together with "Area A" and "Area B" identified on Attachment H. The "WHU Interim Service Area," which is "Area C" on Attachment H, is shown separately due to the interim nature of Western Hancock's service in this area. Attachment N (Revised) to Petitioner's Exhibit 1 contains legal descriptions for each of the two areas shown on Attachment M. Attachment N (Revised) was submitted and described in Mr. Bruns' supplemental direct testimony, which corrected the scrivener's error in the legal description for "Area C" contained in Mr. Bruns' direct testimony. As a result, Attachment N (Revised) states the correct legal description for "Area C."

Mr. Bruns also described that Western Hancock intends to use county-owned property, including without limitation highway rights-of-way, in connection with serving the public within the Proposed CTA Areas. According to Mr. Bruns, public convenience and necessity require such service and Western Hancock is requesting the Commission to make such a determination and consent to Hancock County granting Western Hancock licenses, permits or franchises for the use of county-owned property.

Mr. Bruns' testimony also included his opinion that granting Western Hancock the requested CTA expansion would serve the public interest. Mr. Bruns testified that the development of the Proposed CTA Areas depends on having adequate sanitary facilities. Consequently, the provision of a central wastewater utility service is essential for the future growth and development of the Proposed CTA Areas. A central wastewater utility service in the area also will provide relief for existing residents with failing septic systems, which pose a health risk to not only the residents but the general public as well. Mr. Bruns also stated that Western Hancock's existing customers also should benefit due to its ability to spread fixed costs over a larger customer base and otherwise take advantage of economies of scale in connection with providing service to them.

**5. Public's Evidence.** The OUCC's witness, Mr. James T. Parks, described Western Hancock's relationship to Aqua America and Aqua Indiana, as well as its customer base of 812 residential customers, 72 commercial customers and one significant industrial discharger. Mr. Parks also described the facilities that Western Hancock currently uses to provide such service. Mr. Parks stated that Western Hancock's wastewater treatment plant has adequate daily average and peak hourly hydraulic capacity to accept and treat additional sewage. Mr. Parks also concluded that, based on current conditions, there is enough available organic treatment capacity at the Western Hancock wastewater treatment plant to serve additional customers.

Mr. Parks next reviewed the Indiana Code's requirements to Western Hancock's request to expand its CTA, set out in Indiana Code § 8-1-2-89(e). Mr. Parks stated that Western Hancock has the legal authority to request an expansion of its existing CTA, and likewise has supported its contention that it has the financial ability to install, commence, and maintain the proposed sewer utility service.

Additionally, Mr. Parks assessed Western Hancock's compliance with 170 IAC § 8.5-3-1, *et seq.*, which are applicable to sewer CTA expansions. Mr. Parks determined that Western Hancock had complied with every applicable requirement. Therefore, Mr. Parks recommended that Western Hancock's CTA request should be approved.

**6. Discussion and Findings.**

A. Section 89. Pursuant to Ind. Code § 8-1-2-89(e), the Commission must review the evidence and determine whether Western Hancock has proved the following:

- That it has lawful power and authority to apply for said certificate and to operate said proposed service;
- That it has the financial ability to install, commence, and maintain said proposed service; and
- That public convenience and necessity require the rendering of this proposed service by it in the CTA Area.

As the Commission has found in several other orders granting Aqua America and Aqua Indiana affiliates CTAs, the Commission finds that Western Hancock has the managerial, technical and financial ability to provide wastewater service in the Proposed CTA Areas. The evidence presented in this Cause accords with the Commission's previous determinations

concerning Aqua Indiana and further supports Western Hancock's request for authority to provide wastewater service within the Proposed CTA Areas. We note that, in regard to Area A, granting Western Hancock a CTA accords with our approval of the settlement reached in Cause No. 44776. We further note that, due to the inadvertent belief that it need not obtain a CTA, Western Hancock is already providing service within Area B and Area C. We also state that Western Hancock, upon realization that a CTA for Area B and Area C was required, promptly initiated this proceeding to seek the required CTA for the areas. Consequently, we find Western Hancock possesses the legal, technical, managerial and financial ability to provide service to each of those three (3) Proposed CTA expansion areas ("Areas").

There is no dispute that the Proposed CTA Areas are not presently served by any other supplier, or that Western Hancock appears to be the only supplier interested in serving the area. Further, the evidence demonstrates that Western Hancock has the current capacity in its wastewater treatment plant to serve additional customers, and should a future expansion be necessary, Western Hancock has indicated a willingness to do so. The evidence, therefore, establishes a present need for Western Hancock to provide service within the Proposed CTA Areas, and a willingness to address future needs as well.

Western Hancock's request for an expanded CTA also meets our preferred design criteria. Western Hancock has demonstrated that its interest in serving the Proposed CTA Areas is not focused solely on one subdivision. Rather, the Proposed CTA Areas encompass territory adjacent to Western Hancock's existing CTA area, is generally in a symmetric form, and does not create isolated unserved areas.

In consideration of the evidence presented, the Commission finds that Western Hancock's request that it be authorized to serve the Proposed CTA Areas, which are contiguous to its existing CTA area is reasonable and, thus, will serve public convenience and necessity and the public interest.

B. Commission Rules. Pursuant to 170 IAC 8.5-3-1(2), an existing sewage disposal company seeking an additional or expanded CTA is required to submit, where appropriate, the following exhibits in support of its request:

- (A) A legal description of the area to be served.
- (B) A letter of approval from the:
  - (i) Indiana department of environmental management; or
  - (ii) state department of health.
- (C) Documents to support approvals that have been obtained from the Indiana department of natural resources, if necessary.
- (D) Plans and specifications of treatment plant and sanitary sewers.
- (E) Area maps as outlined in the instructions of section 2 of this rule.
- (F) A letter of acknowledgement from the owner-operator of any sanitary system within five (5) miles of the company's system that he or she is familiar with the company's interest to apply for a CTA, which should be submitted together with the signed return receipts, as well as any other correspondence from the owner-operator relating to the proposal.
- (G) A statement of the estimated costs of the construction of the sewage disposal plant, including and separately as to the following:



- (i) The treatment plant.
- (ii) The collection system.
- (iii) The pumping plant.
- (H) As deemed appropriate by the administrative law judge, a personal guarantee and personal financial statement as described in subdivision (1)(D).

The evidence contains a legal description for the Proposed CTA Areas (inclusive of Attachment N (Revised)), as well as detailed maps showing the Proposed CTA Areas' location and other required data. We find those materials are sufficient and that Western Hancock has satisfied items A and E above.

As shown above, Western Hancock presently has an effective NPDES permit issued by IDEM and IDEM requires no approvals at this time in connection with the provision of service to the Proposed CTA Areas. Western Hancock also has been informed by DNR that no approval by DNR is necessary for the issuance of the requested CTA. In light of the evidence presented, we find that items B and C above have been satisfied in connection with Western Hancock's request for authority to serve the Proposed CTA Areas.

Since Western Hancock intends to serve the Proposed CTA Areas with its existing infrastructure, no detailed plans or specifications for additions to that infrastructure are available, or otherwise necessary, at this time. Further, the lack of any need for Western Hancock to make immediate infrastructure improvements does not permit the submission of a statement of costs for them. Thus, items D and G are not applicable, and this does not constitute any bar to granting Western Hancock the requested CTA.

Attachment J to Petitioner's Exhibit 1 contains copies of letters that Western Hancock sent by certified mail to several utilities and municipalities in the vicinity of the Proposed CTA Areas notifying them of the initiation of this proceeding and its request for authority to serve the Proposed CTA Areas. Attachment J to Petitioner's Exhibit 1 also includes the acknowledgments that have been received to its notice letters. In light of this evidence, we find Western Hancock has satisfied item F above.

Finally, there is no basis for requiring Western Hancock to submit a guarantee or special financial statements as provided for in item H above.

In summary, no evidence was presented disputing Western Hancock's satisfaction of 170 IAC 8.5-3-1 in connection with its request to serve the Proposed CTA Areas and we find that the relevant requirements have been satisfied by Western Hancock.

**7. Commission Consent.** Ind. Code § 36-2-2-23 requires the consent of the Commission prior to the grant by a board of county commissioners of a permit to a utility to use county property (generally roads, easements, right-of-ways, and the like) in rendering utility service. For the purposes of clarification, the finding by the Commission herein that the public convenience and necessity require the issuance of the requested CTA to Western Hancock should be deemed the consent of the Commission to the Board of Commissioners of Hancock County issuing to Western Hancock a license, permit or franchise for the use of county property in rendering sewage disposal and water service within the Proposed CTA Areas in accordance with applicable Indiana law.

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

1. Western Hancock's request that it be authorized to provide sewage disposal service in the Proposed CTA Areas shall be and is granted.

2. Western Hancock is granted, pursuant to Ind. Code § 8-1-2-89, a Certificate of Territorial Authority, and is authorized, to provide sewage disposal service within the CTA Areas shown on Attachment M, and described more fully on Attachment N (Revised), to Petitioner's Exhibit 1, copies of which are attached hereto. The CTA granted to Western Hancock with respect to Area C is interim and will last only until the Town of Cumberland, Indiana's municipal system is in a position to extend its facilities to Area C, as reflected in Attachment L to Petitioner's Exhibit 1. This Order shall constitute the sole evidence of Western Hancock's authority to provide sewage disposal service within those areas.

3. The Commission shall and does consent to the Board of Commissioners of Hancock County issuing to Western Hancock licenses, permits or franchises for the use of county property in connection with its provision of sewage disposal service within the Proposed CTA Areas. With regard to Area C, where Western Hancock's CTA is interim, to the extent necessary to ensure the continued, uninterrupted provision of sewage disposal service within Area C, the Commission further consents to the Board of Commissioners of Hancock County issuing to the Town of Cumberland, Indiana, or to another lawful successor in interest of Western Hancock, licenses, permits or franchises for the use of county property in connection with the provision of sewage disposal service within Area C.

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

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

**APPROVED:**

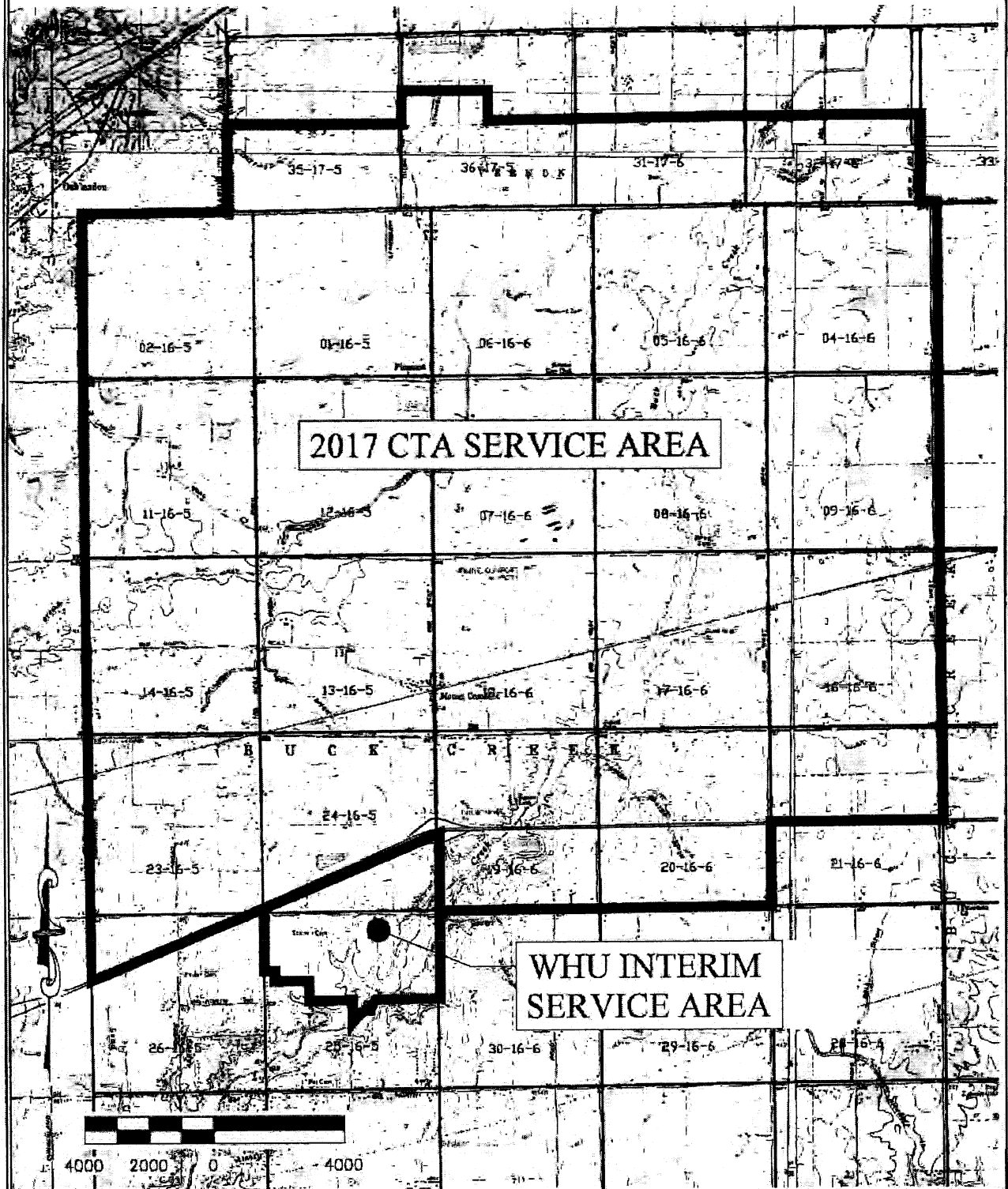
**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

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Mary M. Becerra  
Secretary of the Commission

# **ATTACHMENT M**

PROPOSED WESTERN HANCOCK UTILITIES' CTA EXPANSION  
MAY 2017



**ATTACHMENT N**  
**(REVISED)**

**Legal Description**

**2017 CTA Service Area**

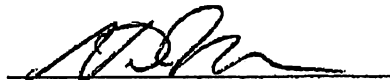
Part of Vernon Township, Hancock County, Indiana, more particularly described as follows:

The south half of Section 35, Township 17 North, Range 5 East;  
The south half of Section 36, Township 17 North, Range 5 East;  
The south half of the Northwest quarter of Section 36, Township 17 North, Range 5 East;  
  
The south half of Section 31, Township 17 North, Range 6 East;  
The south half of Section 32, Township 17 North, Range 6 East.

Also, part of Buck Creek Township, Hancock County, Indiana, more particularly described as follows:

Sections 1, 2, 11, 12, 13, and 14, Township 16 North, Range 5 East;  
All of Section 23, Township 16 North, Range 5 East, situated North of Interstate 70;  
All of Section 24, Township 16 North, Range 5 East, situated North of Interstate 70;  
All of Section 26, Township 16 North, Range 5 East, situated North of Interstate 70;  
  
All of Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19 and 20, Township 16 North, Range 6 East;  
The north half of Section 21, Township 16 North, Range 6 East.

Prepared by:  
**MIDWESTERN ENGINEERS, INC.**

  
Nathan J. Walker, PLS  
State of Indiana  
Reg. No. 20200085



**Legal Description**

**Area C – Interim Service Area Granted to WHU by HCRSD  
October 24, 2011**

Part of Buck Creek Township, Hancock County, Indiana, more particularly described as follows:

All of Section 24, Township 16 North, Range 5 East, situated South of Interstate 70;  
The east half of the northwest quarter of Section 25, Township 16 North, Range 5 East;  
Part of the northwest quarter of Section 25, Township 16 North, Range 5 East, more particularly  
identified as Parcel 30-05-25-200-001.000-006.  
The northeast quarter of Section 25, Township 16 North, Range 5 East;  
That part of the northwest quarter of the southeast quarter of Section 25, Township 16 North,  
Range 5 East, situated north of Buck Creek.

Prepared by:  
**MIDWESTERN ENGINEERS, INC.**



Nathan J. Walker, PLS  
State of Indiana  
Reg. No. 20200085

