

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
THE JACKSON COUNTY REGIONAL)
SEWAGE DISTRICT FOR COMMISSION)
REVIEW OF THE RATES AND)
CHARGES OF THE SEYMOUR)
MUNICIPAL SANITATION UTILITY)
FOR WHOLESALE SEWAGE SERVICE) CAUSE NO. 45548
PURSUANT TO)
IND. CODE § 8-1-2-61.7)
)
RESPONDENTS: CITY OF SEYMOUR,)
INDIANA, SEYMOUR MUNICIPAL)
SANITATION UTILITY)

RESPONDENTS' SUBMISSION OF PROPOSED ORDER

City of Seymour, Indiana and Seymour Municipal Sanitation Utility ("Seymour" or "Respondents"), by counsel, hereby submit their Proposed Order in this matter.

Respectfully submitted,



By: _____

Nicholas K. Kile, Atty No. 15203-53

Hillary J. Close, Atty No. 25104-49

Lauren Aguilar, Atty No. 33943-49

Barnes & Thornburg LLP

11 South Meridian Street

Indianapolis, Indiana 46204

Telephone: (317) 231-7768

Fax: (317) 231-7433

Email: nkile@btlaw.com

hclose@btlaw.com

lauren.aguilar@btlaw.com

Attorneys for Respondents
City of Seymour, Indiana and
Seymour Municipal Sanitation Utility

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 19th day of May, 2022, electronically upon:

J. Christopher Janak
Nikki Shoultz
Kristina Kern Wheeler
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
cjanak@boselaw.com
nshoultz@boselaw.com
kwheeler@boselaw.com

Daniel LeVay
Indiana Office of Utility Consumer Counselor
PNC Center
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
dlevay@oucc.in.gov
infomgt@oucc.in.gov



Lauren Aguilar

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

| | | |
|-----------------------------------------|---|------------------------|
| IN THE MATTER OF THE PETITION BY |) | |
| THE JACKSON COUNTY REGIONAL |) | |
| SEWAGE DISTRICT FOR COMMISSION |) | |
| REVIEW OF THE RATES AND |) | |
| CHARGES OF THE SEYMOUR |) | |
| MUNICIPAL SANITATION UTILITY |) | |
| FOR WHOLESALE SEWAGE SERVICE |) | CAUSE NO. 45548 |
| PURSUANT TO |) | |
| IND. CODE § 8-1-2-61.7 |) | |
| |) | |
| RESPONDENTS: CITY OF SEYMOUR, |) | |
| INDIANA, SEYMOUR MUNICIPAL |) | |
| SANITATION UTILITY |) | |

ORDER OF THE COMMISSION

Presiding Officers:

Stefanie N. Krevda, Commissioner

Brad J. Pope, Administrative Law Judge

On May 24, 2021, Jackson County Regional Sewage District (“Petitioner” or “JCRSD” or “District”), filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking Commission review of the City of Seymour, Indiana, Seymour Municipal Sanitation Utility’s (“Respondents” or “Seymour”) rates and charges for wholesale sewage service.

On September 3, 2021, Respondents prefiled the testimony and exhibits of Kerry A. Heid and Katelyn Shafer.

On December 16, 2021, Petitioner prefiled the testimony and exhibits of Steven K. Brock, Richard A. Burch and Gary M. VerDouw.

On January 27, 2022, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed its notice of intent not to file testimony.

On February 25, 2022, Respondents prefiled the rebuttal testimony and exhibits of Ms. Shafer and Mr. Heid.

The Commission held an evidentiary hearing in this Cause on April 7, 2022, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The testimony and attachments of Petitioner and Respondents were admitted into the record without objection.

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

1. **Notice and Jurisdiction.** Notice of the hearing was published as required by law. Petitioner and Respondents are public utilities as defined in Indiana Code § 8-1-2-61.7(a). Under Ind. Code § 8-1-2-61.7 the Commission has jurisdiction to review rates and charges for wholesale sewage service to determine whether the rates and charges are just and reasonable. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Parties' Characteristics.** JCRSD is a regional sewer district created under Ind. Code art. 13-26. JCRSD is an independent municipal corporation, a political subdivision of the state, and a utility as that term is defined in Ind. Code § 8-1-2-61.7(a). JCRSD is not under the jurisdiction of the Commission for the approval of rates and charges. Seymour is a municipal wastewater utility that is owned and operated by the City of Seymour, Indiana, and is a utility as that term is defined in Ind. Code § 8-1-2-61.7(a). Seymour is not under the jurisdiction of the Commission for the approval of its retail rates and charges, and is subject to the jurisdiction of the Commission for the approval of its wholesale rates and charges only as provided in Ind. Code § 8-1-2-61.7.

3. **Relief Requested.** Petitioner requests the Commission to issue an order determining that Seymour's rates and charges for wholesale sewage service are unjust and unreasonable. JCRSD also requests that the Commission find that the rates and charges that are appropriately charged under the terms of the Wholesale Contracts should continue to be applied until such time as JCRSD and Seymour agree to new wholesale sewer contracts or, in the alternative, set appropriate rates and charges for Seymour's wholesale sewage service to JCRSD.

4. **Evidence of the Parties.**

A. **Respondents' Direct Evidence.** Mr. Heid discussed the history of Respondents' wastewater rates and charges, presented his wholesale Cost of Service Study ("COSS") for the wastewater utility, and described the cost of service methodology utilized. Respondents' Exhibit 1 at 2-3. He explained that on April 28, 1980, the City of Seymour and JCRSD entered into two separate but virtually identical Agreements for Seymour to receive and treat the wastewater received from JCRSD. Mr. Heid said JCRSD desired to serve certain rural areas south of the corporate limits of the City of Seymour. He explained this project and service fell under U.S. Environmental Protection Agency ("EPA") project Number C 180 999 and was referred to as JCRSD South Seymour. He said similarly, JCRSD also desired to serve certain areas in and around the unincorporated town of Rockford, Indiana north of the corporate limits of the City of Seymour, and this project and service fell under U.S. EPA project Number C 181000-01, referred to as JCRSD Rockford. He explained, consequently, two separate Agreements, both dated April 28, 1980, were implemented, one for JCRSD South Seymour and another for JCRSD Rockford. Mr. Heid testified these two Agreements were identical for all terms and conditions and for the Operation, Maintenance and Replacement ("O, M & R") volumetric rates, differing only in the provisions pertaining to payment of capital costs. Both contracts and projects were subject to the EPA Construction Grants Program and its requisite User Charge System. He explained JCRSD South Seymour and JCRSD Rockford are located at the extreme south and the extreme north ends of the Seymour collection system and are not directly interconnected with each other. He said they are physically separate and are metered separately, both with 4-inch meters. *Id.* at 4. Mr. Heid explained the initial O, M & R volumetric rate for both JCRSD districts was \$0.83 per 1,000 gallons (\$0.62 per ccf) of flow. He said this O, M & R volumetric rate does not include capital costs which are recovered in these Agreements through other contract provisions. *Id.* at 5.

Mr. Heid said JCRSD's rates and charges have increased only two times, initially in 1997 and most recently in 2001. He said in 2001, Seymour desired to increase the JCRSD rates and charges to recover increasing operating and capital costs. He explained Seymour and JCRSD could not agree on the details of the increase in JCRSD rates and charges and thus, it was submitted to arbitration pursuant to the provisions of the JCRSD Agreements. He stated the result of the arbitration decision was that JCRSD received an increase in its O, M & R volumetric rates to \$1.89 per ccf (\$2.52 per 1,000 gallons) effective for bills beginning in June 2001. *Id.*

Mr. Heid stated that on December 8, 2020, Seymour provided notice to JCRSD via Certified Mail of its desire to renegotiate the terms of the Agreements. He explained the letter stated that if negotiations were subsequently unsuccessful, the Agreements would terminate on the date forty (40) years following the initial connection of JCRSD to Seymour. He explained the negotiations were unsuccessful, thus resulting in the termination of the Agreements. Mr. Heid noted that according to JCRSD's Petition initiating this proceeding: "The term of the Wholesale Contracts is 40 years, and the parties agree that the initial contract term expires on August 1, 2021." *Id.* at 6 citing Petition Paragraph 5. He explained, on the basis of the termination of the Agreements between Seymour and JCRSD, which resulted in service being provided to JCRSD without a contract, Seymour's position was that JCRSD should be subject to the same rates and charges as all other customers. *Id.* at 7.

Mr. Heid explained the ultimate objective of his COSS was to determine the cost of serving the wholesale rate class comprised of JCRSD Rockford and JCRSD South Seymour. *Id.* at 8. He said the Wholesale Wastewater COSS will determine the appropriate amount of the total revenue requirement that should be attributable to the Wholesale Wastewater customers, and appropriate rates will be designed to recover this proper amount of allocated cost. He explained, regardless of the findings of the Wholesale COSS as to the cost of service to Retail rate class, the Retail rates will not be adjusted in this proceeding.

Mr. Heid described the typical process of assigning operating costs and capital costs to the functions of Volume, Capacity, Strength (BOD, Suspended Solids, Ammonia, and Phosphorous) and Customer costs. *Id.* at 10-11. He explained why he was only able to assign costs to the Volume cost function and the Customer cost function. *Id.* at 12-14. He discussed Respondents' Attachment KAH-3, Schedule 1, which presents a table of the functional cost allocation factors described above. He explained these functional cost allocation factors are cross-referenced in the functional cost allocation schedules that will be subsequently discussed in this section. *Id.* at 14. Respondents' Attachment KAH-3, Schedule 2, shows the allocation of the rate base investment to the various cost functions. The capital costs (debt service, extensions and replacements, etc.) are allocated to the cost functions in accordance with the allocation of rate base. He said on Schedule 2, as well as the subsequent schedules, the functional cost allocation factors are identified in the columns labeled "Allocation No." and "Allocator Description." *Id.* at 15. Respondents' Attachment KAH-3, Schedule 3, shows the functional cost allocation of operation and maintenance ("O&M") expenses to cost functions. Mr. Heid explained the estimated test year service requirements or units of service for the various rate classes are shown in Respondents' Attachment KAH-3, Schedule 4, titled "Units of Service." He said annual wastewater volume and number of bills are based on the number of wastewater customers and their corresponding wastewater volume that is discharged to the wastewater system based on information from the Reedy Rate Report. *Id.* at 15-16.

He explained Respondents' Attachment KAH-3, Schedule 5, titled "Calculation of Wholesale Cost of Service." He said costs of service are distributed among rate classes by application of unit

costs of service to respective service requirements. He stated the total costs of service are based upon the total costs previously allocated to functional components and the total number of applicable units of service. *Id.* at 16. He testified the total wholesale cost of service as determined by his COSS is \$472,588. He explained this total is bifurcated into a Volume cost of \$472,515 and a Customer cost of \$74. *Id.* at 16. He said given the immaterial amount of the Customer cost and the general requirement in this proceeding to determine a cost-based rate, he recommended that the total wholesale cost of service amount of \$472,588 be recovered volumetrically, which would result in a volumetric rate of \$12.1551 per thousand gallons (\$9.092 per ccf). *Id.* at 16.

Ms. Shafer explained the basis for the rates that are currently being paid by all other Seymour customers (other than JCRSD) and used by Witness Kerry A. Heid to compute the cost of serving JCRSD. She explained the history of rate increases that have been charged by Seymour to JCRSD. Finally, she explained Seymour's objectives in this proceeding. Respondents' Exhibit No. 2 at 2. She said on April 12, 2021, the Seymour Council adopted Attachment KS-1, which implemented a 2-step rate increase. She said this rate increase commenced June 1, 2021, with each subsequent step to take effect one year afterwards. She explained the ordinance was later amended to add unmetered users, which had not been included, when the City adopted Attachment KS-2. She said the basis for the rate increase is the rate report (Attachment KS-3). *Id.* at 4. She said at the time Attachments KS-1 and KS-2 were adopted by the Seymour Council, there was in effect an agreement between Seymour and JCRSD that governed the rates that would be paid by JCRSD. She explained those agreements are Attachment KS-4 (the "Agreement"). *Id.* at 4. She explained the date of termination in the Agreement is not triggered from the date of the Agreement; it is triggered from date of connection by JCRSD to Seymour. She said Seymour attempted to investigate when the actual connection was made, both at Seymour and by asking JCRSD, and could not learn that date and as a result, Seymour worked out informally with JCRSD that the connection would not have been before August 1, 1981, and so have assumed a termination date of August 1, 2021. *Id.* at 4-5. She said it was Seymour's objective to move the JCRSD rate to a level that matched the rate charged all other customers. *Id.* at 6.

Ms. Shafer testified after providing the goal of moving JCRSD to the rate charged to all other customers, Seymour had one virtual meeting with JCRSD attended by JCRSD's attorney and its rate consultant at the time, Steve Brock. She explained Mr. Brock asked a series of questions in that meeting, plus he followed up with some written questions. She testified she answered his written questions. She explained the only response Seymour ever received was a copy of the petition which JCRSD filed to initiate this proceeding. *Id.* at 6. She said ideally, Seymour would like JCRSD to pay the same rate that every other customer pays; nevertheless, Seymour understands that the Commission will set the rate that Seymour charges to JCRSD. She explained as such, Seymour retained Mr. Heid to conduct a COSS for purposes of setting JCRSD's rates. *Id.* at 6. She recommended the Commission approve the rate to be charged by Seymour to JCRSD based upon the COSS conducted by Mr. Heid. *Id.* at 7.

B. Petitioner's Evidence. Mr. Brock recommended the Commission adopt the corrected calculations shown in his rate analysis, included as Attachment SKB-1, instead of Seymour's Annual revenue requirement presented at page 19 of Attachment K-3 to Ms. Shafer's pre-filed direct testimony and use the corrected revenue requirement he provided for the whole system as the starting point for determining the appropriate rates for JCRSD, which is a single wholesale customer of Seymour. Petitioner's Ex. 1 at 4. He identified and explained his adjustments to Seymour's revenue requirement, operation and maintenance, and depreciation calculation. *Id.* at 8-10, 13-15. He discussed differences in the utility plant in service value in the Reedy Report, the Audit,

and the Gateway Report. *Id.* at 10-12. He discussed his adjustments to the calculations of payment in lieu of taxes ("PILOT"), debt service, and debt service reserve and other considerations. *Id.* at 15-20.

Mr. Burch provided an analysis of the extent to which JCRSD uses the wastewater system of the City of Seymour and the Seymour Municipal Sanitation Utility ("Seymour" and the "Utility", respectively) in order to receive wholesale sewage collection and treatment service. He explained Mr. VerDouw used his analysis to correct Mr. Heid's COSS to reflect the proper allocations of Seymour's costs to JCRSD. Pet. Ex. 2 at 3. He explained how he evaluated specifically which Seymour collection system assets are used to provide wholesale service to JCRSD and based on his analysis, he estimated that a total of 30,550 linear feet or 5.8 miles of Seymour's collection system are used to transport JCRSD's flows to the waste water treatment plant ("WWTP"). *Id.* at 5-8. He said the Commission should find that JCRSD's proportionate use of the collection system is 3.4%. Mr. Burch explained how he estimated JCRSD's proportionate use of Seymour's WWTP by comparing JCRSD's average daily sewage flow to the IDEM Design Day rating of the WWTP and discussed how accurate the factor is to show JCRSD's relative use of Seymour's system *Id.* at 9. He said the Commission should find that JCRSD's proportionate use of the WWTP is 1.1%. He commented on the location of JCRSD's "connection" to Seymour's collection system relative to Seymour's municipal corporate boundaries. *Id.* at 10. Mr. Burch concluded that Seymour's 50% outside territory adder should not be applied to JCRSD, and the Commission should adopt the corrected wholesale rate calculation provided by Mr. VerDouw that relies on the system usage analysis provided in his testimony. *Id.* at 10-11.

Mr. VerDouw commented on the magnitude and impact of the historical rate increases for JCRSD. *Id.* at 14. He said JCRSD's current wholesale rate with Seymour of \$2.5267 per thousand gallons treated represents a 204.43% increase in the user charge rate per thousand gallons as compared to the original rate of \$0.83 per thousand gallons treated that was established in 1980, or an average increase of 5.11% per year during the 40-year period.

Mr. VerDouw said that if Mr. Heid's recommended rates were implemented, it would mean an increase of 381.07% to JCRSD over the current rate. *Id.* at 14. Mr. VerDouw stated that this increase would most definitely fall within anyone's definition of rate shock. *Id.* At 19.

Mr. VerDouw stated he analyzed and reviewed the testimony and the wholesale COSS prepared on behalf of Seymour by Mr. Heid. Pet. Ex. 3 at 6. He recommended the Commission adopt the corrected wholesale rate calculation resulting in a wholesale rate to JCRSD of \$1.64579 per thousand gallons of waste treated, or a rate of \$1.2310 per hundred cubic feet of waste treated, using the adjustments he recommended to Mr. Heid's COSS. *Id.* at 7. He stated he believed based on Mr. Burch's estimate that as no more than 3.4% of Seymour Municipal Sewage Work's distribution and transmission lines are accessed to transmit sewage from JCRSD to the Seymour Municipal Sewage Works wastewater treatment facility, no more than \$21,914 ($\$644,516 \times 3.4\%$, or \$21,914) should be included as an applicable cost to recover for Sewer Line Maintenance in wholesale rates from JCRSD. *Id.* at 28. He stated the recovery of PILOT should only be included as an applicable cost to the wholesale rates for JCRSD only for plant that is located within the municipal boundaries of the City of Seymour and is being accessed by JCRSD. *Id.* at 29-31. He explained as such, only \$12,555 ($\$450,000 \times 2.79\% = \$12,555$) should be included as an attributable cost for PILOT in determining a wholesale rate for JCRSD. \$437,445 ($\$450,000 - \$12,555$, or \$437,445) in PILOT should not be included in the COSS cost for wholesale customer JCRSD. *Id.* at 31. He commented on Mr. Heid's inclusion of a proportionate share of Debt Service Requirement of \$2,790,317 in the capital costs that

Mr. Heid allocated to and recovered as wholesale costs attributable to JCRSD. *Id.* at 32. He identified other concerns with Seymour's Debt Service Requirement amounts included in the COSS. *Id.* at 33-34. He commented on Mr. Heid's inclusion of a proportionate share of Extensions and Replacements in the amount of \$1,556,071 in the capital costs that Mr. Heid allocated to and recovered as wholesale costs attributable to JCRSD and other adjustments he made to the COSS. *Id.* at 34-35. He recommended that the Wholesale COSS prepared in this Cause should reflect a final wholesale rate of \$1.6457 per thousand gallons of waste treated, or a rate of \$1.2310 per hundred cubic feet of waste treated for wholesale customer JCRSD. *Id.* at 36.

C. Respondents' Rebuttal Evidence. Mr. Heid explained the EPA Construction Grants Program and said his experience with Black & Veatch occurred during the height of the EPA Construction Grants Program in the late 1970's and early 1980's. He said most, if not all, of the sewer cost of service studies he worked on when at Black & Veatch were EPA Construction Grants projects. Respondents' Ex. 1-R at 7-9. He said the Contracts with JCRSD Rural South and JCRSD (North) Rockford on April 28, 1980 (See Attachment KS-4 to Ms. Shafer's direct testimony, Respondents' Exhibit 2) demonstrate that an EPA Construction Grant was provided to the City of Seymour. He said the remaining Local Costs to be paid were \$1,030,000 as noted in the Contracts. *Id.* at 9. He explained rate shock is not applicable in this proceeding because the sole focus of this proceeding is determination of the cost of serving JCRSD. He said this issue is outside the scope of this proceeding. He explained the comparison of grant-subsidized, expired contract rates (that were never subject to Commission review and approval) is irrelevant and beyond the scope of the Commission's jurisdiction in this Cause and the only question before the Commission is the appropriate wholesale rate to charge JCRSD based on the COSS. *Id.* at 10. He explained that based on his 40 years of experience in the utility and ratemaking arena, his expert opinion is that the term "just and reasonable rates", which are generally synonymous with fair and equitable rates, are cost-of-service-based rates that in ratemaking refers to a cost causality between rates and the customer's bill. He said in a ratemaking context, the terms "just and reasonable rates" or "fair and equitable rates" will typically imply that the rate in question has been developed using cost of service rate principles. *Id.* at 11. He explained it would be contrary to and inconsistent with the purpose of the Petition and its underlying enabling statute for the Commission to find any rate other than a cost-based rate to be just and reasonable, or fair and equitable. *Id.* at 11-12. He testified based on his experience, and without expressing a legal opinion, the only available rate option for service to JCRSD would be those rates and charges as set forth in the Seymour rate ordinance as determined in the Reedy Report. He said those rates and charges are applicable to all customers and make no distinction between retail and wholesale rates. He stated as such, JCRSD should be subject to the generally-applicable rates, not continuation of an expired, below cost Grant-subsidized, non-IURC approved Contract rate. *Id.* at 13.

Mr. Heid explained there are several reasons why the expired Contract rate should not be approved by the Commission, be used for billing pending the Commission's disposition in this proceeding, or otherwise used for bill comparisons or other purposes. He explained (1) the requested rate is based on a now-expired Contract; (2) the rate that JCRSD desires to use from the now-expired Contract is the result of a non-precedential arbitration decision because the Parties could not agree on a rate change; and probably most importantly, (3) the requested rate has never been approved by the Commission, has never been submitted to the Commission for approval, and JCRSD has presented no evidence to support the requested rate as fair and equitable. *Id.* at 14. He said Mr. VerDouw fails to recognize or consider that the majority of the costs incurred for the wastewater treatment plant during the term of the Contracts were paid through an EPA Construction Grant that paid up to 75% of the cost of the wastewater treatment plant. *Id.* at 14. He explained by the time of the expiration of

the Contract on August 1, 2021, the EPA Construction Grants Program had long expired in 1987. Once the COSS reflected full cost-based rates without the EPA Construction Grants subsidy, the obvious and inevitable result was a significant increase to JCRSD. *Id.* at 15.

Mr. Heid stated why he disagreed with how Mr. VerDouw calculates the average annual increase of the JCRSD O, M & R volumetric rate at 5.11% per year. He explained Mr. VerDouw's calculation is in error as he failed to take into consideration the use of annual compounding, thus significantly overstating the 40-year average percentage increase. *Id.* at 17. He said the average annual percentage increase reflecting annual compounding was 2.82%, about half of Mr. VerDouw's calculation result. *Id.* at 17.

Mr. Heid stated his COSS includes the proportionate cost of Seymour's collection system and Seymour's billing services, but not JCRSD's collection system or JCRSD's own billing services.

Mr. Heid explained Mr. Burch determined by visual inspection what in his opinion was the most direct pipeline route from the two separate JCRSD district areas to the wastewater treatment plant. Seymour's collection system is a complex, integrated network of pipes, as shown in the various exhibits by both Parties illustrating the collection system. Mr. Heid explained that in very simple sewer collection point-to-point configurations that are comprised of only one or a few pipelines in series, parallel or branched systems, hydraulic formulas can assist with estimating pipeline flow and other parameters. He said however, with more and more complex pipeline networks such as Seymour's, the analytical approaches used for the simple point-to-point pipelines are not suitable. *Id.* at 25. He stated it is not correct from either an engineering perspective nor is it in accordance with generally accepted cost of service principles as set forth in the WEF Manual. He noted it is not possible to determine specifically which Seymour collection facilities are used to provide service to JCRSD or which pipeline route such a flow would take. He said the flow of a fluid through a sewer pipeline network is dependent upon the hydraulic and physical characteristics of the lines through which it flows as well as the level and characteristic of the flows themselves. *Id.* at 26. He said all retail customers, including the largest retail customers, utilize the same conventional approach as set forth in the WEF Manual, with each customer class being allocated a proportionate share of the collection system. He further stated it could certainly be argued that Mr. Burch's direct pipeline routing approach is arbitrary as well as discriminatory by singling out the wholesale customer for this unique treatment. *Id.* at 27.

He explained while Mr. VerDouw's reasoning as set forth in his direct testimony is somewhat ambiguous, he believed Mr. VerDouw assumed that the Replacement component of O, M & R (as previously defined referring to "Operation, Maintenance & Replacement") supposedly recovered the future capital recovery of the wastewater treatment plant costs. He said Mr. VerDouw is mistaken; the Replacement component of O, M & R is effectively identical to what is commonly known in Indiana as Extensions and Replacements ("E&R"). He explained the EPA document "User Charge Guidance Manual for Publicly-Owned Treatment Works" and the WEF Manual support his interpretation. *Id.* at 30-31. He said the fact that the JCRSD Rural South System and the JCRSD Rockford (North) System have paid O, M & R fees for the entire 40-year contract period indicates that those costs that are characterized as "Replacement Costs" were paid for on a pay-as-you-go basis. He explained the Replacement Costs were not paying for future capacity costs but for current Extensions and Replacements. He said the Seymour system and all of its customers including JCRSD have and will always have a need for Extensions and Replacements in its rates. *Id.* a 31.

Mr. Heid responded to Mr. VerDouw's arguments against including the debt service (a capital cost) in JCRSD's rate. He said JCRSD Rural South paid a one-time capital cost of \$12,935 (see Contract Paragraph 8A, p. 6). He said JCRSD (North) Rockford paid a one-time capital cost of \$22,277 (see Contract Paragraph 8A, p. 6). So in total, JCRSD paid \$35,212. *Id.* at 32. Mr. Heid explained the Contracts terminated on August 1, 2021. Mr. Heid explained Mr. VerDouw is attempting to carry forward provisions in the Contracts by applying them to the prospective determination of the Wholesale rates and charges. *Id.* at 34. Mr. Heid also discussed the unreasonableness of a utility establishing rates that exclude all recovery of capital costs.

Mr. Heid discussed Mr. Brock's and Mr. VerDouw's proposed revenue requirements, and the significant differences between the recommended total Seymour system revenue requirements of JCRSD witness Brock and JCRSD witness VerDouw are material. He explained Mr. VerDouw's recommended total Seymour system revenue requirement on behalf of JCRSD is less than half of Mr. Brock's recommended total Seymour system revenue requirement, also on behalf of JCRSD. Of particular interest is that the two JCRSD witnesses generally identify different issues for reduction or disallowance. He said, for example, Mr. VerDouw rejects all capital costs from revenue requirements whereas Mr. Brock does not. *Id.* at 39. He explained both Mr. VerDouw and Mr. Brock are proposing significant reductions to the current revenue requirement that was previously and legally adopted in Seymour Sewer Rate Ordinance No. 12 as amended in Seymour Sewer Rate Ordinance No. 18. Pursuant to IC 36-9-23-26, the City Council and the Mayor determine the revenue requirement, which they did in the present instance. Every other customer is now paying the rates and charges based upon that revenue requirement. *Id.* at 39.

Ms. Shafer testified on rebuttal that it strikes her as a mismatch for JCRSD's revenue requirement to be set on a different basis than all other customers in response to Mr. Brock's attempt to change the overall revenue requirement. Respondents' Ex. 4 at 1-2. She explained why Attachment SKB-7 is more reliable than what was reported on Gateway or included in the State Board of Accounts (SBOA) report. *Id.* at 2-3. She explained she knows that what is reported on Gateway and in the SBOA Report is wrong and importantly, the number on which Mr. Brock relies was not audited by the SBOA. She stated the number is included on page 61 of the report, which is contained in the "Other Information – Unaudited" section of the Report. She explained there is no one who can vouch for the veracity of that number. *Id.* at 3. Ms. Shafer explained even if there were a problem with depreciation expense as calculated, Mr. Brock is proposing to take depreciation expense down to a level that is lower than Extensions and Replacements, as presented on page 8 of 37 of Attachment KS-3. She said a revenue requirement that does not fund extensions and replacements will fail to recover all cash needs of the utility. *Id.* Ms. Shafer discussed the distinction between the statutory allowance for PILOT between water and sewer utilities. *Id.* at 3-4. She also explained what she did to determine the location of the meter settings for JCRSD. *Id.* at 4.

5. Commission Discussion and Findings.

The Petition filed by JCRSD in the instant proceeding pursuant to Ind. Code § 8-1-2-61.7 is limited to a review of rates and charges for wholesale sewage service. Our task is to determine the rate to JCRSD vis-à-vis all other Seymour customers that is "just and reasonable." The Commission has long supported the use of a COSS when setting rates. *In the Matter of the Stucker Fork Conservancy District*, Cause No 44164, (IURC October 2, 2013), Pet. Cross-examination Ex. 3, the Commission stated:

[W]e note that it has been the position of this Commission that "utility rates should be designed to the maximum extent practicable to reflect the cost of providing service, while avoiding abrupt changes in rate structures and undue hardship." *Ed. of Dir. for Utils. of the Dept. of Pub. Utils. of the City of Indianapolis*, Cause No. 39066, 1991 Ind. PUC LEXIS 350, *72 (IURC Nov. 1, 1991), citing *Bd. of Dir. for Utils. of the Dept. of Pub. Utils. of the City of Indianapolis*, Cause No. 36979, 1983 Ind. PUC Lexis 410 at *64 (IURC June 20, 1983). We have also previously considered the costs and benefits of conducting a cost of service study, including the level of detail and complexity required, when determining whether a utility should be required to undertake such a study. See *Westfield Gas Corp.*, Cause No. 37568, 1984 Ind. PUC LEXIS 106, *4-7 (IURC Nov. 8, 1984). And, we have recognized data limitations for small utilities. See *Wabash Co. Rural Elec. Membership Corp.*, Cause No. 38499, 1988 Ind. PUC LEXIS 366, *13 (IURC Sept. 21, 1988).

Based on the evidence presented as further discussed below, we find that Stucker Fork should be authorized to use the COSS it prepared to further reduce the subsidies among its various rate classes.

Id. at 23.

We begin by noting there is only one witness who testified who has ever conducted a cost of service study for sewer service, Mr. Heid. Indeed, Mr. Heid's experience in conducting cost of service studies for sewer service is extensive, dating back for many decades¹. He also has extensive experience conducting cost of service studies for water utilities. In fact, Mr. Heid is recognized in the acknowledgements of the AWWA Rates Manual, M1 Principles of Water Rates, Fees, and Charges. None of JCRSD's witnesses have ever conducted a COSS – wastewater, water or otherwise. JCRSD's witnesses have nevertheless raised various objections to Seymour's COSS. We remind that cost of service is a zero-sum game: to the extent we accept JCRSD's criticisms of the COSS, we are effectively increasing the allocation to all other Seymour customers. We will thus begin our review of JCRSD's criticisms, which fall into five basic categories:

- (1) Objections to Seymour's overall revenue requirement.
- (2) Objection that relies on purported geographic pricing, based on the directional flow of JCRSD's flow to determine which "specific pipelines" of Seymour's system that JCRSD "uses."
- (3) Objection that Seymour's COSS does not differentiate between small and large customers.
- (4) Objection that JCRSD has already paid all capital costs for the Seymour system.

¹ Mr. VerDouw stated "Mr. Heid said in the last 40 years, he's done one sewer cost of service study." Tr. at B-35 (lines 11-12). As Mr. Heid's rebuttal testimony discussed, Mr. VerDouw's statement is erroneous as Mr. Heid has demonstrated extensive experience performing sewer cost of service studies.

(5) Objection to the application of Seymour's outside-city surcharge.²

a. The Revenue Requirement. Most of the issues raised by Mr. Brock pertained to criticisms of the rate report prepared by Witness Shafer. This revenue requirement stands as the basis for the COSS conducted by Mr. Heid. We find this is the proper jurisdictional guardrail for us as well. This Commission has no jurisdiction over the City of Seymour's rates in general; that matter has been assigned by the General Assembly to the Seymour legislative body. The City of Seymour set the revenue requirement by ordinance on June 1, 2021. If we were to change that revenue requirement for purposes of setting a single customer's rates, we would effectively be assigning 100% of the costs attributable to that change to all other customers. Our limited focus, instead, is to determine which portions of that revenue requirement are appropriately attributable to the cost of serving JCRSD. Accordingly, we begin our analysis by rejecting the various reductions to the revenue requirement recommended by Mr. Brock and instead, we accept the revenue requirement that has lawfully been determined by the Seymour Council.

b. Geographic Pricing. JCRSD attempts to convince this Commission to institute geographic pricing by only having JCRSD pay for its use of 3.4% of sewage mains. As illustrated by the map provided by Seymour (KAH-2) and the similar maps provided by JCRSD, while it may seem reasonable to visually predict what portions of the system may be serving JCRSD, Seymour's pipes and mains are comingled and interconnected, meaning individual parts of the system likely support the whole to some degree. Mr. Heid explained this very point during cross examination where he testified: "[Y]ou don't design a system to deliver sewage to a particular point. You don't design a system to deliver it to the southeast quadrant of the system and then deliver it to another location. It's basically like a water system or like an electric system where the sewage goes where it wants to go." Tr. at A-17. This Commission is not convinced that Mr. Burch's calculation of 3.4% based on an attempt to specifically identify the pipeline routing used by JCRSD is an accurate representation of JCRSD's usage of the system due to comingling and interconnectedness of the collection system. The Commission has strongly rejected "geographic pricing." The Commission's Order in *Indiana American Water Company*, Cause No. 40703, (December 11, 1997) explains:

We recognize that electric and telephone utilities have interconnected facilities. But that does not diminish the facts that (a) they still have geographic differences in costs and (b) we have decided those differences should not be considered in the ratemaking process. We already have a policy against considering geographic differences in costs within an interconnected system. For example, customers on the north side of town pay the same rates as customers on the south side of town even though the sources of supply, transmission mains, pumping stations and distribution lines serving those different areas may have different costs.

Id. at p. 81.

² Preliminarily, we note two other matters. First, Mr. Heid acknowledged in his rebuttal testimony and on the witness stand that he had made two minor numerical errors in his COSS that resulted in a small over allocation to JCRSD of approximately \$15,000. Tr. A-10. Second, Mr. Burch attempted an allocation of flow at the treatment plant that Mr. Heid proved to be mathematically incorrect on rebuttal. It was confirmed on the witness stand that Mr. VerDouw did not use Mr. Burch's treatment plant allocation, and so we find that JCRSD has abandoned that argument.

If we were to accept Mr. Burch's analysis, it would be inconsistent with decades of cost allocation before this Commission and would be fundamentally unfair (i.e., unjust and inequitable) to every other customer of Seymour whose rates are not similarly set based upon where he/she/it is physically located in relationship to the treatment plant. Accordingly, we reject Mr. Burch's analysis and Mr. VerDouw's use of Mr. Burch's analysis.

c. Small/Large Customers. While JCRSD did not present any calculation or change in the cost allocation based upon differing allocations among large and small customers, JCRSD's counsel did cross-examine Mr. Heid concerning positions he has taken in the *Stucker Fork* case concerning allocation of only larger diameter mains to larger customers. Mr. Heid explained on cross examination that *Stucker Fork* is a water utility and that, while there are similarities in cost allocation between water and sewer utilities, they are not the same. For example, Mr. Heid responded that it is common with water cost of service studies to attempt to differentiate between larger and smaller mains, then proportionately allocating all larger mains to all larger customers. However, Mr. Heid differentiated between the *Stucker Fork* issue of smaller versus larger mains and the JCRSD proposal of directly assuming a specific pipeline route and costs to a particular customer. Mr. Heid stated on cross examination: "We do not attempt to directly assign a customer with particular costs or assume that they're using a particular line, but rather it's really just a category or a subclassification of the customer class." Tr. A-57, lines 14-18. More to the point, our *Stucker Fork* Order (p. 12) discussed the testimony of Richard Burch: Our Order with respect to Mr. Burch stated: "He stated the interconnectedness or 'looping' of the water mains in the Austin pressure zone allows Stucker Fork to reinforce its system, offer improved service, and better quality for all its customers, including Morgan Foods."

Thus we rejected the contention in *Stucker Fork* that the COSS was flawed because it did not allocate only larger mains to larger customers:

An examination of the AWWA Manual, at pages 167-168, indicates that either Morgan Foods' or Petitioner's approach for allocating costs associated with transmission and distribution mains is acceptable depending upon the particular circumstances. Based on the utility system maps and evidence presented by Stucker Fork concerning its system operations, we find Stucker Fork's approach to be reasonable. As noted earlier, Petitioner is a small rural water utility with a much less diverse customer base when it comes to large and small customers, as opposed to a large investor owned utility such as Indiana American Water Company.

Stucker Fork, p. 25. For the same reason, we find JCRSD's criticisms of Mr. Heid's COSS concerning allocation among large and small customers should be rejected here.

d. Inclusion of Capital Costs. Based upon the expired contracts, Mr. VerDouw recommended that all capital costs (both extensions and replacements as well as existing and proposed debt service) should be excluded from JCRSD's cost of service and rates. He reached this conclusion based upon the assessment of an O, M & R rate component and the additional one-time payment of \$35,212 in "capital costs" pursuant to the now-expired contracts, which Mr. VerDouw believes means that JCRSD has already paid all capital costs. We agree with Mr. Heid that Mr. VerDouw is mistaken. The O, M & R rate was the equivalent to what we generally refer to as the extensions and replacements element of the revenue requirement. Seymour Ex. No. 1-R at 30. Thus, in theory, during the forty-

year term of the contracts, JCRSD would have paid rates recovering the equivalent of extensions and replacements. In addition, as Mr. Heid noted in rebuttal testimony (pages 33-34), the EPA Construction Grants Program expired in 1987, to be replaced with a State Revolving Fund program. Thus, any current or future capital projects must be self-funded rather than through an EPA Construction Grant. It is unreasonable to assume that in perpetuity no future capital costs would need to be allocated to and recovered from JCRSD. Moreover, the contracts are expired. Any “rights” that JCRSD enjoyed pursuant to the contracts have also expired with their terms. Accordingly, the capital costs (both extensions and replacements and debt service) are properly allocable to JCRSD.

e. Outside City Surcharge. Seymour has a lawfully established outside city surcharge. The issue we must decide is whether that surcharge properly applies to JCRSD. JCRSD argues its point of connection is within the corporate limits of Seymour. Seymour counters that the metering points which are outside the corporate limits of Seymour represent the point of sale and are the determinative factor. Seymour demonstrates that the Contracts specify that the connection points are in different locations than the metering points, with the connection points being located within the corporate limits of Seymour while the metering points are located outside the corporate limits of Seymour. We find that the surcharge is properly applied to JCRSD. We also note that the entirety of JCRSD’s service territory is located beyond those metering points; therefore, we find Seymour is correct and that the outside city surcharge properly applies.

In considering JCRSD’s argument of rate shock, the Commission agrees with Mr. Heid that rate shock is not applicable in this proceeding because the sole focus of this proceeding is determination of the cost of serving JCRSD. The Commission acknowledges the grant subsidized rates JCRSD was previously paying are historical and unique, but the grant program has long been discontinued and so must the subsidized rate. Other customers’ rates have been raised many times in the ensuing years in recognition that the system is no longer funded by EPA grants. That JCRSD’s rate has been below cost for many years is not justification for continuing to hold it well below cost in the future, especially when it is remembered that other customers bear the responsibility of holding that rate below cost. Moreover, JCRSD included in its Petition, *see* p. 4, f.n. 2, that Seymour offered JCRSD the option to phase in to a lower rate before this case was filed. JCRSD is the entity that has invoked our jurisdiction to establish its rate, and we have long held that just and reasonable rates are those that are based on cost of service. The Commission finds JCRSD’s argument of rate shock to be unpersuasive. This finding is additionally supported by prior case law; *see Clinton Township Water Co., Inc.* Case No. 83A04-9805-CV-248. The Court in affirming the decision in 1997 included the following dicta:

Prior to the rate increase, the Township, a wholesale customer, paid lower rates than residential customers. These lower rates were instituted pursuant to a contract between the City and the Township entered into in 1985. When the ten-year contract expired in 1995, attempts at renegotiation were unsuccessful. After the rate increase, all of the City’s water customers, wholesale and residential customers alike, pay the same rate, with discounts permitted based upon the quantity used. While this has resulted in a higher increase in the Township’s rates as compared to the residential customers, this disparity does not render the rate increase, discriminatory, unreasonable, or unjust. The rate increase simply requires the Township to pay the same rate as the City’s other customers. The greater percentage increase was required by the fact that the

Township's pre-increase rate was less than the City's cost to produce the water sold.

(Emphasis added). Exhibit 1-R at 15.

After review of the evidence of record, the Commission finds the wholesale rates as recommended by Mr. Heid (after correcting for the approximately \$15,000 error he identified) to be paid by JCRSD as a wholesale customer to be just and reasonable.

6. Confidential Information. On September 3, 2021, Seymour filed a motion seeking a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 5-14-3 and Ind. Code § 8-1-2-29. The request was supported by a verified declaration showing the designated documents offered into evidence at the evidentiary hearing were trade secret information within the scope of Ind. Code § 5-14-3-4(a) (4) and Ind. Code § 24-2-3-2. On September 16, 2021, the Presiding Officers issued a docket entry finding such information confidential on a preliminary basis. On March 28, 2022 Seymour submitted its designated confidential information.

After reviewing the designated confidential information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. Seymour takes reasonable steps to maintain the secrecy of the information, and disclosure of such information would cause harm to Seymour. Therefore, we affirm the preliminary ruling and find this information should be exempted from the public access requirements contained in Ind. Code Ch. 5-14-3 and Ind. Code § 8-1-2-29, and held confidential and protected from public disclosure by this Commission.

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

1. After correction, Seymour's wholesale rate calculated by Mr. Heid to which JCRSD is subject to is just and reasonable.

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 to the Secretary of this Commission, as well as any additional costs which were incurred in connection with this Cause:

Commission Charges: \$
OUCC Charges: \$
Legal Advertising Charges: \$
Total: \$

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

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

**Dana Kosco
Secretary of the Commission**

DMS: 22384904.3