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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE )  
DEPARTMENT OF WATER WORKS OF THE )  
CITY OF MICHIGAN CITY, INDIANA, FOR ) CAUSE NO. 44865  
APPROVAL OF A REGULATORY )  
ORDINANCE ESTABLISHING A SERVICE )  
TERRITORY FOR THE CITY'S MUNICIPAL ) APPROVED:  
WATER SYSTEM PURSUANT TO IND. CODE ) FEB 22 2017  
§ 8-1.5-6 ET SEQ. )

ORDER OF THE COMMISSION

**Presiding Officers:**

**Sarah E. Freeman, Commissioner**

**David E. Veleta, Senior Administrative Law Judge**

On October 4, 2016, the City of Michigan City, Indiana ("Michigan City"), filed its Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission") in this matter. On October 11, 2016, Michigan City filed the direct testimony and exhibits of Randall E. Russell, Superintendent of the Michigan City Department of Water Works.

On December 15, 2016, 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. That same day, the City of La Porte, Indiana ("La Porte") filed its Petition to Intervene, as well as the direct testimony of its Director of Water Works, Todd A. Taylor. The Presiding Officers issued a Docket Entry on January 3, 2017, granting La Porte's Petition to Intervene. On January 4, 2017, Michigan City filed the verified rebuttal testimony of Mr. Russell.

The Commission held an Evidentiary Hearing in this Cause at 9:30 a.m. on January 18, 2017, in Room 224, 101 West Washington Street, Indianapolis, Indiana. Michigan City, the OUCC, and La Porte appeared by counsel 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. Michigan City owns a water utility as that term is defined in Ind. Code § 8-1.5-6-1(1). Michigan City requests approval of Michigan City Ordinance No. 4398 adopted pursuant to Ind. Code § 8-1.5-6-3 on September 20, 2016 (the "Regulatory Ordinance"). Under Ind. Code § 8-1.5-6-9, the Commission has jurisdiction over the enforceability of a regulatory ordinance adopted by a municipality after December 31, 2012. Therefore, the Commission has jurisdiction over Michigan City and the subject matter of this proceeding.

2. **Michigan City's Characteristics.** Michigan City is a municipality located in La Porte County, Indiana. Michigan City owns and operates a municipal water utility that provides water service to customers in and outside its corporate boundaries as explained in the verified direct testimony of Randall E. Russell.

3. **Relief Requested.** Michigan City requests approval of the Regulatory Ordinance which asserts Michigan City's jurisdiction to provide water service to certain areas that are within four miles of Michigan City's corporate boundaries as described and depicted in Exhibit 2 to the Verified Direct Testimony of Randall E. Russell.

4. **Summary of Evidence.**

A. **Michigan City's Direct Evidence.** Randall E. Russell, the Superintendent of the Michigan City Department of Water Works, generally described: (i) Michigan City's existing water facilities; (ii) the Regulatory Ordinance at issue in this Cause; (iii) the ability of other providers to serve in Michigan City's proposed service territory; (iv) the rates and charges for service in the proposed service territory; (v) the present and future economic development in the proposed service territory; (vi) the history of service in the existing water service area; and (vii) other factors supporting approval of the Regulatory Ordinance.

Mr. Russell specifically described the Regulatory Ordinance. According to Mr. Russell, the Regulatory Ordinance establishes Michigan City's water service areas that include all the property within Michigan City's corporate boundaries and certain areas within four miles outside its municipal boundaries as identified on Exhibit A attached to the Regulatory Ordinance (the "Water Service Area"). Mr. Russell explained that the Regulatory Ordinance provides that upon approval by the Commission, Michigan City will hold an exclusive license to furnish potable water service within the Water Service Area.

Mr. Russell also explained that while there are six other water utilities within or near four miles of the corporate boundaries of Michigan City, each of the service areas of these utilities has been excluded from the Water Service Area proposed in the Regulatory Ordinance. In light of the fact that the existing service areas of other utilities have been carved-out of the Water Service Area proposed in the Regulatory Ordinance and he is not aware of any utility planning to serve that area, Mr. Russell stated his belief that Michigan City was in the best position to provide water service to the Water Service Area proposed in the Regulatory Ordinance and that such service would promote economic development. Mr. Russell noted that Michigan City has been discussing extending its corporate boundaries and creating a tax increment financing area for a proposed project that is southeast of Michigan City's existing boundaries. Furthermore, Mr. Russell stated that it is anticipated that this area that is within the Water Service Area proposed in the Regulatory Ordinance will experience economic development and a corresponding increase in water needs. Mr. Russell also presented testimony and exhibits regarding the terms and conditions for water service, including the rates and charges that would be imposed on users within the Water Service Area proposed in the Regulatory Ordinance.

In conclusion, Mr. Russell testified that having an exclusive water service area would allow Michigan City to plan for expansion of its utility service regardless of annexation, and would give Michigan City a planning area to enable it to plan for the best means of extending service in the

short and long term. Mr. Russell also testified that the Water Service Area was consistent with Michigan City's existing long-term plans for providing redundancy of service and expanding its existing facilities, and that Michigan City currently has pipes in the ground in portions of the Water Service Area.

**B. OUCC's Direct Evidence.** James T. Parks testified that the OUCC does not contest the Commission's approval of the Regulatory Ordinance, provided several concerns discussed in Mr. Parks' testimony are adequately addressed, as more fully discussed below. Mr. Parks acknowledged that Michigan City has sufficient managerial and technical capabilities needed to extend water service to areas beyond its corporate limits. Mr. Parks briefly described Michigan City's existing water infrastructure and noted that its water treatment plant has a capacity of 20 million gallons per day ("MGD"). Mr. Parks concluded that Michigan City has ample capacity to serve additional customers as Michigan City's water production over the last three years has ranged between 6.0 and 6.44 MGD.

Mr. Parks also indicated that the Water Service Area as proposed would extend beyond the corporate boundaries by more than the four mile allowable distance and that a small area southeast of Michigan City falls outside the Great Lakes watershed. Mr. Parks noted that under the Great Lakes Compact, water from the Great Lakes cannot be diverted outside the Great Lakes drainage basin without specific permission from the St. Lawrence River Basin Water Resources Council. Therefore, Mr. Parks recommended that Michigan City revise its proposed regulated territory to comply with both the four-mile distance allowed by Indiana law and the basin boundary recognized under the Great Lakes Compact.

Mr. Parks testified that Michigan City currently has limited water distribution mains outside of its corporate limits and therefore is not currently capable of providing water services to the entire proposed regulated territory until new water mains are constructed to serve areas located outside of its municipal boundaries. He did, however, acknowledge that Michigan City has larger water mains in and around its corporate boundaries that could be looped and extended to serve the adjacent proposed regulated territory. Since that would require some time to complete, Mr. Parks recommended that Michigan City revise Section 4 of the Regulatory Ordinance to state that the ordinance does not prevent the use of onsite private water systems where Michigan City does not have facilities available. Mr. Parks also expressed concern that the requested service territory rights would give Michigan City the exclusive right to serve a large area not already equipped with distribution mains. Mr. Parks believes that granting exclusive service rights to Michigan City could deter other utilities from extending service to customers Michigan City is not yet able to serve. He acknowledged it seems unlikely that other utilities will be poised to serve in the proposed Regulated Territory before Michigan City. Mr. Parks recommended that, under such circumstances, a consumer should not be required to wait for Michigan City to extend service if another provider has the present ability to meet the consumer's service needs at a reasonable cost. Mr. Parks recommended that if such a situation arises in the future, the Commission should revisit the exclusivity of Michigan City's rights to serve the Regulated Territory.

**C. La Porte's Direct Evidence.** Mr. Todd A. Taylor testified on behalf of Intervenor, La Porte. Mr. Taylor testified that he did not oppose the approval of the Regulatory Ordinance in principle. However, Mr. Taylor did raise a concern that Michigan City should not be authorized as the exclusive water utility provider in areas either located outside of the Great Lakes

Basin or greater than four miles from the corporate boundaries of Michigan City. Mr. Taylor also stated that the map attached to the Regulatory Ordinance is unclear in some places and difficult to understand. He indicated that uncertainties surrounding the boundary lines of the Water Service Area made him unable to determine whether Michigan City intended to include areas outside the Great Lakes Basin in its exclusive service territory. Therefore, Mr. Taylor recommended that the Commission approve the Regulatory Ordinance to the extent it is modified to exclude any areas located outside the Great Lakes Basin, and that Michigan City revise the map attached to the Regulatory Ordinance to clearly delineate boundary lines.

**D. Michigan City's Rebuttal Evidence.** Mr. Russell addressed the testimony of Witnesses Parks and Taylor regarding the proposed service territory. His rebuttal testimony clarified that Michigan City did not intend to have a Water Service Area that extends greater than four miles outside of its corporate boundaries or that extends out of the Great Lakes Basin. Mr. Russell attached five exhibits to his Verified Rebuttal Testimony including a birds-eye view map of the entire water service area boundary (the "Boundary Map"), and separate detailed maps by quadrant. The Boundary Map was revised to address the two issues raised by the OUCC and La Porte so that those boundaries do not extend greater than four miles outside of the Michigan City corporate boundary, nor do they extend beyond the Great Lakes Basin/Kankakee Watershed divide. Mr. Russell noted that the carve-outs previously noted in his Direct Testimony for existing service from other utilities remained in the revised Boundary Map. Therefore, Mr. Russell recommended that the Commission approve the water service area established in the Regulatory Ordinance, if Michigan City adopts the Boundary Map as an amended exhibit to that Ordinance.

**5. Commission Discussion and Findings.** Michigan City seeks approval of its Regulatory Ordinance. 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) 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.

Ind. Code § 8-1.5-6-9(b). Michigan City's Petition states that the proposed service territory includes all the area within Michigan City's municipal boundaries, as well as certain areas within four miles outside Michigan City's boundaries as described and depicted in Regulatory Ordinance No. 4398. Michigan City provided a revised Boundary Map and detailed maps by quadrant that specifically delineate the proposed new water service territory (collectively, the "Michigan City Territory"). Based on a review of the revised Boundary Map, we find that, consistent with the language of the Regulatory Ordinance, the Michigan City Territory does not extend greater than four miles outside of its corporate boundaries, nor does it extend beyond the Great Lakes Basin. The Petition also included a schedule of the proposed rates and charges for water service within

the Michigan City Territory and indicated that Michigan City was not aware of any pending administrative or judicial proceedings involving the Regulatory Ordinance. Finally, Michigan City provided a list of utilities that are potentially impacted by the Regulatory Ordinance. Based on our review of the Petition, we find it complies with the requirements of Ind. Code § 8-1.5-6-9(b), provided that Michigan City adopts the revised Boundary Map presented in its rebuttal testimony as an amended exhibit to the Regulatory Ordinance.

**B. Public Interest Factors.** Under Ind. Code § 8-1.5-6-9(c), before approving a Regulatory Ordinance, we 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.

No party disputed that Michigan City has the ability to provide service in the Water Service Area. The evidence presented indicates Michigan City has adequate capacity to meet today's flows and the ability to expand its capacity as the need arises. There is no other history of any other entity providing service in the Michigan City Territory.

The record further reflects that Michigan City currently has water rates in place as approved by the Commission's Order in Cause No. 44538 that will apply to new customers in the Water Service Area. Additionally, we conclude from the uncontroverted evidence of record in this case that the Regulatory Ordinance will advance economic development in and around the area. Specifically, the Water Service Area gives Michigan City the ability to extend service and to add more customers.

Finally, the governing statute allows us discretion to consider additional factors. The testimony of record indicated that the Water Service Area would allow Michigan City to plan for expansion of its utility service without concerns about annexation, and would give Michigan City a planning area that enables it to plan for the best means of extending service over the short and long term. Finally, to the extent Mr. 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 approve the Regulatory Ordinance No. 4398, subject to Michigan City adopting the revised Boundary Map as an amended exhibit to the Regulatory Ordinance.

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

1. Michigan City's request for approval of the Regulatory Ordinance No. 4398 is hereby approved, subject to Michigan City adopting the revised Boundary Map as an amended exhibit to Regulatory Ordinance No. 4398.

2. In accordance with Indiana Code § 8-1-2-70, Michigan City shall, within 20 days from the date of this Order, pay into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

|                            |                 |
|----------------------------|-----------------|
| Commission Charges:        | \$ 1,142.90     |
| OUCG Charges:              | \$ 1,515.61     |
| Legal Advertising Charges: | \$ <u>36.22</u> |
| Total:                     | \$ 2,684.73     |

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 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