

FILED

October 13, 2017

INDIANA UTILITY

REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

COMPLAINT OF CLARK BYRUM AGAINST)
CITIZENS WASTEWATER OF WESTFIELD,)
LLC CONCERNING THE PROVISION OF) CAUSE NO. 44886
WASTEWATER SERVICE)

SUBMISSION OF PROPOSED ORDER
BY COMPLAINANT CLARK BYRUM

The Complainant, Clark Byrum, by counsel, hereby submits his Proposed Order and in lieu of a supporting brief, requests and incorporates by reference the previously filed Complainant's Response to Citizens Motion to Dismiss and Supporting Brief filed in this docket with the Commission on February 24, 2017, in the above-referenced matter.

/s/ Keith L. Beall

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complainant's Submission of Proposed Order* that was electronically filed with the Indiana Utility Regulatory Commission was also served upon the following counsel of record via electronic service this 13th day of October 2017.

<u>OUC</u>	<u>Citizens Wastewater of Westfield, LLC</u>
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/s/ *Keith L. Beall*
Keith L. Beall

COMPLAINT OF CLARK BYRUM AGAINST) CAUSE NO. 44886
CITIZENS WASTEWATER OF WESTFIELD,)
LLC CONCERNING THE PROVISION OF) (ORDER ON CUSTOMER
WASTEWATER SERVICE) COMPLAINT)
)
) APPROVED:

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the OUCC offered their respective prefiled testimony and exhibits which were admitted into evidence without objection and witnesses presented for cross examination. No members of the public appeared at the hearing or otherwise sought to testify.

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

1. Notice and Jurisdiction. Due, legal, and timely notice of these proceedings was given and published as required by law. Citizens is a public utility as defined in Ind. Code § 8-1-2-1. Petitioner seeks to issue long-term debt pursuant to Indiana Code § 8-1-2-78 for purposes of funding certain necessary utility plant replacements and upgrades; pay off short-term interim funding; and provide funds for Petitioner's costs associated with a specific interconnection and main relocation project. Therefore, this Commission has jurisdiction over the Petitioner and the subject matter of this Cause.

2. Complainant. Complainant, Clark Byrum Jr., is an individual customer who is a part owner of certain real property located in the far south western portion of Westfield, Hamilton County, Indiana ("Property"). Complainant is seeking water and wastewater utility services to the Property at reasonable and just costs.

3. Respondent's Characteristics. Citizens is a for-profit, combined water and wastewater utility that serves residential, commercial, and limited small industrial customers in the City of Westfield and Hamilton County, State of Indiana. Citizen's water and wastewater infrastructure was recently taken over by Citizens from the City of Westfield, the prior municipal utility operator and service provider.

4. Relief Requested. In the instant referred CAD proceeding, Complainant seeks Commission review and authorization to: allow Complainant to obtain utility service through more practical means, not the least of which would be through this Commission's authorization of service by and through the contiguous utilities Clay Township Regional Waste District ("CTRWD") and the City of Carmel Water Department ("Carmel") because Citizens does not currently have facilities in place nor any immediate plans to serve the Complainant. In the alternative, Complainant seeks a determination that the application of Citizens Terms and Conditions of Service does not represent a reasonable and just cost for extension of utility services for the Byrum Property, and requests that the Commission determine a reasonable and just cost of connection based upon the evidence of record.

5. Evidence of the Parties.

A. Complainant's Evidence

(1) Clark Byrum. Mr. Byrum testified that he is part owner with other family members of a parcel of property located at 3810 W. 146th Street, Westfield, Indiana ("Property"). Mr. Byrum indicated that he was interested in building a residential home for his family on a portion of the 32-acre Property. Mr. Byrum stated that the Property was located in rural Hamilton County, until it was annexed by the City of Westfield in 2005. At the time of annexation, the City of

Westfield promised to provide all City services, including water and sewer utilities, which at that time it was providing through its own municipally operated sewer and water utilities.

Mr. Byrum stated that he contacted Citizens of Westfield ("Citizens") in the March 2016 to determine how to obtain water and sewer services for the Property. Complainant was advised by Ed Bukovac, Citizens' Development Strategic Engineer, that Citizens had no intention of constructing the utility infrastructure out to serve the Property. Based on this, Mr. Byrum contacted Clay Township Regional Waste District ("CTRWD") and the City of Carmel ("Carmel") who were providing utility service to customers just across 146th Street from the Property to the south. Mr. Byrum then heard back from Citizens who indicated he would have to obtain water and sewer services from Citizens because the Property was located in Citizens' certified territory. Citizens verbally indicated to Mr. Byrum that it would cost well over \$1 million to extend sewer service to the Property and that he would be required to agree to pay that if he wanted service to the Property. Mr. Byrum then filed his complaint with the Commission Consumer Affairs Division ("CAD") claiming the Citizens costs to connect were excessive and he made a request to be served by Carmel and CTRWD instead.

Mr. Byrum indicated that the Citizens proposed costs to extend utility service to the Property was clearly unjust and completely unreasonable. Mr. Byrum also stated that he believed what Carmel and CTRWD proposed for allowing him to connect and be served by them was far more reasonable and practical since they already had facilities in place in the area and are willing to serve the Property. Complainant reviewed what both Carmel and CTRWD stated was needed to provide him service. Each stated that it would be a very easy process to either bore under or make a road cut to run a line to whatever designated location on the 146th Street Property was desired.

Complainant indicated to Citizens that the other utilities already have an available mains within just a few feet of the Property and upon payment of basic connection fees, they are ready, willing, and able to serve the Property. However, Citizens refused to allow Carmel or CTRWD to service the Byrum Property. Mr. Byrum stated he tried to get more information from Citizens about when they planned to provide the service mains to Property and the details regarding the exorbitant costs, but was never provided this information during the CAD process.

Mr. Byrum also testified why a septic system was not an option. He indicated that there originally was an old farmhouse on the Property that had a septic system, but the farmhouse was raised and septic system was closed several years back following the City's annexation. Mr. Byrum further testified about discussions with the local health department which indicated they did not see the need to grant new septic system permit because the area had been annexed by the City of Westfield, Citizens had taken over the sewer service operations, and Clay Township had a sewer system just across the street. Mr. Byrum also testified about concerns of being forced to connect to some utility's system anyway, thus paying twice – once to engineer, locate and install a possible new septic system and the second time when he would have to connect on and pay the sewer utility connection fees.

Complainant indicated that he was caught in an unusual set of circumstances. He was originally promised utility services when Westfield annexed the Property in 2005. Then Citizens came along and bought the City's utilities and promised Westfield residents that they would

provide those same utility services at reasonable rates. Mr. Byrum testified that Citizens requirement to pay over \$1 million dollars to get sewer service to the Property was not reasonable. Complainant stated that he reasonably expected that if Citizens does not have the facilities in the area to serve the Property and Clay Township and Carmel do, it seemed practical to allow him to connect to them at a far lower and far more reasonable cost. Complainant therefore requested the Commission allow Clay Township Regional Waste and Carmel Water provide service to the Property because of their existing location of facilities and willingness and ability to serve. Mr. Byrum also stated that Citizens should be required, in these circumstances, to provide specific details about and support any demands for main extensions and that any such charge be reasonable and just.

(2) Andrew Williams. Andrew Williams is the Utility Director for the Clay Township Regional Waste District ("CTRWD"). Mr. Williams filed testimony as part of Complainant's direct case providing additional background. Mr. Williams indicated that he was familiar with the area where Mr. Byrum's Property is located on W. 146th Street because CTRWD currently provides service to several customers immediately to the south of 146th Street in the Bear Creek Subdivision, as well as having customers to the west of this area in Boone County. Mr. Williams then generally described CTRWD, its formation, the current service territory, its customer size, and reviewed the CTRWD treatment and collection systems.

Mr. Williams indicated that CTRWD had facilities in place contiguous to the Byrum Property and that it would be easy for CTRWD to run a main to serve the Property. Mr. Williams also stated CTRWD had adequate capacity to serve Mr. Byrum and has all necessary technical, financial, and managerial capability to serve this Property. Further, Williams stated that CTRWD's collection system in that general area of Hamilton County is primarily gravity controlled. Mr. Williams indicated the Property is upstream and thus any sanitary sewage would be by gravity, south into CTRWD's interceptor that runs parallel to 146th Street.

Mr. Williams also provided an estimate of the cost to serve the Byrum Property. He provided detailed Exhibit AW-2 that indicated it would cost Mr. Byrum approximately \$225,000 to \$250,000 for all of the necessary connection, interceptor, application and inspection fees required to obtain service. He estimated that it would be very easy to extend an 8" sanitary sewer main 800 feet north to the south property line of the Property in order to provide service for all 32 acres. Additionally, Mr. Williams calculated the monthly cost to Mr. Byrum to be \$31.92/month in recurring service charges if he were a CTRWD residential customer.

Mr. Williams also stated that sometime in May 2016 he had reached out to Ed Bukovac, at Citizens, and explained that CTRWD had a property owner contact them and CTRWD was willing to help provide service. Mr. Williams stated these types of discussions are not uncommon when there are customers who seek service that are on the fringes of one utility's service area and another utility already has facilities in the same area.

Mr. Williams summarized his testimony stating that CTRWD has facilities already in the area; is willing to serve the Byrum Property if the territory has been released; has all necessary technical, financial, and managerial capability to provide the services; and has provided the

reasonable cost estimate information for what it would approximately cost to construct the extension of the sewer main and receive service from CTRWD. Mr. Williams also stated that the District has previously exchanged contiguous service territories with Carmel, Zionsville, HSE and Citizens in the past when one of the parties had the facilities and capacity to provide the customer with the needed services more readily or in a more cost effective manner. Finally, Mr. Williams noted that the Byrum Property can easily and more inexpensively be serviced by CTRWD because of its location which allows for gravity flow of the Byrum Property sewage.

B. Citizen's Responsive Evidence.

Respondent's witness Edward J. Bukovac provided a general overview of Citizens' water and wastewater facilities. As part of that review Mr. Bukovac noted that on November 25, 2013, the Commission issued an Order in Cause No. 44273 finding that Citizens' acquisition of the water and wastewater utility assets from the City of Westfield was in the public interest. Thereafter, Mr. Bukovac noted that in March 2014, Citizens acquired the utility assets used to provide water and wastewater utility service to the Westfield community.

Mr. Bukovac stated that because the Byrum Property is located within the corporate limits of the City of Westfield, Citizens considers it part of Citizens' service territory. He noted that the Commission grants wastewater certificates of territorial authority for "rural" areas, which by definition are areas located outside the corporate boundaries of a municipality. Bukovac also stated that there are no certificates of territorial authority that are required for the provision of water service in rural areas. Mr. Bukovac acknowledged that the Property is not within a certificated area for water service. (See Resp. Exh. 1, Pg. 7).

Mr. Bukovac testified that the City of Westfield transferred its wastewater and water system assets to Citizens with the expectation that it would be the service provider for the entire community. During cross examination, Mr. Bukovac could only point to invitations by the City to attend community meetings as support for this expectation. (TR at A-78). Mr. Bukovac also stated that Citizens paid approximately \$91 million to acquire those utility assets and Citizens would lose some of the benefit of their bargain if other service providers were allowed into the City of Westfield, which would go against the purpose of the acquisition. (See Resp. Exh. 1, Pg. 17).

Mr. Bukovac did note that he had advised Mr. Byrum back in March 2016 that Citizens Westfield had no immediate plans to serve the area where the Property was located and further explained that in situations such as this, "it is the responsibility of the developer/property owner to provide that infrastructure for what is required to serve that site". (See Bukovac Testimony Page 8). Mr. Bukovac then described how utility facilities and service would typically be extended to the Property pursuant to Citizens' Terms and Conditions for Water Service and Terms and Conditions. Mr. Bukovac stated that the utility infrastructure could be extended to the site either by the property owner paying Citizens to construct the infrastructure or by the developer (property owner) constructing it directly. Mr. Bukovac made clear that this obligation on the owner to pay to extend service is found in Citizens Terms and Conditions for Service which was approved by the Commission.

Mr. Bukovac indicated that Citizens preliminary proposal to extend service to the Property was based upon sound engineering principals, the Ten State Standards, Citizens' Infrastructure Planning document for the wastewater system, and our Terms and Conditions for Service. He claimed service to the Property would require the construction of the new sewer lift station and approximately 3,100 feet of offsite gravity sewer to connect the Property to the lift station at an estimated cost of approximately \$917,000. Mr. Bukovac also stated that it would take approximately 8,900 – 9,300 lineal feet of pipe to extend water service from a Citizens main to the Property. He testified that a 12-inch water main would be needed, but that may be subject to change as more information becomes available. The cost for water service to the Property was determined to be \$1,023,000. Mr. Bukovac indicated that Citizens issued a "Will Serve Letter" ("Letter") to Mr. Byrum on July 16, 2016, which stated that Citizens would provide water and wastewater service to the Property in accordance with its Terms and Conditions for Service. During cross examination, Mr. Bukovac confirmed that this meant Mr. Byrum would be required to pay the extension costs of approximately \$917,000 for sewer and \$1,023,000 for water service. He stated this is the same process Citizens would go through with any other similarly situated customer.

Mr. Bukovac then shared another potential way for Mr. Byrum to reduce these costs would be to see if there are other property owners along the main extension routes that are interested in receiving service, or to wait for more development to occur in the area. He stated that Mr. Byrum would be eligible for potential refunds up to the amounts of the main extensions based upon his usage and subsequent connections to the mains by other customers. However, Mr. Bukovac also acknowledged that any refunds are made after those customers connect to the main and only for a period of ten years.

Mr. Bukovac next outlined Citizens' proposal to serve the Property through wholesale arrangements with CTRWD and City of Carmel Water Utility ("Carmel Water"). Mr. Bukovac stated that Citizens principal objective is to resolve this matter in a way that is beneficial to Mr. Byrum, Citizens Westfield, our other customers and the Westfield community generally. He states that the wholesale arrangement proposal reduces the cost to extend service to the Property, for equal or lesser cost than what was proposed by CTRWD and Carmel Water without negatively impacting Citizens Westfield or its ratepayers. He stated that Citizens would make the necessary offsite improvements to interconnect its system with CTRWD's system, and extend a main across the frontage of the Property. Mr. Byrum would be responsible for the actual costs of those improvements, which Citizens Wastewater of Westfield agreed shall not exceed \$250,000.

Similarly, Mr. Bukovac discussed a possible wholesale arrangement with Carmel Water whereby Citizens would make the necessary offsite improvements to interconnect its system with Carmel Water's system, and extend a main across the frontage of the Property. Mr. Byrum would, under this proposal, be responsible for the actual costs of those offsite improvements, which Citizens Westfield agreed would not exceed \$80,000. Mr. Bukovac noted that this is similar to the cost quoted to Mr. Byrum by Carmel Water of approximately \$80,000. Mr. Bukovac stated that under the proposed wholesale arrangements, service could be provided to the Property at a similar cost to that proposed by CTRWD and Carmel Water and provide Citizens Westfield a cost effective means to provide service to this portion of the City of Westfield prior

to additional development taking place. This approach would also avoid other concerns raised by Mr. Bukovac.

Mr. Bukovac then reviewed certain issues raised by Mr. Byrum's request to have the Property served directly by CTRWD and Carmel Water. Mr. Bukovac claims that permitting another utility to serve the Property would result in Citizens losing some of the benefit of their bargain. He asserts that allowing other service providers into the City of Westfield would go against the purpose of the acquisition. Bukovac also states that CTRWD and Carmel will need approval from the City of Westfield which could also limit access to the City's rights of way. Mr. Bukovac raised other adverse impacts such as the precedent Mr. Byrum's proposal could set if Mr. Byrum were allowed to choose alternative service providers.

Mr. Bukovac then concludes his direct testimony by outlining several conditions and restrictions on any potential temporary arrangements for utility service to the Property by CTRWD and Carmel. He then asks the Commission deny Mr. Byrum's request to allow the Property to be served directly by CTRWD and Carmel Water. He then requested the Commission order that the Property be served with water and wastewater utility service in one of the two following ways:

(1) by Citizens Westfield directly in accordance with its Terms and Conditions for Service which requires the up-front payment by Mr. Byrum of \$917,000 for sewer and \$1,023,000 for water service; or

(2) by Citizens Westfield through wholesale arrangements with CTRWD and Carmel Water in accordance with the terms *as proposed by Citizens*.

C. OUCC's Evidence.

Witness James T. Parks was the only witness on behalf of the OUCC. Mr. Parks stated that Citizens is not yet able to serve Mr. Byrum's Property because it does not have sewer infrastructure to serve the Property or the Southwest Interceptor Basin. Mr. Parks noted that all collecting mains, interceptors, lift station, and a force main to the Westside WWTP must first be designed, permitted, and constructed at a significant cost over a several-year period. Further, Mr. Parks recognized that due to limited initial flows, Citizens Westfield could not build the lift station and force main sized for ultimate build-out but would instead need to install an "interim" or "temporary" lift station and force main to serve the Byrum Property.

On the other hand, Mr. Parks stated that Clay Township already has an existing nearby interceptor that Mr. Byrum could connect to via a gravity sewer at a far lower cost. The gravity sewer connection to the Clay Township interceptor would not be an "interim" or "temporary" solution. It would not need to be upgraded, replaced, or expanded in the future with a higher capacity sewer according to Mr. Parks. However, Mr. Parks also observed that the Byrum Property is not within the service territory of Clay Township.

Mr. Parks provides a general overview of the Complaint and provides background details regarding the Property and the Westfield zoning. He also reviewed the Citizens extension costs

proposals and confirmed that the Citizens estimated the water main cost would be \$1,023,000 and Mr. Byrum's share for the sewer costs would be \$917,036. He also totaled the cost for both water and sewer extensions to be approximately \$2 million. Mr. Parks did take issue with how the numbers were calculated, but did not discuss those in his testimony, noting only that the costs were four to ten times the cost associated with alternatives. Mr. Parks next reviewed the Clay Township option and the facts and figures presented by Mr. Williams, and stated that the Clay Township option is significantly below the \$917,036 cost estimate prepared by Citizens Westfield.

Mr. Parks also indicated that it appears that Mr. Byrum might consider constructing a septic system on the Property to serve his single family residence, or separate septic systems for up to a total of ten homes on large three acre parcels based on current zoning. However, during cross examination Mr. Parks conceded he made only a generic review and did not actually personally evaluate the Property (TR at B-23 to B24), and his investigation with the Hamilton County Health Department was limited and the representative also did not have specific knowledge of the Byrum Property (TR at B-25). Mr. Parks also acknowledged during cross examination that his cost estimates were obtained from the internet, were national averages, and thus not specific to the Property. (TR at B-28).

D. Citizens Cross Answering Testimony.

Citizens was the only party to file cross-answering testimony on August 4, 2017. Mr. Bukovac filed cross-answering testimony to address certain issues raised in the direct testimony of OUCC Witness Parks. Mr. Bukovac stated that he believe Mr. Parks' conclusion of an on-site septic system was sensible and practical, and that an on-site septic system is a solution for homes in the area of the Property. Mr. Bukovac explained why Citizens did not propose this option initially based upon a misunderstanding of the circumstances. Mr. Bukovac also specifically indicated and requested that the Commission consider the installation of an on-site septic system as a wastewater treatment option for Mr. Byrum.

Mr. Bukovac also addressed OUCC Witness Parks criticisms of the \$917,000 and \$1,023,000 respective cost estimates for extending sewer and water utility service to the Byrum Property. He explained that these figures were an engineer's estimate of probable costs, and an estimate, by its very nature, is an inexact science. Mr. Bukovac stated additional information was necessary to prepare a more detailed cost estimate which he alleged Mr. Byrum failed to pursue further. Mr. Bukovac did concede that its estimate was not a precise formulation, and Mr. Parks was better able to disagree with certain assumptions and calculations based in part on follow up information obtained by the OUCC through data requests.

E. Complainant's Rebuttal.

(1) Clark Byrum. Mr. Byrum filed rebuttal testimony responding to both Citizens Witness Bukovac and OUCC Witness Parks. Mr. Byrum indicated that he has been trying for nearly 1.5 years to obtain reasonable sewer and water utility service. He also testified that the City of Westfield annexed the Property in 2005 and at that time promised to provide reasonable sewer and water services to the annexed properties. Shortly after annexation Mr. Byrum

indicated they went through the process of formally closing the prior farmhouse well and septic system on the Property at their own expense. Mr. Byrum then summarized his communications with Citizens about initially seeking to obtain utility services. He indicated that he was told Citizens had no utility facilities in the area and they had no plans to serve the Property. Mr. Byrum indicated that based on this he went to the other providers in that area seeking to obtain utility service. Citizens only then advised that they would not allow others to serve the Property but indicated they would agree to serve it, provided Mr. Byrum paid up front several millions of dollars for the installation of the necessary facilities to the Property.

Mr. Byrum also stated that after reviewing OUCC Witness Parks' testimony, he contacted Baker Construction and the Hamilton County Health Department to explore the possibility of what would be involved with installing a new septic system and well on the Property. On August 16, 2017 Mr. Byrum met with Brian Baker from Baker Construction and Larry D. Beard from the Hamilton County Health Department at the Property. He indicated that Mr. Beard noted the housing subdivision just to the south and suggested that because it looked to be within 300 feet, that may cause any request to fail. The second development Mr. Byrum raised was the fact that CTRWD recently approved a resolution that stated it will not enter into any wholesale agreement with Citizens. Mr. Byrum reviewed Mr. Bukovac's claimed wholesale solution proposed in his direct testimony. Mr. Byrum noted that this was unlikely given the August 15, 2017 CTRWD Resolution and raised concerns about any arrangements with Carmel.

Mr. Byrum also takes issue with Citizens claim that request for a \$2 million upfront payment as a proposed reasonable solution based upon their Commission approved "Terms and Conditions for Service" is reasonable, especially when Citizens took the position that the Commission lacks jurisdiction. Mr. Byrum also reasons that if Citizens wants the rights and benefits bestowed by the City to provide utility services, then Citizens should also accept the burdens and obligations to provide those services consistent with how the City of Westfield promised to provide them. He states that Citizens should honor the City's utility commitment and provide the service consistent with Westfield Council approved Ordinance 04-32 which states:

"Section 1. The Town Council hereby establishes a policy to extend water and sewer mains and facilities, without an extension agreement from landowners or developers and at the Town's initial expense..."

Mr. Byrum also takes issue with Citizens Witness Bukovac's description of the "typical" situation and discusses what he understands the "typical" in situations like this, where: (1) the requesting customer is at the extreme end of a service territory, (2) the authorized utility has no facilities in place, (3) but there are other contiguous utilities serving there; then an agreement to allow those utilities with facilities in place to serve the customer is "typically" reached – especially in the case of a residential service situation. Further he testified that Mr. Bukovac's claims of trying to resolve this matter in a way that is beneficial is not really the case. Mr. Byrum further states that he does not believe Citizens should be able to seek a \$2 million upfront payment from any residential customer, especially in a the situation here where annexed property owners were promised reasonable utility services by the City of Westfield by and through their annexation plan. Mr. Byrum states that \$2 million cost is unreasonable.

Mr. Byrum summarizes his testimony by stating that all he is wanting is to get *reasonably* priced utility service. He states Citizens seems unwilling or unable to provide the services, and even tries to suggest the City of Westfield would somehow not support the simple solution to allow these other utilities to help remedy this unique situation. He concludes his rebuttal by taking issue with the Citizens Terms and Conditions of Service and states they are neither reasonable nor just, and what Citizens is demanding under its Commission approved “Terms and Conditions for Service” is outrageous. He argues reasonable utility service was previously promised by Westfield to be extended at their cost and that Citizens presumably took on those obligations so they should honor the City’s commitment. He also testified that the other reasonable alternative is to just allow the Property to be served by CTRWD and Carmel who already have facilities in place and have indicated it is a simple process to connect to their systems, especially for sewer since the Property can more cheaply be served because it is uphill.

(2) Andrew Williams. Witness Williams presented limited testimony in response to certain CTRWD actions, reactions, and efforts since filing his June 9, 2017 testimony. Mr. Williams stated he was requested to further investigate and study what would be involved with providing sewer service north across 146th Street in the area of Mr. Byrum’s Property. The District retained an engineering consultant to complete the study.

Mr. Williams also clarified what he meant in his direct testimony regarding the District being “willing to work with all parties to provide service”. he stated that a temporary or permanent connection to the District’s system by the Byrum parcel would be as a CTRWD customer. Further, he shared details regarding a CTRWD resolution that was passed on August 14, 2017. The CTRWD Board specifically decided and determined that, “The District declines to enter into a wholesale agreement with Citizens of Westfield”. Williams also noted that the District confirmed its February motion and willingness to provide service. Mr. Williams clarified that while the District would not be able to provide the arrangement Citizens has suggested, the District does remain ready and available to extend our facilities and serve the Byrum Property if allowed to do so by the Commission.

6. Commission Discussions and Findings. The Commission begins with the general observation that this is very unique and unusual case. As noted by Mr. Williams, when there are customers located at the extreme ends of a utility’s service territory and there is a contiguous operator in that same area, the utilities typically work out some sort of arrangement to serve the customer. Thus, these matters rarely come before the Commission for resolution. This one has and we are thus presented with several unique issues for consideration.

It is helpful to first review some of the general issues raised by Mr. Byrum’s Complaint. First, he raises concerns about and challenges the application of the Citizens extension rules, referred to by Citizens as its Terms and Conditions of Service, and the fairness and reasonableness of the results those Terms and Conditions produce. Second, he raises and challenges Citizens current ability and capability to provide the utility services requested for the Property. Third, he proposes that a second provider of water and sewer utility services be considered who is ready, willing and able to serve to the Property.

We note that there may have been some confusion regarding what the intentions were with regard to the Byrum Property initially, but through this process it has become clear that the

Complainant is looking to obtain sewer and water service for his single family residence on the Property and for water and sewer utility services generally to be provided to the Property. What is also clear from a review of the evidence is that Citizens does not currently have any sewer or water facilities in place to provide such services. As noted above, there are other utilities in the area which have indicated a willingness and the ability to provide services to the Byrum Property quickly and easily. However, we are left with conflicting requests from the Complainant and Citizens on how to access those existing utility providers in light of the territorial rights claimed by Citizens. Before we address that conflict, we will discuss two derivative issues that have been raised, namely: (1) the septic and well options raised by OUCC Witness Parks; and (2) the application and reasonableness of Citizens Terms and Conditions of Service.

A. Septic and Well. We believe it is necessary to first review and address the issue of a septic and well from the outset. We have conflicting information on this issue starting with the November 29, 2016 Referral letter from the Commission's General Counsel. The November 29, 2016 Referral Letter noted that Mr. Byrum was unable to obtain a septic permit because the Property was within 300 feet of the CTRWD system. Mr. Byrum also stated that reinstalling a septic system on the Property was neither practical or cost effective - especially if his other family members were required to do the same if they chose to build on the Property. OUCC Witness Parks explored this septic system possibility generally with a representative from the Hamilton County Health Department and outlined how Mr. Byrum could pursue a septic permit, but provided no further definitive information on the whether a permit could or would be successfully granted. Mr. Parks also presented estimated septic costs gathered from the internet using national average estimated figures but did no specific analysis related to the Property.

After reviewing OUCC Witness Parks' testimony, Mr. Byrum contacted Baker Construction and the Hamilton County Health Department to explore the actual costs and what would be involved with installing a new septic system. Mr. Byrum met with Brian Baker from Baker Construction and Larry Beard from the Hamilton County Health Department at the Property on August 16, 2017. As a result of those meetings, Mr. Byrum presented costs estimates for a new septic system that would be at \$100,000 to \$125,000 (TR at B-49), and a well would cost at least \$32,000 (TR at B-42). He also indicated, in response to questions from the bench, that this could total up to \$500,000 if his family each had to install their own septic systems and wells on the Property. (TR at A-37). Mr. Byrum also made the practical observation that he, "... will likely be forced to connect to some utility's system anyway, thus paying twice – once to engineer, locate and install a new septic system (if they would even permit it), and the second time when I would have to pay the sewer utility connection fees." (Complainant Exh. 1, Pg. 9).

Upon a review of the entirety of the evidence presented, we find that the record is inconclusive, at best, as to whether Mr. Byrum or anyone would be allowed to install a septic system on the Property. There is even less evidence regarding the possibility of installing a well at the Property. What we do have before us is sufficient, compelling evidence to find and determine that the septic and well option for Mr. Byrum is neither practical or cost effective compared to other alternatives and the findings provided below. Further, this Commission is charged with addressing the provision of utility services and not considering or weighing information or evidence of non-utility service options. The Commission declines to start down a

path where other utility customers could misinterpret an order from this Commission directing septic or well installation as a new method to try to opt out entirely from a sewer or water utility's service territory. Fortunately, we have not been asked to make such a determination because Complainant has sought a determination that would allow him to actually obtain utility services to the Property at a reasonable cost. Additionally, he has indicated and supported the practical reasons why other non-utility options were not and are not within his requested relief. The Commission therefore finds no determination on the septic and well suggestions is necessary.

B. Reasonableness of Terms and Conditions - Cost of Extension of Service. In both the underlying CAD matter as well as in his testimony in the instant docket, Mr. Byrum raises concerns about the reasonableness and application of Citizens Terms and Conditions of Service to his situation. More directly, Mr. Bukovac openly acknowledged that an application of the Citizens' Terms and Conditions would result in extension costs of \$917,000 for sewer and \$1,023,000 for water service to the Property. We agree with Mr. Byrum that he is caught in an unfortunate set of circumstances. Although we typically see the extension costs of this magnitude are born by developers who are able to spread these extension costs over a larger number of developed lots, we are troubled by Mr. Bukovac's frank confirmation that this application of its Terms and Conditions is the *same* approach Citizens would take with any other similarly situated property owner. (See Respondent Exh. 1, Pg. 13). This concern is mitigated, in part, by Citizens own recognition that these proposed extension costs for a single homeowner are expensive¹ and their presentation and offering other options which propose and try to limit the costs to Mr. Byrum to no more than \$250,000 for sewer and \$80,000 for water service.

We recognize the broad policy reasons for the general extension of service rules and do not intend to review or overrule those here in the instant case. Due to the unique facts that is unnecessary. However, we also must view this particular situation through a more focused lens of this unique situation where a single residential customer is involved in a remote portion of a service territory. As Complainant correctly points out Citizens is a public utility and as such is not only obligated to "...furnish reasonably adequate service and facilities," but it must do so at charges that are "reasonable and just" pursuant to IC 8-1-2-4. Further, Section 4 goes on to state that every "unjust or unreasonable charge for such service is prohibited and declared unlawful." In the instant matter we are called upon to review the evidence presented within these required statutory parameters.

Mr. Bukovac testified that its estimates for extending service to the Byrum property would be \$917,000 for sewer and \$1,023,000 for water service. (Resp. Exh. 1, Pgs. 11-12). During cross examination Mr. Bukovac indicated the costs could be a little cheaper which he indicated that, "...it would still be probably about \$900,000 for water and about \$600,000 for wastewater." (TR at A-105). We find and determine that either of these amounts to be unreasonable and unjust, and therefore unlawful under these circumstances. This finding then requires us to determine what constitutes a reasonable and just rate to extend serve to the Property.

¹ See Hearing TR at A-74; A-105.

The only additional record evidence presented by the parties, including Complainant and Citizens, of what a reasonable cost would be to extend services to the Property are the amounts of \$80,000 for water service, and between \$225,000 to \$250,000 to provide sewer service. Mr. Bukovac echoed these same \$80,000 and \$250,000 figures in his testimony under the Citizens' optional proposal to serve the Property. Mr. Bukovac further stated that, "under this approachcosts would be equivalent to the estimates put forth by CTRWD and Carmel Water." (See Resp. Exh. 1, Pg. 14). He went on to reiterate that, "This is similar to the cost quoted to Mr. Byrum by CTRWD of approximately \$225,000 to \$250,000;" and, "... is similar to the cost quoted to Mr. Byrum by Carmel Water of approximately \$80,000." (Resp. Exh. 1, Pgs. 14-15). The OUCC's Witness Parks examined Citizens total cost for both water and sewer extensions. He indicated these were approximately \$2 million, according to Citizens, but Mr. Parks noted certain disagreements with how the Citizens figures were calculated². We do recognize that Mr. Parks also provided additional discussions in his Appendix C providing helpful explanation and certain relevant data to highlight the shortcomings with Citizens calculations, but he never presents any conclusions on what a more accurate extension cost should be. Therefore, based upon the evidence before us we find and conclude that a reasonable cost to extend utility services to the Byrum Property is \$80,000 for water service and \$250,000 to provide sewer service.

C. Ability to Provide Services³. This Complaint raises very unique issues regarding the ability and capability of Citizens to actually be able to provide the requested utility services. It is undisputed that Citizens does not currently have the sewer or water facilities in place to provide services to the Byrum Property. They have offered to provide such facilities but only if Mr. Byrum agrees to pay for the costly installation of the infrastructure. This is how this entire case arose, by Mr. Byrum trying to obtain service from Citizens as the local utility company. There is no disagreement that Mr. Byrum first contacted Citizens. In that initial scenario, Citizens indicated it had no intentions of building water or sewer facilities out to here the Byrum Property is located. Following that response, Mr. Byrum contacted the other local providers of utility sewer and water services, CTRWD and Carmel, providing service just to the south across 146th Street to residential customers in neighboring subdivisions. Both of those utilities indicated a willingness to provide services but then contacted Citizens to alert Citizens of the Byrum inquiry. It was at this point that Citizens asserted its position of exclusive right to serve the Property followed shortly thereafter by a requirement to Mr. Byrum to enter in to an service extension arrangement which, as noted above, called for extension charges that we have already found to be unjust. That demand for the up-front payment of nearly \$2 million is what lead to Mr. Byrum filing his Complaint pursuing this matter first before the CAD and then later, after the General Counsel's Referral, through this formally docketed cause.

It is appropriate at this point to recognize that both Carmel and CTRWD have throughout this process been willing to assist and provide service. No party has disputed this. This willingness to assist was shown not only in the initial 2016 discussions, but also reiterated in the

² We recognize that Mr. Parks does state in his attached Appendix C (OUCC Exh. 1, Pgs. 19-20) that Citizens calculations are "...not in accordance with the main extension rules..." Based upon the other findings in this Order we do not believe that it is appropriate or necessary to review and address this potential violation.

³ A review of the Commission's Title 8 statutory authority and oversight of these issues is presented in Complainant's February 24, 2018 Response to Motion to Dismiss and Supporting Brief, which are incorporated herein by Reference.

testimony offered by CTRWD's Mr. Williams and the John Duffy Affidavit, Complainant's Exh. CX-3. Those efforts also provide a possible starting point for part for Citizens wholesale proposal (See Resp. Exh. 1, Attachment EJB-9). Unfortunately, the extent of CTRWD's willingness to assist and Citizens interpretation of how far that would actually extend are at odds with one another. CTRWD has since indicated it will not enter into any sort of wholesale or temporary arrangements with Citizens. Citizens, on the other hand, has specifically requested this Commission to somehow encourage CTRWD to reconsider and enter into a wholesale arrangement. While we can through this order suggest CTRWD reconsider, we cannot force CTRWD, which is not a public utility, to enter into some arrangement with Citizens if it chooses not to. This appears to be the case, as Citizens has twice asked CTRWD to first enter into a wholesale arrangement and then a temporary arrangement both of which has been declined. (See Complainant Exh. 7 and Attachment AWR-1). Therefore we must look to what other options for service are available.

D. Determination of Who Can Serve. This Commission is a creature of statute and the authority we have is given by the Indiana Generally Assembly through the statutes we are obligated to follow. The fundamental statute that is directly implicated here is IC 8-1-2-4, which, in relevant part here, states: "Every public utility *is required to* furnish reasonably adequate *service and facilities.*" (Emphasis added). As noted above, Citizens does not have reasonably adequate facilities in place to provide Mr. Byrum with service. Its proposed methods to obtain those facilities either result in unjust charges (See Order Section 6(B), above); or is not entirely possible because the contiguous utility declined to enter into a temporary or wholesale arrangement. We are thus confronted with Citizens claim that it purchased and owns the service territory in which the Byrum Property is located, and thus only it can provide service to the Property. This position flies in the face of the statutory requirements of IC 8-1-2-4 cited above because Citizens clearly does not have in place the facilities to reasonably provide the utility services. Citizens argues that its Commission approved Terms and Conditions of Service provide an avenue to install such facilities, but as we already found, this does not meet the second portion of the IC 8-1-2-4 requirement that the charges be reasonable and just.

With the above statutory mandates in mind, we must now address the crux of Mr. Byrum's Complaint, namely how he can reasonably obtain utility services to the Property. There are three main proposals before us. The first is the traditional extension arrangement whereby Citizens would build the necessary facilities to the Byrum Property and offer water and sewer services thereafter consistent with its Terms and Conditions. The second alternative is for Citizens to enter into a temporary or wholesale arrangement with Carmel and CTRWD, provided those other utilities are receptive and agreeable. Finally, we have the request by Mr. Byrum to allow the Property to be served directly by Carmel and CTRWD. We discuss and review each of these three alternatives below.

(1). Traditional Extension Agreement. Having already determined that the reasonable and just cost to extend the services under this type of arrangement should be no more than \$80,000 for water service and \$250,000 for sewer service, we encourage the parties to enter into whatever arrangements are necessary to accomplish this. However, based on Citizens' statements and protestations about unfairly burdening its other customers, it is not clear this will provide an acceptable solution for Citizens.

(2). Temporary - Wholesale Arrangements. Citizens has presented and proposed wholesale arrangements as a possible solution and/or otherwise raised concerns with temporary arrangements which we discuss below.

(a) Temporary Arrangements. In regards to temporary arrangements, Mr. Bukovac states, "... the types of services being requested here do not really lend themselves to being provided on a temporary basis." (Resp. Exh. 1, Pg. 19). CTRWD's Mr. Williams also shares similar concerns about the benefit of a temporary service arrangement. Citizens Witness Bukovac sets out in his testimony several specific conditions if a temporary arrangement were to be required which include: limiting the service to one single family residence; that it not result in a permanent expansion of other utilities' service territories; providing Citizens with the right to determine the length of timing; the arrangement would be converted to Citizens system once Citizens finally builds out to the Property; all fees including applicable SDCs would then have to be paid by Mr. Byrum; and Citizens would not have to incur or be required to pay any additional costs. (Resp. Exh. 1, Pg. 20-21).

It is not entirely clear why Citizens has raised and discussed a temporary arrangement. Mr. Byrum has not sought or proposed a temporary arrangement. Only Mr. Williams mentions the possibility of a temporary arrangement in passing, but clearly both Citizens and CTRWD have no interest in pursuing such an arrangement. What is clear from the evidence before us is that there are no real benefits to anyone in pursuing such an arrangement and so we find a temporary service arrangement is not appropriate. Accordingly, it is unnecessary to consider or discuss the several conditions raised by Mr. Bukovac, except for one. While we understand why Mr. Bukovac suggested the single residential service limitation, we do not believe such a limitation or restriction makes practical sense or is in the public interest. We believe that Mr. Byrum has sufficiently indicated he wants service not only for his own personal reasons, but has also testified he is before us on behalf of all the owners of the Byrum Property with regard to obtaining reasonable sewer and water services for the entire Property. We share the similar concerns as those raised in Mr. Bukovac's related testimony in that we do not want to now "create a patchwork" of regulatory determinations for this particular parcel of Property should any of the other owners later want utility service. Therefore we find that the determinations set forth herein shall apply for the entire Property.

(b). Citizens Wholesale Proposal. We next turn attention to Citizens wholesale service arrangement proposals. Mr. Bukovac testified that, "...it is not our standard practice to enter into a wholesale arrangement simply to serve one potential customer...". (See Resp. Exh. 1, Pg. 15). Likewise, Mr. Williams stated that CTRWD has a similar practice and does not enter into wholesale arrangements. (See Complainant's Exhibit 7, Pg. 3). Carmel Water seems to be amenable to such a wholesale arrangement with Citizens and they have entered into a Letter of Intent which obligates the utilities to subsequently negotiate a wholesale agreement. However, there is no final wholesale agreement before us and thus we cannot review or make any findings on whether it fully addresses the issues herein or if it is reasonable. Additionally, and as discussed above,

CTRWD has declined to enter into any wholesale arrangement whatsoever with Citizens to provide sewer service to the Property. Accordingly, we must look at the efficacy of the third option and request by Mr. Byrum to obtain service directly from Carmel and CTRWD.

(3). Direct Service from Carmel Water and CTRWD. Carmel and CTRWD are "utilities" as that term is defined under Indiana law. No party disputed the fact that both of these utilities have the requisite capabilities and capacity to provide the respective water and sewer utility services to the Property. As stated by OUCC Witness Parks, "... Mr. Byrum's property is not within the service territory of Clay Township, and Citizens Westfield has formally stated it "will not consent to an unnecessary expansion of the [Clay Township] district to serve the [Mr. Byrum's] Property." (See OUCC Exh. 1, Pgs. 3-4). Citizens has taken the same position with regard to Carmel Water. We are thus confronted with the issue of the exclusivity of Citizens service territory under this unique factual situation. To address this issue we look not only to the evidence and arguments made during the evidentiary hearing, but also draw upon the arguments presented by Complainant in his Supportive Brief⁴ and the statutory authority cited therein. We also think it is necessary to review some relevant language from our November 25, 2013 Order in Cause No. 44273 approving the transfer to Citizens of Westfield's utility assets. The settling parties in that Cause No. 44273 specifically requested, and we approved, the elimination from the wastewater general terms and conditions any language that indicates that Citizens Wastewater of Westfield may compel homeowners to connect to the wastewater system. (See IURC Cause No. 44273, Order at 15-16). We also note that the Cause No. 44273 Order only approved the sale and transfer of utility assets which did not identify or specify the municipal bounded "service territory" as one of the assets transferred. Further, because we do not issue certificates of authority for water service this is not an issue we must address.

We now address the concerns raised and arguments presented by Citizens against allowing Carmel or CTRWD the ability to directly serve the Property. The primary argument made by Citizens Witness Bukovac is that they paid the City of Westfield several millions of dollars for the utility which they now assert included the right to serve the Byrum Property because it is within the corporate boundaries. Second, Citizens claims that Carmel and CTRWD would need to obtain additional approvals from the City of Westfield. Finally, Citizens asserts that allowing Carmel and CTRWD to serve the Property would create a patchwork of utility service providers in the area and duplication of service lines utility lines.

(a) Mr. Bukovac openly admits that Citizens is, " concerned about permanently losing a portion of the area that it paid a significant cost to be able to serve." (Resp. Exh. 1, Pg 17). Mr. Bukovac also claims, "It was the *desire of the City of Westfield for Citizens Westfield to provide water and sewer service to its residents*, and Citizens Westfield *paid for that right* and obtained the necessary approvals to do so." (Respondent Exh. 1, Pg. 17; emphasis added). A review of both the Order and the underlying Settlement Agreement in Cause No. 44273 does not support such a claim. As noted

⁴ This brief was filed by Complainant with the Commission on February 24, 2017 in Response to Citizens Motion to Dismiss.

above, Citizens purchased the utility assets from Westfield, but the municipally bounded territory itself was not among the assets listed. Therefore, we must surmise that Citizens believes that because it has purchased the utility assets it therefore must also get the exclusive right to provide utility services to all future customers within the corporate boundaries. Yet, as raised by Mr. Byrum, Citizens fails to also accept the burdens and obligations to provide those services consistent with how the City of Westfield promised to provide them. Mr. Byrum argues that, "... if Citizens believes it bought and paid for the rights and the City of Westfield committed to provide the services first through the annexation process and then later by and through the sale to Citizens of Westfield as Mr. Bukovac suggests, then Citizens should honor that commitment and provide the service consistent with the utility ordinance in place at the time of the annexation." (Complainant Rebuttal Exh. 3, Pg. 6). In support Mr. Byrum points us to Complainant's Rebuttal Exhibit CBR-2, which is the Westfield Council Ordinance 04-32 that states:

"Section 1. The Town Council hereby establishes a policy to extend water and sewer mains and facilities, without an extension agreement from landowners or developers and at the Town's initial expense..."

Complainant makes a compelling argument that the City also made a bargain with the property owners involved with the annexation that included the provision of water and sewer services "without an extension agreement" and at the City's expense. (See Complainant Rebuttal Exh. 3, Pg. 7). We also note that this annexation bargain was made prior to the one Citizens entered into with the City. We therefore find it disingenuous of Citizens to attempt to argue that its bargain with the City should somehow take priority, especially where Citizens has requested Complainant to pay up to \$2 million to extend services to the Property under its new interpretation of the 2013 utility asset purchase - utility assets that do not extend to Mr. Byrum's Property. Citizens attempts to argue on the one hand that it should have an exclusive right to serve, but on the other hand it has no facilities to serve those customers is unpersuasive.

(b) Citizen next argues that Carmel and CTRWD would need to obtain additional approvals from the City of Westfield and there may be denials to access to rights of way. This may in fact be the case and if so we are certain these two entities can and will address whatever steps or access rights are required. As stated by Mr. Williams, "The Byrum Property can easily and more inexpensively be serviced by CTRWD because of its location..." and, "CTRWD ... is willing to serve the Byrum Property if the territory has been released..." (Complainant's Exh. 2, Pgs. 8-9). Carmel, through the Affidavit of John Duffy makes similar affirmations. Accordingly, we are certain these two entities know and are capable of determining what steps they believe are necessary to address issues to provide utility service to the Byrum Property and thus are not swayed by these concerns.

(c) Finally, Mr. Bukovac raises concerns about there being "... an inconsistent patchwork of utility service providers in the area and duplication of service lines..." (See Resp. Exh. 1, Pg. 18). However, this argument rings hollow as Citizens itself has proposed wholesale arrangements to provide services to the Property using these same utilities. Further, Citizens has no facilities or lines in this area so we are hard pressed to find there would be any duplication of service lines. Finally, the Byrum Property already

abuts on one side the service territories of Carmel and CTRWD so this scarcely can be considered to create a patchwork of providers.

We also note more practical considerations with this unique scenario. Both Mr. Williams in his testimony and Carmel Representative John Duffy indicate that it will be a fairly easy process to connect the Property on to their respective systems. (See Complainant Exh. 2, and Exh. CX-3). Further, OUCC Witness Parks also makes the following observation in response to the following question:

When could Mr. Byrum connect to Citizen Westfield's sewer system?

Citizens Westfield does not indicate how long it would need to design, permit, obtain the easements, and construct the sewer improvements. I would estimate it would require approximately two years because of the sewer length, the insufficient flow issue and how it would be addressed, the need to obtain 23 to 40 easements (depending on the route), and the inclusion of the lift station. (See OUCC Exh. 1, Pg. 23)

We are not persuaded by any of concerns or arguments raised by Citizens opposing a second utility being allowed to provide service to the Byrum Property. Citizens does not have the current facilities or means to provide the services to Mr. Byrum. To the extent Citizens chooses to extend its facilities out to the Byrum Property based upon our reasonable cost determination set forth in Finding Paragraphs 6(b) and 6(d)(1) above, this may bring this matter to a conclusion. However, if that option is not viable, then we find and determine that under these particular facts and circumstances that under this Commission's broad authority granted under IC 8-1-2-0.5; 4; 25; 58; 68; 69; 72; 86; among others, that the public convenience and necessity dictates and requires that this Commission allow a second utility provider with the ability to serve the Byrum Property. The second sewer provider is CTRWD which has already indicated the ability and a willingness to serve. To the extent Citizens cannot reach a workable wholesale arrangement with the City of Carmel Water Department pursuant to its Letter of Intent within sixty (60) days that meets Mr. Byrum's needs, then this Order also authorizes Carmel the ability to serve the Byrum Property as well. The ability to act as a second utility provider to the Byrum Property are neither conditional nor temporary, consistent with our findings above.

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

1. The estimated costs of extension of water and sewer services to the Byrum Property made calculated pursuant to Citizens Terms and Conditions of Service are found to be unjust, unreasonable, and unlawful; and the reasonable charges to extend utility services to the Byrum Property is: \$80,000 for water service and \$250,000 to provide sewer service as consistent with our findings and discussions in Section 6(B).
2. CTRWD, and to the extent Citizens is unable to reach a workable wholesale arrangement with the City of Carmel Water Department pursuant to its Letter of Intent within sixty (60) days, are each authorized to provide sewer utility service to the Byrum Property as a

second utility service provider consistent with our discussions and findings in Section 6(D).

3. 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.

Mary M. Becerra
Secretary to the Commission