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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE TOWN OF GEORGETOWN,)
INDIANA FOR APPROVAL OF A REGULATORY) CAUSE NO. 45066
ORDINANCE FOR SANITARY SEWAGE SERVICE)
COVERING CERTAIN UNINCORPORATED) APPROVED: SEP 19 2018
AREAS OF FLOYD COUNTY, INDIANA.)

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Carol Sparks Drake, Administrative Law Judge

On March 16, 2018, the Town of Georgetown, Indiana, (“Petitioner” or “Georgetown”) initiated this Cause by filing a Petition seeking approval from the Indiana Utility Regulatory Commission (“Commission”) under Ind. Code § 8-1.5-6-9 of Georgetown’s regulatory ordinance, as defined by Ind. Code § 8-1.5-6-3, for sanitary sewage service covering certain unincorporated areas of Floyd County, Indiana. On March 22, 2018, Aqua Indiana, Inc. (“Aqua Indiana”) filed a petition to intervene which was granted by Docket Entry dated April 3, 2018.

A prehearing conference was held in this proceeding on April 16, 2018. Consistent with discussions at the prehearing conference, a Prehearing Conference Order of the Commission was approved on April 25, 2018, establishing a procedural schedule.

On April 27, 2018, Georgetown prefiled Petitioner’s case-in-chief. This included the direct testimony and attachments of Robert L. Woosley, who has served as Georgetown’s Town Engineer since 2005, and Douglas L. Baldessari, a Certified Public Accountant with H.J. Umbaugh and Associates, Certified Public Accountants, LLP (“Umbaugh”).

Georgetown filed a motion on June 28, 2018, seeking to modify the procedural schedule to accommodate ongoing settlement discussions. This motion was granted on June 29, 2018, with the procedural schedule revised to reflect filing dates for testimony and exhibits upon the anticipated settlement. Neither Aqua Indiana nor the Indiana Office of Utility Consumer Counselor (“OUCC”) filed direct testimony responding to Petitioner’s prefiled case-in-chief.

Georgetown and Aqua Indiana (collectively, the “Settling Parties”) jointly filed a Stipulation and Settlement Agreement (the “Settlement Agreement”) on July 20, 2018, along with supporting testimony. The OUCC filed a notice on July 27, 2018, confirming its intent to not file testimony in this Cause.

On September 10, 2018, a settlement hearing was held in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Georgetown, Aqua Indiana, and the OUCC appeared and participated at the hearing. The parties’ pre-filed evidence, including the

Settlement Agreement and the Settling Parties' supporting testimony, was admitted without objection. All parties waived cross-examination.

Based upon applicable law and the evidence presented, the Commission finds:

1. **Notice and Jurisdiction.** Notice of the settlement hearing was given as required by law. Georgetown is a utility as defined by Ind. Code § 8-1.5-6-4. Georgetown adopted Ordinance No. G-14-01 on or about April 21, 2014, ("Ordinance G-14-01") and on October 5, 2015, adopted Ordinance No. G-15-22 ("Ordinance G-15-22") amending Ordinance G-14-01. Ordinance G-14-01, as supplemented by Ordinance G-15-22, collectively constitute the "Regulatory Ordinance" for which Georgetown seeks Commission approval. Under Ind. Code § 8-1.5-6-9, if a municipality adopts a regulatory ordinance after December 31, 2012, and the municipality's utility has not filed a wholesale sewage petition, the Commission has jurisdiction to approve the regulatory ordinance; therefore, the Commission has jurisdiction over Georgetown and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Georgetown is a municipality which owns and operates plant and equipment for the collection and treatment of sanitary sewage pursuant to Ind. Code ch. 36-9-23. Georgetown provides wastewater service to the public throughout the corporate limits of Georgetown and to customers outside its corporate limits.

3. **Relief Requested.** Ordinance G-14-01 is a regulatory ordinance as defined by Ind. Code § 8-1.5-6-3. In Ordinance G-14-01, Georgetown established a regulated territory for exclusive sewer service and jurisdiction over the area four miles outside Petitioner's corporate boundaries except as outlined in the "Georgetown-New Albany Agreed Sewer Regulatory Boundary Map" attached to and incorporated by reference into Ordinance G-14-01 (the "Regulated Territory"). Areas served by existing certificates of territorial authority ("CTAs") duly authorized by the State of Indiana and its agencies were also exempted in Ordinance G-14-01 from the Regulated Territory. Ordinance G-14-01 regulates the furnishing of sanitary sewage service pursuant to Ind. Code §§ 36-9-2-16, -17, and -18. On October 5, 2015, Georgetown adopted Ordinance G-15-22, amending Ordinance No. G-14-01. Ordinance No. G-14-01, as supplemented and amended by Ordinance No. G-15-22, collectively, constitute the Regulatory Ordinance. Georgetown seeks Commission approval of the Regulatory Ordinance subject to its amendment consistent with the terms of the Settlement Agreement.

4. **Georgetown's Case-in-Chief/Pre-Settlement Position.** Robert Woosley is a licensed Professional Engineer in the State of Indiana and the President of Heritage Engineering. He serves as Georgetown's Town Engineer. Mr. Woosley testified in support of the Regulatory Ordinance. He generally described Georgetown's wastewater utility.

Mr. Woosley testified that until about seven years ago, the City of New Albany ("New Albany") treated Georgetown's wastewater flow. Georgetown was presented with an opportunity to build its own wastewater system through the assistance of the American Recovery and Reinvestment Act of 2009 and now has the ability to provide wastewater treatment for all the growth within its existing service area. Mr. Woosley testified that Georgetown is currently expanding its wastewater treatment plant ("WWTP") capacity from 350,000 gallons to 700,000

gallons and with the expansion of Georgetown's wastewater utility operations, Georgetown will have the ability to serve the growth anticipated within the Regulated Territory. He explained that the foreseeable growth of Georgetown has driven the expansion of its plant. Mr. Woosley stated that Georgetown recently closed on an Indiana State Revolving Fund ("SRF") loan, and construction on its WWTP expansion has begun. He reviewed the workforce available for providing wastewater service and testified that while Georgetown currently has sufficient staff to provide wastewater services, the plant expansion will require additional staffing.

Mr. Woosley also testified regarding a "No Response Letter" Georgetown's third party contract operator received from the Indiana Department of Environmental Management ("IDEM") with respect to its wastewater utility operations. In this letter, IDEM's inspector noted documented sanitary sewer overflows within Georgetown's collection system. Mr. Woosley testified the overflows are a result of inflow and infiltration ("I&I") into Georgetown's collection system, and he identified capital improvement projects to resolve most, if not all, of the I&I within Georgetown's system, including: (1) rehabilitation of manholes; (2) replacement of manholes; (3) modifications to manholes; (4) replacement of sewer lines; and (5) slip lining of sewer lines. Mr. Woosley testified the SRF funding does not cover these capital improvements, so Georgetown will need additional funds to make these improvements. He stated the overflow and infiltration issues IDEM identified were taken into account in the expansion plans for Georgetown's wastewater utility operations. He testified that Georgetown's current average daily flows during dry weather utilize approximately 81% of its WWTP capacity. According to Mr. Woosley, planned developments within Georgetown's service territory will far exceed the current WWTP capacity, but Georgetown's WWTP expansion will double its WWTP capacity allowing Georgetown to handle projected growth and serve the anticipated 20-year growth of the area.

Mr. Woosley testified that Georgetown adopted Ordinance G-14-01 largely in response to the decision of the Indiana Court of Appeals in *Newburgh v. Chandler*,¹ in which he testified the Court ruled that it was proper under the Indiana Code for a municipality to establish exclusive jurisdiction to service the area within four miles outside the municipality's corporate boundaries. He stated that Georgetown was already serving individuals located within the Regulated Territory and adopted Ordinance G-14-01 to establish the Town's exclusive right to provide wastewater service to the Regulated Territory. Mr. Woosley testified that the Regulatory Ordinance memorializes the understanding between New Albany and Georgetown with respect to areas of overlap and their respective rights to establish a regulated territory. Mr. Woosley stated the Regulatory Ordinance is intended to give clear guidance and boundaries for customers and sewer service providers within the Regulated Territory, mitigating the need for future litigation, and limits the unrestrained ability of other entities and/or utilities to build WWTPs and provide wastewater service within the Regulated Territory.

Mr. Woosley also testified regarding who currently serves the Regulated Territory. He explained that a small portion of Aqua Indiana's Wymberly CTA overlaps with the Regulated Territory. Otherwise, he is not aware of other entities serving within the boundary the Regulatory Ordinance depicts as Georgetown's wastewater service area. Mr. Woosley testified there are

¹ 999 N.E.2d 1015 (Ind. Ct. App. 2013).

several CTAs that lie within New Albany's portion of the service boundaries depicted on the map attached to Ordinance G-15-22. He also testified that New Albany and Aqua Indiana entered into a stipulation and settlement agreement that was filed with the Commission in Cause No. 44860 that includes a map suggesting Aqua Indiana wants to protect its ability to expand its existing CTAs within New Albany's service boundaries. A portion of this proposed expansion area overlaps with Georgetown's Regulated Territory. Mr. Woosley testified that the Commission approved the settlement filed in Cause No. 44860, but this does not bind Georgetown with respect to the proposed Aqua Indiana Expansion Area. He testified that it is possible Aqua Indiana could provide service to a portion of the Regulated Territory, although that depends upon the capacity of its existing CTAs and Aqua Indiana's ability to accept additional flow. Mr. Woosley testified he does not know whether Aqua Indiana has the capacity necessary to serve any part of the Regulated Territory. Mr. Woosley identified new residential developments that have begun construction, but testified he is not aware of additional customers beyond these developments currently requesting Georgetown's service.

Mr. Woosley described the present and future economic development impacted by the Regulatory Ordinance. He testified that Georgetown's plant is being expanded to handle the wastewater from immediate development in close proximity to Georgetown and within the Regulated Territory. He stated the WWTP expansion will allow for future development to continue without needing to limit development due to lack of capacity. Mr. Woosley testified that the intent of the Regulatory Ordinance is to prevent new CTAs from being created and CTAs from expanding without first approaching Georgetown, thereby protecting its wastewater infrastructure investment. According to Mr. Woosley, there is an inherent benefit to Georgetown providing the necessary wastewater services. This allows for orderly development in the Regulated Territory, and approval of the Regulatory Ordinance will help ensure that entities seeking to provide service in the Regulated Territory are subject to the comprehensive plan, zoning, subdivision requirements, and regulations of Georgetown and Floyd County.

Douglass Baldessari, a Certified Public Accountant with Umbaugh, also testified in support of Georgetown's request for approval of the Regulatory Ordinance. Mr. Baldessari testified that since the adoption of Ordinance G-14-01 and its amendment, Ordinance G-15-22, Georgetown and New Albany have operated as though the Regulatory Ordinance is in full force and effect. He further testified that no other parties have raised an issue with respect to wastewater service in the Regulated Territory. Mr. Baldessari stated that as Georgetown moved to close on its SRF funding, Georgetown became aware of the need for Commission approval of the Regulatory Ordinance to protect its investment in this plant expansion, prompting this proceeding and the relief requested.

Mr. Baldessari also testified regarding the effect of a Commission order in this Cause on customer rates and charges for wastewater service provided in the Regulated Territory. He stated there are two other sewer providers that could likely serve the Regulated Territory, those being New Albany and the Wymberly Division of Aqua Indiana. According to Mr. Baldessari, Georgetown's current Outside Town residential monthly sewer bill of \$61.55 for the Regulated Territory, assuming 4,000 gallons, is roughly the same as New Albany's Outside Town monthly bill at \$61.40 and less than Aqua Indiana's Wymberly Division \$80.00 bill. At 5,000 gallons per month, Georgetown's current Outside Town residential monthly sewer bill for the Regulated

Territory is \$70.80, whereas New Albany's comparable 5,000 gallon Outside Town bill is \$76.85, and Aqua Indiana's is \$80.00. Mr. Baldessari stated an Ordinance is pending for Georgetown's wastewater rates which will increase the 4,000 gallon monthly Outside Town residential bill to \$66.75 and 5,000 gallons per month to \$77.34, but even with this increase, Georgetown's monthly bills for 4,000 gallons and 5,000 gallons will be less than Aqua Indiana's and comparable to New Albany's monthly bills.

In concluding his testimony, Mr. Baldessari testified that approval of Georgetown's Regulatory Ordinance is in the public interest based on rate impact and affordability for the customers in this area. Additionally, approval of the Regulatory Ordinance will protect Georgetown's recent \$3.96 million investment in its WWTP and protect the revenue source for the \$3.43 million SRF par amount of bonds issued to pay for the WWTP expansion project.

5. Settlement Agreement and Settlement Testimony. Prior to the procedural deadline for Aqua Indiana and the OUCC to file their cases-in-chief, Georgetown and Aqua Indiana reached a settlement resolving all issues. The OUCC is not a party to the settlement, but has not objected to the settlement terms or filed testimony opposing the settlement. On July 20, 2018, the Settling Parties filed the Settlement Agreement and the settlement testimony of their respective witnesses, Mr. Woosley, Town Engineer for Georgetown, and Thomas M. Bruns, President of Aqua Indiana. The Settlement Agreement was admitted into the record at the settlement hearing as Petitioner's Exhibit 4. A copy of the Settlement Agreement, excluding the attached proposed Order, is attached to this Order and incorporated by reference.

The Settlement Agreement represents a compromise between Georgetown and Aqua Indiana with respect to each party's provision of wastewater service in Floyd County, Indiana, particularly within the Regulated Territory, and includes a process by which service to customers will be decided in the future. Generally, the settlement testimony affirms the reasonableness of the Settlement Agreement and addresses why the Settlement Agreement is in the public interest.

In the Settlement Agreement, the Settling Parties agree that Georgetown will not have the exclusive right to provide wastewater service within the area shaded in orange on the map attached to the Settlement Agreement as Exhibit A. This shaded area is identified as the proposed "Aqua Indiana Expansion Area." Additionally, Aqua Indiana's existing CTAs are exempted from the territory that is subject to the Regulatory Ordinance. And, within the proposed Aqua Indiana Expansion Area, Aqua Indiana is authorized to seek a CTA to extend its system and provide service without any opposition from Georgetown (including, but not limited to, opposition at the Commission or before any court, board, agency, or commission). Georgetown also agreed to adopt an amendment to the Regulatory Ordinance, if the Commission approves the Settlement Agreement, amending its Regulated Territory to conform to the area stipulated in Paragraph 6 of the Settlement Agreement (the "Amended Regulated Territory"), and to file that ordinance amendment with the Commission within a reasonable time after the Commission issues a final order in this Cause approving the Settlement Agreement. With the exception of the proposed Aqua Indiana Expansion Area, the Amended Regulated Territory corresponds to the area depicted in the map entered into evidence as part of Attachment RLW-1.

With respect to future wastewater service, the Settling Parties stipulated that in the event Georgetown or Aqua Indiana seeks to expand service outside of the Amended Regulated Territory or the Aqua Indiana Expansion Area, respectively, Aqua Indiana and Georgetown will meet and try to agree on how service should be extended to unserved customers/developments located in the proposed expanded area based on their respective estimated main extension and connection costs without regard for the source of payment. In conjunction with this process, Georgetown and Aqua Indiana agreed to endeavor to include in these meetings any other provider in the area with the ability to serve the unserved customers/developments. If Aqua Indiana and Georgetown are unable to agree upon how service should be extended to the unserved customers/development, Aqua Indiana may seek a CTA to extend its system and provide wastewater service in the proposed expanded area, but Georgetown shall be permitted to oppose granting this CTA.

The Settling Parties further stipulated that Aqua Indiana shall have the exclusive right to provide service within its current and future CTA areas shown on Exhibit A to the Settlement Agreement.

In support of the Settlement Agreement, the Settling Parties offered settlement testimony from Mr. Woosley and Mr. Bruns explaining how the Settlement Agreement satisfies the factors the Commission is to consider in approving the Regulatory Ordinance under Ind. Code § 8-1.5-6-9 and is in the public interest. The testimonial support for each of the factors is discussed below in connection with our specific findings upon the respective factors.

A. Georgetown's Settlement Testimony. Mr. Woosley testified the Settlement Agreement covers four primary areas of agreement: (1) the scope of Georgetown's Regulated Territory; (2) the parameters of the proposed Aqua Indiana Expansion Area that Georgetown will not oppose; (3) cooperation between Aqua Indiana and Georgetown upon wastewater service outside the Regulated Territory and the proposed Aqua Indiana Expansion Area; and (4) Aqua Indiana's exclusive right to serve within its current and future CTA areas as delineated in the Settlement Agreement. Mr. Woosley stated the Settling Parties have agreed the Commission should approve an Amended Regulated Territory for Georgetown that includes the area described in the Regulatory Ordinance but excludes Aqua Indiana's existing CTA area. In addition, he testified that under the settlement, Aqua Indiana is permitted to seek an expansion of its existing CTA area consistent with the map attached to the Settlement Agreement, thereby enabling Aqua Indiana to consolidate several of its Floyd County CTA service areas into a single contiguous area. Mr. Woosley testified that the Settlement Agreement recognizes Commission approval is required for Aqua Indiana to expand its existing CTAs as agreed, but binds Georgetown to not oppose an expansion within the proposed Aqua Indiana Expansion Area.

According to Mr. Woosley, Aqua Indiana has a number of existing CTAs in Floyd County. The existing Aqua Indiana CTAs overlap with a portion of the Regulated Territory. He noted the Regulatory Ordinance excluded the existing CTA areas. Mr. Woosley testified that under the Settlement Agreement, Georgetown will not oppose an expansion of Aqua Indiana's existing CTAs as shown on the map attached to the Settlement Agreement. Otherwise, he stated the Settling Parties agree that Georgetown will have the exclusive right to provide wastewater service within the Amended Regulated Territory and within its corporate boundaries.

Mr. Woosley testified that the Settling Parties propose the Commission approve the Settlement Agreement and in doing so, order Georgetown to amend its Regulatory Ordinance to incorporate the agreed Amended Regulated Territory and then file the Amended Regulatory Ordinance with the Commission as a compliance filing. He stated this is similar to the Commission's approval in Cause No. 44860 involving New Albany in which the Commission approved a settlement which included the settling parties in that Cause agreeing to a modified regulated territory.

Mr. Woosley testified that the Settlement Agreement also expressly contemplates that Georgetown and Aqua Indiana will meet and endeavor to agree on how service should be extended to unserved customers or development located outside of the Amended Regulated Territory and the proposed Aqua Indiana Expansion Area. Under this scenario, the Settling Parties agree that Georgetown and Aqua Indiana will base any agreement upon such service on the respective estimated main extension and connection costs without regard for the source of payment. He stated the Settlement Agreement also memorializes the Settling Parties' commitment to include in such meetings other area providers with the ability to serve the unserved customers or development. Mr. Woosley testified that the Settlement Agreement contemplates that if Aqua Indiana and Georgetown cannot agree on how wastewater service will be extended to such an unserved customer or development, Aqua Indiana may seek a CTA to extend its system and provide wastewater service, but Georgetown may oppose the requested CTA.

Mr. Woosley testified the Settlement Agreement is in the public interest because it addresses current and future wastewater service in the Regulated Territory (and the Amended Regulated Territory) in a way that prioritizes reliable service to customers on reasonable terms. Moreover, it binds Georgetown and Aqua Indiana to cooperate to determine the best way to serve future customers in this area who are outside the Regulated Territory. He stated the agreements reached show reasonable compromise with respect to wastewater service in the area that focuses on the party best situated to serve customers, and the terms provide assurance that unnecessary litigation and delay will be avoided when wastewater service is needed. Mr. Woosley opined that the Settlement Agreement terms allow the Commission to make positive determinations upon each statutory factor to be considered under Ind. Code § 8-1.5-6-8(g), and he provided the basis for this opinion. He noted that Mr. Baldessari's direct testimony shows the current rates available to Georgetown's customers are comparable to and slightly less than those of Aqua Indiana.

In addressing the factors set forth in Ind. Code § 8-1.5-6-8(g), Mr. Woosley testified the Settling Parties carefully considered Georgetown and Aqua Indiana's respective ability to serve in reaching their agreement upon wastewater service in the Amended Regulated Territory and Aqua Indiana's CTA expansion area to ensure the stipulated areas will be served by the party best positioned to provide wastewater service in that area. For unserved customers outside these areas, the Settling Parties agreed to meet and try to resolve how service should be extended.

Mr. Woosley noted that Mr. Baldessari's direct testimony shows the current rates available to Georgetown's customers are comparable to and slightly less than those of Aqua

Indiana. He testified the Settlement Agreement's terms help ensure the stipulated areas will be served by the party best positioned to do so, including considering the rates and charges applicable to such wastewater service.

Mr. Woosley stated that one of the primary drivers for Georgetown instituting this proceeding is to ensure the orderly development of wastewater service in the Regulated Territory. Georgetown and Aqua Indiana agree that providing reliable wastewater service is a critical component of present and future economic development in the area. According to Mr. Woosley, the Settlement Agreement will have a positive effect upon economic development by helping ensure entities seeking to provide wastewater service are subject to Georgetown and Floyd County's comprehensive plan, zoning, subdivision requirements, and regulations.

Finally, in addressing the history of utility service in the Regulated Territory, Mr. Woosley testified that as described in his direct testimony, until approximately 2011, New Albany treated Georgetown's wastewater flow. He stated the Regulatory Ordinance was adopted in part to memorialize Georgetown and New Albany's agreement with respect to their wastewater service area boundaries after Georgetown constructed its WWTP. But he noted, the Regulatory Ordinance acknowledges the existence of other providers in this area. Mr. Woosley testified the Settlement Agreement reconciles the interests of the providers historically serving the area while reinforcing the provision of reliable and safe wastewater service in the future. In addition, Mr. Woosley testified it is his understanding that generally, mutual agreement between utilities upon service territory matters, as reflected in the Settlement Agreement, is preferred.

B. Aqua Indiana's Settlement Testimony. Mr. Bruns testified that Aqua Indiana presently provides wastewater utility service through its Wymberly Division to approximately 700 customers located in four areas of Floyd County making Aqua Indiana, he believes, the largest current supplier of wastewater service within the Regulated Territory. He described each of these four areas, stating that based on his review, a small portion of the Regulated Territory overlaps with a corner of the Wymberly Area. However, Mr. Bruns testified the Regulatory Ordinance states that areas having a CTA duly authorized by the State of Indiana and its agencies are exempt from the auspices of the Regulatory Ordinance; therefore, approving the Regulatory Ordinance will not impact Aqua Indiana's Wymberly CTA. Mr. Bruns described the facilities the Wymberly Division operates to provide wastewater service in Floyd County. He stated that in deciding how to use its treatment plants, Aqua Indiana looks for the optimal solution that allows it to provide current and future customers with adequate and reliable service in an effective and economic way.

Mr. Bruns testified the Settlement Agreement is the product of negotiations that began after Georgetown filed its case-in-chief in this Cause on April 27, 2018. He views the proposed settlement as similar to the settlement Aqua Indiana and New Albany reached in Cause No. 44860 which the Commission approved on April 25, 2018 (the "44860 Order"). He stated the area identified in the Settlement Agreement as the Aqua Indiana Expansion Area is the same area the Commission approved in the 44860 Order for Aqua Indiana to seek a CTA to extend its system and provide service without opposition from New Albany. Because a portion of the Aqua Indiana Expansion Area overlaps with Georgetown's Regulated Territory, the Settlement

Agreement serves to close that loop by recognizing Aqua Indiana can seek to extend service to the Aqua Indiana Expansion Area without opposition from Georgetown.

Mr. Bruns testified regarding the substantive terms of the Settlement Agreement. He stated the Settlement Agreement provides that Aqua Indiana shall have the exclusive right to provide service within its current and future CTA areas. Mr. Bruns opined that the Settlement Agreement represents a reasonable resolution of the issues in this proceeding because its approval will result in increased certainty with respect to where each of the parties will be expected to serve within Floyd County. Increased certainty concerning service areas will assist in planning for growth.

Mr. Bruns recommended the Commission approve the Settlement Agreement as consistent with the public interest.

6. Commission Discussion and Findings. Georgetown seeks approval of the Regulatory Ordinance pursuant to Ind. Code § 8-1.5-6-9. This statute requires Georgetown to secure Commission approval because the Regulatory Ordinance was adopted after December 31, 2012, and no party has filed or is eligible to file a wholesale sewage petition within the meaning of Ind. Code § 8-1.5-6-9(a)(2).

A. Sufficiency of the Petition. Under Ind. Code § 8-1.5-6-9(b), a municipality's 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.

The Petition, admitted as Petitioner's Attachment RLW-1, includes a description of the Regulated Territory. In its Petition, Georgetown states that while Ordinance No. G-14-01, as supplemented and amended by Ordinance No. G-15-22, purport to extend the Regulated Territory four miles from Georgetown's corporate limits in all directions, its application is limited to Floyd County pursuant to Ind. Code § 36-1-3-9(c)(2). A map delineating the proposed sewer service boundaries between Georgetown and New Albany is included within Exhibit A to the Petition. The exhibits Georgetown attached to the Petition also include a copy of its rates and charges to be applied to the Regulated Territory. These are Georgetown's existing rates and charges for sewer service, and these are to remain applicable until Georgetown's rates are lawfully changed.

Georgetown states in Paragraph 6 of the Petition that there are no administrative or judicial proceedings involving the Regulatory Ordinance, and in Paragraph 3 of the Petition,

Georgetown identifies the utilities potentially impacted by the Regulatory Ordinance. Petitioner states the only other municipalities located in Floyd County are New Albany and the Town of Greenville, and New Albany is a party to the territorial agreement embodied in the Regulatory Ordinance, with the Town of Greenville operating a small treatment plant that is not expected to be affected by the Regulatory Ordinance. As a result of consolidations that have occurred, Georgetown states that those known to have existing CTAs to provide sewer service in Floyd County are Aqua Indiana, Inc., Deerwood Environmental, Inc., and Canyonlands Homeowners, Inc. Georgetown represents in the Petition that Georgetown caused a copy of the Petition to be mailed to these CTA holders at the addresses the Secretary of State maintains.

Based on our review of the Petition, the Commission finds that Georgetown's Petition complies with the sufficiency requirements of Ind. Code § 8-1.5-6-9(b).

B. Public Interest Factors. Under Ind. Code § 8-1.5-6-9(c), before approving the Regulatory Ordinance, the Commission must consider the following public interest factors set forth in Ind. Code § 8-1.5-6-8(g):

- (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, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.
- (5) Any other factors the Commission considers necessary.

(1) The Ability of Another Utility to Provide Service. Both Georgetown and Aqua Indiana presented evidence demonstrating their respective ability to serve in the area where Georgetown seeks to enforce its Regulatory Ordinance. As discussed in the testimony of Mr. Woosley, Georgetown's WWTP is currently operating at about 81% capacity, but Georgetown's WWTP expansion will double its WWTP capacity, affording Georgetown increased capacity to provide wastewater service to customers located within the Regulated Territory and the Amended Regulated Territory.

Mr. Woosley testified the impetus for the Regulatory Ordinance was the decision of the Indiana Court of Appeals in *Newburgh v. Chandler*, 999 N.E.2d 1015 (Ind. Ct. App. 2013) in which the Court held the statutes permit a municipality to establish exclusive jurisdiction to service the area within four miles outside its corporate boundaries. When the Regulatory Ordinance was adopted, Georgetown was already serving customers located within the Regulated Territory, and it adopted the Regulatory Ordinance to establish the Town's exclusive right to provide wastewater service to the Regulated Territory. Mr. Woosley testified the Regulatory Ordinance also memorializes the understandings between Georgetown and New Albany upon areas of overlap and their respective rights to establish a regulated territory. He

stated the Regulatory Ordinance gives clear guidance and boundaries for customers and wastewater service providers within the Regulated Territory mitigating the need for future litigation, and it limits the unrestrained ability of other entities and/or utilities to build sewer plants and provide wastewater services in the Regulated Territory. Mr. Woosley explained that the Regulatory Ordinance prevents new CTAs from being created or expanded without first approaching Georgetown. Georgetown seeks Commission approval of its Regulatory Ordinance to help ensure that entities providing service in the Regulated Territory are subject to Georgetown's comprehensive plan, zoning, subdivision requirements, and regulations. The Commission notes that entities providing wastewater services are already subject to Floyd County's comprehensive planning, zoning, and subdivision ordinances and regulations.

In his testimony supporting the settlement, Mr. Bruns described the wastewater service Aqua Indiana's Wymberly Division presently provides under existing CTAs to approximately 700 customers in four areas of Floyd County. He described the facilities the Wymberly Division operates, the workforce supporting these operations, and the absence of customer complaints regarding this service. Mr. Bruns stated that Aqua America, Inc. serves as the source of funding for improvements to the Wymberly Division's facilities, and he shared Aqua Indiana's current rates and charges for the Wymberly Division.

The Settlement Agreement in this Cause between Georgetown and Aqua Indiana reflects the Settling Parties' agreement to cooperate to ensure the orderly development of wastewater facilities within the Regulated Territory. It does so by providing that Georgetown will serve as the exclusive wastewater provider in the Amended Regulated Territory with Aqua Indiana permitted to serve as the exclusive provider within its authorized CTA areas. This enables Georgetown and Aqua Indiana to make definitive plans without duplicative facilities. Georgetown also agreed to not oppose an extension of Aqua Indiana's wastewater service within the Aqua Indiana Expansion Area as defined in the Settlement Agreement and shown in attached Exhibit A. The Settling Parties presented testimony supporting the settlement, including the process to be used to determine how to best serve customers or developments outside the Regulated Territory, with the terms of the Settlement Agreement including Georgetown's and Aqua Indiana's commitment to future cooperation. The Settlement Agreement is specifically tailored to address Georgetown's objectives in adopting the Regulatory Ordinance while serving the public interest. Based upon the evidence regarding Georgetown's and Aqua Indiana's respective ability to serve, the Commission finds the evidence presented upon the first public interest factor to be considered under Ind. Code § 8-1.5-6-8(g)(1) weighs in favor of approving the Regulatory Ordinance, subject to the terms set forth in the Settlement Agreement.

(2) The Effect of a Commission Order on Customer Rates and Charges in the Regulated Territory. If the Regulatory Ordinance is approved subject to the terms set forth in the Settlement Agreement, the rates and charges that will be in effect for wastewater service in the Amended Regulated Territory are Georgetown's rates and charges as approved by the Town and amended from time to time. Mr. Baldessari's direct testimony shows the current rates to Georgetown's wastewater customers are comparable to and slightly less than those of Aqua Indiana. Mr. Woosley testified that the terms of the Settlement Agreement help ensure the respective areas will be served by the party best positioned to do so, including with respect to the rates and charges applicable to such wastewater service. As a result, the

Commission finds the rates and charges that will apply in the Amended Regulated Territory support approval of the Regulatory Ordinance and the Settlement Agreement.

(3) Effect of the Commission's Order on Present and Future Economic Development in the Regulated Territory. Georgetown and Aqua Indiana agree that providing reliable wastewater service in the Regulated Territory is critical to present and future economic development in the area. As discussed above, a primary driver behind Georgetown instituting this proceeding is to ensure orderly development of wastewater service in the Regulated Territory, including ensuring that entities seeking to provide service in this territory are subject to Georgetown's comprehensive plan, zoning, subdivision requirements, and regulations.

In supporting the settlement, Mr. Woosley testified that increased certainty concerning wastewater service in the Regulated Territory will assist Georgetown and Aqua Indiana in responsibly planning for growth. He also testified that approval of the Settlement Agreement will provide developers and potential customers with a known source of wastewater service and provide assurance to Floyd County's officials upon the availability and source for this service. Based upon the record, the Commission finds that present and future economic development in the Regulated Territory will be served by approving the Regulatory Ordinance, subject to the conditions outlined in the Settlement Agreement including adoption of an Amended Regulatory Ordinance. This reflects a comprehensive approach that will afford certainty in providing and in resolving wastewater service to the Amended Regulated Territory. We find that the effect on present and future economic development favors approval of the Regulatory Ordinance on the terms set forth in the Settlement Agreement.

(4) The History of Utility Service in the Regulated Territory. Mr. Woosley testified that until about seven years ago, New Albany treated Georgetown's flow. Georgetown then made the decision to build its own wastewater system, and according to Mr. Woosley, has the ability to provide wastewater treatment for all the growth within its existing service area and is currently expanding its plant capacity to 700,000 gallons. He testified that with this expansion, Georgetown will have the ability to serve the growth anticipated within the Regulated Territory. The Regulatory Ordinance reflects agreement between Georgetown and New Albany with respect to wastewater service in this area. The Settlement Agreement, as explained by Mr. Woosley in his settlement testimony, also reconciles the interests of the providers historically serving in the area. The testimony the Settling Parties presented in support of the settlement evidences their efforts to cooperate to achieve a comprehensive, planned approach to reliable and safe wastewater service in the Amended Regulated Territory in the future. Similar to the settlement between New Albany and Aqua Indiana approved in the 44860 Order, the Settling Parties' agreement upon how service in the Amended Regulated Territory will be extended appears to be an effective and efficient resolution to achieve that end. In this respect, we find that the history of utility service in the Regulated Territory favors approval of the Regulatory Ordinance subject to the conditions outlined in the Settlement Agreement.

(5) Other Matters, Including the Settlement Terms. As the Commission has previously discussed, settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly

private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind., Inc. v. Public Service Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that such agreement serves the public interest.

In the Settlement Agreement, the Settling Parties agree upon how they will each provide wastewater service to unincorporated areas of Floyd County. Georgetown witness Woosley’s testimony shows that Georgetown has sufficient plant capacity to serve the Amended Regulated Territory, and Georgetown presented evidence demonstrating it will serve the Amended Regulated Territory at reasonable rates and charges that are similar to Aqua Indiana’s rates and charges. Also, by clearly delineating their respective service areas, the Settling Parties will avoid making costly capital expenditures to provide service to overlapping areas. This cost avoidance is beneficial to the Settling Parties and to their customers. The testimony also shows, as discussed above in reviewing other factors under Ind. Code § 8-1.5-6-8(g), that approval of the Settlement Agreement will enable potential wastewater customers in Floyd County to have increased certainty concerning wastewater service. Based upon the evidence, the Commission finds the Settlement Agreement serves the public interest in resolving the issues presented in this Cause; therefore, we further find the Settlement Agreement is consistent with the purposes of Ind. Code ch. 8-1.5-6 and should be approved.

Ind. Code § 8-1.5-6-9(c) vests the Commission with the authority to resolve all the issues Georgetown presents in its Petition, including the enforceability of the Regulatory Ordinance in the manner the Commission determines is in the public interest. The Settling Parties provided testimony advocating that the Regulatory Ordinance be modified to reflect the service territory shown on the map attached as Exhibit A to the Settlement Agreement. They provided evidence demonstrating this modification is in the public interest. In light of our authority to make modifications to the enforceability of the Regulatory Ordinance in the manner needed to serve the public interest, we find that consistent with the Settlement Agreement, Georgetown shall submit, as a compliance filing under this Cause, an Amended Regulatory Ordinance that adopts the map depicting the Amended Regulated Territory as described in the Settlement Agreement and in the Settling Parties’ settlement testimony. To aid in reviewing this compliance filing, the boundaries of Georgetown’s Amended Regulated Territory shall be filed with the Commission’s Water and Wastewater Division in shapefile, geodatabase, or mxd format and in a definable coordinate system.

Based on the foregoing discussion and findings, the Commission finds that the Settlement Agreement is reasonable and in the public interest and the authority and obligations proposed therein should be approved; consequently, we find that Georgetown shall promptly proceed with adopting the Amended Regulatory Ordinance, consistent with the Settlement Agreement, incorporating the Amended Regulated Territory as defined in the Settlement Agreement into the Amended Regulatory Ordinance and file the Amended Regulatory Ordinance and the map depicting the Amended Regulated Territory with the Commission within 60 days of approval of this Order as a compliance filing and as a precondition to exclusively rendering sewage disposal service to the Amended Regulated Territory.

C. Use of Settlement Agreement. Pursuant to the terms of the Settlement Agreement, it should not be used as precedent in any other proceeding or for any other purpose, except to the extent provided therein or to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement or of this Order, the Commission finds that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

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

1. The Settlement Agreement which is attached to and incorporated into this Order by reference (exclusive of the proposed Order originally attached) is approved.

2. Georgetown shall adopt an Amended Regulatory Ordinance incorporating the Amended Regulated Territory as specifically described in the Settlement Agreement and the map attached as Exhibit A to the Settlement Agreement, and upon adoption of such Amended Regulatory Ordinance, Georgetown shall file the Amended Regulatory Ordinance with the Water and Wastewater Division of the Commission within 60 days of the date of this Order, along with the map depicting the Amended Regulated Territory, consistent with Finding B.(5) above as a compliance filing in this Cause. The boundaries of Georgetown's Amended Regulated Territory map shall be filed with the Commission's Water and Wastewater Division in shapefile, geodatabase, or mxd format and in a definable coordinate system.

3. Georgetown's Regulatory Ordinance No. G-14-01, as supplemented and amended by Ordinance No. G-15-22, is approved subject to the conditions outlined in the Settlement Agreement and the compliance filing being made in this Cause as required under Ordering Paragraph 2 above.

4. In accordance with Ind. Code § 8-1-2-70, Georgetown shall pay within 20 days from the date of this Order and prior to placing into effect the Settlement Agreement approved in this Order the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

Commission charges:	\$ 2,969.05
OUCG charges:	\$ 726.98
Legal Advertising Charges:	\$ <u>133.08</u>
 TOTAL	 \$ 3,829.11

Georgetown shall pay all charges into the Commission public utility fund account described in Ind. Code § 8-1-6-2 through the Secretary of the Commission.

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

HUSTON, KREVDA, OBER, AND ZIEGNER CONCUR; FREEMAN ABSENT:

APPROVED: SEP 19 2018

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



Mary M. Bécerra
Secretary of the Commission

FILED
July 20, 2018
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE TOWN OF GEORGETOWN,)
INDIANA FOR APPROVAL OF A)
REGULATORY ORDINANCE FOR SANITARY) CAUSE NO. 45066
SEWAGE SERVICE COVERING CERTAIN)
UNINCORPORATED AREAS OF FLOYD)
COUNTY, INDIANA)

STIPULATION AND SETTLEMENT AGREEMENT

Petitioner Town of Georgetown, Indiana (“Petitioner”, “Georgetown”, or the “Town”) and Intervenor Aqua Indiana, Inc. (“Intervenor” or “Aqua Indiana”) enter into this Stipulation and Settlement Agreement (the “Stipulation”). Georgetown and Aqua Indiana (hereafter sometimes “the Settling Parties”) agree that the terms and conditions set forth below represent a fair and reasonable resolution of all issues, subject to incorporation into a final order of the Indiana Utility Regulatory Commission (“Commission”) without any modification or condition that is not acceptable to Georgetown or Aqua Indiana. The Settling Parties stipulate as follows:

1. On or about April 21, 2014, Georgetown adopted Ordinance No. G-14-01 (“Ordinance No. G-14-01”), which is a regulatory ordinance (as defined by Ind. Code § 8-1.5-6-3) establishing Georgetown’s Wastewater Service Area throughout the area within four (4) miles surrounding the corporate limits of Georgetown that is not being serviced by a Certificate of Territorial Authority (“CTA”) from the State of Indiana, and specifically recognizing the territories agreed upon in the “Georgetown-New Albany Agreed Sewer Regulatory Boundary Map” with the City of New Albany attached to the ordinance (the “Regulated Territory”). That

ordinance regulates the furnishing of sewer service within the Regulated Territory under Ind. Code §§ 36-9-2-16, 17 and -18. On October 5, 2015, Georgetown adopted Ordinance No. G-15-22 (“Ordinance No. G-15-22”), amending Ordinance No. G-14-01. (Ordinance No. G-14-01, as supplemented and amended by Ordinance No. G-15-22, collectively, the “Regulatory Ordinance”). On March 16, 2018, Georgetown initiated this proceeding before the Commission, seeking Commission approval of the Regulatory Ordinance.

2. On March 22, 2018, Aqua Indiana, Inc. petitioned to intervene in this proceeding, which petition was granted by Commission docket entry dated April 3, 2018.

3. Georgetown submitted its case-in-chief, including the prefiled direct testimony and attachments of Robert L. Woosley and Douglas L. Baldessari, on April 27, 2018.

4. Beginning on or about May 9, 2018, and continuing thereafter, the Settling Parties engaged in informal discussions, which culminated in the execution of this Stipulation . The Settling Parties agree the relief requested by Georgetown should be granted, subject to the conditions stated herein.

5. For purposes of compromise and settlement, the Settling Parties agree that the Commission should approve the Regulatory Ordinance to be applied to an amended regulated territory for Georgetown that excludes the areas in which the Settling Parties agree Aqua Indiana should be permitted to seek an expansion of its existing CTA as described in Paragraph 6 below.

6. Georgetown affirms that Aqua Indiana’s existing CTAs are exempted from the territory that is the subject to the Regulatory Ordinance. Additionally, even if the Regulatory Ordinance is approved, Georgetown shall not have the exclusive right to provide sewer service within the area shaded in orange as shown on the attached Exhibit A (the “Aqua Indiana Expansion Area”). Aqua Indiana shall be permitted to seek a CTA to extend its system and

provide service without any opposition (including but not limited to at the Commission, or before any court, board, agency or commission) from Georgetown within the Aqua Indiana Expansion Area, as shown on Exhibit A.

7. In the event Georgetown or Aqua Indiana seeks to expand service outside of the Regulated Territory or the Aqua Indiana Expansion Area, respectively, Aqua Indiana and Georgetown shall meet and endeavor to agree on how service should be extended to unserved customers/developments located in such proposed expanded area based on the respective estimated main extension and connection costs without regard for the source of payment. Georgetown and Aqua Indiana shall endeavor to include in such meetings any other provider in the area with the ability to serve such unserved customers/ developments. In the event Aqua Indiana and Georgetown cannot agree on how service should be extended to such unserved customer/development, Aqua Indiana may seek a CTA to extend its system and provided service to such customer/development in the proposed expanded area, but Georgetown shall be permitted to oppose the granting of such CTA.

8. Aqua Indiana shall have the exclusive right to provide service within its current and future CTA areas, as shown on Exhibit A.

9. Georgetown shall adopt an amendment to the Regulatory Ordinance to amend the regulated territory established therein to conform to the area stipulated in Paragraph 6 above, and shall file the amendment within a reasonable time after the issuance by the Commission of a final order approving this Stipulation.

10. The Settling Parties stipulate to the issuance by the Commission of a final order in the form attached hereto as Exhibit B.

11. The Settling Parties agree that all evidence that has been filed in this Cause with respect to the relief provided herein, including the testimony filed in support of this Stipulation is admissible in evidence and that such evidence constitutes a sufficient evidentiary basis for the issuance of a Commission Order approving this Stipulation.

12. If this Stipulation is not approved in its entirety by the Commission, the Settling Parties stipulate that the terms herein shall not be admissible in evidence or discussed by an party in a subsequent proceeding. Moreover, the concurrence of the parties with the terms of this Stipulation is expressly predicated upon the Commission's approval of this Stipulation in its entirety by issuance of the Order in the form set forth in Exhibit B without any material modification or any material condition deemed unacceptable by any of them. If the Commission does not approve the Stipulation in its entirety or if the Commission makes modifications to the final order that are unacceptable to either Settling Party, the Stipulation shall be null and void and deemed withdrawn upon notice in writing by either Settling Party within 15 days after the date of the final order stating that a modification made by the Commission is unacceptable to such Settling Party. If the Stipulation is withdrawn, either Settling Party may request, and the other Settling Party shall not oppose, the convening of attorneys' conference to establish a procedural schedule for the continued litigation of this proceeding.

13. The Settling Parties agree this Stipulation reflects a fair, just and reasonable, resolution, and is without prejudice to the ability of either party to propose a different term in future proceedings.

14. The Settling Parties agree that neither party shall cite as precedent this Stipulation or the order approving it. The Settling Parties further agree neither party shall assert this

Stipulation or agreed order is an admission by the other party except as necessary to enforce its terms before the Commission or a court of competent jurisdiction.

15. The undersigned represent and stipulate that they are fully authorized to execute this Stipulation on behalf of the respective parties who will be bound thereby.

(signature page follows)

Town of Georgetown, Indiana

Date: 7-16-2018

By: Emerett Pulli
President of the Town Council
Town of Georgetown, Indiana

Aqua Indiana, Inc.

Date: 7/20/2018

By: Thomas Bruns
Thomas Bruns, President
Aqua Indiana, Inc.

DESIGNERS

DEVELOPERS

AQUA INDIANA
FLOYD COUNTY CTA MAP
GALENA CTA EXPANSION

PROJECT

DATE: OCTOBER 2011
SHEET
1
of 1

DATE	DATE
DESIGNED BY	DATE
CHECKED BY	DATE
SCALE	DATE
VERT SCALE	DATE
HORIZ SCALE	DATE

