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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE TOWN OF ELBERFELD, INDIANA )  
FOR APPROVAL OF ITS ORDINANCE GOVERNING )  
THE PROVISION OF WASTEWATER UTILITY )  
SERVICE TO CUSTOMERS LOCATED IN THE )  
UNINCORPORATED AREAS OF WARRICK COUNTY, )  
INDIANA THAT ARE WITHIN FOUR MILES OF THE )  
TOWN'S INCORPORATED BOUNDARY )

CAUSE NO. 44766

APPROVED: SEP 28 2016

ORDER OF THE COMMISSION

**Presiding Officers:**  
**Angela Rapp Weber, Commissioner**  
**David E. Veleta, Senior Administrative Law Judge**

On March 15, 2016, the Town of Elberfeld, Indiana, ("Elberfeld") filed its petition with the Indiana Utility Regulatory Commission ("Commission") in this matter. On May 6, 2016, Elberfeld filed the direct testimony and exhibits of Dennis Miller and David Hynes. On June 29, 2016, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the direct testimony and exhibits of James T. Parks, Utility Analyst in the OUCC's Water/Wastewater Division. On July 13, 2016, Elberfeld filed rebuttal testimony from Dennis Miller. On August 12, 2016, the Presiding Officers issued a Docket Entry requesting additional information from Elberfeld.

The Commission held an evidentiary hearing in the Cause at 9:30 a.m. on August 18, 2016, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Elberfeld and the OUCC appeared at and participated in the evidentiary hearing. No members of the general public attempted to participate in the hearing.

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

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Elberfeld owns a municipal wastewater utility as that term is defined in Ind. Code § 8-1.5-6-1(2). Under Ind. Code § 8-1.5-6-9, the Commission has jurisdiction over the enforceability of a regulatory ordinance adopted by a municipality after December 31, 2012. Therefore, the Commission has jurisdiction over Elberfeld and the subject matter of this proceeding.
  
2. **Elberfeld's Characteristics.** Elberfeld is a municipality located in Warrick County, Indiana. Elberfeld owns and operates a municipal wastewater utility that provides wastewater service to customers in and outside its corporate boundaries.
  
3. **Relief Requested.** Elberfeld requested approval of Elberfeld Ordinance 2013-3, which asserted Elberfeld's jurisdiction to provide wastewater service within four miles of its

corporate boundaries. Mr. Miller sponsored as a supplemental exhibit Elberfeld's Ordinance 2016-2 ("Regulatory Ordinance"), which replaced the Ordinance 2013-3 after removing references to water service that had been included in that earlier ordinance attached to Elberfeld's petition initiating this cause. Nonetheless, Section 4 of the Regulatory Ordinance offered into the record during the evidentiary hearing still included a reference to "water" service.

#### 4. Summary of the Evidence.

A. Elberfeld's Direct Evidence. Dennis Miller, assistant utilities manager for Elberfeld, described the number and type of wastewater customers currently served by Elberfeld both inside and outside of its corporate limits. Mr. Miller identified steps Elberfeld is taking to address treatment capacity limitations, including a multi-million dollar investment in a new trunk line and an expansion of Elberfeld's wastewater treatment plant to enable it to connect to new customers in the regulated territory. Mr. Miller also described various anticipated sources of funding for these utility investments, as well as the existing demand for wastewater service in the North Warrick Industrial Park and around the nearby intersection of two interstate highways, I-64 and I-69.

Mr. Miller also verified Elberfeld's responses to the three questions from the Presiding Officers' August 12, 2016 Docket Entry. Mr. Miller confirmed that the single stray reference to water service in the Regulatory Ordinance was inadvertent. He also provided earlier Elberfeld ordinances containing the wastewater utility's rules and regulations for service and pretreatment as well as its rate ordinances.

David Hynes, an associate partner with Commonwealth Engineers, Inc., provided an overview of Elberfeld's wastewater infrastructure, and described and sponsored Elberfeld's master plan, which he had helped author. He also provided correspondence between Elberfeld and the Indiana Department of Environmental Management ("IDEM"), including an approved revised compliance plan referencing planned improvements to Elberfeld's wastewater treatment plant. Mr. Hynes testified that there are no other wastewater utilities providing service in the vicinity and opined that Elberfeld is in the best position to extend service to new businesses and residents within the proposed regulated territory. He also noted that having exclusive territorial rights helps assure that Elberfeld will be able to expand its system in accordance with its master plan and provide service on the most efficient terms.

B. OUCC's Direct Evidence. James T. Parks testified that the OUCC does not contest the Commission's approval of the Regulatory Ordinance. He said Elberfeld has existing wastewater facilities and the managerial and technical capabilities needed to extend wastewater services to areas beyond its corporate limits.

Mr. Parks also described the number of positive steps taken by Elberfeld in response to an IDEM enforcement action. He noted Elberfeld hired Commonwealth Engineers to evaluate the wastewater system, propose a compliance plan, and develop capital improvement projects to eliminate the sanitary sewer overflows. He noted Commonwealth Engineers also prepared a

master plan for water, sanitary sewer, and drainage in October 2012 that was approved by the Town Council and is guiding Elberfeld's efforts. Mr. Parks said that based on his review, the master plan is comprehensive, well done, and a good example of planning that can serve as a road map for infrastructure development.

Mr. Parks described the planned expansion of Elberfeld's wastewater treatment plant and also noted that if Elberfeld is not able to provide wastewater service to a particular property within the proposed regulated territory, the owner of the property would not be barred by the Regulatory Ordinance from installing a private sewage-handling system.

Mr. Parks concluded that in responding to Elberfeld's request for relief, as well as the ability of the municipal utility to extend service, the Commission should consider the demand for service in the proposed exclusive territory. Mr. Parks stated there appears to be a potential for demand for wastewater service in the area east of the I-69/I-64 interchange, but as to the other parts of the proposed regulated territory existing outside Elberfeld's municipal limits, there appeared to be little evidence of demand. Mr. Parks said that another factor that should be considered is whether granting exclusivity to such a large area will deter other utilities from extending service to customers that Elberfeld is not yet able to serve. He noted the closest wastewater utilities appear to be the Town of Lynnville, which is approximately six miles away, and the Town of Chandler is 8.15 miles away. Mr. Parks considered it unlikely that other utilities will be poised to serve in the regulated territory before Elberfeld. But if that should ever be the case, he hoped the extent of the exclusive regulated territory could be revisited. In the meantime, he said the OUCC does not contest approval of Elberfeld's ordinance.

**C. Elberfeld's Rebuttal Evidence.** Mr. Miller described various proposed developments within the proposed regulated territory south and east of Elberfeld. He also noted that much of the area outside Elberfeld and within the proposed regulated territory lies within Warrick County's Campbell Township. He included a future and existing land use map of that township showing areas of possible residential and other development.

**5. Commission Discussion and Findings.** Elberfeld seeks approval of its Regulatory Ordinance. Under Ind. Code 8-1.5-6-9, a municipality may not enforce a regulatory ordinance until the Commission issues an order approving the ordinance.

**A. Sufficiency of the Petition.** A petition for approval of a regulatory ordinance must contain the following information:

- (1) a description of the service territory established in the Regulatory Ordinance;
- (2) the proposed rates and charges for the services to be provided in the service territory;
- (3) a list of any administrative or judicial proceedings involving the Regulatory Ordinance;
- (4) a list of any utilities actually or potentially affected by the regulatory ordinance.

Ind. Code § 8-1.5-6-9(b). Elberfeld's Petition describes the proposed service territory, which is the unincorporated area of Warrick County within four miles of Elberfeld's corporate boundaries.

Elberfeld attached a copy of Ordinance 2007-1 establishing an amended schedule of rates for Elberfeld's wastewater utility. Elberfeld's Petition notes that they are not aware of any pending administrative or judicial proceedings involving its Regulatory Ordinance nor aware of any wastewater utilities actually or potentially affected by its Regulatory Ordinance. Therefore, we find that Elberfeld's Petition complies with the requirements of Ind. Code § 8-1.5-6-9(b).

**B. Public Interest Factors.** Under Ind. Code § 8-1.5-6-9(c), prior to approving the Regulatory Ordinance, we must consider the public interest factors set forth in Ind. Code § 8-1.5-6-8(g), which are:

- (1) the ability of another utility to provide service in the Regulated Territory;
- (2) the effect of a Commission order on customer rates and charges for service provided in the Regulated Territory;
- (3) the effect of the Commission order on present and future economic development in the Regulated Territory;
- (4) the history of utility service in the Regulated Territory; and
- (5) any other factors the Commission considers necessary.

Neither Elberfeld nor the OUCC has identified any other utility in a position to provide wastewater service within the regulated territory in which Elberfeld has proposed to be the exclusive provider of such utility service. We accept Elberfeld's assertion that it is not aware of any other wastewater utilities actually or potentially affected by the Regulatory Ordinance.

Further, Elberfeld plans to continue its current practice of charging the same rates to its wastewater customers inside as well as outside of its corporate limits, but anyone within the regulated territory who is unable to receive new wastewater service from Elberfeld retains the option of installing a private collection and treatment system that otherwise complies with all applicable health code and other requirements.

Additionally, we conclude from the evidence of record in this case that the Regulatory Ordinance will advance economic development around Elberfeld. Both by advancing Elberfeld's comprehensive master plan for its wastewater utility and providing support for the revenue streams anticipated to be essential to Elberfeld's ability to pay for the significant investments in treatment and other capacity that are called for in the master plan. The only entity currently providing wastewater service in the regulated territory is Elberfeld. There is no history of any other provider within four miles of Elberfeld's corporate boundary.

Finally, the governing statute allows us discretion to consider additional factors. We find it relevant that our approval of the exclusive territorial rights sought by Elberfeld will provide for the orderly build-out of its existing wastewater infrastructure and offer stability and reasonable assurance that the cost of necessary investments in expanded collection and treatment capacity not covered by various public grants will be recoverable.

Therefore, each of these factors has been satisfactorily addressed in this case, and we,

accordingly, find that Elberfeld's Regulatory Ordinance in regard to wastewater service is in the public interest and should be approved.

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

1. Elberfeld's request for approval of its Regulatory Ordinance (Ordinance 2016-2) in regard to wastewater service is approved.

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

Commission Charges:	\$ 922.29
OUCG Charges:	\$1,416.82
Legal Advertising Charges:	\$ <u>178.91</u>
Total:	\$2,518.02

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

**FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR; STEPHAN ABSENT:**

**APPROVED:            SEP 28 2016**

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

  
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**Mary M. Becerra**  
**Secretary of the Commission**