

ORIGINAL

AB
DF
JH
CM

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE)
TOWN OF HUNTERTOWN, INDIANA FOR (A))
REVIEW OF THE RATES AND CHARGES BEING)
IMPOSED BY FORT WAYNE OF FORT WAYNE,)
INDIANA FOR WHOLESALE SERVICE PURSUANT)
TO IND. CODE § 8-1-2-61.7; AND (B) APPROVAL)
OF REGULATORY ORDINANCES ESTABLISHING)
SERVICE TERRITORIES FOR THE TOWN'S)
MUNICIPAL WASTEWATER AND WATER)
SYSTEMS PURSUANT TO IND. CODE § 8-1.5-6 ET)
SEQ.)

CAUSE NO. 44519

APPROVED:

MAY 20 2015

RESPONDENT: CITY OF FORT WAYNE, INDIANA)

ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays-Medley, Commission Vice Chair
Loraine L. Seyfried, Chief Administrative Law Judge

TABLE OF CONTENTS

1. Notice and Jurisdiction	2
2. Utility Characteristics	2
3. Relief Requested	3
A. Request for Review of Rates and Charges	3
B. Request for Approval of Regulatory Ordinances	3
4. Outstanding Motions	3
A. Fort Wayne Motion for Partial Summary Judgment.....	3
B. Fort Wayne’s Objection to Late-Filed Exhibit 57A.....	6
C. Fort Wayne’s Motion for Directed Verdict	6
D. Huntertown’s Request for Administrative Notice.....	7
E. Fort Wayne’s Motion to Strike Portions of Huntertown’s Response Brief.....	7
5. Field Hearing Comments	7
6. Review of Fort Wayne’s Rates and Charges	8
A. Evidence Presented.....	8
1. Fort Wayne’s Direct Evidence	8
a. Matthew A. Wirtz.....	8
b. Eric J. Walsh	10
2. Huntertown’s Direct Evidence	12
a. Stephen Carter	12
b. Derek Frederickson	15
3. Fort Wayne’s Rebuttal Evidence.....	17
a. Matthew A. Wirtz.....	17
b. Eric J. Walsh	19
B. Commission Discussion and Findings.....	22
1. Statutory Requirements	22
2. Background and Ordinances.....	23
3. Review of Fort Wayne’s Retail Outside-City Rates Charged to Huntertown under its Rate Ordinances	24
a. Classification of Huntertown as a Retail Outside-City Customer	25
b. Three Primary Causes of Additional Cost of Service	26
c. Just and Reasonable Rates	28
d. Conclusion	29

4. Review of Fort Wayne’s Connection Fee Ordinance	30
7. Review of Regulatory Ordinances	31
A. Evidence Presented.....	31
1. Huntertown’s Direct Evidence	31
a. Andrew Conner	31
b. Derek Frederickson	34
2. Twin Eagles’s Direct Evidence	35
3. The District’s Direct Evidence	36
4. Fort Wayne’s Direct Evidence	38
a. Thomas T. Nitza.....	38
b. Eric J. Walsh	40
5. Huntertown’s Rebuttal Evidence.....	41
a. Andrew Conner.....	41
b. Derek Frederickson.....	43
c. Stephen Carter	47
B. Commission Discussion and Findings.....	50
1. Statutory Requirements	50
2. Background and Regulatory Ordinances	50
3. Indiana Code § 36-9-23-16.....	51
4. Review of the Regulatory Ordinances.....	53
a. History of Utility Service in the Reduced Service Areas.....	54
b. Ability of Fort Wayne and Huntertown to Provide Water and Wastewater Service in the Reduced Service Area.....	55
c. Customer Rates and Charges for Service.....	56
d. Present and Future Economic Development.....	58
e. Other Factors.....	60
i. Drinking Water Quality.....	60
ii. Customer Preference and Concerns	60
5. Conclusion.....	61
6. Modification of Regulatory Ordinances	65
8. Confidentiality.....	65

On July 29, 2014, the Town of Huntertown, Indiana (“Huntertown”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) for (a) review pursuant to Ind. Code § 8-1-2-61.7 of the rates and charges being imposed by the City of Fort Wayne, Indiana (“Fort Wayne”) for wholesale sewage service; and (b) approval pursuant to Ind. Code ch. 8-1.5-6 of Huntertown’s regulatory ordinances establishing service territories for Huntertown’s municipal wastewater and water systems (collectively, the “Regulatory Ordinances”). Fort Wayne was named the Respondent.

On August 21, 2014, Twin Eagles Development, II, LLC (“Twin Eagles”) and the Allen County Regional Water and Sewer District (“District”) filed motions to intervene, which were granted by the Presiding Officers on September 10, 2014. Various individuals also sought leave to intervene, but such motions were denied for failure to comply with the Commission’s procedural requirements.

On September 17, 2014, the Commission issued a Prehearing Conference Order establishing the procedural schedule for this Cause and denying Huntertown’s Motion for Entry of Order Governing the Provision of Services on an Interim Basis. A public field hearing was held on November 3, 2014, at 6:00 p.m. at the Cedar Canyon Elementary School, 15011 Coldwater Road, Fort Wayne, Indiana.

An evidentiary hearing was held on January 13, 2015, at 9:30 a.m. in Room 222, 101 West Washington Street, Indianapolis, Indiana concerning the reasonableness of Fort Wayne’s rates and charges for wholesale sewage service provided to Huntertown. At the hearing, Huntertown, Fort Wayne, and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared and participated by counsel. No members of the public appeared.

An evidentiary hearing was held on January 15, 2015, at 9:30 a.m. in Room 222, 101 West Washington Street, Indianapolis, Indiana concerning the approval of Huntertown’s Regulatory Ordinances. At the hearing, Huntertown, Fort Wayne, the OUCC, Twin Eagles, and the District appeared and participated by counsel. No members of the public appeared.

Based upon the applicable law and the evidence of record, the Commission finds:

1. Notice and Jurisdiction. Notice of the hearings held in this Cause was given and published by the Commission as required by law. Huntertown and Fort Wayne are “utilities” as defined by Ind. Code §§ 8-1.5-6-4 and 8-1-2-61.7. Huntertown filed a wholesale sewage petition in Allen Circuit Court on June 17, 2013, and adopted its Regulatory Ordinances in October 2013. Under Ind. Code § 8-1.5-6-8, if a municipality adopts regulatory ordinances after December 31, 2012, and the municipality’s utility has filed a wholesale sewage petition, the Commission has jurisdiction to approve the regulatory ordinances and assumes jurisdiction over any remaining issues concerning the wholesale sewage petition. Therefore, the Commission has jurisdiction over Huntertown and Fort Wayne and the subject matter of this Cause.

2. Utility Characteristics. Huntertown is an Indiana municipal corporation located in Allen County, Indiana that, through its Utility Service Board, owns and operates a municipal water and wastewater utility. Huntertown’s municipal water and wastewater utilities each serve approximately 3,200 residential and commercial customers. Huntertown’s wastewater utility

consists of a sewage collection system, which collects and transports sewage to Fort Wayne for treatment.

Fort Wayne is a municipality located in Allen County, Indiana. Through its municipally-owned utilities, Fort Wayne provides both wastewater and water service to customers inside and outside its municipal limits. Fort Wayne is a regional provider of water and wastewater services, providing service to approximately 87,768 sewer customers and 84,142 water customers.

3. Relief Requested. In its Verified Petition, Huntertown requests the Commission: (a) review the rates and charges imposed by Fort Wayne for wholesale sewage service; and (b) approve the Regulatory Ordinances adopted by the Huntertown Town Council.

A. Request for Review of Rates and Charges. Huntertown and Fort Wayne entered into a Water Pollution Control Agreement in 1985, which was further amended in 1998 and 2005 (“Agreement”). Under the Agreement, Fort Wayne provided Huntertown with wholesale sewage service. Huntertown and Fort Wayne had been in negotiations to further extend the Agreement, but those negotiations were unsuccessful. In January 2010, Huntertown, in anticipation of constructing its own Wastewater Treatment Plant (“WWTP”), gave Fort Wayne notice of its intent to terminate the Agreement effective April 2013. The Agreement does not set forth rates to be applied upon termination.

Following termination of the Agreement, Fort Wayne adopted Ordinance G-13-13, which purports to reclassify Huntertown as a retail customer, and began charging Huntertown the “retail” wastewater treatment rates contained in Ordinance G-12-09 (“2009 Rate Ordinance”). Fort Wayne has since adopted Ordinance G-19-14 (“2015 Rate Ordinance”), which amends the rates contained in the 2009 Rate Ordinance, and Ordinance G-16-14 (“Connection Fee Ordinance”), which adjusts certain non-recurring charges. Huntertown requests the Commission review the reasonableness of the rates and charges for wholesale sewage service being provided to Huntertown by Fort Wayne.

B. Request for Approval of Regulatory Ordinances. On October 7, 2013, Huntertown adopted Ordinance 13-004, as thereafter amended on November 18, 2013, by Ordinance 13-008. These ordinances are regulatory ordinances (as defined by Ind. Code § 8-1.5-6-3) establishing Huntertown’s Water Service Area (“Water Service Area”) and regulate the furnishing of water therein. On October 21, 2013, Huntertown adopted Ordinance 13-006, which is also a regulatory ordinance (as defined by Ind. Code § 8-1.5-6-3). Ordinance 13-006 establishes Huntertown’s Sewage Service Area (“Sewage Service Area”) and regulates the furnishing of sanitary sewage service therein. Huntertown seeks Commission approval of its Regulatory Ordinances establishing its Water Service Area and its Sewage Service Area.

4. Outstanding Motions.

A. Fort Wayne Motion for Partial Summary Judgment. Fort Wayne filed a Motion for Partial Summary Judgment and its supporting brief (“Motion”) requesting the Commission enter summary judgment determining Huntertown cannot recover conveyance charges that were paid to Fort Wayne from 1997 through 2013. More specifically, Fort Wayne asserts:

1. Huntertown agreed to pay the conveyance charges as part of the Agreement;
2. Huntertown cannot use a wholesale sewage petition filed under Ind. Code § 8-1-2-61.7 to recoup historically paid conveyance charges because a wholesale sewage petition may only address prospective rates and charges;
3. Huntertown cannot recoup the voluntarily paid conveyance charges under the voluntary payment doctrine; and
4. Huntertown is prohibited from challenging the conveyance charges under the doctrines of waiver and laches because it failed to timely raise any claim or defense to the conveyance charges.

Huntertown filed a Response arguing that the Motion should be denied. Huntertown asserts that the dispute concerning the conveyance charges is a matter that remains pending in the Allen Circuit Court and is an issue that is outside the Commission's jurisdiction.

Fort Wayne filed a Reply and argued that because Huntertown filed a petition for approval of its Regulatory Ordinances with the Commission under Ind. Code § 8-1.5-6-8, the Allen Circuit Court has been divested of jurisdiction over any issues raised by Huntertown in its petition, including those concerning the conveyance charges. In addition, because Huntertown failed to respond to the arguments raised by Fort Wayne in its Motion, the Motion should be granted.

Before we address Fort Wayne's Motion, we must first determine whether the Commission has jurisdiction to consider the issue raised in the Allen Circuit Court by Huntertown concerning the conveyance charges that it paid to Fort Wayne. For the reasons set forth below, we find that the Commission does not have jurisdiction to determine the issue.

Ind. Code § 8-1-2-61.7(c) allows certain utilities to "file a petition for review of rates and charges for wholesale sewage service" with the Commission or an applicable judicial court. If a petition is filed with the Commission, the Commission may (after notice and hearing) issue an order determining whether the rates and charges are just and reasonable. Ind. Code § 8-1-2-61.7(e). The Commission may not, however, revise the rates and charges of a utility for a purpose other than as provided in Ind. Code § 8-1-2-61.7 ("Section 61.7"). Both Fort Wayne and Huntertown acknowledge that this section of the Indiana Code provides the Commission with jurisdiction to review a utility's rates and charges for wholesale sewage service on a prospective, and not a historical, basis. Motion at para. 1.b. and Response at p. 4.

Huntertown originally sought review of Fort Wayne's wholesale sewage rates in Allen Circuit Court. Huntertown's petition filed in that court included a request for relief under Section 61.7 as well as other requests for declaratory judgment and monetary damages with respect to Fort Wayne's adoption of certain ordinances and assessment of conveyance charges. Ex. A to the Verified Petition. Although Huntertown originally sought review in Allen Circuit Court, Ind. Code § 8-1-2-61.7(d)(4) provides that a petition filed under Section 61.7 may be

subject to Ind. Code ch. 8-1.5-6, which concerns utility service in municipal regulated territories. Ind. Code § 8-1.5-6-8(d) requires certain utilities (such as Huntertown) to petition the Commission no later than October 1, 2014, for approval of a regulatory ordinance before it may be enforced. Because the Allen Circuit Court had not issued a final judgment as to the wholesale sewage petition at the time of Huntertown's filing of a petition in this Cause, the Commission assumed "immediate and exclusive jurisdiction over the municipal utility, including the wholesale sewage petition...." Ind. Code § 8-1.5-6-8(e)(2). Upon assuming jurisdiction, and after notice and hearing, the Commission is required to issue an order resolving all issues related to the regulatory ordinances and "*any applicable issues* presented in the wholesale sewage petition." Ind. Code § 8-1.5-6-8(f) (emphasis added). A "wholesale sewage petition" is defined as a petition filed under Section 61.7 (i.e., a petition seeking review of a utility's prospective rates and charges for wholesale sewage service). Ind. Code § 8-1.5-6-5.

When interpreting a statute, the statute should be examined as a whole and not given excessive reliance on a strict literal meaning or the selective reading of individual words, but to ascertain the purpose of the legislation and avoid an unjust or absurd result. *Ind. Bureau of Motor Vehicles v. Orange*, 889 N.E.2d 388, 390 (Ind. Ct. App. 2008). In ascertaining the legislative intent, a court must also examine the law existing before it, the changes made, and the apparent intent for making the changes. *Van Orman v. State*, 416 N.E.2d 1301, 1305 (Ind. Ct. App. 1981).

Fort Wayne argues that Huntertown's filing of its petition in this Cause divests the Allen Circuit Court of jurisdiction, and instead vests the Commission with jurisdiction, to address each and every issue that Huntertown raised in the Allen Circuit Court. Although Ind. Code § 8-1.5-6-8(e)(2) may purport to give the Commission "exclusive jurisdiction" over Huntertown, it is clear from a reading of the relevant statutes as a whole that the Commission is not being given jurisdiction to determine any issue that Huntertown may have asserted against Fort Wayne. Such an interpretation would lead to an absurd result by placing issues before the Commission that are outside its area of expertise and without statutory authority to address (e.g., monetary damages for breach of contract and negligence claims). Rather, the more logical interpretation is that the Commission is being given exclusive jurisdiction over only the "wholesale sewage petition," i.e., the petition or the portion of the petition seeking the prospective review of a utility's rates and charges for wholesale sewage service under Section 61.7.

When the Indiana Legislature enacted Ind. Code ch. 8-1.5-6, it is clear they understood that certain municipal utilities with authority to provide water and/or wastewater service in overlapping regulated territories were also engaged in disputes concerning wholesale sewage rates that were pending in the courts. The Legislature added a provision in Ind. Code § 8-1.2-61.7(d)(4) noting that a petition filed under that section may be subject to Ind. Code ch. 8-1.5-6. Consistent with that addition, they defined a "wholesale sewage petition," for purposes of Ind. Code ch. 8-1.5-6, as one filed under Section 61.7 and included provisions allowing for the Commission to obtain jurisdiction over those issues. *See* Ind. Code § 8-1.5-6-8(c) and (e). In addition, Section 61.7(f) provides that the statute does not authorize the Commission to revise the wholesale rates and charges of a utility for any purpose other than as provided in Section 61.7 or otherwise return a utility to the Commission's jurisdiction. A reading of these provisions together evidences an intent by the Legislature for the Commission to resolve any issues related

a municipality's service territory in conjunction with any issue related to a municipality's prospective rates and charges for wholesale sewage service under Section 61.7 that may be pending in a judicial court or remain unaddressed by a court order.

This conclusion is consistent with Indiana cases concerning the Commission's subject matter jurisdiction, including *Se. Ind. Natural Gas v. Ingram*, 617 N.E.2d 943 (Ind. Ct. App. 1993).¹ As the majority of the Court of Appeals in that case noted, the Commission derives its power solely from the legislature and any doubt about the existence of authority must be resolved against a finding of authority. *Id.* at 947. It is well recognized that the Commission can exercise only administrative or legislative powers. *Pub. Serv. Ind., Inc. v. Nichols*, 494 N.E.2d 349, 353 (Ind. Ct. App. 1986) citing *Citizens Action Coalition of Ind., Inc. v. Pub. Serv. Comm'n of Ind.*, 425 N.E.2d 178 (Ind. Ct. App. 1981). The Commission does not have judicial powers or the ability to award money judgments. *Ind. Tel. Corp. v. Ind. Bell Tel. Co., Inc.*, 358 N.E.2d 218, 224 (Ind. Ct. App. 1976), *modified*, 360 N.E.2d 610 (Ind. Ct. App. 1977). Further, any order that the Commission makes with regard to services or rates must be prospective in nature and cannot grant compensation for events that occurred in the past. *Id.*; *see also, Ind. Bell Tel. Co. v. Office of Util. Consumer Counselor*, 717 N.E.2d 613, 625 (Ind. Ct. App. 1999).

The Legislature's enactment of Ind. Code ch. 8-1.5-6 and modification of Section 61.7 did not enlarge the Commission's existing powers to address rates only on a prospective basis and did not add new powers specifically authorizing the Commission to address issues beyond those within its expertise or to award monetary damages. Consequently, we find that Ind. Code § 8-1.5-6-8 does not grant the Commission jurisdiction over issues raised in Huntertown's circuit court petition that are unrelated to a review of Fort Wayne's current rates and charges for wholesale service to Huntertown under Section 61.7 or Huntertown's Regulatory Ordinances.

Accordingly, Fort Wayne's Motion for Partial Summary Judgment is denied.

B. Fort Wayne's Objection to Late-Filed Exhibit 57A. At the evidentiary hearing, Fort Wayne sought to offer into evidence its response to a January 7, 2015 Docket Entry that requested the basis for Mr. Wirtz's statement concerning Huntertown's request for additional wastewater capacity. Fort Wayne's response contained an affidavit from an individual other than Mr. Wirtz and who was not a witness in this Cause. Huntertown objected. The Presiding Officers overruled the objection and allowed Huntertown the opportunity to conduct additional discovery and to provide a response, which would be designated as Late-Filed Exhibit 57A.

Huntertown filed Late-Filed Exhibit 57A containing an affidavit of a non-witness responding to the statements contained in Fort Wayne's admitted affidavit. Fort Wayne filed an objection. Because we find Late-Filed Exhibit 57A to be responsive to the admitted exhibit, Fort Wayne's request to strike Late-Filed Exhibit 57A is denied.

C. Fort Wayne's Motion for Directed Verdict. At the close of the evidentiary hearing, Fort Wayne moved for a directed verdict pursuant to Indiana Trial Rule 50 concerning the issue related to approval of the regulatory ordinance establishing the Sewage Service Area.

¹ Fort Wayne is advised to use caution when citing and quoting from a dissenting opinion as authority for what the Indiana Court of Appeals has "expressly recognized."

Fort Wayne argues that Ind. Code § 36-9-23-16 requires Huntertown to have a contract for the treatment of its wastewater before it may provide sewage service and because no contract exists, Fort Wayne is entitled to a directed verdict.

Indiana Trial Rule 50 provides,

[w]here all or some of the issues in a case tried before a jury...are not supported by the evidence or a verdict thereon is clearly erroneous as contrary to the evidence because the evidence is insufficient to support it, the court shall withdraw such issues from the jury and enter judgment thereon....

As this case was not tried before a jury, there is no issue to withdraw from jury consideration. Accordingly, Fort Wayne's Motion for Directed Verdict is denied. However, the Commission considers Fort Wayne's arguments concerning Ind. Code § 36-9-23-16 further below.

D. Huntertown's Request for Administrative Notice. On February 20, 2015, Huntertown requested the Commission take Administrative Notice that the Indiana Department of Environmental Management ("IDEM") issued a National Pollutant Discharge Elimination System ("NPDES") permit to Huntertown on February 19, 2015, for the construction of a wastewater treatment plant. Fort Wayne filed its objection on February 27, 2015, arguing Huntertown's request is untimely under 170 IAC 1-1.1-21 and Huntertown failed to comply with the requirements to reopen the record under 170 IAC 1-1.1-22. On March 6, 2015, Huntertown filed its verified response complying with the requirements of 170 IAC 1-1.1-22 and asserting that 170 IAC 1-1.1-21 requires the Commission to take administrative notice of any fact that must be judicially noticed, such as the issuance of an NPDES permit.

Huntertown's verified response cured the procedural deficiencies with its request for the submission of additional evidence after the record has been closed. Although we recognize that the NPDES permit may be appealed, IDEM issued the NPDES permit after the evidentiary hearing in this Cause and the issuance of such a permit is relevant to Huntertown's wastewater service. Therefore, in accordance with the Commission's procedural rules and Indiana Rule of Evidence 201 pertaining to judicial notice, Huntertown's Request for Administrative Notice is granted.

E. Fort Wayne's Motion to Strike Portions of Huntertown's Response Brief. On March 27, 2015, Fort Wayne filed a Motion requesting the Commission strike portions of Huntertown's response to certain proposed orders. The Commission has previously indicated that proposed orders and post-hearing briefs are not evidence and to the extent any proposed order refers to facts not in evidence, those facts will not be considered when making a decision. *Commission Investigation of Utility Center, Inc.*, Cause No. 41187, Docket Entry (IURC Aug. 23, 2005). Therefore, we deny Fort Wayne's Motion.

5. Field Hearing Comments. Various comments from the public concerning Huntertown's request were received at the public field hearing and provided to the OUCC. Very few comments addressed the reasonableness of the rates and charges assessed by Fort Wayne, but those that did express the belief that Fort Wayne should be charging Huntertown wholesale

rates. The majority of comments addressed the Regulatory Ordinances and opposed approval of those ordinances. However, several did express support for Huntertown's requested relief.

Reasons for opposing approval of the Regulatory Ordinances included: wanting the ability to choose between utility service providers, concern with environmental impacts on the Eel River if Huntertown constructs a WWTP, not needing wastewater utility service in the area; Huntertown's lack of wastewater treatment facilities, concern with Huntertown's ability to provide utility service, the lack of voting rights for residents living outside of the municipal boundaries, and concern with the cost of service.

6. Review of Fort Wayne's Rates and Charges.

A. Evidence Presented.

1. Fort Wayne's Direct Evidence. Matthew A. Wirtz, Deputy Director of Engineering Services and Chief Engineer for Fort Wayne, described the historical relationship between Fort Wayne and its customers, explained the basis for Huntertown's rate classification, and offered support for the rates charged to Huntertown. Eric J. Walsh, Certified Public Accountant and a manager in H.J. Umbaugh & Associates ("Umbaugh"), offered support for Fort Wayne's wastewater rates and charges.

a. Matthew A. Wirtz. Mr. Wirtz stated that Fort Wayne is primarily interested in entering into contracts with customers whose point-of-connection location and flow poses an environmental, regulatory, or financial risk to the utility and its other customers. In particular, Fort Wayne is concerned with flows discharged into the sewer system that may bring risks, such as sanitary sewer overflows, basement backups, or exacerbation of combined sewer overflows. Mr. Wirtz indicated that increased flows from contract customer growth or inflow and infiltration ("I&I") can potentially exceed downstream sewer-system capacity, especially during wet-weather events. He said this risk requires more management when serving customers who have their own collection systems that experience high I&I or wet-weather peaks. Mr. Wirtz stated that special contracts are beneficial in encouraging the contract customer to limit the amount of I&I and peak-flows and invest in peak-flow-mitigation solutions.

For purposes of capacity planning, Mr. Wirtz stated that Fort Wayne invites customers with large volumes who discharge on a seasonal or unusual basis to provide anticipated plans for collection systems and to forecast any change expected in volumes and volume patterns. The information received provides the basis to estimate new capacity requirements and develop conceptual solutions and implementation plans. He said the master planning process is lengthy and can take several years. But special contracts assist in ensuring that the beneficiaries of the planning, detailed design, and construction of additional capacity pay their fair share and do not use more than their allocated capacity.

Mr. Wirtz stated that Huntertown experienced problems with its wastewater treatment facilities in the mid-1980s. As a result, Fort Wayne and Huntertown entered into a long-term agreement for sewage treatment service. Mr. Wirtz noted that the Agreement provided for an unlimited number of automatic five-year extensions unless one of the parties notified the other in

writing at least three years prior to the expiration of its desire to terminate the Agreement. Mr. Wirtz stated that Huntertown notified Fort Wayne in 2010 of the intent to terminate the Agreement effective in April 2013.

Mr. Wirtz indicated that the Agreement placed burdens on Huntertown that benefited Fort Wayne. For instance, the Agreement dictated that Huntertown would remain a Fort Wayne customer for an extended period of time so that Fort Wayne was able to master plan, set appropriate rates, and make capacity and location improvements to its system. This also provided assurance that the long-term revenues from Huntertown would help pay for the costs of the improvements. Other provisions of the Agreement benefitting Fort Wayne included requirements that allocated meter costs, defined the parties' respective service territories, and provided for maintaining and sharing user information. In exchange for these long-term commitments, Mr. Wirtz stated that Fort Wayne offered Huntertown a rate lower than the rates typically paid by non-contractual customers.

Mr. Wirtz indicated that the Agreement's provisions were consistent with those of other wholesale and large-volume users in the 1980s. However, he indicated that more recent contracts have other controls, such as peak-flow limits, penalties for exceeding peak-flow limits, and connection fees to help fund new capacity. Mr. Wirtz also stated that the only customers with reduced rates are those that have signed long-term special contracts.

Mr. Wirtz stated that without a contract Huntertown has been classified as a governmental user and charged the governmental user rate since there was no basis or justification for deviating from the rate ordinance. He said being a large-volume user alone does not justify a reduced rate. Rather, managing flows and execution of long-term contracts are the key elements in justifying a reduced rate. Mr. Wirtz stated that wholesale customers with their own collection systems that have not signed a special contract pose a risk of excessive I&I and peak-flows during wet-weather events, and limit Fort Wayne's flexibility and ability to serve new customers. He said special contracts allow Fort Wayne to protect its utility and its other customers by regulating customer discharges.

Mr. Wirtz testified that the rates currently charged to Huntertown are similar to the rates charged to other non-contractual, large-volume users. Mr. Wirtz claimed the circumstances surrounding the change in classification for Huntertown are not any different from those for General Motors ("GM"), when it terminated its contract in 2009 and was charged a standard retail rate. Mr. Wirtz stated that to allow Huntertown to have a reduced rate without any of the contractual burdens of a long-term commitment would be unfair to Fort Wayne's remaining customers. Mr. Wirtz noted that as Huntertown has not been paying retail rates, Fort Wayne seeks repayment of all outstanding fees.

Mr. Wirtz testified that the 2009 Rate Ordinance sets out the retail rates and charges imposed on Huntertown after termination of the Agreement. He stated these rates were adopted after an independent financial consulting firm prepared a cost of service study ("COSS") that calculated the rates and charges for Fort Wayne's different classes of customers.

Mr. Wirtz stated that Huntertown was offered a special contract with rates and charges lower than Fort Wayne's retail rates, but these offers have been rejected. According to Mr. Wirtz, Huntertown wants a discounted rate with no long-term commitment or flow management features so it can build its own wastewater treatment plant and disconnect from Fort Wayne. Nonetheless, Mr. Wirtz stated that Fort Wayne has constructed and continues to plan, design, and construct, downstream lines, pumps, and other facilities with sufficient capacity to convey the anticipated sewage flows from Huntertown, as well as treatment facilities with sufficient capacity to treat the flows. Mr. Wirtz stated that if Huntertown disconnects from Fort Wayne, the capacity originally planned, designed, and constructed to serve Huntertown will no longer be needed and the cost associated with constructing this capacity may never be recovered. The burden to pay for these improvements will become the burden of the remaining customers.

Mr. Wirtz testified that when Fort Wayne adopted the 2015 Rate Ordinance, it relied on the 2014 Accounting Report. He explained that Fort Wayne provided the capacity allocation factor calculations, including the calculation for Huntertown of 192.33, for the report. He expressed his opinion that the 2014 Accounting Report provides a sufficient basis for the 2015 Rate Ordinance. Mr. Wirtz also explained Fort Wayne's calculation of the charges contained in the Connection Fee Ordinance.

b. Eric J. Walsh. Mr. Walsh testified that Umbaugh calculated the rates and charges contained in the 2015 Rate Ordinance and sponsored the 2014 Accounting Report. Mr. Walsh stated Fort Wayne's rate structure incorporates three different customer classifications based on the cost to provide service to those classes and their specific characteristics: (1) retail inside-city; (2) retail outside-city; and (3) contract customer.

Mr. Walsh stated contract customers are those that: (1) have a signed, long-term contract committing to send sewer flows to Fort Wayne; (2) agree to provide growth projections and estimated average day flows; (3) agree to peak-flow limits and capacity reservations; (4) commit, via contract, to control peak-flows and manage capacities or, in the alternative, pay penalties when predetermined limits are exceeded; and (5) Fort Wayne provides less than all administrative, customer collection, conveyance, and treatment services required by the customer or the contract customer receives all of the above from Fort Wayne but, by terms of a contract, commits to restrictions not applicable to retail customers.

Mr. Walsh stated that being a contract customer creates a mutually beneficial relationship between Fort Wayne and the customer. Fort Wayne can use projections and capacity needs as provided by the customer to create expansion plans to accommodate needs in cost-effective ways and protect other customers from being required to pay for the contract customer's share of an investment if the contract customer leaves the system. Mr. Walsh stated that this results in cost-based rates for contract customers that are significantly lower than retail rates. Contract customers who are able and willing to control usage characteristics allow a utility's limited capacity to be used more efficiently.

Mr. Walsh stated that under the 2015 Rate Ordinance, Huntertown is classified as a retail outside-city customer. Mr. Walsh noted, however, that Huntertown is classified as a contract customer in the 2014 Accounting Report because of ongoing negotiations and anticipation that a

new contract would be signed. He said it was deemed prudent and conservative to consider Huntertown as a contract customer because if Huntertown was classified as a retail outside-city customer, Fort Wayne would be relying on more revenues from Huntertown to meet total utility revenue requirements.

Mr. Walsh stated that, as a retail outside-city customer, Huntertown has been billed \$2.2 million for sewer services in accordance with the 2009 Rate Ordinance since April 2013. Huntertown, however, has paid approximately \$0.797 million; a difference of \$1.403 million. Mr. Walsh stated it is appropriate for Huntertown to be billed the retail outside-city rate because upon termination of the Agreement, Huntertown no longer met Fort Wayne's established requirements to be a contract customer. Mr. Walsh noted that same treatment was applied to GM at the time of its 2008 bankruptcy when its contract was terminated and GM became a retail outside-city customer. He said if an exception was made for Huntertown to be considered a contract customer without a contract, it would set a precedent for other contract customers to seek a similar exception.

Mr. Walsh explained how Huntertown went from being classified as a contract customer in the 2014 Accounting Report to a retail outside-city customer in the 2015 Rate Ordinance. He stated the first step was calculating Huntertown's rates as a contract customer in the accounting reports. Mr. Walsh noted that Huntertown has the characteristics and ability, if they so choose, to become a contract customer, making this a good starting point for analyzing the fairness, equity, and justification of Fort Wayne's rates. Mr. Walsh stated that the second step was to analyze additional costs that will be incurred by the utility if Huntertown is a retail customer. Because these costs were not accounted for in the 2014 Accounting Report, the third step was to develop a plan for billing Huntertown within the parameters of the 2015 Rate Ordinance to recover the additional costs.

Mr. Walsh stated that Huntertown's rates as a contract customer consist of three components: treatment, conveyance, and billing. Huntertown's treatment rate as a contract customer would be \$1.7334 per cubic foot ("CCF") for 2015. He said conveyance charges include the conveyance costs related to operation and maintenance, payment in lieu of tax payments, debt service, and capital costs. Huntertown, as a contract customer, would be allocated 0.69% of the conveyance system capacity for 2015. In addition, Huntertown would pay a monthly service charge for debt classified as common-to-all of \$7,881.

Mr. Walsh testified that Fort Wayne will collect more revenues than the revenue requirements found in the 2014 Accounting Report by charging Huntertown retail outside-city rates. However, Mr. Walsh stated that this additional revenue will be used to offset the additional revenue requirements not accounted for in the 2014 Accounting Report. These would include unaccounted for capacity costs that result from Huntertown not signing a contract and having little incentive to control peak-flows, reactive system-expansion costs, and stranded costs.

Mr. Walsh stated that it is difficult to calculate reactive system expansion costs. However, Mr. Walsh indicated that Umbaugh had prepared a Stranded Cost Analysis that is based on the utility's outstanding debt and proposed 2015 and 2017 bond issues. Mr. Walsh indicated the projects included in the analysis were those deemed to have benefited, or that will

benefit, Huntertown. He concluded that Fort Wayne will experience \$7,562,829 in stranded costs as of January 1, 2015, as a result of Huntertown's disconnection. Mr. Walsh noted that if Huntertown does not disconnect from Fort Wayne until January 1, 2020, the stranded costs to Fort Wayne are \$5,237,520. Mr. Walsh testified that Fort Wayne will ensure the revenues collected from Huntertown do not exceed revenue requirements by placing any additional revenues in a dedicated account to be reserved to pay for additional capacity-related costs not included in the 2014 Accounting Report.

2. Huntertown's Direct Evidence. Stephen Carter, partner and owner in Carter Dillon Umbaugh LLC, offered evidence concerning the appropriateness of the wastewater rates and charges being charged to Huntertown by Fort Wayne and the rates in the 2015 Rate Ordinance. Derek Frederickson, Vice President of Municipal Services for Engineering Resources, Inc., responded to testimony of Mr. Wirtz and Mr. Walsh.

a. Stephen Carter. Mr. Carter stated that since expiration of the Agreement Fort Wayne has attempted to bill Huntertown as a retail outside-city customer, which he believes is inappropriate. He stated that Huntertown should be classified as a wholesale or contract customer. Mr. Carter noted that the American Water Works Association's *M1 Principles of Water Rates, Fees and Charges Manual* ("AWWA M1 Manual") states that "[f]or wholesale customers, the nature of this type of service (sales for resale) alone justifies inclusion of this service as a separate class of customers." He stated that the Commission requires the cost of providing service to customers to be the basis of just and reasonable rates. Mr. Carter noted that to classify Huntertown as a retail customer without regard to cost of service is inappropriate and would result in Huntertown's residential customers paying more for treatment alone than Fort Wayne inside-city customers pay for service.

Mr. Carter stated that Fort Wayne is classifying Huntertown as a retail customer simply because Huntertown has not entered into a new long-term contract. He expressed his understanding that Huntertown has worked in good faith to negotiate a new contract, but that Fort Wayne is unwilling to commit to a contract period of less than 20 years. Mr. Carter testified that Huntertown cannot enter into an agreement that extends for 20 years while building its own treatment plant. Mr. Carter stated that Huntertown is not requesting contract rates without a contract, but is asking for a rate and reasonable terms based on its needs as a wholesale sale-for-resale customer building its own WWTP.

Mr. Carter stated that Fort Wayne has three classes of customers in its rates and charges. However, he noted that the 2015 Rate Ordinance renamed the wholesale contract customer class to contract customer and included a provision that if a customer does not meet the contract customer criteria they shall be considered a retail user. Mr. Carter stated that classifying Huntertown as a retail customer does not represent Huntertown's cost of service based on Fort Wayne's own rate study and is unfair. Mr. Carter stated that Fort Wayne's rate ordinances do not require a 20-year contract and noted the Town of New Haven is on a five-year wholesale sewage contact renewal cycle and is paying contract rates.

Mr. Carter stated that Huntertown has not been paying the retail outside-city rates charged by Fort Wayne because it does not have sufficient monthly revenues. He said to pay at

such a rate Huntertown would need to pass the charges on to its customers, which would increase sewer rates by 50% and raise the average monthly bill from \$50 to \$75. Mr. Carter testified that Huntertown has been paying the estimated treatment rate that would have been paid if the Agreement had continued. Mr. Carter stated that if Fort Wayne's position were to be ratified, Huntertown's residential customers would have to pay for retail service from Fort Wayne and retail service from Huntertown.

Mr. Carter stated that, in his opinion, the cost to serve Huntertown and its residents did not increase by more than 200% simply as a result of the expiration of the Agreement. He noted that Huntertown continues to operate and maintain its own collection system, administer and collect customer billings, submit monitoring of flows and strength of flow information, and invest in infrastructure to mitigate wet-weather flows.

Mr. Carter disagreed with Mr. Walsh's arguments for classifying Huntertown as a retail outside-city customer. He said that although a relationship exists between the length of the contract to a utility's rate of recovery of capital and infrastructure costs, Huntertown is not asking for additional capacity nor is it requesting that additional infrastructure be built to accommodate future growth. Accordingly, Mr. Carter stated there is no need for Fort Wayne to plan, design, or construct additional capacity improvements. Mr. Carter noted that Huntertown also has continued to control its usage characteristics through the investment of various capital projects, including construction of the EQ Basin and reconstruction of the Ferguson Tile. Mr. Carter opined that these are characteristics of a wholesale or contract customer and not a retail customer.

Mr. Carter noted that Huntertown is classified as a contract customer for purposes of calculating the revenue requirements and resulting rates and charges that have been adopted by Fort Wayne. Accordingly, Fort Wayne's collection of retail outside-city rates from Huntertown results in a windfall of revenues above the revenue requirement identified in the 2014 Accounting Report. Mr. Carter stated that Fort Wayne's purported reason for treating Huntertown as a retail outside-city customer is to avoid an unfair and undue burden to its other customers. Mr. Carter believes this reasoning to be inconsistent with the fact that Fort Wayne already has adopted rates and charges that recognize Huntertown as a contract customer.

Mr. Carter indicated the situation involving GM cited by Fort Wayne is not analogous. GM is an industrial retail customer and does not serve flows of residential customers. Mr. Carter also noted that Huntertown and Fort Wayne are essentially competitors in the provision of wastewater service. Mr. Carter stated that Fort Wayne is attempting to price squeeze Huntertown out of competition by not allowing Huntertown to enter into a short-term contract and forcing Huntertown to pay retail rates.

Mr. Carter also disagreed with Fort Wayne's calculation of stranded costs. Mr. Carter stated that stranded costs are most commonly discussed when a utility has made significant investment in a regulated environment to service a protected customer base that is subsequently forced into an unregulated, competitive market. He said a stranded cost can be argued if those assets are deemed worthless, worth less, or cannot be utilized by other customers of the system, thus leaving the assets stranded without future use.

Mr. Carter stated that Fort Wayne's Stranded Cost Analysis fails to reflect the fact that Fort Wayne's treatment plant is already over capacity in wet-weather events, which results in permitted sewage overflows. Accordingly, any capacity freed up at the Fort Wayne treatment plant results in less overflow volume. Mr. Carter stated that removal of Huntertown's flow from the Fort Wayne treatment plant actually decreases the capital costs of Fort Wayne for its long-term control plan. Further, Mr. Carter stated that Huntertown has been paying its share of capital costs of treatment through rates and charges under the term of the Agreement for over 25 years. Accordingly, Mr. Carter stated that Fort Wayne could resell the capacity and collect additional area connection fees for the same assets Huntertown and its customers have paid for.

Mr. Carter also testified that the amount of stranded costs being allocated to Huntertown for assets included in Fort Wayne's analysis is inconsistent with the amount Huntertown would pay for those assets over the life of a 20-year contract. Mr. Carter stated that Fort Wayne proposes to allocate almost \$6 million to Huntertown for both historical and future stranded costs of the collection system. Yet, over the life of a 20-year contract, Huntertown would pay less than \$1.9 million in their allocable share of debt service associated with conveyance system assets, including interest.

Mr. Carter further noted that the stranded costs allocated to Huntertown were incorrectly calculated because all bonds issued prior to 2014 were classified as common-to-all in the 2014 Accounting Report, which is inconsistent with how the debt service is allocated to Huntertown in the Stranded Cost Analysis. Mr. Carter stated that assets determined to be common-to-all under a cost of service methodology cannot suddenly become attributable to a specific user when that customer leaves the system. Mr. Carter also noted that Fort Wayne is proposing to allocate bonds issued in 2015 and 2017 to Huntertown in the stranded costs calculation. However, Mr. Carter stated that Huntertown has been open about its plans to build its own treatment plant for many years and did not request these assets be built.

Mr. Carter further stated that Fort Wayne will not incur unaccounted for capacity costs associated with serving Huntertown. He stated that peak-flows are being controlled via Huntertown's investment in additional infrastructure and the physical hydraulic limitations in the Huntertown system. In addition, Mr. Carter noted that Fort Wayne retains the ability to monitor and assess penalties for non-contract customers by ordinance.

Mr. Carter noted that the difference in rates between a contract customer and a retail outside-city customer in the 2014 Accounting Report is primarily based on I&I. He said I&I is a material component of the cost of service model due to the fact that 42.86% of all flow to the Fort Wayne treatment plant is I&I. Of that percentage, 3.54% is attributable to contract customers and 11.25% is allocated to retail outside-city customers. Mr. Carter indicated this is an acknowledgement that contract customers contribute very little I&I to Fort Wayne's system.

Mr. Carter concluded that he sees no difference in the costs of service for Huntertown under a 20-year contract or a three-year contract based on the facts of this case. Therefore, Mr. Carter recommended that it is appropriate for Huntertown to pay the rate, as calculated in the 2014 Accounting Report, of \$2.0314/CCF, plus applicable monthly service charges.

b. Derek Frederickson. Mr. Frederickson testified that Huntertown did issue a notice of intent to terminate its wholesale treatment contract with Fort Wayne, but did so in furtherance of its plan to construct a WWTP and eliminate the need to rely on Fort Wayne to treat its wastewater. Mr. Frederickson testified Huntertown believes construction of its planned WWTP will preserve a low monthly bill for its utility customers, permit the treatment of its wastewater with the least amount of impact on the environment, and develop a course of action that allows for and encourages future growth of Huntertown.

Mr. Frederickson stated that Huntertown has been pursuing its own WWTP since 2002. In addition, Huntertown's Town Engineer conducted an engineering feasibility study in 2008, concluding that a WWTP was a better long-term solution than continued service from Fort Wayne. He indicated Fort Wayne has been aware of Huntertown's decision to construct the WWTP since at least 2008.

Mr. Frederickson stated that Huntertown decided to issue its termination notice in 2010 to comply with the Agreement's provision requiring three-years advance notice of an intent to terminate. At that time, Huntertown believed a three-year period would be sufficient to get the WWTP built and in service. Mr. Frederickson noted that Huntertown encountered unexpected difficulties in obtaining permits, especially in regard to IDEM's requirement for an anti-degradation demonstration.

Mr. Frederickson stated that Huntertown has now obtained a construction permit and is awaiting the issuance of an NPDES permit from IDEM. The WWTP has been designed, permitted, and is now in the bidding process. In addition, Mr. Frederickson testified that Huntertown is in the process of securing financing for the project and has been scored by the State Revolving Fund.

Mr. Frederickson stated that Huntertown is not opposed to entering into a new wholesale treatment contract, but any new contract would only be needed until the WWTP plant is in service. Although Fort Wayne has a long history with Huntertown as a wholesale customer and is familiar with its wastewater collection system, the quality and quantity of wastewater delivered for treatment, and the administrative responsibilities associated with serving it, Mr. Frederickson stated Fort Wayne appears to be unwilling to discuss anything other than a long-term contract.

Mr. Frederickson indicated that there are no increased capacity requirements requiring any capital investment by Fort Wayne during the term of a short-term contract. He stated that Fort Wayne receives wastewater from Huntertown at several lift stations, which were constructed by Huntertown with Fort Wayne's input and approval. Mr. Frederickson further testified that the capacities of the pumping systems at the lift stations have been consistent since 2004 and continue to limit the maximum rate of flow to 1,590 gallons per minute ("gpm"). Due to this limited flow rate, Mr. Frederickson said Huntertown will only be discharging on average approximately 610,000 gallons per day ("gpd") to Fort Wayne's system and the rate of flow will be reduced even further (to 1,500 gpm) after completion of Huntertown's new EQ Basin in early 2015.

Mr. Frederickson stated that although Huntertown could change its pumping systems to increase the volumes of wastewater flowing into Fort Wayne's system, it would not do so because it would violate the IDEM permit. Mr. Frederickson noted that as long as Fort Wayne remains the wastewater treatment provider for Huntertown, IDEM will continue to solicit Fort Wayne's input and require its approval for any proposed modifications to Huntertown's system that may impact Fort Wayne's wastewater transportation or treatment facilities.

Mr. Frederickson testified that Huntertown is not asking for more capacity from Fort Wayne. He said, even assuming Huntertown made a request for more capacity, Fort Wayne would not be obligated to agree to it. Mr. Frederickson stressed that even if there is growth on Huntertown's system, it does not need to increase its discharge capacity on Fort Wayne's system. He said Huntertown can manage its peak-flows and reduce the volume of wastewater currently sent to Fort Wayne through the new EQ Basin and the reconstruction of the Ferguson Tile, which will support the anticipated growth until the WWTP is complete and operational. Mr. Frederickson testified that these improvements will allow Huntertown the ability to connect as many as 694 single-family homes in addition to the promised but not yet constructed connections. Therefore, Mr. Frederickson concluded that there is no basis for Fort Wayne to expect that continued service to Huntertown under a short-term contract will expose it to having to add costly capacity to its system that it would not be able to recover from Huntertown.

Mr. Frederickson explained that Huntertown has successfully managed its wastewater utility to not exceed the maximum capacity allowances established by the Agreement and Fort Wayne has recovered from Huntertown the cost of making capacity available to Huntertown over the term of the contract. Mr. Frederickson noted that under the Agreement Huntertown was required to pay a plant expansion fee if its average flow exceeded 975,000 gpd for 90 consecutive days, and pursue an alternate connection point if the flows could not be reduced. He testified Huntertown has never exceeded the threshold and currently averages only about 610,000 gpd. He also indicated that he was unaware of any authorization by Huntertown for Fort Wayne to invest in improvements to provide additional capacity.

Mr. Frederickson opined that Fort Wayne will benefit from Huntertown's departure from its system. He stated Fort Wayne continues to experience overflows along the transportation sewer between Huntertown and Fort Wayne's treatment plant and Fort Wayne's combined sewer overflow pond #2. Mr. Frederickson stated that so long as this situation exists, any capacity in Fort Wayne's collection system or at its treatment plant no longer used by Huntertown will reduce the total overflow volumes. In addition, Mr. Frederickson noted that any capacity freed up by Huntertown's departure from its system can be used by Fort Wayne to meet new or expanded customer demand if they so choose.

Mr. Frederickson further disagreed that Huntertown is responsible for creating stranded costs. He stated Fort Wayne has known for some time that Huntertown intends to disconnect from its system. Therefore, any future costs identified on Fort Wayne's Stranded Cost Analysis that have not yet been incurred cannot be attributable to Huntertown. Additionally, Mr. Frederickson noted that Fort Wayne has had opportunities to deal with the past costs identified in its analysis as stranded when the Agreement was amended. He also noted that in 1998,

Huntertown gave back 500,000 gpd of its reserved capacity after contributing toward the cost to reserve it for 10 years without receiving any credit.

3. Fort Wayne's Rebuttal Evidence.

a. Matthew A. Wirtz. Mr. Wirtz indicated that Mr. Carter's reliance on the AWWA M1 Manual was misplaced because it sets forth the principles to be considered when establishing water rates, not sewer rates. He said a sewer COSS involves different cost considerations and risks, including peak-flows, I&I, strength of sewage, and regulatory risks of large-volume customers. He also noted that the rate structure for each type of service is distinct from the other.

Mr. Wirtz testified that Fort Wayne's sewer practice is to offer lower rates to large-volume users with whom it has long-term contracts. Mr. Wirtz testified that Huntertown voluntarily terminated the Agreement, leaving Fort Wayne and its remaining customers with significant, yet-to-be-paid debt service for capital costs that were incurred to serve Huntertown and the Sewage Service Area. Mr. Wirtz indicated that if Huntertown had not terminated the Agreement, it would still have the lower contract rate.

Mr. Wirtz indicated that Huntertown desires a short-term agreement with contract rates and no payment towards stranded costs. He said Huntertown has no intention of providing Fort Wayne with long-term revenue certainty or payment for capacity investments and therefore, Fort Wayne sees no benefit or justification to enter into a new agreement with Huntertown. Mr. Wirtz indicated that Fort Wayne has discussed entering into a 20-year agreement with the right to terminate with a five-year notice, but Huntertown wants the same rate calculation methodology as a long-term contract customer. He said there is little or no benefit to Fort Wayne in such an arrangement. Mr. Wirtz acknowledged that the 2009 and 2015 Rate Ordinances do not require a 20-year agreement, but noted the law does not obligate Fort Wayne to enter into a short-term agreement.

Mr. Wirtz disagreed that cost of service principles dictate a lower rate for Huntertown. He said that because the Agreement no longer exists, the basis for charging Huntertown the lower contract rate no longer exists. Although Huntertown indicated it is willing to commit to operating in a manner consistent with the terms of the Agreement, Mr. Wirtz stated that in fairness to Fort Wayne's other customers, Fort Wayne could not charge Huntertown a lower contract rate based on vague unenforceable proclamations.

Mr. Wirtz noted that the Agreement limited Huntertown to a 90-day average of 650,000 gpd, but that Huntertown now claims it has 1,167,350 gpd available to it. Mr. Wirtz stated the Agreement was not amended to increase Huntertown's capacity to 1,167,350 gpd, but it was Huntertown's desire for more capacity that precipitated the contract negotiations that have been occurring since 2002. Mr. Wirtz testified that in 2002, Huntertown's existing flows and the amount of new developments seeking capacity certifications indicated that Huntertown was approaching the end of its contractual capacity. Mr. Wirtz stated that based on projections Fort Wayne notified Huntertown that its capacity limit had been reached in 2004, but continued to approve capacity allocation requests from Huntertown customers until 2006. Mr. Wirtz stated

that the capacity certification letters were not intended to increase the contractual flow limit. He said Fort Wayne issued the capacity certification letters directly to the developers, rather than Huntertown, in good faith and under the assumption a new agreement would be reached.

With regard to area connection fees, Mr. Wirtz testified that only two of Huntertown's customers have ever paid such fees. He said unlike other contract customers, Huntertown only paid monthly user fees and has not paid connection fees or other charges designed to help cover the cost of facilities necessary to serve Huntertown's customers. He also noted that Huntertown was obligated under the Agreement to pay penalties for flows over 650,000 gpd in a 90-day period. He said Huntertown exceeded the 90-day average of 650,000 gpd at least 19 times since 2006. Although Fort Wayne billed Huntertown for the excess charges, Mr. Wirtz stated Huntertown never paid those costs.

In response to statements that Huntertown does not need additional capacity, Mr. Wirtz referenced a July 1, 2013 letter from Huntertown concerning entering into a new contract that increases Huntertown's limit of 650,000 gpd in the Agreement to 886,161 gpd. Mr. Wirtz also stated that Huntertown's need for more capacity to serve new customers is further evidenced by the fact that Huntertown has exceeded 650,000 gpd six times in the past year.

As concerns the GM contract, Mr. Wirtz testified that from Fort Wayne's perspective, the customers are very similar. He said both GM and Huntertown had similar average day-flow volumes, peak-flows, and were located on portions of the sewer system where capacity was limited and additional flows would cause substantial investment to Fort Wayne's infrastructure.

Mr. Wirtz disagreed with Mr. Carter's statement that Fort Wayne will not have stranded costs. He said the treatment plant capacity improvements considered during the 1990s to comply with environmental mandates concerning sewer overflows were designed with capacity to continue to serve Huntertown, as was the master planning completed in 2005. Mr. Wirtz also testified that the reuse of the stranded capacity would be possible, but it was speculative because Fort Wayne has already planned, designed, and built capacity for the growth it anticipates. To absorb the loss of Huntertown, Mr. Wirtz testified that Fort Wayne will have to experience significantly more growth than it already planned. As for reuse of transmission system improvements, Mr. Wirtz testified that those assets are even less likely to be applied to future use as they were designed specifically to serve the northwestern part of the system. He also noted other costs that were not included in the Stranded Cost Analysis that Fort Wayne will experience if Huntertown's ordinances are approved.

Mr. Wirtz disagreed with Huntertown's assertions that the loss of Huntertown's flows will offset the capital cost of Fort Wayne's Long-Term Control Plan ("LTCP"). Mr. Wirtz stated that the costs of the LTCP are related to the reduction of combined sewer overflows and not sewer capacity from the northern area of the system.

Mr. Wirtz also disagreed with Huntertown's assertions that the EQ Basin will limit Huntertown's peak-flows. He testified that the EQ Basin is designed to limit flows at only one of Huntertown's three pump stations that send flow to Fort Wayne. Mr. Wirtz stated that although he understands Huntertown intends to run only one pump at a time, it could run both of

its EQ Basin pumps simultaneously, sending greater flows to Fort Wayne. He expressed concern that the EQ Basin will not provide the necessary capacity to allow Huntertown to add connections and will increase the likelihood of the two pumps running simultaneously. He also noted that approximately 10% of Huntertown's flows would not go through the EQ Basin. Although Fort Wayne ordinances allow it to control quality, Mr. Wirtz stated Fort Wayne has no way to control, limit, or penalize Huntertown for excess quantity absent a contract.

Concerning the construction of facilities, Mr. Wirtz indicated that Huntertown has wanted to construct a WWTP since 2002. However, he noted the proposed WWTP is still not fully permitted, financed, or built, and expressed concern that Huntertown's estimated cost for the WWTP is too low. Mr. Wirtz testified that until Huntertown's WWTP is complete and operational, Fort Wayne, as a regional provider of wastewater service, must assume that Huntertown will remain a Fort Wayne customer. He said that considering Fort Wayne's ongoing duty to provide service, Huntertown should be responsible for all costs, including its pro rata portion of prospective debt issues, until Huntertown physically disconnects from Fort Wayne's system.

Mr. Wirtz testified that the IDEM construction permit for the EQ Basin simply allows Huntertown to construct the basin. It does not provide any operational enforcement and the only means for Fort Wayne to monitor, control, or limit Huntertown's flow is through a contract. He noted that Indiana law requires Huntertown to have a contract for the treatment of its wastewater before making the EQ Basin improvements.

Mr. Wirtz explained why a reduction of approximately 500,000 gpd related to the 1998 amendment to the Agreement occurred. He said the contract amendment addressed a provision of the Agreement that allowed Huntertown to relocate its connection point to a new location where more capacity was available in Fort Wayne's system and specified a fee to be paid if this occurred. He said Huntertown should not be given credit on stranded costs for contributions to reserve capacity that it never accessed or paid for. He also noted that the 1998 amendment gave Huntertown a broader service area and certain annexation rights.

Mr. Wirtz concluded that the best solution is for Huntertown to choose the most cost-effective option for providing sewer service, which is to sign a long-term contract with Fort Wayne. He said absent that solution, Fort Wayne must treat Huntertown as it treats other non-contract customers and charge it retail rates.

b. Eric J. Walsh. Mr. Walsh responded to Mr. Carter's assertions that billing Huntertown retail outside-city rates would be catastrophic to Huntertown's retail customers. Without expressing an opinion, he noted that Huntertown recently adopted rates in 2014 that increased residential customers' bills from \$21.25 per month to \$50.88 per month, an increase that is greater than that resulting from billing Huntertown retail outside-city rates. Mr. Walsh also testified that if Huntertown builds its own WWTP, the resulting monthly bill for an average residential customer will be in excess of \$90 per month.

Mr. Walsh testified that both the 2015 Rate Ordinance and the 2014 Accounting Report indicate that a long-term contract of typically 20 years is required to be a contract customer. He

stated that if the contract term is shortened, the rate of recovery of capital and infrastructure costs related to serving that customer will need to be accelerated, and the rates will increase. He further stated that customers with a contract that are on a five-year renewal cycle meet the definition of a long-term contract because they have been, and are expected to continue to be, customers of Fort Wayne for the long term.

Mr. Walsh testified that Fort Wayne does not have any other contracts in which the initial contract term is 3-5 years without recognition of stranded costs. He said such a scenario would cause potential harmful outcomes to Fort Wayne and other regional providers in their ability to adequately plan long-term capital investment and equitably recover the associated costs.

Mr. Walsh testified that Fort Wayne's cost to serve Huntertown changed when the Agreement was terminated. He said the 2014 Accounting Report was based on Fort Wayne recovering capital and infrastructure costs related to serving Huntertown over 20 years. He said the original COSS also assumed Huntertown would install flow meters, manage peak and average daily flows, pay penalties for violations, and commit to paying area connection fees when connecting new customers. He said without a new long-term agreement that places limits on Huntertown, the cost to serve Huntertown has changed.

Mr. Walsh disagreed that Fort Wayne would benefit from Huntertown leaving its system. He said that Huntertown is one of Fort Wayne's 10 largest customers. With Huntertown's departure, the loss of revenue and any capital and infrastructure costs allocated to Huntertown that have not been paid in full will need to be recovered from Fort Wayne's other customers. Mr. Walsh testified that Fort Wayne is not likely to be able to resell the capacity allocated to Huntertown for two reasons. First, because the growth Fort Wayne experiences would have to be substantially more than what it has already planned. And second, because the conveyance system is dedicated to the northwest section of Fort Wayne's system, Fort Wayne would have to experience growth in that area to resell those improvements.

Mr. Walsh also disagreed with Mr. Carter's statement that Fort Wayne could collect an additional \$6.4 million in area connection fees from the same capacity that Huntertown has already paid for. Mr. Walsh stated that Huntertown has not paid for its capital costs. He noted that the Stranded Cost Analysis indicates there will be approximately \$7.6 million of infrastructure and capital costs attributable to Huntertown that will not have been paid for by January 1, 2015. Mr. Walsh also noted that the Stranded Cost Analysis appropriately includes an allocation of \$2.3 million related to the 2015 and 2017 bond issues. He said proceeds from the bonds will be used to fund construction of facilities necessary to meet Huntertown's service needs. He further indicated that Huntertown benefits from Fort Wayne's borrowings as Fort Wayne is able to centralize the borrowing of funds to benefit all of its customers.

Mr. Walsh explained why he believes Mr. Carter's proposed rate of \$2.0314/CCF is not just and reasonable. He said that Huntertown is seeking the benefit of a contract rate without the burdens attached thereto. He noted that Ind. Code § 36-9-23-25 allows Fort Wayne to charge different rates to different customers provided there is a cost basis, and Mr. Carter has not provided any cost justification for his proposed rates. Mr. Walsh testified that Mr. Carter's proposal is not reflective of the cost to serve Huntertown because it ignores allocating any

conveyance related debt service cost, allocating any portion of billing related cost, and the phased rate adjustments. He stated Fort Wayne's rate was more consistent with Ind. Code § 36-9-23-25 because Fort Wayne based its rates on (1) whether a customer has paid separately for its facilities; (2) classification of customers based on costs associated with providing the service; and (3) consideration of "any other factors necessary," which Fort Wayne believes includes only extending lower rates to those customers with a long-term contract.

Mr. Walsh addressed several other aspects of Mr. Carter's testimony, stating: (1) the AWWA M1 Manual is designed for water rates and charges and should not be relied on for designing sewer rates and charges; (2) the language change in the 2015 Rate Ordinance was to make clear how former contract customers would be classified for rate purposes if they no longer had a contract; (3) if the Agreement was still in effect, Huntertown's treatment rate (excluding conveyance charges and monthly fees) would be \$2.1187/CCF, not \$1.9402/CCF; (4) the rates Huntertown is charging its customers were calculated to generate revenues sufficient to pay a treatment rate that is materially higher than the \$1.9402/CCF that Huntertown is paying to Fort Wayne; and (5) Fort Wayne's recovery of retail rates from Huntertown will not result in a windfall of revenues to Fort Wayne because they will be used to pay for stranded costs and protect existing customers from bearing those costs after Huntertown leaves the system.

Mr. Walsh testified that Fort Wayne did not calculate a short-term contract rate for Huntertown because the duration may not be adequate and designer rates are not practical or feasible. He said if Huntertown is given a designer rate, then it would encourage other contract customers to seek a designer rate. Instead, Mr. Walsh said it is more appropriate to charge the retail rate and hold the funds in a dedicated account to pay for any stranded costs remaining when Huntertown leaves the system.

Regarding Mr. Carter's price squeeze accusation, Mr. Walsh denied trying to price squeeze Huntertown from being able to compete for customers. He said the evidence demonstrates the lowest cost alternative to serve customers in the disputed area would be for Huntertown to be a long-term contract customer of Fort Wayne. Accordingly, he said Huntertown's current circumstances are the result of its own actions, not any predatory pricing by Fort Wayne.

Mr. Walsh also disagreed with Mr. Carter's allegations that there are no stranded costs. He testified that Fort Wayne has borrowed money and invested in facilities that are being used to serve Huntertown. Fort Wayne anticipated paying for that investment and infrastructure over a 20-year period. If the cost associated with the capital and infrastructure improvements is not paid in full at the time Huntertown disconnects from Fort Wayne's system, the debt service will remain an ongoing revenue requirement. Mr. Walsh stated if Huntertown is not paying its portion of the debt, the cost is still present and therefore stranded. He also disagreed with Mr. Carter's statement that assets common-to-all cannot suddenly become attributable to a specific user when that customer leaves the system. He said the concept of allocating a portion of communal cost to a specific customer or class of customers is a core concept of cost of service ratemaking.

Mr. Walsh concluded that the only fair and equitable result is for Huntertown to continue sending sewage to Fort Wayne for treatment without a contract while paying retail outside-city rates so that Huntertown maintains the flexibility to disconnect from Fort Wayne once it completes its WWTP.

B. Commission Discussion and Findings.

1. Statutory Requirements. As we indicated earlier, because Huntertown filed a petition for review of its regulatory ordinances under Ind. Code § 8-1.5-6-8 and the Allen Circuit Court had not issued a final order resolving Huntertown's wholesale sewage petition, the Commission has been vested with jurisdiction to resolve the wholesale sewage petition. Ind. Code § 8-1-2-61.7(c) authorizes a utility that receives wholesale sewage service and negotiates to renew or enter into a new contract for wholesale sewage service to seek review of the rates and charges for wholesale service. The evidence demonstrates that Huntertown receives wholesale sewage service, as defined in Section 61.7(b), from Fort Wayne and that Huntertown has sought to negotiate with Fort Wayne to enter into a new contract for service.

Section 61.7(e) requires the Commission, after notice and hearing, to issue an order determining whether Fort Wayne's rates and charges assessed to Huntertown are just and reasonable. Section 61.7 does not specify what the Commission must consider in making its determination.

Fort Wayne argues that the Commission should consider the factors identified in Ind. Code § 36-9-23-25, which governs the establishment of Fort Wayne's fees for sewage service, in reviewing its rates and charges for Huntertown.² Huntertown, on the other hand, argues that the Commission should consider the factors set forth in Ind. Code § 8-1.5-3-8, which governs the requirements for rates and charges of municipal utilities that are subject to the Commission's jurisdiction.³

Both of these statutory provisions are similar in their requirements. Ind. Code § 36-9-23-25 requires a municipality to establish "just and equitable" fees that are required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. Likewise, Ind. Code § 8-1.5-3-8 requires a municipality's rates and charges to be "nondiscriminatory, reasonable, and just" so as to produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service. Although the specific language differs between the statutes, both generally allow for the establishment of rates and charges that produce sufficient revenue to: pay all operation and maintenance related expenses; provide for a sinking fund for bonds and other financial

² Although Ind. Code § 36-9-23-25(b) provides that fees established after notice and hearing are presumed to be just and reasonable, it is a rebuttable presumption.

³ Although Section 61.7(d)(4) provides that a wholesale sewage petition is not subject to the requirements of Ind. Code ch. 36-9-23, it is unclear whether this provision is simply referring to the procedural requirements to challenge the wholesale sewage rates and charges or whether it is referring to the substantive requirements of Chapter 23. Because we find Fort Wayne has failed to prove that its retail outside-city rates for wholesale sewage service to Huntertown are just and reasonable under either Ind. Code § 36-9-23-25 or Ind. Code § 8-1.5-3-8, we need not consider this issue further.

obligations; supply adequate money for working capital, extensions, and replacements; and pay taxes.

These statutes generally provide that a utility's rates and charges should reflect what it costs to serve its customers, which is often called a utility's revenue requirement. It is general practice for a utility to allocate its costs to serve among various customer classes through a cost of service analysis. Typically, customer classes are established by grouping customers together based on similar service characteristics. Customer rates established based upon cost causative allocations are viewed as an equitable standard against other ratemaking methodologies. Accordingly, the Commission views these statutory provisions under cost of service ratemaking to determine whether the retail outside-city rates that Fort Wayne is charging Huntertown for wholesale sewage service are just and reasonable.

Finally, as noted above, the Commission only has the authority to establish rates on a prospective basis and neither Ind. Code § 8-1-2-61.7 nor Ind. Code § 8-1.5-6-8 modifies that authority. Although the parties acknowledge the Commission's authority is limited to setting rates on a prospective basis, each asks us to determine what rate Fort Wayne should have been billing Huntertown since the Agreement ended. However, neither statute authorizes the Commission to set rates retroactively. Fort Wayne, in its proposed order, also requests the Commission issue an order assessing fees and penalties under Ind. Code § 36-9-23-31.

As the Court of Appeals noted in *Ind. Tel. Corp.*, 358 N.E.2d at 224, “[a]n order of the Commission is an administrative order, not a judgment, and, any order it might make with regard to...rates, must be prospective in nature, fixing compensation for the future but not for the past.” The Court found the following statement from the United States Supreme Court in *Prentiss v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908) instructive:

[a] judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial, in kind....

Therefore, any remedy for past actions appropriately lies in the trial courts. This is consistent with the requirement in Ind. Code § 36-9-23-31 that any fees and penalties be recovered in a *civil action* filed by the board in the name of the municipality. The Commission is an administrative agency, not a judicial court. At most, the Commission may offer its rate-setting expertise to assist the court in determining the parties' liabilities and damages to be assessed, which we do below. *Ind. Tel. Corp.*, 358 N.E.2d at 224 n#3.

2. Background and Ordinances. From 1985 until April 2013, Fort Wayne provided sewage treatment service to Huntertown pursuant to the terms of the Agreement, which essentially classified Huntertown as a wholesale contract customer for purposes of rates. After the Agreement ended, Fort Wayne began charging Huntertown retail outside-city rates. The basis for charging Huntertown retail outside-city rates is Fort Wayne's Ordinance G-13-13,

which provides that when a contract for sewage treatment expires or is terminated Fort Wayne will continue to provide sewage treatment for the customer at retail rates.

On August 30, 2013, Huntertown filed a wholesale sewage petition with the Allen Circuit Court seeking review of the retail outside-city rates in the 2009 Rate Ordinance being assessed to Huntertown. The Commission assumed jurisdiction over that review on July 29, 2014, when Huntertown filed its petition in this Cause and the parties were unable to reach a mutual agreement.

In July 2014, after the filing of Huntertown's wholesale sewage petition, Fort Wayne adopted a Connection Fee Ordinance establishing certain utility connection fees and the 2015 Rate Ordinance, which revises the rates and charges in the 2009 Rate Ordinance effective beginning January 1, 2015. Under both the 2009 and the 2015 Rate Ordinances, Fort Wayne established rates for retail inside-city customers, retail outside-city customers, and contract customers. Consequently, while the Agreement was in place, Huntertown was assessed a contract customer sewage treatment rate.⁴ After the Agreement ended, Huntertown was assessed the sewage treatment and conveyance rates for retail outside-city customers.

3. Review of Fort Wayne's Retail Outside-City Rates Charged to Huntertown under its Rate Ordinances. Because Ind. Code § 8-1-2-61.7(e) requires the Commission to determine whether the rates and charges being assessed for wholesale sewage service are just and reasonable, the Commission must necessarily evaluate and consider how the rate was derived and whether it is reasonable based on the cost of providing service. We cannot simply review whether Fort Wayne has correctly applied the requirements outlined in Ordinance G-13-13.

In accordance with Ind. Code § 8-1-2-61.7(d)(1), Fort Wayne bears the burden of proving that its rates and charges for service are just and reasonable. In doing so, Fort Wayne relies on its Ordinance G-13-13, the 2009 Rate Ordinance, and the COSS underlying the 2009 Rate Ordinance. Fort Wayne also submitted its 2015 Rate Ordinances and underlying COSS. In both Rate Ordinances, rates were established for retail inside-city customers, retail outside-city customers, and contract customers. Fort Wayne applies the retail outside-city rates to Huntertown because Huntertown does not have a contract. Fort Wayne identified three primary causes of additional cost of service relating to unaccounted for capacity costs when no long-term contract is in place: (1) there is little incentive for Huntertown to control peak wet-weather flows; (2) Fort Wayne will have to react to increased capacity needs of Huntertown instead of proactively planning; and (3) Huntertown can leave Fort Wayne's system at any time resulting in stranded costs to Fort Wayne. Resp.'s Ex. 10 at 20-21.

The rates developed in the 2014 Accounting Report and the 2015 Rate Ordinances were not disputed. The primary point of contention relates to Fort Wayne's classification of Huntertown as a retail outside-city customer and whether or not the application of the retail outside-city rates result in just and reasonable rates for Huntertown.

⁴ As noted earlier, the dispute between Huntertown and Fort Wayne regarding conveyance charges under the Agreement remains pending in the Allen Circuit Court.

a. Classification of Huntertown as a Retail Outside-City Customer. Fort Wayne acknowledges that Huntertown is a wholesale customer and a large-volume user. Resp.'s Ex. 1 at 8. But Fort Wayne argues that Huntertown is not entitled to any discounts or reduced rates without first entering into a contract with the following requirements:

- Must sign a long-term contract (i.e., at least 20 years);
- Must agree to provide growth projections, estimated average-day-flows, agree to peak-flow limits, and request capacity reservations;
- Must commit to control peak-flows and manage capacities, or in the alternative, pay penalties when predetermined limits are exceeded;
- Require Fort Wayne to provide less than all administrative, customer collection, conveyance and treatment services required by the customer, or Fort Wayne provides these services, but by terms of a contract, the customer commits to restrictions not applicable to retail customers.

First, we note that the mere existence of a contract or lack thereof is not necessarily determinative of the cost to serve that customer. In fact, Fort Wayne's COSS treats Huntertown as a contract customer and its witness, Mr. Walsh, recognizes that "Huntertown has the characteristics of a contract customer." Resp.'s Ex. 10 at 15. In addition to being inconsistent with Fort Wayne's COSS, charging retail rates is not consistent with the commonly adhered to principle of grouping customers together in separate rate classifications. Huntertown pointed out the AWWA M1 Manual provides that:

[t]raditional reasons for grouping customers into separate classifications include similarities in service characteristics, use of common facilities, ownership and to further public policy and pricing objectives. *For wholesale customers, the nature of this type of service (sales for resale) alone justifies inclusion of this service as a separate class of customer.* Because most wholesale customers do not use the supplying utility's smaller distribution main system and perhaps other facilities, a separate classification and rate schedule is typically warranted.

Pet.'s Ex. 3 at 10-11. Fort Wayne witnesses, Mr. Wirtz and Mr. Walsh, argue that the AWWA M1 Manual does not apply to the establishment of sewer rates. While we agree that caution should be exercised when applying concepts from the AWWA M1 Manual to wastewater rate setting, some rate setting concepts are similar for both water and wastewater. We note that the Indiana Supreme Court has upheld a finding that the AWWA M1 Manual "offers a reasonable methodology for setting municipal sewer rates," even though it is specifically applicable to water utilities. *Farley Neighborhood Assn. v. Town of Speedway*, 765 N.E.2d 1226, 1229 (Ind. 2002).

Like the majority of Fort Wayne's other contract customers, Huntertown is a large-volume user and a wholesale customer of sewage service.⁵ Wholesale customers have limited connection points, use fewer administrative/customer service functions, and do not use a substantial portion of the collection system that is used to serve retail customers. A review of the

⁵ With the exception of two large industrial customers, Fort Wayne's contract customers consist of two towns, a city, and three regional sewer districts that are wholesale sewage providers. Resp.'s Conf. Ex. 13 at 44.

COSS included with the 2014 Accounting Report reveals that these costs are included in the outside-city retail rates as well as a 25% surcharge.

Fort Wayne argues that its 25% surcharge is reasonable because the Commission approved the surcharge in Cause No. 44206. Contrary to Fort Wayne's assertion, the Commission did not approve, or conduct any substantive review concerning, the reasonableness of the 25% outside-city surcharge. Our December 19, 2012 Order (at 3-4) in that Cause specifically noted that whether the outside-city surcharge was "nondiscriminatory, reasonable and just [was] not one of the statutorily identified requirements" for obtaining approval of the ordinance. Instead, Ind. Code § 8-1.5-3-8.3 simply required the Commission to determine whether Fort Wayne's petition contained certain requisite information. The Legislature established this process to provide municipalities with the ability to grandfather surcharges that were within a range of 15% - 50% and in effect by March 31, 2012. Fort Wayne did not provide any evidence to support its determination that it costs 25% more to serve outside-city customers than inside-city customers.

Huntertown's witness Mr. Carter notes that the primary difference in rates between a contract customer and a retail outside-city customer as reflected in the 2014 Accounting Report is based on I&I. He noted that I&I is a material component of the COSS due to the fact that 42.86% of all flow to the Fort Wayne treatment plant is I&I. Of that percentage, 3.54% is attributable to contract customers and 11.25% is allocated to retail outside-city customers. Application of the outside-city retail rate requires Huntertown to pay a higher portion of I&I costs than are warranted by the COSS.

While we agree it is a reasonable business practice to develop long-term contracts for wholesale customers, we do not agree that a simple application of the retail outside-city rates to Huntertown results in just and reasonable rates.

b. Three Primary Causes of Additional Cost of Service. As mentioned above, Fort Wayne argues that without a contract there are three primary causes of additional cost of service to Huntertown: (1) uncontrolled peak wet-weather flows, (2) reactive system expansion costs, and (3) stranded costs.

With respect to the first two causes, Fort Wayne states that without a contract Huntertown has little incentive to control peak wet-weather flows resulting in additional cost of service. However, the evidence suggests, with or without an incentive, Huntertown has continued to take steps to control its peak wet-weather flows, including construction of the EQ Basin and reconstruction of the Ferguson Tile. But because we believe Fort Wayne raises a valid concern, especially if wet-weather flow results in an IDEM violation, we address this concern further below in our determination concerning the rates to be applied for wholesale sewage service to Huntertown. We disagree, however, with Fort Wayne's contention that it will incur reactive system expansion costs. Fort Wayne did not attempt to quantify the alleged reactive system expansion costs, but instead simply indicated "it is difficult to estimate...these costs." Resp.'s Ex. 10 at 21.

With respect to stranded costs, Fort Wayne argues that even if termination of the Agreement alone is not sufficient to support application of the retail outside-city rates, imposition of those rates and charges is just and reasonable in order to recover its stranded costs. Fort Wayne argues that it has continued to make infrastructure investments to serve requests by Huntertown for additional capacity. Moreover, Fort Wayne asserts that as recently as 2014 it has incurred costs to maintain the initial 650,000 gpd capacity referenced in the Agreement. Mr. Wirtz explained that during 2002 through 2005, Fort Wayne developed a Northern Area Wastewater Collection System Master Plan (“Master Plan”). This Master Plan was intended to provide a framework for capacity in the northern area of its collection system for the next 20 years. Fort Wayne alleged that during this process, Huntertown and other contract customers requested capacity, and in good faith, Fort Wayne planned, designed, and is now in the process of constructing capacity for Huntertown and others. Resp.’s Ex. 1 at 3-4. Without another 20-year contract, Fort Wayne argues that those investment costs will be stranded and its other sewer utility customers will have to incur those costs if Huntertown is allowed to leave the system. Fort Wayne provided a Stranded Cost Analysis that proposes to allocate certain capital improvements to Huntertown. Resp.’s Ex. 12. In total, this analysis allocates over \$7 million to Huntertown for both historical and future stranded costs including projects that will be financed and constructed in 2015 and 2017.

Treatment Plant	\$ 1,683,251
Collection System - Current	3,575,170
Collection System - Future	2,304,408
Total	<u>\$ 7,562,829</u>

Generally, “stranded costs” have been considered by regulatory commissions in the context of a regulated utility transitioning to retail choice. In that context, “stranded costs” are essentially costs incurred by the utility in providing regulated monopoly services that, in the transition to retail choice, may not be recoverable from ratepayers. Various public utility commissions have determined that utilities should be given a fair opportunity to recover their verifiable and prudently incurred stranded costs in this situation. E.g., *Southern Maryland Elec. Co-op.*, 91 Md.P.S.C. 391 (July 20, 2000); *see also, Commission Inv. Of GTE*, Cause No. 40618 (IURC May 7, 1988). But even in this context, utilities are required to take all reasonable steps to mitigate to the maximum extent possible the total amount of stranded costs they seek to claim and to minimize the cost to be recovered from customers. We have also considered stranded cost arguments in evaluating whether a utility’s investment in additional infrastructure investments would be reasonable. *Heartland Gas Pipeline, LLC*, Cause No. 42729 (IURC Oct. 10, 2005); *Commission Inv. Of Smart Grid Investments*, Cause No. 43580 (IURC Dec. 16, 2009). Thus, it is with this background in mind that we consider Fort Wayne’s stranded cost claims.

First, the period of time the Agreement was in effect does not lend support to the existence of “stranded assets.” Huntertown is not a new customer that prematurely left Fort Wayne’s system. Huntertown proposes to leave the system after more than 25 years of being a wholesale customer of Fort Wayne.⁶ Accordingly, Huntertown has been paying its share of the

⁶ Although Huntertown and Fort Wayne executed the Agreement more than 28 years ago, Huntertown’s connection to Fort Wayne did not occur until 1988.

capital cost for treatment through rates and charges under the terms of the Agreement. Pet.'s Ex. 7 at 27. As illustrated in Fort Wayne's Confidential Exhibits 7 and 13, municipal utility rates include capital costs (e.g., debt-service and extensions and replacements) which Huntertown has historically paid. Moreover, neither the original Agreement executed in 1985 nor the subsequent amendments in 1998 and 2005 addressed or provided for the recovery of stranded costs upon expiration or termination of the Agreement.

Fort Wayne claimed that certain improvements were made to the system as a result of Huntertown requesting additional capacity. However, it is unclear whether those improvements were undertaken because of a request by Huntertown or simply because of information Huntertown provided to Fort Wayne concerning future growth potential. Even if they were made at the request of Huntertown, it does not necessarily mean the improvements would be "stranded." In addition to reducing overflows, capacity freed up from the loss of Huntertown's 3,200 customers can be used to serve other customers or meet wet-weather flows. Fort Wayne's treatment plant is already over capacity in wet-weather flows. Pet.'s Ex. 3 at 18-19. As Mr. Frederickson noted, Fort Wayne continues to experience overflows along the transportation sewer between Huntertown and Fort Wayne's treatment plant and from Fort Wayne's combined sewer overflow pond #2. Pet.'s Ex. 4 at 10-11. Fort Wayne's own growth projections reflect projected customer growth of 11,700 equivalent residential units ("ERUs") in areas outside of Huntertown. If Huntertown's customers are removed from the system, Fort Wayne may reutilize the capacity in many of the same assets Huntertown and its customers have paid for over the last several decades.

We also note that Fort Wayne has been aware of Huntertown's interest in constructing its own WWTP since 2008 and that Huntertown provided notice to Fort Wayne of its termination of the Agreement in January 2010. Many of the capital improvements reflected in Fort Wayne's Stranded Cost Analysis are associated with capacity expansion made after Fort Wayne received Huntertown's termination letter (Resp.'s Ex. Late-filed 57-B) or to be financed in 2015 and 2017. While we encourage master planning for capital expenditures, those plans must be continuously updated and revised to accommodate changing circumstances. No evidence was presented that reflects Fort Wayne considered revisions or revised their plan since 2008 or 2010 to reflect that Huntertown may no longer be a customer. Accordingly, we find Fort Wayne's subsequent improvements to expand its treatment and conveyance capacities for Huntertown's benefit to be imprudent.

Based on the evidence presented, we find that Fort Wayne failed to provide adequate support for its arguments concerning stranded assets. Fort Wayne has not identified any assets that will be rendered useless as a result of Huntertown leaving Fort Wayne's system. The evidence also indicates that Huntertown has contributed to the costs of the assets necessary to serve it for more than 28 years. In addition, because Fort Wayne failed to provide sufficient evidence to demonstrate a firm request by Huntertown or an agreement between Huntertown and Fort Wayne for the provision of additional capacity, Huntertown should not be required to pay for any potential "stranded" costs that relate to future investment.

c. Just and Reasonable Rates. Because we have determined that Fort Wayne's retail outside-city rates are not just and reasonable rates to be applied to Huntertown,

we must determine what rates would be just and reasonable for wholesale sewage service. In this instance, the rates and charges established in the 2015 Rate Ordinance for Huntertown as a contract customer are the most reflective of the costs to provide wholesale sewage service to Huntertown. While the 25% outside-city surcharge was not adequately supported, the results of the 2014 Accounting Report were not disputed and otherwise appear reasonable. We also note that the evidence presented does not include a COSS without the surcharge. However, as indicated above, we agree that Fort Wayne raised a valid concern about the possible effects to Fort Wayne's cost if Huntertown does not control its wet-weather flow.⁷ Therefore, we believe the terms and conditions under which wholesale sewer service was contemplated, and the rates designed, must be considered and imposed to ensure the rates and charges are just and reasonable to both the utility and the customer.

With regard to making those rates and charges subject to certain terms and conditions, Fort Wayne is correct that the Commission may exercise only that power conferred by statute. However, the Commission's authority also includes those implicit powers necessary to effectuate the regulatory scheme. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 795 (Ind. 2000). Every utility provides its services subject to certain terms and conditions, for example Fort Wayne's 2015 Rate Ordinance and 170 IAC 6. Those terms and conditions of service serve to protect the utility and its other customers from potential harm to the utility and its ability to provide safe and reliable service in a manner that complies with all applicable laws. Without terms and conditions of service, a utility's cost of service may be substantially higher. Because utilities typically account for those terms and conditions when designing and determining the rates and charges for its service, imposing those terms and conditions by which a customer must abide helps ensure those rates and charges remain just and reasonable.

In addition, Mr. Carter expressed Huntertown's willingness to agree to all of Fort Wayne's contractual terms on a going forward basis, with the exception of signing a 20-year contract because it is planning to build its own treatment plant. Pet.'s Ex. 3 at 6-7. Huntertown also indicated its willingness to be bound to the flow limitations set forth in the Agreement. Pet.'s Ex. 2 at 12-13. If Huntertown is subject to terms of service as outlined by Fort Wayne for contract customers and established in the Agreement, then no additional costs above those already allocated to Huntertown in Fort Wayne's COSS included in its 2014 Accounting Report should be incurred by Fort Wayne for continued service to Huntertown. Huntertown's peak wet-weather flows should be controlled and no additional future capacity planning would be required because Huntertown's capacity would be capped (or subject to additional charge if flow limits are exceeded).

d. Conclusion. Therefore, we find that application of Fort Wayne's retail outside-city rates to Huntertown is not just and reasonable. We further find that the rates and charges developed for Huntertown in Fort Wayne's COSS and 2014 Accounting Report, along with the terms of service outlined by Fort Wayne as set forth below, are just and reasonable. Notwithstanding the 25% outside-city surcharge, the evidence demonstrates that the proposed rates established for Huntertown in the 2014 Accounting Report were developed in a manner

⁷ We note that although the lack of an enforceable requirement might reduce Huntertown's incentive to manage wet-weather flows, the evidence (particularly Huntertown's construction of the EQ Basin and reconstruction of the Ferguson Tile) does suggest otherwise.

consistent with the statutory requirements set forth at Ind. Code §§ 36-9-23-25 and 8-1.5-3-8. They are also consistent with the AWWA M1 Manual and the Water Environment Federation's *Financing and Charges for Wastewater System WEF Manual of Practice No. 27*, an authoritative reference for developing customer rates for wastewater utilities.

The monthly rates established for Huntertown are:

	2015	2016	2017	2018	2019
Treatment (per CCF)	\$1.7334	\$1.9036	\$2.0247	\$2.0441	\$2.1498
Conveyance and Collection (per CCF)	\$0.2980	\$0.3050	\$0.3283	\$0.3238	\$0.3601
Total Metered Rate (per CCF)	\$2.0314	\$2.2086	\$2.3530	\$2.3679	\$2.5099
Monthly Service Charge	\$7,886.24	\$8,222.43	\$8,604.58	\$9,662.63	\$10,056.90

For these rates and charges to remain just and reasonable, Huntertown shall be subject to the following terms and conditions of service as were established in the Agreement⁸:

1. Huntertown is solely responsible for the delivery of sewage material in a form suitable for passage through the Fort Wayne sewer line system and conforming to the specifications in the Agreement.

2. Huntertown shall comply with all relevant municipal codes of Fort Wayne pertaining to sewage treatment service.

3. Huntertown shall be responsible for reading the meters that Fort Wayne currently relies on for billing Huntertown.

4. In the event that sewage flows greater than 650,000 gpd for any 90 consecutive day period occurs, Huntertown shall pay an additional surcharge as set forth in Section 4(D) of the Agreement. However, Huntertown's flow volume shall not average more than 975,000 gpd for any 90 consecutive day period.

5. These rates under the above terms and conditions of service shall remain in effect until January 1, 2020, or Huntertown's termination of sewage treatment services from Fort Wayne, whichever occurs first.

4. Review of Fort Wayne's Connection Fee Ordinance. On July 22, 2014, Fort Wayne adopted Ordinance G-16-14 establishing connection and capital improvement charges. This Connection Fee Ordinance was based on an analysis conducted by the Secant Group to determine the fees necessary to aid in offsetting the cost of constructing capacity to serve new customers.

⁸ The Agreement is set forth in Petitioner's Exhibit 1-A.

We believe the Area Connection Fee of \$2,000 is a reasonable charge to impose on Huntertown. Based on Fort Wayne's 2014 Accounting Report, the costs to be recovered through Fort Wayne's connection fee are not being recovered through Fort Wayne's customer rates. However, the Area Connection Fee should only be imposed on Huntertown for any proposed connection that it seeks beyond the capacity certifications already approved by Fort Wayne, whether to a developer in Huntertown's regulated territory or to Huntertown directly, from the effective date the ordinance was enacted. Imposing this fee retroactively on Huntertown or any developer that had already received a capacity certification from Fort Wayne prior to the date the ordinance was enacted would be unreasonable. We further find that the other non-recurring charges reflected in the Connection Fee Ordinance are specifically designed for Fort Wayne's retail customers and therefore should not be applied to Huntertown.

7. Review of Regulatory Ordinances.

A. Evidence Presented.

1. Huntertown's Direct Evidence. Andrew Conner, President of the Utility Service Board for Huntertown, described Huntertown's water and wastewater utilities, discussed improvements that have been made, and offered evidence to support enforcement of the Regulatory Ordinances. Mr. Frederickson described Huntertown's existing water and wastewater capabilities and its ability to provide service in the Water and Sewage Service Areas.

a. Andrew Conner. Mr. Conner testified that in 2013, Huntertown adopted the Regulatory Ordinances giving Huntertown exclusive authority to provide water service within a defined Water Service Area and exclusive authority to provide wastewater service within a defined Sewage Service Area. The Regulatory Ordinances were adopted pursuant to Ind. Code §§ 36-9-2-14 through 19. Before the Regulatory Ordinances may be enforced, they must be submitted to the Commission for approval.

Mr. Conner testified that he believes it would be in the public interest to have the service area of Huntertown delineated by the Commission. He pointed to the Whisper Rock and Timber Ridge subdivisions along Gump Road as examples of why identifying service territory is good public policy. He said Fort Wayne had previously agreed under the Agreement that Huntertown should serve that area along Gump Road. In 2005, Huntertown extended water and wastewater facilities along Gump Road designed to serve an elementary school and future developments at a cost of \$500,000. Nonetheless, Fort Wayne recently extended a duplicate water main along Gump Road, which is located within a few feet of Huntertown's existing facilities, to serve the developments. Mr. Conner also noted that Huntertown has now annexed that area, which will become effective pending approval by the Allen County Court. Mr. Conner expressed concern that unless the Commission approves the Regulatory Ordinances, the unfettered competition will continue to result in the duplicative and inefficient provision of service to customers in the area.

Mr. Conner explained the reasons he believes the factors identified in the statute support the Commission's approval of the Regulatory Ordinances. First, he opined that Huntertown is best able to provide water and wastewater service in the regulated territories and in some instances is the only supplier able to serve such territories. Second, he said that Huntertown has

made significant investments in its water and wastewater systems to better serve customers within its corporate boundaries and for growth in the surrounding area. He said if other providers are allowed to extend service near Huntertown's corporate boundaries, then the cost of the investments made would need to be spread over a smaller customer base and will adversely impact the rates and charges to Huntertown's customers. Third, the Regulatory Ordinances are designed to promote economic development in and around Huntertown. And fourth, Mr. Conner stated a portion of the Sewage Service Area is located within an area that Fort Wayne and Huntertown had previously agreed would be served by Huntertown. He said Huntertown extended its facilities into that area at substantial cost.

Mr. Conner testified that Huntertown provides utility service to a number of customers outside its corporate boundaries. He said they are generally located in the Planning and Service Area that was established under the Agreement. Mr. Conner testified that Huntertown is not proposing to serve any customers of Fort Wayne or the District. Rather, the intent of the Regulatory Ordinances is to establish responsibilities for serving future customers.

He stated Huntertown employs six dedicated utility technicians that are responsible for maintaining water and wastewater systems and other town maintenance items as well as three office staff that handle utility and town administration duties. He expressed his belief that Huntertown is technically and managerially qualified to provide water and wastewater service in the area and has the financial ability to do so.

Mr. Conner testified that Huntertown provides water service to approximately 3,200 residential and commercial customers from a system composed of approximately 45 miles of water main piping, a water treatment facility, two elevated water towers, and a well field. In addition, Huntertown has \$5.35 million of bonds outstanding relating to improving its water treatment facilities, including agreeing to build and beginning construction on a large water plant facility in place of a small water plant previously owned by Allen County. Mr. Conner noted that the new water treatment plant ("WTP") is designed to serve Huntertown and the growth in surrounding areas.

Mr. Conner stated that the wastewater collection system maintained and operated by Huntertown serves approximately 3,200 residential and commercial customers at a uniform rate. However, Huntertown's wastewater is treated by Fort Wayne. He noted that Fort Wayne provided wholesale sewage service pursuant to the Agreement for approximately 25 years until 2010 when Huntertown decided to construct its own WWTP and gave notice of its intent to terminate the Agreement effective April 2013. He said Fort Wayne continues to treat Huntertown's wastewater but is charging retail rates to do so.

Mr. Conner testified that Huntertown is constructing its own WWTP to benefit its citizens and the environment. He indicated the benefits include preserving a low monthly bill for customers, treating wastewater in a way that will have the least amount of impact on the environment, and developing a plan that allows for future growth of Huntertown.

Mr. Conner testified that Huntertown explored the option of entering into a new long-term contract with Fort Wayne, but indicated that such a relationship presents an economic risk

due to future, state and federal requirements and the current Consent Decree requiring Fort Wayne to spend \$239 million to address combined sewer and sanitary sewer overflow issues. He said more recently an underground storage tunnel was announced at an additional cost of \$150 million. He indicated the final cost of the combined sewer overflow improvements are unknown and may continue to escalate. Mr. Conner also expressed concern that with a new contract, Fort Wayne may use its position as treatment provider to negatively impact Huntertown's growth and development in order to benefit Fort Wayne's own growth. He cited as an example Fort Wayne's refusal in 2005 to issue a sewer capacity allocation letter to the developer of the Timber Ridge subdivision when that project was first proposed with Huntertown as the water and sewer service provider. He stated that by controlling capacity, Fort Wayne has controlled the growth in Huntertown.

Mr. Conner testified Huntertown has taken steps to construct the WWTP by receiving a construction permit from IDEM, and has applied for an NPDES permit, and anticipates completion of construction and service to be started by August 2016.⁹ He also noted that Huntertown has received a construction permit from IDEM for an EQ Basin that, once completed, will allow Huntertown to provide service to its existing customers and new customers that may locate in the Sewage Service Area until the WWTP can be completed.

With respect to rates, Mr. Conner explained that sewer rates under a 20-year agreement with Fort Wayne may be slightly lower for the first half of the agreement; however, those rates would become exceedingly high during the second half of the agreement in comparison to rates from Huntertown using its own WWTP. He also noted that with its own WWTP, Huntertown's wastewater revenue would be reinvested into the infrastructure providing additional rate advantages for customers within the Sewage Service Area. He stated that Huntertown customers pay about \$50.88 per 5,000 gallons of wastewater and this is expected to rise to about \$69.00 once Huntertown completes the WWTP.

Mr. Connor testified the 2010 census showed Huntertown as the second fastest growing community in Indiana. He expressed his belief that access to Huntertown's municipal water and sewer service play a vital role in promoting economic development in the area. He said without widely available, reliable, and affordable water and wastewater services, most projects would not move forward. So, to promote economic development, Huntertown has incurred significant planning and expense to ensure it will have adequate utility capacity and infrastructure in place. He opined that enforcement of the Regulatory Ordinances will promote economic activity and create certainty as to what utility is responsible for the provision of water and wastewater service in areas around the town. He noted that many development projects in the Sewage Service Area are on hold due to the ongoing dispute between Fort Wayne and Huntertown and that with Fort Wayne's refusal to grant additional sewer connections, Huntertown's growth has come to a stop.

He further noted that Fort Wayne has extended a water line but has not extended wastewater mains within the Planning and Service Area. He said Fort Wayne still maintains the intent to serve the Whisper Rock and Timber Ridge subdivisions, despite Huntertown having taken steps to annex the area. Mr. Conner stated Fort Wayne plans to provide sewage service to the subdivisions by pumping sewage from a manhole and transporting it by truck to a treatment

⁹ Huntertown received its NPDES permit on February 19, 2015.

plant. Mr. Conner noted that this arrangement is inconsistent with Fort Wayne's representation to IDEM that the sewer at the point of connection is physically in existence and operational. He said this purported extension of service, as well as the contracts entered into between Fort Wayne and developers after Huntertown filed its Verified Petition in this Cause and adopted an annexation ordinance, makes the Commission's intervention and establishment of service area boundaries necessary. He testified if the Commission does not establish service territories, further duplication of facilities and lines could result to the detriment of all customers in the area.

b. Derek Frederickson. Mr. Frederickson stated that he regularly works with Huntertown's utilities superintendent and others involved in the operation and maintenance of the town's systems. With respect to the provision of water service, he described Huntertown's water system and noted the average daily demand is estimated at 800,000 gpd with a firm capacity of the existing water treatment facility at 1.1 million gallons per day ("mgd"). He described the upgrades to Huntertown's water system beginning in 1993 and continuing through 2011 as well as Huntertown's plans for future improvements to strengthen delivery pressures, provide redundancies through looping, and establish needed infrastructure for extension of services to future developments. Mr. Frederickson testified that Huntertown used the Planning and Service Area established by the Agreement for purposes of its planning process, but with the termination of the Agreement, it has now established the Water Service Area for reference during planning.

Mr. Frederickson testified that in the first quarter of 2015, construction of Huntertown's new 3.6 mgd WTP will be completed. He said the new WTP will have new wells and be positioned over an aquifer with strong production. It will include three new well pumps, new pressure filters, and five high service pumps. He stated the new facility is located in the Wabash River Watershed and that all water supplied to Huntertown's distribution system will be taken and eventually returned (with the construction of the new WWTP) to the same watershed. He expressed his opinion that Huntertown provides adequate and reliable water service to its customers.

With regard to the provision of wastewater service, Mr. Frederickson testified that as with the water system, Huntertown had previously used the Planning and Service Area established by the Agreement for purposes of its planning process for sewage service. However, with the termination of the Agreement, Huntertown has now established the Sewage Service Area. Mr. Frederickson testified that Huntertown's wastewater system is composed of approximately 41 miles of sanitary sewer collection mains and 11 primary sewage lift stations. The wastewater is collected, metered at three discharge locations, and transported through 13 miles of sewer piping for treatment at the P.L. Brunner Water Pollution Control Plant by Fort Wayne.

Mr. Frederickson stated that with completion of the EQ Basin and reconstruction of the Ferguson Tile in 2015, Huntertown will have addressed sanitary sewer overflows, reduced wet-weather infiltration into the sanitary sewer collection system, and restored capacity to the sewer utility. It will also allow for reserve capacity for continued growth until the planned WWTP is operational. He noted these improvements result in wastewater being pumped to Fort Wayne at a slower rate, less volume, and higher quality.

Mr. Frederickson testified that Huntertown is planning to construct a WWTP to eliminate the need to rely on Fort Wayne to treat its wastewater. He said until completion of the WWTP, Huntertown expects to continue to utilize Fort Wayne's treatment services. Mr. Frederickson stated that with the completion of the EQ Basin and reconstruction of the Ferguson Tile, Huntertown's collection system has the capacity to serve additional connections. He said that Fort Wayne also has the capacity to receive the flow associated with additional connections as long as Huntertown does not exceed the maximum allowable flow rate of 1,500 gpm and its authorized total average-daily-flow of 1,280,350 gpd. Mr. Frederickson testified that the planned WWTP will have sufficient capacity to serve the entire Sewage Service Area and has been designed for expandability to support a 4% growth rate of the community over 20 years and a reserve capacity for an additional 2,514 customers at the end of the planning period.

Mr. Frederickson testified that although there is not currently a great demand for service within the Water and Sewage Service Areas, there is the potential for growth. He said planning for such growth avoids an adverse effect to service reliability, allows for the provision of service in an economical and efficient manner, provides developers with a known source of water and wastewater service, and assures planners of the availability and source of service in the area. He noted a further benefit of extending infrastructure to serve new developments within the Water and Sewage Service Areas is that existing residential areas without water or wastewater utility service will have an opportunity to connect to the system.

Mr. Frederickson testified that Huntertown's current water system can serve its existing customer base and Huntertown's current wastewater system will be able to serve its existing customer base when the wastewater system improvements currently underway are completed. He noted that Huntertown has evaluated infrastructure requirements and long-range planning indicates Huntertown will have sufficient time to make necessary improvements to serve new customers in the Water and Sewage Service Areas. He stated that Huntertown is the largest provider of water and wastewater service within the Water and Sewage Service Areas and in some areas immediately north of its corporate boundaries is the only supplier capable of providing service without significant investment by the provider.

2. Twin Eagles's Direct Evidence. Jeffrey M. Thomas, a member of Twin Eagles, is a real estate developer. He testified that Twin Eagles owns and is developing the Whisper Rock residential subdivision, which is located within the Water and Sewage Service Areas. Mr. Thomas testified concerning his prior experience with Huntertown's water service to a development known as Twin Eagles Development, LLC ("Twin Eagles Development"). Mr. Thomas testified that he and the homeowners in the Twin Eagles Development encountered significant problems with the water pressure provided by Huntertown. He stated he was informed by Huntertown that any water pressure problems were the developer's obligation to fix. The Twin Eagles Development installed a booster station at the cost of \$115,000 and the Twin Eagles Association was required to pay monthly electric costs and maintenance. Several years later, Huntertown improved its water supply system and the booster station was decommissioned.

Mr. Thomas testified that Huntertown's water supply is corrosive and some of the hardest water in Allen County. He said each home designed in the Twin Eagles Development required a water softener system, resulting in additional cost to the customers. He also testified that many homeowners have had to replace water softeners, refrigerators, washers, dishwashers, and plumbing fixtures because of the corrosive and hard water from Huntertown. Mr. Thomas testified that water softener systems are typically unnecessary for homes that use Fort Wayne's water.

Mr. Thomas testified concerning an affiliated interest in Tuscany, LLC, which is the developer of the Tuscany subdivision. He said Tuscany consists of 119 platted lots in Sections I through III and all the public water and sanitary sewer improvements are dedicated to and owned by Fort Wayne. He said that Section IV is also intended to be developed using Fort Wayne water and sewer utilities.

With respect to Whisper Rock, Mr. Thomas stated the land being acquired consists of over 151.07 acres. The development currently consists of 41.51 acres, with 47 platted residential lots in Section 1 of Whisper Rock, 29 lots in the Villas of Whisper Rock, and plans to plat an additional 35 lots in Section 2 of Whisper of Rock. He noted that only 35 of the 151.07 acres are within Huntertown's proposed annexation area and that Twin Eagles has filed suit opposing that annexation.

He said Whisper Rock's water and sanitary sewer infrastructure has been constructed and dedicated to Fort Wayne. He said Fort Wayne has run water lines to Whisper Rock and is currently providing water service. Mr. Thomas testified that he prefers Whisper Rock be served by Fort Wayne for sewer service because: (1) it is uncertain whether Huntertown will complete its WWTP; (2) Fort Wayne has agreed to provide complete sewer service at or near the time homes will be ready for service; (3) installation of a lift station would be necessary to pump waste to Huntertown, whereas none would be required if Fort Wayne provides service; and (4) Fort Wayne is best suited to provide sewer service based on operations, organization, and breadth of knowledge. He testified he prefers Fort Wayne water service because: (1) Fort Wayne is nationally recognized for water quality; (2) the cost to homeowners will be higher with Huntertown's water service because of the need for water softeners; (3) bills will be higher for customers with Huntertown for the first ten years; and (4) installation of a booster pump to insure sufficient water pressure may be needed if Huntertown provides service.

Mr. Thomas testified that as a developer, he prefers to have the right to choose his utility service provider. He said when developers have a choice, then cost, quality, reliability, and service will guide decisions that are best for their customers. Mr. Thomas testified that his preferred choice is for Fort Wayne utility service, not Huntertown. Thus, he requested the Commission deny Huntertown's request for approval of the Sewage and Water Service Areas.

3. The District's Direct Evidence. Kenneth R. Neumeister, Executive Director for the District, described the District, its current service areas, and projects being undertaken near Huntertown's Water and Sewage Service Areas. Mr. Neumeister stated the District is an independent political entity whose purpose is to provide for the collection and disposal of sewage and the distribution of water in unincorporated areas of Allen County. However, the District

does not currently provide any drinking water service. He said the District is governed by a Board of Trustees.

Mr. Neumeister stated that the District currently serves more than 2,200 customers in primarily unincorporated areas of Allen County. He described the various sewage utility services provided by the District, including facilitation of sanitary sewer infrastructure for relief from failed or failing septic systems. Mr. Neumeister also described the managerial, financial, and technical capabilities of the District.

Mr. Neumeister disagreed with Mr. Conner's comparison of the District's sewer rates with the proposed rates of Huntertown. He said Mr. Conner's use of an average of the rates for 34 different District areas at \$105 per 5,000 gallons does not accurately represent or allow comparison of service rates. Mr. Neumeister stated the \$105 charge includes a significant debt service charge for the local collection piping and other infrastructure necessary to provide septic relief to individual homes. He said the high cost of septic system relief projects can result in a debt service charge of up to \$46 per home, yet this type of local collection system piping is not included in the approximate \$69 per month that Huntertown is projecting for their customers. He noted the District does provide service to two areas (Canyon Run and Salt Hill) that are comparable and the District's existing rates suggest an advantage to Huntertown's proposed rates.

Mr. Neumeister identified eight project areas in Huntertown's proposed Sewage Service Area that are served by the District. These areas are: (1) Greater Cedar Creek Watershed Septic Relief Project; (2) Plantation Park/Huguenard Road Septic Relief Project; (3) Wallen Community Septic Relief Project; (4) Goshen, Cook, Fritz Septic Relief Project; (5) Carroll Road/Hand Road Septic Relief Project; (6) Western Eel River Township; (7) Northwest Lake Township; and (8) Canyon Run. Mr. Neumeister briefly described each project and the sewer service that the District was providing therein. Mr. Neumeister testified that Huntertown has not shown a significant level of interest in these areas or these types of septic relief projects until recently.

Mr. Neumeister expressed concern that the District would have stranded costs associated with the Regulatory Ordinances. He said the District would lose significant time and money that has already been invested into project areas and existing long-term contract areas that fall into the areas from which Huntertown wishes to exclude the District from providing service. In addition to the significant costs incurred before a project area is actually constructed and connected to service, the significant value of existing infrastructure would be lost because it could not be fully utilized for future connections and cost effective extension to nearby areas.

Mr. Neumeister noted that he had been contacted by Eel River residents who were concerned with the imposition of service areas and having their ability to choose a utility provider taken away. Mr. Neumeister testified that the continuous development and growth in northwest Allen County requires capable and proven utility providers. He expressed his belief that it is best to leave the unincorporated areas of Allen County open to market selection to enable continued growth. He said that through its relationships with Fort Wayne, New Haven, Woodburn, and Aqua Indiana, its expert technical team, and its ability to obtain grants and low

financing rates, the District can make municipal water and sewer service a reality in areas that otherwise would not be able to obtain these services. He said this continued ability depends on being able to provide service in the area and the freedom to partner with providers that make economic and timely sense for customers.

He concluded by recommending the Commission deny Huntertown's petition for exclusive service rights in any area outside of their town limits.

4. Fort Wayne's Direct Evidence. Thomas T. Nitza, Jr., President of The Secant Group, LLC and Vice President of the District's Board of Trustees, responded to Huntertown's evidence in support of its request for approval of its Regulatory Ordinances. Mr. Walsh addressed the rate impacts and financial feasibility of Huntertown's proposed service areas.

a. Thomas T. Nitza. Mr. Nitza described the historical relationship between Fort Wayne and Huntertown as well as the current circumstances. He explained his understanding that Huntertown terminated the Agreement with Fort Wayne because it hoped to build its own WWTP. He stated that Huntertown has received IDEM construction permits for the EQ Basin and the WWTP but both permits are currently under appeal. He expressed his opinion that Huntertown is years away from having its own WWTP. He said until Huntertown is able to construct the WWTP, it plans to use Fort Wayne and its treatment capacity as a basis for excluding Fort Wayne from directly serving customers in the Sewage Service Area.

Mr. Nitza expressed concern with Huntertown's ability to serve the Sewage Service Area. He testified Huntertown is not capable of providing sewer service to the Whisper Rock and Timber Ridge subdivisions at this time because: (1) Huntertown does not have a contract with Fort Wayne for the treatment of the waste; (2) Huntertown has been unable (or unwilling) to pay Fort Wayne's sewer bills since termination of the Agreement; and (3) Huntertown's downstream facilities are experiencing sanitary sewer overflows and its EQ Basin is not complete.

Mr. Nitza also expressed concern with Huntertown's WWTP cost estimates. He noted the cost estimate for the WWTP has gone from \$10 million in 2008, to \$11 million in 2010, and is now \$14.2 million. He stated that Huntertown's current estimate for the WWTP is low, based on cost estimates by Donohue & Associates, Inc. ("Donohue") and Arcadis U.S., Inc. (f/k/a Malcolm Pirnie) ("Arcadis"). He testified that in his engineering opinion, actual construction cost of the WWTP is at least \$20 million with additional operational costs of \$400,000 to \$500,000 per year.

Mr. Nitza testified that he has acted as a project manager and consulting engineer on several sewer and water projects for Fort Wayne and participated in the development of master plans for the area. He said Fort Wayne is a regional provider of sewer and water services. He indicated that Fort Wayne has water and wastewater facilities in place with sufficient capacity to serve in the Water and Sewage Service Areas. Although he acknowledged that additional piping extensions and infrastructure may need to be completed, he stated Fort Wayne is ready, willing, and able to provide service.

With regard to Fort Wayne's water utility, Mr. Nitza explained that Fort Wayne is completing the acquisition of the remaining water assets and customers of Utility Center, Inc. d/b/a Aqua Indiana, Inc. ("Aqua"). Fort Wayne acquired approximately 9,000 Aqua North customers in 2008 and will soon acquire an additional 12,600 Aqua Southwest customers. He opined that most former Aqua North customers believe they have received better water quality at lower rates from Fort Wayne since the transition to Fort Wayne service. He also indicated that many former Aqua North customers reduced or eliminated the use of water softeners once they converted to Fort Wayne water service. Based on this experience, Mr. Nitza stated he believes customers in the Water Service Area will experience better service at lower rates if they receive service from Fort Wayne rather than Huntertown. Mr. Nitza further testified that when purchasing the Aqua North system, Fort Wayne planned to use that infrastructure as a means of providing service to the Water Service Area.

Regarding Huntertown's resources and facilities, Mr. Nitza testified that Huntertown provided little information or support from which to determine Huntertown's technical, financial, and managerial capacities. He said Huntertown did not provide financial reports or accounting studies demonstrating its financial ability to serve the Water and Sewage Service Areas. He also noted that Huntertown's water utility opted out of the Commission's jurisdiction in 1989.

Mr. Nitza testified that Huntertown plans to abandon its existing WTP on Gump Road, in part because its plant is not compatible with its proposed WWTP discharge. He said Huntertown's new WTP has not been completed and won't be until early 2015. He also noted that Huntertown does not soften its drinking water, which is approximately three times as hard compared to Fort Wayne's water.

Mr. Nitza disagreed with Mr. Conner's statement that Fort Wayne's water main along Gump Road is duplicative of Huntertown's water main. He said it is not duplicative because Fort Wayne's water main on Gump Road will provide service to an area south and east of Gump Road while Huntertown's water piping can serve areas north and west of Gump Road.

Mr. Nitza discussed Fort Wayne's current water and sewer service in and around the Water and Sewage Service Areas. He said Fort Wayne has four existing long-term contract areas in or near the Sewage Service Area: (1) Western Eel River Township; (2) Northwest Lake Township; (3) Canyon Run; and (4) Institutional Power Plant. He provided additional details about each of the contracts, indicating that in the case of Western Eel River Township, Northwest Lake Township, and Canyon Run, Fort Wayne partnered with the District for Fort Wayne to provide sanitary sewer conveyance and treatment capacity to those areas. As concerns the Institutional Power Plant, Fort Wayne provides sewer service to this collection of Allen County owned and operated government buildings. Mr. Nitza noted that a portion of the Institutional Power Plant area has been annexed into Huntertown, but Huntertown has not requested or otherwise taken legal action seeking to switch the service to Huntertown sewer service. In addition to these four areas, Mr. Nitza identified 14 economic development areas where Fort Wayne was either currently providing service or was ready, willing, and able to provide sanitary sewer and water service.

Mr. Nitza stated that Fort Wayne has the available water production and wastewater treatment capacity to provide service to the Whisper Rock and Timber Ridge developments, although additional piping extensions and other infrastructure needs to be completed. He also noted that Fort Wayne plans to boost the water pressure to the area. With respect to Cedar Canyon Elementary School, Mr. Nitza stated that in April 2012, the Northwest Allen County Schools Board of School Trustees expressed interest in exploring the possibility of changing from Huntertown water and sewer utility service to Fort Wayne. Mr. Nitza also discussed the remaining 14 areas of economic development, indicating that Fort Wayne currently provides potable water and sewer service to individual properties in Tuscany, Coves of Brooks Crossing, Ravens Cove, and Fuller's Landing, and that it provides sanitary sewer service to residents in Plantation Park. Mr. Nitza also indicated that Fort Wayne has a dedicated Development Services staff that can provide developers and property owners with economic development planning in the Water and Sewage Service Areas.

Mr. Nitza stated that Fort Wayne has constructed, and continues to plan, design, and construct, downstream lines, pumps, and other facilities with sufficient capacity to convey the anticipated sewage flows from Huntertown to Fort Wayne's treatment plant. Fort Wayne has also built the treatment facilities with sufficient capacity to treat Huntertown's flows. He testified that sewer conveyance capacity is the most expensive utility infrastructure and that Fort Wayne built this infrastructure based on growth projections that Huntertown made and requested. He said if Huntertown is given the exclusive Sewage Service Territory, Fort Wayne's infrastructure investment to serve the flows from this area will be stranded and may not be recovered on a timely basis as indicated in Mr. Walsh's Stranded Cost Analysis.

Mr. Nitza concluded by recommending the Commission deny approval of Huntertown's Regulatory Ordinances.

b. Eric J. Walsh. Mr. Walsh testified that Huntertown did not provide any evidence of how it calculated the potential rate impact on customers. He expressed his belief that Mr. Conner is not a rate consultant or rate expert and that Mr. Conner appears to have relied on the Preliminary Engineering Report ("PER") of June 2, 2014, as the basis for determining the rate impact in the Sewage Service Area. Mr. Walsh testified that the PER is not a rate analysis.

Mr. Walsh expressed two primary concerns with relying on the PER analysis. First, it assumes 4% annual customer growth over 20 years. Mr. Walsh testified that hypothetical growth is too speculative; not fixed, known, or measurable; and not typically considered when analyzing and calculating rates and charges. Second, Huntertown's estimated costs to build, operate, and maintain its proposed WWTP is optimistically low when compared to the Donohue and Arcadis cost estimates.

Mr. Walsh sponsored Respondent's Exhibit 40 ("Special Purpose Report"), an analysis that he performed concerning the rates associated with serving customers within the Water and Sewage Service Areas. His analysis considered four alternatives: (1) Fort Wayne provides the water and sewer service in the area; (2) Fort Wayne provides the water service and Huntertown constructs a WWTP to provide the sewer service; (3) under an assumption that the Agreement was not terminated, Huntertown provides sewer service under a long-term contract with Fort

Wayne to provide sewage treatment, and Fort Wayne provides the water service; and (4) under an assumption that Huntertown agrees to a new long-term contract with Fort Wayne for sewage treatment, Huntertown provides the sewer service and Fort Wayne provides the water service. Mr. Walsh indicated that the two alternatives assuming an agreement between Fort Wayne and Huntertown were provided for comparison purposes only.

Mr. Walsh explained the assumptions he used in the Special Purpose Report, including periodic rate increases, imposition of surcharges, and elimination of customer growth assumptions. Mr. Walsh's analysis showed that if the Sewage Service Area were served by Fort Wayne, the estimated sewer bill for a customer in that area would be \$64.10 in 2014, \$76.05 in 2017, \$84.85 in 2024, and \$110.70 in 2033. If the Sewage Service Area were served by Huntertown, the customer's estimated sewer bill would be \$108.80 in 2014 (assuming Huntertown pays the applicable Fort Wayne retail outside-city rates); \$89.85 in 2017 (assuming WWTP complete at that time), \$96.35 in year 2024, and \$112.90 in 2033. Mr. Walsh also compared Fort Wayne's water rates to those of Huntertown. Based on these comparisons, Mr. Walsh concluded that over a 20-year period an average customer would pay \$9,247 if served by Fort Wayne while that same customer would pay \$10,626 for that same period if served by Huntertown. Mr. Walsh also noted that Huntertown charges a \$500 connection charge and \$75 permit fee for new water customers. He said Fort Wayne does not have a water connection fee.

Mr. Walsh testified that other reasons also exist for denying Huntertown's request for exclusive service areas, including: (1) Fort Wayne is a large, regional provider that is able to spread its costs over a larger customer base; (2) Fort Wayne's water rates are regulated by the Commission, which gives customers an impartial forum to review and approve rates that are fair, just, and equitable; (3) Huntertown is not regulated by the Commission; and (4) Fort Wayne has significant "in-house" experience and expertise in providing both sewer and water service.

Mr. Walsh commented on Huntertown's WWTP feasibility analysis dated June 21, 2012 ("2012 Feasibility Analysis"). He testified that the rates calculated in the 2012 Feasibility Analysis are no longer accurate. He noted the cost estimates in the analysis are 30% lower than what Huntertown now estimates in its PER that the WWTP will cost.

Mr. Walsh concluded it is not in the best interest of potential customers in the Water and Sewage Service Area to be served exclusively by Huntertown. He said if the customers were served by Huntertown for water and sewer, the average customer would pay an estimated \$145.69 per month over a 20-year period. That same customer would pay an estimated \$128.58 per month if they were served by Fort Wayne for water and sewer over the same period.

5. Huntertown's Rebuttal Evidence.

a. Andrew Conner. Mr. Conner testified that although three new members were added to the Huntertown Town Council on January 1, 2015, the majority of the Town Council supports Huntertown's decision to build its own WWTP. He said the Town Council and the Utility Service Board are united in the belief that Huntertown should be charged wholesale rates. He said imposition of Fort Wayne's retail rates on Huntertown for wholesale service would be devastating to Huntertown's residents, increasing a resident's bill from \$50.88 to more

than \$75 per month. He also noted that a 2010 Ball State University study found many residents in a large area of the old part of Huntertown have incomes that qualify as low- to middle-income. In addition, if Huntertown is required to pay the additional \$1.403 million that Fort Wayne contends is owed since April 28, 2013 (i.e., the difference between Fort Wayne's retail rates and the rates Huntertown has paid) then Huntertown will be required to collect an additional approximate \$430 from each customer.

Mr. Conner responded to a number of comments submitted by the public expressing concern about the ability to continue relying on their own wells or septic systems. Mr. Conner explained that Huntertown is not attempting to prevent those individuals from relying on their wells or septic systems, nor does it intend to compel them to connect to its water or wastewater system. Rather, Huntertown is seeking to delineate the service areas it is responsible for serving. He said this will allow for better planning of customer growth and eliminate disputes involving new developments. He noted that Huntertown had an agreement with Fort Wayne for an exclusive Planning and Service Area for 28 years. However, once the Agreement expired, Fort Wayne began extending into part of that Planning and Service Area and apparently intends to take current Huntertown customers such as Cedar Canyon Elementary School. Mr. Conner stated that Huntertown's request for exclusive service territory appears to have overshadowed the fact that customers in Huntertown will experience a rate increase if Fort Wayne's proposal is approved.

Mr. Conner stated that although he is not a rate consultant, he believes that construction of a WWTP will result in favorable rates for Huntertown's customers. In forming his opinion, he said he relied on the PER and discussions with Mr. Frederickson and Mr. Carter regarding planning, cost, and future rates associated with the planned capital improvements. He noted that ~~neither Fort Wayne's nor Huntertown's wastewater utilities are regulated by the Commission.~~ Although Huntertown's water rates are also not subject to the Commission's jurisdiction, Mr. Conner did not believe this to be a concern because the water utility has no need, nor plans, for a water rate increase and is well-positioned to continue its needed capital expansion. He also noted that Fort Wayne's water utility charges a 25% out-of-city surcharge that Huntertown does not have and has no intention of imposing.

Mr. Conner testified that Huntertown put substantial effort into trying to reach a reasonable settlement with Fort Wayne and the District on service area boundaries, but no compromise was reached. He stated that based on the evidence presented, the Commission could reach a solution addressing the major concerns of the parties by: (1) reducing the Water and Sewage Service Areas as depicted in Petitioner's Exhibit 5-D; (2) allowing the District to continue operations in its current areas of service; (3) prohibiting mandatory wastewater or water line connections for residences with properly working septic systems and wells; (4) prohibiting Huntertown from charging out-of-town water or wastewater rates; (5) requiring Huntertown to work with the OUCC on matters such as implementing a water conservation program and its next water rate increase; (6) requiring Huntertown to report every six months to the Commission and OUCC on the progress on the WWTP and WTP; and (7) requiring Huntertown to pay the wholesale contract customer wastewater rate in the Agreement (i.e., \$2.31/CCF) from the date of the Agreement's termination until the WWTP is operational. Mr. Conner pointed out this middle

ground does not solve all disputes between Huntertown and Fort Wayne because the issue of conveyance charges remains pending in Allen Circuit Court.

Mr. Conner opined that this case is a turning point for Huntertown's growth as a great place to live. He said the utility's capital improvements will allow it to serve such growth with reasonably priced, quality service, and the revenue from the growth makes such improvements possible. Conversely, if Fort Wayne prevails, Huntertown's customers will suffer steeply increased rates and customers in the growth area may not benefit from the expected lower rates.

b. Derek Frederickson. Mr. Frederickson disagreed with Mr. Nitz's characterization of a 2002 letter Fort Wayne sent to Huntertown concerning the need to negotiate a new contract because Huntertown had nearly exhausted all its allocated capacity. He said the original Agreement allowed Huntertown to send up to 650,000 gpd to Fort Wayne for treatment and up to 975,000 gpd with the payment of excess flow charges. Currently, Huntertown is averaging 610,000 gpd, which he said is well below the 975,000 gpd allowed by the Agreement. Mr. Frederickson also noted that after the 2002 letter, Fort Wayne approved additional flows for 15 new developments to be connected to Huntertown's wastewater system. He stated that of the 3,766 ERUs of capacity approved by Fort Wayne, 56% of those approvals occurred after the 2002 letter.

Mr. Frederickson questioned Fort Wayne's stated desire to keep Huntertown as a contract customer based on Fort Wayne's attempt to convert Huntertown to retail classification in 2010, and again in May of 2013. He explained why he believes Fort Wayne is more interested in financially benefiting from population growth in the area and utility revenue than continuing a contractual relationship with Huntertown. He also expressed his belief that Fort Wayne is interested in becoming the exclusive provider of water and wastewater services in Huntertown and surrounding areas. He said if this were to occur, all customers would be switched to out-of-town retail classification and pay its corresponding surcharge.

With respect to completion of Huntertown's WWTP, Mr. Frederickson identified certain actions by Fort Wayne that he believes created delay. However, he said Huntertown has received a construction permit and funding for the EQ Basin, a construction permit for the WWTP, and was scored by the State Revolving Fund ("SRF") for funding. He said Huntertown is on schedule and under budget for the EQ Basin as well as in a position to bid the WWTP upon receipt of the remaining permits and completion of this proceeding.

Mr. Frederickson said sewer rates will increase to a certain extent with the construction of the WWTP, but the growth in Huntertown supports this solution and an increase in rates. He said the WWTP will ultimately benefit the existing customers by protecting them from future increases in Fort Wayne's wastewater treatment service rates, particularly increased costs related to the LTCP designed to address combined sewer overflow issues. He testified that construction of the WWTP is a cost-effective alternative to Huntertown's continuing to receive treatment service from Fort Wayne.

Mr. Frederickson stated that Huntertown will continue to use Fort Wayne as its treatment provider until it builds its own WWTP. However, a number of improvements, such as the EQ

Basin and Ferguson Tile reconstruction, will reduce Huntertown's use of Fort Wayne's treatment capacity and ultimately allow the system to serve additional customers. He said these projects also resolve the capacity issues associated with the reported overflows to IDEM that have occurred in wet-weather periods. Additionally, Mr. Frederickson noted that Huntertown's existing sewer connection with Fort Wayne along with its EQ Basin can support additional growth at a 4% average growth rate for at least another six years and possibly beyond 2020.

Mr. Frederickson testified Huntertown is not using Fort Wayne and its treatment capacity as a means of excluding Fort Wayne from directly or indirectly serving the Sewage Service Area. Instead, Fort Wayne is using capacity as leverage to obstruct Huntertown from providing new wastewater services in northwest Allen County, positioning itself to be the exclusive water and wastewater treatment provider in this area, and preventing Huntertown from serving new customers.

Mr. Frederickson disagreed with Mr. Nitza's assessment of Huntertown's ability to serve Whisper Rock and Timber Ridge. He said Huntertown will have sewer capacity available to serve the area in March 2015, which is well before Fort Wayne's anticipated completion of its own sewer connection to Whisper Rock and Timber Ridge. Consequently, connection of the Whisper Rock subdivision to Huntertown's sewer would avoid the temporary pump and haul solution Fort Wayne is relying on. Mr. Frederickson stated Huntertown also has water service immediately available for this development's connection.

Mr. Frederickson further testified that Mr. Nitza does not have a correct understanding of the estimated WWTP project costs. He noted the differences in cost estimates from year-to-year are because in the 2008 report the cost of land, site specific costs, and the cost of collection system improvements were not included as they were in the 2010 study. And the increase from the 2010 study to the 2014 study reflects the stringent effluent limitations set by the State as well as the use of an alternate discharge location that is further away.

Mr. Frederickson testified the estimates from Donahue and Arcadis are conceptual at best and appropriate only for high level preliminary budgeting. He said statements made within these evaluations suggest the engineer did not fully review the proposal or understand how the facility works, and therefore should not be given serious weight. Mr. Frederickson stated that the \$14.2 million figure of 2014 is accurate and based on a thorough and detailed estimate by Engineering Resources. He indicated there are no anticipated additional costs beyond what is budgeted for the project, including budgeted contingencies.

Mr. Frederickson indicated that Fort Wayne has agreed not to disconnect Huntertown's treatment service. He said based on this understanding, Huntertown is not exceeding the maximum flow rate allowances and using the remaining capacity it has already paid for over the 25-year contract period to support its projected growth until the WWTP is operational. The paid-for capacity will then be returned to Fort Wayne when the WWTP is complete in 2016.

Mr. Frederickson testified that Huntertown does have the technical, financial, and managerial capabilities necessary to own and operate their water and wastewater utilities. He said Huntertown has been successfully providing potable water and wastewater service to its

customers for almost 50 years. He stated Huntertown has qualified staff that are responsible for operating and maintaining the wastewater utility as well as all the necessary vehicles and equipment. He noted that exceptional growth occurred between 2000 and 2010, requiring Huntertown to evaluate its existing infrastructure, plan new water and wastewater treatment solutions for the next 20 years, and invest in aging infrastructure to eliminate overflows and restore capacity. Huntertown is completing five years of planning and implementation to restore capacity to its sewer collection system and address the overflow issues in the old section of Huntertown with the EQ Basin. Conversely, he noted Fort Wayne will not completely eliminate overflows even after completion of its LTCP measures in 20 years.

With respect to Huntertown's water quality and water service capabilities, Mr. Frederickson stated that based on reports of the well driller and geologist, the water supply wells will draw water from an aquifer that is substantially less hard than the current WTP's water production wells that are scheduled to be decommissioned. He said the service pumps at the water plant will be repurposed to boost pressures in the water distribution system and the new water treatment facilities are designed to accommodate softening equipment should softening of water prove necessary or desirable in the future. Mr. Frederickson noted that water hardness has no bearing on water safety to the customer. He also testified that Huntertown's water quality reporting shows its water system has lower levels of Trihalomethanes and Haloacetic Acids (known carcinogens) and unlike Fort Wayne has never exceeded the maximum allowable concentration level of 80 ppb for Trihalomethanes.

Mr. Frederickson disagreed with Mr. Nitza's assertion that Fort Wayne's new water line in Gump Road is not duplicative. He said Fort Wayne's line runs within feet of Huntertown's main, extends along property already served by Huntertown (i.e., Cedar Canyon Elementary School), and will duplicate services that are already available to this area. He also noted that Huntertown was granted easements for the extension of its water main by Whisper Rock's prior owner and that both Whisper Rock and Timber Ridge have largely been annexed into Huntertown potentially creating an additional issue.

With respect to areas within the Sewage Service Area already served by Fort Wayne, Mr. Frederickson testified that Huntertown Ordinance 13-006 excludes those areas and Huntertown does not intend to require those who were customers of Fort Wayne at the time of the ordinance adoption to switch service providers. Conversely, he noted Fort Wayne has attempted to persuade Huntertown's customers, like Cedar Canyon Elementary School, to leave the Huntertown system. Mr. Frederickson testified Huntertown's intention is to work cooperatively with adjacent municipalities. He said Huntertown is also willing to reduce the proposed boundary so as to not take or interfere with Fort Wayne's long-standing contracts. He said Huntertown's intentions are to preserve the historic Planning and Service Area as well as the right to serve additional areas to the west that the new WTP and proposed WWTP are designed to serve.

Mr. Frederickson disagreed with Mr. Nitza's assessment of stranded costs, noting that Huntertown is managing its flows to not exceed the peak limitations set by Fort Wayne. He stated Huntertown's capacity has been reserved since its original connection in 1988 and Huntertown has paid for the cost to connect and reserve this capacity over the term of the

original Agreement without being given any additional capacity by Fort Wayne. Therefore, additional infrastructure for additional capacity allowances for Huntertown has not been needed.

He testified Fort Wayne's actions make it clear that service boundaries are necessary to protect Huntertown's investment in its infrastructure. Although Fort Wayne is attempting to make Huntertown's service uncompetitive with continuous objections, strategic maneuvers, and obstacles, Huntertown is a safe, reliable, environmentally responsible, and low cost service provider.

With respect to Mr. Walsh's testimony that Huntertown owes Fort Wayne \$1.403 million for sewer service since April 28, 2013, Mr. Frederickson disagreed. He said that Mr. Walsh assumes Fort Wayne's billing records accurately reflect the appropriate billing rates that were charged to Huntertown. However, he noted no ordinances were adopted by Fort Wayne that support the rates charged to Huntertown prior to April 28, 2013, and therefore the amounts paid by Huntertown exceed the amounts supported by rate ordinances.

Mr. Frederickson further disagreed with Mr. Walsh's suggestion that growth be removed from the PER analysis because it defeats the primary purpose of preparing the 20-year capital plan. If there will be no growth, there is no need for a capital plan. He noted that Huntertown has 319 approved but yet to be constructed lots; Whisper Rock, Timber Ridge, and the Russell property could add another 300 customers; and additional requests provide the potential for another 400 customers. Mr. Frederickson stated Huntertown sends approximately 610,000 gpd to Fort Wayne, which is half the proposed capacity of the new WWTP. He said Huntertown is planning to construct a larger plant because it anticipates that growth will continue.

With regard to the District, Mr. Frederickson stated that Huntertown wishes to cooperate with the District because it understands the importance of septic relief to property owners and the benefits the District brings to these property owners. He said Huntertown had been working on an interlocal agreement with the District, but specific discussions related to the Carroll Road/Hand Road Septic Relief Project were put on hold to work through the territory issues first. He said it was not Huntertown's intention to ignore the District's request for information and would welcome the opportunity to have a productive discussion on the matter.

Finally, Mr. Frederickson responded to Mr. Thomas's testimony by noting that the issue of water pressure at Twin Eagles has been resolved. He said with the planned water improvements, Huntertown will further strengthen delivery pressures to the Twin Eagles area, including the Whisper Rock development. He also disputed Mr. Thomas's statement that Whisper Rock is connected to Fort Wayne's utility because Fort Wayne will not have a sanitary sewer extended to the property until the end of 2015, and even though the water pipe has been installed, it had not been put in service. He said Huntertown has owned, and will continue to own, the sanitary sewer collection system that serves Twin Eagles. He further stated that Huntertown has invested in infrastructure to support future growth, passed an annexation ordinance that includes the Whisper Rock and Timber Ridge subdivisions, and welcomes an opportunity to show the development community that Huntertown values their investment.

c. Stephen Carter. Mr. Carter responded to Mr. Walsh's testimony concerning Huntertown's rate projections. He explained why he believes the PER projections accurately reflect the anticipated rates. He said the three scenarios presented in the PER are: (1) the No Action Scenario, where Huntertown continues the status quo; (2) the Upper Ely Connection Scenario, where Huntertown continues as a wholesale sewer customer of Fort Wayne with an upgraded connection point; and (3) the WWTP Scenario, where Huntertown constructs and operates its own WWTP. He said each scenario utilizes necessary reasonable estimates for the costs of constructing assets, increases in operating costs specific to the infrastructure utilized, and customer growth consistent with the planned assets.

Mr. Carter testified that to project rates 20 years into the future, certain best estimates must be made. He said the starting point for the financial calculations in the PER was the March 2014 rate study, which included pro forma adjustments and the subsequent rate ordinance adopted by Huntertown. The key estimates used in the PER relate to: (1) capital costs, including future capacity needs; (2) operating costs with 3% inflationary adjustments and additional flow; and (3) operating receipts and related customer growth. He testified all the estimates made in the PER are reasonable, conservative, and consistent with accepted industry standards.

With regard to customer growth estimates, Mr. Carter stated the 2010 Census shows Huntertown grew 172% from 2000-2010 and has continued at a 4% growth rate. He said the 4% annual growth estimate used in the PER is a reasonable projection based on the 7.9% average annual growth of Huntertown between 1988 and 2014. As to Mr. Walsh's assertion that the fixed, known, and measurable standard must be applied in the 20-year PER estimates, Mr. Carter explained that the standard applies to rate studies and cost of service studies to set rates to be charged in the near term, not to estimate rates 10 or 20 years in the future. He said the PER is being appropriately used to project the necessary capital additions, operating expenditures, and operating receipts, and to reasonably estimate the resulting rates, not to set new utility rates. He also noted that if the actual average historic growth had been used, the PER rates would have been even lower.

Mr. Carter noted that Mr. Walsh's Special Purpose Report contains many assumptions to create scenarios extending over 20 years that are not fixed, known, or measurable. He said these assumptions help present a favorable outcome for Fort Wayne, while ignoring assumptions that do not result in a favorable outcome.

Mr. Carter disagreed with Mr. Walsh's statement that the PER does not present an apples-to-apples comparison as a result of the use of customer growth in the rate alternatives. He said the No Action Scenario assumes customer growth only to the extent existing infrastructure can support it, whereas under the WWTP Scenario customer growth is accounted for in both higher receipts and disbursements related to the construction and operation of the proposed infrastructure. He said under the Upper Ely Connection Scenario, customer growth is again consistent with the cost assumptions related to the construction and operation of the proposed infrastructure. Mr. Carter stated that ignoring customer growth in these scenarios is nonsensical, creates inconsistencies, is inappropriate from a financial planning and analysis standpoint, and is also irresponsible from a utility management standpoint.

With regard to Huntertown's projected WWTP costs, Mr. Carter stated his belief that there was a sound basis to rely on the projections in the PER. He also noted that Mr. Walsh's firm has previously relied on the estimates provided by Engineering Resources. Mr. Carter testified that the rates under the WWTP Scenario are reasonable, and that rates in the early years are comparable to the other scenarios and substantially lower for the majority of the WWTP's useful life. He said if growth continues at a rate higher than the conservatively estimated 4%, then the savings under the WWTP option will be greater than what is presented.

Mr. Carter testified that the assumptions utilized by Mr. Walsh's Special Purpose Report to conclude that Fort Wayne's rates will be more affordable for customers in the regulated areas are flawed. He said when appropriate assumptions are used and applied consistently to all the scenarios, Huntertown providing service with a new WWTP yields the lowest rates long term of any of the alternatives. He also pointed out that Huntertown's water utility is in fine financial condition and no rate increase is expected in the foreseeable future.

Mr. Carter explained that Mr. Walsh's first scenario, where Fort Wayne provides both water and sewer service in the Water and Sewage Service Areas, contains inaccurate calculations because the retail outside-city rates do not include the capital or operating costs associated with extending and providing services throughout the area. The projections provided by Mr. Walsh conclude that in 2025 the average customer bill will be \$87.40, but Fort Wayne's LTCP as published on their website anticipates the average bill to be \$95 by 2025, and this is without the 25% outside-city surcharge that would push the bill to \$118.00.

Mr. Carter testified that the second scenario, where Huntertown builds a WWTP to serve the Sewage Service Area and Fort Wayne provides water service, contains flawed assumptions by excluding customer growth. He further noted that the second problem was the lack of a sound basis to Mr. Walsh's statement that the construction cost estimate by Engineering Resources is "optimistically low." He said another incorrect assumption made in this calculation is that Fort Wayne will be allowed by the Commission to continue charging Huntertown as a retail customer, which is not based on the cost of service and would have detrimental effects on ratepayers in Huntertown. Lastly, Mr. Carter stated the calculation appears to include duplicative charges for treatment in 2014 of approximately \$900,000.

Regarding the third scenario, where Huntertown provides service in the Sewage Service Area and signs a long-term contract with Fort Wayne that doesn't include an Upper Ely connection and Fort Wayne provides water service, Mr. Carter testified that it contains the flawed assumption of no growth in billed flow, yet includes some volumetric increases in treatment expenses. Mr. Carter opined that the No Action Scenario in the PER is a more accurate depiction than what is proffered in the Special Purpose Report.

Mr. Carter stated that the fourth scenario, where Huntertown provides service in the Sewage Service Area and signs a long-term contract with Fort Wayne that includes a new Upper Ely connection and Fort Wayne provides water service, also contains the flawed no growth assumption. He noted this assumption was made even though Mr. Walsh acknowledged the reason for the Upper Ely connection is to provide additional capacity for growth. He said other flaws in Mr. Walsh's assumptions include: (1) inflated treatment costs because the Fort Wayne

treatment expenses in the Huntertown PER include volumetric increases from growth, and (2) an Upper Ely connection cost of \$4.0 million, which is not needed if there is no growth.

Mr. Carter further stated that the Special Purpose Report shows the detrimental effect of Fort Wayne charging Huntertown retail rates since the Agreement's termination. He said if Fort Wayne is allowed to charge retail outside-city rates, the average customer would see an immediate increase in their monthly sewer bill of \$25.

Mr. Carter testified that Mr. Walsh's calculations have additional problems. He noted that Umbaugh previously prepared a November 27, 2013 financial report for Huntertown's water utility showing a strong financial position and no need for a rate increase. However, Umbaugh's Special Purpose Report paints an entirely different picture and reaches vastly different conclusions.

Mr. Carter testified the PER calculations represent a more accurate analysis of projected future rates in the Water and Sewage Service Areas because the assumptions are appropriate to each scenario and are consistent with the anticipated growth patterns and the factual information that is available. When analyzing the underlying assumptions utilized by Umbaugh and those utilized by Engineering Resources, Engineering Resources provides a more accurate representation of Huntertown's future rates based on the facts known today.

Mr. Carter disagreed with Mr. Walsh's testimony that greater economies of scale will benefit customers in the affected area. He said under the theory that "growth pays for growth," economies of scale will have a much more dramatic impact on Huntertown than on Fort Wayne because Huntertown would gain a 117% growth factor compared to Fort Wayne's 4% growth factor. The relative economies of scale to be derived from growth within the Water and Sewage Service Areas will result in a more favorable impact for both Huntertown's existing customers and future customer base.

Mr. Carter testified that approval of the Regulatory Ordinances will not leave customers disenfranchised. He noted there was no evidence offered to support that Huntertown has ever or will ever adopt unlawful rates. Mr. Carter asserted that Fort Wayne's outside-city users are already disenfranchised because there is no cost of service justification for the 25% disparity between inside user and outside user rates. He said Huntertown has never and does not plan to have a surcharge for out-of-town water or wastewater customers.

Finally, Mr. Carter disagreed with Mr. Nitza about Fort Wayne's stranded costs because: (1) any assets freed up by Huntertown leaving Fort Wayne's system will not be rendered worthless, worth less, or without further use; (2) the Fort Wayne treatment plant is already over capacity resulting in wet-weather overflows of raw sewage; (3) Huntertown has been paying for its share of capital costs for over 25 years through rates and charges; and (4) if Huntertown is removed from the system, Fort Wayne can resell that capacity and potentially collect higher user charges from the same capacity if it is sold at retail rather than wholesale. Further, he stated the amount of stranded costs allocated to Huntertown for the assets identified are inconsistent with the amount paid for those assets over the life of a 20-year contract. He said Fort Wayne proposes to allocate almost \$6 million to Huntertown for both historical and future stranded costs

of the system, which allocates to Huntertown a percentage of debt service in a range from 10.59% to 37.14% per asset depending on the asset. Fort Wayne's 2014 Accounting Report allocates to Huntertown a percentage of 0.69% in debt service, which over 20 years means Huntertown would pay less than \$1.9 million in its allocable share of debt service.

B. Commission Discussion and Findings.

1. Statutory Requirements. Ind. Code § 8-1.5-6-8 applies if a municipality files a wholesale sewage petition and adopts a regulatory ordinance after December 31, 2012. A regulatory ordinance is defined as a municipal ordinance that "asserts the exclusive authority of a municipality to provide service within a regulatory territory" or "prohibits another utility from providing utility service in the regulated territory." Ind. Code § 8-1.5-6-3. A municipality may not enforce a regulatory ordinance unless and until it is approved by the Commission. Ind. Code § 8-1.5-6-8(b).

If a petition is filed with the Commission by a municipality requesting authority to enforce its previously adopted regulatory ordinances, the Commission is authorized to resolve the issue as to how the affected utilities shall provide service to customers in the regulated territories "in the manner that the commission determines is in the public interest." Ind. Code § 8-1.5-6-8(f). In determining the public interest, Ind. Code § 8-1.5-6-8(g) requires the Commission to consider the following:

- (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's 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.

2. Background and Regulatory Ordinances. Huntertown currently provides water and sewer utility service to approximately 3,200 residential and commercial customers located within and outside of its municipal boundaries. With respect to water service, Huntertown owns and operates a WTP and related facilities for the furnishing of water to its customers. Huntertown is also in the process of constructing a new, larger WTP, which is scheduled to be completed in the first quarter of 2015, to accommodate expected growth in the area.

As to wastewater service, Huntertown owns and operates a sewage collection system that conveys wastewater to Fort Wayne for treatment. Since 1985 and until 2013, the Agreement between Huntertown and Fort Wayne governed the treatment of wastewater collected and conveyed by Huntertown to Fort Wayne. In 2010, Huntertown decided to construct its own WWTP and gave notice of its intent to terminate the Agreement effective April 2013. Since that time, Fort Wayne has continued to provide wholesale sewage service to Huntertown pursuant to Fort Wayne's Ordinance G-13-13. Huntertown is currently constructing an EQ Basin and reconstructing the Ferguson Tile, both of which are expected to be completed in the first quarter of 2015, which will provide additional capacity in its collection system. Huntertown has also received a construction permit and an NPDES permit from IDEM to build a WWTP, which Huntertown expects to be in service by the end of 2017.

In the original Agreement, Fort Wayne and Huntertown had agreed upon a Planning and Service Area within which Huntertown would be solely responsible for providing wastewater service. The Agreement was amended in 1998 to reconfigure Huntertown's Planning and Service Area. While the Agreement was in effect, Huntertown extended both wastewater and water service to areas outside its corporate boundary within the Planning and Service Area.

Following termination of the Agreement in 2013, Huntertown adopted the Regulatory Ordinances establishing exclusive water and wastewater service areas. The Regulatory Ordinances were adopted pursuant to Ind. Code §§ 36-9-2-14 through -19, which generally allow a municipality to regulate the furnishing of water and wastewater service to the public within its corporate boundaries and within four miles outside of its corporate boundaries. Because the Regulatory Ordinances assert the exclusive authority to provide service within a regulated territory, they are regulatory ordinances within the meaning of Ind. Code § 8-1.5-6-3.

During the pendency of this proceeding, Huntertown indicated its agreement to revise and reduce the exclusive Water and Sewage Service Areas established by its Regulatory Ordinances. The service areas delineated for the provision of water and sewer service are identical. Therefore, for purposes of this Order, our review of the Regulatory Ordinances is limited to the reduced service areas ("Reduced Service Areas") as depicted in Petitioner's Exhibit 5-D in resolving the issues raised by the parties.

3. Indiana Code § 36-9-23-16. At the close of the evidentiary hearing, Fort Wayne argued Huntertown had failed to demonstrate that approval of the Regulatory Ordinance concerning sewage service is in the public interest because Huntertown failed to establish it has the requisite authority to provide such service. More specifically, Ind. Code § 36-9-23-16(a) (emphasis added) provides,

[a] municipality that does not have a sewage treatment plant, and wants to acquire, construct, improve, operate, and maintain sewage works other than a sewage treatment plant, may proceed under this chapter *only if it first contracts* for the required treatment of the sewage emanating from its works.

Huntertown is a municipality that does not have a sewage treatment plant. Fort Wayne argues that in order for Huntertown to operate and maintain its sewage works, it must have a contract

for the treatment of the sewage emanating from its works. Therefore, because Huntertown terminated the Agreement, it does not have a contract for the treatment of sewage from its collection system and cannot operate its sewage works in the Sewage Service Area.

We do not believe that Huntertown's lack of a written contract is dispositive of whether the Regulatory Ordinances should be approved as in the public interest. Although the Agreement no longer exists, a form of contract does exist between Huntertown and Fort Wayne for the treatment of sewage emanating from Huntertown's sewage system. There are three general types of contracts – express, implied, and constructive. *Zoeller v. East Chicago Second Century, Inc.*, 904 N.E.2d 213 (Ind. 2009); *Ahuja v. Lynco Ltd. Medical Research*, 675 N.E.2d 704 (Ind. Ct. App. 1996); *Wagoner v. Joe Mater & Assoc., Inc.*, 461 N.E.2d 706 (Ind. Ct. App. 1984). Express and implied contracts are very similar. *Wagoner*, 461 N.E.2d at 708. They differ only in that an express contract is evidenced by spoken or written words while an implied contract is evidenced by the conduct of the parties. *Id.* Contracts and covenants implied in fact arise from the course of dealing between the parties and may be evidenced by acts done in the course of performance or by ordinary practices in the trade. *Johnson v. Scandia Assoc., Inc.*, 717 N.E.2d 24, 30-31 (Ind. 1991). An implied contract is as binding as an express contract. *Retter v. Retter*, 40 N.E.2d 385 (Ind. App. 1942).

Mr. Frederickson explained that Fort Wayne has agreed not to disconnect Huntertown's treatment service. Pet.'s Ex. 6 at 16. His testimony is supported by Fort Wayne's Ordinance G-13-13, which provides that Fort Wayne will continue to convey and treat sewage from wholesale contract customers when a contract expires or has been terminated. Fort Wayne's agreement to provide treatment to Huntertown is further evidenced by the parties' actions. Since the Agreement ended in 2013, Huntertown has continued to convey, and Fort Wayne has continued to treat, the sewage emanating from Huntertown's sewage works in the same manner as under the Agreement.¹⁰ Consequently, we find that the ongoing relationship between Huntertown and Fort Wayne indicate that an implied contract between the parties exists for the treatment of sewage from Huntertown's collection system.

Moreover, when interpreting a statute, a court looks to the express language of the statute and the rules of statutory construction. *Hubbard v. State*, 849 N.E.2d 1165 (Ind. Ct. App. 2006), *trans. denied*, 860 N.E.2d 590 (Ind. 2006). A fundamental principle of statutory construction is to construe the statute in accordance with its purpose and the statutory scheme of which it is a part. *B.K.C. v. State*, 781 N.E.2d 1157, 1167 (Ind. Ct. App. 2003). As written, the intent of Ind. Code § 36-9-23-16(a) is to ensure that a municipality without a WWTP *first* enters into a contract for the treatment of sewage that will emanate from its facilities *before* proceeding under the authority provided by the Legislature to engage in sewer utility service. Huntertown did this. When Huntertown closed its WWTP in the 1980's, it entered into a long-term, written contract with Fort Wayne for sewage treatment. The evidence demonstrates that Huntertown is willing to enter into another express, written contract with Fort Wayne, but has been unable to do so because Fort Wayne is unwilling to enter into a contract for a term of less than 20 years. Because Huntertown is constructing its own WWTP, we agree it would be unreasonable for Huntertown to enter into a 20-year contract with Fort Wayne for sewage treatment.

¹⁰ Although the parties dispute the amount to be charged for the sewage treatment service, this issue has been addressed and resolved on a prospective basis as set forth above.

We do not believe the Legislature intended for a municipality to be prohibited from operating and maintaining its existing sewage works when it cannot reach an agreement with another utility for treatment after its initial contract has ended. To interpret the statute in that manner would put the public at risk of not being able to receive sewer service or of receiving service that may be unjust and unreasonable due to the municipality having to enter into a contract that it considers to be unreasonable. This conclusion is further supported by the fact that the Legislature has enacted other statutes providing the Commission (and the courts) with the authority to address disputes that may arise between municipalities concerning the provision of sewage utility service. E.g., Ind. Code § 8-1-2-61.7 (authority to review and resolve issues related to rates and charges for wholesale sewage service); Ind. Code ch. 8-1.5-6 (authority to address disputes among municipalities concerning service territories); Ind. Code § 8-1-2-5 (authority to require physical connections between utilities whenever public convenience and necessity require such connections); and Ind. Code § 8-1-2-113 (authority to take actions necessary to prevent injury to the people or utilities in Indiana).

Accordingly, we find that an implied contract exists between Hometown and Fort Wayne for the continued treatment of sewage from Hometown's collection system in accordance with the parameters in the Agreement and Hometown has sufficient legal authority to continue operating its sewage facilities.

4. Review of the Regulatory Ordinances. Ind. Code § 8-1.5-6-8(g) provides four specific factors that the Commission must consider in reviewing the regulatory ordinances to determine if they are in the public interest, but also provides the Commission with the discretion to consider any other factor it may determine is necessary. Although this is the first instance in which the Commission is presented with determining under Ind. Code § 8-1.5-6-8 whether an exclusive utility service area is in the public interest, the Commission has previously addressed service area disputes under other statutes. E.g., *Indiana-American Water Co., Inc.*, Cause No. 43133 (IURC Dec. 5, 2007) (resolving dispute between water utilities under Ind. Code § 8-1-2-86.5); *South Haven Sewer Works, Inc.*, Cause No. 43007, (IURC Jan. 31, 2007) (resolving dispute between sewer utilities under Ind. Code § 8-1-2-89); and *Kosciusko Rural Elec. Membership Corp.*, Cause No. 43507 (IURC April 15, 2009) (resolving dispute between electric utilities under Ind. Code § 8-1-2.3-6); and *Town of Chandler, Ind.*, Cause No. 44516 (IURC May 13, 2015) (resolving dispute between municipal utilities under Ind. Code § 8-1.5-6-9).

While the majority of these cases involved a Commission determination based on public convenience and necessity, many of the factors considered in those cases are similar to, or subsets of, those identified by the Legislature to be considered in determining whether the public interest will be served in approving the regulatory ordinances. For example, factors considered by the Commission have included: the existing utility service, the need for utility service, customer preference, logical growth of facilities and utilization of existing facilities, a municipality's annexation plans, environmental concerns, existence of fair competition, duplication of facilities, adequacy and reliability of service, and relative economic feasibility of service. *Damon Run Conservancy District*, Cause No. 43966 (IURC Oct. 19, 2011).

Accordingly, we review the Regulatory Ordinances by considering the factors enumerated in Ind. Code § 8-1.5-6-8(g), as supplemented where appropriate with the factors we have previously considered in other service area dispute cases, to determine whether approval is in the public interest.

a. History of Utility Service in the Reduced Service Areas. Because the manner in which sewer and water utility service has been provided in the Reduced Service Areas provide background for further discussion of the other factors, we begin by considering the history of utility service in the area. Municipal water and wastewater utilities have the exclusive right to serve within their corporate boundaries. Ind. Code § 36-1-3-9. However, they also have the authority to regulate the furnishing of such service within four miles outside their corporate boundaries. Ind. Code §§ 36-9-2-14, -16, and -18. Because of the close proximity between Hometown and Fort Wayne, the four mile area from their corporate boundaries overlaps.

As indicated above, beginning in the 1980's, the Agreement between Fort Wayne and Hometown provided for a defined Planning and Service Area regarding the provision of sewage service. During the term of the Agreement, Hometown expanded its water and wastewater utility service outside of its corporate boundaries consistent with the agreed upon service area. The majority of the Reduced Service Area is the same as the Planning and Service Area. Pet.'s Ex. 5 at 8.

Shortly after the Agreement ended in 2013, Hometown adopted the Regulatory Ordinances establishing exclusive water and wastewater service areas. Hometown also adopted an annexation ordinance on June 20, 2014, which includes additional area located within the Reduced Service Area. Pet.'s Ex. 1-D. Relevant to this proceeding, the annexed area in Hometown's Ordinance 14-001 includes approximately 530 acres, commonly known as the Twin Eagles Annexation Area. However, at the time of the evidentiary hearing, the annexation had yet to become final. Resp.'s Ex. CX-2. Consequently, this area remains subject to the Regulatory Ordinances.

Subsequent to these actions by Hometown, Fort Wayne entered into contracts with developers for the provision of water and sewer service to Whisper Rock and Timber Ridge subdivisions, both of which are in the Reduced Service Area, on August 6, 2014, and August 11, 2014, respectively. Although we denied Hometown's request for an emergency interim order governing the provision of service in the regulated territory, our September 17, 2014 Prehearing Conference Order expressed concern with Fort Wayne's actions given the pendency of this proceeding and the potential for a change in service providers should the Commission approve the Regulatory Ordinances. The Commission required the utilities to inform potential customers of this action and the possible financial risks if a customer elects to receive service prior to the issuance of a final order in this Cause. Since the issuance of our Prehearing Conference Order, Fort Wayne has entered into approximately 46 contracts with customers in the Reduced Service Area.

The District also provides sewage service in and near the Reduced Service Area. Although the District is authorized to provide drinking water service, it does not currently do so. Based on the evidence presented, it appears that Fort Wayne, Hometown, and the District have

worked cooperatively in the past concerning the provision of sewer service in the rural areas of Allen County, particularly with regard to projects that provide relief from failed or failing septic systems. The District has entered into long-term contracts with Fort Wayne for the provision of sewer conveyance and treatment capacity in the areas identified as A, B, C, and D on Respondent's Exhibit 21. However, only a small portion of areas A and C are within the Reduced Service Area and appear only to include property where the provision of service is simply being considered as opposed to currently being provided.¹¹ Resp.'s Ex. 14 at 18-20.

Based on the evidence presented, Huntertown has been the primary water and wastewater provider in the Reduced Service Areas. Although the District and Fort Wayne have entered into contracts concerning the provision of service in areas A and C, the evidence fails to demonstrate that either the District or Fort Wayne is actively providing service in the portions of areas A and C that are included within the Reduced Service Areas. Furthermore, the evidence indicates that both Fort Wayne and Huntertown have a history of coordinating service with the District. Therefore, the historical provision of water and wastewater service in the Reduced Service Areas supports approval of the Regulatory Ordinances with respect to the Reduced Service Areas.

b. Ability of Fort Wayne and Huntertown to Provide Water and Wastewater Service in the Reduced Service Area. Based on the evidence presented, both Huntertown and Fort Wayne appear to have the requisite managerial, technical, and financial capabilities to provide water and wastewater service in the Reduced Service Area. Both utilities have been successfully providing safe and reliable water and wastewater services for the past several decades. They each maintain a professional staff necessary to operate their facilities and engage in long-range planning that is necessary to ensure the utility is capable of providing service when needed.

With regard to the provision of wastewater service, Fort Wayne argues that because Huntertown does not have its own WWTP or a contract with Fort Wayne for the provision of wastewater treatment, Huntertown does not have the ability to provide wastewater service in the Reduced Service Area. Huntertown argues that it does have an agreement with Fort Wayne for the provision of wastewater treatment and that with the construction of the EQ Basin and reconstruction of the Ferguson Tile, it will have the capacity to accommodate the projected growth in the Reduced Service Area and stay within the capacity limitations under which Fort Wayne has been providing treatment service.

As set forth above, Huntertown does have an implied contract with Fort Wayne for the provision of wastewater treatment in accordance with the terms of the Agreement. However, at the evidentiary hearing in this Cause, Mr. Frederickson indicated that in order to make any new connections, Huntertown would need to reallocate its capacity that has already been approved and that such reallocation would require certification from Fort Wayne. Tr. at E 43-48. Any reallocation of capacity would be subject to the approval of IDEM. *Id.* While Fort Wayne and Huntertown have cooperated in reallocating capacity in the past, it is uncertain whether Fort Wayne remains willing to do so. *Id.* In addition, it appears that IDEM would require Fort

¹¹ The vast majority of area D is within Huntertown's corporate boundaries and the remainder of area D is not within the Reduced Service Area. Area B is also located outside the Reduced Service Area. Therefore, we do not address those areas.

Wayne's certification that its WWTP has sufficient capacity to treat flows from Huntertown, even though Huntertown would simply be reallocating capacity that has already been certified by Fort Wayne and approved. Resp.'s Ex. Admin. Notice 1 and 2, Tr. at E 63-64 and 85. Consequently, until its WWTP is constructed and operational, Huntertown's ability to connect additional customers to its wastewater system without Fort Wayne's cooperation appears uncertain.

Based on the evidence presented, both Huntertown and Fort Wayne have the ability to provide water service in the Reduced Service Area. It is less certain whether Huntertown has the ability to provide wastewater service to new customers in the Reduced Service Area until its WWTP is completed and operational because it must necessarily rely on Fort Wayne for treatment. However, the Commission does have the authority to address utility interconnections and the use of utility equipment by other utilities "whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner of other users of such equipment, nor in any substantial detriment to the service to be rendered by such owner or other users." Ind. Code § 8-1-2-5. See also, *Lakeland Lagoon Sewer Corp.*, Cause No. 39549 (IURC April 13, 1994); *Commission Investigation into Operations of Utility Center, Inc.*, Cause No. 41187 (IURC June 8, 1998); and *Valley Rural Utility Company*, Cause No. 42837 (IURC April 20, 2005).

c. Customer Rates and Charges for Service. There was much evidence submitted by the parties regarding the future customer rates and charges of each utility. Both Huntertown and Fort Wayne presented evidence concerning how customers would be better served by their respective utilities. In addition, the accounting witnesses of both parties each argued that the other's projections of future rates are based on multiple assumptions and therefore may be inaccurate.

Fort Wayne argued that Huntertown's customers will pay more for water and wastewater services over a 20-year period. In support of that assertion, Mr. Walsh offered the Special Purpose Report, which purports to compare Huntertown's rates to those of Fort Wayne.¹² Assuming no customer growth and a 3% annual increase in costs, Fort Wayne's water rates for retail outside-city customers are projected to increase to \$50.37 by 2033, whereas Huntertown's current water rate is projected to increase to \$57.75. Fort Wayne's retail outside-city rate for sewer service is projected to increase to \$110.70 by 2033, compared to a revised projection for Huntertown of \$112.90. Mr. Walsh revised Huntertown's projected wastewater rates in the PER because he believed the cost estimate for the WWTP was too low and the inclusion of a 4% growth rate was not appropriate. He also noted that Huntertown has a \$500 water connection fee, a \$75 water permit fee and an average \$2,500 wastewater connection fee for new customers. Whereas, Fort Wayne does not have any one time fees for water and only a \$2,000 wastewater connection fee for new customers.

Based on the evidence presented, we agree with Huntertown that Fort Wayne's analysis in its Special Purpose Report is flawed for several reasons. First, although Fort Wayne's Special Purpose Report was designed to present a comparison of rates to serve a growing population, customer growth and the capital costs necessary to serve the area were ignored. We agree that

¹² Comparisons are based on customer usage of 5,000 gallons.

the fixed, known, and measurable standard for making adjustments is appropriate for purposes of setting rates in the near term, but it is unreasonable to apply this standard to Huntertown's PER, which is a long-range planning document. PERs typically look out over a 20-year period and should provide reasonable estimates for planning purposes and long-range decisions based on appropriate assumptions. Thus, it would be unreasonable to exclude projected trends in usage and customer growth when considering what rates might be over a 20-year period.

Second, Fort Wayne used estimated construction costs for Huntertown's WWTP from Donahue and Associates. This estimate provided a wide cost variation based on conceptual designs with large contingencies of 40%. In addition, because Donahue prepared its estimate before the construction documents for the WWTP were complete, it is unclear whether the estimates were based on any quantity takeoffs. However, Huntertown's estimate from Engineering Resources was based on quantity takeoffs from design documents that had been permitted for construction. Pet.'s Ex. 6 at 13-16. Consequently, we find Huntertown's WWTP cost estimate provides a more reasonable estimate of construction costs.

Third, the Special Purpose Report addressed various scenarios related to Huntertown's provision of water and wastewater service in the regulated area, but failed to address the only scenario proposed by Huntertown in this case, which is to provide both water and wastewater service in the regulated area with its own water and wastewater facilities.

We also note that the documentation provided by Mr. Carter supports Huntertown's assertion that the Special Purpose Report under-estimates Fort Wayne's projected wastewater rates when compared with Fort Wayne's LTCP.

With respect to the Special Purpose Report's projected water rates, Fort Wayne includes a 3% annual increase in rates. However, Huntertown last increased its water rates in 2006 and, unlike Fort Wayne, has no plans to increase its rates in the foreseeable future or to charge an outside-city surcharge. Mr. Carter testified that Huntertown's water utility is in sound financial condition. He also noted that although the financial report prepared by Umbaugh for Huntertown's 2013 bond issuance did not include a rate increase in 2016 for Huntertown's water utility, Umbaugh included a 3% increase during 2016 to Huntertown's water utility rates in their Special Purpose Report.

While Huntertown raised multiple flaws with the Special Purpose Report, we note that if we corrected only two of the flaws (the WWTP cost estimate and elimination of the 2016 annual 3% increase in water rates), the projected monthly rates of water and wastewater service for Huntertown would be less than the average monthly rates that Fort Wayne projected for its water and wastewater service over the next 20 years. These adjustments would result in Fort Wayne outside-city customers paying an average of \$128.58 per month for water and wastewater service, whereas Huntertown customers would pay an average of \$125.59 per month.

Regarding one-time connection fees, we lack sufficient evidence from which to make a meaningful comparison. Huntertown's one-time fees are higher than Fort Wayne's, but based in part on the capital costs to serve in the Reduced Service Area. However, Fort Wayne's one-time fee does not include all the capital costs necessary to serve in the Reduced Service Area.

As indicated above, the factors and assumptions used by the parties may vary significantly from actual results, especially the further out projections are made. Nonetheless, based on the evidence presented, we believe the rates Huntertown and Fort Wayne may charge if either was granted exclusive rights to serve within the Reduced Service Area are comparable.

d. Present and Future Economic Development. Both Fort Wayne and the District identified multiple economic development areas that may be impacted by a Commission order approving the Regulatory Ordinances. Fort Wayne identified 14 areas or projects and the District identified eight project areas. Resp.'s Ex. 14 at 21-30; District Ex. 1 at 11-17. However, based on Huntertown's agreement to the Reduced Service Area as clarified at the evidentiary hearing, the only projects remaining within the Reduced Service Area are: Whisper Rock (western half), Timber Ridge, Cedar Canyon Elementary School, Russell Property, Irving Property (western half), Duane Embry, Carroll Hand, and Carroll High School Complex (projects 1-5, 14, 15, and 17 on Resp.'s Ex. 21) and small portions of two of the District's project areas (i.e., portions of A and C on Resp.'s Ex. 21).

Of the eight economic development projects identified by Fort Wayne, Huntertown already provides both water and sewer service to the Cedar Canyon Elementary School, Fort Wayne already provides water and sewer service to the Carroll High School Complex, and the District provides water and sewer service in Carroll Hand. Mr. Frederickson testified that Huntertown does not intend to require Fort Wayne's customers that were being served by Fort Wayne at the time the Regulatory Ordinances were adopted to change providers or to interfere with long-standing contracts. Pet.'s Ex. 6 at 22. Consequently, the Carroll High School Complex and the adjacent property owned by the Northwest Allen County Schools would remain a customer of Fort Wayne and be excluded from the Reduced Service Area. In addition, Carroll Hand would remain a customer of the District and also be excluded from the Reduced Service Area. Mr. Frederickson also indicated that Huntertown is willing to cooperate with Fort Wayne, the District, and other utilities in the area. *Id.* More specifically, Mr. Frederickson stated that Huntertown has been working on an interlocal agreement with the District regarding the areas it is serving. Pet.'s Ex. 6 at 29-30. Therefore, it is essentially the Whisper Rock (western half), Timber Ridge, Cedar Canyon Elementary School, Russell Property, Irving Property (western half), and Duane Embry that Huntertown wants included in its regulated territory. Each of these properties was within the Planning and Service Area under the Agreement. Pet.'s Ex. 6 at 23.

Cedar Canyon Elementary School. As indicated above, Huntertown currently provides water and wastewater service to the school. Huntertown extended its water main and wastewater facilities to the school in 2005 at the request of the school and in accordance with the Agreement. The school provided easements across its land for the main extension and Huntertown's facilities were sized to serve future nearby developments. However, Fort Wayne recently installed its own water main along Gump Road and the school has expressed an interest in exploring alternative utility providers in an effort to reduce costs. Fort Wayne indicated that additional infrastructure, including a booster station, would be necessary to provide water and wastewater service to the school. The historical provision of service to the school by Huntertown and the desire to avoid duplication of facilities supports the school's inclusion in Huntertown's Reduced Service Area.

Whisper Rock and Timber Ridge. Fort Wayne entered into contracts for the provision of water and sewer utility service with the developers of these subdivisions subsequent to Huntertown's adoption of the Regulatory Ordinances and the adoption of an annexation ordinance to include these areas (except the eastern portion of Whisper Rock) within Huntertown's corporate boundaries. Whisper Rock's developer, Mr. Thomas, explained why he preferred service from Fort Wayne over Huntertown, which included: uncertainty regarding Huntertown's construction of a WWTP, the need for Huntertown to install a lift station to convey wastewater to Huntertown, Fort Wayne's water quality and softness, and the possibility for installation of a booster pump to ensure sufficient water pressure.

In order to serve these developments, Fort Wayne extended its own water main along Gump Road that runs within feet of Huntertown's water main that is used to serve the Cedar Canyon Elementary School. Fort Wayne is also in the process of installing a sewer line to serve these subdivisions, which is not expected to be in service until the end of 2015. Until the sewer line is connected, Fort Wayne is providing service through a pump and haul arrangement.

Huntertown, on the other hand, has an existing sewer line in the area that could provide service to the subdivisions. Although Huntertown indicated that it would not have sufficient capacity until the EQ Basin was complete in March 2015, the evidence indicates that the provision of sewer service through a dedicated sewer connection to Huntertown could occur prior to Fort Wayne's completion of its sewer line. Pet.'s Ex. 6 at 12.

The evidence also indicates that both utilities will need to make additional improvements to provide service to Whisper Rock and Timber Ridge. Fort Wayne will need to make improvements to its water treatment facilities to boost water pressure to the properties, while Huntertown will likely need to install a lift station for the conveyance of wastewater. Resp.'s Ex. 14 at 21 and Tr. at H-7. Huntertown has already taken steps to address its water pressure in the area once its new WTP is operational by re-purposing of the service pumps from its Gump Road WTP. Pet.'s Ex. 6 at 18.

Huntertown has water and sewer mains available to serve these subdivisions and Fort Wayne was not providing service to these properties at the time the Regulatory Ordinances were adopted. The evidence further indicates that Huntertown has the ability to provide water service and will have the ability to provide sewer service to these subdivisions once its EQ Basin is complete, which was anticipated to be in March 2015.

Russell Property. Fort Wayne extended water and sewer piping to the property after the owner's request in July 2014 and subsequent to the adoption of the Regulatory Ordinances and the filing of the Petition in this Cause. No evidence was offered indicating that any connections have been made. This property lies to the north of Gump Road, which is within an area that Fort Wayne has indicated Huntertown's water main would be used and useful for serving. Resp.'s Ex. 14 at 17.

Including this property within the Reduced Service Areas is supported by the fact that Fort Wayne is not yet providing service and the extension of facilities to the property was made after the Regulatory Ordinances and subsequent to the filing of the Petition in this Cause.

Huntertown would also provide water service to an area that its water main along Gump Road was designed to serve.

Irving Property. The Irving property consists of approximately 200 acres that is undeveloped and located to the south of Whisper Rock. Only the western half of the property is located within the Reduced Service Area. Including this property within the Reduced Service Area is supported by the fact that Fort Wayne is not yet providing service and the extension of facilities to serve the property was made after the adoption of the Regulatory Ordinances and subsequent to the filing of the Petition in this Cause.

Duane Embry. The Embry property includes both the septic relief of existing homes and the provision of sewer service for new homes. Although Mr. Embry explained why he prefers that exclusive service areas not be approved, no evidence was offered concerning when service would be needed or which utility was better situated to provide service based on existing infrastructure currently in place.

e. Other Factors.

i. Drinking Water Quality. The evidence indicates that the drinking water provided by Fort Wayne is significantly softer than the water provided by Huntertown because, unlike Fort Wayne, Huntertown does not soften its water. However, we note that water hardness is an aesthetic aspect of water and not indicative of water safety. In addition, while testimony at the hearing indicates that customers served by Huntertown would likely need to install water softeners, the same may also be true for customers served by Fort Wayne. Tr. at G-44. Mr. Frederickson also indicated that Huntertown's new water wells will provide water that is substantially less hard and the new WTP is designed to accommodate water softening equipment.

Mr. Frederickson testified that Huntertown's water quality compares favorably to Fort Wayne's water quality. He noted that Huntertown's water contains lower concentrations of Trihalomethanes and Haloacetic Acids, both of which are known carcinogens.

ii. Customer Preference and Concerns. As indicated earlier, the vast majority of public comments received did not express a particular preference for service from one utility over another. Rather, most indicated that they did not need service at this time, but would like to retain the ability to choose which provider they wanted if they needed service in the future. However, the evidence does indicate that several developers, including those of Whisper Rock and Timber Ridge, have expressed a preference and/or entered into contracts with Fort Wayne for the provision of water and wastewater service.

In addition to the desire to choose their utility provider, some of the public comments received addressed concerns related to environmental impacts of Huntertown's proposed WWTP on the Eel River, the possibility of being required to connect to water and/or wastewater service by Huntertown, and the lack of representation or ability to participate in municipal decisions by those that live outside of Huntertown's corporate boundaries. None of these concerns weigh more heavily in support of or against approval of the Regulatory Ordinances. Any concern regarding the environmental impacts of Huntertown's proposed WWTP will have been

considered by IDEM in its decision whether to issue an NPDES permit. Huntertown, in its testimony, also committed to not compelling any customers to connect to its water or wastewater service. And, finally, regardless of whether a customer in the Reduced Service Area is served by Huntertown or Fort Wayne, customers do have the ability to provide comments on the proposed rates or contest the fairness of either utility's rates. *See* Ind. Code §§ 36-9-23-26 and -26.1 (sewer rates) and Ind. Code § 8-1.5-3-8 and -8.1 (water rates). It is simply the forum that may be different for water rates because Fort Wayne's rates are regulated by the Commission, whereas Huntertown's are not.

5. Conclusion. Based on the evidence presented and consideration of the above factors, we find that approval of defined service areas for water and wastewater service by Huntertown is necessary and in the public interest for several reasons. Competition for service territory exists in the water and wastewater industry partially because as municipal boundary lines expand the potential service territories begin to overlap. However, utility services are unlike other industries. One reason utilities are given a monopoly over a specific territory is the high cost of capital investment required to serve; it is extremely inefficient to duplicate utility infrastructure, especially underground pipes such as those used in providing water and wastewater services. We are concerned that without defined service areas, customer rates in the area may substantially increase due to the duplication of facilities and the unwillingness of the utilities to cooperate with each other to provide service in manner that is most cost-effective for the customer. In this case, it is clear from the parties' actions that if both municipalities continue to have authorization to serve in the overlapping area, duplication of facilities will continue to occur and customer rates will likely increase.

The Reduced Service Area is largely composed of the Planning and Service Area in which Huntertown has been providing water and sewer service for almost three decades. Huntertown has engaged in master planning to accommodate the anticipated growth in the area and expanded its facilities to provide both current and anticipated water and wastewater service in the area. Only with the termination of the Agreement in 2013 has Fort Wayne begun to expand its water infrastructure and sewer collection system into the area. It is this expansion that has created our concern for the unnecessary duplication of facilities.

As noted above, Fort Wayne has installed a water main along Gump Road to serve Whisper Rock and Timber Ridge subdivisions. Although Fort Wayne argues that the main is not duplicative because the two mains may be used to serve different customers, the evidence reflects that the line runs within feet of Huntertown's main and extends to the property of Whisper Rock, Timber Ridge, and the Cedar Canyon Elementary School, which have had access to water service for at least 10 years through a main installed by Huntertown that was sized to serve new customers. Pet.'s Ex. 6 at 20. Fort Wayne is also extending its own sewer collection line to the subdivisions, which won't be complete until the end of 2015, while Huntertown has an existing line currently in place and being used to serve the Cedar Canyon Elementary School. Fort Wayne also extended sewer and water piping to the Russell Property, which lies to the north of Gump Road and is in the area where Fort Wayne indicates Huntertown's water main would be used and useful for providing water service. Resp.'s Ex. 14 at 17 and Ex. 21.

The Commission has frequently held that the public convenience and necessity is not served by the installation of duplicative facilities. *See e.g., Re Damon Run Conservancy District*, Cause No. 43966 (IURC Oct. 19, 2011); *White River Valley and Morgan County Rural Water Corporation*, Consolidated Cause Nos. 40719 and 40757 (IURC Jan. 7, 1988). The Indiana Legislature has also recognized duplication of facilities as a reason for establishing defined service areas. Ind. Code ch. 8-1-2.3.

In addition to duplicating facilities, the evidence indicates that Fort Wayne is seeking to serve Huntertown's existing customers, such as the Cedar Canyon Elementary School, once it has extended its own facilities. Huntertown has been providing service to the school for 10 years and has recently made improvements in the area to provide better service, including the installation of a water tower to increase water pressures and plans to re-purpose the current WTP service pumps to further boost water pressure. Although the addition of the school as a customer of Fort Wayne would help offset some of the costs that Fort Wayne has incurred to extend duplicate facilities, the loss of the school as a customer of Huntertown would result in increased costs to Huntertown's current customers. Consequently, while some competition may be beneficial, too much may be harmful to the public interest.

Another reason we believe that a defined service area would be in the public interest is because of the acrimonious nature of the relationship between Fort Wayne and Huntertown. The evidence indicates that prior to Huntertown's termination of the Agreement, both Fort Wayne and Huntertown worked cooperatively with each other as well as with the District to provide service in the rural areas of Allen County. Having agreed-upon service areas allowed the utilities to plan for future development in a cost-effective manner. However, since Huntertown's decision to build its own WWTP and terminate the Agreement, the parties' conduct toward each other has devolved into a contentious and litigious battle over a variety of issues, including interlocal agreements with the District, allocations/reallocations of sewer capacity, appropriate wholesale sewer rates and charges, and service to particular customers. When two or more utility providers are capable of providing service in an area, the public is best served when the utilities are able to work cooperatively with each other to evaluate and determine which utility is in a better position to provide the most cost-effective service. It is clear from the evidence presented in this case that this will not occur.

Like the Legislature found with respect to assigned electric service areas at Ind. Code 8-1-2.3-1, we find that the circumstances in this case require defined service areas to encourage the orderly development and unnecessary duplication of water and wastewater facilities, prevent the waste of materials and resources, and promote the economical, efficient, and adequate utility service to the public. Approving Huntertown's proposed Reduced Service Areas as its exclusive water and wastewater territory should assist in the efficient and orderly development of water and sewer infrastructure in the area and avoid unnecessary duplication of facilities that would lead to increased utility expense and increased costs to customers.

We would also expect that approval of Huntertown's Reduced Service Areas will not have any adverse impact on present or future economic development in the area. With a defined, exclusive service area, Huntertown will be able to appropriately plan for serving current and expected growth in the area without the possible concern for stranded costs in the event

customers choose another provider. It will also create certainty for customers as to which utility is responsible for providing water and wastewater service. In addition, Huntertown's willingness to reduce its exclusive service territory for which it seeks approval to essentially the Planning and Service Area substantially reduces the number of existing and potential economic developments identified by Fort Wayne.

With respect to the small portions of A and C for which Fort Wayne has contracted with the District to provide sewer treatment service in the future if needed, no evidence was introduced that customers are currently being served within those areas. In addition, based on their location, it is clear that if service in the area was required, both Huntertown and Fort Wayne would be required to extend additional facilities to provide service. Mr. Frederickson expressed his opinion that Huntertown is the only provider currently capable of extending wastewater service west of Hand Road and north of Carroll Road and in the area immediately north of Huntertown's corporate boundaries and west of State Road 3 without significant investment in infrastructure. Pet.'s Ex. 2 at 16. Huntertown indicated it does not want to interfere with long-standing contracts, but also indicates a preference to serve this area because its new WTP and WWTP were designed to serve that area. While the District does have a contract with Fort Wayne, there are no utility services being provided in this area under that contract.¹³ It would appear that Huntertown's interest to provide service to the area east of Johnson Road is based on logical planning for development. Including this area in Huntertown's regulated territory would not adversely affect the District's ability to serve the remainder of Eel River Township. In fact, it could provide the District with the opportunity to provide lower cost service to some areas that may end up being closer to Huntertown's infrastructure than Fort Wayne's. Huntertown also indicated its agreement to work cooperatively with the District, particularly in those areas requiring septic relief, and its desire to enter into an interlocal agreement with the District concerning the provision of sewer service in the area.

Our only concern with approving the Reduced Service Area for water and wastewater service is with respect to Huntertown's ability to connect new customers to its sewer collection system until its WWTP is completed and operational. As indicated above, once Huntertown completes construction of its EQ Basin and reconstruction of the Ferguson Tile, which was expected in March 2015, Huntertown will have sufficient capacity to manage its flow to Fort Wayne within the limits under the Agreement for at least six years assuming a 4% growth rate. Pet.'s Ex. 6 at 11. However, based on testimony at the hearing, it is unclear whether Huntertown is capable of making sewer main connections to serve new customers without cooperation from Fort Wayne.

Mr. Frederickson testified that when sewer main connections are made to new homes or businesses, two capacity allocation letters are signed and go to IDEM for review. Tr. at E-64. Huntertown certifies to IDEM that there is available capacity in the collection system. *Id.* Fort Wayne then certifies to IDEM that its transportation sewer and its WWTP have capacity. *Id.* These two certification letters are necessary in order for IDEM to issue a permit for the construction of a new sewer main extension. *Id.*

¹³ Fort Wayne and the District entered into a contract concerning area A in 2009 and area C in 2000.

Fort Wayne requested that the Commission take administrative notice of the Office of Environmental Adjudication's ("OEA") Order relating to Independence Hill Conservancy District, 2007 OEA 164 and an Order of the Lake Superior Court in Cause No. 45D02-0803-MI-00012 affirming the OEA's ruling. The OEA Order held that 327 IAC 3-6-4 requires a capacity certification to be verified by authorized representatives of any town, city, sanitary district, or other entity that has jurisdiction over the proposed collection system, including the city or town that provides treatment service to the municipality. However, this case does not address whether IDEM would require a capacity certification from Fort Wayne if Huntertown is simply reallocating previously certified capacity to serve new customers.

Huntertown is not requesting additional transportation sewer or treatment capacity. Moreover, our Order requires Huntertown to comply with the capacity limitations that were established in the Agreement to ensure that the rates being charged by Fort Wayne are just and reasonable. The evidence reflects that with construction of the EQ Basin and reconstruction of the Ferguson Tile, Huntertown expects its flows to be well below those capacity limitations. Huntertown is proposing to simply utilize previously unused capacity that already has been allocated to Huntertown for a particular development to a new development. Therefore, Fort Wayne already has certified that its transportation sewer and its wastewater treatment plant have this capacity available.

Mr. Frederickson explained the reallocation process previously used by Huntertown and Fort Wayne as follows:

It's a precedent that's already been established between the Town of Huntertown and the City of Fort Wayne. Talons Reach would be one example. Talons Reach requested to the Town of Huntertown and to the City of Fort Wayne taking the ERUs that had been approved and reusing them in a different capacity, and as a -- and in the agreement that was ultimately approved, there are -- there is criteria that would apply to these new allocations. No. 1, there would be an area connection fee assessed. No. 2, there would be a \$20 a month capital surcharge applied to all of these new connections. So these reallocations that I'm referring to would all fall within that category.

I would add that given that Huntertown has fallen within the capacity provisions of the original agreement, that would be a benefit to the City of Fort Wayne because there [are] no improvements required on the collection system downstream of the Town.

Tr. at E-46-47.

As we noted above, Ind. Code § 8-1-2-5 requires a utility to permit the use of its equipment by another utility for reasonable compensation "whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users." In addition, when the utilities cannot agree upon such use, the conditions, or compensation, the Commission is authorized to address those issues.

Because we have found approval of the Reduced Service Area to be in the public interest, we also find that public convenience and necessity requires Fort Wayne to continue to provide sewer treatment services until such time as Hometown completes construction of its WWTP. In accordance with Ind. Code § 8-1-2-5, we find that Fort Wayne shall cooperate with Hometown to provide any necessary certifications to IDEM when Hometown seeks only to utilize existing capacity on its system that has already been certified. The evidence demonstrates that Fort Wayne has sufficient treatment capacity for flows from Hometown that remain within the limits established under the Agreement as set forth above in this Order. Therefore, to the extent Hometown is complying with those capacity limitations, any reallocation of capacity will not cause “irreparable injury” or a “substantial detriment” to Fort Wayne’s system or service.

Since our Order requires Hometown to remain within the capacity limitations required herein, we find that the rates for wholesale sewer service approved above are reasonable rates for the joint use of the facilities. However, because new connections in the Reduced Service Area will occur, we find that the new connections should be subject to the area connection fee and monthly capital surcharge as previously agreed upon by the utilities.

6. Modification of Regulatory Ordinances. In accordance with our findings above and consistent with the conditions identified by Hometown that it would be willing to undertake, the Regulatory Ordinances should be modified to reflect the following:

1. Hometown’s reduction of its water and wastewater regulated territories to the Reduced Service Areas identified in Petitioner’s Exhibit 5-D, which shall also exclude the Carroll Hand project, the Carroll High School Complex and its adjacent property owned by the Northwest Allen County Schools. ~~The modified ordinance shall include a schematic depicting the regulated territory approved herein.~~

2. Hometown’s willingness to agree to the District continuing operations in its current areas of service that remain in the regulated territory identified above.¹⁴

3. Hometown’s agreement to not compel or mandate any residences with properly working septic systems and/or wells to connect to its wastewater and/or water system.

4. Hometown’s commitment not to charge out-of-town water or wastewater rates.

5. Hometown’s payment to Fort Wayne the wholesale sewer rates and charges set forth above and compliance with the terms and conditions outlined in this Order until January 1, 2020 or until its WWTP is completed and operational, whichever occurs earlier.

8. Confidentiality. On October 16, 2014, Fort Wayne filed a Motion for Confidential Treatment asserting that certain customer usage data constitutes a trade secret and requesting such information be held confidential. The Presiding Officers issued a docket entry on October

¹⁴ We encourage Hometown to enter into an interlocal agreement with the District concerning continued service in the regulated territory.

28, 2014 finding such information should be held confidential on a preliminary basis. We find that the information is confidential pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. Fort Wayne's retail outside-city rates and charges for wholesale sewer service to Huntertown are unjust and unreasonable.
2. The rates and charges to Huntertown for wholesale sewer service shall be as set forth herein.
3. The Regulatory Ordinances as adopted by Huntertown are not approved. Huntertown shall modify its Regulatory Ordinances as set forth herein.
4. The confidential information filed by Fort Wayne is determined confidential under Ind. Code §§ 5-14-3-4 and 24-2-3-2, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.
5. In accordance with Indiana Code § 8-1-2-70, Chandler 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:	\$ 22,409.98
OUCG Charges:	\$ 10,831.58
Legal Advertising Charges:	\$ 292.22
Total:	\$ 33,533.78

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

STEPHAN, MAYS-MEDLEY, HUSTON AND ZIEGNER CONCUR, WEBER NOT PARTICIPATING:

APPROVED: MAY 20 2015

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


Brenda A. Howe,
Secretary to the Commission