

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

COMPLAINT OF SUGAR CREEK )  
PACKING CO. FOR REVIEW OF ) CAUSE NO. 44948  
WESTERN WAYNE REGIONAL )  
SEWAGE DISTRICT'S OPERATIONS ) APPROVED: APR 04 2018  
PURSUANT TO IC § 8-1-30(3)(b). )  
)  
RESPONDENT: WESTERN WAYNE )  
REGIONAL SEWAGE DISTRICT )

ORDER OF THE COMMISSION

**Presiding Officers:**

**James F. Huston, Chairman**

**Carol Sparks Drake, Administrative Law Judge**

Sugar Creek Packing Company ("Sugar Creek" or "Complainant") initiated this Cause on May 25, 2017, by filing a complaint with the Indiana Utility Regulatory Commission ("Commission") under Ind. Code § 8-1-30-3(b). Sugar Creek seeks the Commission's review of Western Wayne Regional Sewage District's ("WWRSD" or "Respondent") provision of service to customers. Specifically, Sugar Creek asks the Commission to: (1) require WWRSD to upgrade its facilities to accommodate 200,000 gallons per day ("gpd") of wastewater capacity from Sugar Creek; (2) prevent WWRSD from invoking Ind. Code § 13-26-23-30<sup>1</sup> or otherwise asserting territorial jurisdiction to require Sugar Creek to remain connected to WWRSD's system for treatment of its wastewater; and (3) if necessary, order appointment of a receiver to take over WWRSD and its operations.

The Town of Cambridge City, Indiana, ("Cambridge City") petitioned to intervene in this Cause on July 5, 2017. Wayne County, Indiana, ("Wayne County") petitioned to intervene on July 7, 2017 (Cambridge City and Wayne County, collectively, the "Intervenors"). A docket entry was issued on July 18, 2017, granting both interventions.

Pursuant to notice published as provided by law, a prehearing conference was held in this Cause on July 20, 2018. Proofs of publication of the notice of the prehearing conference were incorporated into the record and placed in the Commission's official files. Sugar Creek, WWRSD, Cambridge City, Wayne County, and the Indiana Office of Utility Consumer Counselor ("OUCC") each appeared by counsel and participated. On August 9, 2017, the Commission issued a Prehearing Conference Order consistent with the agreements reached at the prehearing conference.

On July 28, 2017, Sugar Creek filed its case-in-chief consisting of the direct testimony and accompanying exhibits of Edward Rodden, Chief Information Officer of Sugar Creek, and Ron Holbrook, Plant Manager at Sugar Creek's Cambridge City location.

<sup>1</sup> The statute cited in Sugar Creek's complaint as the Mandatory Connection Statute, Ind. Code § 13-26-23-30, does not exist. Given the characterization of the referenced statute, Ind. Code § 13-26-5-2 is presumably the correct reference.

Wayne County on August 11, 2017, filed the direct testimony and exhibits of Valerie Shaffer, President of the Economic Development Corporation of Wayne County, Indiana, and Robert Warner, Highway Engineer for Wayne County, Indiana. That same day, Cambridge City filed the direct testimony and exhibits of Mark McCarty, a Cambridge City Town Council member who is also one of Cambridge City's four appointees to WWRSD's Board.

On August 18, 2017, WWRSD filed the testimony and exhibits of Otto Krohn, of O.W. Krohn & Associates, LLP, and Martin Wessler, P.E., Chief Executive Officer of Wessler Engineering, Inc. ("Wessler"). The OUCC on August 25, 2017, filed a Notice of Intent Not to File Testimony in this Cause.

Sugar Creek on September 1, 2017, filed the rebuttal testimony of Mr. Rodden and Scott Gregory, Facilities Maintenance Supervisor at Sugar Creek's Cambridge City plant. Docket entry requests were issued on September 15, 2017, seeking information from Sugar Creek and WWRSD, to which Sugar Creek responded on September 18, 2017. On September 19, 2017, WWRSD requested leave to late-file its docket entry response, which late-filing was granted on September 22, 2017.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, the evidentiary hearing in this Cause was opened at 9:30 a.m. on September 19, 2017, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At that time, the evidentiary hearing was continued on the record to October 17, 2017, and subsequently continued to November 2, 2017, by docket entry issued on September 22, 2017. All parties appeared by counsel at the evidentiary hearing on November 2, 2017, and participated.

After considering the evidence of record and the applicable law, the Commission finds as follows:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearing conducted in this Cause was given as required by law. Sugar Creek's complaint was initiated under Ind. Code ch. 8-1-30. WWRSD is a regional waste district providing wastewater utility service in Wayne County, Indiana. WWRSD owns, operates, manages, and controls plant, property, and facilities which are used and useful for providing these services. WWRSD is a utility company under Ind. Code § 8-1-30-2(2), and Sugar Creek is a WWRSD customer. Ind. Code § 8-1-30-3 authorizes the Commission to review certain aspects of a regional district's operations upon the filing of a customer complaint. The Commission, therefore, has jurisdiction over WWRSD and the subject matter of this proceeding.

2. **Complainant's and Respondent's Characteristics.** Sugar Creek is an Ohio corporation founded in 1966 when three investors opened the Washington Court House facility in Ohio. This facility was and is a manufacturer of raw bacon. Since its inception, Sugar Creek has grown into a widely diversified food manufacturer.

In 2015, Sugar Creek opened a meat food processing plant in the Gateway Industrial Park in Cambridge City, Indiana. Sugar Creek purchased this plant from the bankruptcy estate of Really Cool Foods ("RCF") and subsequently expanded its footprint. At this facility, raw meat is processed into various retail products for national and private label brands. The Cambridge City plant, at 418,000 square feet, is nearly four times larger than any other Sugar Creek facility and houses several state-of-the-art cooking technologies. The centerpiece of the facility is its large-scale sous vide operation.

In sous vide, the food is prepped, vacuum-packed, and then cooked slowly in a circulated water bath. When the food reaches its optimal internal temperature, it is quick-chilled and then refrigerated or frozen until served.

WWRSD is a regional sewage district providing wastewater utility service to customers in western Wayne County, Indiana, including customers located within the Gateway Industrial Park. WWRSD was formed in 1974 as a non-profit municipal corporation designed and created to provide efficient sanitary sewer service in western Wayne County. WWRSD took over the treatment plant and facilities of Cambridge City and has maintained that treatment facility with a rated average capacity of 0.804 million gallons per day (“mgd”) of wastewater and a maximum capacity of 2.00 mgd. WWRSD has expanded and now also serves customers in Mount Auburn and Dublin, the Gateway Industrial park, and several commercial customers outside the Gateway Industrial Park. WWRSD also has an agreement with the Town of Pershing to treat Pershing’s wastewater. At present, WWRSD serves around 1,200 to 1,300 customers in Wayne County, Indiana. WWRSD’s recorded treated flow for calendar year 2016 was approximately 0.663 mgd. Sugar Creek discharges its treated industrial wastewater and its sanitary wastewater to WWRSD and, as such, is a WWRSD customer.

### **3. Summary of the Evidence.**

**A. Sugar Creek’s Case-in-Chief.** Mr. Holbrook, Sugar Creek’s Cambridge City Plant Manager, generally described Sugar Creek’s business and operations. He testified that in 2015 Sugar Creek opened the facility in the Gateway Industrial Park which employs innovative cooking technologies, including a large-scale sous vide operation. Mr. Holbrook described the facility as having three production halls, two of which are now operational. Each production hall has its own production department so these are, essentially, three small production plants within a large plant. Sugar Creek is in the process of installing the equipment for the third production hall. The Sugar Creek plant is an expansion of the 77,000 square foot facility RCF built.

The facility Sugar Creek occupies was purchased in 2012 after RCF abruptly closed. Mr. Holbrook testified that in 2007, RCF announced it was building the production complex and would be investing more than \$100 million. The Indiana Economic Development Corporation, according to Mr. Holbrook, offered RCF a multi-million dollar package of tax credits and grants to fund site infrastructure improvements. Wayne County donated the land and provided additional grants, as well as tax abatement. Mr. Holbrook testified that RCF’s facility was the first development in the Gateway Industrial Park located at the interchange of State Highway 1 and Interstate 70, and RCF was served by WWRSD. RCF opened its facility in October 2008, but opened with only 250 of the projected 1,000 jobs. Sugar Creek has invested \$130 million to expand RCF’s footprint.

Today, Sugar Creek’s plant operates three shifts and employs about 400 workers. Production occurs on two shifts, with sanitation occurring on the third shift nightly. With the existing equipment, the plant is operating at around 50% of its capacity. Mr. Holbrook estimated, on cross-examination, that Sugar Creek’s water usage may increase another 25% when its production increases. The entire plant is cleaned every night so while there will be an incremental increase in water usage as production increases, it will not double. The largest portion of Sugar Creek’s water is generated during sanitation. According to Mr. Holbrook, a lot of water accumulates during sanitation between midnight and 6:00 a.m. that is then dispensed throughout the day. Sugar Creek can regulate its flows using its holding tanks.

Mr. Holbrook testified that, as explained in more depth by Mr. Rodden, WWRSD has not been consistently capable of collecting and treating 200,000 gpd from Sugar Creek's pretreatment facility as WWRSD certified. Mr. Holbrook stated that Sugar Creek began operations in late 2015 and, from that point, has ramped up production to the point where Sugar Creek needs to discharge 200,000 gpd from its pretreatment facility. According to Mr. Holbrook, Sugar Creek's lift station at the Gateway Industrial park has frequently overflowed since Sugar Creek's operations began with the first overflow he is aware of occurring on April 14, 2016. Mr. Holbrook stated that Sugar Creek has chosen since that time to monitor its flow and, when necessary, scale back or shut down production to avoid flooding the field surrounding WWRSD's manhole. No one has asked Sugar Creek to perform this monitoring, but because Sugar Creek wants to minimize overflows, several times per shift, employees have inspected the lift station and monitored the flow level. Mr. Holbrook testified that when the flow level reaches a point that is too high, Sugar Creek has adjusted its operations. He testified that until 2017, the capacity issue had not risen to the point where operations were completely shut down.

On May 22, 2017, shortly before filing the complaint in this Cause, Sugar Creek began keeping a written log documenting its monitoring and when the manhole was found full or overflowing. Mr. Holbrook sponsored Attachment RH-1, an e-mail summarizing the events associated with the first overflow in April 2016, and Attachment RH-2, a written log documenting Sugar Creek's more recent monitoring of the manhole. He testified that starting in 2017, Sugar Creek experienced disruptions to its operations and incurred costs as a result of the capacity issues.

Mr. Holbrook testified that on January 19, 2017, Sugar Creek shut down its operations because of WWRSD's inability to receive flow from Sugar Creek's production plant (the "January Event"). This shutdown lasted for two shifts, and all employees were sent home. During the shutdown, Sugar Creek employees monitored flow every hour and restricted flow to WWRSD. Because Sugar Creek could not send flow to WWRSD, Frac Tanks were rented to hold and store wastewater on site until the lift station pumps were functional. He stated that Sugar Creek was not discharging more than 200,000 gpd during the time of the January Event, with Sugar Creek's records indicating an industrial discharge on January 15 of 128,299 gallons; 142,052 gallons on January 16; and 140,776 gallons on January 17. Mr. Holbrook sponsored Attachment RH-4, an excel spreadsheet with the data Sugar Creek has compiled since mid-January analyzing its pretreatment flows. But, Mr. Holbrook acknowledged on cross-examination that not all the water Sugar Creek discharges to the lift station is metered. Wastewater goes directly to WWRSD, as opposed to going through Sugar Creek's pretreatment process, from water softener regeneration, the boiler blowdown, and the condenser cooling tower.

Mr. Holbrook also sponsored Attachment RH-5, a summary printout of the worksheet from the excel spreadsheet showing the daily pretreatment flow and total estimated discharge (including wastewater not flowing through Sugar Creek's pretreatment facility). Mr. Holbrook reiterated that although WWRSD's capacity certificate is plainly for the pretreatment facility, if the capacity certificate covered all flows, Sugar Creek's discharge did not exceed 200,000 gpd during the January Event.

WWRSD installed new pumps in the lift station after the January Event. Notwithstanding this effort, a subsequent failure occurred on May 22, 2017, when Sugar Creek suddenly lost the ability to discharge to the lift station. During this time, Sugar Creek scaled back production and again stored water on site in Frac Tanks. Mr. Holbrook testified that Sugar Creek's flows from its pretreatment

facility on May 21, 2017, were 50,881 gpd; on May 22, 2017, 151,341 gpd; and on May 23, 2017, 79,516 gpd. Mr. Holbrook testified that while a WWRSD technician came to Sugar Creek's plant on May 22 to investigate the issue, no one at WWRSD communicated with Sugar Creek regarding the cause of the shutdown in May (or in January); consequently, Sugar Creek employees attended WWRSD's Board meeting that same evening to inform the Board that Sugar Creek was again experiencing backups and was unable to discharge water. Mr. Holbrook testified that WWRSD's Board did not offer an explanation, but stated that WWRSD was doing the best it could to resolve the issue. The next morning another WWRSD technician came to Sugar Creek's facility, and the cause of the failure was determined later that day or possibly the next morning. Mr. Holbrook's understanding is that a miscalculation resulted in too much pressure in the lines which caused the lift station pumps to become unseated. The pumps were resealed, and WWRSD installed a diesel powered auxiliary pump to supplement the lift station. Mr. Holbrook was critical of poor communication from WWRSD's personnel with Sugar Creek about the cause of issues, their status, or solutions. Notwithstanding the importance of wastewater service for Sugar Creek, he stated WWRSD's personnel are unresponsive to questions.

Mr. Holbrook testified that Sugar Creek has incurred approximately \$330,000 in costs related to WWRSD's service issues and numerous costs that cannot be quantified, such as production and sanitation schedule changes, executive time, and potential loss of workforce due to employees finding other jobs during the shutdown. Mr. Holbrook further testified that according to Wayne County officials, WWRSD's capacity issues are limiting Wayne County's ability to market the remaining Gateway Industrial Park properties. On cross-examination, he acknowledged that Sugar Creek's flow levels have been higher than 200,000 gpd over the two to three months leading up to the hearing, probably averaging 200,000 to 320,000 gpd, and Sugar Creek has not run into problems or seen overflow conditions at the lift station.

Q Okay, and you haven't run into any significant problems or seen any significant overflow conditions at the lift station; correct?

A We have not.

We've backed down the frequency of our checks at the manhole, but we've not observed any overflows, and we've not had to intentionally hold back water because – to prevent an overflow in the last several months, and I would further say that really since the temporary auxiliary pumps have been put in, that's when we've – we've seen the problem go away.

Tr. A-111-12.

Mr. Rodden testified regarding Sugar Creek's capacity certification. He stated that prior to becoming a WWRSD customer, Sugar Creek applied for a construction permit with the Indiana Department of Environmental Management ("IDEM") for its new pretreatment facility to discharge to WWRSD. As part of the application process, Sugar Creek submitted a certification from WWRSD that WWRSD had sufficient capacity such that the daily flow from Sugar Creek's pretreatment system "will not cause overflowing or bypassing in the collection system" and that this sufficient capacity was "not contingent on water pollution/control facility construction that has not been completed and put into operation." Complainant's Ex. 2 at 2. Mr. Rodden sponsored a copy of the certification as Attachment ER-1. He testified that WWRSD certified capacity from Sugar Creek's pretreatment plant of 200,000 gpd and that WWRSD's certification is not limited in terms of instantaneous flow. After

the original application was submitted to IDEM, IDEM requested WWRSD to clarify that its ability to provide sufficient capacity is not contingent on a proposed Wastewater Treatment Plant (“WWTP”) expansion that WWRSD is planning. WWRSD provided this assurance in an allocation letter dated February 18, 2015, and IDEM issued the construction permit on March 9, 2015. Mr. Rodden sponsored Attachment ER-3, a copy of WWRSD’s revised capacity certification letter.

Mr. Rodden explained that the construction permit was needed for Sugar Creek’s pretreatment plant so Sugar Creek could receive a pretreatment discharge permit from IDEM. Initially, the existing RCF discharge permit was assigned and its limits modified to reflect Sugar Creek’s operations. In Sugar Creek’s permit application materials, Sugar Creek calculated its daily average flow at 167 gpm, as the quotient of 200,000 gpd divided by 20 hours per day of operation, in recognition that the pretreatment facility will only operate 20 hours per day, i.e., 200,000 gallons divided by 20 hours and further divided by 60 minutes produces 167 gpm. This was within Sugar Creek’s estimated continuous flow of 150-180 gpm. Mr. Rodden testified that Sugar Creek also indicated its peak flow will be 400 gpm and that when Sugar Creek applied for the construction permit, Sugar Creek expected to discharge a maximum of 200,000 gpd from its pretreatment facility until its operations expand. Sugar Creek anticipates this increasing to 300,000 gpd as its operations expand. Mr. Rodden sponsored Attachment ER-7, Sugar Creek’s renewed pretreatment permit, which shows a pretreatment facility flow of 178,000 gpd. This is the pretreatment discharge permit IDEM issued when the modified RCF discharge permit expired. Mr. Rodden testified the pretreatment flow of 178,000 gpd is based upon Sugar Creek’s actual plant activities, whereas the original renewal was based on design capabilities.

Mr. Rodden shared his perspective upon WWRSD’s capacity issues. He indicated that throughout the filing of testimony and the discovery process in this Cause, WWRSD has suggested its capacity issues are a result of Sugar Creek’s peak hourly flows. Mr. Rodden disagreed and stated that Sugar Creek offered to permit WWRSD to inspect its treatment plant and recorded flow rates, but WWRSD declined. He further testified that Sugar Creek’s flows are not extreme, and WWRSD’s inability to handle these flows has caused Sugar Creek to wonder whether WWRSD ever had the promised capacity. Mr. Rodden explained that the force main leaving the lift station towards WWRSD’s plant is 6” diameter HDPE pipe, which means the inside diameter is 5” and can, therefore, only handle flows of 180-200 gpm. He testified that Sugar Creek’s flow, combined with the other industrial customer, Taconic’s flow feeding this line account for almost all of the capacity the force main can handle on a peak basis. From this analysis, Mr. Rodden concluded WWRSD has never had the capacity to collect 200,000 gpd from Sugar Creek.<sup>2</sup>

In response to questions at the hearing from the Commission’s Chairman, James Atterholt,<sup>3</sup> Mr. Rodden testified that Sugar Creek is currently operating at just under 50% capacity and plans to expand its operations. The number of employees is anticipated to increase with this expansion from

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<sup>2</sup> Mr. Rodden is not an engineer, and his professional background evidenced experience overseeing information technology, security, and safety for the company. Mr. Rodden testified that he also serves as a “C-level advisor and spokesperson” for wastewater issues at the Sugar Creek Cambridge City facility, supporting the company and its environmental group. He is employed as Sugar Creek’s Chief Information Officer. No objection was made to his testimony and opinions upon flow, discharge, or capacity to and from the lift station or to his opinions upon WWRSD’s capacity, but his background may impact the weight afforded this testimony.

<sup>3</sup> James Atterholt served as the Commission’s Chairman at the time of the evidentiary hearing in this Cause and was the Presiding Officer who heard this matter with the Administrative Law Judge. Upon Chairman Atterholt’s retirement, this Cause was reassigned to James F. Huston, Chairman.

just under 400 to 700. He testified that the issues with WWRSD have not yet delayed Sugar Creek's expansion, but if Sugar Creek keeps adding equipment, Complainant may not be able to push enough water. Operating at just under 50% of its capacity currently is not, however, attributable to wastewater service issues. Mr. Rodden echoed Mr. Holbrook's testimony that since WWRSD added auxiliary pumps at the lift station in June 2017, Sugar Creek has consistently been able to discharge at 200,000 gpd. There have been no further issues like the January Event or those in May 2017, although the temporary pumps are not a permanent solution.

Q When the question was posited 'What relief is Sugar Creek seeking in this Cause?', the first item mentioned was ... 'immediately upgrade its lift station and pipe to accommodate 200,000 Gallons per day of wastewater capacity from the pretreatment plant'.

That would seem to be, at least, the first request that was made by Sugar Creek [in its complaint].

What's the status of that request —

A They have done —

Q —as we sit here today?

A They have done that by adding the auxiliary pumps that were talked about earlier in my testimony.

They have above-ground pumps, I believe, running on generators that increase the hydraulic pressure enough to allow more flow through the line.

Since they've done that, we've consistently been able to discharge at the 200,000 gallons a day.

Tr. A-68-69.

Mr. Rodden testified the auxiliary pumps are a temporary solution, but he also stated that WWRSD has a project they are moving forward to bid to replace the lift station and force main from the Gateway Industrial Park to WWRSD's plant. This project is the long-term solution, and if appropriately implemented, it will solve Sugar Creek's problem as far as discharging the amounts Sugar Creek needs to discharge. Tr. A-70-71.

Mr. Rodden stated that Sugar Creek is a major customer of WWRSD providing, he believes, 25 to 30% of its sewer treatment business. Yet, there was no discussion, according to Mr. Rodden, when Sugar Creek was rebuilding the RCF facility, about WWRSD's planned WWTP and needing funds or a commitment from Sugar Creek to secure the related financing. Mr. Rodden was vocal that not disclosing to Sugar Creek until well beyond the point of no return, after its operations started, that WWRSD was going to need money or a commitment in connection with the new WWTP "in and of itself caused a huge loss of confidence in the relationship that we could have with them [WWRSD]." Tr. A-73. He testified that that's a big issue for Sugar Creek, and as a result, the Complainant doesn't have trust in WWRSD anymore. He maintained that Sugar Creek is not responsible for contributing money or providing a long-term commitment to WWRSD in order for it to secure financing because such assurances were not part of Sugar Creek's original agreement for wastewater service. Mr. Rodden testified that Sugar Creek is unwilling to financially assist with the WWTP expansion project,

that there are better alternatives to address WWRSD's capacity issues—including interconnecting with the City of Connersville's wastewater treatment plant (the "Connersville Option").

With respect to the Connersville Option, Mr. Rodden explained that Sugar Creek wants this option to be fairly evaluated. If it is evaluated through a preliminary engineering report ("PER"), Mr. Rodden testified that Sugar Creek will support whichever option, i.e., the WWTP project or the Connersville Option, makes long-term economic sense for the area. Mr. Rodden stated that Sugar Creek is willing to sign a letter of commitment so financing can be secured for the WWTP alternative if that proves to economically be preferable. The concern is that WWRSD plans to proceed with the WWTP without having fully investigated the Connersville Option.

Mr. Rodden concluded his direct testimony by opining that WWRSD does not possess the technical, managerial, and financial capacity to properly operate a wastewater utility. He testified that after more than 15 months from the first bypass event, Sugar Creek has no confidence the problem is resolved. Mr. Rodden requested the Commission to initiate an investigation under Ind. Code § 8-1-30-3 and appoint a receiver. Although Mr. Rodden also requested in his direct testimony that Sugar Creek be permitted to directly discharge as opposed to remaining connected to WWRSD's system, he testified at the hearing that securing a National Pollutant Discharge Elimination System ("NPDES") permit from IDEM for direct discharge is not the best course for Sugar Creek for multiple reasons. First, if Sugar Creek does not remain a WWRSD customer, Mr. Rodden testified this hurts the area from a revenue standpoint. Second, Sugar Creek prefers to have somebody else between Sugar Creek and the river because it is safer; and third, Sugar Creek's preference is to not be in the sewage treatment business.

**B. Intervenors' Case-in-Chief.** Ms. Shaffer, President of the Economic Development Corporation of Wayne County, Indiana, testified on behalf of Wayne County. She stated that in her role as President, she is tasked with attracting new industries and businesses to Wayne County and being a liaison between the business community and Wayne County officials.

Ms. Shaffer testified regarding the impact of WWRSD's lack of capacity on economic development in Wayne County, as well as Wayne County's concerns with WWRSD's plans to replace its treatment plant instead of interconnecting with Connersville. Ms. Shaffer testified that Sugar Creek is a significant employer in Wayne County, and to the extent Complainant is unable to operate at full capacity, Sugar Creek could decide that doing business in Wayne County is not cost effective and move. Such a result would be devastating for Wayne County's residents, particularly those who are Sugar Creek employees. In addition, Sugar Creek has expressed an interest in adding capacity to its plant, and growing existing industries is an important means of generating economic development in Wayne County. Ms. Shaffer testified that the issues Sugar Creek is experiencing, as well as the disagreement between Sugar Creek and WWRSD, do not reflect well on Wayne County and its commitment to economic growth; therefore, one of Wayne County's primary purposes for intervening in this Cause is to assist Sugar Creek's efforts to obtain adequate and reliable service from WWRSD.

Ms. Shaffer explained that Wayne County has had a great deal of success in attracting food processing and food-related companies, and food processing companies are particularly interested in water and wastewater costs because their operations are water intensive. Ms. Shaffer discussed Wayne County's efforts to develop the Gateway Industrial Park. She stated that Wayne County invested approximately \$7.1 million to develop the Gateway Industrial Park, with approximately \$1.4 million spent on land acquisition and \$5.7 million on infrastructure improvements. Wayne County still owns



approximately 96 undeveloped acres in Gateway Industrial Park, 79 of which are certified shovel-ready. In addition, Sugar Creek owns 90 acres near Gateway Industrial Park and has indicated Wayne County can market this acreage.

Ms. Shaffer testified that at this time Wayne County is unable to market the Gateway Industrial Park to any facility that will have sewage capacity requirements exceeding those associated with normal restroom usage. She stated that food processing and other high water use industries are unwilling to consider the Gateway Industrial Park without assurance that they will have adequate and reliable capacity to operate without their operations being curtailed. Wayne County is fortunate, however, to have another industrial park in the Richmond area where they have had success in attracting companies and are in the process of optioning additional ground. Ms. Shaffer stated there is room for growth in this other industrial park while waiting for the issues in this proceeding to be resolved. In response to questions from the Presiding Officer, she testified that of the utilities she works with in Wayne County, WWRSD is the only utility that has not shown a true partnership with her office, and during site visits is perceived as not being excited about new investment in the Gateway Industrial Park. Ms. Shaffer also testified that to her knowledge, the companies other than Sugar Creek that are located in Gateway Industrial Park, i.e., Dot Foods, Inc. and Taconic Biosciences, Inc., have not had any troubles with WWRSD.

Ms. Shaffer testified regarding WWRSD's proposed expansion of its treatment plant. She expressed concern about whether this expansion will eliminate WWRSD's capacity issues and testified that while this expansion might enable WWRSD to effectively handle Sugar Creek's discharges, Wayne County does not believe it is sufficient to support long-term growth of the Gateway Industrial Park. From Wayne County's perspective, WWRSD entering into an agreement to interconnect with Connersville will provide certainty to industries, and it is that certainty that she is promoting. Ms. Shaffer stated that Wayne County is willing to provide financial assistance for the interconnection because there may be economic development grant money available but is presently unwilling to provide the same assistance for the plant expansion. She reiterated that the significant level of disagreement between WWRSD and its largest customer has, unfortunately, been very public and received substantial media attention. Such a dispute between a utility and its largest customer is not viewed positively in marketing the Gateway Industrial Park.

Ms. Shaffer is concerned with Sugar Creek's proposal to directly discharge all or a portion of its process water. While this might resolve Sugar Creek's problems and help ensure continued operation of its facility, she believes direct discharge could create new issues, including confusion by future Gateway Industrial Park tenants regarding how they will be able to discharge wastewater. She is also concerned that Sugar Creek's proposal to directly discharge will require WWRSD to spread its costs over a smaller customer base which, in turn, will increase costs for Wayne County residents as well as industries looking to locate in Wayne County. Ms. Shaffer stated that having one wastewater solution which has sufficient capacity for all Gateway Industrial Park tenants will simplify marketing efforts. She recommended the Commission issue an Order requiring WWRSD to sit down with all interested stakeholders and attempt to discuss the best solution for all parties.

Mr. Warner, Highway Engineer for Wayne County, also testified on Wayne County's behalf. He provided background information upon the capacity issues at WWRSD's treatment plant from Wayne County's perspective and conveyed that Wayne County would like WWRSD to further investigate interconnecting with Connersville, as opposed to expanding its plant.

Mr. Warner generally described the Gateway Industrial Park and testified that effluent from a sanitary manhole at the south end of the industrial park was called to his attention in the fall of 2015 by Wayne County crews who were mowing. When asked whether WWRSD has been able to provide adequate and reliable service, Mr. Warner testified that Sugar Creek's witnesses in this proceeding reflect that it has not. On cross-examination, he concurred that the crux of the problems Sugar Creek has experienced all focus on the Gateway Industrial Park lift station and its capacity limitations. He acknowledged that temporary pumps were added to offset these problems and that WWRSD has hired Wessler to evaluate whether the lift station problem is a design issue, a pump issue, or both and to remedy and upgrade the lift station. Mr. Warner also recalled concerns in 2009 and 2010 about the lagoon liner at WWRSD's treatment plant showing wear and noted it has not been replaced. He would, however, not describe the liner as facing imminent failure, but rather, as having a problem. Tr. B-59.

Mr. Warner testified that Wayne County hopes Sugar Creek continues to grow and its capacity needs increase. He stated that Sugar Creek has projected a future need for 400,000 gpd of capacity, which is higher than was projected when its operations began. Mr. Warner acknowledged that WWRSD hired Wessler in 2014 to design upgrades to its WWTP, including adding 400,000 gpd of additional capacity. Based on estimates Mr. Warner developed, he does not believe 400,000 gpd of additional capacity will be sufficient to serve the increased discharges Sugar Creek is projecting and the Wayne County Economic Development Corporation's projections upon what is needed to promote the Gateway Industrial Park as shovel-ready. On cross-examination, Mr. Warner concurred that his numbers reflect a very rough estimate and that WWRSD cannot continue utilizing the existing plant.

Mr. Warner testified that WWRSD retained Callahan CPA Group to study the rate impact of expanding WWRSD's treatment plant, and they concluded the initial phase of plant upgrades, to be in compliance with IDEM requirements, will drastically increase wastewater service costs. A proposed capacity charge to Sugar Creek of just under \$3,000,000 was included in the rate study, but Mr. Warner testified Sugar Creek is not amenable to paying a capacity fee. He noted Mr. Rodden testified that Sugar Creek agreed to invest \$130 million to upgrade a production facility in Cambridge City but did not agree to contribute \$3 million or make a long-term commitment to service in exchange for WWRSD providing wastewater service.

Mr. Warner stated that Wayne County officials met with Sugar Creek's representatives on numerous occasions in late 2015 to discuss possible wastewater treatment alternatives, including options to increase capacity. He testified on cross-examination that this effort began after Sugar Creek found out that WWRSD wanted to charge Sugar Creek \$3 million for attaching to their system, so Sugar Creek began looking at what options are available so that does not happen "since they [Sugar Creek] never expected that in the first place." Tr. B-44. WWRSD was not included in these meetings. Following these discussions, in late fall 2015, Strand Associates, Inc. ("Strand") was retained by Wayne County and Sugar Creek to determine the available capacity of the line from Milton to Connersville and the costs to connect the Gateway Industrial Park to that system. Strand concluded this option is viable for wastewater discharges from the Gateway Industrial Park, but Mr. Warner testified he could not state with certainty, at this point, that interconnecting with Connersville will result in lower rates than expansion of WWRSD's plant. Additional evaluation of this alternative needs to be done to determine the rate impact.

On cross-examination Mr. Warner testified that within a few months after the Strand report dated January 22, 2016, identified the lift station upgrades needed in the Gateway Industrial Park for the park's wastewater to flow to Connersville, the Indiana Finance Authority ("IFA") stepped in and said "it's either going to be everything stays in Cambridge City or everything goes to Connersville." Tr. B-45. That occurred, he believes, after a Wayne County Council person who is also in charge of the Eastern Indiana Regional Planning Commission had discussions with IFA representatives. At the time, WWRSD wanted Sugar Creek to sign a commitment letter. IFA asked Strand to perform an additional study, that IFA funded, of the cost to take all waste discharged from WWRSD to Connersville.

Mr. Warner expressed concern that in deciding to expand and design the new WWTP, WWRSD's Board did not adequately consider the needs of Wayne County, Sugar Creek, or its customers. He believes the Commission should require WWRSD to work collaboratively with Wayne County, Sugar Creek, Cambridge City, and other interested stakeholders to affirmatively consider alternatives to expanding WWRSD's treatment plant.

Mark McCarty testified on behalf of Cambridge City. He is a member of Cambridge City's Town Council and is one of the Town Council's four appointees to the nine-member WWRSD Board. Mr. McCarty generally explained the interrelationship between Cambridge City and WWRSD. He testified that in 1974, Cambridge City was one of five municipalities within Wayne County to petition the Indiana Stream Pollution Control Board to establish this Regional Sewer District. In conjunction with this creation, Cambridge City transferred all of its wastewater assets to WWRSD. Cambridge City continues to be associated in multiple ways with WWRSD. It is responsible for all billing services provided for rate payers living within Cambridge City, and WWRSD's physical plant continues to be located within Cambridge City, which is the home jurisdiction for the majority of WWRSD's rate payers. Milton and East Germantown earlier removed themselves from WWRSD, leaving Cambridge City as one of the three bodies now making appointments to WWRSD's Board. Cambridge City appoints four members to WWRSD's Board; Dublin appoints three members, and Mount Auburn appoints two.

Mr. McCarty testified that Cambridge City is concerned anytime a local business does not have its utility service needs met, and it appears from the information provided that Sugar Creek has on multiple occasions been unable to obtain sufficient treatment services from WWRSD for its waste products. Sugar Creek is Cambridge City's largest water user and rate payer, so Cambridge City is also concerned about Sugar Creek potentially reducing its water use. By a vote of four to one, the Cambridge City Town Council voted to intervene in this proceeding for two basic purposes: (1) to the extent a receiver is appointed to operate WWRSD's sewage disposal system, Cambridge City wants to express its willingness to re-assume ownership and/or management, and (2) to convey that the Town Council does not believe WWRSD gave serious consideration to the Connersville Option, determining from the outset to retain operation of WWRSD so it remains locally owned and operated. He stated that a majority of the Town Council wants to stop short, however, of affirmatively saying WWRSD should enter into a contract with Connersville for treatment services before there is additional review of the costs as opposed to the current cost estimates. Mr. McCarty does not believe sufficient numbers have been provided to WWRSD to decide between expanding the WWTP or building a line to Connersville.

In response to questions from the Presiding Officer, Mr. McCarty testified that the people in Cambridge City and Dublin just want this matter to end, either with WWRSD building a new

treatment plant in Cambridge City or extending a line to Connersville. He relayed the hope that when the Commission makes its decision, it is not gray. "A lot of people want it over with." Tr. B-71. When asked whether he thought WWRSD has outlived its purpose, Mr. McCarty answered "yes." Tr. B-76.

**C. WWRSD's Case-in-Chief.** Martin Wessler, P.E., provided general background about WWRSD. He testified that Wessler has been assisting WWRSD since 1995, so he is familiar with the proposed WWTP expansion project, the Gateway Industrial Park lift station project, and the other options WWRSD reviewed before the Board decided to move forward with the WWTP project.

Mr. Wessler testified that WWRSD was formed in 1974 as a non-profit municipal corporation created to provide efficient sanitary sewer service to customers in western Wayne County, Indiana. WWRSD took over Cambridge City's treatment plant and facilities and has grown to now also serve customers in Mount Auburn and Dublin, the Gateway Industrial Park, and several commercial customers outside the industrial park. At present, WWRSD serves around 1,200 to 1,300 customers in Wayne County. WWRSD has maintained the former Cambridge City treatment plant as its treatment facility with a rated average capacity of 0.804 mgd of wastewater and a maximum capacity of 2.00 mgd. Mr. Wessler testified that WWRSD is proud of its service record and has capably and consistently met its IDEM NPDES permit and treatment requirements. He testified that WWRSD has adequate ability and capacity to serve all its customers, including Sugar Creek, and has all necessary technical, financial, and managerial capability to continue to serve.

Wessler's engagement by WWRSD began in 1995 to assist with wastewater system improvements. Since 1995, Wessler has assisted WWRSD with most, if not all, of its engineering and construction for capital projects, plant upgrades, operational issues, and most recently, assisted WWRSD with developing plans to upgrade its treatment plant and collection system. Mr. Wessler testified the treatment plant efforts began in earnest in 2008 when WWRSD obtained a grant from Wayne County Economic Development Corporation and engaged Wessler to prepare a PER for expansion of the existing WWTP to facilitate serving RCF's facility and other anticipated Gateway Industrial Park growth. Wessler assisted WWRSD with evaluating and certifying capacity for RCF and provided operational and engineering assistance during the start-up and shut down of RCF's facility. Mr. Wessler testified that following the news in 2014 of Sugar Creek purchasing the shuttered RCF facility, Wessler moved quickly to present a WWTP project update to WWRSD's Board. They verified that WWRSD qualified for an IFA State Revolving Fund ("SFR") low interest loan for the WWTP project, so a financing application was prepared and submitted to the SRF. Wessler prepared another PER to meet the SRF format guidelines that was submitted in May 2014 and, upon SRF review, was amended and approved in December 2014. Following this approval, contract documents were prepared, including engineering plans and specifications, for the WWTP expansion project. The documents were then submitted to IDEM for approval, and a construction permit was obtained from IDEM in October 2015. Mr. Wessler testified that meetings occurred with Sugar Creek during this time period at which Sugar Creek was updated on the planned WWTP expansion project because this project would benefit Sugar Creek's plans and its schedule for future expansion.

Mr. Wessler testified that while WWRSD was moving forward with obtaining the approvals described above, Sugar Creek was underway with its plant expansion, quadrupling the former RCF plant size, constructing its pretreatment system, and seeking IDEM construction permits. Mr. Wessler stated that Sugar Creek asked WWRSD twice to delay its expansion project and that it was during these delays that Sugar Creek engaged Strand to review the Gateway Industrial Park lift station and

then later to evaluate the possibility of sending flows to Connersville. Wayne County joined in Sugar Creek's second request to WWRSD to delay the WWTP expansion. Mr. Wessler stated that WWRSD accommodated these requests, worked with Wayne County and Sugar Creek's representatives to consider their requests, and reviewed all necessary information and any practical options. After over a year of requested delays by Sugar Creek and Wayne County, and after considering and reviewing their investigations and options, Mr. Wessler testified that WWRSD's Board voted to proceed with the WWTP expansion project in January 2017 as the most viable option.

Mr. Wessler testified that WWRSD obtained approval from the SRF in March 2017 to publicly bid the WWTP project, and after receiving the bids on May 18, 2017, the SRF approved awarding the construction contract. Mr. Wessler testified that WWRSD has not closed on this loan, however, due primarily to two issues: (1) Sugar Creek's refusal to sign a treatment agreement or letter of intent which the SRF requires, and (2) the pending complaint in this Cause. Mr. Wessler believes WWRSD should be allowed to proceed with the plant expansion.

Mr. Wessler testified WWRSD's Board asked his firm to assist, advise, and directly communicate and coordinate with Sugar Creek's representatives starting in 2014 through the present. He recalled meetings over several months to discuss: (1) the timing of the WWTP expansion and how to coordinate with Sugar Creek's start-up and future expansion needs; (2) Sugar Creek's pretreatment system and supporting its IDEM Industrial Waste Permit ("IWP") process, and (3) construction costs and contributions. According to Mr. Wessler, during these meetings Sugar Creek's representatives discussed the state-of-the-art processing facility and what it would mean for Wayne County with the proposed number of jobs, tax base, and utility usage. Sugar Creek also discussed the ramp-up of its operations and resulting wastewater discharges and asked WWRSD for flexibility and lenience in "hiccups" and "burps" after the start-up because Sugar Creek's pretreatment system is a biological plant, and it takes time for the biological process to stabilize. Sugar Creek also asked for WWRSD's assistance with its IDEM IWP application because Sugar Creek applied for a modification to RCF's IWP to save time and start production sooner. WWRSD supported these efforts.

Mr. Wessler testified that Sugar Creek explained it would start with one line and one haul in July 2015, then additional lines and hauls would be added in the second and third phases. At the end of the third phase Sugar Creek projected purchasing approximately 275,000 gpd of water from Cambridge City and producing 200,000 gpd of wastewater flow to WWRSD's collection system. Sugar Creek explained that its pretreatment system would have an equalization tank so while peak flows generated within the processing plant and sent to the pretreatment system might be as high as 400 gpm, those internal flows would be sent to the equalization tank and pumped out through Sugar Creek's pretreatment system at a much lower flow of approximately 167 gpm and then discharged to WWRSD's system. Sugar Creek requested up to 200,000 gpd capacity. Mr. Wessler described the verification and review WWRSD conducted before issuing the capacity certification for Sugar Creek's IDEM construction permit application in January 2015.

Mr. Wessler stated that all wastewater discharged inside and outside Gateway Industrial Park is eventually pumped to the manhole outside WWRSD's treatment plant. Flows along Frontage Road and northeast of the industrial park are pumped from the Frontage Road lift station to the gravity sewer in the Gateway Industrial Park. Flows from Gateway Industrial Park plus the Frontage Road lift station flows are pumped from the industrial park lift station to the Capitol Hill lift station. The Capitol Hill lift station then pumps that sewage directly to WWRSD's plant. Mr. Wessler's recollection is that the Whitewater River Economic Council ("WREC"), an economic development

arm of Wayne County, was responsible for developing Gateway Industrial Park. In that capacity, WREC hired GRW Engineering to provide the planning, design engineering, and construction management of the collection sewers, lift stations, force mains, water treatment plant, water mains, and other infrastructure to the respective utilities. WWRSD agreed to own and operate the wastewater infrastructure after this project was completed, but WWRSD did not oversee the project design or construction. Mr. Wessler recalls no capacity or flow issues from RCF or any other Gateway Industrial Park customers other than Sugar Creek. There were concerns with RCF regarding high strength waste and fats, oils, and grease ("FOG") as the RCF effluent flow was high temperature and FOG flowed through RCF's grease traps and then coagulated in the lift stations or at the treatment plant, but WWRSD timely addressed those issues as they arose.

When RCF shut down, WWRSD was ready to proceed with a WWTP expansion. The original PER prepared in August 2009 for the WWTP expansion included an option to expand the WWTP to 1.2 mgd. From Mr. Wessler's perspective, WWRSD had a plan in place then to accommodate the wastewater treatment needs of the Gateway Industrial Park, including Sugar Creek flow of up to 400,000 gpd, with WWTP capacity to spare for additional development. Mr. Wessler testified that WWRSD tried to balance the future capacity needs of Sugar Creek and Wayne County with the revenue sources that would actually be realized from the customers who will use the WWTP and collection system, recognizing that WWRSD could not significantly over build the WWTP and ask its current customers to pay for unreasonable excess capacity. Mr. Wessler testified there were numerous discussions with the SRF and IDEM to even allow the WWTP project to be sized at 1.2 mgd, as IDEM was concerned that expanding to 1.2 mgd was excessive. Sugar Creek and Wayne County wanted additional capacity but have refused to commit to pay for that capacity or offer any type of capacity charge to reserve future additional WWTP capacity.

Mr. Wessler testified that when WWRSD was asked to file the capacity certification for Sugar Creek's construction permit application, Sugar Creek informed WWRSD they would be ramping up to a flow of 200,000 gpd. While Sugar Creek mentioned that its pretreatment system would be sized for future capacity of 300,000 gpd, they indicated that will be in the future, well after WWRSD completes its WWTP expansion.

When Sugar Creek began to ramp-up production, Sugar Creek and WWRSD anticipated there being issues but agreed to work together to address these. The first issue Mr. Wessler recalls was in August 2016 when WWRSD became aware of an apparent flow capacity issue with the industrial park lift station pump on August 10, 2016. He testified that on August 12, 2016, WWRSD attempted to perform drawdown testing of the lift station to determine the effective pumping capacity; however, the lift station wet well was surcharged, and the testing could not be performed. On August 15, 2016, WWRSD's Board authorized further investigation. Mr. Wessler testified that at a meeting on September 2, 2016, with WWRSD, Sugar Creek, and Strand, Sugar Creek offered to pay the cost of temporarily pumping with above ground diesel pumps at the lift station while a permanent long-term solution was designed and constructed. WWRSD's Board approved Sugar Creek's offer to install and pay for temporary pumps, but Sugar Creek did not proceed with that installation.

The next lift station incident Mr. Wessler recalls was on or about January 17, 2017, i.e., the January Event, when it was determined the existing lift station pumps were operating but appeared to be operating at less than their rated capacity. At that time, Sugar Creek represented its flows were not near 200,000 gpd capacity and requested WWRSD resolve the issue. A pump manufacturer was contacted on January 18, 2017, to provide new pumps capable of meeting the original design

parameters of 240-280 gpm. On January 20, Mr. Wessler met with the manufacturer of Xylem pumps at the lift station site so Xylem's representative could review the dimensions and verify the pumps would fit in the wet well. WWRSD then signed the quote of \$24,852 to purchase the pumps and proceed with installation. Mr. Wessler testified the pump controllers were delivered on February 3 and installed. On February 6, the Xylem pumps were installed. Start up and training was provided to WWRSD, and the pumps were placed in operation that day. The cost from Turpin Electric to install the controllers and pumps was \$2,521.94. Mr. Wessler testified that at each critical step, Sugar Creek was kept up to date on these efforts and that he directly communicated with Alex Hauck, Ed Rodden, and Victor Dearman at Sugar Creek throughout this process through calls and multiple emails on January 23 and 25, 2017, and February 2 and 3, 2017.

Following installation of the new pumps, Mr. Wessler testified WWRSD also proactively inspected and serviced the pumps and motor starters at the Capitol Hill lift station. WWRSD had new motor starters installed, rebuilt the old starters for spare inventory, and installed new impellers on each pump to restore the pumps to the original design parameters of approximately 350 gpm. The electrical improvements and pumps with new impellers were installed on March 6 and 22, 2017, with the work completed by Turpin Electric at a cost of \$12,443.90.

Mr. Wessler testified that WWRSD became aware of the May 2017 incident when notified by Sugar Creek late on May 22, 2017. On May 23, 2017, WWRSD contacted Xylem for emergency service since Xylem had installed the new pumps. Mr. Wessler described the tests performed on May 23 to determine the effective pumping capacity of the pumps at that time. The Xylem field service technician arrived on site on May 24, and it was determined the pumps had somehow rotated off the discharge connection. Mr. Wessler stated the Xylem technician pulled the pumps and re-installed them. Once the discharge connection was sealed at approximately 11:15 a.m., Sugar Creek personnel on site instructed their plant personnel to start discharging again from the pretreatment system. According to Mr. Wessler, out of an abundance of caution, WWRSD ordered new gaskets for the pumps that the Xylem technician installed on Memorial Day, May 29, 2017. Turpin Electric's bill for these issues was \$1,799.90.

Mr. Wessler testified that when he was on site on May 24, Victor Dearman from Sugar Creek discussed Sugar Creek's pretreatment system with him in greater detail. He relayed that Sugar Creek's flow is not equalized at the discharge end of the pretreatment system, but rather, near the front of the system. Mr. Wessler learned that Sugar Creek receives up to 400 gpm into the equalization tank and then runs the pretreatment system so it discharges at a flow rate of 200 to 220 gpm, or higher, which is much more than the 167 gpm levels Sugar Creek represented to WWRSD; consequently, Sugar Creek's total sewage flow rate to the lift station could be 320 to 340 gpm, or greater, which is greater than the 280 gpm pumping capacity of the lift station. After these discussions and this new information, Wessler proceeded to review options to provide additional emergency pumping capacity to meet Sugar Creek's flow rate conditions of approximately 350 to 400 gpm. This was an expedited evaluation, during which WWRSD decided to corroborate the incoming Sugar Creek flows to the industrial park lift station by installing flow meters. Flow meters were installed in two locations: one meter immediately upstream of Sugar Creek and one meter immediately downstream. The meters were installed and calibrated by Gripp, Inc. on June, 5, 2017, and flows began to be recorded that day.

Based on the new information Mr. Wessler had learned, WWRSD's Board declared an emergency, reviewed the evaluations and recommendations presented to them, and authorized the

rental and installation of two diesel bypass pumping units on June 7, 2017. These units were installed on June 15, 2017, and have continued to be in operation since then. Mr. Wessler testified the units are pumping between 350 and 400 gpm as recorded on their flow meters. The diesel pump rental quote was \$1,118.60 per month, plus the cost of diesel fuel, and Turpin Electric's bill for the diesel pump installation was \$1,688.06. Mr. Wessler sponsored Exhibit MW-10 which shows the meter locations, the recorded flows, and the peak flow rate recorded each day, along with the recorded flow and pump run time of the diesel pumps. After reviewing the flow metering information from Gripp, Inc. starting on June 5, 2017, Mr. Wessler testified the flow from Sugar Creek has ranged from a minimum of 77,385 gpd on June 11, 2017, to a maximum of 370,903 gpd on July 13, 2017. Over the metering period, Sugar Creek's total flow averaged a little more than 270,000 gpd. He stated the peak flow rate from Sugar Creek during this time ranged from a minimum of 237.8 gpm on June 18, 2017, to a maximum of 622.5 gpm on July 16, 2017, and over the period, Sugar Creek's peak flow rate averaged just under 400 gpm. Mr. Wessler testified that this data is alarming and of great concern.

Sugar Creek's daily flows, based on the data collected since June 5, 2017, are approximately 70,000 gpd greater than the capacity Sugar Creek requested in its applications. Of graver concern, however, is Sugar Creek's peak flow rate. Mr. Wessler testified that Sugar Creek's peak flow rate has averaged almost 400 gpm, and its peak flow rate has regularly exceeded the lift station pump rated capacity of 280 gpm on every day except two. Based upon this data, the cause behind the lift station pump issues and sewer system surcharges is the lift station pumps' inability to handle Sugar Creek's peak flow rate. Mr. Wessler testified that Sugar Creek has been flowing at well in excess of the flow rates represented to WWRSD. In addition, Mr. Wessler noted that following installation of the diesel driven bypass pumps on June 15, Sugar Creek's flow increased, exceeding the 200,000 gpd flow on 51 of the 60 days since June 15, with the average discharge flow increasing to 277,000 gpd. Mr. Wessler stated that even with a pumping rate of 400 gpm from the diesel pump at the industrial park lift station, the sewer system surcharged during this metering period due to Sugar Creek's high peak flows.

Mr. Wessler testified that this flow metering data verifies the decision WWRSD's Board made on July 17, 2017, to continue their plans for a permanent long-term solution to handle these peak flows and maintain service to existing customers by building a higher capacity industrial park lift station and a new force main. WWRSD engaged Wessler on July 17, 2017, to proceed with the SRF PER amendment and the engineering design of the Gateway Industrial Park lift station project. This project will be constructed in sequence with the WWTP expansion project such that the lift station project is completed immediately following start-up of the new WWTP.

Mr. Wessler testified that the above ground pumps at the lift station have provided WWRSD and its customers, including Sugar Creek, with a pumping solution that will work reliably until the new industrial park lift station project is completed. He estimated that to date it has cost WWRSD approximately \$85,000 to replace the Gateway Industrial Park lift station pumps, restore the Capitol Hill lift station pumps, install flowmeters, and install and operate the emergency diesel pumps. Approximately \$1.9 million is budgeted for the new higher capacity industrial park lift station and force main.

Mr. Wessler also testified regarding the Connersville Option. He summarized the steps that will need to be taken, from his perspective, to pursue this option and estimated it will take approximately three years to complete this alternative. He also estimated the additional cost for WWRSD to reach the same point that WWRSD is now with the WWTP expansion project (bids



received, ready to award the construction contract), plus acquire the necessary easements, to be \$1.2 million. Mr. Wessler testified that he reviewed the financial analysis and testimony Mr. Krohn prepared and agreed with Mr. Krohn's conclusion that expanding WWRSD's treatment plant is the best option. Mr. Wessler testified that the WWTP build option WWRSD has vetted over several years is the most flexible and viable option, and there are too many unknowns and delays related to the Connersville Option to make it reasonable.

Mr. Wessler concluded by testifying that WWRSD has the requisite ability to operate and manage its utility and has capably and ably served its customers for over thirty years. He testified that Sugar Creek and WWRSD knew issues would arise as Sugar Creek ramped-up its operations, and WWRSD has addressed these as they arose. Mr. Wessler stated that WWRSD is certainly not a troubled utility. Its many efforts, as recounted in his testimony, show WWRSD is actively engaged, has tried very hard to work on the needs and issues of an expanding service territory, and has also tried to work with its customers and the community.

Mr. Krohn, CPA and executive partner of O.W. Krohn & Associates, LLP, testified that WWRSD engaged him in April/May 2017 to assist WWRSD with evaluating options and its decision to move forward with the WWTP expansion. As such, his analysis was done after WWRSD made the decision to proceed with a new treatment plant and not interconnect with Connersville. Mr. Krohn discussed the cost benefit analysis he performed comparing the WWTP expansion to the Connersville Option, and he testified that expanding WWRSD's WWTP was the economically better option. Mr. Krohn provided analysis and data showing why the Connersville Option offers no compelling advantages and, instead, offers additional costs, risks, and lost opportunities for WWRSD's customers when compared to the WWTP expansion. Mr. Krohn further testified why, based on the numbers, WWRSD believes constructing additional capacity is the best, most flexible option for its customers. His analysis was based upon the cost of constructing WWRSD's proposed 1.2 mgd plant and did not include costs for additional expansion. He testified that, in his opinion, WWRSD is in no way a troubled or incapable utility and stands ready to move forward with its expansion and upgrade.

**D. Sugar Creek's Rebuttal Testimony.** On rebuttal, Mr. Rodden testified that he took exception to many things in WWRSD's evidence because the evidence portrayed Sugar Creek as the bad actor when Sugar Creek has done nothing more than invest \$100 million in Cambridge City to bring new opportunity and jobs. He reiterated that WWRSD's capacity certificate was specifically not contingent on WWRSD expanding its plant and testified that a long-term service commitment or \$3 million contribution was not part of the bargain for Sugar Creek to invest in Indiana. He further testified that WWRSD's capacity issues have impacted Sugar Creek's ability to grow notwithstanding that Sugar Creek always planned to expand to 300,000 gpd within two years. Mr. Rodden testified that while operating below 200,000 gpd during the past two years, WWRSD experienced capacity issues which resulted in Sugar Creek shutting down its plant and incurring related costs.

Mr. Rodden disagreed that Sugar Creek's refusal to sign a treatment agreement or letter of intent delayed WWRSD's expansion project and contributed to WWRSD's capacity issues. He stated that if WWRSD had expanded its plant, the capacity issues would likely still exist because the 2014 PER WWRSD submitted for the plant expansion shows WWRSD did not take into account the capacity needs of Sugar Creek and other Gateway Industrial Park customers. Mr. Rodden disagreed that excessive flows caused WWRSD's capacity issues because, as explained in Mr. Gregory's analysis of WWRSD's flow data, he believes this data is flawed and incorrect.

In testifying upon other concerns with Mr. Wessler's testimony, Mr. Rodden expressed concern that Mr. Wessler's discussion of the Gateway Industrial Park lift station's capacity only included customers located in the industrial park, although the lift station also handles flow from customers outside the industrial park. Mr. Rodden believes this omission indicates WWRSD and/or Mr. Wessler failed to consider these customers when performing their calculations and investigating whether WWRSD has sufficient capacity to handle Sugar Creek's flows. He further testified that this is concerning because Mr. Wessler initially ran his calculations based upon there being a 6" diameter pipe, but it was later confirmed this pipe has a 5" diameter, and this makes a significant difference in pump capability.

Mr. Rodden also responded to Mr. Wessler's testimony about the Connersville Option. Mr. Rodden testified that Sugar Creek asked WWRSD to delay its expansion projects because Sugar Creek is concerned about their cost, design, and feasibility, and Sugar Creek wants to ensure WWRSD fully explores the Connersville Option. He stated WWRSD did not fully explore the Connersville Option, as evidenced by its failure to complete a construction design or solicit bids for that project. Mr. Rodden disagreed with Mr. Krohn's analysis that WWRSD's expansion is economically a better alternative than the Connersville Option. He does not accept Mr. Krohn's analysis because Mr. Krohn was engaged by WWRSD in April/May 2017 and, by that point, the decision to move ahead with the WWTP expansion and not the Connersville Option had been made. Mr. Rodden found parts of Mr. Krohn's cost/benefit analysis objectionable, including his comparison of cost estimates when actual design and bids have not been completed, and he was critical of Mr. Krohn not considering, in his analysis, that the Connersville Option offers significant rate protection and substantially more capacity.

Mr. Rodden concluded his testimony by reiterating that if Mr. Wessler is concerned about Sugar Creek's flows, there is always the option of direct discharge. He believes WWRSD has serious deficiencies it has failed to correct and that such deficiencies may detrimentally impact Sugar Creek's ability to grow and invest in Indiana.

Scott Gregory, Facilities Maintenance Supervisor at Sugar Creek's Cambridge City location, also provided rebuttal testimony. Specifically, Mr. Gregory responded to Mr. Wessler's testimony regarding problems with the lift station pumps and rebutted the inference that Sugar Creek's excess flows caused WWRSD's capacity issues. With respect to the lift station pumps, Mr. Gregory testified that Mr. Wessler inaccurately described WWRSD's actions during the May Event because, based upon what Mr. Gregory was told by a WWRSD contractor, WWRSD knew the gaskets tore when the pumps were replaced in February 2017 but left the pumps in the ground notwithstanding this knowledge.

Mr. Gregory also took issue with Mr. Wessler regarding the Gripp, Inc. flow monitoring data WWRSD began collecting after the May Event. Mr. Gregory testified the flow figures showing Sugar Creek operated in excess are incorrect and could not have occurred. Mr. Gregory reviewed the flow data Mr. Wessler provided and, based on his review, it is clear the flow meters were improperly installed and/or calibrated, because the peak flows attributed to Sugar Creek are impossible. He provided examples from the flow data where the data registered peak flows during times Sugar Creek was not discharging, as well as examples where it registered hourly flow rates which Mr. Gregory testified could not have occurred due to limitations on the maximum pumping capacity of Sugar Creek's DAF pump out of its facility. Mr. Gregory raised additional concerns about WWRSD's flow

data and sponsored Attachment SG-R3, a spreadsheet comparing the peak flows WWRSD recorded and the peak flows Sugar Creek recorded.

4. **Commission Discussion and Findings.** Sugar Creek initiated this Cause as a complaint under Ind. Code § 8-1-30-3(b). This statute authorizes the Commission to review a utility company's operations upon the filing of a customer's complaint. The evidence shows Sugar Creek is WWRSD's largest customer. In connection with this customer's complaint, Ind. Code § 8-1-30-3(a) authorizes the Commission to review the following:

(a) The commission may review any of the following or any combination of the following aspects of a utility company's operations:

- (1) Technical, financial, and managerial capacity.
- (2) Physical condition and capacity of the utility company's plant.
- (3) Compliance with Indiana or federal law or the commission's orders.
- (4) Provision of service to customers.

There is considerable overlap among these, and evidence was presented, as discussed below, upon each.

In conducting this review, we are mindful that the specific relief Sugar Creek seeks is an order: (1) requiring WWRSD to immediately upgrade its facilities to accommodate 200,000 gpd of wastewater; (2) preventing WWRSD from invoking Ind. Code § 13-26-23-20 or otherwise asserting territorial jurisdiction to require Sugar Creek to remain connected to WWRSD's system; and (3) if necessary, appointing a receiver to take over WWRSD and its operations.<sup>4</sup>

A. **WWRSD's Technical, Financial, and Managerial Capacity.** The record shows significant issues between WWRSD and Sugar Creek. We are not persuaded, however, that these differences equate to WWRSD not having the technical, financial, and managerial capacity to operate its utility company.

Ms. Shaffer identified WWRSD as the only Wayne County utility she works with that has not truly partnered with the Economic Development Corporation of Wayne County in embracing its economic development efforts, but she testified that of the companies located in the Gateway Industrial park, to her knowledge, only Sugar Creek has experienced troubles with WWRSD. WWRSD serves 1,200 to 1,300 customers and within the Gateway Industrial Park, WWRSD serves Dot Foods, Inc. and Taconic Biosciences, Inc. in addition to Sugar Creek. WWRSD also treats the Town of Pershing's wastewater.

Mr. Wessler, a licensed professional engineer, testified about his long-standing relationship with WWRSD dating back to 1995. He reviewed the engineering assistance WWRSD has sought, including assisting WWRSD with engineering and construction for capital projects, plant upgrades,

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<sup>4</sup> Under Ind. Code § 8-1-30-5(b)(2), a prerequisite to appointing a receiver is a finding by the Commission under Ind. Code § 8-1-30-4 that the utility has continued violations of law after the Commission has ordered compliance or continued violations of Commission orders or the Commission finds, after a review under Ind. Code § 8-1-30-3, that the utility company has severe deficiencies that the utility company has failed to remedy.

operational issues, and with developing plans to upgrade its treatment plant and collection system—including the Gateway Industrial Park lift station. Mr. Wessler stated that WWRSD has consistently met its IDEM NPDES permit and treatment requirements, and he was unequivocal that WWRSD has adequate ability and capacity to serve all its customers and the necessary technical, financial, and managerial capability to provide this service.

The record demonstrates WWRSD has secured professional assistance in not only engineering and technical matters, but also retained Callahan CPA Group to study the rate impact of expanding WWRSD's treatment plant and O.W. Krohn & Associates, LLP to perform a cost benefit analysis comparing the WWTP expansion to the Connersville Option. Mr. Krohn is a certified public accountant who has rendered public accounting and financial consulting services for more than 39 years. His firm focuses on the accounting, financial, and managerial needs of local government units and utilities, primarily within Indiana. After working with WWRSD since April/May 2017, Mr. Krohn testified that WWRSD is in no way a troubled or incapable utility.

While there are certainly issues between Sugar Creek and WWRSD, we find the foregoing testimony persuasive that WWRSD has the technical, financial, and managerial capacity to conduct its utility operations; provided, however, that exercising good management oversight and system foresight entails exploring WWRSD's viable wastewater capacity options on their merits, from an approach that is not outcome driven. Although Mr. McCarty questioned whether WWRSD gave serious consideration to the Connersville Option, Mr. Wessler's testimony, coupled with Mr. Krohn's cost analysis, support the position that this alternative was investigated by WWRSD's Board, as opposed to summarily dismissed, but it was not fully vetted. Mr. Wessler acknowledged that WWRSD's analysis of the Connersville Option stopped short of a PER being performed to fully evaluate and compare this alternative to the new WWTP expansion. In response to questions from the Presiding Officer upon what is necessary to fully explore the Connersville Option, Mr. Wessler testified:

A To fully explore the Connersville option, as described yesterday, a Preliminary Engineering Report would need to be performed and completed.

Tr. C-34.

Mr. Wessler projected the cost of a PER to explore the Connersville Option will be approximately \$29,000. We are persuaded that prudent management should make this investment to be in a position to knowledgeably compare WWRSD's wastewater capacity options. Based on Mr. Rodden's testimony, this may also be money well spent since he testified Sugar Creek will support the \$12 million new WWTP alternative if properly explored and cost efficient or will sign a letter of commitment for the Connersville Option, as evidenced by the following exchange during Mr. Rodden's cross-examination:

Q Well, you raise concerns about and indicate in your direct testimony that you [Sugar Creek] were asked to commit or sign a letter of commitment for the District but refused.

Do you recall that –

A Correct.

Q --testimony?

A Yes,

Q Would you [Sugar Creek] refuse a similar commitment if it were required to make the Connersville option work?

A No.

Q Why?

A Because we think it makes sense for all of the ratepayers, and understand that we know it's an estimate; so, you know, if for some unknown reason it [Connersville Option] came back as not as economically viable as building the plant, then, we [Sugar Creek] would support building the plant.

Q Okay, and you'd commit – sign a letter of commitment if that were the case?

A Yes.

Tr. A-52-52.

Mr. Rodden again confirmed Sugar Creek's support in responding to a follow up question by the Presiding Officer:

Q Okay. Because earlier this morning, there was some good back and forth about your interest in the Connersville option, and you had – correct me if I'm wrong, but you had said something to the effect that if the Connersville project is proved to not be cost efficient, assuming it's explored properly, that you [Sugar Creek] would be willing to look at the \$12 million proposal by Western Wayne and be willing to support it.

Am I getting that right?

A Yes, sir.

Tr. A-62.

The Commission finds the exercise of good management practices, under the circumstances, includes WWRSD developing a PER that is independently performed to determine the feasibility and near-term, as well as long-term, costs of the Connersville Option. The debt Mr. Wessler identified that Connersville has and the work left on Connersville's wastewater treatment plans, as well as appropriately updating related costs, should be considered in this process so the best available information is presented to WWRSD's Board to evaluate and make a decision on expanding wastewater capacity. For purposes of the PER, cost estimates based on a conceptual layout are acceptable as opposed to expending resources to develop a construction design. WWRSD is also encouraged to collaborate with its stakeholders in further investigating and considering the Connersville Option. Based upon the testimony, we find 90 days should be sufficient to complete this

PER. The issues between Sugar Creek and WWRSD are regrettable, especially given Sugar Creek's significant investment in Wayne County, its jobs for hundreds of Indiana employees, and its need for WWRSD's services, but if they are the fruit of WWRSD's reluctance to date to expend funds for a PER upon the Connersville Option, doing so should improve this situation by providing needed data and enable Sugar Creek to sign a treatment agreement or letter of intent.<sup>5</sup>

It is noted that Sugar Creek asserts WWRSD demonstrated poor managerial responsibility in neglecting prudent maintenance that placed it at risk of a service interruption. We are not persuaded, however, that Sugar Creek established a track record of poor maintenance. To the contrary, we find Mr. Wessler's testimony persuasive in demonstrating WWRSD's service commitment.

**B. WWRSD's Physical Condition and Plant Capacity.** In its complaint filed in May 2017, Sugar Creek asserts that WWRSD needed to upgrade its facilities to accommodate 200,000 gpd of wastewater discharged from Sugar Creek's pretreatment facility. At the time of the November evidentiary hearing, Mr. Rodden confirmed that Sugar Creek has consistently been able to discharge at 200,000 gpd since June 15, 2017, when auxiliary pumps were installed at the lift station. Based upon Mr. Wessler's testimony, Sugar Creek has actually been discharging to WWRSD's lift station without incident since June 15, 2017, at levels in excess of 200,000 gpd, exceeding 200,000 gpd flow on 51 of the 60 days following the auxiliary pump installation. Although Mr. Gregory on rebuttal disputed the accuracy of this excess flow, we are persuaded that WWRSD is accommodating 200,000 gpd of wastewater from Sugar Creek. The auxiliary pumps at the lift station are not a permanent solution, but the evidence is that the duration of their use is not limited. Mr. Wessler stated these pumps provide a pumping solution that will work reliably until the new industrial park lift station project is completed. Both Mr. Rodden and Mr. Wessler testified that WWRSD has a project moving forward to bid to replace the lift station and force main from the Gateway Industrial Park to WWRSD's plant that will be the long-term lift station solution. Based upon the evidence, the Commission finds WWRSD is accommodating 200,000 gpd of wastewater from Sugar Creek; consequently, it is not necessary to order WWRSD to upgrade its facilities to accommodate this flow. That said, we are mindful that WWRSD's capacity to accommodate Sugar Creek's flow long-term as its operations expand, as well as discharge from potential additional development of the Gateway Industrial Park and surrounding area, was also at issue during the hearing.

WWRSD needs to retire its existing wastewater treatment plant and increase its capacity. Mr. Wessler testified that efforts to do so began in earnest in 2008 when WWRSD obtained a grant and engaged Wessler to prepare a PER to expand the existing WWTP. Those efforts were prompted by the new RCF facility which closed when RCF declared bankruptcy. With the news of Sugar Creek purchasing this plant in 2014, Mr. Wessler testified his firm moved quickly to present a WWTP update to WWRSD's Board. These efforts continued, eventually culminating with approval from the SRF in March 2017 to issue the WWTP project for public bidding. Although the SRF approved awarding the construction contract, these efforts have stalled, according to Mr. Wessler, because Sugar Creek will not sign a treatment agreement or letter of intent and because of the pending complaint. Based upon the evidence, we anticipate resolution of the WWTP and future capacity issues

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<sup>5</sup> The acrimonious tone of the proposed orders the parties submitted, particularly the proposed order on WWRSD's behalf, is not productive for the Commission's consideration and use in issuing an Order in this Cause and, we surmise, perpetuates discord as opposed to a positive working relationship. This post-hearing submittal should be used to provide a proposed Order that is beneficial to the Commission, not inflammatory, and counsel is admonished to do so in the future. It is also highly inappropriate to inform the Commission about events that have transpired since the evidentiary hearing by including these in a proposed Order, as WWRSD did in its proposed Order at 24.

moving forward upon an Order being issued in this Cause and WWRSD completing the PER for the Connersville Option. Although Sugar Creek challenged the future adequacy of WWRSD's proposed WWTP and planned capacity that does not demonstrate an infirmity in the physical condition and capacity of WWRSD's plant currently.

We find it incongruous for Sugar Creek on one hand to contend that WWRSD's existing plant is in danger of imminent failure while repeatedly asking WWRSD to delay moving forward with the WWTP project given how dependent Sugar Creek's operations and plant expansion are upon being able to discharge its flows; yet, Mr. Wessler testified that WWRSD's Board accommodated over a year of requested delays by Sugar Creek and Wayne County upon the WWTP project. We find the more plausible inference from the evidence, including Mr. Warner's discussion of Sugar Creek's efforts in 2015 to find a wastewater treatment alternative to WWRSD, is that Sugar Creek and Wayne County needed time to review alternatives to WWRSD continuing to serve the Gateway Industrial Park, and WWRSD's plant was not perceived as facing imminent failure.

The evidence demonstrates that WWRSD's plant is 26 years old and needs repairs or replacement. WWRSD acknowledged the plant is approaching the end of its useful life. Sugar Creek did not establish that WWRSD has been derelict in the upkeep of the plant's physical condition. Although Mr. Warner recalled concerns in 2009 and 2010 about the lagoon liner at WWRSD's treatment plant showing wear, Mr. Warner also testified that seven years have passed without incident, so he would describe the liner as having a problem as opposed to facing imminent failure. Mr. Wessler echoed that the main issue with the plant, from an engineering standpoint, is the Biolac® basin and the liner. He testified that if the liner continues to hold, the plant could be fine for an undetermined period. If the liner rips, he explained there is a bentonite clay liner underneath the high density polyethylene liner, so there will not be adverse environmental impacts, but WWRSD will need to repair the liner to provide two layers of protection. He did not venture an opinion as to how dire the situation is with the liner. Based upon the evidence, we find the physical condition of WWRSD's plant is consistent with its age.

**C. Compliance with Indiana or Federal Law or Commission Orders.** The testimony demonstrates there have been overflows at the lift station serving Sugar Creek. Sugar Creek urges the Commission to find that a violation of law occurred because WWRSD did not report the overflow or subsequent bypasses. The Commission, however, is a statutory creation, and as such, the Commission can exercise only the power conferred upon it by statute. Further, any doubt upon the Commission's statutory authority is required to be resolved against the existence of such authority. *United Rural Elec. Membership Corp. v. Ind. & Mich. Elec. Co.*, 549 N.E.2d 1019, 1021 (Ind. 1990). It is not within the Commission's statutory authority to adjudicate whether actions constitute an environmental violation under Indiana law; consequently, in the absence of an IDEM notice of violation, the violation of law Sugar Creek asserts was not shown.

Sugar Creek also presented evidence that the President of WWRSD's Board is the president of a plumbing and heating company that has rendered business services for WWRSD. Sugar Creek asserts that no conflict of interest disclosure form was submitted to WWRSD reflecting this business relationship; consequently, this is a violation of Ind. Code § 35-44.1-1-4 and may constitute a crime. Again, the Commission is not authorized to adjudicate conflict of interest violations under Ind. Code § 35-44.1-1-4.

During cross-examination, Sugar Creek also presented a Supplemental Examination Report from the State Board of Accounts dated April 29, 2013. (Sugar Creek Ex. CX-18). According to Sugar Creek, this report noted improper payments and disbursements and requested reimbursement from certain WWRSD personnel for disbursements made for personal purchases. We note the examination results and comments also state that repayment for the identified personal disbursements was received.

Sugar Creek did not contend that WWRSD is violating federal law or Commission orders in conducting its operations. Based upon the record, as discussed above, we are not persuaded that Sugar Creek established WWRSD's operations are not being conducted in compliance with Indiana law.

**D. Provision of Service to Customers.** It is clear from the testimony that WWRSD and its largest customer are at loggerheads. The evidence leads us to conclude, however, that this is the result of WWRSD requesting \$3 million or a long-term commitment from Sugar Creek for the new WWTP as opposed to severe deficiencies in WWRSD's service, particularly severe deficiencies that have not been remedied. Quite the opposite has occurred. In each lift station incident, WWRSD took action to address and remedy the situation. We find the testimony shows a responsive utility that worked to promptly eliminate the lift station issues—actually eliminated these since mid-June 2017 by installing auxiliary pumps, but that did not dissuade Sugar Creek from continuing with its complaint.

Based upon Mr. Warner's testimony, before the first overflow occurred at the Gateway Industrial Park lift station in April 2016 that Mr. Holbrook identified, Sugar Creek's representatives initiated meetings with Wayne County's officials in 2015 upon potential wastewater treatment alternatives to WWRSD, including options to increase capacity, excluding WWRSD from these discussions. Mr. Rodden was direct in identifying WWRSD's request to Sugar Creek for funds or a commitment for the new WWTP expansion as the catalyst for distrust and Sugar Creek's loss of confidence in the relationship with WWRSD. WWRSD and Sugar Creek have a breakdown in communication and a difference in perspective upon whether Sugar Creek should financially contribute toward expanding the WWTP, and it is this breakdown—fueled by an independent PER not being performed for the Connersville Option, that we find is adversely impacting Sugar Creek's relationship with its wastewater service provider and that provider's ability to complete the treatment and capacity upgrades Sugar Creek will need.

While the testimony upon the status of WWRSD's current treatment plant was conflicting, the need for WWRSD to plan for, construct, and provide expanded treatment capacity—either through a new larger facility in Cambridge City and a long-term resolution of the lift station's challenges or a connection to Connersville, needs to be resolved. The Commission appreciates the balancing of interests required to meet current and known customer service needs versus projected economic development considerations; consequently, WWRSD, Sugar Creek, and the Intervenor are encouraged to collaboratively work together to resolve wastewater service to Sugar Creek, the Gateway Industrial Park, and the surrounding area. Consistent with our findings above, the Commission does not foresee second guessing the decision WWRSD reaches after the PER upon the Connersville Option is performed and WWRSD is knowledgeable upon the alternatives, long and near-term costs, rate impact, associated risks, timetables, and other appropriate considerations.

That said, an element of providing good service includes good lines of communication with customers, particularly the utility's largest customer whose business operations are dependent upon



WWRSD's wastewater service. While both parties are encouraged to improve communications with each other, as the utility before the Commission upon the pending complaint, we direct WWRSD to affirmatively take steps designed to improve communications with Sugar Creek, including promptly reporting/updating upon the status of service issues and other wastewater matters impacting Sugar Creek's operations.

**E. Directive to Not Assert Jurisdiction.** Although included in the relief originally requested, Sugar Creek did not present evidence substantiating the appropriateness of the request in its complaint for the Commission to prevent WWRSD from asserting territorial jurisdiction to require Sugar Creek to remain connected to WWRSD's system for wastewater treatment. Sugar Creek similarly did not address or include this requested relief in its proposed order. Mr. Rodden testified that Sugar Creek has filed for an NPDES permit from IDEM and is receiving concepts for what would need to be built for direct discharge, but he also testified that granting the NPDES permit is not the best course for Sugar Creek. Tr. A-81. Mr. Rodden further testified that Sugar Creek's preference is to not be in the sewage treatment business.

Based upon the evidence, we find Sugar Creek failed to establish that the Commission has statutory authority to order WWRSD to not assert territorial jurisdiction, as originally requested, or the propriety of this relief.

**F. Appointment of a Receiver.** While we found that WWRSD should, as an exercise of good management, develop a PER that is independently performed to evaluate the Connersville Option and directed WWRSD to work upon improving communications with Sugar Creek, based upon the evidence presented and discussed above, we are not persuaded Sugar Creek has shown WWRSD has severe deficiencies that WWRSD has failed to remedy, as required under Ind. Code § 8-1-30-4(2) to proceed with appointment of a receiver under Ind. Code § 8-1-30-5(b). The Commission will, therefore, not issue notice and schedule a hearing under Ind. Code § 8-1-30-5.

**5. Motion to Dismiss.** At the close of Sugar Creek's case-in-chief and again at the conclusion of all the evidence, WWRSD orally moved to dismiss this Cause pursuant to Ind. Trial Rule 41(B). In each instance, the motion was taken under advisement.

T.R. 41(B) provides for involuntary dismissal if, at the conclusion of the case-in-chief of the party who bears the burden of proof, "upon the weight of the evidence and the law there has been shown no right to relief." Under 170 IAC 1-1.1-26, the Commission may look to the Indiana Rules of Trial Procedure as appropriate.

The pending complaint was filed under Ind. Code § 8-1-30-3 which provides for the Commission to review certain aspects of WWRSD's operations. The evidence upon each of these areas of review is discussed above, and in some instances, we found the evidence sufficient to direct WWRSD to take certain actions. Accordingly, the motion to dismiss is denied.

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

1. The requested relief Sugar Creek seeks is denied, subject to WWRSD's compliance with Finding No. 4.A. above by completing the PER for the Connersville Option within 90 days of

the date of this Order and filing a copy of the PER under this Cause with the Water/Wastewater Division of the Commission, and WWRSD's compliance with Finding No. 4.D. above.

2. If WWRSD is unable to complete the PER for the Connersville Option within 90 days of the date of this Order, notice shall be filed under this Cause explaining the actions taken to timely complete this PER, why the time has been inadequate, and requesting an appropriate extension within which to complete and file this report with the Commission.

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

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

**APPROVED: APR 04 2018**

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

  
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Mary Becerra  
Secretary of the Commission