

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE
CITY OF VALPARAISO, INDIANA, AND
VALPARAISO CITY UTILITIES FOR
APPROVAL OF A REGULATORY ORDINANCE
ESTABLISHING A SERVICE TERRITORY FOR
THE CITY'S MUNICIPAL SEWER SYSTEM
PURSUANT TO IND. CODE CH. 8-1.5-6.

CAUSE NO. 45306

**PETITIONERS' OBJECTION TO
THE TOWN OF CHESTERTON, INDIANA'S MOTION TO CONSOLIDATE**

The City of Valparaiso, Indiana, (Valparaiso) and Valparaiso City Utilities (VCU) (collectively, Petitioners), by counsel, acting under 170 IAC 1-1.1-12(e) file their objection to the Town of Chesterton, Indiana's (Chesterton) Motion to Consolidate and, in support of their objection, state as follows:

1. On October 15, 2019, Petitioners filed their Verified Petition establishing this Cause. The Petition requests approval of a Valparaiso Ordinance No. 27-2019 (the Regulatory Ordinance), which establishes an exclusive sewer service area outside of Valparaiso's corporate boundaries (the Regulated Territory). As set forth in the Verified Petition, one purpose of the Regulatory Ordinance is to allow Valparaiso to effectuate the acquisition of the Damon Run Conservancy District's (Damon Run) sewage utility system and to allow Valparaiso to provide sewer utility service to Damon Run's customers.
2. On October 29, 2019, Chesterton simultaneously filed a Petition to Intervene in this Cause and a Petition in Cause No. 45312, seeking approval of a sewer service territory ordinance that Chesterton adopted in 2014 (Ordinance No. 2014-11) but never requested

Commission approval to enforce. Chesterton also filed simultaneous motions in this Cause and in Cause No. 45312, requesting that the two cases be consolidated.

3. Motions to consolidate Commission proceedings are authorized at the discretion of the Presiding Officer where there are common issues of fact or law. 170 IAC 1-1.1-19.

4. The consolidation of the two cases is improper for the following reasons:

- a. **Consolidation would unduly broaden the issues in this case.** The issues in this proceeding are confined to the approval of Valparaiso's Regulatory Ordinance. Valparaiso's Regulated Territory is very limited and comprises the Damon Run sewer service areas, the area within VCU's Master Plan Service Areas, and other areas which are logically related to Damon Run's current sewage utility infrastructure and the proposed new infrastructure in VCU's Master Plan. The map attached as Exhibit 1 to Valparaiso's Verified Petition in this Cause clearly delineates the areas included in Valparaiso's Regulated Territory, and clearly excludes those areas already being served by other utilities, including Chesterton, the City of Portage, Indiana (Portage), Aqua-Indiana South Haven (Aqua), and Valparaiso Lakes Area Conservancy District (VLACD). The map also clearly shows the existing Damon Run infrastructure and the existing and planned VCU infrastructure. Contrary to Chesterton's assertion in its Motion to Consolidate, Valparaiso's Regulated Territory specifically excludes Chesterton's corporate boundaries and those areas outside its corporate boundaries where Chesterton is currently providing service, namely, Whispering Sands and Fox Chase Farms.

By contrast, the sewer service area included in Chesterton Ordinance No. 2014-11 fully encircles Chesterton to a distance of 4-miles, yet the map attached

to Chesterton's Petition in Cause No. 45312 shows only the area south of Chesterton, which is just a fraction of the total purported service area. Chesterton Ordinance No. 2014-11 was enacted five years ago, and Chesterton's Petition in Cause No. 45312 is not clear whether Chesterton intends to enforce the ordinance based on the conditions at the time the ordinance was adopted or at the time that the Petition was filed. Chesterton's ordinance and map are unclear what areas are intended to be included or excluded from Chesterton's purported service area. For example, although the general area of South Haven is delineated, that area does not encompass the entirety of Aqua's South Haven service territory. Also, the Damon Run service area is given three separate designations without explanation (pre- and post-2014 annexed customers and contract customers), implying that Chesterton may claim authority to serve certain Damon Run customers in defiance of the Conservancy District Act (Ind. Code art. 14-33) and the Commission's October 19, 2011 Order in Cause No. 43966 granting Damon Run authority to serve the so-called "contract customers" over Chesterton's objection. Third, the VLACD's service territory is not identified at all although it appears to be encompassed by Chesterton's purported service area.

This uncertainty regarding Chesterton's purported service area and the addition of other, possibly disputed territory that is not even remotely related to or contiguous with Valparaiso's Regulated Territory will unduly broaden the issues in this case causing unreasonable delay in the resolution of this case. Chesterton will have ample opportunity as an intervenor in this case to provide evidence regarding Valparaiso's Regulated Territory without the necessity of consolidating

the two cases and introducing additional issues unrelated to Valparaiso's Regulatory Ordinance.

- b. **Consolidation would unduly expand the universe of potential intervenors in this case leading to further complication of the issues.** As discussed above, Valparaiso's Regulated Territory specifically excludes the authorized and enforceable service areas of Portage, Aqua, VLACD, and Chesterton. Chesterton's Petition in Cause No. 45312 identifies three additional utilities, the Town of Porter, Indiana, the Town of Burns Harbor, Indiana, and Indian Boundary Conservancy District, (none of which are identified on the map attached to the Petition), as additional impacted sewer utilities. Upon knowledge and belief, these three potential parties to Cause No. 45312 have no interest in Valparaiso's Regulatory Ordinance or the issues in this Cause.
- c. **Consolidation could unreasonably delay a Commission decision in this case, possibly reducing or eliminating the projected savings to Damon Run's water and sewer utility customers.** The intention of Valparaiso's acquisition of Damon Run's sewer system, and, in part, the corresponding adoption of the Regulatory Ordinance, is to bring much needed rate relief to Damon Run's sewer and water customers, in the short term, by providing capital to Damon Run to refinance its debt at much better terms, reducing an average Damon Run residential customer's annual sewage utility costs by approximately \$1,100 per year, and, in the long term, by allowing Valparaiso to connect the Damon Run system to VCU's treatment facilities and to provide sewer utility service at even lower monthly rates.

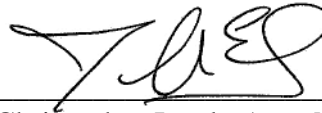
In order to expedite the approval of the Regulatory Ordinance necessary to provide Valparaiso and VCU the exclusive authority to serve Damon Run's customers and allow Damon Run's customers to benefit from currently available beneficial financing terms, Valparaiso carefully crafted a specifically targeted Regulated Territory based on the location of Damon Run's existing service territory, infrastructure, and customers and VCU's Master Plan. Interest rates for sewer bonds are currently very low, providing Damon Run with an excellent opportunity to pay-down and refinance its debt and achieve significant savings for its water and sewer utility customers. Consolidating the two cases, with the resulting broadening of issues and addition of potential intervenors unrelated to Valparaiso's requested relief, will likely delay the Commission's resolution of this case, during this time bond interest rates may rise, jeopardizing Valparaiso's acquisition of Damon Run's sewer utility and reducing the potential savings to Damon Run's customers.

5. Chesterton passed Ordinance 2014-11 over five years ago. Yet, by its own admission in the Petition in Cause No. 45312, Chesterton did not and had no intention of seeking the required regulatory approval of the Commission under Ind. Code ch. 8-1.5-6 to enforce the ordinance until Valparaiso filed its Verified Petition in this Cause. By its own further admission in its Petition to Intervene and its Motion to Consolidate, Chesterton's actual intention in filing the Petition in Cause No. 45312 and its Petition to Intervene in this Cause is to assert "that it—and not Valparaiso—possesses the right to provide sewer utility services to portions of the geographical area included in and subject to the Valparaiso Ordinance." *Town of Chesterton, Indiana's Motion to Consolidate*, ¶¶ 2 and

3. Chesterton can adequately argue this assertion as an intervenor in this Cause without unreasonably complicating this Cause by consolidating the two cases.
6. While no party will be prejudiced if the two causes proceed separately, Valparaiso, VCU, Damon Run, and Damon Run's customers face potential financial harm from the delay and broadening of parties and issues that will result if the two matters are consolidated.
7. Petitioners do not object to Chesterton's Petition to Intervene in this Cause.

THEREFORE, Petitioners respectfully request that this Commission deny The Town of Chesterton Indiana's Motion to Consolidate, and promptly notice and convene a prehearing conference and preliminary hearing for the purpose of establishing a procedural schedule in this Cause.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on October 31, 2019, a copy of Petitioner's Objection to the Town of Chesterton, Indiana's Motion to Consolidate was filed with the Indiana Utility Regulatory Commission (Commission) using the Commission's electronic filing system and was electronically served on the following parties:

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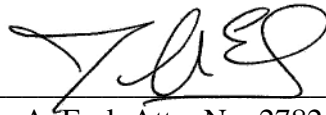
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