

**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. 5-1.5-6**

**CAUSE NO. 45306**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**Stefanie N. Krevda, Commissioner**

**Jennifer L. Schuster, Administrative Law Judge**

On October 15, 2019, the City of Valparaiso, Indiana, and Valparaiso City Utilities (VCU) (collectively, Petitioner or Valparaiso) filed a Verified Petition seeking approval from the Indiana Utility Regulatory Commission (Commission) under Ind. Code § 8-1.5-6-9 of Valparaiso's regulatory ordinance, as defined by Ind. Code § 8-1.5-6-3.

On October 29, 2019, the Town of Chesterton, Indiana, (Chesterton) filed a Petition to Intervene in this Cause and a Motion to Consolidate this Cause with Cause No. 45312. Valparaiso opposed Chesterton's Motion to Consolidate. On November 21, 2019, Aqua Indiana, Inc. (Aqua) filed a Petition to Intervene in this Cause.

On November 26, 2019, Valparaiso prefiled direct testimony and exhibits of the following witnesses:

- Steve Poulos, VCU Utilities Director;
- Anthony Kenning, PE, Professional Engineer at DLZ Indiana, LLC; and
- John D. Julien, CPA, Partner at Baker Tilly Municipal Advisors, LLC.

The Commission held a Prehearing Conference and Preliminary Hearing on December 3, 2019. That same day, Chesterton filed a Motion to Withdraw its Motion to Consolidate. On December 4, 2019, the Presiding Officers issued a Docket Entry granting Chesterton's and Aqua's Petitions to Intervene.

On December 13, 2019, Valparaiso filed the supplemental direct testimony of Mr. Poulos.

On December 18, 2019, the Commission issued its Prehearing Conference Order in this Cause, establishing a procedural schedule and granting Chesterton's Motion to Withdraw its Motion to Consolidate.

On February 11, 2020, the Indiana Office of Utility Consumer Counselor (OUCC) filed the direct testimony and exhibits of Carl N. Seals, Utility Analyst in the OUCC's Water/Wastewater Division, and Consumer Comments. That same day, Aqua filed the direct testimony and exhibits of Kari Bennett, Aqua's President.

Also on February 11, 2020, Chesterton filed the direct testimony and exhibits of the following witnesses:

- Lawrence Brandt, President of Chesterton's Utility Service Board (USB);
- Sharon Darnell, President of the Chesterton Town Council;
- Stephen "Mark" DeBruler, P.E., Professional Engineer at Beam Longest & Neff, LLC; and
- Theodore J. Sommer, CPA, Partner at LWG CPAs and Advisors.

On February 21, 2020, Valparaiso filed a Motion for Extension of Time to File Rebuttal and Cross-Answering Testimony, which the Presiding Officers granted by Docket Entry on February 24, 2020. On February 28, 2020, Valparaiso and Chesterton filed a Notice of Settlement and Motion to Establish a Procedural Schedule to File Settlement and Supporting Testimony, which the Presiding Officers granted by Docket Entry on March 2, 2020.

On March 3, 2020, Valparaiso filed the Settlement Testimony of Messrs. Poulos, Kenning, and DeBruler, and Chesterton filed the Settlement Testimony of Mr. Brandt. On March 12, 2020, the Commission issued a Docket Entry requesting additional information from Valparaiso. Valparaiso filed its response to the Docket Entry on March 16, 2020.

The Commission held a settlement hearing in this Cause at 10:00 a.m. on March 30, 2020, via a publicly available WebEx teleconference. Valparaiso, Chesterton, Aqua, and the OUCC appeared at and participated in the settlement hearing. No members of the public sought to participate in the hearing.

Based on the applicable law and the evidence presented, the Commissions finds:

1. **Notice and Jurisdiction.** Notice of the hearings in this Cause was given and published as required by law. Valparaiso is a municipal utility as that term is defined in Ind. Code § 8-1.5-6-1. Under Ind. Code § 8-1.5-6-9, the Commission has jurisdiction to approve a municipality's Regulatory Ordinance. Therefore, the Commission has jurisdiction over Valparaiso and the subject matter of this proceeding.
2. **Petitioner's Characteristics.** Valparaiso is a municipality that owns and operates plant and equipment for the collection and treatment of sanitary sewage and storm water pursuant to Ind. Code ch. 36-9-23. Valparaiso provides sewer utility service to the public inside its corporate limits and to certain customers outside its corporate boundaries. On December 10, 2019, Valparaiso acquired the sewer utility assets of the Damon Run Conservancy District (Damon Run) and began providing sewer utility service to the former Damon Run customers.
3. **Relief Requested.** Valparaiso requests approval of Ordinance No. 27-2019 as amended by Ordinance No. 7-2020 (the Valparaiso Regulatory Ordinance). Valparaiso and Chesterton also

request approval of their Joint Stipulation and Settlement Agreement (Settlement), which was attached to the settlement testimony of Mr. Poulos as Petitioners' Exhibit 21.

#### **4. Summary of the Evidence.**

##### **A. Valparaiso's Case-In-Chief.**

**1. Steve Poulos.** Mr. Poulos, VCU's Utilities Director, testified regarding Valparaiso's wastewater utility, Valparaiso's regulatory ordinance, the proposed regulated territory, and the acquisition of Damon Run's sewer utility. VCU provides sewer utility service to approximately 35,000 people and 13,000 accounts, which include residential, commercial, and industrial customers. VCU operates a major wastewater treatment plant, over 225 miles of sewer mains, and 32 sewage pump stations.

Mr. Poulos testified that the Valparaiso Common Council adopted Ordinance No. 27-2019 on October 14, 2019. Ordinance No. 27-2019 provides that Valparaiso has the exclusive authority to provide wastewater service within a defined, specified territory that includes all areas within Valparaiso's city limits and a defined territory located within four miles of Valparaiso's corporate boundaries (the Valparaiso Regulated Territory). After Valparaiso filed its petition in this Cause, Aqua contacted Valparaiso regarding three parcels of property for which Aqua had previously been issued a certificate of territorial authority (CTA). Mr. Poulos stated that although two of the three parcels had been annexed by Valparaiso and the Aqua CTA was more than 12 years old, Aqua and Valparaiso agreed to eliminate the three parcels from the Valparaiso Regulated Territory. Mr. Poulos stated that neither Valparaiso nor Aqua are precluded from serving the three parcels in the future. Mr. Poulos attached Petitioners' Exhibit 3 to his testimony, which is a map of the Valparaiso Regulated Territory modified to remove the three parcels.

Mr. Poulos testified that in 2015, Valparaiso and Damon Run began discussing ways in which Valparaiso could assist Damon Run in providing sewer utility service to Damon Run's customers. Initially, Valparaiso and Damon discussed entering into an interlocal agreement for Valparaiso to operate Damon Run's sewer utility, but Valparaiso and Damon Run eventually agreed that Valparaiso would acquire Damon Run's sewer utility system. Mr. Poulos testified that Valparaiso's Regulatory Ordinance is necessary to protect Valparaiso's investment in the Damon Run system by providing VCU with the exclusive authority to provide sewer utility service to Damon Run's customers and other nearby properties.

Around the same time the negotiations were occurring, Valparaiso began preparation of a formalized engineering Master Plan, which considered the feasibility of expanding sewer utility service to customers outside of Valparaiso's corporate boundaries and interconnecting the Damon Run customers to VCU's existing facilities. A copy of the Master Plan was attached to Mr. Poulos's testimony as Petitioners' Exhibit 13. Mr. Poulos testified that the Valparaiso Regulatory Ordinance is also necessary to provide Valparaiso with the exclusive authority to invest in new facilities to provide sewer utility service to the customers and areas identified in the Master Plan.

Mr. Poulos testified that the Damon Run sewer system is a collection-only system of pump stations, force mains, and gravity sewers. Damon Run conveys collected sewage for treatment by

the City of Portage, Indiana (Portage). Since its inception, Damon Run has contracted with Portage for wholesale sewage treatment service. Valparaiso, Damon Run, and Portage agreed to and executed an assignment of the Portage wastewater service agreement to Valparaiso. A copy of the assignment was attached to Mr. Poulos's testimony as Petitioners' Exhibit 4. At least for the short term, Valparaiso intends to continue to operate the Damon Run sewer utility as a stand-alone collection system and utilize Portage for whole sewage treatment.

Mr. Poulos testified that as noted in its Master Plan, Valparaiso plans to extend a sewage transmission main from its existing facilities to interconnect with the Damon Run service area within the next ten years. Valparaiso could expedite the connection depending on the pace of development in the southern half of the Valparaiso Regulated Territory. Once Valparaiso interconnects the Damon Run system to its existing facilities, it will be able to avoid the treatment expense from Portage and pass the savings on to the Damon Run customers through more competitive rates. Mr. Poulos testified that in order to maximize the savings, Valparaiso needs to be able to serve the customers between its existing facilities and the Damon Run system. He also testified that Valparaiso has received inquiries from existing developments that are currently served by semi-public wastewater treatment plants within the Valparaiso Regulated Territory interested in connecting to VCU's anticipated facilities.

Mr. Poulos testified that Valparaiso has the technical, financial, and managerial capability to provide sewer utility service in the Valparaiso Regulated Territory. VCU has a talented workforce of 68 total employees, including mechanical and electrical experts, certified wastewater operators, customer service experts, field divisions, and a financial department. Mr. Poulos believes that VCU can provide service to the Valparaiso Regulated Territory without adding new employees. By expanding its service territory, VCU should be able to achieve greater economies of scale, decrease the costs per customer, and offer more competitive rates over time, providing long-term benefits to both the Damon Run and VCU customers.

Mr. Poulos testified that Valparaiso and Damon Run are the only current wastewater utilities in the Valparaiso Regulated Territory. Chesterton has also extended a sewer main from the west side of Highway 49 to serve two developments (Fox Chase Farms and Whispering Sands) just north of U.S. Highway 6 along Meridian Road. Valparaiso excluded these two developments from the Valparaiso Regulated Territory, and also excluded the areas currently being served by the Valparaiso Lakes Area Conservancy District (VLACD), Portage, and Aqua. Mr. Poulos testified that Valparaiso is in the best position to provide service to the Valparaiso Regulated Territory.

Mr. Poulos testified that Valparaiso has two sewer rate ordinances—one for customers served by VCU's own facilities and the second for customers in the Damon Run service area. Valparaiso's current rate ordinance for the VCU portion of its facilities, Ordinance 28-2013, was attached to Mr. Poulos's testimony as Petitioners' Exhibit 5. A typical single family residential customer using 5,000 gallons per month that is connected to the VCU portion of Valparaiso's facilities pays approximately \$47.79 per month for wastewater service. Valparaiso's current rate ordinance for the Damon Run portion of its facilities, Ordinance 25-2019, was attached to Mr. Poulos's testimony as Petitioners' Exhibit 10. According to Ordinance 25-2019, a typical single family residential customer using 5,000 gallons per month that is connected to the Damon Run portion of Valparaiso's facilities pays approximately \$99.63. Once the Damon Run system is

connected to the VCU system, all customers will pay the same rates, which are currently those established by Ordinance 28-2013.

Mr. Poulos testified that on November 14, 2019, Valparaiso, VCU, and Damon Run executed an Asset Transfer Agreement that was attached to Mr. Poulos's testimony as Petitioners' Exhibit 6. Under the agreement, Damon Run transferred all of its sewer assets, including its existing agreements, accounts receivable, and cash equivalents to Valparaiso and VCU in return for a payment of \$4,633,036, all of which will be used to refund a portion of Damon Run's outstanding debt. In addition, VCU accepted assignments of the out-of-territory sewer and water customers from Damon Run and agreed to collect certain water payments in lieu of taxes or PILOTs and deliver the proceeds to Damon Run. Damon Run will use the water PILOT funds to make payments on its water bonds. These out-of-territory customers include the Porter Hospital, Liberty Elementary, and Intermediate Schools, and the Porter County Parks Department.<sup>1</sup>

Mr. Poulos testified that Valparaiso intends to issue tax exempt sewer revenue bonds to finance the Damon Run acquisition. Because Valparaiso has a very strong credit rating, it will be able to issue bonds at a much lower interest rate than Damon Run was paying. Damon Run will also be able to pay off its sewer debt and refinance its water debt at a much lower interest rate than it had been paying. The result of the acquisition and refinancing of debt will allow the average Damon Run customer using 5,000 gallons per month to save approximately \$1,100 per year. VCU held two public meetings to inform Damon Run customers about the proposed acquisition, which approximately 100 customers attended. Mr. Poulos testified that generally, the Damon Run customers have been very supportive of the proposed acquisition. Mr. Poulos also testified that the local Chamber of Commerce also supports Valparaiso's acquisition of the Damon Run sewer system and the creation of the Valparaiso Regulated Territory. He attached Petitioners' Exhibit 11, to his testimony, which is a resolution of the Chamber to that effect.

**2. Anthony Kenning.** Mr. Kenning, a Professional Engineer with DLZ Indiana, LLC, testified regarding Valparaiso's ability to serve the Valparaiso Regulated Territory, the ability of other utilities to provide service in the area, and the potential impact of the Valparaiso Regulated Territory on future economic development in the area. He testified that based on his 18 years of working with VCU, the utility is able to provide safe, efficient, and cost-effective service to the Valparaiso Regulated Territory.

Mr. Kenning testified that in 2016 he began working with Valparaiso to develop concepts to extend VCU's facilities to serve Damon Run and evaluating the capacity of certain Damon Run facilities. He testified that Valparaiso's existing West Side Sewer gravity sewer, pump station, and force main have the available capacity to service areas both west of Valparaiso and the Damon Run area. Mr. Kenning completed a Master Plan that outlines the improvements and extensions that will be necessary to serve the Valparaiso Regulated Territory northward up to and including parcels adjacent to U.S. Highway 6 and Damon Run. Mr. Kenning attached excerpts from the Master Plan to his testimony as Petitioners' Exhibit 13. The specific goals of the Master Plan include: (1) provide an overview of topographic and service area considerations that may affect the extension of VCU water and wastewater facilities; (2) review any major components of the

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<sup>1</sup> Mr. Poulos submitted supplemental direct testimony on December 13, 2019, Petitioners' Exhibit 16, which included the executed assignments from the out-of-territory customers, Petitioners' Exhibits 17, 18, and 19.

existing wastewater collection system and identify recent planning efforts that may affect the extension of VCU wastewater facilities; (3) review future growth potential that will affect the extension of VCU wastewater facilities; (4) develop future wastewater service areas/flows and general routing and sizing of infrastructure that is mindful of topographic constraints, service area boundaries of adjacent utilities, and other geopolitical considerations; (5) provide an overview of potential wastewater treatment plant expansion alternatives, including the development of a second treatment plant; (6) develop concepts for redirection of major wastewater basins for the purposes of redistributing existing and future flows to minimize capital costs; and (7) provide a summary of wastewater alternatives, opinions of probable construction costs for selected alternatives, implementation recommendations, and a recommended implantation plan.

With respect to providing service to Damon Run, Mr. Kenning testified that Valparaiso intends to use Damon Run's existing infrastructure, which collects wastewater and transmits it to an interconnection with Portage for treatment. For the next several years, VCU will operate the Damon Run system as a stand-alone system, using Portage as the wholesale treatment provider, but within 10 years, VCU intends to interconnect the Damon Run area with VCU's existing facilities. The interconnection will require the upgrade or replacement of Damon Run Lift Station #1 and construction of a new force main to discharge southward into VCU's West Side Sewer. With the interconnection in place, Valparaiso can extend force main and gravity sewer lines to serve other areas in the Valparaiso Regulated Territory.

Mr. Kenning testified that there are no other utilities currently serving in the Valparaiso Regulated Territory except for Damon Run. He identified the following other utilities in the area, which were excluded from the Valparaiso Regulated Territory: Aqua, VLACD, and Chesterton. Mr. Kenning testified that it is theoretically possible that Aqua, Chesterton, or VLACD could provide service to a portion of the regulated territory, but that would depend on the extent of those utilities' authorized service areas and their abilities to extend infrastructure to the area and whether those utilities have facilities necessary to serve significant portions of the regulated territory.

Mr. Kenning testified that Valparaiso's plan to provide service throughout the Valparaiso Regulated Territory is important for two reasons. First, VCU can implement the Master Plan improvements and other necessary improvements to provide service to the entire Valparaiso Regulated Territory, much of which is currently unserved or underserved. Second, Valparaiso plans to eventually provide sewer utility service throughout the Valparaiso Regulated Territory at the same rates and charges that Valparaiso's existing, in-town customers pay. Mr. Kenning testified that the availability of wastewater service at reasonable rates from an experienced entity such as VCU should encourage present and future economic development in the area.

**3. John Julien.** Mr. Julien, a partner in the CPA firm of Baker Tilly Municipal Advisors, LLC, testified regarding customer rates and charges for the Valparaiso Regulated Territory and economic development. Mr. Julien has advised Valparaiso and VCU regarding a variety of utility- and municipal-related financial matters for over 20 years. Mr. Julien prepared an accounting report analyzing the required rates for VCU to serve the portion of the Valparaiso Regulated Territory that will utilize the Damon Run facilities, which he attached to his testimony as Petitioners' Exhibit 15. Page 11 of the report contains the proposed schedule of rates and charges for the Damon Run area, which were incorporated into Valparaiso Ordinance 25-2019.

Mr. Julien testified that his accounting report includes the following: a schedule of suggested rates and charges for the Damon Run area; a summary of the historical financial operations of the Damon Run sewage utility; a presentation of the estimated annual operating expenses for the Damon Run area; an estimate of the value to be placed on the Damon Run sewer assets to be transferred to VCU assuming neither a financial gain or loss for Damon Run or VCU; and an estimate of the resulting savings this transaction would produce for the Damon Run customers as calculated by the change in the monthly sewer bills using the suggested schedule of rates and charges and the change in the annual special benefit tax bills.

Mr. Julien testified that customers in the Valparaiso Regulated Territory that are connected to and using Valparaiso's existing facilities will pay the same schedule of rates and charges as VCU's existing customers, regardless of whether such customers are located inside or outside of Valparaiso's municipal limits. For existing Damon Run customers, VCU's current rates would not generate sufficient revenues to fund the identified costs associated with serving the Damon Run area. Therefore, Mr. Julien testified that until those economics changes it is necessary and appropriate for Valparaiso to calculate the rates and charges for the customers served by the Damon Run facilities separately from customers directly connected to Valparaiso's existing sewer system. Valparaiso's strategic objective is to change the economics of the Damon Run area to eventually allow the Damon Run customers to be served at the same rates as the other VCU customers. Mr. Julien testified that Valparaiso can change the economics of the Damon Run area by connecting additional customers to the Damon Run system or by connecting the Damon Run system to VCU's existing sewer system.

Mr. Julien compared Valparaiso's sewer rates to Damon Run's existing rates and the rate of other nearby utilities. Prior to the acquisition, Damon Run's sewer customers paid a fixed monthly rate of \$12.00 and a volumetric rate of \$5.98 per 1,000 gallons, which was substantially lower than the cost-based rates that Mr. Julien calculated based on the Damon Run system's revenue requirement. The Damon Run customers also paid a \$187.66 special benefits tax to cover the sewer and water system debt service charge. Thus, a typical residential customer using 5,000 gallons per month paid a total of \$241.66 in rates and special benefits tax/debt service. Under Valparaiso's rates for the Damon Run area, a typical residential customer using 5,000 gallons per month will pay \$99.63 for sewer rates plus \$52.98 for the special benefits tax, which pays the refinanced water debt service charge. This is total of \$152.61 which is a savings of approximately \$89.05 per month. Mr. Julien presented a table in his testimony comparing Valparaiso's monthly sewer rates, \$99.63 in the Damon Run Area and \$47.79 for all other customers, to other area utilities: Chesterton (special utility area)-\$99.18; Aqua-\$72.77; and VLACD-\$52.94.

Mr. Julien testified that approval of Valparaiso's Regulatory Ordinance is in the public interest. He stated that Damon Run's small customer base does not provide many economies of scale and has a significant negative impact on the amount of debt per customer and the interest rate on that debt. VCU's acquisition of Damon Run will result in reduced operating expenses and reduced annual debt service payments, resulting in a savings to Damon Run customers of nearly \$90.00 per month. Valparaiso is able to borrow the funds to acquire Damon Run at an interest rate of approximately 2.43% over 20 years as compared to the 6% rate on Damon Run's original bonds. Similarly, once Damon Run uses the proceeds of the acquisition to pay off its sewer debt, it will

be able to refinance its water debts at a significantly lower rate of approximately 2.22% over 11 years.

Mr. Julien testified that lowering the high cost of sewer service in the Damon Run area lowers the barrier to growth that such high rates have created. To the extent such growth occurs after Valparaiso's acquisition of the Damon Run system, the addition of new customers will allow Valparaiso to reduce rates ever further. Mr. Julien testified that without the protections of the Valparaiso Regulatory Ordinance, it will not be possible for the Damon Run area customer base to grow adequately.

**B. Chesterton's Case-in-Chief.**

**1. Lawrence Brandt.** Mr. Brandt, President of Chesterton's USB, testified regarding the overlapping areas included in both the Valparaiso and Chesterton Regulated Territories (the Contested Areas), Valparaiso's ability to serve the contested areas, and whether Valparaiso's Regulatory Ordinance is in the public interest.

Mr. Brandt testified that Chesterton's municipal sewer utility comprises approximately 88 miles of collection pipe, 35 lift stations, a 1.2 million gallon holding tank, built to comply with a long-term control plan, and a processing plant with a 4.6 MGD capacity currently operating between 55 and 60 percent of its total capacity. Chesterton serves approximately 5,200 customers both inside of and outside of its municipal boundaries, including the Fox Chase Farms and Whispering Sands developments. Chesterton's sewer utility employs 22 individuals and currently operates with a cash surplus in excess of \$2 million.

Mr. Brandt testified that theoretically, Valparaiso could provide sewer utility service in the Contested Areas but noted that Valparaiso would need to either continue to contract with Portage for treatment or make significant investments in infrastructure to collect and treat waste from the Contested Area.

Mr. Brandt testified that in 2014 Chesterton enacted a regulatory ordinance with a four-mile service corridor beyond its municipal boundaries (the Chesterton Regulatory Ordinance). Mr. Brandt testified that Chesterton objected to Valparaiso's petition in this Cause because it is Chesterton's position that Valparaiso enacted its regulatory ordinance to prevent Chesterton from serving in the Contested Area.

Mr. Brandt provided his understanding of Valparaiso's Regulatory Ordinance. He testified that the Valparaiso Regulatory Ordinance defines an area within which only Valparaiso can provide wastewater service to the exclusion of other providers and imposes a fine of up to \$2,000 per day on any development that risks choosing another wastewater provider in spite of whether another provide may be able to offer service at a lower initial capital cost or lower user rate. Mr. Brandt testified that the effects of the Valparaiso Regulatory Ordinance would likely be higher overall user rates in the Contested Area due and reduced development activity due to higher costs of capital improvements or higher than necessary user rates. He testified that the Valparaiso Regulatory Ordinance would eliminate the right of property owners to freely choose their sewer treatment provider and would thwart efforts by Chesterton to extend its sewer system beyond its



Southern boundaries, including the extension of sewer treatment to Fox Chase and Whispering Sands and the joint venture between Chesterton and Porter County to upsize a sewer main along State Road 49.

Mr. Brandt testified that in 2012 Chesterton invested \$1.5 million to extend a sewer main underneath the Indiana Toll Road to reach recently annexed property. As part of the same project, Porter County invested more than \$750,000 to upsize Chesterton's sewer main to allow users of in unincorporated Porter County to connect to the Chesterton sewer utility. Mr. Brandt testified that Valparaiso's Regulatory Ordinance would squander the investment by Chesterton and Porter County and leave the new sewer lines potentially abandoned.

Mr. Brandt testified that in 2002 Chesterton was approached by the developer of Damon Run requesting whether Chesterton had the capacity to service the Damon Run unit. Although the Chesterton USB voted 5-0 to proceed with negotiations to serve Damon Run, Damon Run ultimately entered into a contract for sewage treatment with Portage. In Cause No. 43966, Chesterton contested Damon Run's request for authority to provide sewer service to a Duneland School District school campus and the Porter Regional Hospital, but the Commission ruled in favor of Damon Run based, in part, on the fact that Chesterton had not yet constructed sewer infrastructure under the Indiana Toll Road or the CSX railroad. This infrastructure has since been installed.

Mr. Brandt testified that in April 2014, Chesterton entered into a Memorandum of Understanding with Fox Chase Farms and Whispering Sands for the provision of wastewater treatment. Mr. Brandt attached a copy of the agreement to his testimony as Attachment LB-1. Fox Chase is a subdivision of approximately 90 homes located immediately west and south of Damon Run. Whispering Sands is a mobile home park with a capacity of 330 lots located at the northwest corner of U.S. Highway 6 and Meridian Road. On June 30, 2015, the Commission granted authority to Chesterton to serve Fox Chase Farms upon installation of the infrastructure necessary to serve the subdivision. That project cost in excess of \$1.5 million. On June 8, 2015, Chesterton enacted Ordinance 2015-08, which established a special utility area and rates and charges for the area. Mr. Brandt attached a copy of the Ordinance 2015-08 to his testimony as Attachment LB-2. In 2015, Chesterton agreed to provide sewer service to the Preserve subdivision located outside of its southern borders, south of County Road 1050 North. Mr. Brandt attached a copy of the Preserve sewer agreement to his testimony as Attachment LB-3.

Mr. Brandt testified that in August 2019, Damon Run announced to freeholders that it had reached an agreement for Valparaiso to buy Damon Run's sewer infrastructure and assume Damon Run's sewage treatment agreement with Portage until Valparaiso could construct the necessary sewer infrastructure or build a second treatment facility. Mr. Brandt attached a copy of the letter to his testimony as Attachment LB-4.

Mr. Brandt testified that in January 2020, Chesterton entered into an agreement with the Duneland School Corporation which had been under contract with Damon Run, to provide sewer utility service to the Liberty Elementary and Intermediate School facilities, located on County Road 900 North under the same terms as other properties within Chesterton's special utility area

created by Ordinance 2015-08. Mr. Brandt attached a copy of the school sewer agreement to his testimony as Attachment LB-5.

Mr. Brandt testified that Valparaiso's ability to provide service in the Contested Area relies on infrastructure that is not currently installed and will depend on residential or industrial growth in the area that is speculative and not well defined at this time. Valparaiso's ability also depends on the capacity of the Valparaiso treatment plant, which, according to Mr. DeBruler is currently operating at approximately 83% of its total capacity because the capacity of Portage's treatment plant, which currently treats sewage from the area, is near total capacity.

Mr. Brandt testified that Chesterton has the capacity and ability to serve the Contested Area with relatively minor infrastructure improvements compared to Valparaiso. Chesterton's plant operates at between 55 and 60 percent capacity. Mr. Brandt testified that over the past 25 years, Chesterton has been operating on a number of basic assumptions regarding its long-term mission, including: the ultimate goal of the State of Indiana to eliminate septic systems and have all sanitary waste treated in municipal facilities; the ultimate Chesterton sewer utility treatment area would be north to Lake Michigan, east to the city limits of Michigan City, west to the city limits of Portage, and south to the city limits of Valparaiso; the extension of service must comply with Chesterton's policy regarding outside users; extension of service depends on developer activity in unserved areas; expansion of Chesterton's treatment facility; and expansion of Chesterton's capital plan, including an \$11 million dollar project for a 1.2 million gallon holding tank to avoid discharging raw sewage into Lake Michigan. Chesterton recognizes the value of a more formal Master Plan outlining long-term goals, objectives, and implementation steps and has initiated the development of future service concepts for its sewer utility.

Mr. Brandt testified that Chesterton has taken significant steps to plan for the extension of its sewer utility within the Contested Area. Chesterton developed a plan with Porter County for the extension of sewer service to areas within the Contested Area surrounding State Road 49 south of Chesterton to the interchange of State Road 49 and U.S. Highway 6. In addition, Chesterton has extended sewer lines to Fox Chase Farms and Whispering Sands. With the installation of the proper infrastructure, such as pipes and lift stations, Chesterton has sufficient capacity to service the Contested Area: the main sewer lines currently installed are of a sufficient size to properly handle effluent from the Contested Area. Mr. Brandt further testified that Chesterton's connection points are significantly closer to the Contested Area than Valparaiso's.

Mr. Brandt testified that approval of Valparaiso's Regulatory Ordinance is not in the public interest because Valparaiso lacks the capability and infrastructure to serve the Contested Area, it would inhibit customer choice in the Contested Area, it would harm Chesterton's economic development and growth activities, and it would jeopardize Chesterton's and Porter County's infrastructure investments.

**2. Sharon Darnell.** Ms. Darnell, President of the Chesterton Town Council, testified regarding Chesterton's interest in areas north of County Road 700 included in Valparaiso's Regulated Territory, the historical background of the interaction between Valparaiso and Chesterton in the Contested Area, and Chesterton's plans for future sewer service in the Contested Area.

Ms. Darnell testified that in 2014, Chesterton adopted Ordinance 2014-11 (the Chesterton Regulatory Ordinance), which created a regulated territory for areas outside of Chesterton's municipal boundaries. Ms. Darnell attached a copy of the Chesterton Regulatory Ordinance to her testimony as Attachment SD-1. Chesterton did not seek approval of the Chesterton Regulatory Ordinance at the time because it envisioned using the ordinance as a tool to engage in discussions with other area sewer utilities.

Ms. Darnell testified that Chesterton had been involved in a dispute with Damon Run over the provision of sewer service to Porter Hospital. Chesterton considered the hospital to be within Chesterton's potential growth and sewer service areas, and Chesterton still considers the hospital to be a potential customer along with the owners of property adjacent to the hospital. After the dispute with Damon Run, Chesterton adopted its regulatory ordinance as a protective measure to express its interest in serving areas outside of its municipal boundaries. Chesterton also spent significant resources to extend sewer lines south of the Indiana Toll Road in 2013-14 to be in a position to provide sewer service to areas adjacent to the hospital.

Ms. Darnell testified that Chesterton has long considered areas south of its municipal boundaries for possible future growth. County Road 700 North is the southern boundary for the Duneland Schools Corporation, which is primarily based in Chesterton, and provides a logical dividing line between Chesterton and Valparaiso, which are each approximately two miles from the Road. Ms. Darnell attached a Valparaiso Wastewater Service Area Designation Map to her testimony as Attachment SD-2 that reflects a northern planning boundary for Valparaiso of County Road 700 North, and stated that Valparaiso's 2017 Master Sewer Plan is not in harmony with its official planning documents authorized by Indiana Code. She stated that Valparaiso's 2017 Master Sewer Plan was performed to facilitate Valparaiso's current attempt to land grab.

Ms. Darnell testified that in late 2011, Chesterton approached Porter County to discuss the possibility of a regional sewer to be developed in partnership between Chesterton and Porter County. Chesterton was planning to extend sewer service south of the Indiana Toll Road to serve two voluntarily annexed properties straddling each side of State Road 49. Chesterton presented a plan for a State Road 49 Utility Corridor to the Porter County Council and Commissioners at several public hearings in late 2011 and early 2012. Ms. Darnell attached the meeting minutes to her testimony as Attachments SD-3, SD-4, and SD-5. Although Valparaiso was not directly a part of the discussions between Chesterton and Porter County, Chesterton consulted with former Valparaiso Mayor Jon Costas. Chesterton proposed that Porter County pay the cost of upsizing the planned sewer line extension so that future development located south of Chesterton's municipal corporate limits could be furnished with sewer service by Chesterton. As a result, Chesterton and Porter County entered into a Sanitary Sewer Infrastructure Agreement on August 13, 2012, which Ms. Darnell attached to her testimony as Attachment SD-6. In 2015, Chesterton and Porter County amended the agreement to include specific costs and to reserve an amount of capacity to end users in unincorporated Porter County, which Ms. Darnell attached to her testimony as Attachment SD-7.

Ms. Darnell testified that Chesterton installed sewer infrastructure in 2014-15 to serve the Fox Chase Farms and Whispering Sands communities. This project cost \$1.5 million and was

financed by a State Revolving Fund loan that provided low interest financing. The project provided relief for the 88 residents of Fox Chase subdivision who were confronted with a failing utility system. Ms. Darnell testified that at this time, Chesterton met with Valparaiso to discuss the possibility of an interlocal agreement to prescribe sewer territory, but those discussions fell apart when Valparaiso demanded that Chesterton's service territory remain located north of U.S. Highway 6. Also around this time, Chesterton adopted its regulatory ordinance (2014-11). Ms. Darnell testified that with Chesterton already extending sewer service to Fox Chase and Whispering Sands, which are adjacent to Damon Run, it would have been much simpler for Chesterton rather than Valparaiso to serve Damon Run.

Ms. Darnell testified that awarding Valparaiso an exclusive sewer territory would not serve the public interest. She stated first that Chesterton is better suited and has the ability and available capacity to serve areas north of County Road 700 North. Second, Chesterton's rates for sewer service north of County Road 700 North will likely be more competitive than Valparaiso's because Valparaiso has not had a rate increase since 2013, whereas Chesterton's rates are reviewed biennially. Third, Chesterton's facilities are closer to the areas north of County Road 700 North, which makes main extensions easier and more cost effective. Fourth, granting Valparaiso's request would strand the significant investment made by Porter County to upsize Chesterton's sewer lines in the State Road 49 Utility Corridor. Finally, Ms. Darnell testified that the Commission should promote regional approaches to solving infrastructure and sewer service problems as encouraged by the Indiana General Assembly in HEA 1406 and SEA 4 from the 2019 legislative session.

**3. Stephen "Mark" DeBruler.** Mr. DeBruler, a Professional Engineer with Beam Longest & Neff testified regarding the statutory factors pertaining to service in the Valparaiso Regulated Territory. He testified that although both Chesterton and Valparaiso are able to serve the Valparaiso Regulated Territory, Chesterton is better able to serve the Contested Areas north of County Road 700 North, and Valparaiso is better able to serve the areas in its regulated territory south of 700 North.

Mr. DeBruler testified that in 2014, Chesterton adopted its regulatory ordinance claiming the sole right to provide sewer service within the area four miles from its corporate boundaries. At the time, Chesterton indicated its only intent in adopting this ordinance was to protect the area intended to be served by the State Road 49 Corridor Sewer Utility Project along with the logical extensions of service off the Fox Chase Farms project and that the Town did not intend to be the exclusive service provider in the entire area.

Mr. DeBruler testified that in 2019 Valparaiso acquired the Damon Run sewer utility assets located over two miles away from Valparaiso and unconnected and otherwise unrelated in any physical respect to Valparaiso's sewer utility. Valparaiso's requested regulated territory consists of over 9,750 acres (over 15.25 square miles), equivalent to the entire corporate area of Valparaiso. Mr. DeBruler testified that service to the Damon Run system is not dependent on territorial control of the intervening lands. He stated that granting Valparaiso an exclusive service territory would not serve the public interest, would harm development activities in the Contested Areas, would jeopardize Chesterton's investment in infrastructure, and would set a bad precedent.

Mr. DeBruler described the Valparaiso Regulatory Ordinance, stating that it is unclear as to the area intended for regulation because it refers to certain areas within ten miles outside Valparaiso's boundaries but also defines the area based on a confusing and ill-defined attached map. He stated that the Valparaiso Regulatory Ordinance would provide Valparaiso with a monopoly over the provision of sewer service within a huge area and effectively eliminate the ability of other wastewater providers to serve customers within the area even if those providers can serve at a lower cost or more favorable conditions. Mr. DeBruler also noted that Valparaiso Regulatory Ordinance does not mandate that Valparaiso extend service to areas where technically or financially non feasible. He stated that the effects of the Valparaiso Regulatory Ordinance are likely to be higher overall user rates and reduced development activity in the Contested Areas.

Mr. DeBruler testified that Valparaiso owns and operates an 8.0 MGD wastewater treatment plant, which he calculated operated at about 76% of design capacity in 2018 with over 3,500 equivalent dwelling units (EDUs) of available capacity before the plant would be subject to a sewer ban early warning, which is issued by the Indiana Department of Environmental Management (IDEM) when a treatment plant exceeds 90% of capacity and triggers extra scrutiny. In 2019, through September, flows to the Valparaiso wastewater plant had risen to 87.8% of plant capacity, which would only 574 EDUs of available capacity. Mr. DeBruler attached his calculations related to the Valparaiso treatment plant's capacity to his testimony as Attachment MD-2. Mr. DeBruler testified that Valparaiso would need a plant expansion to serve the Valparaiso Regulated Territory, which is an expensive and time consuming process and which would likely cause Valparaiso's sewer rates to increase significantly.

Mr. DeBruler testified that Portage, which presently treats the wastewater from Damon Run was operating at 78% capacity in 2018 with 1,882 EDUs of available capacity. However, flows through September 2019 had risen to 91.2% of plant capacity, which would likely make Portage subject to a sewer ban early warning and would impact Valparaiso's ability to serve new developments in the Damon Run area. Mr. DeBruler attached his calculations related to the Portage treatment plant's capacity to his testimony as Attachment MD-3.

Mr. DeBruler testified that both topography and distance work against Valparaiso's extension of sewer mains. Valparaiso lies at a major watershed break between the Lake Michigan basin, where water flows to the north, and the Illinois River basin, where water flows to the south. Natural water flow is generally northward to the north of Valparaiso in most of Valparaiso's Regulated Territory and all of the Contested Areas. Mr. DeBruler testified that all things being equal, gravity sanitary sewers can be installed at lesser depths and for greater lengths before needing to be pumped when the sewers are constructed with the lay of the land. Due to Valparaiso's location as the highest ground in the area, most of the wastewater from the Valparaiso Regulated Territory north of Valparaiso will need to be pumped up to Valparaiso's existing sewer system.

Mr. DeBruler testified that Petitioners' Exhibit 3 depicts two force main systems proposed to pump and convey wastewater that naturally flowed north back south to Valparaiso. The terrain falls going northward from a high elevation of 819 feet mean sea level (msl) at Valparaiso to 656 msl at U.S. Highway 6. Mr. DeBruler attached a topographical analysis to his testimony as Attachment MD-4, which he states demonstrates that Valparaiso's master planned gravity sewer west of Meridian Road is not capable of being constructed due to topographical concerns. He

testified that the topography of the Contested Areas makes it easier and cheaper from a capital cost perspective to construct sewer mains leading to Chesterton rather than Valparaiso, especially in the Contested Areas.

Mr. DeBruler testified that there would be no impacts to Valparaiso's existing infrastructure or future plans if Valparaiso does not serve the Contested Areas. He stated that utility master plans are a purely speculative snapshot in time and are intended to be revised regularly to keep them current as conditions change. For example, he noted that Valparaiso's 2017 Master Plan does not envision service north of State Road 6, although issues related to Damon Run are briefly considered, specifically related to the alternative incorporating flows from Damon Run and the need for additional study. Clarifying his earlier comments about topographical issues, Mr. DeBruler testified that he created a sewer profile along Valparaiso's proposed gravity sewer route depicted in Attachment MD-4 that shows the gravity sewer is not capable of being constructed due to required depths of up to 60 feet. He stated that no conventional construction can achieve those depths and the planned gravity sewer is not viable.

Mr. DeBruler testified that even if Chesterton is granted exclusive sewer service rights in the Disputed Areas, there will be no limitations on Valparaiso owning facilities within Chesterton's exclusive service area because Chesterton's Regulatory Ordinance makes no mention of limiting or banning the presence of another utility's sewer infrastructure in the regulated territory. He stated that there is no technical reason that the Damon Run system could not be connected to Valparaiso's sewer system—the limitation is financial because the necessary lift stations and sewer mains will be expensive. He stated that few if any new developments will occur between Valparaiso and Damon Run until sewers are first installed, making Valparaiso's financial argument for and exclusive service territory immaterial and that there are no technical reasons that Valparaiso needs a regulated territory to connect its Damon Run system to its main sewer system.

Mr. DeBruler testified that in 2019 Valparaiso experienced 15 sanitary sewer overflows (SSOs) in its collection system that were not caused by problems in private plumbing or private sewer laterals. He attached the related IDEM reports to his testimony as Attachment MD-5. By comparison, Chesterton only reported one SSO in 2019. See Attachment MD-6. In addition, Mr. DeBruler testified that in 2019, Valparaiso received two Notice of Violation/Non-Compliance letters from IDEM both related to inadequate preventative maintenance of lift stations. Mr. DeBruler testified that Valparaiso needs to improve its technical and managerial functions and need to expend more money to control SSO issues and to perform maintenance activities to remedy these issues.

Mr. DeBruler testified that from a theoretical perspective Chesterton, Valparaiso, Aqua, and Portage have the capability to provide service in the Contested Areas. Chesterton owns and operates a 4.6 MGD wastewater treatment plant. Chesterton accepts for treatment up to 0.809 MGD of wastewater from the Town of Porter and 0.081 MGD of wastewater from the Indian Boundary Conservancy district. In 2018, Chesterton's wastewater treatment plant operated at 54.1% of its capacity with the capability to serve an additional 5,300 EDUs. Through September 2019, Chesterton's treatment plant operated at 59.4% of capacity with over 4,500 EDUs of available capacity. Mr. DeBruler attached his calculations related to Chesterton's treatment plant to his testimony as Attachment MD-9. Chesterton installed a sewer system to serve the Fox Chase

Farms and Whispering Sands neighborhoods, including a lift station on Meridian Road and an 8-inch force main connecting to Chesterton's sewer system. Mr. DeBruler estimated that peak flow to the lift station is currently about 317 gallons per minute (gpm) leaving approximately 90 EDUs of capacity in the lift station/force main system before upgrades are required. He stated that the lift station can be easily upgraded with higher capacity pumps and larger motor controls to pump 700 gpm without exceeding reasonable pressure limits in the force main. With this upgrade, the lift station would have the capacity to serve 420 additional EDUs.

Mr. DeBruler testified that Chesterton also constructed the State Road 49 Corridor Utility Service Project, which includes a 15-inch gravity sewer designed to handle about 1.5 MGD peak flow and serve about 731 acres of land. Mr. DeBruler attached to his testimony Attachment MD-10, which depicts the general scope of the project, Attachment MD-11, the engineering report for the project; and Attachment MD-12, a map showing the intended benefitted area for the project. He stated that Chesterton's and Porter County's abilities to recapture project costs is being threatened by some overlapping with the Valparaiso Regulated Territory, specifically two properties on County Road 900 North lying east of the Damon Run system and most of the Contested Areas east of State Road 49. He attached a map showing the overlapping areas to his testimony as Attachment MD-13.

Mr. DeBruler testified that Chesterton has the technical, financial, and managerial capabilities to serve the Contested Areas. He estimated that the upgrades discussed above required to increase capacity at the Fox Chase Farms lift station would cost less than \$150,000. Mr. DeBruler testified that Chesterton is better able to serve the Contested Areas because in most cases capital costs for sewer service in the Contested Areas will be less expensive where the sewer extension distance is shorter and Chesterton's sewer system is closer than Valparaiso's system in much of the Contested Areas. For these reasons, Mr. DeBruler testified that Chesterton should be the exclusive wastewater utility service provider in the Contested Areas.

Mr. DeBruler testified that approving Valparaiso's requested regulated territory will harm both present and future economic development in the Contested Areas because developers make decisions based on economic considerations, primarily capital costs in the case of utilities. Generally, connection to the closest utility will result in lower capital costs and will be most favorable to a developer. Because of this, Mr. DeBruler testified that service from Chesterton would be most favorable in the Contested Areas and service from Valparaiso would be most favorable in the southern part of the Valparaiso Regulated Territory with a dividing line at County Road 700 North.

**4. Theodore J. Sommer.** Mr. Sommer, a CPA and Partner with LWG CPAs and Advisors, testified regarding financial issues concerning Valparaiso's requested relief.

Mr. Sommer testified that Valparaiso issued \$5,620,000 in revenue bonds to acquire Damon Run's sewer assets. The acquired Damon Run system will continue to be served wholesale treatment by Portage and Damon Run will issue refunding bonds to defease the remaining amount of the sewer bonds. Mr. Sommer created a table of his calculation of Valparaiso's sewer rates, including the \$60.78 monthly fee per EDU, a \$38.85 per 5,000 gallons flow charge, and a \$52.98 debt service charge per EDU, totaling \$152.61. He testified that this amount compares unfavorably

to Chesterton's monthly rate of \$99.18 in Chesterton's special utility area, comprising a \$44.21 monthly user charge and a \$54.97 debt service and reserve charge. Chesterton's debt service and reserve charge recovers costs for grinder pumps and the sewer line run up to Whispering Sands on the west side of the Fox Chase Farms. This rate would be charged to all connections to the sewer interceptor running from Chesterton's sewer main located at the Indiana Toll Road and State Road 49 to Fox Chase Farms and Whispering Sands. Mr. Sommer testified that Chesterton's \$99.18 monthly charge will reduce to \$90.02 the next time Chesterton adjusts its rates because the debt service reserve on Chesterton's 2015 Series A and 2015 Series B bonds was fully funded in January of 2020. When the bonds are fully paid off, the special utility area customers will revert to Chesterton's standard rates, which are \$44.21 per month.

Mr. Sommer testified that Valparaiso intends to charge customers added onto its main sewer system in the southern portion of its proposed regulated territory consistent with its tariffs, which is \$47.75 per month, and to charge customers added to the Damon Run system in the northern portion of its proposed regulated territory consistent with the tariffs included for those customers discussed above. Mr. Sommer stated his concern that Valparaiso's plan is merely aspirational and founders because the capacity to add customers is limited as testified to by Mr. DeBruler. Mr. Sommer stated that Chesterton's standard rates are lower than Valparaiso's standard rates despite being more recently adjusted (by Chesterton in April 2019) compared with Valparaiso's last rate increase in 2013.

Mr. Sommer testified that Chesterton has a significant cash reserve, an engaged and informed board, and a diligent Utility Superintendent. He stated that Chesterton's environmental record shows that it has spent its money wisely to build and maintain a safe, efficient, and environmentally sound sewer utility system. Chesterton raises its rates when it needs to, most recently in 2019, in order to maintain its financial integrity. He stated that these qualities demonstrate Chesterton's technical, managerial, and financial abilities.

Mr. Sommer testified that sewer rates are often a factor in making a development work. However, the developer pays for the line extension, and the further the property is from the appropriate infrastructure, the more it will cost to pay for that main extension. Mr. Sommer stated that limiting the choices for sewer service, especially in the northern portion of Valparaiso's requested service area, will stifle economic development activities in the present and the future because of the distance main extensions from Valparaiso must cover. Mr. Sommer testified that a reasonable dividing line would be County Road 700 North, which is approximately equidistant from Valparaiso and Chesterton.

Mr. Sommer testified that every argument Mr. Julien makes supporting the public interest for Valparaiso applies at least equally to Chesterton. He stated that had Damon Run connected to Chesterton five years ago when Chesterton undertook the Fox Chase Farms project, Damon Run customers would have enjoyed lower bills for the past five years. Mr. Sommer also testified that the full savings identified by Mr. Julien for Damon Run area customers is already in jeopardy because the Duneland School Corporation has decided to leave Valparaiso's Damon Run system and connect to Chesterton. He concluded that Valparaiso's financial model does not promote economic development because of its high rates.



**C. Aqua's Case-in-Chief.**

**1. Kari Bennett.** Ms. Bennett, Aqua's President, testified regarding Aqua's South Haven Division and the areas it currently serves related to Valparaiso's requested relief. Aqua currently provides wastewater service to approximately 27,904 customers in Indiana, including approximately 4,225 customers in Porter County through its South Haven Division. Aqua's South Haven Division's sewage disposal plant includes one sequential batch reactor wastewater treatment plant with a capacity of two million gallons and over 50 miles of collection and force mains.

Ms. Bennett testified that Aqua has made substantial improvements to the South Haven Division, investing in sewer main and pump station rehabilitation and new sewer construction. Recently, Aqua completed a \$3.2 million improvement to the South Haven Division's treatment plant, including a transition from chlorine gas to ultraviolet light for disinfection, an improved screening system to better manage storm water inflow, and updated energy-efficient blowers.

Ms. Bennett noted that Mr. Poulos identified three parcels where the Commission had previously granted Aqua a CTA to serve and removed those parcels from Valparaiso's proposed regulated territory. She attached a map identifying the portion of those parcels that have been annexed by Valparaiso, which are the southeastern parcel and the approximate western half of the middle parcel. Ms. Bennett agreed with Mr. Poulos that the three parcels should be removed from Valparaiso's proposed regulated territory, that neither Valparaiso nor Aqua should necessarily be precluded from serving the portions of the three parcels that have been annexed by Valparaiso, and that Aqua continues to have a CTA to serve the non-annexed, rural portions of the parcels. She stated that service to the three parcels should continue to be provided in a manner that does not cause duplication of facilities or the provision of service in a wasteful manner. Aqua has made investments in facilities in all three parcels and is providing safe and reliable service to customers collectively located therein, and intends to continue to provide wastewater utility service to all present and future customers located in the three parcels that request service from Aqua. Ms. Bennett specifically described a six-inch main constructed by Aqua that is capable of facilitating service to development within all three parcels. With respect to new customers in the annexed portions of the three parcels, Ms. Bennett stated that Aqua will work with Valparaiso to ensure service is provided in a manner that does not result in the duplication of facilities and that the utility best suited to serve the area does so and that neither utility extends service in a manner that is wasteful or inefficient.

Ms. Bennett testified that based on Valparaiso's agreement to remove the three parcels from its proposed regulated territory, Aqua does not object to the approval of the Valparaiso Regulatory Ordinance.

**D. OUCC's Case-in-Chief.**

**1. Carl N. Seals.** Mr. Seals, Utility Analyst in the OUCC's Water/Wastewater Division, testified regarding whether Valparaiso has met the criteria in Ind. Code ch. 8-1.5-6.

Mr. Seals testified that Valparaiso seeks to become the exclusive provider and to establish territory whereby it may provide sewage treatment service to Damon Run and to areas along and adjacent to Damon Run and establish exclusive areas generally north of Valparaiso, consistent with its Master Plan. Mr. Seals identified the four elements that a petition under Ind. Code § 8-1.5-6-9(b) must include: a description of the service territory, proposed rates and charges, a list of any related proceedings, and a list of any actually or potentially affected utilities.

Mr. Seals testified that Valparaiso filed Ordinance 27-2019 with its Verified Petition, which included a graphical depiction of the proposed regulated territory. The map attached to the petition was subsequently modified in Petitioners' Exhibit 3, to remove three parcels sought by Aqua. He stated that new customers in the Valparaiso Regulated Territory, excluding Damon Run, are set out in Ordinance 28-2013 and Petitioners' Exhibit 5 as \$47.79 per month for 5,000 gallons per month. For Damon Run customers, the rate is \$99.63 for 5,000 gallons per month, excluding debt service charges. Mr. Seals noted that Valparaiso's Damon Run rate is higher than the \$53.90 per month that Damon Run customers were paying, but that excludes a significant reduction (\$187.76 per month to \$52.98 per month) to debt service payments Damon Run customers currently pay through the annual residential tax bill. When including debt service payments, the total monthly cost of sewer service to Damon Run customers will reduce from \$241.66 to \$162.61.

Mr. Seals testified that Valparaiso's petition indicated there were no other administrative or judicial proceedings involving its regulatory ordinance and that the petition lists the following affected sewer utilities, Aqua, Portage, Damon Run, Chesterton, and VLACD, and excludes these utilities from the proposed regulated territory.

Mr. Seals testified that when evaluating the public interest of a proposed regulatory ordinance, the Commission should consider the factors set forth in Ind. Code § 8-1.5-6-8(g). Regarding the ability of another utility to provide service, Mr. Seals testified that Mr. Poulos explains the Valparaiso and Damon Run are currently the only wastewater utility providers in the Valparaiso Regulated Territory and that Chesterton may have limited capacity in the area to serve additional customers. Regarding the potential impact on customer rates, Mr. Seals testified that Valparaiso stated the rates in the proposed regulated territory, excluding Damon Run, will be the same rates charges to Valparaiso's other customers. Damon Run customers will see a decrease in total cost, when debt service collected through residential tax bills is taken into consideration.

Mr. Seals testified that economic development will be served by providing greater certainty to potential developers in the Valparaiso Regulated Territory and that Valparaiso will have a clearly defined area in which to anticipate and plan for future growth. He further testified that reducing rates to Damon Run customers may encourage growth in that community, and this may be enhanced when Valparaiso is able to extend sewer mains to Damon Run, further reducing costs (and rates). Regarding the history of service in the Valparaiso Regulated Territory, Mr. Seals testified that Valparaiso already serves approximately 2,000 customers outside of its corporate limits and has been in discussions with Damon Run since 2015 to find a way to assist Damon Run in providing sewer service.

Mr. Seals testified that Valparaiso appears to have fulfilled all of the requirements provided in Ind. Code § 8-1.5-6-9(b). He also noted that Valparaiso has already completed the acquisition

of Damon Run on December 10, 2019, and has begun providing sewer utility service to Damon Run's former customers. Mr. Seals testified that one of those customers, Liberty Intermediate and Elementary schools, appears to be seeking sewer service from Chesterton and that losing the schools as a customer may affect the economic decision to extend mains to Damon Run and move rates to Valparaiso's existing rates. Mr. Seals stated that the OUCC received customer comments supporting Valparaiso's provision of service to Damon Run. The OUCC filed the comments as Public's Exhibit 2.

**E. Valparaiso's Settlement Evidence.**

**1. Mr. Poulos.** Mr. Poulos testified regarding the terms of the Settlement, the settlement process, and how the public interest will be served by the Settlement. Mr. Poulos also testified regarding technical issues raised by Chesterton regarding Valparaiso's ability to provide service to the Valparaiso Regulated Territory. Mr. Poulos attached a copy of the Settlement to his testimony as Petitioners' Exhibit 21.

Mr. Poulos testified that in the Settlement Valparaiso and Chesterton have agreed to a division of service territory and certain other modifications of their respective regulated territories. The Valparaiso Regulated Territory is depicted in the map attached to the Settlement as Exhibit 1 and comprises the areas originally requested by Valparaiso south U.S. Highway 6, all existing Damon Run Customers, and the area marked on the map directly south of the Damon Run area. The Porter County Recapture Area and Liberty Elementary and Intermediate Schools are excluded from the Valparaiso Regulated Territory. The Chesterton Regulated Territory is depicted in the map attached to the Settlement as Exhibit 2 and comprises all areas north of U.S. Highway 6 that are not included in the Valparaiso Regulated Territory and the Porter County Recapture Area.

Mr. Poulos testified that the Settlement requires both Valparaiso and Chesterton to amend their regulatory ordinances to reflect the terms of the Settlement. Valparaiso approved the amended ordinance, Ordinance 7-2020, on March 9, 2020, and submitted a copy of the amended ordinance as Petitioners' Exhibit 28. Chesterton will submit its amended ordinance for approval in Cause No. 45312, and Valparaiso has agreed not to oppose approval of Chesterton's ordinance so long as it is consistent with the terms of the Settlement. In addition, Valparaiso and Chesterton have agreed not to provide service in each other's regulated territories, and Chesterton has agreed to engage in good faith negotiations to provide wholesale sewer service to Valparaiso's Damon Run system on request from Valparaiso.

Mr. Poulos testified that he discussed the issues raised by Mr. DeBruler regarding Portage's treatment plant capacity with Portage officials, including Portage's treatment plant superintendent, Don Slawnikowski. Mr. Slawnikowski informed Mr. Poulos that the recent increases in Portage's influent flow rate are due to a significant inflow and infiltration (I&I) problem within Portage's collection system. Mr. Slawnikowski assured Mr. Poulos that Portage will make the necessary repairs to reduce the I&I problem. In addition, Portage's treatment plant capacity was recently raised by IDEM from 4.95 MGD to 5.3 MGD. Mr. Poulos also testified that Valparaiso has alternative plans if Portage is unable to meet its contractual treatment obligations, including seeking damages for breach of contract, the possibility of contracting with Aqua or Chesterton for

wholesale treatment service, and interconnecting Damon Run to the Valparaiso system sooner than expected.

Regarding issues raised by Mr. DeBruler about Valparaiso's treatment plant capacity, Mr. Poulos testified that the increases in influent flows noted by Mr. DeBruler were due in part to a failing raw influent meter that was measuring significantly higher than the final effluent meter. Valparaiso replaced the sensor/probe in the meter, which rectified the disparity between recorded influent and effluent flows. The influent flows since December 2019 show that the treatment plant is operating at approximately 69% of its treatment capacity on a daily basis and has sufficient capacity to provide service to the Valparaiso Regulated Territory.

Regarding issues raised by Mr. DeBruler about operational concerns, Mr. Poulos testified that VCU operates a combined sewer/storm water collection system, consisting of 202 miles of sewer lines, 5,000 manholes, 32 lift stations, and an 8.0 MGD treatment plant with a peak capacity of 18 MGD. He stated that Valparaiso operates the largest wastewater utility provider in Porter County. Mr. Poulos also testified that Valparaiso reports all SSOs, including all basement wastewater backups and all releases caused by a problem with a private sewer lateral. Over the last five years, Valparaiso has averaged 2.97 municipal-system-related SSOs per 100 miles of sewers, which is lower than the national average of 4.5 SSOs per 100 miles of sewers.

Mr. Poulos also testified that Valparaiso satisfied the terms of its Long-Term Control Plan in 2012 and has invested approximately \$15 million in strategic sewer separations and the construction of a combined sewer overflow wet-weather treatment facility, resulting in the removal of over 50 million gallons of storm water within the combined sewer system. In addition, Valparaiso has invested \$12 million in additional capital in sewer main replacements, sewer lining, and additional sewer separation projects. Valparaiso also embedded a financial mechanism to pay for the replacement of aging infrastructure in its current rates, and in 2018, Valparaiso invested over \$80,000 to upgrade its computerized maintenance management system.

Mr. Poulos testified that Valparaiso is a financially and operationally strong utility that is proactive in its management of utility assets and is a good steward of the environment in meeting its regulatory responsibilities. Mr. Poulos testified that Valparaiso has sufficient facilities and treatment capacity to provide superior sewer service to its current customers and to potential customers in the Valparaiso Regulated Territory. Mr. Poulos also testified that based on Chesterton's testimony and reputation, he has no reason to believe that Chesterton would be unable to provide quality, safe sewer utility service to existing and potential customers in the Chesterton Regulated Territory.

Mr. Poulos testified that the Settlement is in the public interest because it resolves the issues in this case and provides stability and predictability of service to the current and future customers in the two regulated territories. The Settlement ensures that all customers in the Contested Areas will have access to quality, affordable sewer service and supports Valparaiso's plan to bring immediate and long-term rate relief to the Damon Run system customers. The Settlement also allows the Liberty Elementary and Intermediate schools to be served by Chesterton as are the majority of other Duneland Township schools. Finally, the Settlement protects the substantial investments already made by Chesterton and Porter County to potentially provide sewer utility

service in the Porter County Recapture Area. For these reasons, Mr. Poulos recommended that the Commission approve the Settlement and Valparaiso's amended regulatory ordinance.

2. **Mr. Kenning.** Mr. Kenning testified regarding the Valparaiso's ability to extend a main to connect the Damon Run system to Valparaiso's wastewater treatment plant. He stated that Mr. DeBruler's topographical analysis appears to have assume a route for the gravity sewer that is approximately 2,700 feet to the west of the proposed route in Valparaiso's Master Plan. Mr. Kenning attached a diagram to his testimony as Petitioners' Exhibit 25 showing the difference between the route assume by Mr. DeBruler and the route in the Master Plan. Moving the location of the gravity sewer causes the pipe to go through the obstruction that Mr. DeBruler claimed made construction of the gravity sewer impossible.

Mr. Kenning testified that Valparaiso's Master Plan is the result of substantial study and analysis but that the final routes of utility extensions are determined by more detailed topographical analysis, construction costs, and developer driven routing. Mr. Kenning attached a topographical analysis for the gravity sewer route assumed in the Master Plan to his testimony as Petitioners' Exhibit 26. The analysis shows that the proposed route lends itself to allowing for a northward fall of the gravity sewer to a regional pump station. All construction depths would be reasonable and able to be constructed. Mr. Kenning testified that he is confident in the results of the study and in Valparaiso's ability to implement the study's recommendations.

3. **Mr. Julien.** Mr. Julien testified regarding the calculation of Valparaiso's sewer rates and charges for the Damon Run area. He stated that in calculating Valparaiso's Damon Run sewer rates, Mr. Sommer combined the sewer rates and charges with the \$52.98 monthly amount the average Damon Run water customer pays to retire the debt that is outstanding on Damon Run's water bonds. He stated that Mr. Sommer improperly included the water debt service charge because it is not related to sewer service.

Mr. Julien testified that prior to Valparaiso's acquisition of Damon Run's sewer utility, Damon Run customers, on average, paid \$187.66 per month for debt service per EDU related to Damon Run's sewer and water system debt. Damon Run used the funds that it received from Valparaiso's acquisition to pay off its sewer debt, so no Damon Run sewer debt service charge remains. Damon Run also refinanced its water debt, resulting in the reduced estimated monthly water debt service charges of \$52.98. After removing this charge from Mr. Sommer's calculations, Valparaiso's Damon Run area sewer rates are \$99.63, which is nearly identical to Chesterton's special utility area rate of \$99.18.

#### **F. Chesterton's Settlement Evidence.**

1. **Mr. Brandt.** Mr. Brandt testified regarding the Settlement, which essentially creates a boundary along U.S. Highway 6 with Chesterton serving north of the highway and Valparaiso serving south of the highway. There are two exceptions to this general rule. First Valparaiso will serve north of U.S. Highway 6 in the Damon Run area, including certain areas outside of Damon Run as depicted on the map attached to the Settlement as Exhibit 1. Second, Chesterton will serve south of U.S. Highway 6 in the Porter County Recapture Area as shown on both Exhibit 1 and Exhibit 2 to the Settlement. The exceptions recognize that each party has made

investments to serve those respective areas, and it would be inefficient, burdensome, and overly complicated to strand or unwind those investments.

Mr. Brandt testified that litigating this matter would have been an expensive proposition, exhausted resources, and diminished the reputations of Chesterton and Valparaiso. The Settlement also directly settles this Cause and goes a long way toward settling Cause No. 45312 by removing any opposition that Valparaiso might have raised in that Cause. The Settlement allows Chesterton and Valparaiso to get to work planning their respective sewer systems and serving their customers in the most efficient manner possible.

Mr. Brandt testified that the Settlement is in the public interest because it avoids unnecessary litigation and allows Chesterton and Valparaiso to proceed with relative certainty to plan infrastructure investments to serve their respective areas. Although Aqua did not join the Settlement, Chesterton understands that Aqua will not oppose the Settlement in this Cause or Chesterton's requested relief in Cause No. 45312 so long as the evidence in those cases is consistent with the terms of the Settlement and the maps attached to the Settlement. Mr. Brandt testified regarding Chesterton's intention to file its case in Cause No. 45312 consistent with the Settlement. Finally, the Settlement promotes regionalism and cooperation by providing that if requested by Valparaiso, Chesterton will enter into good faith negotiations to provide wholesale sewer service to Valparaiso's Damon Run system.

Mr. Brandt testified that Chesterton's Town Council and USB approved the settlement by a joint resolution on February 27, 2020. Mr. Brandt attached a copy of the joint resolution to his settlement testimony as Attachment LB-8.

## **5. Commission Discussion and Findings.**

**A. Sufficiency of the Petition.** Under Ind. Code § 8-1.5-6-9(b), a municipality's petition for approval of a regulatory ordinance must contain the following information:

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

Valparaiso's Verified Petition states:

8. The Regulated Territory is defined as those areas within the corporate boundaries of the City, as well as certain areas within ten miles outside the City's boundaries, excluding any area within the exclusive, authorized service area of another sewage utility, including but not limited to, a municipal sewage utility.

9. The boundaries of the Regulated Territory established by the Regulatory Ordinance are outlined on the map attached to Exhibit 1 (Ordinance 27-2019).

After agreeing to the Settlement in this Cause, Valparaiso enacted Ordinance 7-2020, which replaced the map attached to Ordinance 27-2019 with a map reflecting the terms of the Settlement.

In addition, Valparaiso's Verified Petition provided the rates that would be charged for customers in the Damon Run Area and included Exhibit 2 (Ordinance 28-2013), which sets forth Valparaiso's current rates for all other customers. Valparaiso's verified petition indicated that the regulatory ordinance is not currently the subject of any other administrative or judicial proceedings. Although Valparaiso's Regulatory Ordinance is tangentially related to Chesterton's request for approval of its own regulatory ordinance in Cause No. 45312, we note that Chesterton's case was filed after Valparaiso filed its Verified Petition in this Cause and that all parties had notice of the proceeding through Chesterton's petition to intervene in this Cause. Finally, Valparaiso's Verified Petition lists the utilities that might be impacted by its regulatory ordinance.

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

**B. Analysis of the Settlement.** Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coal.*, 664 N.E.2d at 406.

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

**B. Public Interest Factors.** In this case, as required by Ind. Code § 8-2.5-6-9(c), the Commission must consider Valparaiso's regulatory ordinance, as amended by the Settlement, in light of the public interest factors set forth in Ind. Code § 8-1.5-6-8(g), which are discussed in detail below.

**1. The ability of another utility to provide service.** Both Valparaiso and Chesterton provided evidence demonstrating their respective ability to provide serve in the Valparaiso Regulated Territory. Valparaiso has acquired and now operates the Damon Run system, which includes a collection sewer system in the vicinity of the intersection of U.S. Highway 6 and

Meridian Road, and a sewer main running west along U.S. Highway 6 to connect the Damon Run system to Portage for wastewater treatment. Valparaiso also presented its 2017 Master Plan which sets forth proposed plans to serve the areas located between its corporate boundaries and the Damon Run system, eventually allowing Valparaiso to connect to and serve the Damon Run system with its own treatment facility.

Mr. DeBruler raised concerns about Portage's ability to accept additional capacity from Valparaiso's Damon Run Area system. Mr. Poulos testified that Portage has assured Valparaiso that the sudden increase in influent flow is due to an I&I problem, which Portage is correcting. Further, Mr. Poulos testified that Valparaiso has several possible alternatives that it can explore in the event that Portage is unable or unwilling to provide any additional capacity necessary to serve the Damon Run Area system. Similarly, Mr. Poulos addressed Mr. DeBruler's concerns about Valparaiso's available treatment plant capacity, noting that Mr. DeBruler's calculations were based on data from a misreporting influent meter, which has since been fixed. Based on this evidence, we find that Valparaiso has sufficient capacity available to serve additional customers in the Valparaiso Regulated Territory.

Chesterton provides sewer utility service to customers in the Fox Chase Farms and Whispering Sands communities, which are located along Meridian Road north of U.S. Highway 6. Chesterton installed a sewer main to connect these communities to the State Road 49 Utility Corridor project and Chesterton's primary sewer system. Chesterton has sufficient capacity available at its treatment plant and, with reasonable upgrades, in the connecting sewer mains to serve additional customers in the Chesterton Regulated Territory.

No other utilities provided evidence regarding their ability to provide service in either the Valparaiso or Chesterton Regulated Territories, with the exception of Aqua. Ms. Bennett limited her testimony regarding Aqua's service to three specific parcels located on the west side of Valparaiso's corporate boundaries. Both Ms. Bennett and Mr. Poulos testified that Valparaiso and Aqua agreed to remove those three parcels from Valparaiso's Regulated Territory and agreed that service to the three parcels should continue to be provided in a manner that does not cause duplication of facilities or the provision of service in a wasteful manner.

Based on the evidence presented, we find that the Valparaiso Regulatory Ordinance, as amended by the terms of the Settlement, sufficiently addresses the abilities of both Chesterton and Valparaiso to provide service within and in the vicinity of the Valparaiso Regulated Territory and promotes the efficient provision of service to customers in those areas.<sup>2</sup> Therefore, we conclude that our consideration of the ability of another utility to provide service in the regulated territory supports our approval of the Settlement and the Valparaiso Regulatory Ordinance.

**2. The Effect of a Commission Order on Customer Rates and Charges in the Regulated Territory.** Our analysis of this issue is broken into three distinct customer groups: the current Damon Run Area customers; future Damon Run Area Customers; and future customers connected to Valparaiso's sewer treatment system.

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<sup>2</sup> Although many of our findings in this Cause could also apply to the terms of the Settlement related to the Chesterton Regulatory Ordinance and Regulated Territory, we will reserve our findings and conclusions on those issue to be addressed in a Final Order in Cause No. 45312.



With respect to the current Damon Run Area customers, these customers will experience a significant decrease in their total monthly cost for sewer service and debt service charges. Mr. Julien testified that the total monthly costs to an average Damon Run residential customer using 5,000 gallons per month will reduce from \$241.66 to \$152.61, a savings of \$89.05 per month. In addition, Valparaiso's plan to eventually connect the Damon Run Area system to Valparaiso's sewer treatment system should further reduce the monthly rates of Damon Run Area customers. Mr. Poulos testified that bringing this much needed rate relief to the Damon Run Customers is one of the primary reasons that Valparaiso acquired the Damon Run sewer system and requested approval of its regulatory ordinance.

Future Damon Run Area customers, meaning those customers connected to the Damon Run Area system but located outside of the Damon Run Conservancy District, will pay a monthly charge of \$99.63, because those customers would not be obligated to pay the Damon Run water debt service charge. This rate is nearly identical to Chesterton's current rate for customers in its SUA of \$99.18. Although Mr. Sommer testified that Chesterton's SUA rate will decrease in the next rate adjustment to \$90.02, the evidence shows that whether the customers in the Damon Run Area/SUA are served by Chesterton or Valparaiso, their rates will be within \$10 per month of each other.

Future customers connected to Valparaiso's sewer treatment system, i.e. customers located in the Valparaiso Regulated Territory south of U.S. Highway 6, will pay Valparaiso's regular sewer rates, which are currently \$47.79 for an average residential customer using 5,000 gallons per month. Valparaiso's sewer rates are competitive with or less expensive than the rates of other nearby utilities as demonstrated by the chart in Mr. Julien's testimony.

Based on the evidence presented, we find that approval of Valparaiso's Regulatory Ordinance, as amended by the terms of the Settlement, will bring much needed monthly payment relief to the Damon Run Area customers, and will make service available to new customers within the Valparaiso Regulated Territory at rates that are competitive with or less expensive than the rates available from other nearby utilities. Therefore, we conclude that our consideration of the effect on customer rates and charges in the regulated territory supports approval of the Settlement and the Valparaiso Regulatory Ordinance.

**3. Effect of the Commission's Order on present and future economic development in the Regulated Territory.** The ability to obtain reliable and affordable wastewater treatment service is critical to present and future economic development in an area. Valparaiso, Chesterton, and Porter County, Indiana, have each expended considerable resources acquiring and constructing infrastructure to provide sewer utility service in and around the Valparaiso Regulated Territory. In addition, Valparaiso has expended substantial resources to develop a Master Plan to serve those areas of its regulated territory between U.S. Highway 6 and its corporate boundaries. Both Mr. Brandt and Mr. Poulos testified that the Settlement provides stability and predictability of service to the current and future customers in the area while protecting the investments made by Valparaiso, Chesterton, and Porter County. The Settlement also promotes regionalism and cooperation by opening an avenue for Valparaiso and Chesterton to discuss further ways to cooperate in the provision of sewer treatment service in the Damon Run area.

Based on the evidence presented, we find that approval of the Valparaiso Regulatory Ordinance, as amended by the terms of the Settlement, will support present and future economic development in the Valparaiso Regulated Territory. The Settlement reflects a comprehensive approach that will afford certainty in providing sewer utility service within and in the vicinity of the Valparaiso Regulated Territory. Therefore, we conclude that our consideration of the effect of the Commission's order on present and future economic development in the regulated territory supports our approval of the Settlement and the Valparaiso Regulatory Ordinance.

**4. The History of Utility Service in the Regulated Territory.** Prior to Valparaiso's acquisition of the Damon Run Area system, Damon Run provided sewer utility service to the Damon Run Area customers, which included the Liberty schools, Porter Hospital, and the Porter County Park. In 2014, Chesterton extended sewer utility service to the Fox Chase Farms and Whispering Sands neighborhoods, bringing much needed relief to residents experiencing significant problems from failed private sewage systems. Mr. Poulos testified that south of U.S. Highway 6, there are existing developments in the Valparaiso Regulated Territory that are currently served by their own semi-public wastewater treatment plants.

Historically, there has been a great deal of disagreement between Chesterton and first Damon Run and later Valparaiso regarding the provision of service to customers in north of U.S. Highway 6 and between Meridian Road and State Road 49. The Settlement is a reasonable resolution of these disagreements and promotes the future cooperation of the two utilities in a regional approach to providing sewer utility service. In addition, the Valparaiso Regulatory Ordinance will allow Valparaiso to extend municipal sewer utility service to the existing developments south of U.S. Highway 6.

Based on the evidence presented, we conclude that our consideration of the history of utility service in the regulated territory supports our approval of the Settlement and the Valparaiso Regulatory Ordinance.

**5. Other Factors and Terms of the Settlement.** In addition to the division of service areas, the Settlement also includes the provision that Valparaiso will not oppose the Commission's approval of the Chesterton's requested relief in Cause No. 45312 so long as Chesterton's request is consistent with the terms of the Settlement. Thus, the Settlement resolves the disputes between Valparaiso and Chesterton in this Cause and also assists with the resolution of the issues in Cause No 45312. Further, Valparaiso and Chesterton have explicitly agreed not to provide sewer utility service in each other's service territories, including their respective proposed regulated territories. Finally, as discussed above, the Settlement promotes a regional and cooperative approach to the provision of sewer utility service in the area, not only by providing clear guidance on which utility will provide service in specific areas, but also by opening an avenue for Valparaiso and Chesterton to discuss future cooperation in wastewater treatment.

Although Aqua and the OUCC are not parties to the Settlement, neither entity presented evidence opposing the Settlement and the testimony from Valparaiso and Chesterton indicates that Aqua and the OUCC do not object to the Settlement or to the approval of the Valparaiso Regulatory Ordinance, as amended by the Settlement.

**C. Approval of the Settlement and the Valparaiso Regulatory Ordinance.**

The Commission has before it sufficient evidence to determine whether the Settlement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that such agreement serves the public interest. The Settlement resolves the issues in this case, and the long-standing dispute between Chesterton, Damon Run, and Valparaiso over the provision of utility service in the Damon Run Area and surrounding vicinity. In addition, the Settlement provides stability and predictability of service to the current and future customers in the area and protects the infrastructure investments made by Valparaiso, Chesterton, and Porter County.

Under Ind. Code § 8-1.5-6-9(c), the Commission has authority to resolve all issues related to the proposed regulatory ordinance and regulated territory in a manner the Commission determines is in the public interest. Based on the evidence presented, we conclude that the Settlement is reasonable, just, and consistent with the purposes of Ind. Code ch. 8-1-2. We further conclude that the Settlement is in the public interest. Based on our consideration of the public interest factors discussed above, we also conclude that Valparaiso Regulatory Ordinance, as amended by the Settlement, and the Valparaiso Regulated Territory comply with Ind. Code § 8-1.5-6-9 and that our consideration of the public interest factors support approval of both. We therefore, approve the Valparaiso Regulatory Ordinance as amended by the Settlement (Ordinance Nos. 27-2019 and 7-2020) and find that Valparaiso shall have an enforceable Regulated Territory as described in Ordinance Nos. 27-2019 and 7-2020 and depicted in the map attached to Ordinance 7-2020 and to the Settlement in this Cause.

**D. Use of the Settlement.** Under the terms of the Settlement, the Settlement shall not be used as precedent in any other proceedings or for any other purpose, except to the extent allowed by the Settlement or to the extent necessary to implement or enforce its terms. Therefore, with regard to future citation of the Settlement Agreement or this Order, the Commission finds that our approval should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

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

1. The Joint Stipulation and Settlement Agreement, which is attached to and incorporated into this Order by reference is approved.
2. The Valparaiso Regulatory Ordinance, as set forth in Ordinance No. 27-2019 and amended by Ordinance No. 7-2020 is approved subject to the terms of the Joint Stipulation and Settlement Agreement.
3. Valparaiso shall have an enforceable Regulated Territory as described in Ordinance Nos. 27-2019 and 7-2020 and depicted in the map attached to Ordinance No. 7-2020 and to the Settlement in this Cause.
4. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:**

APPROVED:

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

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