

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

FILED

November 17, 2017

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

INDIANA UTILITY
REGULATORY COMMISSION

COMPLAINANT'S SUBMISSION OF PROPOSED ORDER

Complainant, Sugar Creek Packing Co. ("Sugar Creek"), by counsel, hereby submits its
Proposed Order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 17th day of November, 2017, by electronic transmission to the following:

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**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

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

ORDER OF THE COMMISSION

Presiding Officers:

James Atterholt, Chairman

Carol Sparks Drake, Administrative Law Judge

Complainant, Sugar Creek Packing Co. ("Sugar Creek") initiated this case on May 25, 2017 when it filed its complaint with the Indiana Utility Regulatory Commission ("Commission") pursuant to Ind. Code § 8-1-30-3(b) requesting that the Commission review Western Wayne Regional Sewage District's ("WWRSD") operations with respect to its provision of service to customers, including Sugar Creek.

The Town of Cambridge City, Indiana ("Cambridge City") filed its Petition to Intervene in this Cause on July 5, 2017. Wayne County, Indiana ("Wayne County") filed its Petition to Intervene in this Cause on July 7, 2017 (Cambridge City and Wayne County, collectively, the "Intervenors"). This Commission issued a docket entry granting the Intervenors' Motions to Intervene on July 18, 2017.

The presiding officers convened a prehearing conference and preliminary hearing on July 20, 2017 at which Sugar Creek, WWRSD, Cambridge City and Wayne County each appeared by counsel, along with the Indiana Office of Utility Consumer Counselor ("OUCC"). This Commission issued its Prehearing Conference Order in this cause on August 9, 2017.

Sugar Creek filed its case-in-chief consisting of the direct testimony and accompanying exhibits of Mr. Edward Rodden, Chief Information Officer of Sugar Creek and Mr. Ron Holbrook, Plant Manager at Sugar Creek's Cambridge City, Indiana location, on July 28, 2017. Intervenor Wayne County filed the direct testimony and accompanying exhibits of Valerie Shaffer and Robert Warner on August 11, 2017. Intervenor Cambridge City filed the direct testimony and accompanying exhibits of Mark McCarty on August 11, 2017. WWRSD filed its responsive testimony consisting of the responsive testimony and accompanying exhibits of Mr. Otto Krohn, of O.W. Krohn & Associates, LLP and Mr. Marty Wessler, P.E., Chief Executive Officer of Wessler Engineering, Inc. on August 18, 2017. The OUCC filed its Notice of Intent Not to File Testimony on August 25, 2017, and Sugar Creek filed the rebuttal testimony and exhibits of Mr. Rodden and Mr. Scott Gregory, Facilities Maintenance Supervisor at Sugar

Creek's Cambridge City, Indiana plant on September 1, 2017. This Commission issued docket entry requests seeking additional information from Sugar Creek and WWRSD on September 15, 2017.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in this Cause was held at 9:30 a.m. on November 2, 2017 in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. All parties appeared by counsel and the parties' prefiled evidence was admitted into the record. No members of the general public appeared.

Having considered the evidence of record and the applicable law, the Commission now finds as follows:

1. Notice and Jurisdiction. Notice of the evidentiary hearing conducted in this Cause was given and published by the Commission as required by law. This proceeding is filed pursuant to, among others, Ind. Code ch. 8-1-30. Respondent WWRSD is a regional waste district providing wastewater utility service to the public in Wayne County, Indiana. WWRSD owns, operates, manages and controls plant, property and equipment and facilities which are used and useful for providing sewer utility service. WWRSD is an organization recognized and created by the General Assembly and vested with the power, among others, to sue and be sued. Ind. Code § 13-26-5-2. As such, WWRSD owns a "utility," and WWRSD is an "association of individuals" and therefore a "public utility," as both terms are used in Ind. Code § 8-1-2-1. *See Stucker Fork Conservancy Dist. v. Indiana Util. Reg. Comm'n*, 600 N.E.2d 955, 960 (Ind. Ct. App. 1992). Sugar Creek is a customer of WWRSD. Indiana Code § 8-1-30-3 provides that the Commission may conduct a review of certain aspects of a regional district's operations upon the filing of a complaint by a customer of the district. Therefore, the Commission has jurisdiction over WWRSD and the subject matter of this proceeding.

2. Complainant's and Respondent's Characteristics. Sugar Creek is a corporation organized under Ohio law that owns and operates a meat food processing plant for the purpose of producing raw meat into various retail products for both national and private label brands. Sugar Creek's Indiana facility is located in the Gateway Industrial Park in Cambridge City, Indiana. WWRSD is a regional sewage district providing wastewater utility service to the public in western Wayne County, Indiana, including the Gateway Industrial Park.

3. Motion to Dismiss.

At the close of Sugar Creek's case-in-chief and again at the conclusion of all the evidence, WWRSD orally moved to dismiss pursuant to Ind. Trial Rule 41(B). This Rule provides for involuntary dismissal if, at the conclusion of the case-in-chief of a party who bears the burden of proof, "upon the weight of the evidence and the law there has been shown no right to relief." *Id.*

The complaint here is filed pursuant to Ind. Code § 8-1-30-3, which provides:

- (a) The commission may review any of the following or a combination of the following aspects of a utility company's operations:
 - (1) Technical, financial, and managerial capacity.
 - (2) Physical condition and capacity of the utility company's plant.
 - (3) Compliance with Indiana or federal law or the commission's orders.
 - (4) Provision of service to customers.
- (b) The commission may conduct a review under this section upon its own motion, a request of the office of the utility consumer counselor, or upon the filing of a complaint by a customer of the utility company. The commission's order for review must state facts to justify a review by the commission.

As we will explain hereinafter, we have heard evidence of severe interruptions in sewage treatment service by WWRSD to Sugar Creek, which is its largest customer and a large economic development project and employer in the area. These interruptions are unrebutted, and we find they have occurred. We also find that WWRSD's efforts to build a new wastewater treatment plant are opposed by Sugar Creek, Wayne County, and the Town of Cambridge City (the unit with the largest number of WWRSD customers) until WWRSD fully investigates the alternative of connecting to Connersville. We also find that further economic development by the Economic Development Corporation of Wayne County within WWRSD's service territory has halted because of WWRSD's dispute with Sugar Creek, Wayne County, and Cambridge City. We find that these facts are sufficient for us to justify a review of WWRSD's operations pursuant to Ind. Code § 8-1-30-3(b). Accordingly, we deny WWRSD's motion to dismiss.

3. Summary of the Evidence.

(a) Sugar Creek's Case-in-Chief

Mr. Ron Holbrook, Plant Manager at Sugar Creek's Cambridge City, Indiana Plant, testified on behalf of Sugar Creek. Mr. Holbrook generally described Sugar Creek's business and operations. He testified that in 2015 Sugar Creek opened a 418,000 square foot, state-of-the-art facility in Cambridge City, Indiana which employs innovative cooking technologies, including a large-scale Sous Vide operation. Sugar Creek came to be located in Cambridge City because it purchased the facility from Really Cool Foods ("RCF"), which abruptly closed its plant in 2011. Sugar Creek purchased the facility in 2012 and invested \$130 million to expand its footprint from 77,000 square feet to 418,000 square feet. Today, the plant operates three shifts and employs close to 400 workers.

Mr. Holbrook testified regarding WWRSD's capacity issues and the economic impact of such issues. Mr. Holbrook testified generally about WWRSD and explained Sugar Creek is a customer of WWRSD because RCF, the previous owner of the property, was already a customer when Sugar Creek acquired the site in 2012. Mr. Holbrook stated that, as explained in more depth in Mr. Rodden's testimony, WWRSD is not capable of collecting and treating the 200,000 gpd that it certified to Sugar Creek. He explained that as a result of WWRSD's lack of capacity,

Sugar Creek has observed frequent overflows at WWRSD's Gateway Industrial Park lift station and has been forced to monitor the manhole and to scale back, or shut down, productions, in order to avoid flooding the field surrounding WWRSD's manhole. Mr. Holbrook sponsored Attachment RH-1, an e-mail detailing the summary of events surrounding the first overflow and Attachment RH-2, a written log documenting Sugar Creek's more recent monitoring of the manhole. Mr. Holbrook testified that Sugar Creek has experienced disruptions to its daily operations and incurred costs as a result of having to monitor its flow.

Mr. Holbrook testified that on January 19, 2017, Sugar Creek was forced to completely shut down operations as a result of WWRSD's inability to receive any flow from Sugar Creek's production line. The shutdown lasted for two full shifts, and all employees were sent home for that period of time. During the shutdown period, Sugar Creek employees were forced to monitor flow every hour and restrict all flow to WWRSD. Because Sugar Creek could not send any flow to WWRSD, it was forced to rent Frac Tanks to hold the water and store it on site. He stated that Sugar Creek was not discharging more than 200,000 gpd during the time of the January event, with Sugar Creek's records indicating an industrial discharge on January 15 of 128,299 gallons; on January 16 of 142,052 gallons; and on January 17 of 140,776 gallons. Mr. Holbrook sponsored Attachment RH-4, an excel spreadsheet with the data Sugar Creek had compiled since mid-January analyzing its pretreatment flows. Mr. Holbrook also sponsored Attachment RH-5, a summary printout of the worksheet from the excel spreadsheet showing the daily pretreatment flow and total estimated discharge (including wastewater not flowing through the pretreatment facility). Mr. Holbrook reiterated that although WWRSD's capacity certificate is plainly for the pretreatment facility, even if the capacity certificate covered all flows, none of the days in January exceeded 200,000 gpd.

Despite WWRSD's attempts to repair the lift station after the January Event, a similar failure occurred on May 22, 2017, when Sugar Creek suddenly lost the ability to discharge to WWRSD's lift station. During this time, Sugar Creek was again forced to scale back production and store water on site using Frac Tanks. Sugar Creek's flows from its pretreatment facility on May 21, 2017 were 50,881 gpd; on May 22, 2017, 151,341 gpd; and on May 23, 2017, 79,516 gpd. Mr. Holbrook testified that no one at WWRSD had communicated with Sugar Creek regarding the cause of the shutdown events in January and May. On cross-examination, he testified that WWRSD personnel have been very poor in communicating about causes or status or solutions. Despite the importance of continuous wastewater service to Sugar Creek, WWRSD personnel have been unresponsive to questions.

In total, Mr. Holbrook testified that Sugar Creek has incurred approximately \$330,000 in costs related to WWRSD's capacity issues and numerous other costs that simply cannot be quantified, such as production schedule changes, modification of sanitation schedules, executive time, and potential loss of workforce due to employees finding other jobs during production scale backs or shutdowns. Mr. Holbrook concluded his testimony by stating that Sugar Creek's plant is located in an Industrial Park and, according to Wayne County officials, WWRSD's capacity issues have impacted the County's ability to market the remaining properties in the industrial park.

Mr. Edward Rodden, Chief Information Officer with Sugar Creek, also testified on behalf of Sugar Creek. Mr. Rodden testified specifically regarding Sugar Creek's capacity certification stating that prior to beginning operations, Sugar Creek applied for a construction permit with the Indiana Department of Environmental Management ("IDEM") for a new pretreatment facility that would discharge to WWRSD. As part of the application process, Sugar Creek had to submit a certification from WWRSD that it had sufficient capacity such that the daily flow from the Pretreatment System "will not cause overflowing or bypassing in the collection system" and that sufficient capacity was "not contingent on water pollution/control facility construction that has not be completed and put into operation." Mr. Rodden sponsored Attachment ER-1, a copy of the certification. It certifies that there is capacity, expressed in "Gallons per day (Total Average Flow for Project)", from the pretreatment plant of 200,000 gpd. After Sugar Creek submitted the original application to IDEM, IDEM requested clarification from WWRSD that its ability to provide sufficient capacity was not contingent on a proposed Wastewater Treatment Plant Expansion ("WWTP") WWRSD was planning to complete and place into operation. WWRSD provided such assurances, and IDEM issued the construction permit on March 9, 2015. Mr. Rodden sponsored Attachment ER-3, a copy of the revised certification.

Mr. Rodden provided a further explanation of the capacity certification. The construction permit was needed for Sugar Creek's pretreatment plant so that Sugar Creek could receive from IDEM a pretreatment discharge permit. At first the existing RCF discharge permit was to be modified so as to be assigned to Sugar Creek and to modify the limits therein to reflect Sugar Creek's operations. Mr. Rodden explained that in the application for the modification of the RCF permit, Sugar Creek calculated its daily average flow at 167 gpm, as the quotient of 200,000 gpd divided by 20 hours per day of operation. This figure was within the estimated continuous flow of 150-180 gallons per minute range. Sugar Creek indicated its peak flow would be 400 gallons per minute. He also testified that while Sugar Creek indicated it expected to discharge a maximum of 200,000 gpd from its pretreatment facility, it expected that amount to grow to 300,000 gpd per day as operations expanded. Mr. Rodden also sponsored Attachment ER-7, Sugar Creek's renewed pretreatment permit which shows a pretreatment flow of 178,000 gpd. This was the pretreatment discharge permit issued by IDEM upon the expiration of the modified RCF discharge permit. He explained the figure was based upon actual flows seen during the brief period of operation prior to permit renewal.

Mr. Rodden offered his views on WWRSD's capacity issues. He indicated that throughout the filing of testimony and discovery process, WWRSD had suggested that its capacity issues were a result of Sugar Creek's peak hourly flows. Mr. Rodden explained that this is not the case, and Sugar Creek offered to permit WWRSD to inspect its treatment plant and recorded flow rates, but WWRSD declined. Mr. Rodden further explained that Sugar Creek's capacity certification is not limited in terms of instantaneous flow, as it is stated in terms of average daily flow. He further testified that Sugar Creek's flows are not extreme and WWRSD's inability to handle such flows made Sugar Creek wonder whether WWRSD ever actually had the capacity it promised. Mr. Rodden explained that the force main leaving the lift station towards WWRSD's plant is 6" diameter HDPE pipe, which means the inside diameter is only 5" and the lift station therefore can only handle flows of 180-200 gpm. Sugar Creek's flows, combined with the other industrial customer's flow feeding this line, Taconic, would account for almost all

of the capacity the force main could handle. From this analysis, Mr. Rodden stated it is apparent that WWRSD has never had the capacity to collect 200,000 gpd from Sugar Creek.

Mr. Rodden also testified in response to WWRSD's claims that Sugar Creek is preventing WWRSD from making the needed improvements in order to address its capacity issues and handle Sugar Creek's 200,000 gpd capacity. Mr. Rodden noted that WWRSD's proposed "Projects" related only to replacing their plant and do not include upgrading the lift stations or replacing the pipe from the industrial park to their plant. He further stated Sugar Creek is not responsible for contributing money or providing a long-term commitment to WWRSD in order for it to secure financing, because such assurances were not part of Sugar Creek's original agreement with WWRSD to be served. Mr. Rodden testified that Sugar Creek is unwilling to assist with WWRSD's WWTP expansion project, because the project is ultimately not designed in a way to solve WWRSD's capacity issues. He further testified that there are better alternatives to addressing WWRSD's capacity issues—including interconnecting with the City of Connersville's wastewater treatment plant (the "Connersville Option")—which will prevent Sugar Creek from incurring any additional economic losses.

In response to questions from the Presiding Officers, Mr. Rodden testified that Sugar Creek is currently operating at just under 50% capacity and that it plans to expand its operations so that the total number of employees would grow from just under 400 employees to 700 employees. He testified that the issues with WWRSD have not yet delayed that expansion but that Sugar Creek will soon reach the point where the lack of capacity will prevent the expansion. He testified that since WWRSD installed some temporary backup pumps that sit on the ground outside the lift stations in June 2017, there have been no further issues such as those in January or May, but that the temporary pumps were not a permanent solution. As to Connersville, he explained that Sugar Creek wants Connersville to be evaluated fairly. If it is evaluated through a preliminary engineering report, Sugar Creek is willing to support whichever option makes the most long-term economic sense for the area and will sign a letter of commitment so financing can be secured.

Mr. Rodden concluded his testimony by stating that WWRSD does not possess the technical, managerial and financial capacity to properly operate a wastewater utility and requested the Commission to initiate an investigation under Ind. Code § 8-1-30-3 and to force WWRSD to upgrade its plant and lift station or appoint a receiver. In the alternative, Mr. Rodden requested that Sugar Creek be permitted to discharge to its own pretreatment facility.

(b) Intervenor's Case in Chief

Ms. Valerie Shaffer, President of the Economic Development Corporation of Wayne County, Indiana, testified on behalf of Intervenor Wayne County. Ms. Shaffer testified regarding the impact of WWRSD's lack of capacity on economic development in Wayne County, as well as the County's concerns with WWRSD's plans to expand its current plant instead of interconnecting with the City of Connersville. Ms. Shaffer testified that she was concerned about WWRSD's capacity issues and the issues raised by Sugar Creek, because Sugar Creek is a significant employer in the County, and such issues could cause Sugar Creek to shut down its plant. Ms. Shaffer further testified that WWRSD's capacity issues do not reflect well on the

County and its commitment to economic growth. She explained that the County has had a great deal of success in attracting food processing and food-related companies, and food processing companies are particularly interested in water and wastewater costs, as their operations are water intensive. Ms. Shaffer further testified regarding the Gateway Industrial Park. She stated that while the County invested approximately \$7.1 million to develop the park, it cannot market the park because companies want assurances that they will have adequate and reliable capacity to operate and will not be forced to curtail operations. In response to questioning from the Presiding Officers, she testified that of all of the utilities she encounters in attempting to attract economic development to Wayne County, WWRSD is the worst with which she must deal. She testified that they are not a partner in her economic development efforts.

Ms. Shaffer also testified regarding WWRSD's proposed expansion of its plant to eliminate the capacity problems. Ms. Shaffer stated that she is concerned the plant expansion will not eliminate WWRSD's capacity issues, and, from the County's perspective, WWRSD should enter into an agreement to interconnect with Connersville. She stated that Wayne County is willing to provide financial assistance for the interconnection because there may be economic development grant money available, but is not willing to provide the same assistance for the plant expansion. She reiterated that WWRSD's dispute with Sugar Creek does not reflect favorably on the County or its ability to attract economic development. Ms. Shaffer stated that she was concerned with WWRSD's proposal to directly discharge, and she recommended the Commission issue an Order requiring WWRSD to sit down with all interested stakeholders and attempt to discuss the best solution for all parties.

Mr. Robert Warner, Wayne County's Highway Engineer, also testified on behalf of Intervenor Wayne County. Mr. Warner generally described the Gateway Industrial Park and testified regarding his personal observations of WWRSD being unable to provide adequate and reliable service in the Industrial Park. On cross examination, he testified to the condition of the WWRSD plant. Since at least 2010, it has been known that the lagoon liner is in poor condition and could fail and that the liner is an integral part of the treatment plant. Mr. Warner explained that WWRSD's lift station located at the southeast corner of the Gateway Industrial Park cannot pump 200,000 gallons per day capacity. Mr. Warner further testified that Sugar Creek's capacity needs, as well as the capacity needs of existing and future customers in the Industrial Park, are likely to increase in the future, with such increase demanding a substantial amount of capacity.

Mr. Warner stated that while WWRSD hired Wessler Engineering to design a proposed upgrade to WWRSD's plant to increase capacity by 400,000 gpd, he did not believe an additional 400,000 gpd capacity would be sufficient to serve current and future Industrial Park customers. He also stated that the rate impact of such expansion would drastically increase wastewater service costs. Mr. Warner stated that the County viewed interconnecting with Connersville as a better alternative to service the Industrial Park and that the County had committed to provide financing for this option. Mr. Warner stated that the County had provided a feasibility analysis and rate study to WWRSD supporting Connersville as a better alternative, but that the WWRSD Board never adequately considered the Connersville option. Mr. Warner concluded his testimony by recommending that the Commission require WWRSD to work collaboratively with all other parties and interested stakeholders to affirmatively consider alternatives to expanding WWRSD's treatment plant.

Mark McCarty, member of the Cambridge City, Indiana Town Council, testified on behalf of Intervenor Cambridge City. Mr. McCarty testified that he is one of the four individuals appointed by the Town of Cambridge City's Town Council to serve on the nine-member WWRSD Board. Mr. McCarty generally explained the interrelationships between the Town of Cambridge City and WWRSD. He stated that the town is vitally concerned about the pending issues between WWRSD and Sugar Creek because the majority of WWRSD rate payers are citizens of Cambridge City, and because the dispute presents economic concerns related to Sugar Creek's continued operations and future economic growth for the Town. Mr. McCarty explained that the Town voted to intervene in the matter so that, in the event a receiver was appointed, the Town could step forward and express its willingness to re-assume ownership or management of the operation. He also testified that the WWRSD Board never gave serious consideration to the Connersville Option. Mr. McCarty explained that a majority of the Town Council is strongly leaning towards the Connersville Option, and that the Town had solicited input from its citizens and rate payers regarding these outstanding issues with WWRSD which ultimately led to a vote that the Town should intervene in the Cause.

Mr. McCarty explained the Board "was determined from the beginning – regardless of costs and economics – to retain full operation of the District so that it could be deemed 'locally owned and operated.'" Cambridge City Ex. 1, p. 5. In response to questions from the Presiding Officers, he attributed this attitude to that which many communities once saw in dealing with discussions of school consolidation. Like a small town not wanting to lose its school, the WWRSD Board did not want to lose its treatment plant. He stated that he had responded to this attitude by asking, "You know, we are talking about where your poop is treated, right?" He asked the Commission to resolve the debate once and for all. When asked whether he thought the WWRSD had outlived its purpose, he answered "yes."

(c) Western Wayne Regional Sewage District's Case-in-Chief

Martin Wessler, P.E., of Wessler Engineering, Inc., testified on behalf of WWRSD. Mr. Wessler provided general background about WWRSD and testified that he has been assisting WWRSD with sewer system improvements since 1995. Mr. Wessler testified that beginning in 2008 and, most recently, he has been assisting WWRSD with developing plans for the design and upgrade of its treatment plant and collection system. Mr. Wessler testified that he was also directly involved with helping WWRSD address the needs of adding Sugar Creek as a new customer, and, prior to being brought on as a customer, Sugar Creek discussed their need to ramp up operations and for flexibility and leniency as they began operating their system. Mr. Wessler also testified regarding the planning process and other practical considerations which went into planning for Sugar Creek's needs, which included balancing the future capacity needs of Sugar Creek and Wayne County with the revenue sources actually available from customers using the WWTP and collection system.

Mr. Wessler testified regarding Sugar Creek's purported capacity needs. He testified that Sugar Creek indicated it would be starting operations and ramp up to a flow of 200,000 gpd, and would plan to ramp up to 300,000 gpd, but that such ramp up would not occur until WWRSD had completed its WWTP expansion. Mr. Wessler testified that at a later date Sugar Creek

indicated it wanted to expand its flow numbers from 200,000 to 400,000 gpd, and this is the basis for the differing flow numbers and Sugar Creek's suggestion to abandon WWRSD's WWTP expansion plans and pump all flows to Connersville. He testified on direct that before Sugar Creek could expand to 300,000 gpd, they would need a revised capacity certificate from WWRSD. We heard evidence that this is not correct. Instead, IDEM had confirmed in writing that there are no limits on flow in Sugar Creek's pretreatment permit (Sugar Creek Redirect Ex. 1), which is confirmed by the language of the permit. Sugar Creek Ex. CX-11, p. 5 of 34. Mr. Wessler confirmed that certification of capacity occurs in connection with IDEM's application for a construction permit and not its pretreatment permit application. Sugar Creek Ex. CX-12 and CX-13. The only issue we heard concerning increasing flows is that Mr. Wessler testified that WWRSD's pretreatment ordinance requires a significant user to notify WWRSD of a desire to increase flows. The ordinance itself was not offered. As to notification, Sugar Creek did inform WWRSD of its desire to be discharging 300,000 gpd from its pretreatment plant. Sugar Creek Ex. 3, Atts. ER-R4 and ER-R7.

Mr. Wessler testified regarding flow capacity issues at the Industrial Park Lift Station. He testified regarding the first time he recalled there being issues, as well as WWRSD's actions to address the pump issues during the January and May 2017 incidents. Specifically with respect to the May 2017 incident, Mr. Wessler testified that WWRSD acted immediately to determine the cause of the lift station issues, addressed the problems in a timely manner and ordered new gaskets for the lift station pumps out of an abundance of caution. Mr. Wessler further testified that during his discussions with one of Sugar Creek's employees during the May Event, he learned that Sugar Creek was purportedly discharging in excess of the flow rate it originally represented to WWRSD. Mr. Wessler testified that WWRSD felt it would be wise to corroborate Sugar Creek's incoming flows to the Industrial Park Lift Station, and WWRSD authorized Wessler Engineering to install Gripp, Inc. flow meters to monitor Sugar Creek's flows at two locations. Mr. Wessler testified that WWRSD began monitoring Sugar Creek's flows at noon on June 5, 2017.

Mr. Wessler testified regarding his review of the Gripp, Inc. meter flow data and sponsored Exhibit MW-11 providing his summary of the flow metering data. He testified that WWRSD's flow data showed that Sugar Creek's total flow averaged a little more than 270,000 gpd and its peak flow rate averaged just under 400 gpm. Mr. Wessler further testified that the data WWRSD collected was very alarming and concerning to WWRSD, and it confirmed that Sugar Creek was flowing well in excess of their represented flow rates. He stated that such flows had effectively overwhelmed the lift station capacity and verify WWRSD's decision to move forward with its WWTP expansion to handle the peak flows and maintain service to its existing customers.

Mr. Wessler also testified regarding the Connersville Option. He summarized the steps that would need to be taken to pursue this option and estimated that it would take approximately three years to complete. Mr. Wessler further testified that he had reviewed the financial analysis and testimony prepared by Mr. Otto Krohn and agreed with Mr. Krohn's assumptions and conclusion that expanding WWRSD's treatment plant was the best option.

Mr. Wessler concluded his testimony by stating that WWRSD has the requisite ability to operate and manage its utility, and has capably and ably served its customers for over thirty years.

Mr. Otto Krohn, CPA and executive partner of O.W. Krohn & Associates, LLP, testified on behalf of WWRSD. Mr. Krohn testified that he was engaged by WWRSD in April/May 2017 to assist WWRSD with evaluating various options and its decision to move forward with its WWTP expansion. As such, none of his analysis was done prior to WWRSD making its decision to proceed with its own plant and not interconnect with Connersville. Mr. Krohn discussed the cost benefit analysis he performed comparing the WWTP expansion to the Connersville Option and testified that expanding WWRSD's WWTP was the economically better option. Mr. Krohn provided analysis and data showing why he believed the Connersville Option offered no compelling advantages, and instead only offered additional costs, risks and lost opportunities for WWRSD's customers when compared to the WWTP expansion. Mr. Krohn further testified why, based on the numbers, WWRSD believes that constructing additional capacity is the best, most flexible option for WWRSD's customers. His analysis was based upon the cost of construction for WWRSD's proposed 1.2 MGD plant and included no costs for further expansion. He further testified that, in his opinion, WWRSD is in no way a troubled or incapable utility. He concluded his testimony by stating that WWRSD is ready to move forward with its expansion and upgrade projects.

(d) Sugar Creek Rebuttal Testimony

Mr. Edward Rodden provided rebuttal testimony on behalf of Sugar Creek. Mr. Rodden testified that he took exception to many things in WWRSD's evidence, because the evidence portrayed Sugar Creek as the bad actor when Sugar Creek had done nothing more than invest \$100 million in Cambridge City, Indiana to bring new opportunity and jobs. He reiterated that WWRSD's capacity certificate was specifically not contingent on WWRSD expanding its plant and testified that a long-term commitment or \$3 million contribution of funds was never part of the bargain for Sugar Creek to invest in Indiana. He further testified that WWRSD's capacity issues have impacted Sugar Creek's ability to grow and that Sugar Creek had always planned to expand to 300,000 gpd within two years. Mr. Rodden testified that even while operating below 200,000 gpd in the past two years, WWRSD experienced capacity issues which forced Sugar Creek to shut down its plant and incur hundreds of thousands of dollars in costs.

Mr. Rodden testified that he disagreed with Mr. Wessler's contention that Sugar Creek's refusal to sign a treatment agreement or LOI delayed WWRSD's expansion project and contributed to WWRSD's capacity issues. He explained that even if WWRSD had expanded its plant, the capacity issues would likely still exist because the 2014 Preliminary Engineering Report WWRSD submitted for the plant expansion shows that WWRSD did not take into account the capacity needs of Sugar Creek and other customers in the Industrial Park. Mr. Rodden further testified that he disagreed with Mr. Wessler's insinuations throughout his testimony that Sugar Creek's excessive flows caused WWRSD's capacity issues, because, as explained in Mr. Scott Gregory's analysis of WWRSD's flow data, WWRSD's flow data is flawed and could not be correct.

Mr. Rodden testified regarding other concerns he had with Mr. Wessler's testimony. He stated he was concerned with the fact that Mr. Wessler's discussion of the Industrial Park lift station's capacity only included a discussion of customers located in the Industrial Park, because the Industrial Park Lift Station handles flows from customers located outside of the Industrial Park, as well. Mr. Rodden stated that he believes this omission indicates WWRSD and/or Mr. Wessler failed to consider those customers when performing their calculations and investigating whether WWRSD had sufficient capacity to handle Sugar Creek's flows. He further testified that this is concerning because Mr. Wessler ran his initial calculations based off of a 6" diameter pipe when the Lift Station pipe is only 5" diameter. Mr. Wessler wasn't made aware of this discrepancy until after the pipe was in the ground and such issue makes a significant difference in pump capability.

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

Mr. Rodden concluded his testimony by reiterating that if Mr. Wessler is concerned about Sugar Creek's flows, there is always the option of direct discharge which Sugar Creek requested in its original complaint. He further testified that he believes WWRSD has serious deficiencies it has failed to correct, and indicated such deficiencies may detrimentally impact Sugar Creek's ability to continue growing and investing in Indiana.

Mr. Scott Gregory, Facilities Maintenance Supervisor at Sugar Creek's Cambridge City, Indiana location also provided rebuttal testimony on behalf of Sugar Creek. Specifically, Mr. Gregory offered testimony to respond to Mr. Wessler's testimony regarding problems with the Lift Station pumps and rebut Mr. Wessler's insinuations that Sugar Creek's excess flows caused WWRSD's capacity issues. With respect to the lift station pumps, Mr. Gregory testified that Mr. Wessler's testimony regarding WWRSD's actions during the May Event is not accurate, because WWRSD knew that the gaskets had torn when the pumps were replaced in February 2017 but left the pumps in the ground to fail despite this knowledge. This had been told to him by WWRSD's contractor.

Mr. Gregory also responded to Mr. Wessler's testimony regarding the Gripp, Inc. flow monitoring data WWRSD began collecting after the May Event. Mr. Gregory testified that the

flow figures showing that Sugar Creek operated in excess during the period are incorrect and such flow data could not have occurred. Mr. Gregory testified that he reviewed the flow data provided in Mr. Wessler's testimony and, based on his review, it is clear that such flow meters were improperly installed or calibrated, because the peak flows attributed to Sugar Creek in the flow data are impossible. Mr. Gregory provided examples from the flow data where such data registered peak flows during times Sugar Creek was not even discharging, as well as examples where it registered hourly flow rates which could not have occurred due to limitations on the maximum pumping capacity of Sugar Creek's DAF pump out of its facility. Mr. Gregory testified regarding additional concerns he had with WWRSD's flow data and sponsored Attachment SG-R3, a spreadsheet comparing the peak flows recorded by WWRSD and the peak flows recorded by Sugar Creek, to further show WWRSD's flow data was flawed and could not be correct.

The Office of Utility Consumer Counselor offered no evidence in this Cause.

4. Commission Discussion and Findings.

As noted previously, this case is filed pursuant to Ind. Code ch. 8-1-30. Indiana Code § 8-1-30-3(a) provides:

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

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

While there is considerable overlap among these aspects, we heard evidence in this proceeding addressed to all four. Overall we find several issues of concern, of varying degrees of severity.

A. Capacity to Serve Sugar Creek.

Unquestionably, WWRSD has not had the capacity to serve Sugar Creek. Inability to accept flows in January 2017 forced a shutdown of a large employer and one of the biggest, if not the biggest, recent economic development projects in Wayne County. We find this event was caused because, as set forth in correspondence from Wessler engineer Gary Ruston, the pumps were "shot." Sugar Creek Ex. CX-8, 2.1(b), p. 6. Another serious interruption occurred in May 2017 when the replacement pumps became unseated. We find that this latter event occurred because, when the pumps were replaced in February, WWRSD knew that a gasket had torn and that the replacement pumps would later fail. Sugar Creek Ex. 4, p. 2. In both cases, WWRSD demonstrated poor managerial responsibility in neglecting prudent maintenance and placed its largest customer at risk of a service interruption unnecessarily. This is a severe deficiency.

The events are broader than these, however. Since at least April 2016, WWRSD has had difficulty accepting Sugar Creek's flows, and Sugar Creek has been put to great expense and burden to monitor WWRSD's facilities and adjust Sugar Creek's operations to be certain that WWRSD did not have unlawful bypasses. Monitoring the utility's facilities to assure the utility remains in compliance with environmental laws is not the customer's responsibility – this is the duty of the utility. This indicates that WWRSD lacks technical, managerial, and financial capacity to operate a sewer utility. Again, this is a severe deficiency.

WWRSD attempted to defend itself by claiming that Sugar Creek is providing greater flows than WWRSD was anticipating. We find this contention to be unreasonable. The original capacity certificate was for 200,000 gallons per day on an average basis from Sugar Creek's pretreatment facility, and WWRSD had been apprised that Sugar Creek wanted to increase its operations and its flows to 300,000 gallons per day from pretreatment within two years of commencement of operations. Sugar Creek Ex. 3, Atts. ER-R4 and ER-R7. The meter data from Sugar Creek's pretreatment plant shows that Sugar Creek has operated within these understood parameters. Sugar Creek Ex. 1, Att. RH-5.

Flows have been somewhat higher than expected from Sugar Creek's operations that do not come through pretreatment, but we find this has not been the cause of WWRSD's lack of capacity to serve. It became clear on cross-examination of Mr. Wessler that the capacity certificate had been based on his calculation of flow capacity using the facilities described in the original IDEM construction permit for WWRSD's industrial park lift station and force main. Western Wayne Ex. 1, p. 11; Sugar Creek Ex. CX-2. In fact, a different type of pipe was installed, which greatly diminished the capacity of the lift station. Sugar Creek Ex. CX-3. Mr. Wessler testified that Western Wayne had anticipated flows of 167 gpm from the pretreatment plant plus the other flows that are not pretreated. Western Wayne Ex. 1, p. 9; Sugar Creek Ex. CX-7, p. 8 of 17. When those flows are added to the other flows from the Gateway Industrial Park, Western Wayne Ex. 1, Att. MW-10, p. 6, the flows that Western Wayne had anticipated from Sugar Creek would have caused total flows to exceed the greatly reduced capacity of the lift station (200 gpm) resulting from the different type of force main that was installed. Sugar Creek Ex. 3, Att. ER-R1, Attachment 4.11. Mr. Wessler testified that the line had not been installed by WWRSD; however, the evidence is clear that the Gateway Industrial Park was in WWRSD's territory when the line was installed. Sugar Creek Ex. CX-5. Further, WWRSD's as-built drawings for their facilities in the Park show that the type of pipe that was installed was an acceptable alternative, per the specifications. Sugar Creek Ex. CX-6, p. 3, Sanitary Sewer Note No. 6. Certifying capacity with a significant economic development project when you do not have that capacity is troublesome enough. To make the mistake because you do not know what type of facilities you have in the ground is sloppy management that we find to be unacceptable and a severe deficiency.

It now appears that WWRSD has installed temporary auxiliary pumps that sit on the ground and that have addressed the immediate capacity issue for the time being and that WWRSD has solicited bids to begin the permanent solution for the lack of capacity in the lift station. While this is welcomed news, we fail to see why it took over a year after WWRSD learned that it had incorrectly issued the capacity certificate to its largest customer before it began to implement a solution. The timing of the decision to solicit bids days before the

evidentiary hearing also seems questionable. In addition, this is a temporary fix. Mr. Wessler testified that an issue with this fix has already occurred once and that the permanent solution is dependent on financing. Accordingly as of today, Western Wayne has failed to remediate this deficiency.

B. Western Wayne's Proposed New Plant.

WWRSD needs to retire its existing wastewater treatment plant. It is of poor condition (a subject which we will address later in this Order) and lacks capacity to handle existing or future flows. WWRSD has proposed to build a new plant with capacity of 1.2 million gallons per day on an average day basis and a peak capacity of 2.5 million gallons per day. If the peak flows exceed 2.5 MGD, the plant will be at risk of overtopping its tanks. Western Wayne Ex. 1, Att. MW-5, p. 2. The size of the plant is based upon WWRSD's historical analysis of monthly reports of operation (MROs), which reveal the plant's daily and average flows. As stated by Wessler to IDEM, the design flow of the new plant "was based on maximum month flow (0.621 MGD)" reported on the MROs during the period February 2012 through April 2014. *Id.*

Seven years ago and long before Sugar Creek, WWRSD was planning a capacity expansion which would have provided the same 1.2 mgd of capacity that WWRSD's proposed plant would provide. The 2009 proposal was long before Sugar Creek purchased RCF and announced plans to quadruple its size. It was long before Sugar Creek informed WWRSD that it expected to expand operations further so that its pretreatment facility would be discharging 300,000 gallons per day on an average basis within two years of startup. In other words, WWRSD's plant is of the same size that it was planning to build before it ever knew about this large, new economic development project in Wayne County. Sugar Creek Ex. 3, p. 7.

During cross examination, we learned that the plant WWRSD proposes is seriously undersized. While the plant was designed based upon maximum monthly flows from 2012 to 2014, Mr. Wessler confirmed that the MRO for May 2017 showed an average daily influent flow nearly twice as high as the maximum flow on which the plant was designed. In May 2017, Western Wayne experienced an average flow of 1.18 MGD, almost equal to the capacity of the proposed plant. Further, during the month of May 2017 alone, influent flows in excess of the peak capacity of the new plant occurred on three separate days. Sugar Creek Ex. CX-1. WWRSD's planning horizon is too short to be considered reasonable.

We are reminded what we previously have said concerning capacity of new facilities:

We simply cannot condone the OUCC's approach, which we find would lead to inferior water quality and customer complaints (in addition to inadequate fire protection) so soon after costly capacity additions. Ms. Adams understated the reaction to the impact of the OUCC's approach - - there would be outrage, not just "some concern," both on the part of the customers and this Commission if only three weeks after building new treatment plants, Petitioner experienced a demand that exceeded the capacity of the affected systems.

Utilities need to pursue cost effective additions of capacity reflective of reasonable planning horizons.

Indiana American Water Co., Cause No. 40703 (IURC 12/11/97), 1997 Ind. PUR LEXIS 429 *32-33.

WWRSD is planning to do precisely what we condemned in *Indiana American*. This reflects poorly on WWRSD's technical, managerial, and financial capacity and is a severe deficiency.

C. Condition of Plant.

In addition to the capacity issue, WWRSD's existing plant is in very poor condition. Indeed, County witness Warner testified that the lagoon liner has been in danger of failure since 2010 and that if the liner fails, the plant will fail. The plant is well beyond its estimated useful life.

WWRSD has seen this day coming for several years. Mr. Wessler confirmed on cross-examination that in 2009, when it was first planning a new plant, WWRSD was aware that the existing plant was nearing twenty years of age at the time and that some of the equipment was already past its estimated useful life.

Knowing that its plant was in such marginal condition, WWRSD still proceeded to issue the capacity certificate to Sugar Creek, which certificate was not contingent on adding any new construction, let alone its new treatment plant. It was several months later that WWRSD learned it could not close on the loan necessary to construct the new plant without a commitment from Sugar Creek that Sugar Creek would remain connected for the life of the loan. Western Wayne Ex. 1, Att. MW-1. Such a commitment was not required in connection with the capacity certificate and indeed was inconsistent with the capacity certificate. When Sugar Creek was presented with the need for the commitment, Sugar Creek indicated it was not willing to give such a commitment unless and until the option to interconnect with the City of Connersville rather than build a new treatment plant was fully evaluated. All of this had occurred by January of 2016. Sugar Creek Ex. CX-14.

We are now more than two years after Sugar Creek informed WWRSD what it needed before it would provide the commitment, and WWRSD still has not done the investigation that Mr. Wessler testified would need to be done before Connersville could be evaluated. We learned that a mere \$29,000 investment in an additional preliminary engineering report is what is needed to evaluate Connersville. When asked several times by the Presiding Officers why WWRSD has pursued its proposed \$12 million investment without making such a modest investment to vet fully an alternative, Mr. Wessler had no explanation. WWRSD Board Member Mark McCarty, who testified on behalf of Cambridge City, declared that WWRSD never "gave serious consideration to pursue the Connersville proposal, and was determined from the beginning – regardless of costs and economics – to retain full operation of the District so that it could be

‘locally owned and operated.’” Cambridge City Ex. 1, 5. No other board member offered any contrary view. Based upon the totality of the evidence, we find WWRSD made its decision to build its undersized plant from the outset and never gave serious consideration to interconnection with Connersville, contrary to the expressed wishes of its largest customer that must sign a commitment letter to make any option feasible.

Such a situation represents a severe deficiency. One is left to wonder what WWRSD would have done to fund its new plant had Sugar Creek never chosen to locate in Wayne County. Its plant would still be in the same condition, and there would be no hope of a commitment from Sugar Creek because Sugar Creek would not be there.

Sugar Creek has informed WWRSD what it needs before it can sign the commitment, but WWRSD has done nothing to satisfy those concerns. As a result, we have a sewer utility which has allowed its plant to reach a condition where there is risk of critical failure, and WWRSD has no ability to address the situation. Had WWRSD done what Sugar Creek asked to be done back in January 2016, which is faithfully evaluate interconnection with Connersville as an option, we would likely not have this case before us. Mr. Rodden testified that if Connersville is fairly evaluated and Western Wayne’s stand-alone plant represents the better option, Sugar Creek would sign the certificate. Instead, due to obstinance and intransigence, WWRSD has forged ahead with its plans to build a new treatment plant which does not have sufficient capacity to handle WWRSD’s flows, let alone future growth from the Gateway Industrial Park or Sugar Creek. Lacking access to funds to finance the imprudent expansion, WWRSD has urged that we move with speed in this case so that it could have been resolved prior to the bids on its undersized project expiring and has complained that its customer Sugar Creek would not execute a twenty-year commitment that would be necessary for WWRSD to fund such an expansion.

We expect much more from utilities in Indiana. The condition to which WWRSD has allowed its facilities to deteriorate represents a severe deficiency, and we, frankly, see no path forward for WWRSD to address it.

D. Violations of Law.

We heard evidence that leads us to find several violations of law.

(1) Overflows.

We do not know how many overflows have occurred during the time that WWRSD has been serving Sugar Creek, but Mr. Holbrook’s testimony that they have been frequent is unrebutted. We find the first overflow was on April 14, 2016. Sugar Creek Ex. 1, p. 6. This overflow was reported directly to the WWRSD Board at its regular meeting. WWRSD’s consulting engineer was in attendance at that meeting. Sugar Creek Ex. 3, Att. ER-7. Nevertheless, WWRSD did not report this overflow to IDEM. Sugar Creek Ex. CX-9. This is a violation of law. All subsequent unreported bypasses would also be violations.

(2) Conflicts of Interest.

The President of the WWRSD Board, Waunalea Dungan, is also the president of Dungan Plumbing & Heating, Inc. Dungan Plumbing & Heating has business relations with WWRSD. Sugar Creek Ex. 2, Att. ER-9. A conflict of interest disclosure form was not submitted to WWRSD. Sugar Creek Ex. 2, Att. ER-8. This is a violation of Ind. Code § 35-44.1-1-4 and may constitute a crime.

(3) Internal Controls.

We received into evidence a Supplemental Examination Report from the State Board of Accounts dated April 29, 2013. Sugar Creek Ex. CX-18. This report noted improper payments and disbursements and requested reimbursement from the WWRSD Office Manager and Superintendent. P. 5. A significant number of the disbursements were for personal purchases. P. 4.

E. Attitude Towards Stakeholders.

WWRSD is a small sewer utility that serves exclusively in Wayne County. The town where the majority of WWRSD's customers live is Cambridge City. Its largest customer is Sugar Creek, representing at least 25% of its flows. The economic development opportunities that will be presented to it will be pursued by the Economic Development Corporation of Wayne County.

Every one of these significant stakeholders has participated in this proceeding. Ms. Shaffer testified that WWRSD is a poor partner in economic development. Mr. McCarty testified that WWRSD rejected the Connersville option without ever giving it serious consideration, against the wishes of all of these stakeholders. Despite the keen interest Sugar Creek has in its current and future capacity, WWRSD was not forthcoming with information and was slow to act. Perhaps most telling, during the entire evidentiary hearing in this proceeding, the only WWRSD Board member to attend was Mr. McCarty, who testified on behalf of Cambridge City and, in fact, testified that WWRSD had outlived its useful purpose. When every one of your stakeholders is involved in a proceeding that could ultimately result in receivership or a forced sale, we would expect the matter to be considered important enough that management and the Board would see fit to attend at least part of the hearing.

WWRSD's relationship with and attitude towards its stakeholders and this Commission is the most troubling finding of this entire investigation. It reveals either contempt for or irreverence toward the legitimate concerns of the stakeholders, and ultimately this Commission's oversight. This represents a severe deficiency.

F. Conclusion on Review of WWRSD's Operations.

Mr. Rodden described in his direct testimony the relief that Sugar Creek is seeking by its Complaint. First, Sugar Creek is requesting that we review WWRSD's operations pursuant to Indiana Code § 8-1-30(3)(b). We have done so, and we have found severe deficiencies that WWRSD has failed to remedy, which we will address in this Order. Second, Sugar Creek was further requesting that we issue an order requiring WWRSD either to immediately upgrade its lift station and pipe to accommodate 200,000 gallons per day of wastewater from Sugar Creek's pretreatment facility, or to interconnect with the City of Connersville. WWRSD has implemented a temporary fix to address the capacity of its lift station and has plans for a permanent solution, but that permanent solution is contingent upon financing. Accordingly, this remains an issue. As to the interconnection with Connersville, we do not have enough data to confirm that Connersville is the preferred option. Instead, we find that WWRSD has rejected Connersville without ever providing a fair opportunity to review it. Presumably we could adopt Wayne County's suggestion to order the parties to work towards pursuing the Connersville option, but that would require WWRSD to exercise much more good faith and partnership with its stakeholders than it has demonstrated the willingness or ability to exercise.

We have found numerous deficiencies in WWRSD's operations. Many of these represent severe deficiencies. For instance, the lack of capacity to serve Sugar Creek is a severe deficiency. It originally resulted because WWRSD did not know or did not understand that it did not have the capacity it certified when it signed the certificate. When Sugar Creek offered to implement a temporary fix at Sugar Creek's expense in the Fall of 2016, the WWRSD Board accepted contingent on IDEM permitting. Sugar Creek Ex. ER-R5. While Mr. Wessler testified that IDEM informed him no permits were needed, Sugar Creek was never informed. Sugar Creek Ex. 3, p. 10. Finally, we are now more than one year after WWRSD first learned of its mistake concerning its capacity and yet the permanent solution still is not being constructed and is contingent on SRF financing that we will discuss. WWRSD has more than \$1,000,000 in cash. WWRSD Ex. 2, Exhibit OWK-1, p. 5. This project should have no contingencies and should have started long ago.

Further, allowing the condition of the plant to deteriorate to the point where it could suffer a critical failure is, in and of itself, a severe deficiency. Not only has WWRSD been unable to correct this deficiency, we see no path forward for WWRSD actually to correct it. WWRSD has known about this condition for years and has known what it needs to do in order to obtain financing to address the situation. The current membership of the Board has been unwilling to take these steps so that the Connersville option could be fairly evaluated. This is despite the urging by the largest customer, the County, and the City comprising the majority of WWRSD's customers that Connersville be evaluated and compared. A question which we asked of Mr. Wessler which was not satisfactorily answered is why if it only takes an additional \$29,000 to conduct a PER to study Connersville, had WWRSD not done so. Mr. McCarty answered this question – the Board determined from the beginning to build its own plant, regardless of costs, solely to retain local control. This is not how Indiana expects its utilities to operate. We expect utilities to work cooperatively with key stakeholders. We expect them not to make up their minds regardless of cost. We expect them to plan so that they have capacity to

foster economic development. WWRSD's current board demonstrates none of these attributes. WWRSD lacks the technical, managerial, and financial capacity to serve. These shortcomings manifest themselves as severe deficiencies that WWRSD has failed to remedy.

Accordingly, we find that we should proceed to schedule a hearing pursuant to Indiana Code § 8-1-30-5. We do not take this step lightly. A change in ownership or receivership is needed because we must send a signal that WWRSD's practices are unacceptable in Indiana. Indiana is proud that it is "a state that works." We actively pursue economic development so that we can create jobs and better the lives of Hoosiers. A small, thinly capitalized and poorly managed sewer utility cannot stand in the way of those efforts. Accordingly, we will proceed to issue notice, conduct a hearing, and issue an order pursuant to Indiana Code § 8-1-30-5.

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

1. Western Wayne Regional Sewer District is found to have severe deficiencies it has failed to remedy as stated in Paragraph 4 herein.
2. A hearing shall be scheduled pursuant to Ind. Code § 8-1-30-5(b) to consider the appointment of a receiver to operate Western Wayne Regional Sewer District, or to provide for the acquisition of its assets on such terms as the Commission shall determine to be in the public interest.
3. Notice of said hearing shall be provided as required by Ind. Code § 8-1-30-5(c).
4. This Order shall be effective on and after the date of its approval.

ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED:

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

Mary Becerra
Secretary of the Commission