

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober			√
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
HAMILTON SOUTHEASTERN UTILITIES, INC.)
FOR 1) AUTHORITY TO TRANSFER ITS)
ASSETS FOR ITS FISHERS SERVICE AREA TO)
THE CITY OF FISHERS, INDIANA; AND 2)) CAUSE NO. 45578
UPON CONCLUSION OF THE TRANSFER, THE)
CANCELLATION OF ITS CERTIFICATES OF)
TERRITORIAL AUTHORITY FOR THE) APPROVED: NOV 03 2021
FISHERS SERVICE AREA, EXCLUDING A)
PORTION OF THE CERTIFICATE OF)
TERRITORIAL AUTHORITY GRANTED BY)
THE COMMISSION IN CAUSE NO. 38819)

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Carol Sparks Drake, Senior Administrative Law Judge

On July 8, 2021, Hamilton Southeastern Utilities, Inc. (“HSE” or “Petitioner”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause requesting: (1) authority to sell and transfer HSE’s facilities used to serve its Fishers Service Area to the City of Fishers, Indiana (“Fishers” or “City”); and (2) upon closing upon the proposed sale and transfer to Fishers, cancellation of HSE’s Certificates of Territorial Authority (“CTAs”) and/or indeterminate permits for the Fishers Service Area, except that portion of the CTA granted in Cause No. 38819 under which HSE currently provides wastewater service to customers residing within the City of Noblesville (“Noblesville”).

On July 8, 2021, Fishers filed a petition to intervene that was granted on July 19, 2021.

On July 13, 2021, HSE prefiled the direct testimony and attachments of Michael G. Lane, Director for NewGen Strategies and Solutions, LLC, and on July 14, 2021, HSE prefiled the direct testimony and attachments of Kendall W. Cochran, its President.

On July 20, 2021, Fishers prefiled the direct testimony of the Scott A. Fadness, Mayor of Fishers, and the direct testimony of Jonathan Valenta, Assistant Director of Public Works and the Director of the Wastewater Utility for Fishers. On August 26, 2021, Fishers filed a notice of correction to amend Mr. Valenta’s direct testimony by correcting a reference regarding certain service area authority the Commission granted to HSE.

On August 31, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the direct testimony of Scott A. Bell, Director of the OUCC’s Water/Wastewater Division.

On September 10, 2021, Petitioner and Fishers filed a joint notice advising the Commission of their intent to not file rebuttal testimony; subsequently, a docket entry was issued on September 24, 2021, requesting HSE to confirm and/or provide certain information. HSE provided responses to this docket entry on September 29, 2021.

The Commission noticed this matter for an evidentiary hearing to commence at 9:30 a.m. on October 8, 2021, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. HSE, Fishers, and the OUCC appeared, by counsel, at the hearing, and their respective testimony, attachments, and other exhibits were admitted without objection. At the outset of the hearing, at HSE's request, a discussion was held off the record after which HSE and Fishers stipulated that notwithstanding testimony and docket entry responses to the contrary, HSE no longer seeks Commission approval to transfer its service rights to Fishers, as more particularly discussed below.

Based upon the applicable law and the evidence, the Commission now finds:

1. Notice and Jurisdiction. Notice of the hearing was given and published by the Commission as required by law. Petitioner also published notice of the filing of its Verified Petition. Petitioner is a public utility as defined by Ind. Code § 8-1-2-1. As a public utility, HSE is subject to the requirements of Ind. Code §§ 8-1-2-83(a) and 8-1-2-89(j) under which the Commission has jurisdiction over the sale and transfer of wastewater assets and facilities; therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. HSE's Characteristics. HSE is a corporation duly organized under Indiana law with its principal office and place of business at 11901 Lakeside Drive in Fishers, Indiana. Petitioner owns, operates, and controls utility plant, property, and equipment for the collection of wastewater. HSE was granted CTAs and/or indeterminate permits by the Commission in Cause Nos. 38685, 38819, 39567, 40501, 41528, 41745, 41752, 41798, 43435, and 43581.¹

3. Relief Requested. HSE has determined, subject to the Commission's approval, to transfer substantially all of the wastewater assets for its Fishers Service Area to Fishers (the "Transaction") pursuant to an Asset Purchase Agreement (the "Agreement") that HSE and Fishers entered into on July 22, 2021. The Fishers Service Area is comprised of CTAs granted to HSE in Cause Nos. 38685, 38819, 39567, 41528, 41745, 41752, 41798, and a portion of the CTA granted in 43435. Specifically, HSE seeks Commission approval to: (1) transfer the assets for its Fishers Service Area to Fishers at a purchase price of \$90,000,000.00, as may be adjusted in accordance with the Agreement; and (2) upon closing the Transaction, cancellation of the CTAs and any indeterminate permit for the Fishers Service Area, except a portion of the CTA granted in Cause No. 38819 under which HSE desires to continue providing wastewater service to its customers who reside within Noblesville's corporate boundaries (the "Noblesville Customers"). Under the

¹ In its Verified Petition, HSE also identified Cause No. 38897 as a proceeding in which HSE was granted a CTA; however, as HSE acknowledged in responding to the Commission's docket entry questions, Cause No. 38897 was dismissed. Accordingly, no CTA or indeterminate permit was granted to HSE in Cause No. 38897, notwithstanding references in other Commission Orders to Cause No. 38897 being a matter in which HSE was granted service area authority.

Agreement, HSE retains its authority to serve the Noblesville Customers, but HSE does not retain its authority to serve an undeveloped area located within Noblesville in which HSE has no assets or customers.

4. HSE's Direct Evidence.

A. Kendall W. Cochran. Mr. Cochran described HSE's existing sewer service, the Transaction, assets being transferred, and the reasonableness of the Transaction. Mr. Cochran testified that HSE currently provides sewage collection service to more than 25,000 customers and 34,134 equivalent dwelling units ("EDUs") pursuant to CTAs granted by the Commission over the last 30 years. He explained the collection system facilities HSE utilizes to provide this service consist primarily of collection mains, lift stations, and related equipment. Mr. Cochran testified that Fishers treats the sewage HSE collects pursuant to two wholesale sewer service agreements HSE and Fishers entered into in 1988 and 1989, as amended. He stated HSE also has CTAs to provide sewage disposal service to parts of Noblesville (the "Noblesville CTA") and to parts of Boone County, Indiana (the "Boone County CTA").

Mr. Cochran described the assets HSE proposes to transfer to Fishers. He stated these assets consist primarily of tangible property such as collection system mains and lift stations and real property, including easements and rights-of-way that HSE uses to provide wastewater service to the Fishers Service Area (the "Assets"). The Assets are described in Section 2.1 of the Agreement. Mr. Cochran testified certain assets are excluded from the Transaction, as identified in Section 2.2 of the Agreement and related Schedules (the "Excluded Assets"). The Excluded Assets include the Noblesville CTA, the Boone County CTA, and a portion of the CTA granted in Cause No. 38819 where HSE's current Noblesville Customers are located. He testified HSE wants to retain those two CTAs and also retain the portion of the CTA granted to HSE in Cause No. 38819 as to the Noblesville Customers.

Mr. Cochran testified that one of the initial CTAs granted to HSE in Cause No. 38819 authorized HSE to serve customers within an area located within Noblesville's corporate boundaries. The Noblesville Customers now consist of 175 customers representing 1,086 EDUs. Mr. Cochran testified that it is his understanding Fishers and Noblesville have a longstanding agreement designating this area as being part of Noblesville ("Noblesville Customer Service Area"). He described the location of the Noblesville Customer Service Area and testified HSE has historically considered this area to be part of its Fishers Service Area due to wholesale treatment service for the Noblesville Customers being provided by Fishers and the CTA granted in Cause No. 38819 consisting mostly of customers within Fishers' corporate boundaries. Mr. Cochran stated HSE and Fishers excluded the Noblesville Customers under the Agreement, so HSE seeks to retain that portion of the CTA granted in Cause No. 38819.²

² As noted above, there is a second area within Noblesville's corporate boundaries that is not included within the Excluded Assets for which HSE was granted an indeterminate permit in Cause No. 39567 to provide wastewater collection service. HSE currently has no customers or infrastructure within this area, and HSE does not seek to retain its service rights for this area. Fishers desires to provide future wastewater service within this area under a prospective interlocal agreement with Noblesville.

Mr. Cochran described other key terms and conditions of the Agreement. He explained the base purchase price agreed upon for the Assets is \$90,000,000, subject to adjustment based upon a formula the parties agreed to, and subject to appraisal of the Assets per Section 2.3(a) and (b) of the Agreement. He testified the Agreement also provides for a Transaction closing date by December 31, 2021. Mr. Cochran testified these are critical components of the Agreement, and if these terms are not satisfied, the Transaction may not close.

Mr. Cochran testified that HSE hired Michael Lane with NewGen Strategies and Solutions, LLC (“NewGen”) to appraise the Assets (the “Appraisal”). He stated NewGen appraised the fair market value of the Assets to be \$138,446,000 using a reproduction cost new less depreciation methodology and \$81,081,000 using an original cost less depreciation methodology. The Appraisal reflects HSE’s fair market value, after adjusting for the Excluded Assets, is \$93,885,000. Mr. Cochran stated he believes a purchase price of \$90,000,000 is reasonable as this is below the fair market value of the Assets and is significantly lower than the appraised value using a reproduction cost new less depreciation methodology.

Mr. Cochran explained that Fishers approached HSE with an offer to purchase the Assets in September 2019, and over the last 21 months, HSE and Fishers have engaged in arms-length negotiations regarding the terms and conditions of this sale and transfer. He testified HSE and Fishers have performed significant due diligence, including the Appraisal, an engineer’s cost estimate performed by Fishers’ contractor, Commonwealth Engineers, Inc., and several data exchanges between the parties. Based on this due diligence, Mr. Cochran stated HSE is confident the Transaction will result in significant benefits to HSE’s customers and to Fishers.

Mr. Cochran testified that based on his understanding of Indiana law, under Ind. Code § 8-1-2-89(j), HSE, as a public sewer utility, is allowed to sell and transfer its public sewer utility assets to a municipality if the assets being transferred lie within an area that has been annexed by the municipality or within the given radius of miles from the corporate limits of such municipality in which it is authorized to render sewer service. He testified the Assets being transferred satisfy these statutory requirements.

Mr. Cochran affirmed that he believes Fishers is well-qualified to provide future wastewater disposal service to the Fishers Service Area without loss of continuity of service. He noted Fishers has been providing wholesale treatment service for the Fishers Service Area since HSE commenced its operations over 30 years ago. As a result, Fishers is uniquely familiar with HSE’s system and customers. He stated Fishers has also been providing quality sewage disposal service to its own service area for many years, and it has the capability to oversee and manage the Assets. Additionally, Fishers expects to provide sewage disposal service to the Fishers Service Area at HSE’s existing rates and charges for the foreseeable future. Mr. Cochran opined that HSE’s customers will receive quality sewage disposal service without any rate impact in the near future and with the possibility of rate benefits in the long-term.

Mr. Cochran testified HSE’s existing customers as well as future customers in the Fishers Service Area will benefit from the Transaction. As a municipality, he stated Fishers has tax advantages that are not available to public utility corporations such as HSE. For example, Fishers does not pay federal or state income taxes or property taxes. Additionally, the Tax Cuts and Jobs

Act of 2017 (the “Tax Act”) made contributions in aid of construction taxable income for public sewer utility corporations such as HSE, but as a municipality, Fishers is not subject to this requirement of the Tax Act. Mr. Cochran testified Fishers has carefully evaluated the Transaction and determined it will be able to continue charging HSE’s current rates and charges within the Fishers Service Area for the near term based on the purchase price being at the low end of the Appraisal, low interest rate financing currently available to municipalities, and HSE’s existing revenues. He testified the Transaction is also expected to create economies of scale due to the expansion of Fishers’ municipal sewer utility system and customer base, which should lower Fishers’ existing operating expenses and benefit all of its customers.

Mr. Cochran testified that he believes the terms and conditions of the Transaction are reasonable. He testified the Assets being transferred are used and useful for the provision of sewage disposal service to the Fishers Service Area, and these Assets will allow Fishers to provide the same quality collection and disposal service HSE has been providing. He testified the Transaction is also reasonable in that it conditions the closing on certain requirements being met, such as the requirement that the Transaction close in 2021. He explained this requirement is important because the low interest rates currently available to municipalities will enable Fishers to complete the Transaction with no rate impact to its customers or HSE’s current customers. He testified the Transaction is also reasonable in that it excludes assets that are unnecessary for Fishers’ provision of sewage disposal service to the Fishers Service Area. The Excluded Assets will be retained by HSE so it can continue to provide sewage disposal service to its customers located in Noblesville and within the Noblesville and Boone County CTAs.

Mr. Cochran testified that once the Transaction closes, HSE will no longer need the CTAs for the Fishers Service Area; therefore, HSE requests the Commission terminate the CTAs for the Fishers Service Area, effective upon closing the Transaction, except for the portion of the CTA granted in Cause No. 38819 related to the Noblesville Customers that HSE will be retaining. He testified once the Transaction closes, HSE no longer needs the CTAs (or any indeterminate permit) for the Fishers Service Area, and Fishers will not need the CTAs due to being a municipality providing sewage disposal service through its municipal sewer utility.

B. Michael G. Lane. Mr. Lane testified regarding the Appraisal, a copy of which was attached to his direct testimony as Petitioner’s Attachment MGL-2. He testified that New Gen performed an independent appraisal to determine the fair market value (“FMV”) of the Assets as of January 1, 2021. In performing the Appraisal, Mr. Lane stated NewGen considered all three generally accepted approaches to valuation (cost, income, and sales comparison) and their degree of applicability in forming an opinion upon the FMV of the Assets. Mr. Lane testified that due to Covid-19 travel restrictions, NewGen did not perform a field review of the Assets in connection with the Appraisal, but NewGen is working to schedule a field review as travel restrictions have generally been lifted.³ Mr. Lane stated that in the interim, NewGen relied on inventory listings, book data, annual financial reports, and annual reports to the Commission. Mr. Lane testified the Appraisal determined the FMV of the Assets to be \$93,885,000 based on the three generally accepted appraisal methodologies (cost, income, and sales comparison).

³ On October 1, 2021, HSE filed a submission advising that Mr. Lane performed the field review of HSE’s system on September 21, 2021, with this review limited to visual and external observations.

5. Fishers' Direct Evidence.

A. Mayor Scott A. Fadness. In testifying in support of HSE's petition to sell the Assets to Fishers, Mayor Fadness described Fishers' goals in acquiring the Assets and Fishers' municipal process to acquire the Assets. Per Mayor Fadness, through this acquisition, Fishers can make a strategic investment to provide its community with complete ownership over all the sewer assets within the City. He stated that in general, Fishers and HSE have enjoyed a cooperative working relationship, with HSE contributing to Fishers' growth at a time when Fishers, then a small town, could not cost-effectively expand its own utility system. He noted, however, that while HSE has historically provided sewer service to a large portion of Fishers' community, Fishers always treated the effluent from HSE's service area; consequently, the two systems are integrated, and the City has an extensive understanding of HSE's facilities and operations. Mayor Fadness testified that today, Fishers is a robust city of approximately 100,000 residents, and in addition to treating the effluent of over 25,000 HSE customers, Fishers provides wastewater collection and treatment service to approximately 6,500 Fishers' customers. Mayor Fadness testified that Fishers makes necessary and proper capital investments in its utility while maintaining just and equitable rates that allow the City to remain competitive in economic growth and development, and Fishers' treatment plant has sufficient capacity to account for its anticipated future growth. Due to these investments and the expertise of its staff, he stated Fishers is well prepared to bring all wastewater collection and treatment and local infrastructure development within the Fishers Service Area under its centralized management.

Mayor Fadness also testified regarding the City's financial position and ability to finance the Transaction. He stated Fishers has a strong financial outlook thanks to the City Council's fiscal leadership. Although the City has experienced significant growth, he advised its tax rate remains the lowest of the ten largest Indiana cities. Mayor Fadness testified Fishers has a AAA bond rating from Standard and Poor's ("S&P") with a stable outlook, is the only Indiana city with a AAA bond rating from S&P, and nationwide, fewer than 2% of local governments are rated AAA.

Mayor Fadness explained that with the approval of the Indiana State Board of Accounts, Fishers engages a private firm, BKD, LLP, to perform annual independent audits and has received unmodified opinions from BKD, LLP since their examinations began in 2016. Although not required by the State of Indiana, Fishers maintains a cash reserve policy and, per Mayor Fadness, has increased its cash reserve balance every year since 2015. Mayor Fadness testified Fishers received the Government Finance Officer Association's ("GFOA's") Distinguished Budget Presentation Award for its 2020 budget – its thirteenth straight budget presentation award. Additionally, the City received the GFOA Certificate of Achievement for Excellence in Financial Reporting award for the 2019 fiscal year – its thirty-second straight financial reporting award. The Mayor testified that as a municipal sewer utility, Fishers can take advantage of tax-free municipal bonds to finance the Transaction. He testified the City's AAA rating from S&P and the City's wastewater utility's AA+ rating allow Fishers to secure financing at favorable interest rates. Mayor Fadness testified the threat of market inflation is more serious today than over the past two years. Accordingly, Fishers is concerned that should this case be delayed beyond the end of 2021, the municipal bond market may experience increased interest rates, causing the Transaction to be less advantageous to ratepayers or not feasible for Fishers; therefore, Fishers requests the

Commission's expedited consideration and an order approving the Transaction before year-end so the City can complete the acquisition and secure financing at an advantageous rate.

Mayor Fadness reviewed Fishers' process for completing the Transaction, explaining that in general, Fishers has authority to acquire, construct, improve, operate, and maintain a sewage works through Indiana's Municipal Sewage Works statutes, Ind. Code ch. 36-9-23 (the "Act"), which grant the City's Board of Public Works and Safety ("Board") authority to enter into contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under the Act; however, a contract related to financing the acquisition or construction of any sewage works is not effective until it is approved by the municipality's legislative body, which in this case is the Fishers City Council. He stated the City Council intends to consider a resolution to approve the Agreement and an ordinance authorizing issuance of sewage revenue bonds to finance the acquisition. Assuming the acquisition is approved, the City Council anticipates conducting a rate hearing to incorporate HSE's fees into Fishers' wastewater utility's schedule of rates and charges. Mayor Fadness testified that after the Transaction is completed, the Board will operate, manage, and control the utility system and may complete extensions or improvements it considers necessary. Accordingly, Fishers will initiate the acquisition process with its Board where it will consider a resolution to acquire HSE that will include: (1) approval of the Agreement, (2) an engineer's estimate supporting the City's acquisition; and (3) an ordinance authorizing the City to pursue financing the Transaction. The Board will then provide notice, through publication, of its adopted resolution, after which the City Council will consider a resolution to approve the Agreement and an ordinance authorizing the issuance of sewage revenue bonds to finance the Transaction. Finally, assuming the Transaction is approved, it is anticipated the City Council will then conduct a rate hearing to incorporate HSE's wastewater fees into Fishers' schedule of rates and charges.

Mayor Fadness discussed the City's plan to incorporate HSE's rates into its wastewater utility's schedule of rates and charges. He testified Fishers' top priority in completing the Transaction is to avoid increasing the current rates of any ratepayer of either the City or HSE. To accomplish this, Fishers will maintain its rates for current Fishers' wastewater ratepayers and incorporate HSE's current rates for former HSE ratepayers within the Fishers Service Area. Mayor Fadness testified that Fishers expects to gain operational efficiencies by consolidating the Assets into its wastewater utility. After completing the acquisition, the City will have a better understanding of how to quantify these efficiencies and expects to explore rate stabilization and other modifications to its rate schedule in the future.

Mayor Fadness testified regarding the City's intentions with respect to the portion of the Fishers Service Area that is within Noblesville but is not within the area HSE is retaining. He explained a small portion of the Fishers Service Area is located inside Noblesville's corporate boundaries. Mayor Fadness testified that he understands HSE does not currently serve any customers in this area or have utility infrastructure there. Since this area is within Noblesville's boundaries, Fishers has discussed serving this area with Noblesville and anticipates coordinating with Noblesville on the provision of sewer service to this area via an interlocal agreement between Fishers and Noblesville before expanding collection facilities there.

Mayor Fadness testified that he believes the terms of the Transaction are fair and reasonable. He noted that Fishers must be a fiscal steward of taxpayer dollars, and the Agreement is the result of Fishers and HSE engaging in arms-length negotiations. Mayor Fadness testified the agreed purchase price is less than the estimated FMV of the utility assets being acquired, which HSE witness Lane testified is \$93,885,000. Mayor Fadness also stated that as Mr. Lane's analysis shows, it would cost Fishers far more to construct its own collection system than the price Fishers will be paying to acquire HSE's existing system. He testified the terms of the sale will allow Fishers to take control of the provision of sewer utility service to a majority of its residents and avoid the duplication of utility plant in Fishers.

Mayor Fadness was unequivocal that Fishers is capable of rendering quality, comparable sewage disposal service within the Fishers Service Area without loss of continuity of service. In addition to currently providing collection and treatment service to approximately 6,500 customers, Fishers provides treatment service to approximately 25,000 HSE customers. As such, the City has an extensive understanding of HSE's utility and operations. He testified that over the past five years Fishers has invested over \$35 million to make necessary and proper capital investments in its utility, including expanding the capacity of its wastewater treatment plant, and this has placed Fishers in a position to complete the Transaction.

B. Jonathan Valenta. Mr. Valenta, who serves as Director of the Fishers Wastewater Utility, testified in support of HSE's requested relief and the Transaction. Specifically, he addressed the City's technical, financial, and managerial ability to own and operate the Assets and to provide wastewater utility service to HSE's current customers in the Fishers Service Area. Mr. Valenta testified Fishers currently operates a sanitary sewer district bounded approximately by the White River, 126th Street, Interstate 69, and 96th Street. This collection system comprises 100 miles of mainline sewers and 22 lift stations. He explained that collected wastewater is treated at the utility's Cheeney Creek Wastewater Treatment Plant ("WWTP"), which features preliminary treatment, primary sedimentation, activated sludge, nitrification, secondary calcification, disinfection, and effluent re-aeration. The utility achieves biosolids stabilization using the N-Viro Soil process. In addition to serving its own utility customers, Mr. Valenta stated Fishers provides wholesale sewage treatment service to HSE, receiving all of HSE's collected wastewater through connection points. All of HSE's flow for the Fishers Service Area goes through the City's collection system and lift stations and is treated at the WWTP.

Mr. Valenta testified that Fishers desires to provide wastewater utility service to all of its citizens and, therefore, to acquire HSE's utility system located within the Fishers Service Area. Because the Fishers Service Area includes customers both inside of and outside the City's corporate boundaries, he stated Fishers will also be taking over the provision of service to HSE's "outside-City" customers located in the Fishers Service Area. Those flows are now treated at the WWTP in accordance with Fishers' wholesale sewer agreements with HSE.

Mr. Valenta testified there is a portion of the Fishers Service Area within Noblesville that Fishers is acquiring as part of the Transaction. He described the area as generally bounded by Olio Road on the west, 146th Street in on the north, Atlantic Road on the east, and I-69 on the south, and he provided a map of the area as Attachment JV-A. Mr. Valenta stated HSE currently has an indeterminate permit to serve this area that was granted in Cause No. 39567, but HSE does not

currently serve any customers in this area or have any installed utility plant there. According to Mr. Valenta, based on the topography of the area, it will be easier for wastewater from this area to flow to Fishers for treatment than to Noblesville. As a result, Fishers plans to coordinate with Noblesville on an interlocal agreement addressing the provision of sewer service to customers or developments in this area.

Mr. Valenta discussed Fishers' current sewer rates and compared them to HSE's rates. He testified Fishers charges a flat rate of \$31.00 per month for single-family residential customers, and the utility's schedule of user charges was attached to his testimony as Attachment JV-B. He testified HSE currently charges single-family residential customers a flat rate of \$35.04 per month plus a sewer tracker of \$4.75 per EDU per month to cover the cost of the sewage treatment Fishers provides. Mr. Valenta stated that to avoid confusion, Fishers will continue charging HSE's current monthly rate (including the sewer tracker) of \$39.79 to former HSE customers after the acquisition, regardless of whether the customers are located inside or outside Fishers' corporate boundaries. Once the acquisition is complete and Fishers gains experience operating the Fishers Service Area collection system, he stated Fishers will reevaluate its rates and charges and consider moving all its customers to a single rate or, if necessary, creating separate rates for former HSE customers.

Mr. Valenta testified that Fishers has the technical ability to own and operate HSE's sewer utility system located within the Fishers Service Area. He testified the City's wastewater utility was created in the early 1970s to serve the wastewater collection and treatment needs of a relatively small residential community. In 1994, as the system grew, Fishers constructed a new 1 MGD WWTP that was expanded in 1998 to 4 MGD and again in 2002 to 8 MGD. Fishers has a 20-person staff, including engineers, laboratory technicians, facility maintenance technicians, operators, and laborers. In the past 20 years, he testified Fishers has conducted an extensive capital improvement project plan designed to maintain regulatory compliance. These projects included ultra-violet disinfection facilities (2008), expanded secondary clarification (2008), increased lift station pumping capacity (2011), refurbishment of the Inlet Building (2013), and biosolids dewatering improvements (2014).

Mr. Valenta testified that over the past five years, Fishers has continued its capital improvement plan by expanding its WWTP to 10 MGD, constructing a chemical feed building at the WWTP, improving the disinfection and biosolids dewatering systems, and making various main and lift station improvements. He testified that since Fishers already treats the wastewater HSE's system collects, the only change resulting from the acquisition will be that Fishers will take over control of HSE's collection system in the Fishers Service Area. He testified Fishers anticipates being able to operate, maintain, and improve HSE's collection system in the Fishers Service Area with its existing workforce and stated Fishers currently performs the management, engineering, and operational functions required to own and operate the Assets. Mr. Valenta testified the City's in-house personnel perform insurance/risk management, human resources, procurement, budgeting, GIS/CAD, economic development/zoning, IT, infrastructure engineering, lift station design, maintenance, CCMS/LIMS, collection system design, inspection, cleaning, repair, replacement, and capital improvement functions. Fishers also employs third-party contractors, including Commonwealth Engineers, Donohue & Associates, Clark Dietz, VS Engineering, and BF&S, among others, for assistance. He testified the City's field crews already work in HSE's service territory because Fishers' stormwater utility includes HSE's service area.

Mr. Valenta testified Fishers has the financial ability to own and operate HSE's wastewater utility system located within the Fishers Service Area. He testified that as required by Ind. Code § 36-9-23-25, Fishers' rates and charges for sewer utility service are designed to be sufficient to pay all expenses incidental to the operation of its works, provide a sinking fund, provide adequate working capital, and provide adequate funds to improve and replace its sewer system as necessary. Under its present rates and charges, Fishers recovers enough revenue to meet its expenses and earn a return of between \$1 million and \$1.5 million before one-time capital expenditures. To the extent Fishers incurs additional expenses to own and operate the Assets, he stated Fishers will recover sufficient funds from continuing to bill HSE's former customers at HSE's current rates to meet these additional expenses and to safely and efficiently own and operate the Assets.

Mr. Valenta testified Fishers has the managerial ability to own and operate the Assets, with the management structure that Fishers uses to manage its wastewater collection and treatment systems able to also manage the collection system to be acquired from HSE. In addition, the City's wastewater utility is overseen by the Board and, ultimately, by the Mayor and the City Council.

Mr. Valenta stated HSE's customers will receive comparable, uninterrupted service when the Transaction is completed. He testified that because HSE's collection system is already interconnected to the City's utility system and Fishers already treats HSE's collected wastewater, HSE's customers will not experience any service interruption when Fishers takes control of the Assets, and HSE's customers will continue to receive the same or better service from Fishers. He noted the City's existing permitting and inspections, customer service, billing, call-out, and emergency response resources for its wastewater utility will also cover the added HSE collection system customers.

Mr. Valenta testified the portion of the Fishers Service Area that is located outside the City's corporate boundaries is within the radius of miles in which Fishers has statutory authority to provide sewer utility service. Per Mr. Valenta, under Ind. Code § 36-9-23-36, Fishers has statutory authority to provide sewer utility service in areas within 10 miles of its corporate boundaries. The majority of the Fishers Service Area is entirely contained either within the City's corporate boundaries or in areas surrounded by Fishers and within 10 miles of its corporate boundaries. The only exception Mr. Valenta identified is the small area located within Noblesville's corporate boundaries that is part of HSE's Fishers Service Area; therefore, to allow Fishers to provide service in this area, Fishers and Noblesville will need to enter into an interlocal agreement.

6. OUC's Direct Evidence. Mr. Bell was supportive of the Transaction and granting the relief HSE requests. He summarized the key terms and conditions of the Transaction and discussed the Appraisal. He also provided a copy of a valuation Commonwealth Engineers performed on behalf of Fishers ("Commonwealth Valuation"), noting that Fishers provided the OUC with the Commonwealth Valuation in response to a data request. In summarizing the Commonwealth Valuation, Mr. Bell stated it reflects the following values for the Assets based on three methods: (1) \$151,025,000 based on the total cost to replicate utility (new); (2) \$102,035,000 based on the total value of the utility – adjusted for depreciation; and (3) \$101,459,000 based on the total value of the utility – adjusted for depreciation and excluding assets within Noblesville's

municipal boundaries. Mr. Bell testified all three of these values exceed the \$90 million purchase price.

Mr. Bell also opined that there are benefits to Fishers owning HSE's wastewater utility assets, including: (1) municipal utilities do not pay income taxes so this expense will not need to be recovered from ratepayers; (2) a municipality like Fishers that has a AAA bond rating from S&P will have access to lower cost debt than an investor-owned utility; and (3) a municipality has no shareholders, so it pays no return on equity investments. Mr. Bell stated the foregoing can benefit ratepayers. Mr. Bell supported HSE retaining the portion of the CTA granted to HSE in Cause No. 38819 as to the Noblesville Customers. He recommended the Commission approve the sale and transfer of the Assets to Fishers pursuant to the Agreement and approve HSE's request to terminate the CTAs for the Fishers Service Area effective upon closing the Transaction.

7. **HSE and Fishers' Stipulations.** As indicated above, at the outset of the evidentiary hearing, HSE asked to engage in discussions off the record. At the conclusion of these discussions, HSE stipulated on the record that HSE no longer seeks Commission approval to transfer its authority to serve any area located within Noblesville to Fishers or its authority to serve any other area within the Fishers Service Area, but HSE continues to request the CTAs and indeterminate permits identified in the Petition be revoked, effective upon the Transaction closing, and that the Commission approve the proposed sale and transfer of HSE's wastewater utility assets. Fishers, similarly, confirmed that Commission approval of any transfer of HSE's service rights to Fishers or of Fishers' acquisition of HSE's undeveloped service territory located within Noblesville is no longer requested. Instead, Fishers committed to try and work out an interlocal agreement with Noblesville with respect to the undeveloped area within Noblesville that is within the Fishers Service Area, and Fishers will rely upon applicable statutes for authority to serve the other areas within the Fishers Service Area after the Transaction closes as opposed to any grant of service authority from the Commission. HSE and Fishers confirmed that notwithstanding their respective testimony, docket entry responses, or other filings, HSE and Fishers no longer seek Commission approval of HSE transferring service rights to Fishers.

8. **Commission Discussion and Findings.**

A. **Statutory Requirements.** Pursuant to Ind. Code § 8-1-2-89(j), a public utility such as HSE is authorized to sell, assign, lease, or transfer its sewage disposal service assets to a municipality if the following conditions are met: (i) the assets being transferred lie within an area which shall have been annexed by such municipality or lie within the given radius of miles from the corporate limits of such municipality into which it is authorized to render such services; (ii) such municipality is prepared to render a comparable sewage disposal service without loss of continuity of service; and (iii) the terms of such sale, assignment, lease, or transfer are reasonable. We review the proposed Transaction using these criteria.

B. **The HSE assets being sold, assigned, or transferred lie within Fishers' corporate boundaries or within the given radius of miles from its corporate boundaries into which Fishers is authorized by statute to render sewer utility service.** Mr. Cochran and Mr.

Valenta testified the Assets⁴ being transferred to Fishers under the Agreement are predominantly inside the City's corporate boundaries. Mr. Valenta described the Fishers Service Area as being the area north of 126th street to Noblesville and east of Interstate 69 to Madison County, and he provided a map of the Fishers Service Area as Attachment JV-A. The Fishers Service Area is also detailed in the executed Agreement.

Mr. Valenta testified a portion of the Fishers Service Area is located within Noblesville. He described this area as generally bounded by Olio Road on the west, 146th Street on the north, Atlantic Road on the east, and I-69 on the south. He stated HSE has an indeterminate permit to serve this area that was granted in Cause No. 39567; however, HSE currently serves no customers in this area and has no utility plant there. According to Mr. Valenta, based on the topography of this area, it will be easier for sewage to flow to Fishers for treatment rather than to Noblesville. As a result, Fishers plans to coordinate with Noblesville on an interlocal agreement addressing the provision of sewer service to new customers or developments in the area. The Commission finds that if HSE's indeterminate permit to serve the undeveloped area within Noblesville that is within the Fishers Service Area is revoked, Fishers stands ready to attempt to enter into an interlocal agreement to provide future wastewater customers within this area with such service, and there are no existing customers within Noblesville whose service will be impacted by the Transaction. The Commission further finds that the Assets include no infrastructure or other assets located within this undeveloped area of Noblesville.

With respect to the portion of the Fishers Service Area that is located outside the City's corporate boundaries and not within Noblesville, Mr. Valenta testified this area is within the radius of miles in which Fishers has statutory authority to provide sewer utility service. Per Mr. Valenta, under Ind. Code § 36-9-23-36, Fishers is authorized to provide sewer utility service in areas within 10 miles of its corporate boundaries. The majority of the Fishers Service Area is entirely contained either within the City's corporate boundaries or in areas surrounded by Fishers and within 10 miles of its corporate boundaries, with the only exception being the undeveloped area within Noblesville's corporate boundaries that is discussed above.

Based upon the evidence and the stipulations, the Commission finds the Assets to be acquired from HSE by Fishers are located within Fishers' corporate boundaries or were shown to be within the radius of miles from Fishers' corporate boundaries into which the City may render sewer utility service under Ind. Code § 36-9-23-36. The small portion of the Fishers Service Area within Noblesville's corporate boundaries that Fishers intends to try and provide service to post-closing via an interlocal agreement with Noblesville has no HSE assets or customers; consequently, we further find it is appropriate to revoke HSE's indeterminate permit for this area effective upon HSE and Fishers closing the Transaction since post-closing, this area will be served by a municipally owned utility.

C. Fishers is prepared to render comparable sewage disposal service without loss of continuity of service. Mr. Cochran testified Fishers is well-qualified to provide

⁴ Given HSE's stipulated withdrawal of any request for Commission approval of a transfer to Fishers of HSE's service rights and/or authority to provide sewer service within the Fishers Service Area, for purposes of the Commission's discussion and findings, "Assets" shall not include such service rights, notwithstanding their inclusion in the Assets as described in Section 2.1 of the Agreement.

wastewater service to the Fishers Service Area. He noted Fishers has been providing wholesale treatment service to the Fishers Service Area for HSE since HSE commenced operations over 30 years ago. As a result, Fishers is familiar with HSE's system and customers. He testified Fishers has provided quality wastewater disposal service to its own service area for many years and has the capability to oversee and manage the Assets.

Mayor Fadness also confirmed that Fishers is capable of prospectively rendering comparable wastewater service without loss of continuity of service to the Fishers Service Area. In addition to providing collection and treatment service to approximately 6,500 current customers, Fishers provides treatment service to approximately 25,000 HSE customers; consequently, the City has an extensive understanding of HSE's utility and its operations. Mayor Fadness testified that over the past five years Fishers has invested more than \$35 million to make necessary and proper capital investments in its utility, including expanding the capacity of its WWTP, with these investments placing the City in a position to complete the Transaction.

Mr. Valenta testified HSE's customers within the Fishers Service Area will receive uninterrupted service from Fishers when the Transaction is completed. Since HSE's collection system is already interconnected to the City's utility system and Fishers treats HSE's collected wastewater, he stated HSE's customers will not experience any interruption in service when Fishers takes control of the Assets, and HSE's customers will continue to receive the same or better service from Fishers as they received from HSE. Mr. Valenta noted that, in addition, Fishers' existing permitting and inspections, customer service, billing, call-out, and emergency response resources for its wastewater utility will be extended to cover the added HSE collection system customers.

Mayor Fadness and Mr. Valenta testified the City has the financial ability to own and operate the Assets and to serve the Fishers Service Area. Mr. Valenta testified that as required by Ind. Code § 36-9-23-25, Fishers has designed its rates and charges for sewer utility service to be sufficient to pay all expenses incidental to the operation of the works, provide a sinking fund, provide adequate working capital, and provide adequate funds to improve and replace its sewer system as necessary. He stated that under Fishers' present wastewater rates and charges, Fishers recovers enough revenue to meet its expenses and earn a return of between \$1 million and \$1.5 million before one-time capital expenditures. To the extent Fishers incurs additional expenses to own and operate the Assets, Fishers will recover sufficient funds from continuing to bill HSE's former customers at the same level as HSE's current rates to meet these additional expenses and to safely and efficiently own and operate the Assets. In addition, Mr. Valenta testified the management structure Fishers uses to manage its wastewater collection and treatment systems will also manage the additional collection system once acquired.

Mr. Cochran testified HSE's customers will not be negatively impacted by the Transaction. They will receive quality wastewater service without any rate impact in the near future and with the possibility of significant rate benefits in the long-term. Mayor Fadness explained that the City plans to incorporate HSE's rates into Fishers' wastewater utility's schedule of rates and charges. He testified the City's top priority in completing the Transaction is to avoid increasing any ratepayer's—either the City's or HSE's—current rates. To accomplish this, Fishers will maintain its current rates for Fishers' wastewater utility ratepayers and incorporate HSE's current rates into

its schedule of rates and charges for former HSE ratepayers within the Fishers Service Area. He testified the City reasonably expects to gain certain operational efficiencies by consolidating the Assets into its wastewater utility. Mr. Valenta testified that to avoid confusion, Fishers will charge HSE's current rate (including HSE's sewer tracker) of \$39.79 per month to former HSE customers after the acquisition regardless of whether the customers are located inside or outside the City's corporate boundaries. Mr. Valenta testified once the acquisition is complete, and Fishers gains experience operating the HSE collection system, Fishers will reevaluate its rates and charges and consider moving all its customers to a single rate.

Based on the evidence, the Commission finds Fishers has the physical connectivity and wastewater experience, as well as the financial and managerial resources, to render quality, comparable wastewater disposal service to HSE's customers located within the Fishers Service Area without loss of continuity of service and is committed to doing so. The testimony shows Fishers will provide this service with no short-term rate impact by not changing the rates and charges HSE currently bills until Fishers gains experience operating HSE's former collection system. Moreover, HSE's former customers could experience rate benefits in the long-term once Fishers incorporates the Assets into its system and gains operational knowledge.

D. The terms of the sale are reasonable. HSE and Fishers testified the agreed purchase price for the Assets is \$90,000,000, subject to adjustment based upon a formula the parties agreed to and subject to certain appraisals, as detailed in the Agreement. In support of the purchase price, HSE provided an appraisal performed by NewGen. Mr. Lane testified regarding the appraisal findings that the FMV of the Assets is \$93,885,000 based on the three generally accepted appraisal methodologies (cost, income, and sales comparison). Both Mr. Cochran and Mayor Fadness opined that the purchase price is reasonable. According to Mr. Cochran, the purchase price is supported by the appraisal and is at the low end of the range NewGen calculated. He projected this will help keep the Fishers Service Area customers' rates low. Mayor Fadness testified the appraisal reflects it would cost Fishers far more to construct its own collection system than the purchase price Fishers has agreed to pay.

OUCC witness Bell provided a copy of a valuation dated June 1, 2021, performed for Fishers by Commonwealth Engineers, Inc. He testified this valuation determined the following three values: (1) the total cost to replicate utility (new) of \$151,025,000; (2) the total value of utility-adjusted for depreciation of \$102,035,000; and (3) the total value of utility-adjusted for depreciation and excluding assets within Noblesville's municipal boundaries of \$101,459,000. Mr. Bell noted all three of these values exceed the \$90 million purchase price. Mr. Bell also testified there are benefits to Fishers owning HSE's wastewater utility assets located within the Fishers Service Area, including: (1) municipal utilities do not pay income taxes so that expense will not need to be recovered from ratepayers; (2) a municipality like Fishers, with a AAA bond rating from S&P, will have access to lower cost debt than an investor-owned utility; and (3) a municipality has no shareholders, so it pays no return on equity investments. He stated these advantages can benefit ratepayers and that the OUCC supports the proposed transfer of assets detailed in the Agreement.

Mr. Cochran and Mayor Fadness also testified as to other reasons they believe the Transaction is reasonable. Per Mr. Cochran, the Assets being transferred are used and useful for

the provision of wastewater service to the Fishers Service Area and will enable Fishers to provide the same quality collection service HSE has been providing. He testified the Transaction is also reasonable in that it excludes certain assets that are unnecessary for the provision of wastewater service to the Fishers Service Area. He stated these Excluded Assets will be retained by HSE so it can continue to provide wastewater service to its present customers located in Noblesville and to HSE's Noblesville CTA and Boone County CTA. Mayor Fadness testified the terms of the sale will allow Fishers to take control of the provision of sewer utility service to a majority of its residents while avoiding the duplication of utility plant within Fishers. Mayor Fadness and Mr. Cochran also testified as to the reasonableness of closing the Transaction in 2021 due to low interest rate financing currently available to Fishers.

The Commission finds the purchase price of \$90,000,000, as potentially adjusted under the formula agreed upon in the Agreement, is supported by the evidence and was shown to be reasonable. It is at the lower end of the range NewGen calculated in its appraisal and is lower than the values Commonwealth Engineers, Inc. determined. The parties demonstrated the purchase price will allow Fishers to complete the Transaction without near term rate impact on HSE's former customers or Fishers' customers. We also find the terms of the sale to be reasonable in that HSE will retain certain assets, defined as the Excluded Assets in the Agreement. These assets are unnecessary for Fisher's provision of wastewater disposal service within the Fishers Service Area.

E. Revocation of HSE's Fishers Service Area CTAs and Indeterminate Permits. HSE requests that effective upon the Transaction closing, the CTAs for its Fishers Service Area be cancelled, except for a portion of the CTA granted in Cause No. 38819 where HSE currently serves wastewater customers who are located within Noblesville's corporate boundaries (the "Retained Noblesville Area"). In its Verified Petition, sponsored by Mr. Cochran as KWC-1, HSE identified the CTAs for the Fishers Service Area that HSE seeks to cancel. These include the CTAs granted in Cause Nos. 38685, 38819 (excluding the Retained Noblesville Area), 39567, 41528, 41745, 41752, 41798, and a small portion of the CTAs granted in Cause No. 43435.⁵ In Cause No. 43435, the Commission granted HSE the following: (1) a CTA for 10,000 acres in Wayne Township, Hamilton County, which HSE considers to be part of its Noblesville CTA; (2) a CTA for 4.6 acres along Geist Reservoir (the "Cambridge Area"); and (3) an indeterminate permit for 11.0 acres Noblesville returned to HSE as part of the wholesale sewer agreement between Noblesville and HSE (the "Returned Area"). In this proceeding, with respect to the CTAs granted in Cause No. 43435, HSE seeks to retain the CTA for 10,000 acres in Wayne Township but stipulated to revocation of its service rights to the Cambridge Area and the Returned Area and to the CTAs for these areas being revoked effective upon closing the Transaction. Mr. Cochran also described the Retained Noblesville Area and provided a legal description and map of this area as Petitioner's Attachments KWC-6 and KWC-7. The CTAs granted to HSE in Cause Nos. 40501 in Wayne Township, Hamilton County, that HSE considers to be part of its Noblesville CTA, and in Cause No. 43581 with respect to Boone County are unaffected by this proceeding. Thus, consistent with the stipulations at the hearing and the evidence presented, HSE seeks the following revocations or retentions of its existing CTAs and indeterminate permits:

⁵ Cause No. 38897 was also listed as a proceeding in which HSE was granted a CTA, but as discussed above, Cause No. 38897 was dismissed, so Cause No. 38897 is excluded from this discussion of HSE's CTAs and indeterminate permits.

IURC Cause No.

38685 – to be revoked entirely

38819 – to be revoked except for the portion of the CTA applicable to the Noblesville customers HSE is retaining (*i.e.*, the Retained Noblesville Area)

39567 – to be revoked entirely

41528 – to be revoked entirely

41745 – to be revoked entirely

41752 – to be revoked entirely

41798 – to be revoked entirely

43435 – (a) 10,000 acres for Wayne Township, Hamilton County, to be retained by HSE

(b) 4.6 acres along Geist Reservoir (the Cambridge Area) to be revoked

(c) 11.0 acres within Fishers that HSE denoted as the Returned Area for which HSE was granted an indeterminate permit, indeterminate permit to be revoked

40501 – no change; HSE to retain the CTA in its entirety

43581 – no change; HSE to retain the CTA in its entirety.

At the evidentiary hearing, HSE clarified, via stipulations, that HSE no longer seeks Commission approval to transfer to Fishers any authority to serve or right to serve any area in which HSE requests its CTA be cancelled. Fishers will rely upon applicable statutes for its authority to provide wastewater service within the areas HSE formerly served and seek an interlocal agreement with Noblesville to serve the undeveloped area within Noblesville for which HSE was issued an indeterminate permit that is being revoked. Based on Ind. Code § 8-1-2-89(j) and the stipulations, once the Transaction is consummated and HSE's CTAs and indeterminate permits are revoked, as listed above, the Commission will not have jurisdiction over the wastewater disposal service to be provided by Fishers' municipal utility within what was the Fishers Service Area. The Commission, therefore, finds that upon closing the Transaction, as defined in the Agreement, HSE's CTAs and indeterminate permits for the Fishers Service Area shall be revoked as set forth above, and HSE shall retain the other CTAs as also set forth above.

To assure the Commission is kept apprised upon the status of HSE's CTAs and indeterminate permits and whether HSE remains responsible for providing wastewater service thereunder, the Commission further finds that HSE shall file written notice with the Commission under this Cause confirming the Transaction has closed within seven calendar days after said closing. If the Transaction has not closed within six months after the date of this Order, HSE shall so notify the Commission under this Cause and update the Commission upon when closing is anticipated. These written updates should continue to be filed under this Cause every three months thereafter until the Transaction closes or otherwise terminates. HSE is reminded of the importance of continuing to perform its wastewater service responsibilities through closing.

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

1. HSE is authorized to consummate the sale and transfer of its Fishers Service Area assets and facilities to Fishers in accordance with the terms and conditions set forth in the Agreement.

2. Upon closing the Transaction, as defined in the Agreement, the CTAs and/or indeterminate permits previously granted to HSE shall be revoked as set forth in Finding No. 8(E) above; provided, HSE shall retain the CTAs granted in Cause Nos. 40501 and 43581 without modification, shall retain in part the CTA granted in Cause No. 43435, and shall retain in part the CTA granted in Cause No. 38819 consistent with Finding No. 8(E) above.

3. HSE shall file written notification with the Commission under this Cause confirming the Transaction has closed within seven calendar days after said closing. If the Transaction has not closed within six months after the date of this Order, HSE shall so notify the Commission under this Cause and update the Commission upon the status of closing; these updates shall continue to be filed under this Cause every three months thereafter until the Transaction closes or HSE notifies the Commission the Transaction is not being consummated.

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

HUSTON, FREEMAN, KREVDA, AND ZIEGNER CONCUR;
OBER NOT PARTICIPATING:

APPROVED: NOV 03 2021

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

Dana Kosco
Secretary of the Commission