

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

FILED
April 29, 2019
**INDIANA UTILITY
REGULATORY COMMISSION**

**PETITION OF THE MUNCIE SANITARY)
DISTRICT, FOR APPROVAL OF A)
REGULATORY ORDINANCE COVERING) CAUSE NO. 45055
UNINCORPORATED AREAS OF)
DELAWARE COUNTY, INDIANA)**

**LIBERTY REGIONAL WASTEWATER DISTRICT'S
SUBMISSION OF PROPOSED ORDER OF THE COMMISSION**

Liberty Regional Wastewater District, by counsel, submits its Proposed Order of the Commission.

Respectfully submitted,

/s/ Brandon E. Murphy
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**STATE OF INDIANA
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DISTRICT, FOR APPROVAL OF A)	
REGULATORY ORDINANCE COVERING)	CAUSE NO. 45055
UNINCORPORATED AREAS OF)	
DELAWARE COUNTY, INDIANA)	DENIED:

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

David E. Veleta, Senior Administrative Law Judge

On February 27, 2018, Muncie Sanitary District (“MSD” or “Petitioner”) filed its Petition for Approval with the Indiana Utility Regulatory Commission (“IURC” or “Commission”) seeking approval of its regulatory ordinance, Muncie City Ordinance 2015-16 (“Regulatory Ordinance”), to become the exclusive provider of sanitary sewage service in certain unincorporated areas of Delaware County, Indiana pursuant To Ind. Code. 8-1.5-6 *et seq.*

On March 9, 2018, MSD filed its Motion for Continuance, which Motion was Granted by the Commission’s Docket Entry of March 27, 2018. On March 16, 2018, counsel Appeared on behalf of the Town of Yorktown (“Yorktown”). On March 26, 2018, Delaware County Regional Wastewater District (“DCRWD”) filed a Petition to Intervene, which Petition was Granted by the Commission’s Docket Entry of April 11, 2018. On April 19, 2018, Liberty Regional Waste District (“LRWD”) filed a Petition to Intervene, which Petition was not granted by the Commission. On April 20, 2018, MSD, DCRWD, Yorktown and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Stipulation as to Procedural Matters. On April 24, 2018, the Commission issued a Docket Entry which Vacated the Prehearing Conference and Established a Procedural Schedule in this Cause. On May 22, 2018, Yorktown filed its Exhibit No. 1-a Stipulation Between MSD and Yorktown. Also on May 22, 2018, DCRWD filed its Motion to Dismiss or Stay Procedural schedule. On May 25, 2018, the OUCC filed the Prefiled Testimony and Exhibits of Carl N.. Seals. On June 14, 2018, MSD filed the Verified Direct Testimony and Exhibits of Michael Cline, P.E. On June 15, 2018, DCRWD filed its Motion to Strike and for Default Ruling on Motion to Dismiss. On June 18, 2018, the Commission issued a Docket Entry converting the July 12, 2018, evidentiary hearing into an attorney’s conference. On July 11, 2018, additional counsel Appeared on behalf of MSD. Based on the scheduling agreements reached at the July 12, 2018, attorney’s conference, the Commission issued a Docket Entry on July 20, 2018, establishing a new procedural schedule for this Cause. On July 30, 2018, Yorktown filed its Petition to Intervene, which Petition was Granted by the Commission’s August 8, 2018, Docket Entry. On August 20, 2018, MSD Filed the Verified Direct Testimony and Exhibits of Michael Cline, P.E. On August 28, 2018, Yorktown filed the Verified Testimony and Exhibits of Pete Olson. On October 1, 2018, the OUCC filed its Motion to Modify Procedural Schedule. On October 2, 2018, the OUCC filed its Notice of Correction to its Motion to Modify Procedural Schedule. On October 3, 2018, The Commission issued a Docket Entry Granting the OUCC’s

October 1, 2018, Motion, as corrected. On October 15, 2018: the OUCC filed the Supplemental Testimony of Carl N. Seals; DCRWD filed the Direct Testimony and Exhibits of John Brooke; and LRWD file the Testimony and Exhibits of Mark Abrell, Kathy May and Jerry Zearbaugh. Also on October 15, 2018, additional counsel Appeared for LRWD. On October 18, 2018, MSD filed its Motion to Strike LRWD Witness Abrell's testimony. On October 22, 2018, MSD filed Motions to Compel discovery against both LRWD and DCRWD. Also on October 22, 2018, one of Yorktown's counsel Moved to Withdraw his appearance, which Motion was Granted by Docket Entry of October 31, 2018. On October 24, 2018, LRWD Responded to MSD's Motion to Strike. On October 30, 2018, MSD Replied to LRWD's Response. On November 1, 2018, the Commission issued a Docket Entry denying MSD's Motion to Strike. On November 2, 2018, MSD filed its Motion for Enlargement of Time to Submit Prefiled Rebuttal Testimony. On November 9, 2018, the Commission Issued a Docket Entry Granting MSD's Motions to Compel and its Request for Enlargement of Time to Submit Rebuttal. On December 5, 2018, MSD filed its Notification to IURC advising the Commission of the initiation of litigation which could affect the operation of the Ordinance. On December 31, 2018, MSD filed the Verified Rebuttal Testimony and Exhibit of Michael Cline, P.E. On January 14, 2019, MSD filed its Objections to the Admissibility of Prefiled Testimony and Exhibits. On January 16, 2019, MSD filed its Corrections to Prefiled Testimony.

The Commission held an Evidentiary Hearing in this Cause at 9:30 a.m. on January 17, 2019, in Room 222, 101 West Washington Street, Indianapolis, Indiana. MSD, LRWD, DCRWD, Yorktown, and the OUCC appeared by counsel and participated in the Evidentiary Hearing. At the hearing, counsel for MSD waived the requirement of Ind. Code. 8-1.5-6-9(c) that the Commission issue its order in this Cause within 300 days of MSD's Petition. However, no other party to the proceeding waived the requirement of Ind. Code 8-1.5-6-9(c). No members of the general public sought to participate in the hearing. MSD has not requested to amend its Petition pursuant to 170 IAC 1-1.1-8(b)

Based on the applicable law and the evidence presented, the Commission now finds:

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. MSD is a special unit of government created pursuant to an Ordinance of the City of Muncie in 1968 adopted under Ind. Code. 36-9-25-1(b). MSD operates as an executive department of the municipality under Ind. Code. 36-9-25-3(a), and is therefore a 'municipality' as defined by Ind. Code. 8-1.5-6-1(a)

MSD is a "utility" as defined by Ind. Code. 8-1.5-6-4. The City of Muncie adopted Ordinance 2015-16 on or about July 13, 2015, which is a "Regulatory Ordinance" as defined by Ind. Code. 8-1.5-6-2. If a municipality adopts a regulatory ordinance after December 31, 2012, and the municipality's utility has not filed, or cannot file, a wholesale sewage petition, the Commission has jurisdiction to approve the regulatory ordinance pursuant to Ind. Code. 8-1.5-6-9. Therefore, the Commission has jurisdiction over MSD and the subject matter of this Cause in the manner and to the extent provided by law.

At the hearing in this Cause, counsel for MSD waived the requirement that the Commission issue an order on MSD's Petition within three hundred (300) days as set forth by Ind. Code. 8-1.5-6-9(c). The Commission accepts MSD's waiver. No other party to the hearing objected to the waiver.

2. LRWD's Petition to Intervene. LRWD filed its Petition to Intervene in this Cause on April 19, 2018. No party objected to LRWD's Petition to Intervene. However, based on a review of the Commission's Docket of this Cause it does not appear that LRWD's Petition to Intervene was granted. No party raised this matter with the Commission and LRWD fully participated in this Cause as an intervening party. Based on a review of LRWD'S Petition to Intervene, we find it satisfies the requirements of 170 IAC 1-1.1-11 and that it should be granted. We find the failure to grant LRWD's Petition to Intervene earlier was harmless oversight and that no party has been prejudiced thereby. The Commission finds that LRWD's Petition to Intervene in this Cause should be Granted, *Nunc Pro Tunc*, as of ten (10) days after the filing of LRWD's Petition to Intervene.

3. Petitioner's Characteristics. MSD currently provides sewer service to over twenty seven thousand (27,000) residential, institutional, industrial, and commercial customers presently within the MSD boundaries and about forty (40) customers outside the boundaries of the MSD. MSD also provides sewage treatment service to DCRWD and LRWD. MSD owns ninety-one (91) miles of combined sewer, two hundred fifty-four (254) miles of separate storm sewer,

and three hundred six (306) miles of separate sanitary sewer pipe. MSD also has one Wastewater Treatment Plant, twenty-six (26) lift stations, and four (4) Army Corps of Engineers Flood Stations. The treatment plant operated by the MSD is considered a class 4 plant, has twenty-four (24) million gallons a day capacity, and is about forty (40) acres in size. MSD has approximately two hundred (200) employees.

4. Intervenor's Characteristics.

A. Intervenor LRWD's Characteristics. The LRWD is a regional sewer district created in 1977 by order of the Indiana Stream Pollution Control Board. LRWD currently consists of a sewage collection system which includes 31 miles of pipe, 19 lift stations and approximately 553 manholes. LRWD provides sewer service to over 1,600 customers located east of Muncie in Delaware County, Indiana. LRWD's territory includes essentially all of Liberty Township in Delaware County, Indiana and that portion of Center Township east of the Muncie bypass and north of the White River.

B. Intervenor DCRWD's Characteristics. DCRWD is a regional sewer district created in 1976 by order of the Indiana Stream Pollution Control Board. DCRWD's collection system comprises over 187,000 lineal feet of gravity sewer lines, over 114,000 lineal feet of force main, over 20,000 feet of 8-24" pipe, and over 140 lift stations and grinder pumps. DCRWD serves approximately 3,000 customers located in areas north and west of Muncie in Delaware County, Indiana. DCRWD's territory includes all of Delaware County not served by another entity.

C. Intervenor Yorktown's Characteristics. The Town of Yorktown is a municipal utility and operates a wastewater treatment plant. They have 70 miles of pipe, about 8 lift stations, and about 8 miles of force main. Yorktown's territory includes all of Mount Pleasant Township in Delaware County except that portion of already being served by DCRWD.

5. Relief Requested. MSD asks the Commission to approve its Regulatory Ordinance granting MSD an exclusive license to furnish sewer service within four (4) miles outside of its corporate boundaries.

During the course of the proceeding, MSD learned of the concerns of the intervening parties, and tried to address those concerns in its rebuttal testimony. Based upon that testimony, MSD is effectively amending the relief requested as set forth in Mr. Cline's rebuttal testimony, to wit, that the Commission approve its regulatory ordinance with the proposed clarifications and amendments based upon the testimony given in this matter. However, MSD has not requested to amend its Petition as required by 170 IAC 1-1.1-8(b). In addition, there is no evidence or allegation that the City of Muncie has taken any steps to amend the Regulatory Ordinance.

MSD now seeks approval of the Regulatory Ordinance subject to amendment ordered by Commission as set forth in MSD's evidence in this Cause. MSD is essentially asking the Commission to perform a legislative function for the City of Muncie.

6. Evidence of the Parties. MSD offered the Direct Testimony and Exhibits of Michael Cline. Intervenor LRWD offered the Direct Testimony and Exhibits of Mark Abrell, Kathy May and Jerry Zearbaugh, Intervenor Yorktown offered the Direct Testimony and Exhibits of Pete Olson. Intervenor DCRWD offered the Direct Testimony and Exhibits of John Brooke. The OUCC offered the Direct and Supplemental Direct Testimony and Exhibits of Carl N. Seals. MSD offered the Rebuttal Testimony and Exhibit of Michael Cline. MSD Witness Cline responded to Cross Examination conducted by DCRWD, LRWD and the OUCC. OUCC Witness Seals responded to Cross Examination conducted by DCRWD.

A. MSD's Direct Testimony. Michael Cline, P.E. ("Mr. Cline") testified regarding MSD's Regulatory Ordinance, their sewer utilities, their customers, and territory.

Submitted with Mr. Cline's testimony were the following exhibits:

- I. Exhibit 1-A is the Verified Petition in this matter.
- II. Exhibit 1-B is the Ordinance passed by the Common Council of the City of Muncie that is the subject of this Petition.
- III. Exhibit 1-C is a map depicting the territory of MSD, the regional districts in Delaware County, and the 4-mile area covered by Ordinance 2016-15.
- IV. Exhibit 1-D is the letter that was sent from the Delaware County Health Department to MSD in January of 2018 requesting we provide service to homes in the Old Town Hill Estates area south of Muncie.
- V. Exhibit 1-E is the second letter from the Delaware County Health Department regarding the provision of services to homes outside of Muncie and the confusion of who is able or responsible to provide service in that area.
- VI. Exhibit 1-F is resolution 2016-10 which sets rates for the MSD.
- VII. Exhibit 1-G is resolution 2016-11 which sets rates for the MSD.
- VIII. Exhibit 1-H is resolution 2017-1 which sets rates for the MSD.
- IX. Exhibit 1-I is a graph comparing the rates of the MSD to other similar sewer utilities in Indiana

Mr. Cline testified that Ordinance 2015-16 was passed by the Common Council of the City of Muncie and directed MSD to seek approval of the Ordinance with the Commission. He testified the Regulatory Ordinance was passed in anticipation of the MSD needing to expand its service area to the statutorily defined 4-mile area outside of the corporate boundaries of the City of Muncie. He testified that the MSD was seeking the approval of the Regulatory Ordinance granting it an exclusive license to furnish sewer service in that area. This exclusive license is necessary, he testified, because the infrastructure, capital, and increased operation costs that will be required in order to serve customers in that area are significant, and an exclusive license will allow MSD to recover those costs over time. He also testified that because of the multiple sewer utilities that already operate in the 4-mile area, an exclusive license will prevent the duplication of services and provide certainty to customers in that area.

Mr. Cline further testified that MSD began operating as a sanitary district in 1968 when it was created by Ordinance of the City of Muncie and that MSD is a unique type of sanitary district created under the authority of Ind. Code. 36-9-25. Mr. Cline testified that MSD has operated an

efficient and prosperous utility that currently serves in excess of twenty-seven thousand (27,000) residential, institutional, industrial, and commercial customers within the MSD boundaries, and in excess of three thousand (3,000) customers outside the boundaries of the MSD. Customers outside the boundaries of the MSD include LRWD and DCRWD. Mr. Cline testified that MSD has been treating 100% of flow from LRWD's customers since 1978 and DCRWD's customers since approximately 1995. Per the 2011 Combined Sewer Overflow Long-Term Control Plan (CSOLTCP), MSD owns ninety-one (91) miles of combined sewer, two hundred fifty-four (254) miles of separate storm sewer, and three hundred six (306) miles of separate sanitary sewer pipe. He testified MSD also has one Wastewater Treatment Plant, twenty-six (26) lift stations, and four (4) Army Corps of Engineers Flood Stations. Nikki Grigsby is the current District Administrator and MSD currently employs over two hundred (200) people.

Mr. Cline went on to testify that MSD has already extended sewer service on a limited basis to customers in the 4-mile area. He stated that MSD currently serves customers in the Old Town Hill and Nanci Lane areas outside of the City of Muncie as well as the Cowan Community Schools and existing homes along Cowan Road. He also stated MSD extended service to these areas in response to requests from those customers and from the Delaware County Health Department ("DCHD"). Mr. Cline testified that the DCHD wrote a letter to MSD asking them to provide service to homes in the Old Town Hill Estates area of Muncie, which is in the 4-mile area. MSD, therefore, began expanding service to that area. Mr. Cline testified that on July 20, 2018, the DCHD sent another letter to MSD noting their original confusion as to whether DCRWD operated in that area, and inquiring who they should have contacted or who had jurisdiction. However, the letter again reiterated the situation of many homeowners along South Burlington Drive who needed a public utility to provide sewer service because the homeowners had failing septic systems that discharged directly into the river. He testified that MSD anticipates there will be additional customers in the 4-mile area that will need services as the community continues to grow and expand, and as the older septic systems and infrastructure start to fail.

Mr. Cline testified that there are currently two (2) other utility providers, LRWD and DCRWD, which operate within the 4-mile area outside of the corporate boundaries of the City of Muncie. LRWD provides service to customers in Liberty Township, and DCRWD provides service to customers in pockets across Delaware County. However, neither of these utilities has the capability to provide for the treatment of the sewage generated from the customers in the 4-mile area. LRWD and DCRWD do not have treatment plants. Both have treatment contracts with MSD whereby the MSD treats their sewage. He also stated that Yorktown operates a sewer utility and treatment plant that currently provides sewer services to the Town of Yorktown and the immediate surrounding area. He testified that MSD is the only utility that realistically has the treatment and infrastructure capacity to handle the customers in the 4-mile area without having to expand the capacity of their treatment plant. He testified that LRWD and DCRWD would need IDEM approval before constructing a new treatment plant to expand their services to any new customers in that area, and at the time of his testimony that process had not begun.

Mr. Cline then testified regarding the rates and charges for MSD customers, how they are set, and how new customers are connected. He stated that current MSD rates and fee schedules for MSD are set by resolutions passed by the Board from time to time. The current rates were set by Resolutions 2016-10 and amended by Resolution 2016-11. The rate structure was further

clarified and amended in Resolution 2017-1. These Resolutions were attached as Petitioner's Exhibits 1-F, 1-G, and 1-H to his testimony. Mr. Cline testified that customers in the 4-mile area would be charged rates just like any other customers. He stated that MSD sets rates and fees for all customers through resolutions. These would be the rates that apply to any customers of MSD in the 4-mile area. He further testified that service extensions would be handled on a case by case basis. Mr. Cline testified that recently collections of property owners came to MSD board meetings and requested that MSD extend service to their area because they have been told that their septic systems are failing. In another circumstance, the MSD was contacted by Cowan Community Schools because their treatment plant was in disrepair and they had no economically feasible solution to upgrade their plant. MSD extended service to the school system in that case. Mr. Cline testified that his Exhibit 1-I depicts a chart showing that MSD's rates and charges are average for the type and size of utility it is. He informed the Commission that MSD is not looking to expand just for expansion's sake, but is trying to protect the public interest and provide for the growth and future development of the Muncie Community. He stated that MSD is always willing to work with the other utilities that operate in Delaware County if it would be mutually beneficial to in provision of service to certain customers.

Mr. Cline testified that if the ordinance is approved, then any development in the 4-mile area would be supported by sewer service infrastructure. Developers, companies, and prospective homeowners would no longer have to worry about failing septic systems or sewer utilities as potential costs or prohibitive factors with new or planned development or expansion. With dependable sewer service utilities, economic growth in that area would be encouraged, workforces could begin to live in that area, and new construction would be supported by sewer service infrastructure capable of supporting increases in population as the Muncie community expands outwards. Approval of the ordinance would allow the MSD to meet the needs of the public in that area currently and remedy some of the failing sanitary situations, and also allow the MSD to adapt to future growth and development in those areas.

Mr. Cline testified that the ordinance will have possible impacts on the territory of other utilities in Delaware County, however, MSD is willing to work with those other utilities when necessary or mutually beneficial as it pertains to the 4-mile area. He stated that, to his understanding, the regional districts that operate in Delaware County have their territory defined by Charters that are approved by IDEM and any expansion to new territory would require approval by IDEM. He stated that, to his knowledge, there is no current plan for either LRWD or DCRWD to expand their territory. It is not the goal of MSD to in anyway negatively impact regional districts or other utilities, rather it is their goal to positively impact the community, promote economic growth, and provide for the public interest

Finally, Mr. Cline testified that Ordinance 2015-16 was drafted concisely and with the needs of the community in mind. He testified that MSD is not attempting to take customers already being served by any of the utilities that currently operate in the 4-mile area. He stated that MSD is trying to address a growing need in the community. He opined that the General Assembly of Indiana clearly wants municipalities that are in the position of MSD to plan for and provide for the future economic development and growth of their communities. He stated that MSD has identified a need in its community and is trying to address that need. The need for solutions to sanitary issues outside of MSD's current territory increases every year, and these needs have to be met in order

for the communities to grow and prosper. Mr. Cline testified that MSD is the only utility with the infrastructure, finances, and capital to provide the services needed in that area.

1. Cross Examination on Direct by DCRWD. Mr. Jeffrey Earl, on behalf of DCRWD, cross examined Mr. Cline on his direct testimony.

Mr. Earl first questioned Mr. Cline regarding his testimony about the 3,000 customers that MSD currently serves outside its territorial bounds. Mr. Cline clarified that those 3,000 customers include the two wholesale customers of LRWD and DCRWD, and that MSD currently serves about 40 customers directly that are outside its boundaries. In response to questioning, Mr. Cline testified that one of the customers that MSD serves directly is Cowan Community Schools, and that Cowan is outside of MSD's boundaries. He testified in response to Mr. Earl's questions that MSD did not seek approval from DCRWD to serve that school district, or the homes in the Nanci Lane and Old Town Hill Estates neighborhoods where MSD currently serves customers directly. He testified that those customers approached MSD about service, and that is why they extended services; however, MSD did not inform those customers to first seek service from DCRWD. On redirect, Mr. Cline clarified that it was his understanding that MSD was under no requirement to seek DCRWD approval to extend their services within 4 miles outside of their boundaries. He testified on redirect that extending service to Cowan was not like a normal extension because it was on an emergency basis. He also testified on redirect that the Nanci Lane and Burlington areas were on "pump and haul" orders from the DCHD, and that DCHD came to MSD Board meetings asking for service to be extended because it was a desperate situation for those homes on "pump and haul."

Mr. Earl cross examined Mr. Cline regarding his testimony that DCRWD and LRWD did not have treatment facilities or infrastructure. Mr. Cline clarified that he does not dispute that DCRWD and LRWD have their own collections systems or pumps stations, but that they do not have their own treatment facility and cannot provide treatment independently. Mr. Cline clarified on redirect that they have infrastructure in the county, however, neither entity has the infrastructure in place to serve the entire county.

Mr. Earl asked Mr. Cline about his statements on direct that, because of their small size, DCRWD and LRWD did not have the financial means to undertake any long-term, large-scale improvements and infrastructure expansion. Mr. Cline clarified that he does not know the annual revenue, the annual expenses, or what their cash reserves are, but that he does know that DCRWD holds between seven million and seven and a half million in debt on fixing their failing infrastructure at Royerton. Mr. Cline testified that when he formed that opinion, he had not reviewed the information that DCRWD provided with its own testimony, as that had not been filed at the time of his direct testimony. He testified that his statement was looking at what DCRWD and LRWD would have to do to be able to provide treatment plant services to the entirety of the county or their district, not so much what they were presently dealing with, but that it was a fair amount of debt for only the existing customers that are living in Royerton. On redirect, Mr. Cline clarified that after reviewing the testimony from LRWD and the documents provided in discovery, not only does he hold the same opinion, but he is even more convinced DCRWD and LRWD did not have the financial means to undertake any long-term, large-scale improvements and infrastructure expansion

He stated that DCRWD and LRWD have their own contracts with MSD, and that those contracts do not provide a limit on the amount of sewage the regional districts can transmit to MSD for treatment.

Mr. Earl extensively questioned Mr. Cline as to whether, based on MSD's Exhibit 1-C, the 4-mile area covered by MSD's proposed ordinance would completely encircle DCRWD's territory. Mr. Cline reviewed the exhibit and stated that based on the exhibit, the territory covered by the ordinance would encircle the areas that DCRWD is currently servicing. Mr. Earl referred Mr. Cline to his direct testimony where he stated that the goal of the ordinance was not to negatively impact any existing utility in the area. He asked Mr. Cline if completely encircling an entity and preventing future growth would have a negative impact on that utility. Mr. Cline said that, in general, the statement that preventing the growth of a utility would be a negative impact is true, but in scenarios where a utility's plant is overloaded or they have a history of violations, preventing growth to an area that is already problematic would not be a negative impact. Mr. Earl again asked Mr. Cline if the proposed ordinance, as it exists, does create a negative impact on DCRWD by encircling them and preventing growth. Mr. Cline responded, stating that the purpose of the ordinance is to help provide sewers to pockets of growth that have already developed within the 4-mile area, and if the two wholesale districts have decided not to serve those areas, he did not see how that could be a negative impact. He stated that if there was a developed area that was not being served by a utility, and DCRWD or LRWD has decided not to serve that area but MSD would serve, then that would not be a negative situation.

Mr. Earl directed Mr. Cline to Exhibit 1-F of his direct testimony, which established the rates for current MSD customers. Mr. Cline testified in response to Mr. Earl's questioning that in the resolution there are minimum rates and charges established for each customer class, and that those rates would be instituted in phases from years 2016 through 2019. Mr. Earl asked Mr. Cline if enacting rate increases in this manner is typical, and he testified in response that he would not say it is typical, that the practice of instituting rates in phases began in 2012, but sometimes they increase rates, sometimes they do not. He testified that the increases are built in for inflationary purposes as determined by MSD's financial advisors. He testified that no cost of service study was done before passing the resolution, but there was a bond/sewer rate study that was done by MSD's financial advisors.

Mr. Earl introduced Cross Examination Exhibit 1, which is the 2012 rate resolution that Mr. Cline mentioned in his cross examination. Mr. Cline clarified that he was not on the MSD Board when that resolution was enacted. In responses to questioning, Mr. Cline testified that on page 9 of the 2012 resolution, there are five phases of rate increases that were most likely put in on advice of MSD's rate consultant to account for inflation. Mr. Earl asked Mr. Cline if MSD's revenues decreased year by year or if their expenses increase year by year. Mr. Cline responded that MSD's revenues do not decrease year to year, but there are aspects of their expenses that do increase every year. Mr. Cline testified that he does not know how much MSD's customer base fluctuates year to year within the district, but the amount of wastewater MSD treats each year is heavily dependent on the weather.

Mr. Earl directed Mr. Cline to Exhibit 1-HMSD Board Resolution 2016-10. Mr. Earl directed Mr. Cline to the part of the resolution where MSD established a new class of customers for regional sewer districts/wholesale customers and the rates that would be charged to those districts. Mr. Cline agreed that was where the current rates for the regional districts are found. He testified that no cost of service study was done before the passing of that resolution either.

2. Cross Examination on Direct by LRWD. Mr. Brandon E. Murphy, on behalf of LRWD, cross examined Mr. Cline on his direct testimony.

Mr. Murphy first directed Mr. Cline back to the Exhibit 1-C, and asked if that map correctly reflected the territory of LRWD. Mr. Cline retorted that since the filing of that exhibit, he has had time to review the exhibits filed on direct by LRWD, and that MSD and LRWD are very close to agreeing on what the boundaries for MSD are. He testified that, to his knowledge, it appears that all of LRWD territory lies within the 4-mile area covered by MSD's ordinance.

Mr. Murphy then asked Mr. Cline about his earlier testimony that MSD has changed its understanding of LRWD's territory since Exhibit 1-C was created. Mr. Cline testified that MSD has had their district engineer reviewing maps provided by LRWD and other than a few "this side of the street or that" issues on the boundary lines, MSD is willing to accept LRWD's boundaries as put forth in their exhibits, and that he does not believe that is any longer a contested issue.

B. Intervenors' Direct Testimony.

1. LRWD's Testimony.

a. Testimony of LRWD Witness Mark Abrell. Mr. Abrell, LRWD's attorney, testified on behalf of LRWD. Witness Abrell testified that his testimony is meant to assist the Commission in determining the boundaries of LRWD. Witness Abrell stated he wants the Commission to see what areas are currently within LRWD's boundaries and are, thus, not areas that the Muncie Sanitary District's Petition for Approval seeks to claim jurisdiction. He testified to the extent that the MSD Petition does seek to claim jurisdiction over any territory within the boundaries of LRWD, Mr. Abrell means to assist the Commission in determining the Petition should not be approved.

Mr. Abrell identified and briefly described certain exhibits to his testimony.

Witness Abrell's Exhibit A-1 is the Final Order and Determination of the Stream Pollution Control Board of Indiana (the predecessor to the Indiana Department of Environmental Management) dated June 30, 1977, which created the LRWD and included a map of the original territory of the LRWD.

Witness Abrell's Exhibit A-2 is the De-Annexation and Annexation into the Liberty Regional Waste District dated July 24, 1979, which essentially removed the excluded area referred to in Exhibit A-1 from the MSD and placed it within LRWD.

Witness Abrell's Exhibit A-3 is a letter from him to IDEM dated June 25, 1990, with two different Applications for Inclusion in Regional Waste District executed by the DCRWD which were approved by the LRWD Board, which, Mr. Abrell states, essentially moved territory from the DCRWD to LRWD.

Witness Abrell's Exhibit A-4 is a color coded map which he prepared, that he stated was based upon the original color coded map, which was sent with his letter (Exhibit A-3), showing the addition (Exhibit A-2), another addition (included with Exhibit A-3) and a further addition (also included with Exhibit A-3). Mr. Abrell states when these additions are taken together with the original territory, as shown in his Exhibit A-1, it makes up the current territory of LRWD.

Witness Abrell states his Exhibit A-5 is a copy of a letter sent on behalf of DCRWD to Mark McKinney, an attorney for the MSD, dated December 14, 2016, objecting to MSD's intention to extend sewage service to the Cowan Schools.

Witness Abrell states his Exhibit A-6 is a picture which he took on July 7, 2016, of a slide presented at a MSD public hearing purporting to show the projected costs of various construction projects. Witness Abrell states these construction projects were to be paid for by an across-the-board increase in sewage rates, including those paid by both LRWD and the DCRWD.

Witness Abrell states that his Exhibit A-7 is a rate study dated June 6, 2016, which was provided to him by counsel for MSD. Witness Abrell states the rate study was the basis of the across-the-board sewage rate increases adopted by MSD referred to in the Direct Testimony of MSD Witness Michael Cline. Witness Abrell testified these increases in rates were charged to both LRWD and DCRWD.

Witness Abrell states that his Exhibit A-8 is a copy of a legal notice which he observed in the June 24, 2016, Muncie Star Press noticing a public hearing to consider and adopt proposed rates.

Witness Abrell points out that in MSD's Petition, MSD does not claim jurisdiction over new or existing customers within LRWD's service area. He stated this indicates to him that MSD is not claiming jurisdiction over customers within LRWD. However, Witness Abrell states the language of the actual Ordinance does not make such distinction. He also states that the map included with that Ordinance does not accurately show LRWD's territory.

Witness Abrell contends that he is aware of legal authority which indicates that MSD's Ordinance has no jurisdiction over existing regional sewer district service areas. He states that during his representation of DCRWD, he notified MSD's counsel of his opinion in that regard.

Witness Abrell states that in his opinion it is not in the public interest to approve MSD's Ordinance. He goes on to give several reasons. Initially, he expresses concern that customers located outside of the Muncie city limits would not have any political input as to how they would be treated by MSD. Witness Abrell also expressed concern because he believes MSD has calculated its sewer rates imposed on LRWD by including costs that are related to providing service to all of MSD's customers. Witness Abrell then referred to his Exhibit A-6 which he

believes showed that a customer specific project, unrelated to the cost of providing service to LRWD, was financed by an across-the-board increase in sewage rates charged to LRWD. He believes that many such costs had nothing to do with providing sewage treatment services to either LRWD or DCRWD.

Witness Abrell stated that the concerns regarding MSD's rate calculation has led to LRWD and DCRWD joining together to pursue construction of their own wastewater treatment plant, thus eliminating their treatment service provided by MSD. He stated the DCRWD Board is expected to adopt an inter-local agreement with LRWD for that purpose. Witness Abrell also noted that both LRWD and DCRWD, pursuant to Ind. Code. 13-26-11-15, must send notices to their customers advising them of appeal rights whenever they attempt to raise sewer rates more than 5% per year. Witness Abrell notes there is no mention of what, if any, rights of appeal "new customers" of MSD would have in the event its Regulatory Ordinance is approved.

b. Testimony of LRWD Witness Kathy May. Kathy May, LRWD's Office Manager, testified on behalf of LRWD. Witness May stated that LRWD bills 1,623 customers. However, some of those customer billings are for multiple residential units, for businesses or schools, which for billing purposes are equivalent to multiple residential units. LRWD's total equivalent residential units exceeds 1,700. Witness May stated that she operates LRWD's business office and is responsible for supervising the billing of LRWD's customers. She also states that she attends the Trustee Board meetings and implements rate increases to LRWD's customers. Witness May testified that since 2012, LRWD has had to raise the rates it charges to its customers six (6) times. She states each rate increase was the direct result of an increase in rates charged by MSD to LRWD for sewage treatment.

Witness May states the purpose of her testimony is to assist the Commission in deciding that MSD's Ordinance is not in the public interest. She states that, generally speaking, all of LRWD's customers have the right to vote for the people who appoint the members of LRWD's Board of Trustees. Witness May opines that very few, if any, of LRWD's customers have the right to vote for the Mayor of Muncie who appoints the members of the MSD Board. It is Witness May's opinion that it is not in the public interest to allow MSD to expand its territory and jurisdiction to provide sewer service into the service area of LRWD.

c. Testimony of LRWD Witness Jerry Zearbaugh. Jerry Zearbaugh, LRWD's Superintendent, testified on behalf of LRWD. Witness Zearbaugh had two Exhibits to his testimony. The first was his Exhibit C-1, which Witness Zearbaugh states is a map of the areas where LRWD's sewage collection system is located. Witness Zearbaugh states that his Exhibit C-2 is a spreadsheet showing rate increases which MSD implemented in the rate MSD charges to LRWD for treatment services. Witness Zearbaugh states Exhibit C-2 also shows an amount which he believes is an overpayment in what LRWD has paid to MSD contrary to its contract with MSD.

Witness Zearbaugh described LRWD's current collection system. He stated the collection system includes 31 miles of pipe, 19 lift stations, and approximately 553 manholes. Witness Zearbaugh states that LRWD has 9 permanent generators and 3 portable generators to provide power to certain lift stations in the event of a power outage. He also states that LRWD provides some repair service to customers who have failing grinder pumps.

Witness Zearbaugh states the purpose of his testimony. It is Witness Zearbaugh's opinion that the Commission should not approve MSD's Ordinance which he believes is not in the public interest. He states as a customer and resident of the LRWD territory, he has the right to vote for the people who appoint LRWD's Trustee Board members. Witness Zearbaugh states that he does not have the right to vote for the Mayor of Muncie who appoints the MSD Board. Witness Zearbaugh states that LRWD has the ability to provide sewer service to those who need it within the LRWD territory.

Witness Zearbaugh states that he was present at some of the public hearings which MSD held for the purpose of considering sewage rate increases. Specifically, he testifies that he was present at the March, 2012, public hearing when MSD proposed and adopted rates which he believes included paying for the separation of MSD's combined storm water/wastewater sewers. He states that LRWD's attorney objected in that meeting, that such an increase was contrary to the terms of the contract between MSD and LRWD. Finally Witness Zearbaugh testified that LRWD and MSD are involved in a lawsuit over increases in the rates charged to LRWD by MSD.

2. Town of Yorktown's Testimony.

a. Testimony of Yorktown Witness Pete Olson. Pete Olson, the Town Manager of Yorktown, testified on behalf of Yorktown. Witness Olson testified as to the purpose of his testimony in this Cause. He stated that his testimony is meant to assist the Commission in determining Yorktown's boundaries so the Commission can clearly see what areas are within its boundaries and, thus, are not areas subject to MSD's Ordinance.

Witness Olson described two exhibits to his Direct Testimony. Exhibit A-1 is the Stipulation between Muncie Sanitary District and the Town of Yorktown. Witness Olson's Exhibit A-2 is a plat map depicting Mount Pleasant Township.

Witness Olson described his duties as Town Manager. He testified that he is responsible for the administration of the day to day functions of Yorktown and implementing the policies of the Town Council. Witness Olson also oversees all of the town departments.

Witness Olson testified that he had reviewed the Stipulation between MSD and Yorktown. Witness Olson stated the purpose of the Stipulation was to establish that MSD does not claim jurisdiction over any territory within Yorktown's boundaries. He also testified that the Stipulation does not completely describe the territory located within Yorktown's boundaries. Witness Olson explained that Yorktown has consolidated with Mount Pleasant Township. He testified the Stipulation, with attachments, and the Mount Pleasant Township plat map, together, completely describe the territory located within Yorktown's boundaries. Witness Olson finally testified that it is his understanding that by entering into the Stipulation, MSD does not intend to claim jurisdiction over the entire boundary of Yorktown, including the Mount Pleasant Township.

3. DCRWD's Testimony.

a. **Testimony of DCRWD Witness John Brooke.** John Brooke, who is a member of the Board of Trustees for DCRWD, testified on behalf of DCRWD. Witness Brooke explained his duties and responsibilities as a member of DCRWD's Board. He is the Secretary of the Board of Trustees. Witness Brooke testified that along with other Board members, he reviews and authorizes payment of DCRWD's claims, sets procedures, regulations and rates for DCRWD. He and the other Board members also establish the current and future policy of DCRWD.

Witness Brooke explains the purpose of his testimony in this Cause. He states the purpose of his testimony is to oppose MSD's Ordinance to expand its service territory outside of its municipal boundaries. Witness Brooke stated that he would discuss the formation of DCRWD to serve the unincorporated areas of Delaware County. He will also explain his opinion that MSD's proposed service territory would completely encircle DCRWD and LRWD.

Witness Brooke described DCRWD's creation. He testified that DCRWD was formed on December 21, 1976, by IDEM in Cause No. B-283. He stated the Board of County Commissioners of Delaware County, with approval of the County Council, petitioned IDEM to form DCRWD. Witness Brooke stated the IDEM Order created DCRWD's district to include "all territory in Delaware County except the territory currently being served by the Muncie Sanitary District." He stated the district also excluded two areas that were in the process of being annexed by MSD. Witness Brooke stated that he attached the IDEM Order creating DCRWD to his testimony as Attachment JB-1. Witness Brooke explained how DCRWD is governed. He states DCRWD is currently governed by a seven member Board of Trustees. Three of the Trustees are appointed by the Delaware County Commissioners, one Trustee is appointed by the Town Board of Yorktown, one Trustee is appointed by the Delaware County Council, one Trustee is appointed by agreement of the Towns of Chesterfield and Daleville, and one Trustee is appointed by the executive of the City of Muncie. Witness Brooke described DCRWD's current system. Witness Brooke stated that DCRWD currently serves over 3,000 customers located in rural areas of Delaware County, including the Daleville, Westbrook, Royerton and DeSoto areas. Witness Brooke stated that he had attached a map of DCRWD's service territory as his Attachment JB-2. He stated DCRWD's collection system is made up of over 187,000 lineal feet of gravity sewer lines, over 114,000 lineal feet of forced main, over 20,000 feet of 8-inch to 24-inch pipe, and over 140 lift stations and grinder pumps.

Witness Brooke stated that MSD Witness Cline's assertion that MSD treats all of the wastewater collected by DCRWD is incorrect. Witness Brooke testified that DCRWD contracts with three (3) providers to treat its wastewater. He stated that Chesterfield treats the wastewater generated by the Daleville area, and Yorktown treats the wastewater from the Westbrook area. He stated MSD only treats the wastewater from the Royerton and DeSoto areas.

Witness Brooke stated that DCRWD has considered constructing its own wastewater treatment facility ("WWTF"). He stated that DCRWD and LRWD have engaged in discussions with the intent to construct a joint WWTF that would serve both districts. He said the proposed WWTF would allow DCRWD and LRWD to serve its existing customers and for service to be extended to new customers. Witness Brooke described the steps DCRWD has taken toward this potential WWTF project. He stated that DCRWD had contracted with Commonwealth Engineering to complete a Preliminary Engineering Report ("PER"). He stated the PER was

presented to DCRWD on July 11, 2018. He stated the PER showed that DCRWD and LRWD could save approximately \$44,000,000.00 over the 20 year project planning period by building a WWTF versus using MSD for its wastewater treatment. Witness Brooke stated that he attached a presentation to DCRWD's Board regarding the PER to his testimony as Attachment JB-3. Witness Brooke testified that DCRWD and LRWD intend to enter into an inter-local agreement regarding the proposed WWTF. He stated they have a final draft inter-local agreement. DCRWD's Board approved the inter-local agreement at its October 15, 2018, Board meeting. He said LRWD is expected to accept the inter-local agreement during its next Board meeting.

Witness Brooke stated that DCRWD currently charges residential customers a monthly flat rate for service based on its four geographical service areas. He said DCRWD's rates are as follows: \$47/mo. in the Daleville area; \$97.79/mo. in the Royerton area; \$83.04/mo. in the DeSoto area; and, \$48.90/mo. in the Westbrook area.

Witness Brooke testified as to how he believed MSD's proposed Ordinance would affect DCRWD's service territory. He stated, based on the map and description provided by MSD in its case-in-chief, MSD's proposed additional service territory encroaches on DCRWD's legally defined service territory. He also believes MSD's proposed service territory would completely encircle those areas where DCRWD currently provides service to customers. Witness Brooke, again, stated the IDEM order that created DCRWD provided that "all of the territory in Delaware County except the territory currently being served by the Muncie Sanitary District and also except for two areas proposed to be annexed by the Muncie Sanitary District" is DCRWD's service territory. Witness Brooke further states the IDEM order that created DCRWD defines its purpose as "the collection and treatment of sewage and all other lawful activities as permitted by [statute]." Witness Brooke states although the Ordinance exempts those areas where DCRWD is already providing service, it would prevent DCRWD from adding additional customers. Witness Brooke believes this would prevent DCRWD from fulfilling its legally defined purpose.

Witness Brooke notes that MSD Witness Cline stated that customers in MSD's proposed four mile area would be charged rates set by MSD's Board. Witness Brooke expressed concern at this situation. He testified that MSD has a three member Board, all of whom are appointed by the Mayor of Muncie. He stated residents who live in the proposed four mile area do not live within Muncie's boundaries and are not allowed to vote for the Mayor of Muncie. Witness Brooke stated these residents would have no control over the appointment of MSD's Board and MSD's Board would have no political accountability to these residents. He testified that by comparison, DCRWD has a seven member Board who are appointed by the Delaware County Commissioners, the Delaware County Council, and the executives of Yorktown, Muncie, Chesterfield, and Daleville. He stated the residents in the proposed four mile area are able to vote for one or more of these appointing authorities. Witness Brooke testified that, therefore, DCRWD's Board is politically accountable to those residents.

Witness Brooke testified that MSD Witness Cline stated that to his knowledge, DCRWD and LRWD, because of their small size and customer base, do not have the financial means to undertake large scale improvements and infrastructure expansion. Witness Brooke disagreed with that statement and said just the opposite is true. He testified that DCRWD has over \$1,000,000.00 set aside for future projects and development, and also has a bond reserve for that same purpose.

Witness Brooke also testified that according to the PER, by constructing and operating a new WWTF, DCRWD and LRWD are projected to save approximately \$44,000,000.00 over 20 years. He said DCRWD alone is expected to save approximately \$27,000,000.00 over that period. Witness Brooke testified by eliminating the cost that DCRWD pays to MSD for wastewater treatment, and adding the O&M and debt service for the new WWTF, DCRWD would realize net savings of over \$400,000.00 annually. Witness Brooke stated these savings would likely be further increased if DCRWD solicits and obtains grants for the project and refinances its outstanding debt. He says the savings from the construction of the new WWTF can be used to fund future projects or to reduce customer rates. Witness Brooke testified that DCRWD has a long term plan for expansion of the District. He says in 2018, DCRWD began long term planning focusing on increasing its customer base. Witness Brooke stated DCRWD is currently considering expanding its operations into the Shidler area using the Eaton treatment plant, and into the Wheeling area using the Gaston treatment plant.

Witness Brooke stated that he had concerns about whether it is in the public interest for MSD to provide service in the proposed four mile area. He stated MSD is currently undertaking a 20 year, \$168,000,000.00 long term control plan ("LTCP") approved by IDEM, to address combined sewer overflows into the White River and Buck Creek. He said the LTCP calls for the full separation of approximately 84 miles of MSD's sanitary and combined sewers, and the construction of a wet weather treatment facility. Witness Brooke opines that compliance with the LTCP will require a great deal of MSD's resources and it is likely that MSD will have to increase its rates in order to fund its LTCP. He states that an information page about the LTCP is attached to his testimony as Attachment JB-4.

Witness Brooke discussed another of his concerns about whether it is in the public interest for MSD to provide service in the proposed four mile area. He stated MSD is currently the subject of an FBI investigation resulting in the indictment of Tracy Barton, MSD's Superintendent of Sewer Maintenance and Engineering, on charges of conspiracy to commit wire fraud, falsification of documents, and witness tampering. Witness Brooke testified that, according to a US Department of Justice press release, "[a] Grand Jury has charged Barton with abusing his position of authority and influence by fraudulently steering contracts to preferred contractors, and soliciting and accepting kickbacks in the form of cash, cash equivalents, or contributions, to Barton and other Muncie employees." He stated a copy of the press release is attached to his testimony as Attachment JB-5. He also stated a copy of the indictment against Mr. Barton is attached to his testimony as Attachment JB-6. Witness Brooke testified that while the investigation and indictment are not proof of any guilt or misconduct, their existence raises questions about whether it is in the public interest to allow MSD to expand its service to the proposed four mile area.

C. OUCC's Direct and Supplemental Direct Testimony.

1. Direct Testimony of OUCC Witness Carl N. Seals. Carl N. Seals, a utility analyst in the OUCC Water/Wastewater Division, testified on behalf of the OUCC. Witness Seals described what the MSD seeks by its filing in this Cause. He stated according to the Petition initiating this proceeding, MSD seeks authority "to assume jurisdiction over certain unincorporated areas of Delaware County, Indiana, and for approval of Muncie City Ordinance 2015-16 ("Regulatory Ordinance"), regulating the provision of sanitary and sewer service to the

fullest extent of the law,” pursuant to Ind. Code. 8-1.5-6. Witness Seals describes the purpose of his testimony. He states the testimony will discuss the information obtained from MSD’s filings and data requests. Witness Seals states that he will explain, based on the information which he reviewed, the OUCC has no concerns with MSD’s request to extend its territory.

Witness Seals explained what he had done to prepare his testimony in this Cause. He states that he reviewed MSD’s Petition and attachments, certain reports pertaining to IDEM, researched online news articles regarding MSD, and issued data request questions to better understand MSD’s current operations and request. Witness Seals notes the OUCC’s review did not include testimony filed by MSD since it was not filed before the OUCC filing date. Witness Seals states the OUCC review and recommendation is based on information provided through discovery and the documents filed with MSD’s Petition. He states the OUCC may review and respond to any testimony which MSD may file at a later date.

Witness Seals described the requirements of an entity seeking approval of a regulatory ordinance pursuant to Ind. Code. 8-1.5-6 *et seq.* He states that according to Ind. Code. 8-1.5-6-9(c), a petition for this type of request must include the following:

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

Witness Seals explained how MSD’s Petition satisfied the requirements of Ind. Code. 8-1.5-6-9(c). He stated that MSD filed its proposed Ordinance, as its Exhibit 1, which is a graphic depiction of the service territory established in the regulatory ordinance. He stated that in response to OUCC Data Request 1.1 seeking a higher quality map, MSD submitted an electronic map of the proposed service area. Witness Seals stated this higher quality map is attached to his testimony as Attachment CNS-1. Witness Seals testified the proposed rates and charges for services to be provided in the service territory are discussed in MSD’s Petition and were confirmed in MSD’s response to OUCC Data Request 1.7. He notes that OUCC Data Request 1 is included in its entirety as Attachment CNS-2 to his testimony. Witness Seal explained the rates which will be charged by MSD in its proposed service territory “apply to all services for all customers of MSD.” Witness Seals explained that MSD noted in its response to OUCC Data Request 1.11 that “there are no administrative or judicial proceedings involving Ordinance 16-2015 except for the IURC case 45055.” Witness Seal states that in MSD’s Petition, it listed DCRWD and LRWD as utilities actually or potentially affected by the regulatory ordinance. He stated in response to OUCC Data Request 1.3, MSD added Yorktown, which has entered into a stipulation with MSD regarding the Ordinance. Witness Seals states according to MSD’s response to OUCC Data Request 1.9, MSD has sewage treatment agreements with LRWD and DCRWD to treat 100% of their sewage.

Witness Seals testified that according to Ind. Code. 8-1.5-6-8(g), the Commission should consider the following when evaluating a proposed regulatory ordinance:

- (1) The ability of another utility to provide service in the regulated territory.

- (2) The effect of a commission order on customer rates and charges for service provided in the regulated territory.
- (3) The effect of the commission's order on present and future economic development in the regulated territory.
- (4) The history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.
- (5) Any other factors the commission considers necessary.

Witness Seals explained how MSD supported each of these considerations. Witness Seals explained that, with regard to the ability of another utility to provide service in the regulated area, MSD stated in its response to OUCC Data Request 1.6 none of the affected utilities would be able to provide service in the regulated territory. Witness Seals noted that MSD stated neither LRWD nor DCRWD could provide the service because neither has a sewage treatment plant. Both LRWD and DCRWD have contracts with MSD to receive and treat 100% of their sewage. He stated MSD explained that Yorktown does not have the means or intent to accept any new customers outside of its municipal boundaries.

Witness Seals explained that regarding the potential impact on customer rates and charges for service in the regulated area, MSD has stated that the rates charged within the regulated area will be the rates charged to its other customers.

Witness Seals testified that MSD's history includes the provision of sewage treatment to both DCRWD and LRWD. He further notes that MSD's Petition states that MSD was created by the Common Council of Muncie in 1968 and currently serves all customers within the corporate boundaries of Muncie.

Witness Seals states that the OUCC recommends the Commission approve MSD's regulatory ordinance.

2. Supplemental Direct Testimony of OUCC Witness Carl Seals. Carl Seals, utility analyst in the OUCC Water/Wastewater Division, offered Supplemental Direct Testimony on behalf of the OUCC. Witness Seals testified the purpose of his Supplemental Direct Testimony is to confirm the opinions and recommendation stated in his earlier Direct Testimony.

Witness Seals testified that MSD had provided additional information pertinent to this Cause since the filing of his earlier Direct Testimony. He stated MSD had filed testimony responsive to the statutes governing the establishment of a regulatory ordinance. He stated much of this information had previously been obtained through data requests issued by the OUCC prior to his earlier testimony. Witness Seals testified this additional testimony does not change any of his opinions or recommendations set forth in his earlier Direct Testimony.

3. Cross Examination on Direct Testimony

Witness Seals was cross examined on behalf of DCRWD by Mr. Earl. Mr. Earl asked Witness Seals about the dates on which certain testimony was filed. In response to questioning,

Witness Seals testified that he filed his direct testimony on behalf of the OUCC on May 25, 2018, and MSD filed its direct testimony on June 14, 2018. Witness Seals testified that he filed his testimony before MSD had filed their direct testimony because he obtained responses for the information he needed from data requests to MSD. He stated that he reviewed the data request responses, the Petition and the attachments, certain reports pertaining to the Indiana Department of Environmental Management, and online news articles regarding Muncie Sanitary District. He testified that while formulating his opinions, he did not speak to anyone from DCRWD or send them any data requests. He testified that he did not review any IDEM orders or news articles related to DCRWD or LRWD. Mr. Earl directed Witness Seals to his testimony where he stated that none of the affected utilities would be able to provide service because they do not have a treatment plant. Mr. Earls asked if he made any attempt to verify this with DRWD or LRWD, and Witness Seals stated that he did not. Witness Seals testified that DCRWD and LRWD currently provide service to the customers in their territory. When asked if that means they are actually capable of providing service to their territory, he stated that they are capable of providing collection services. When asked if it was unusual for a sewer utility to be a collection only utility that contracts for treatment, Witness Seals stated that he did not know that he would call it unusual, and that there are other utilities in the state that operate that way.

D. Rebuttal Testimony of MSD.

1. Rebuttal Testimony of Mike Cline

Mr. Cline submitted rebuttal testimony on behalf of MSD, with corrections to his prefiled rebuttal made orally at the evidentiary hearing. Attached to Mr. Cline's rebuttal testimony was Exhibit 2-A which is the SPCB Order 62255405.

Mr. Cline first testified regarding Witness Abrell's exhibit A-6. Witness Abrell's testimony described the picture as evidence that MSD paid for projects associated with the LTCP by enacting what he called "across the board percentage increase in all sewage rates, including those paid by both LRWD and DCRWD." Mr. Cline testified that this statement was unsupported, and that what the exhibit actually showed was a picture from a slide show presented at a MSD public hearing showing MSD bond projects for 2016. He testified that Witness Abrell makes no showing that he is qualified to analyze utility rates either by training or experience. Further, the rates charged to DCRWD and LRWD by MSD for sewage treatment are based on the contracts that each entity has with MSD. He testified that Witness Abrell makes no showing that he is qualified to analyze these rates under the operation of the respective contracts. Mr. Cline also testified that the MSD 2016 bond projects, or any assumption that Witness Abrell made regarding them, is irrelevant to the matter before the Commission. MSD's proposed Ordinance does not relate to, and has no impact on, the rates for service paid by LRWD or DCRWD to MSD. The important issue regarding rates is that MSD is committed to treating and charging its retail customers inside the city, and outside the city in the 4-mile area, the same.

Next, Mr. Cline testified regarding Witness Abrell's Exhibit A-7. He testified that the exhibit was a draft study that was for internal review only by the MSD Board and was never finalized. Furthermore, he stated that it only relates to rates paid by LRWD, and is therefore not relevant to the proposed ordinance in the case. He then testified concerning Witness Abrell's

testimony generally. Mr. Cline addressed Witness Abrell's statement that MSD "will include all of its costs, regardless of whether such costs are related to providing the service to a specific group of customers" in determining the rate it charges its wholesale customers. He testified that was a completely unsubstantiated statement. Witness Abrell, without consulting a cost of service study, suggested that he somehow knows what costs are or are not related to specific customers or customer groups, and that statement is complete speculation. He went on to testify that even if Witness Abrell's testimony was accurate, which it is not, the rates charged by MSD to LRWD and DCRWD are set by contract and are in no way related to the proposed Ordinance.

In Witness Abrell's testimony he testified regarding MSD's extension of service to Cowan, and he classified it as an "invasion" of DCRWD's territory. Mr. Cline addressed this statement in his rebuttal, he testified that, to his knowledge, DCRWD was asked to provide service to Cowan, and had applied and been approved for funding to undertake the project, but decided against extending service to Cowan. That left Cowan with the need for service, with no provider willing to serve to them. He testified that MSD is authorized to provide services to Cowan since MSD can provide service outside its corporate boundaries pursuant to statute. He testified MSD was approached by Cowan, and MSD was willing and able to work out an arrangement to invest in infrastructure in order to provide service to Cowan. He stated that MSD's service extension to Cowan allowed it to stay in operation and clearly served the public interest. He went on to state that the purpose of MSD's Ordinance is to better assure the availability of sewer service, particularly when other utilities are unable or unwilling to serve—just as was the situation for Cowan Community Schools.

Mr. Cline next addressed the testimony of Witness May. In her direct, Witness May stated that LRWD had to raise its rates in response to MSD rate increase to LRWD. Mr. Cline testified that her statement implies that all of the increases in LRWD's retail rates were caused solely by increases in MSD's rates to LRWD. He testified that Witness May made that statement without any reference to analysis or documentation. In other words, she would have the Commission believe that LRWD's only increase in its costs to serve have been in its treatment costs from MSD. He stated the rates that MSD charges to its wholesale customers are irrelevant to these proceedings. He stated that those rates are set through resolution, but the method of arriving at those rates is provided for by contract, and there are mechanisms available to the wholesale customers to negotiate their rates. The contracts with LRWD and DCRWD have been in force for decades and are not affected by the Ordinance.

Mr. Cline next addressed the testimony of Witness Zearbaugh. Attached to his direct testimony was Exhibit C-2 which Witness Zearbaugh described as showing how much LRWD overpaid MSD. Mr. Cline testified that the document was not prepared by an accounting or ratemaking professional. Further, the document was not based on any cost of service study or rate study prepared by a competent professional. He testified that he did not believe the document or testimony surrounding it was relevant or helpful to the Commission.

Witness Zearbaugh also stated that MSD's proposed ordinance is not in the public interest because he does not have the right to vote for the mayor of Muncie. Mr. Cline noted that all of the witnesses for LRWD put forth similar testimony. Mr. Cline contended that this concern was unfounded. The mayor of Muncie may appoint the members of the Board, but MSD is an

independent political entity, and its Board is accountable to the customers that they serve. The customers in the 4-mile area would have the same interests as those within MSD's municipal territory, and they would have the same opportunities to appear before the Board at public meetings and make their concerns known. He testified that because MSD took action to assist customers in the Cowan area, the Burlington area, and other areas just outside of Muncie when none of the other sewage disposal providers were willing or able to do so, shows that MSD cares about its customers and the County. He testified that MSD will to continue to act fairly and in the public interest.

Mr. Cline next compared the rates that Witness Brooke put forth in his direct testimony for DCRWD customers to those of MSD customers. He stated DCRWD charges flat monthly rates to their customers. Most of MSD's customers are on metered connections, and therefore pay a rate based on their usage. However, MSD does have a monthly flat rate for unmetered connections. MSD's current flat rate for unmetered connections is \$51.73. The flat rates for DCRWD customers are \$47.00 per month in the Daleville area; \$97.79 per month in the Royerton area; \$83.04 per month in the DeSoto area; and \$48.90 per month in the Westbrook area. Mr. Cline testified that in 2 of its 4 service areas, DCRWD's flat rate is double what MSD charges, and MSD's rate is only a few dollars more expensive than DCRWD's flat rate in its other 2 service areas. Also, DCRWD's customers pay different rates based solely on where they live. This would not be the case for MSD customers in the 4-mile area, they would all pay the same, generally lower, rate.

Mr. Cline addressed the concerns that Witness Brooke exuded about the composition of MSD's Board and the political representation of potential customers in the 4-mile area. He stated that Witness Brooke's concerns are unfounded. MSD's Board holds multiple public meetings every month, and they encourage any customers, regardless of where they live, to bring their concerns to the Board at those meetings. He testified that MSD listens, responds, and takes action based on those concerns. He stated MSD takes the issues of their customers very seriously. They are also committed to giving customers in the 4-mile area the same rates and terms of service as those within the municipal boundaries of MSD. He stated the rates MSD charges are set by resolution of the Board. These resolutions would apply equally to all MSD customers regardless of their location. Because the customers in the 4-mile area would be subject to the same rate resolutions and terms of service as those inside the city, their interests would be aligned, and the Board would be equally accountable to those customers.

Mr. Cline next testified regarding LRWD and DCRWD's concerns in their direct testimony that MSD's ordinance would completely encircle their territory and keep them from expanding. Mr. Cline testified that the ordinance was not passed for the purpose of taking existing customers from other utilities. He stated MSD is trying to provide service to the public where none currently exists and serve the public interest in accordance with applicable law. He agreed that there was a discrepancy between the service territory for LRWD according to the map MSD attached as Exhibit 1-C and the map attached to Witness Abrell's testimony as Exhibit A-4. Taking the facts as most favorable to LRWD and a review of Witness Abrell's territory exhibits, he agreed that it appears the hand drawn map attached to Witness Abrell's testimony was reasonably correct. However, he stated the map set forth in Witness Abrell's Exhibit A-4 does not appear to be exact. He stated that if LRWD will confirm its service territory, with documents from IDEM describing its service territory, MSD will amend the ordinance to clarify that the ordinance does not operate in LRWD's current service territory, as set forth in IDEM's official records.

Mr. Cline also clarified that MSD does not intend the ordinance operate within DCRWD's territory as shown on Exhibit 1-C. To the extent MSD's intention in this regard was unclear, he stated MSD will process a clarifying amendment to its ordinance excluding the area DCRWD is serving as set forth in Exhibit 1-C. However, MSD does not believe that DCRWD has exclusive jurisdiction of all the territory in Delaware County as DCRWD claims, and the ordinance is meant only to exclude the territory of DCRWD as shown on Exhibit 1-C. Regarding DCRWD's territory, Mr. Cline stated he reviewed Witness Brooke's Exhibit JB-1 and found it was not an IDEM Order as represented by Witness Brook. Instead, he found it was a summary of action by the Indiana Stream Pollution Control Board ("SPCB") and the Findings of Fact and Recommendations of William C. Vaughn III Hearing Officer, dated October 21, 1975, in SPCB Case No. B-283, which appears to be DCRWD's original formation request before the SPCB.

Mr. Cline testified that as a professional engineer he reviews SPCB and IDEM documents relating to service territory. He stated he was curious why DCRWD only offered the SPCB Hearing Officer Recommendations to support its service territory claims rather than the SPCB final order. So he searched IDEM public record website, which is known as the IDEM Virtual File Cabinet ("VFC"), for documents relating to DCRWD's formation. He found IDEM VFC Document No. 62255405 which, among other things, contained the January 20, 1976, SPCB Order in Case No. B-283 that created DCRWD and defined its service territory. He stated that the service territory grant to DCRWD in the SPCB Order was more restrictive than the service territory grant described in the Hearing Officer Recommendations in Exhibit JB-1. The SPCB Order expressly excluded several areas from DCRWD's service territory proposed by the Hearing Officer. The areas excluded from the proposed DCRWD service territory by the SPCB Order are: the Corporate Limits of the Town of Eaton; the Corporate Limits of the Town of Yorktown; the Corporate Limits of the Town of Albany; the Corporate Limits of the Town of Gaston; and the sewer service area of the Town of Selma. He testified that he did not know why DCRWD did not provide that Order to the Commission.

Mr. Cline next stated that MSD is committed to serving the public interest, and if a dispute arose over territory or service extension to customers in need of sewers, that delay would not serve the public interest. To prevent that in the future, MSD is willing to amend its ordinance to provide carve outs for areas within the 4-mile territory that can be readily and cost effectively served by either DCRWD or LRWD. However, MSD does not believe that waiting on an unknown timeline is in the public interest. For dealing with future events where MSD, DCRWD, or LRWD tries to expand its service, MSD proposes a dispute resolution procedure. MSD is willing to meet and strive to agree on how service should be provided to unserved customers located in that area based upon the expected cost of the connection. MSD would be willing to establish a Joint Committee of Board members from DCRWD, LRWD, and MSD to meet and resolve these disputes in a manner consistent with the public interest.

Mr. Cline then elaborated on his additional concerns on how the 4-mile area is currently being served. He stated that the 4-mile area is currently facing a crisis and is in need of certainty and commitment to service by a sewer provider. He gave as an example the unincorporated Community of Cowan and the Cowan Grade School, Middle School and High School System. In 2015, DCRWD made a formal application to the Indiana Finance Authority to receive State

Revolving Loan Funds (SRF) to extend sewers to Cowan and the School. This application was accepted and then DCRWD decided not to complete the new sewer project. At that point in time, the Cowan School Superintendent approached MSD, stating that their small mechanical WWTF was at the end of its useful life. He testified that within a year, the MSD had entered into an agreement to extend a sewer service line some 3½ miles south of its physical sewer system and that service commitment was completed in early 2018. Local Cowan residents expressed interest in connecting to the sewer line, and with County Board of Health Officials' support, MSD is presently connecting residential customers (at their option). He testified that, essentially, DCRWD chose not to serve the School or the area residents of Cowan who wish to be served. Mr. Cline noted that DCRWD recently filed for a legal injunction against the MSD in attempt to stop MSD from connecting the Cowan residents, as DCRWD alleged it was in DCRWD's charter with the Stream Pollution Control Board to serve every part of Delaware County. Mr. Cline believes this shows that currently it is DCRWD's position that they can elect not to serve an area that obviously needs a sewer service provider and then also halt any attempt by MSD to provide that service. His opinion is that this leaves residents in the 4-mile area in a perilous situation that is against the public interest.

Next, Mr. Cline addressed the testimony of Witness Brooke regarding the WWTF. He stated he was initially surprised, because he knew DCRWD had considered building a plant a few years prior. He stated at that time, DCRWD had retained GRW Engineers, Inc. ("GRW") to develop a plan for a WWTF to replace MSD's service to DCRWD. The GRW plan recommended DCRWD, LRWD, The Town of Eaton, the Town of Parker City, and the community of Shidler join together and jointly construct, own and operate a new Sewage Treatment Plant that would be located approximately 1 mile north of the Town of Desoto and would discharge into the Mississinewa River. However, he stated this plan was not pursued because those parties never reached an agreement. He testified he first learned about the new proposed WWTF during the course of discovery in this matter. But the only actual details of the new WWTF proposal he received was a Power Point presentation by Commonwealth which was attached to Witness Brooke's testimony as Attachment JB-3. He testified that in his opinion, no reasonable sewage disposal entity would base its planning for such a major project on a Power Point presentation, so obviously, there had to be more information available. Mr. Cline testified that MSD tried to obtain this information through discovery. The relevant discovery requests and responses were as follows.

1.1 Please provide any studies, reports, proposals, presentations, or other documents regarding any plans for DCRWD to disconnect from MSD, or to cease using MSD as a provider of sanitary sewage treatment.

1.1 RESPONSE: See Attachment JB-3 to DCRWD's Exhibit 1

1.2 Please provide any studies, reports, proposals, presentations, or other documents regarding any plans for DCRWD to build a Wastewater Treatment Facility ("WWTF"), or partner with any other entity to build a WWTF.

1.2 RESPONSE: See response to 1.1

Mr. Cline took this to mean that DCRWD based its WWTF planning, long term financial decisions, an agreement with LRWD, and its statements to this Commission, solely on the Power Point presentation attached to Witness Brooke's testimony. As a professional engineer, he indicated disbelief that DCRWD would make serious planning decisions based solely on a PowerPoint. Mr. Cline testified that he then reviewed DCRWD's public website and found that it indicated that additional WWTF planning documents had been prepared. MSD made more specific Discovery Requests to DCRWD. The MSD Discovery Requests and DCRWD's Responses, which were received on December 10, 2018, are as follows:

3.2 Regarding the proposed wastewater treatment facility ("WWTF") discussed by DCRWD's Witness Brooke in his Answer at Line 7, Page 4 of DCRWD's Exhibit 1 filed in IURC Cause 45055, please answer the following:

f. Is the final Preliminary Engineering Report ("PER") for the construction of the WWTF complete?

RESPONSE: Yes.

Witness: Brooke

g. If the Response to 3.2(f) was affirmative, when was the final PER for the construction of the WWTF completed?

RESPONSE: Yes. On 12/5/18, Commonwealth indicated in the attached status update that the WWTF PER is complete. Counsel for DCRWD is following up to determine whether the PER has been provided to DCRWD yet and will supplement this response as soon as an answer is received.

Witness: Brooke

Mr. Cline testified that the requested WWTF PER as identified in the discovery requests was never provided to MSD. On December 11, 2018, DCRWD provided a PER to MSD which was supposed to be the December 5, 2018, PER referred to in DCRWD's Discovery Response. But it was not. He testified that the document was a PER for DCRWD's previously proposed WWTF prepared by GRW in 2016. The provision of the 2016 WWTF PER was very confusing to Mr. Cline because MSD had been told in prior Discovery Responses that no such document existed in DCRWD's October 22, 2018, Responses to MSD's Discovery Requests 1.1 and 1.2. Mr. Cline testified thereafter, on December 17, 2018, MSD was contacted by DCRWD. At that time DCRWD advised that despite having responded to Discovery, on December 10, 2018, that the current WWTF final PER was completed by December 5, 2018, it was not really complete and therefore unavailable to MSD. At that time, DCRWD provided a PER prepared by Commonwealth engineers regarding DCRWD's more recent WWTF, dated July, 2018. Mr. Cline testified that the provision of the July, 2018 PER was very confusing since DCRWD said in Discovery Responses 1.1 and 1.2 that no such document existed. At the time of Mr. Cline's rebuttal testimony, MSD had still not received the final PER for DCRWD's WWTF. Mr. Cline testified he was therefore left to assume that no final PER exists and without a final PER to review,

to even characterize the WWTF as reasonably close to achievable is misleading. He stated that without a complete PER, DCRWD and LRWD do not have enough information to ask the Commission to consider the construction of a WWTF when determining what is in the public interest.

Mr. Cline also addressed Witness Brooke's statements on direct that the new proposed WWTF will allow DCRWD to reach new customers. Mr. Cline stated that he does not agree with that statement because of the following discovery responses received from DCRWD in the course of trying to obtain information on the elusive PER:

3.2 Regarding the proposed wastewater treatment facility ("WWTF") discussed by DCRWD's Witness Brooke in his Answer at Line 7, Page 4 of DCRWD's Exhibit 1 filed in IURC Cause 45055, please answer the following:

a. Will the WWTF be sized to allow DCRWD to provide service to its entire service area?

RESPONSE: No, the proposed WWTF will provide service to the residents in Delaware, Hamilton, Liberty and Perry Townships that are connected to the current DCRWD and Liberty Regional Wastewater District ("LRWD") systems or could be connected.

Witness: Brooke

Mr. Cline stated that despite Witness Brooke's statement that the proposed WWTF would allow DCRWD to reach new customers, it appears the WWTF would only replace the treatment service currently provided by MSD. In fact, it would only replace the MSD service in a limited manner. Currently DCRWD has a treatment contract in place by which MSD will treat their flow without restriction on volume. By constructing their own treatment plant, with less capacity than MSD's treatment plant, they are essentially limiting, rather than expanding, their ability to serve new customers. Mr. Cline testified that DCRWD and LRWD's characterization in their testimony that the WWTF will reduce their cost and expand their service was misleading to the Commission.

Mr. Cline testified that DCRWD's proposed WWTF caused him concern. He stated that DCRWD has led the Commission to believe that plans are underway to construct a WWTF in the near future, that DCRWD and LRWD have entered into agreements regarding the WWTF, and that the finances to construct the WWTF are readily available. He stated this is simply not the case based on the materials that he has reviewed from DCRWD and LRWD. He testified that DCRWD currently has a large existing debt of somewhere between \$7M (Seven Million) and \$8M (Eight Million) for the Royerton Sewer System Construction in the 1990's. This debt has been refinanced several times in an effort to keep the Royerton Sewer Rates under an average of \$100 a month. The average monthly rates for MSD customers in 2019 will be approximately one half (1/2) that amount. Additionally, he testified that DCRWD's existing debt will likely be spread across any new customers to which it extends sewers.

Mr. Cline also testified that he had concerns over the proposed location of the WWTF. DCRWD and LRWD intend for the WWTF to be located approximately two (2) miles to the west of the Town of DeSoto and located less than 1 mile north and east of the urbanized area on the boundary of the City of Muncie. The proposed WWTF would discharge into the Muncie Creek. Muncie Creek flows from the northeast in a southeastern direction through almost three (3) miles of dense neighborhoods, commercially developed areas, and a City Park before outletting into the White River. He testified that in 2016, an IDEM Official contacted MSD and wanted to know if MSD would have a major objection to DCRWD building a new WWTF that would be located near and discharge into the Mississinewa River. MSD's reply was that MSD would have no objection to that concept as the Mississinewa is a river in a completely different watershed than the White River. He also stated that during the formation of Mr. Cline's rebuttal testimony, the same IDEM Official contacted MSD again asking about MSD's position regarding the new DCRWD draft PER and the new location of the WWTF that would discharge into the Muncie Ditch just upstream of the City and the White River. He informed the Official that MSD had met with the Mayor of Muncie regarding this situation and that both entities vehemently oppose this location and will be opposing this revised location with every means available to MSD and the City.

Next, Mr. Cline addressed the claims made by DCRWD in its direct testimony about the financial situation of DCRWD, specifically that they have One Million dollars set aside for the WWTF, and that the proposed WWTF would result in Forty-Four Million dollars in savings over the project period. He testified that he cannot agree that the money DCRWD set aside will be sufficient or that the savings they project are accurate, because no PER has been completed upon which to base this contention. He stated that DCRWD wants the Commission to believe they are financially capable of building a WWTF immediately, but DCRWD does not even have a final PER for the WWTF project. He stated that DCRWD does not even know where their WWTF will be located or how much it will cost. Mr. Cline pointed out that DCRWD does not have a finished PER on which to base their budgeting. Mr. Cline pointed out that DCRWD's projected \$44,000,000 in savings was not based on estimates from a final PER, because no final PER exists. He characterized that savings projection as a very optimistic estimate of an estimate. Mr. Cline testified that in his professional experience, the Indiana Finance Authority and the State Revolving Loan fund administrator will not accept a "working draft" of a PER in a formal loan application if that project ever got to them. He also questioned if DCRWD is so financially stable and has \$1,000,000 to spend on a WWTF, then why does DCRWD continue to have SSO's (Separate Sewer System Overflows). He testified that the Royerton Sewer System has major SSO problems and has had numerous violations cited by IDEM. This resulted in DCRWD entering into the IDEM Agreed Order 2011-19984-W in 2011 that mandated certain improvements be made to the Royerton Sewer System. He testified that IDEM sent a Letter of Non-Compliance to DCRWD on March 21, 2018, a new Enforcement Letter to DCRWD dated April 11, 2018, and a new mandated Additional Action Plan to DCRWD calling for the elimination of the SSO's by September 21, 2021. Essentially, DCRWD had made no progress on achieving IDEM Compliance with their Royerton Sewer System from 2011 to earlier this year. Mr. Cline also noted that DCRWD's current collection system failed inspection in March 2018, during the pendency of this matter. He also states that the proposed resolution of those problems was not addressed in the limited materials which were made available to MSD by DCRWD. He testified that MSD specifically requested the PER dealing with the improvements to DCRWD's system in the Royerton/Westbrook area which IDEM required. MSD was told that PER was not yet complete. Mr. Cline's opinion was

DCRWD would not know what these improvements will consist of or what they will cost. The only thing they can know for sure is that they have a serious problem and IDEM will require them to fix it.

Mr. Cline next addressed Witness Brooke's testimony that DCRWD plans to expand its customer base using the Eaton treatment plant and the Gaston treatment plants, which operate in Delaware County. Mr. Cline stated that MSD asked DCRWD in Discovery for information about DCRWD's arrangements with Gaston and Eaton, and for information about their sewage plants. MSD's Discovery Requests and DCRWD's Responses were, as follows:

2.6 Please provide any communications, contracts, studies, reports or proposals, presentations, or other documents regarding DCRWD's use, and proposed future use, of the Eaton Waste Water Treatment Organization or the Gaston Waste Water Treatment plant.

2.6 RESPONSE: DCRWD has no documents responsive to this request.

2.7 Please state the design capacities and currently available capacities of the Eaton Wastewater Treatment facilities and the Gaston Wastewater Treatment Plant.

2.7 RESPONSE: DCRWD objects to this request because it seeks information that is not within DCRWD's knowledge or control. DCRWD does not know the design capacities or currently available capacities of the Eaton Wastewater Treatment facilities or the Gaston Wastewater Treatment Plant.

Mr. Cline reiterated that DCRWD's proposed WWTF would only replace the treatment capacity currently provided by MSD and will not expand, and in fact it will limit, DCRWD's capacity to serve any new customers. He stated the only "plan" which DCRWD described for its expansion to serve new customers was to use the treatment facilities of Gaston and Eaton. Despite announcing this "expansion plan" to the Commission, DCRWD has not communicated with Gaston or Eaton on the subject. He also noted that DCRWD has no idea whether Gaston or Eaton has any treatment capacity available for DCRWD's use, and therefore announcing this as their plan for expansion to the Commission was speculative at best and misleading at worst.

Mr. Cline next commented on whether he thought it was in the best interest of the public that DCRWD be solely responsible for sewer service in the 4-mile area as they claim. He testified that he did not believe this was in the best interest. He noted that since DCRWD's formation in 1976, they have only provided service to some 3,000 customers. He testified that nothing presented by DCRWD in his cause shows any ability or intent by DCRWD to expand its customer base. Even if it is able to build the proposed treatment plant, that plant would only replace the service provided by MSD, not serve additional customers. DCRWD's "expansion plan" using the treatment facilities of Gaston or Eaton was complete speculation. DCRWD's position is that they have the capacity and wherewithal to serve all the areas of Delaware County. However, as it stands, any sewer lines DCRWD would extend in the 4-mile area would have to be connected to MSD for treatment. Mr. Cline testified that with its small customer base, DCRWD has continuing difficulties complying with IDEM requirements. DCRWD was either unable or unwilling to serve

Cowan. Although he did not wish to speak ill of DCRWD, Mr. Cline testified that these facts constrain and define DCRWD's ability to expand. Most disturbing to Mr. Cline is that DCRWD complains MSD should not serve customer's needs in areas of Delaware County where DCRWD currently does not, likely cannot, and may never, serve.

2. Cross Examination on Rebuttal by DCRWD.

Mr. Earl, on behalf of DCRWD, cross examined Mr. Cline on his rebuttal testimony.

Mr. Earl first asked Mr. Cline about his statement that only a properly done cost of service study can determine the allocation of costs among a utility's customers. Mr. Earl asked Mr. Cline about his statement on cross of his direct that MSD did not perform a cost of service study for its current rate ordinance. Mr. Cline agreed that was correct, but that they did rely on a rate study for the 2016 bond issue. Mr. Earl referenced the rate study labeled by LRWD as Exhibit 1 and asked if that was the same rate study that MSD relied upon in passing its 2016 rate ordinance. Mr. Cline agreed that it was and that in the rate study it also recommended rates for regional sewer districts. Mr. Cline testified in response to Mr. Earl's questioning that MSD had to delay enacting the creation of a separate class for regional sewer districts until later because the contract with LRWD only provides for certain times that their rates can be adjusted. Mr. Earl referred Mr. Cline back to his earlier statement that only a proper cost of service study can determine the allocation of costs among customers, and Mr. Cline stated he would say using the term only in that context would have been an error. Mr. Earl asked if Mr. Cline was then changing his testimony to which Mr. Cline responded that a cost of service study is not the only option, there are other potential rate studies that could be done, and for that purpose he was.

Mr. Earl next directed Mr. Cline to his statement that MSD's board is accountable to the customers they serve. He asked Mr. Cline if MSD's customers vote for the MSD Board members. He responded that they do not. He asked Mr. Cline if he had any understanding of a customer's ability to have a Board member removed. Mr. Cline stated that he would say that is incorrect. Mr. Earl asked if, based on his understanding, the mayor of Muncie could only remove Board members for specific causes. Mr. Cline agreed that was his understanding.

Mr. Earl asked, based on Mr. Cline's previous statements, how he could say the MSD Board is accountable to its customers. Mr. Cline stated that MSD has open meetings every other Wednesday and those meetings are broadcast on Muncie TV. The local press attends the meetings and any person who wants to come and speak before the Board is welcome to do so. He testified that MSD will try to address the concerns that are raised in the best way it can. He believed that MSD was accountable to the public in this way. Mr. Earl asked if Mr. Cline had any understanding as to whether the Board was legally accountable to its customers or just had a sense of accountability to its customers. Mr. Cline responded that he is an engineer, not a lawyer, and he cannot say anything more than they have a moral accountability to their customers.

Mr. Earl next directed Mr. Cline to the portion of his testimony in which he discusses the order from SPCB establishing DCRWD and the territory mentioned in that order. Mr. Cline identified the areas of territory as mentioned in the order. In response to Mr. Earl's questioning,

Mr. Cline identified on his Exhibit 1-C where the areas of the Town of Eaton, the Town of Gaston, the Town of Yorktown, Selma, and the Town of Albany. Mr. Earl then asked Mr. Cline where the areas were located with respect to the proposed 4-mile area. Mr. Cline testified that Eaton, Gaston, and Albany were outside of the proposed 4-mile area, and that Selma and Yorktown already had their own treatment provider. Mr. Earl next directed Mr. Cline to the portion of his testimony in which he described his concerns about the history of service in the 4-mile area. He directed Mr. Cline to cross examination exhibit CX-3, which was produced in discovery responses by MSD. Mr. Cline identified the exhibit as the priority list from the State Revolving Loan Fund. Mr. Earl asked Mr. Cline if he could show him on that document where it says that DCRWD made a formal application to the Indiana Finance Authority. Mr. Cline stated that he could not, but he knew from his professional experience that the Cowan project submitted by DCWRD could not have appeared on that list without a formal application, and in fact the project was fairly highly rated on the priority list. Mr. Earl asked Mr. Cline if he knew what range of dates a project could have been applied for in order to be on that list. Mr. Cline stated that it shows on the document that the projects are for the fiscal year July 1, 2015, to June 30, 2016. In response to questioning by Mr. Earl, Mr. Cline testified that based on the document alone, he cannot be certain when the application was made, but the project would not have appeared on the list at all if there had not been an application made. In response to Mr. Earl's questioning, Mr. Cline testified that the document itself does not say that the application was made to extend sewers to Cowan, and the document itself does not say that DCRWD's proceeding application was accepted. However, he testified that they would not have made a number 5 ranking on the state priority list without a fairly extensive level of effort put into an application. In response to Mr. Earl's questioning, Mr. Cline stated that the document CX-3 does not state on that document that DCRWD chose not to serve the school or the area residents.

Mr. Earl next directed Mr. Cline to the part of his testimony where he described a conversation with an IDEM official regarding DCRWD's proposed WWTF. Mr. Cline testified that he recalled that conversation and that all communications regarding that issue were held over the phone.

3. Cross Examination on Rebuttal by LRWD.

Mr. Brandon E. Murphy cross examined Mr. Cline on his rebuttal testimony on behalf of LRWD.

Mr. Murphy directed Mr. Cline to his testimony regarding the Cowan project. Mr. Murphy asked Mr. Cline if he knew how much was budgeted for the Cowan project, and Mr. Cline responded that he did not know what the final payment amount was, but there was an initial budget of \$1.2 million for the extension from MSD to Cowan. Mr. Murphy asked if Cowan was paying the \$1.2 million, and Mr. Cline responded that he believed they were paying around \$127,000.00 as an initial connection fee. Mr. Murphy then asked Mr. Cline if he knew whether the remainder of the costs would be paid by MSD customers. Mr. Cline responded there was anticipation that there would be some clusters of homes along the pipe laid to Cowan that would want to connect and therefore help cover the costs of the extension. Mr. Murphy then asked Mr. Cline if the amount not covered by the school or the clusters of homes would be paid for by MSD customers. Mr. Cline responded that some amount would be, but that he could not be more specific. When asked

if LRWD was included in that, Mr. Cline articulated that all payments MSD makes comes from the revenue it generates, and LRWD makes payments to MSD, and those payments are revenue. He stated that MSD also receives revenue from all of Ball State University's service as well as their approximate 27,600 other customers, all of which goes into the pot of money that MSD has with which they use to pay the debt on any financing they may have. Mr. Murphy asked Mr. Cline if that was a yes to his previous question that LRWD pays for some of the cost of the Cowan extension. Mr. Cline responded by saying that all customers put in some amount of money into the money that MSD has, but he does not know how much of that goes towards the Cowan project.

4. Cross Examination on rebuttal by OUCC.

Karol Krohn, on behalf of the OUCC, cross examined Mr. Cline on his rebuttal testimony.

Ms. Krohn started by asking Mr. Cline about the SRF priority list that was CX-3. She asked about his earlier testimony on whether that particular document showed that DCRWD had withdrawn its financing request and decided not to go forward with the project. Mr. Cline recalled this testimony, and Ms. Krohn then asked why he had to get this information from a public record copy from the Indiana Wastewater State Revolving Fund Loan Program. Mr. Cline explained that he has done many preliminary engineering reports for SRF applications, and that he in fact was involved with the very first SRF application ever made, which happened to be on behalf of MSD. He testified that this application is no small undertaking and that it requires a significant amount of preliminary work that covers a wide array of topics. He stated that in order to appear on that list, DCRWD paid for an engineering study, they paid for a financial advisor, they invested in the necessary preliminary reports, and with that in mind, he testified that he did not understand why they walked away from that project. But they did walk away from that project, so Mr. Cline testified that they decided, at the school's request, to start the process of extending the service to the Cowan school.

Ms. Krohn then asked Mr. Cline about his earlier testimony that MSD received a request from the DCHD to service an area. Mr. Cline clarified that there were actually three different requests, or areas of service, that the DCHD weighed in on. He testified that the Nanci Lane subdivision located off of Burlington Road contained many homes that could not effectively operate their septic systems any longer. Almost all of the residents living in this subdivision showed up at a Board meeting asking for service. He testified that later, residents from another area off of Burlington Road also petitioned MSD to extend service, including the Glad Tidings church.

7. Commission Discussion and Findings. MSD seeks approval of its Regulatory Ordinance pursuant to Ind. Code 8-1.5-6-9. This statute requires MSD to secure Commission approval because the Regulatory Ordinance was adopted after December 31, 2012, and no party has filed or is eligible to file a wholesale sewage petition within the meaning of Ind. Code 8-1.5-6-9(a)(2).

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

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

The Petition, admitted as Petitioner's Exhibit 1-A, includes a description of the proposed regulated territory. In its Petition, MSD states that the purpose of the Regulatory Ordinance is to establish an exclusive service territory over the four miles outside Muncie's corporate boundaries. Exhibit 1 attached to the Petition is the proposed Regulatory Ordinance which includes an Exhibit A thereto which is a map showing the corporate boundaries of the City of Muncie, the purported other sewer utilities in Delaware County and their purported service areas, as well as a representation of the regulated territory. MSD notes in Paragraphs 8 and 11 that the Regulatory Ordinance is not meant to exert authority over new or existing customers within the LRWD or DCRWD current service territory as shown on the said attached map. MSD has at no time, requested to amend its Petition as provided by 170 IAC 1-1.1-8(b). However, MSD admits, at the very least, that the map associated with the Regulatory Ordinance does not accurately depict LRWD service territory or the proposed regulated territory. Thus, MSD's Petition fails on its face.

MSD's proposed Final Order would have the Commission approve its Petition subject to it amending its Petition and adopting a new Regulatory Ordinance which accurately reflects the proposed regulated territory. However, IC 8-1.5-6-9(d) specifically indicates that "[i]f the commission does not approve the petition, the municipality may modify and resubmit the petition in the manner prescribed by the commission. After notice and hearing, the commission shall review the petition as set forth in subsection (c). If the commission does not approve the resubmitted petition, the regulatory ordinance is void."

In Paragraph 13 of the Petition, MSD states that the proposed rates and charges for customers in the regulated territory would be the same rates and charges approved by the MSD Board which are paid by all MSD customers. The Board Resolutions that set the current rates for MSD were attached to the Petition as Exhibits 3a, 3b, and 3c.

In Paragraph 7, MSD states that there is one judicial proceeding currently in Delaware County Circuit Court No. 2 between LRWD and MSD. MSD also notified the Commission of a Complaint for Injunction filed against MSD by DCRWD in Delaware County Circuit Court No. 1. The Petition also identifies other utilities potentially affected by the Ordinance. Those utilities are LRWD and DCRWD. Yorktown also operates a utility which is partially within the regulated territory, however, MSD and Yorktown have stipulated that the ordinance will not affect Yorktown's service territory or authority.

The OUCC's Public Exhibit No. 1. recommended approval of MSD's ordinance and found that the Petition was sufficient and complied with Ind. Code 8-1.5-6-9(b).

Based on our review of the Petition, the Commission finds that MSD's Petition does not comply with the sufficiency requirements of Ind. Code 8-1.5-6-9(b) and is therefore denied. However, in the interest of giving guidance to the parties in the event that MSD should choose to modify and resubmit its Petition make the following additional findings.

B. Regulatory Ordinance Territory Amendments. Before proceeding, we examine the amendments which would be necessary to accurately depict the regulated territory covered by an appropriate Regulatory Ordinance.

1. Regulatory Ordinance Territory Amendment for LRWD. LRWD Witness Abrell, its attorney since 1990, explained LRWD's position regarding MSD's proposed Regulatory Ordinance. In his Direct Testimony, Intervenor – Liberty Exhibit No. 1, Mr. Abrell stated, "In addition, to the extent that the Muncie Sanitary District's Petition for Approval does seek to claim jurisdiction, exclusive or otherwise, over any territory within the boundaries of the LRWD, my testimony is meant to assist the Commission in determining that Muncie Sanitary District's Petition for Approval should be denied as against the public interest." Mr. Abrell goes on to testify that although Paragraph 8 of MSD's Petition in this Cause states the Regulatory Ordinance will not operate in LRWD's service territory, the actual Regulatory Ordinance does not exclude LRWD's service territory. Based upon a review of MSD's proposed Regulatory Ordinance, Petitioner's Exhibit 1- B, and MSD's Petition, Petitioner's Exhibit 1-A, the Commission notes the inconsistency pointed out by LRWD and understands LRWD's concerns.

MSD Witness Cline addressed LRWD's concern in his Rebuttal Testimony, Petitioner's Exhibit No. 2. Mr. Cline explained while there had been some confusion over LRWD's actual service territory, MSD did not intend that its Ordinance operate within LRWD's service territory. Mr. Cline testified that although Mr. Abrell's Exhibit A-4 is a somewhat imprecise, hand drawn depiction of LRWD's service area, MSD generally accepts Exhibit A-4 as accurately depicting LRWD's service territory. The Regulatory Ordinance should accurately reflect the proposed regulated territory.

2. Regulatory Ordinance Territory Amendment for Yorktown. Yorktown Witness Olson testified that Yorktown and MSD had entered into a Stipulation that MSD's Regulatory Ordinance does not intend to claim jurisdiction over the entire boundary of Yorktown, including the Mount Pleasant Township. The Stipulation was admitted into evidence as Intervenor-Yorktown's Exhibit 1-A. The Commission was not asked to approve the Stipulation and we will not. However, we can consider the Stipulation as evidence of the intentions of MSD and Yorktown. Paragraph 3 of the Stipulation reads, "MSD's Petition for Approval shall be construed that MSD is not seeking to claim jurisdiction within Yorktown's boundaries or to provide utility service within Yorktown's boundaries." This Commission is not bound by the Stipulation as to how we construe MSD's Petition. However, based on the Stipulation, we find it is MSD's intent that its Regulatory Ordinance not to operate within the boundaries of Yorktown, including Mount Pleasant Township. We find, to the extent necessary, MSD would need to amend its Regulatory Ordinance to exclude Yorktown, including Mount Pleasant Township.

3. Regulatory Ordinance Territory Amendment for DCRWD. MSD Witness Cline testified in his Rebuttal Testimony that MSD did not intend its Regulatory

Ordinance to have jurisdiction over DCRWD's service area as depicted in his Exhibit 1-C. Mr. Cline stated that MSD would be willing to amend its Regulatory Ordinance to clarify MSD's intention in that regard. Our review of the Regulatory Ordinance does not disclose an exclusion for DCRWD's service territory depicted in Mr. Cline's Exhibit 1-C. Since it is MSD's intent that its Regulatory Ordinance not operate to have jurisdiction over DCRWD's service area depicted in Petitioner's Exhibit 1-C, we find MSD would need to amend its Regulatory Ordinance accordingly. However, we note that to the extent that MSD is conceding in the case of LRWD that its desired regulated territory does not include territory which is part of LRWD's territorial jurisdiction, then the same argument would hold true for DCRWD's territorial jurisdiction. Pursuant to testimony of John Brooke and Mike Cline's rebuttal testimony DCRWD's territorial jurisdiction extends to entirety of Delaware County excluding certain areas which were already part of another jurisdiction. Thus, any Regulatory Ordinance would need to make it clear exactly what portion of DCRWD's territorial jurisdiction, it intended to make a part of the regulated territory.

C. Public Interest Factors. Under Ind. Code 8-1.5-6-9(c), before approving the Regulatory Ordinance, the Commission must consider the following public interest factors set forth in Ind. Code 8-1.5-6-8(g):

- (1) The ability of another utility to provide service in the regulated territory.
- (2) The effect of a Commission order on customer rates and charges for service provided in the regulated territory.
- (3) The effect of the Commission order on present and future economic development in the regulated territory.
- (4) The history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.
- (5) Any other factors the Commission considers necessary.

While the Commission will not do a full analysis of the Public Interest Factors above, as MSD's Petition is denied on the grounds stated above, it should be noted that several items raised by the evidence would likely need to be addressed.

1. Whether the cost of any expansion into the regulated territory would be born in any way by either LRWD or DCRWD.

2. An analysis of how the Indiana Supreme Court's decision in **City of North Vernon v. Jennings Northwest Regional Utilities**, 829 NE 2d 1, Ind. Supreme Court 2005 applies to MSD's requested relief.

3. Any dispute resolution policy or procedure which would be provided to new, and/or existing, customers with regard to future rates imposed by MSD.

4. An explanation of the basis of the calculation of the existing rates to LRWD and DCRWD so as to be able to determine whether MSD is artificially increasing the rates to LRWD and DCRWD for the purpose of making the rates it intends to charge customers in the proposed

regulated area compare favorably to the rates which would be charged by LRWD or DCRWD to those same customers.

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

1. LRWD's Petition to Intervene filed in this Cause shall be, and is, Granted, consistent with Finding No. 2.

2. MSD's Petition is hereby denied.

3. In accordance with Ind. Code 8-1-2-70, MSD shall pay within 20 days from the date of this Order and prior to placing into effect the Amended Regulatory Ordinance approved in this Order the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

Commission charges:	\$
OUCG charges:	\$
Legal Advertising charges:	\$
 TOTAL	 \$

MSD shall pay all charges into the Commission public utility fund account described in Ind. Code 8-1-6-2 through the Secretary of the Commission.

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

APPROVED:

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

Mary M. Becerra
Secretary to the Commission