

**ORIGINAL**

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

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE PETITION OF THE TOWN )  
OF CHESTERTON, INDIANA, AND THE TOWN OF )  
CHESTERTON UTILITY SERVICE BOARD FOR ) CAUSE NO. 45312  
APPROVAL OF A REGULATORY ORDINANCE )  
ESTABLISHING A SERVICE TERRITORY FOR THE ) APPROVED: SEP 23 2020  
TOWN’S MUNICIPAL SEWER SYSTEM PURSUANT )  
TO IND. CODE CH. 8-1.5-6 )**

**ORDER OF THE COMMISSION**

**Presiding Officers:  
Stefanie N. Krevda, Commissioner  
Jennifer L. Schuster, Administrative Law Judge**

On October 29, 2019, the Town of Chesterton, Indiana, by and through its Utility Service Board (“USB”) (collectively, “Petitioner” or “Chesterton”), filed a Verified Petition seeking approval from the Indiana Utility Regulatory Commission (“Commission”) under Ind. Code § 8-1.5-6-9 of a regulatory ordinance, as defined by Ind. Code § 8-1.5-6-3, adopted by Chesterton’s Town Council. The Commission held a prehearing conference in this Cause on December 3, 2019 at 2 p.m. in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana, and issued its Prehearing Conference Order on December 18, 2019.

On May 29, 2020, Chesterton filed its case-in-chief in this Cause, and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its case-in-chief on July 15, 2020. Intervenors Aqua Indiana, Inc. (“Aqua”) and the City of Valparaiso, Indiana and Valparaiso City Utilities (collectively, “Valparaiso”) did not prefile any evidence in this case. On August 11, 2020, in response to a Docket Entry regarding Chesterton’s proposed regulated service territory, Chesterton provided Revised Exhibit LB-3, which shows Chesterton’s Regulated Territory.

The Commission set this matter for an evidentiary hearing to be held at 9:30 a.m. on August 18, 2020 in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. On August 12, 2020, a docket entry was issued advising that, due to the ongoing global pandemic, the hearing would be conducted via teleconference, and provided related participation information. Chesterton, Aqua, Valparaiso, and the OUCC appeared at and participated in the evidentiary hearing via teleconference. During the hearing, all of the prefiled evidence submitted by the parties was admitted into the record without objection.

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

**1. Notice and Jurisdiction.** Notice of the hearings in this Cause was given and published as required by law. Chesterton is a municipal utility as that term is defined in Ind. Code § 8-1.5-6-1. Under Ind. Code § 8-1.5-6-9, the Commission has jurisdiction to approve a

municipality's regulatory ordinance. Therefore, the Commission has jurisdiction over Chesterton and the subject matter of this proceeding.

**2. Petitioner's Characteristics.** Chesterton is a municipality that owns and operates plant and equipment for the collection and treatment of wastewater and storm water pursuant to Ind. Code ch. 36-9-23. Chesterton provides wastewater utility service to the public inside its corporate limits and to certain customers outside its corporate boundaries.

**3. Relief Requested.** Chesterton requests approval of a regulatory ordinance, Chesterton Ordinance No. 2020-07 ("Chesterton Regulatory Ordinance"), that amended Chesterton Ordinance No. 2014-11. The Chesterton Regulatory Ordinance includes a map depicting the areas in which Chesterton seeks to be the exclusive provider of wastewater utility service ("Chesterton Regulated Territory").

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

**A. Lawrence Brandt.** Mr. Brandt, President of Chesterton's USB, testified that Chesterton's municipal sewer utility comprises approximately 88 miles of collection pipe, 35 lift stations, a 1.2-million-gallon holding tank built to comply with a long-term control plan, and a processing plant with a 4.6-million-gallon-per-day ("MGD") capacity that currently utilizes approximately 55 and 60 percent of its total capacity. Chesterton provides wastewater treatment services to approximately 5,200 customers within its corporate limits and to a number of customers outside its corporate limits, including the Town of Porter, Indiana and the Indian Boundary Conservancy District. Chesterton's sewer utility has 22 employees, and its current cash surplus exceeds \$2 million.

Mr. Brandt described the proceedings in Cause No. 45306 and their relevance to this Cause. In Cause No. 45306, Valparaiso requested approval of a regulated territory for sewer service that included territory covered by Chesterton Ordinance No. 2014-11. Chesterton intervened in Cause No. 45306 and entered into a negotiated Joint Stipulation and Settlement Agreement with Valparaiso in Cause No. 45306 ("45306 Settlement") that resulted in both Valparaiso and Chesterton modifying the territories to be covered by their respective regulatory ordinances. The Chesterton Regulatory Ordinance resulted from the 45306 Settlement. Among other things, Mr. Brandt sponsored copies of the 45306 Settlement, the Chesterton Regulatory Ordinance, and a map of the Chesterton Regulated Territory.

Mr. Brandt testified that Chesterton has the capacity and ability to serve the Chesterton Regulated Territory with relatively minor infrastructure improvements. Chesterton has a long-term plan for expanding sewer services in the Chesterton Regulated Territory that it has been following for the past 25 years, which has been previously documented in testimony before the Commission in Cause Nos. 43966, 44146, and 44475. Mr. Brandt testified that this long-term plan was not condensed into a formal master plan until 2020, when the USB approved the Sanitary Sewer Master Plan prepared by Beam, Longest and Neff ("BLN") on May 18, 2020. Mr. Brandt also testified that Chesterton has the technical expertise, staffing levels, and financial resources to provide service in the Chesterton Regulated Territory.

Mr. Brandt provided copies of the current rate ordinances in effect for Chesterton's sewer utility and stated that those rates are competitive with neighboring utilities. Chesterton plans to charge customers in the Chesterton Regulated Territory the same rates that are applicable to customers within the town limits. For customers connecting to Chesterton's sewer utility through the interceptor installed as part of the State Road 49 Corridor Project, rates will be similar to those charged to Chesterton's customers within the special utility area consisting of the Fox Chase and Whispering Sands developments if those customers use the same sewer infrastructure.

Mr. Brandt testified that approval of the Chesterton Regulatory Ordinance would have a positive effect on economic development in Chesterton because it would provide developers greater certainty of the identity of their sewer service provider. This certainty would also allow Chesterton to plan and install infrastructure with confidence knowing that it would not lose its investment to a competing utility that connected customers in the vicinity of Chesterton's main.

According to Mr. Brandt, Chesterton has a significant history of providing sanitary sewer service in the Chesterton Regulated Territory. Chesterton has entered into agreements with a number of developers in the Chesterton Regulated Territory and has also undertaken a main extension project in partnership with Porter County. Chesterton now provides sewer service to all of the customers receiving sewer utility service within the Chesterton Regulated Territory; the single remaining customer in the territory that had previously received service from another utility recently signed an agreement to become a Chesterton sewer customer.

Mr. Brandt also opined that approval of the Chesterton Regulatory Ordinance serves the public interest by encouraging efficient installation of infrastructure, providing certainty for developers, landowners, and Chesterton, cementing the 45306 Settlement between Chesterton and Valparaiso, and avoiding future sewer territory fights.

**B. Stephen DeBruler.** Mr. DeBruler, a Professional Engineer with BLN, described Chesterton's wastewater treatment system as consisting of a 4.6-MGD wastewater treatment plant and a 1.2-million-gallon wastewater storage tank constructed in 2015 to better handle peak wet weather flows and to comply with Chesterton's Long-Term Control Plan. He testified that Chesterton's collection system consists of gravity mains ranging from four to 48 inches in diameter and force mains ranging from two to 20 inches in diameter. Chesterton's system formerly was a combined sewer system, but it has now separated sanitary and storm flows such that only a single combined sewer overflow at the wastewater treatment plant remains in service today. Chesterton also installed new storm sewers for the majority of its separation projects, and its sanitary sewers now have significant excess capacity for sanitary flows.

Mr. DeBruler calculated that, in 2018, Chesterton's wastewater treatment plant utilized 54.1% of its capacity and had the capacity to serve over 5,300 additional customers. In 2019, the treatment plant utilized 59.4% of its capacity and had the capacity to serve 4,500 additional customers.

Mr. DeBruler testified that Chesterton maintains existing sewer infrastructure near and in the Chesterton Regulated Territory, including a lift station and force main system serving the Fox Chase Farms and Whispering Sands developments. He stated that there is significant additional

capacity available in this system, with only minor lift station upgrades needed. Mr. DeBruler also testified about the State Road 49 Corridor Project, in which Chesterton partnered with Porter County to bring sewer infrastructure to areas south of I-80/90 along State Road 49, which is in the Chesterton Regulated Territory.

Mr. DeBruler testified that Chesterton's Sanitary Sewer Master Plan provides a framework for providing service in the Chesterton Regulated Territory. He stated that the goals for the Sanitary Sewer Master Plan are (1) the extension of sanitary sewer infrastructure both within and outside of the current corporate boundaries of Chesterton for sewer service to the Chesterton Regulated Territory; (2) the provision of sanitary sewer service and treatment to areas both within and outside of Chesterton's boundaries within the Chesterton Regulated Territory; and (3) plant and infrastructure capacity determinations for operation and planning purposes.

According to Mr. DeBruler, the Sanitary Sewer Master Plan depicts Chesterton's existing system and divides Chesterton's system into 34 sub-basins based on lift stations and 11 additional sub-basins that flow by gravity directly to the wastewater treatment plant. He identified a schematic flowchart within the Sanitary Sewer Master Plan that described how flows from each sub-basin are routed from the lift stations to the main lift station at the wastewater treatment plant. Mr. DeBruler testified that the Sanitary Sewer Master Plan also divides the Chesterton Regulated Territory into four basins and 12 sub-basins and provides generalized gravity interceptor, lift station, and force main locations for each basin. Specific demands, alignments, and connectivity will be addressed as development occurs in the Chesterton Regulated Territory to ensure compatibility with the overall plan, as the Sanitary Sewer Master Plan does not provide specific alignments of mains or locations of all necessary lift stations. Thus, those elements would be developed at the time each new development approaches Chesterton for service.

Mr. DeBruler opined that the absence of sanitary sewer overflows during 2019 in the Chesterton system, the quality and planning of the State Road 49 Corridor Utility Service Project, and Chesterton's willingness and ability to extend services to Fox Chase and Whispering Sands demonstrates that Chesterton has the technical, financial, and managerial ability to serve the Chesterton Regulated Territory.

**C. Theodore J. Sommer.** Mr. Sommer, a CPA and Partner with LWG CPAs and Advisors, testified that Chesterton has adequate cash reserves, an engaged and informed board, and a diligent utility superintendent. He stated that Chesterton's environmental record shows that it has spent its money wisely to build and maintain a safe, efficient, and environmentally sound sewer utility system. He stated that Chesterton raises its rates when it needs to, most recently in 2019, in order to maintain its financial integrity. He opined that these qualities demonstrate Chesterton's technical, managerial, and financial abilities.

Mr. Sommer testified that Chesterton's monthly charges for sewer service consist of three categories: standard monthly rates and charges, special utility area ("SUA") rates and charges, and monthly charges to wholesale customers. Chesterton's standard monthly rate for an unmetered residential customer is \$44.21 per month. Mr. Sommer explained that the SUA rate is charged to all connections to the sewer interceptor running from Chesterton's sewer main located at the Indiana Toll Road and State Road 49 to Fox Chase Farms and Whispering Sands. In the SUA,

Chesterton charges \$99.18 per month, which is made up of two components: the monthly user charge of \$44.21 applicable to all Chesterton customers and a debt service and reserve charge of \$54.97, which recovers the cost of grinder pumps and the sewer line extension. Upon full payment of the debt supporting the Fox Chase and Whispering Sands extension, customers in the SUA will pay the standard rate charged to other Chesterton customers.

**5. OUCC's Case-in-Chief.** Mr. Seals, a Utility Analyst in the OUCC's Water/Wastewater Division, testified that Chesterton appears to have met the criteria identified in Ind. Code ch. 8-1.5-6. Chesterton seeks to become the exclusive provider of sewer utility service to the Chesterton Regulated Territory. Mr. Seals identified the four elements that a petition under Ind. Code § 8-1.5-6-9(b) must include: a description of the service territory, proposed rates and charges, a list of any related proceedings, and a list of any actually or potentially affected utilities.

Mr. Seals testified that Chesterton modified its proposed service territory from the area proposed in its Petition to conform to the terms of the 45306 Settlement between Chesterton and Valparaiso. He also stated that Chesterton's Petition indicated that there were no other administrative or judicial proceedings involving the Chesterton Regulatory Ordinance. In addition, the Petition lists the following potentially or actually affected sewer utilities and excludes them from the Chesterton Regulated Territory: Valparaiso, Aqua, City of Portage, Damon Run Conservancy District, Valparaiso Lakes Area Conservancy District, Town of Porter, Town of Burns Harbor, and Indian Boundary Conservancy District.

Regarding the ability of another utility to provide service in the Chesterton Regulated Territory, Mr. Seals testified that Mr. DeBruler explained that all of the other utilities that could potentially serve the Chesterton Regulated Territory have agreed that Chesterton should be the sewer provider in that territory. He also stated that Chesterton appears to have been proactive in meeting the needs of potential sewer customers outside its corporate boundaries by working with Porter County and with troubled utilities in the area to provide safe, reliable service. Mr. Seals testified that Chesterton will charge the customers in the Chesterton Regulated Territory the same rates and charges as Chesterton's other customers, excluding customers served by the State Road 49 Corridor Project.

Mr. Seals testified that Chesterton's Sanitary Sewer Master Plan recognizes the benefits of regional approaches to solving infrastructure and sewer service problems and formalizes assumptions under which Chesterton has been operating for the past 25 years. He stated that the Sanitary Sewer Master Plan is important because it supports Chesterton's ability to provide service to the Chesterton Regulated Territory with no immediate need for plant expansion. In conclusion, Mr. Seals recommended that the Commission approve the Chesterton Regulatory Ordinance.

**6. Commission Discussion and Findings.**

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

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

Chesterton's Petition included a description of the originally proposed Chesterton Regulated Territory and attached a map thereof as Exhibit B. After agreeing to the 45306 Settlement, Chesterton enacted the Chesterton Regulatory Ordinance, which amended Chesterton Ordinance No. 2014-11 by establishing a regulated territory reflecting the terms of the 45306 Settlement. The Chesterton Regulatory Ordinance describes the Chesterton Regulated Territory and includes a map of the territory. On August 11, 2020, Chesterton provided Revised Exhibit LB-3, which shows Chesterton's Regulated Territory.

Chesterton's Petition provided the current rates for its customers and also stated that the Chesterton Regulatory Ordinance is not the subject of any other administrative or judicial proceeding beyond Cause No. 45306. Finally, the Petition lists Valparaiso, Aqua, the City of Portage, Damon Run Conservancy District, Valparaiso Lakes Area Conservancy District, Indian Boundary Conservancy District, Town of Porter, and Town of Burns Harbor as the utilities that might be impacted by the Chesterton Regulatory Ordinance.

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

**B. Public Interest Factors.** In this case, as required by Ind. Code § 8-1.5-6-9(c), the Commission must consider Chesterton's request for approval of its regulatory ordinance in light of the public interest factors set forth in Ind. Code § 8-1.5-6-8(g), which are the following:

- (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.

**i. Other Utilities' Ability to Serve the Regulated Territory.** Chesterton provided evidence demonstrating that it is the only utility currently providing wastewater service in the Chesterton Regulated Territory. The evidence demonstrates that Chesterton is well positioned to serve customers in the Chesterton Regulated Territory and that none of the utilities that could theoretically serve in the Chesterton Regulated Territory have

expressed any intention to do so. Aqua filed no testimony in this Cause; Valparaiso entered into the 45306 Settlement with Chesterton; and the City of Portage would need Valparaiso's consent in order to extend its lines into the Chesterton Regulated Territory.

We find that the evidence presented in this Cause sufficiently addresses the ability of another utility to provide service in the Chesterton Regulated Territory and find that this evidence supports our approval of the Chesterton Regulatory Ordinance.

**ii. Effect on Rates.** The evidence demonstrates that Chesterton's monthly standard rate for wastewater service of \$44.21 and SUA monthly wastewater rate of \$99.18 are competitive with neighboring utilities. Chesterton also demonstrated that, once the debt is paid off in the SUA, it will charge the customers in that area the same rates as its other customers. Chesterton's evidence further demonstrates that, with relatively minor infrastructure improvements, it has the capacity and ability to add customers in the Chesterton Regulated Territory without incurring major additional costs or a need to increase its rates in order to extend infrastructure in the territory.

We find that the evidence presented in this Cause sufficiently addresses the effect of Chesterton's requested relief on customer rates, and we find that this evidence supports our approval of the Chesterton Regulatory Ordinance.

**iii. Effect on Economic Development.** The ability to obtain reliable and affordable wastewater treatment service is critical to present and future economic development in an area. Chesterton and Porter County, Indiana have each expended considerable resources acquiring and constructing infrastructure to provide wastewater utility service in and around the Chesterton Regulated Territory. In addition, Chesterton has developed a Sanitary Sewer Master Plan to serve the Chesterton Regulated Territory. The certainty that accompanies a regulated territory will promote economic development.

We find that the evidence presented in this Cause demonstrates that Chesterton's requested relief will have a positive effect on economic development in the Chesterton Regulated Territory, and we find that this evidence supports our approval of the Chesterton Regulatory Ordinance.

**iv. History of Utility Service.** Chesterton presented evidence that it is the only wastewater service provider currently providing service within the Chesterton Regulated Territory. Chesterton demonstrated its substantial history of main extensions in the Chesterton Regulated Territory and its willingness to extend infrastructure to remedy the environmental problems occurring in Fox Chase and Whispering Sands. The evidence also shows Chesterton's willingness to work in partnership with Porter County by extending infrastructure under the Indiana Toll Road.

We find that the evidence presented in this Cause sufficiently addresses the history of utility service in the Chesterton Regulated Territory, and we find that this evidence supports our approval of the Chesterton Regulatory Ordinance.

C. **Approval of the Chesterton Regulatory Ordinance.** Based on our consideration of the public interest factors discussed above, we conclude that the Chesterton Regulatory Ordinance and the Chesterton Regulated Territory comply with Ind. Code § 8-1.5-6-9 and that our consideration of the public interest factors support approval of both. We therefore, approve the Chesterton Regulatory Ordinance and find that Chesterton shall have an enforceable regulated territory as described in Chesterton Ordinance No. 2020-07, as depicted in the map attached to Ordinance No. 2020-07. We further find that the Chesterton Regulated Territory reflects the territory apportioned to Chesterton under the Commission-approved 45306 Settlement.

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

1. Chesterton Ordinance No. 2020-07 (the Chesterton Regulatory Ordinance) is approved.
2. Chesterton shall have an enforceable regulated territory as described in Ordinance No. 2020-07 and depicted in its Revised Exhibit LB-3.
3. This Order shall be effective on and after the date of its approval.
4. In accordance with Ind. Code § 8-1-2-70, Chesterton shall pay the following itemized charges within 20 days from the date of this Order into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges	\$ 2,195.08
OUCG Charges	\$ 518.20
Legal Advertising Charges	<u>\$ 175.70</u>
TOTAL	\$ 2,888.98

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

**APPROVED: SEP 23 2020**

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

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**Mary M. Schneider**  
**Secretary of the Commission**