

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE )  
DEPARTMENT OF WATER WORKS OF THE CITY )  
OF MICHIGAN CITY, INDIANA, FOR APPROVAL OF )  
A REGULATORY ORDINANCE ESTABLISHING A ) CAUSE NO. 44865  
SERVICE TERRITORY FOR THE CITY'S )  
MUNICIPAL WATER SYSTEM PURSUANT TO IND. )  
CODE § 8-1.5-6 ET SEQ. )

TESTIMONY OF

JAMES T. PARKS – PUBLIC'S EXHIBIT NO. 1

ON BEHALF OF THE

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

DECEMBER 15, 2016

Respectfully submitted,



Karol H. Krohn, Atty. No. 5566-82  
Deputy Consumer Counselor

**TESTIMONY OF OUCC WITNESS JAMES T. PARKS**  
**CAUSE NO. 44865**  
**DEPARTMENT OF WATER WORKS OF THE CITY OF MICHIGAN CITY**

**I. INTRODUCTION**

1 **Q: Please state your name and business address.**

2 A: My name is James T. Parks, P.E., and my business address is 115 W. Washington  
3 Street, Suite 1500 South, Indianapolis, IN 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Office of Utility Consumer Counselor ("OUCC") as a Utility  
6 Analyst II in the Water/Wastewater Division. My qualifications and experience are  
7 described in Appendix A.

8 **Q: What relief does the City of Michigan City seek in this Cause?**

9 A: The Department of Water Works of the City of Michigan City ("Michigan City",  
10 "Petitioner" or "Utility") seeks Commission approval of City Ordinance No. 4398  
11 to establish the exclusive right to provide water service in a defined Regulated  
12 Territory within its corporate boundaries and in unincorporated areas of LaPorte  
13 and Porter Counties within varying distances of its corporate boundaries pursuant  
14 to Indiana Code § 8-1.5-6.

15 **Q: When did Michigan City establish the Regulated Territory?**

16 A: Michigan City established the water service Regulated Territory through City  
17 Ordinance No. 4398 adopted on September 20, 2016 by the Common Council of  
18 the City of Michigan City, Indiana.

1 **Q: Please describe the review and analysis you conducted to prepare your**  
2 **testimony.**

3 A: I reviewed the City of Michigan City's Verified Petition seeking approval of its  
4 regulatory ordinance, which it filed pursuant to IC 8-1.5-6-9. I reviewed  
5 Petitioner's case-in-chief consisting of the direct testimony and exhibits of Mr.  
6 Randall E. Russell, Superintendent of the Department of Water Works of the City  
7 of Michigan City. I reviewed information Petitioner supplied about providing  
8 water services in its Regulated Territory. I checked distances from Michigan City's  
9 corporate boundaries to its proposed Regulated Territory boundaries and checked  
10 to see whether the Regulated Territory conforms to the Great Lakes Compact.<sup>1</sup>

11 **Q: What is the purpose of your testimony?**

12 A: I briefly describe the relief requested by Michigan City. I discuss that Michigan  
13 City's Regulated Territory, as proposed, would extend beyond the corporate  
14 boundaries by more than the four mile allowable distance and that a small area  
15 southeast of the City falls outside the Great Lakes watershed. I note that under the  
16 Compact, water from the Great Lakes cannot be diverted outside the Great Lakes  
17 drainage basin without specific permission from the Great Lakes – St. Lawrence  
18 River Basin Water Resources Council.

19 I discuss the extent of Michigan City's water system and assess its ability  
20 to extend water service. I propose Michigan City amend its regulatory ordinance  
21 to allow landowners in areas not served by the City to continue to be able to install  
22 their own private water systems. I also propose that, in assessing whether to grant

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<sup>1</sup> Great Lakes—St. Lawrence River Basin Water Resources Compact, December 13, 2005.

1 a municipal utility the ability to exclude other utilities from providing service, the  
2 Commission consider the demand for services in the regulatory territory proposed.

## II. MICHIGAN CITY'S WATER SERVICES

3 **Q: Please describe Michigan City's water utility.**

4 **A:** Mr. Randall E. Russell, Superintendent, described Michigan City's water utility in  
5 his Direct Testimony on page 3. The City of Michigan City currently provides  
6 water to 14,500 residential, commercial, and industrial customers within its  
7 corporate boundaries and in areas adjacent to the City. The water treatment plant  
8 can produce 20 million gallons per day ("MGD"). Michigan City reported that  
9 water production over the last three years ranged between 6.00 and 6.44 MGD,  
10 distributed to customers through 210 miles of water mains.

11 **Q: Does Michigan City currently have excess capacity at its water treatment plant  
12 to serve additional water customers?**

13 **A:** Yes.

14 **Q: Please describe Michigan City's current land area and corporate boundaries.**

15 **A:** Michigan City occupies 22.85 square miles including 19.50 square miles of land  
16 and 3.27 square miles of water within its corporate boundaries.<sup>2</sup> The City lies  
17 entirely in LaPorte County primarily in Michigan Township but also extending  
18 south into the northern portion of Cool Spring Township. City limits abut portions  
19 of the east and west boundaries of Michigan and Cool Spring Townships as shown  
20 in Attachment JTP-1. Michigan City sits entirely north of Interstate I-94.

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<sup>2</sup> Source: 2010 U.S. Census,

<http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

**III. REGULATED TERRITORY FOR WATER SERVICES**

1 **Q: What is a Regulated Territory for water service and how far can it extend?**

2 A: "Regulated Territory" is a phrase used to denote an exclusive water service territory  
3 in unincorporated areas outside a municipality. *See* IC 8-1.5-6-2. It can extend up  
4 to four miles beyond the corporate boundaries. *See* IC 36-9-2-14, Waterworks, and  
5 IC-36-9-2-18, Extraterritorial powers; four mile limit.

6 **Q: Where is Michigan City's proposed Regulated Territory for water services?**

7 A: Michigan City's proposed territory includes all areas located inside its corporate  
8 limits and territory beyond its corporate boundaries in adjacent unincorporated  
9 areas of LaPorte and Porter Counties. As currently shown, Petitioner's Regulated  
10 Territory would include all of Pine Township in Porter County, all of Michigan  
11 Township and nearly all of Cool Spring Township in LaPorte County and portions  
12 of Springfield, Center, and New Durham Townships in LaPorte County. The  
13 OUCC estimates Michigan City's Regulated Territory, as proposed, would expand  
14 its territory to more than 127 square miles from its current size of 22.85 square  
15 miles, or more than five times larger than its current corporate area. Petitioner  
16 shows its proposed Regulated Territory as part of Exhibits 1 and 2 in its Verified  
17 Petition.

18 Michigan City appears to have picked easily discernible boundaries for its  
19 proposed Regulated Territory that involve major highways and State and township  
20 boundaries. These boundaries are the Indiana State line (and Lake Michigan) on  
21 the north, S.R. 39 on the east, the Indiana Toll Road on the south, and the Pine  
22 Township line in Porter County on the west.

1 **Q: Does Michigan City's Regulated Territory include land in any other County?**

2 A: Yes. Michigan City's Regulated Territory, which mostly lies in northwest LaPorte  
3 County, also includes all of Pine Township in northeast Porter County.

4 **Q: Does Michigan City's proposed Regulated Territory extend the full four miles**  
5 **beyond the City's corporate boundaries?**

6 A: It actually exceeds four miles in almost all directions, as proposed, with two  
7 exceptions. The first exception is that the northern boundary stops at the Michigan  
8 State Line approximately one-half mile beyond city limits. The second exception  
9 is southeast of the city where the proposed Regulated Territory abuts the City of  
10 LaPorte's northwest water service area and the Thirty Nine North Conservancy  
11 District's water service area.

12 **Q: Does IC-36-9-2-18 allow a Regulated Territory to extend more than four miles**  
13 **beyond a municipality's corporate boundaries?**

14 A: No. Under Indiana law, a municipal water utility can claim an exclusive right to  
15 provide water service only within four miles of its corporate boundaries. Beyond  
16 four miles, the municipal utility can still extend water mains to provide water  
17 services but it could not prevent other water utilities from also providing water  
18 services. The proposed Regulated Territory boundaries exceed the four mile  
19 Allowable distance as shown on maps in Attachment JTP-2.

20 **Q: Is there another problem with Michigan City extending its Regulated**  
21 **Territory more than four miles?**

22 A: Yes. By extending the boundary to the Indiana Toll Road, Michigan City's water  
23 service area, in a small area southeast of the City, would cross over the divide  
24 between the Great Lakes Basin and the Kankakee River Basin. The Kankakee  
25 River Basin flows southwest to the Mississippi River away from the Great Lakes.

1 As such, supplying water to this small area near the Indiana Toll Road would be a  
2 water diversion outside the Great Lakes Basin that is prohibited under the Great  
3 Lakes Compact.<sup>3</sup> Attachment JTP-3 shows the LaPorte County watersheds flowing  
4 either north to Lake Michigan or south to the Kankakee River Basin.<sup>4</sup>

5 **Q: What is your recommendation regarding the four mile distance and**  
6 **compliance with the Great Lakes Compact?**

7 A: I recommend that Michigan City revise City Ordinance No. 4398 and its map of  
8 the Regulated Territory to comply with both the four mile distance allowed by  
9 Indiana law and the Great Lakes Compact prohibition against water diversions  
10 outside the Great Lakes Basin. Michigan City could still retain the larger water  
11 service area shown on its map (which should be modified to exclude all area outside  
12 the Great Lakes Basin) for infrastructure planning purposes.

13 **Q: Does Michigan City's proposed Regulated Territory overlap with that of any**  
14 **other water utility?**

15 A: No. Michigan City proposed its Regulated Territory's boundaries so that it does  
16 not overlap or encroach upon any other water utility. Michigan City asserted it is  
17 not aware of any water utilities actually or potentially affected by its Regulatory  
18 Ordinance. I found no information that is inconsistent with that assertion.

19 **Q: What other water utilities and towns/cities are located nearby?**

20 A: There are 13 other water utilities and towns/cities located within or adjacent to  
21 Michigan City's proposed Regulated Territory as listed in Attachment JTP-4.

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<sup>3</sup> **Section 4.8. Prohibition of New or Increased Diversions.** All New or Increased Diversions are prohibited, except as provided for in this Article. *Great Lakes – St. Lawrence River Basin Water Resources Compact*, December 13, 2005.

<sup>4</sup> Source: LaPorte County Soil and Water Conservation District website

<http://www.laporteswcd.com/watershed-management.htm>

1 Michigan City provides water to 10 of the 13 entities. The remaining three entities  
2 receive water either from the LaPorte Municipal Water Utility (both the City of  
3 LaPorte and the Thirty Nine North Conservancy District) or an independent  
4 company with its own groundwater wells (JongKind Park Water Utility).

5 **Q: Why did Michigan City adopt the regulatory ordinance under review?**

6 A: According to Mr. Russell, Commission approval of the Regulatory Ordinance will  
7 provide clarity to developers as to which utility provides water service within the  
8 Regulated Territory. Mr. Russell opines that this clarity regarding which utility  
9 provides services should support and encourage economic growth.

10 More importantly, Michigan City will establish a defined area for its  
11 infrastructure planning purposes and for expansion of municipal water services  
12 without concerns about annexation. This should allow Michigan City to effectively  
13 and efficiently plan investments and expansion of its water infrastructure. *See* the  
14 Direct testimony of Randall E. Russell, page 10.

15 Finally, providing Michigan City the exclusive right to serve the Regulated  
16 Territory prevents duplication of water infrastructure by multiple utilities that  
17 would unnecessarily drive up total infrastructure costs. According to Mr. Russell,  
18 the Regulatory Ordinance protects Michigan City and allows Michigan City to  
19 monitor, oversee, and encourage development in the area immediately surrounding  
20 its municipal boundaries. *See* the Direct Testimony of Randall E. Russell, page 10.

21 **Q: Does Michigan City currently have water distribution mains outside its**  
22 **corporate limits?**

23 A: Yes. However the water infrastructure outside the corporate boundaries appears  
24 limited to Cool Spring Township in LaPorte County and the northeastern portion



1 of Pine Township in Porter County based on my review of the water system maps  
2 Michigan City provided in Cause No. 44538.<sup>5</sup> Michigan City's existing water  
3 distribution system is generally north of Interstate I-94 except for an area south of  
4 the City along U.S. 421. Michigan City has larger water mains in and around its  
5 corporate boundaries that could be looped and extended to serve the adjacent areas.

6 **Q: Is Michigan City capable of providing water services to the entire proposed**  
7 **regulated territory?**

8 A: Not currently. As discussed above, the City will need to construct new water mains  
9 to serve the additional areas outside its corporate boundaries. The City also has  
10 plans to continue extending Michigan City's utilities to serve new customers  
11 located to the south along US 421 and southeast of the City between Interstate I-94  
12 and the Indiana Toll Road.

13 **Q: If Michigan City is not able to provide water service to the entire area, can a**  
14 **property owner still install a private on-site well or water system?**

15 A: The Petitioner did not address this issue either in its testimony or in City Ordinance  
16 No. 4398. Both are silent about a private homeowner or business installing their  
17 own groundwater wells and treatment systems for service limited to specific homes  
18 or businesses in outlying parts of the Regulated Territory that still lack water  
19 distribution mains from Michigan City.

20 **Q: What change would you recommend regarding Michigan City's Water**  
21 **Ordinance?**

22 A: I recommend Michigan City revise Section 3 of City Ordinance No. 4398 to state  
23 that it does not prevent the use of onsite private water systems where the City does

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<sup>5</sup> *Water System Master Plan*, Department of Water Works, City of Michigan City, Indiana, Wessler Engineering, October 8, 2013

1 not yet have water infrastructure available. Possible revised text might read as  
2 follows:

3 Section 3. Upon adoption of this Ordinance and its approval  
4 by the Commission, no other utilities are permitted to provide water  
5 service within the Department's Water Service Area. This  
6 Ordinance does not: (i) mandate the Department to extend service  
7 to areas where technically or financially not feasible; or (ii) prevent  
8 the use of onsite water systems where the City does not have  
9 facilities available. Rather, this Ordinance expressly prohibits other  
10 utilities from furnishing water service to customers within the  
11 Department's Water Service Area.

12 The underlined emphasis on Section 3 marks revisions recommended by the  
13 OUCC.

14 **Q: Were there any other questions or concerns about Michigan City's proposed**  
15 **Water Ordinance?**

16 A: Yes, City Ordinance No. 4398 authorizes a \$2,000 per day fine for violations of the  
17 ordinance. I suggest this provision should be removed since the Commission itself  
18 does not have authority to impose such civil penalties.

19 **Q: Regarding Michigan City's petition to be granted Regulated Territory, is there**  
20 **currently demand for water service in the Regulated Territory?**

21 A: The demand for water services in the entire Regulated Territory appears to be  
22 unknown. Petitioner does not project this demand or explain how demand might  
23 grow in the future. Petitioner does note two potential projects that are part of  
24 possible economic developments.

25 **Q: Did the OUCC receive any consumer comments on this request?**

26 A: No.

#### IV. OUCC'S POSITION

1 **Q: Please summarize your conclusions and recommendations.**

2 A: The City of Michigan City has existing water infrastructure and the managerial and  
3 technical capabilities needed to continue to extend water services to areas beyond  
4 its corporate limits. In responding to Petitioner's request for relief, in addition to  
5 considering the ability of the municipal utility to extend service, the Commission  
6 should consider the demand for service in the proposed exclusive territory. There  
7 appears to be some limited demand for water service in the area along US 421 to  
8 the south, the area to the southeast of the City between Interstate I-94 and the  
9 Indiana Toll Road, and areas surrounding the City's current boundaries. But there  
10 appears to be little evidence of demand at this time in parts of the proposed  
11 Regulated Territory located further away from Michigan City's municipal  
12 boundaries.

13 Another factor that should be considered is whether granting exclusivity to  
14 such a large area will deter other utilities from extending service to customers that  
15 Petitioner is not yet ready or able to serve. It seems no other utilities are currently  
16 poised to serve the proposed Regulated Territory before Michigan City. However,  
17 if other utilities are willing to serve customers outside their current service areas,  
18 consumers in that area should not be required to wait for Michigan City to extend  
19 service to them while another provider has the present ability to serve that customer  
20 at a reasonable rate, with reasonable connection fees. If a situation like that arose,  
21 the size of the exclusive Regulated Territory Michigan City has requested at this  
22 time should be revisited.

1           If Petitioner makes the necessary revisions to City Ordinance No. 4398  
2           regarding (a) Indiana's four-mile maximum distance for exclusive water service  
3           rights outside its corporate boundaries; (b) compliance with the Great Lakes  
4           Compact; and (c) permitting of private, on-site water systems discussed in this  
5           testimony, the OUCC would not contest approval of Michigan City's Regulatory  
6           Ordinance.

7   **Q: Does this conclude your testimony?**

8   A: Yes.

**Appendix A**

1 **Q: Please describe your educational background and experience.**

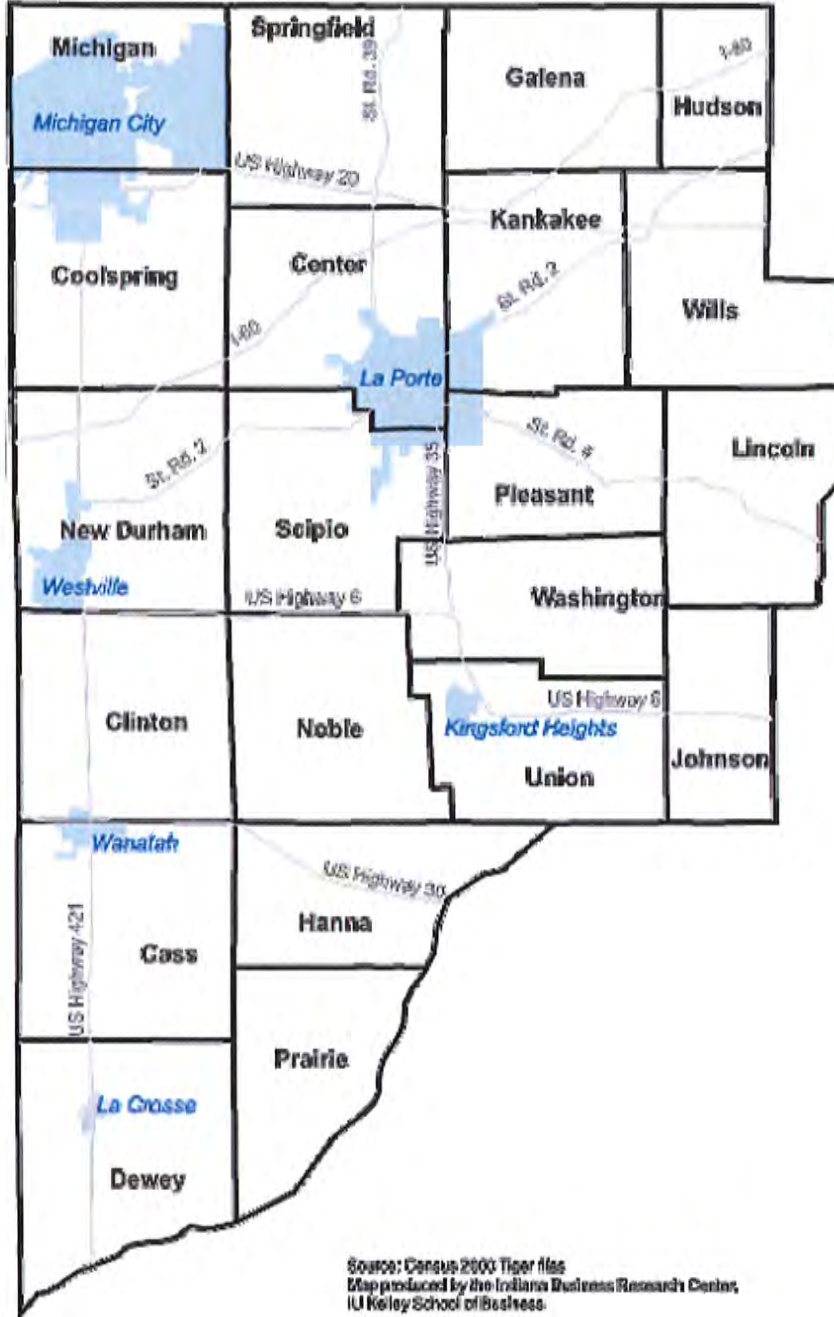
2 A: In 1980 I graduated from Purdue University, where I received a Bachelor of Science  
3 degree in Civil Engineering, having specialized in Environmental Engineering. I  
4 then worked with the Peace Corps for two years in Honduras as a municipal  
5 engineer and as a Project Engineer on self-help rural water supply and sanitation  
6 projects funded by the U.S. Agency for International Development (U.S. AID). In  
7 1984 I earned a Master of Science degree in Civil Engineering and Environmental  
8 Engineering from Purdue University. I have been a Registered Professional  
9 Engineer in the State of Indiana since 1986. In 1984, I accepted an engineering  
10 position with Purdue University, and was assigned to work as a process engineer  
11 with the Indianapolis Department of Public Works at the City's Advanced  
12 Wastewater Treatment Plants. I left Purdue and subsequently worked for  
13 engineering consulting firms, first as a Project Engineer for Process Engineering  
14 Group of Indianapolis and then as a Project Manager for the consulting firm HNTB  
15 in Indianapolis. In 1999, I returned to the Indianapolis Department of Public Works  
16 as a Project Engineer working on planning projects, permitting, compliance  
17 monitoring, wastewater treatment plant upgrades, and combined sewer overflow  
18 control projects.

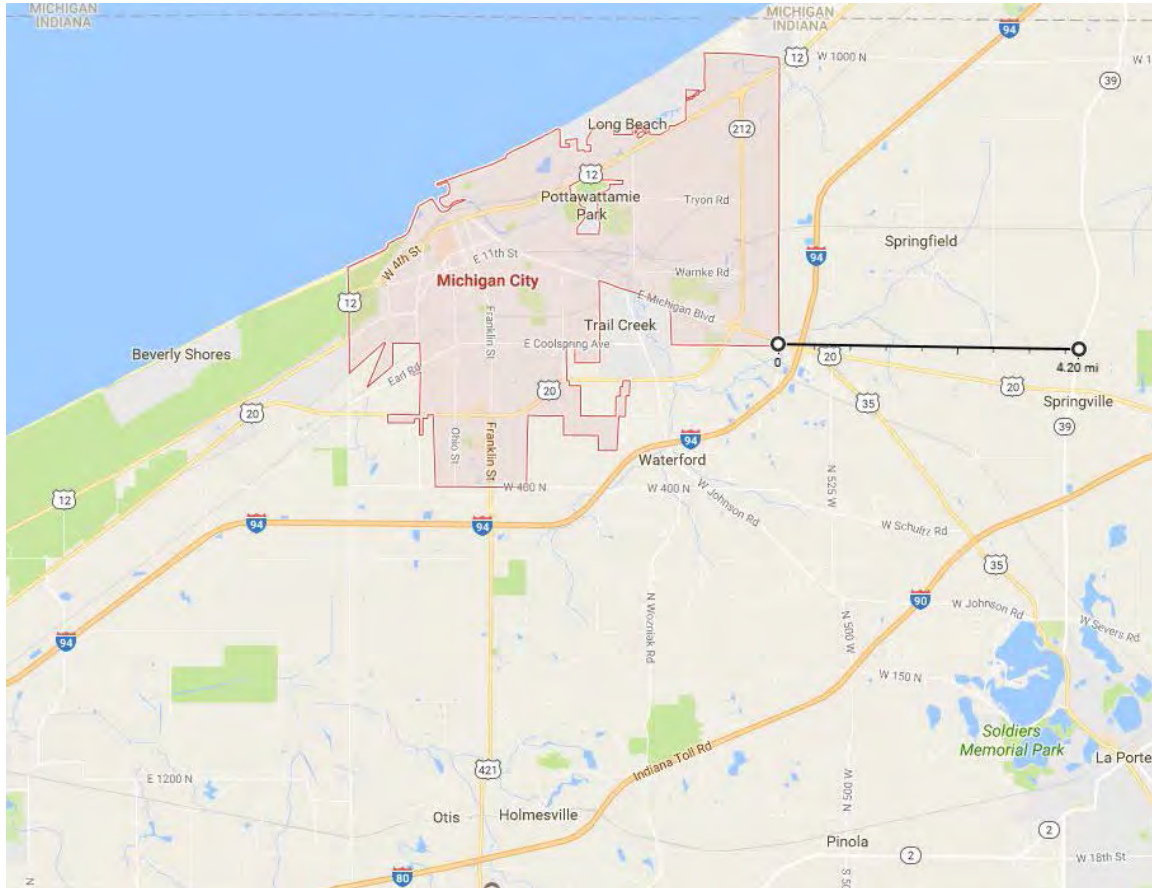
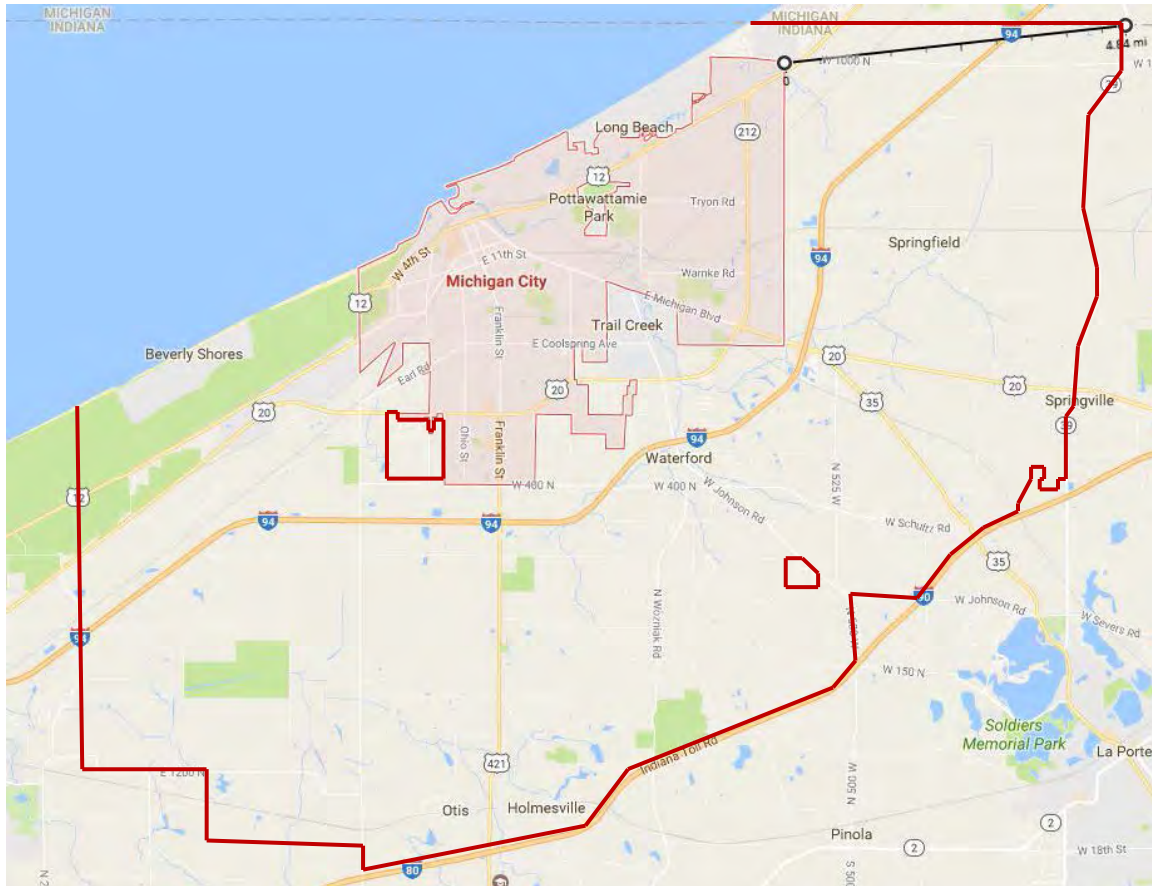
19 **Q: Have you previously testified before the Indiana Utility Regulatory**  
20 **Commission ("Commission")?**

21 A: Yes.



# La Porte County Townships

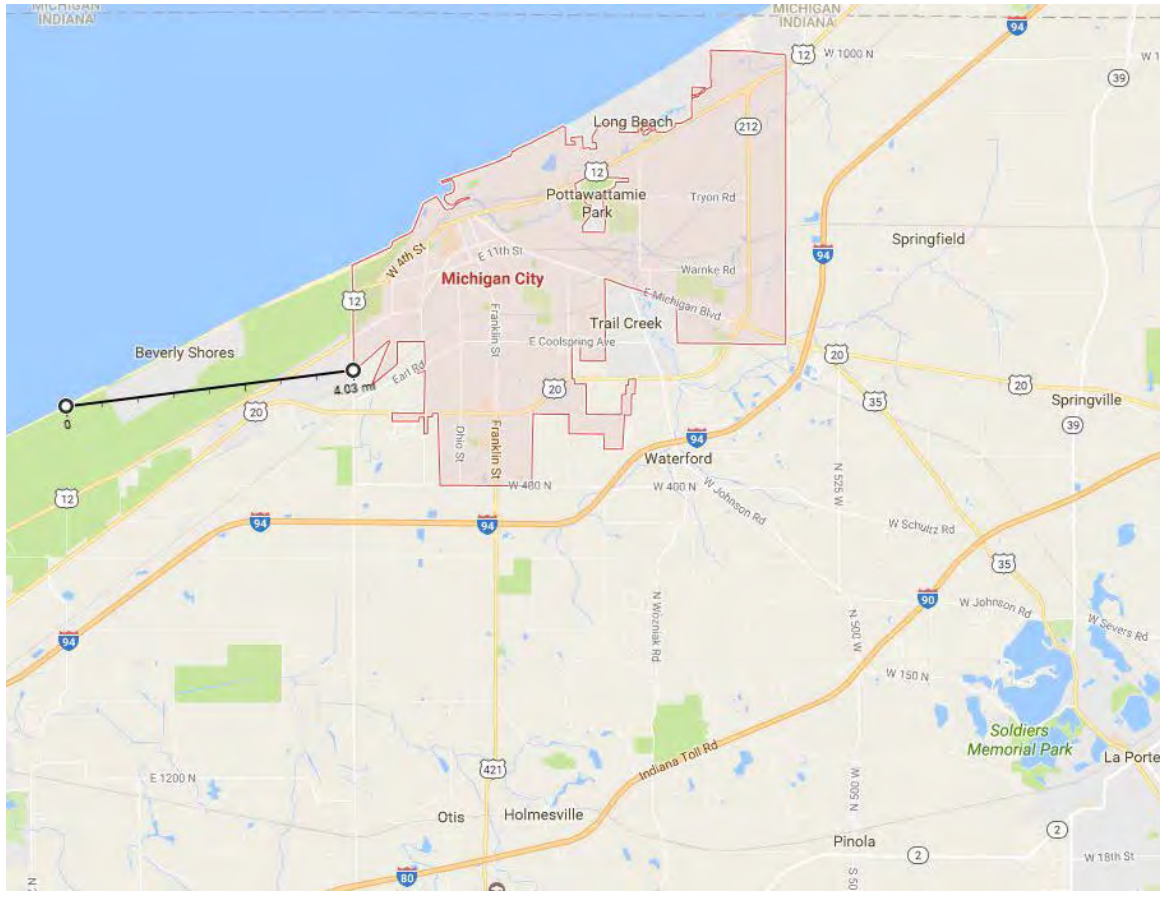
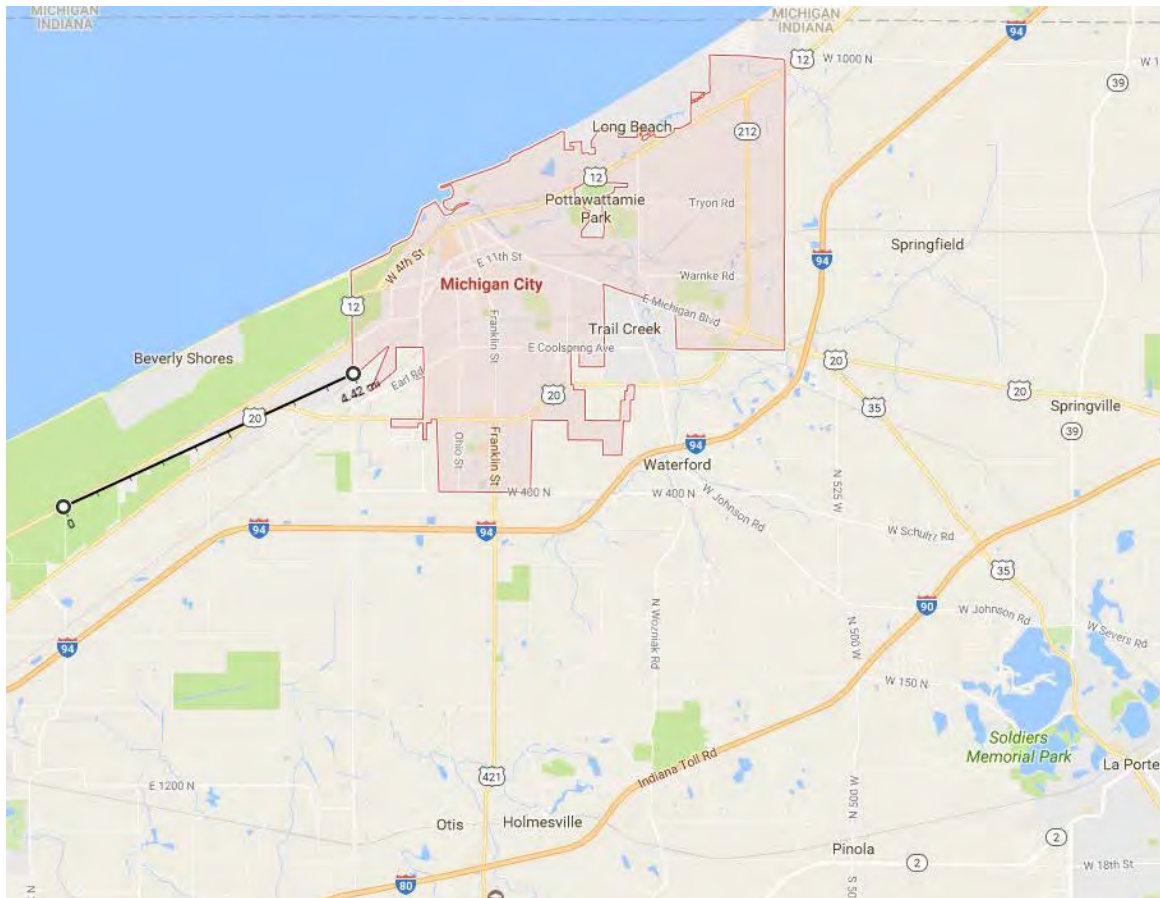


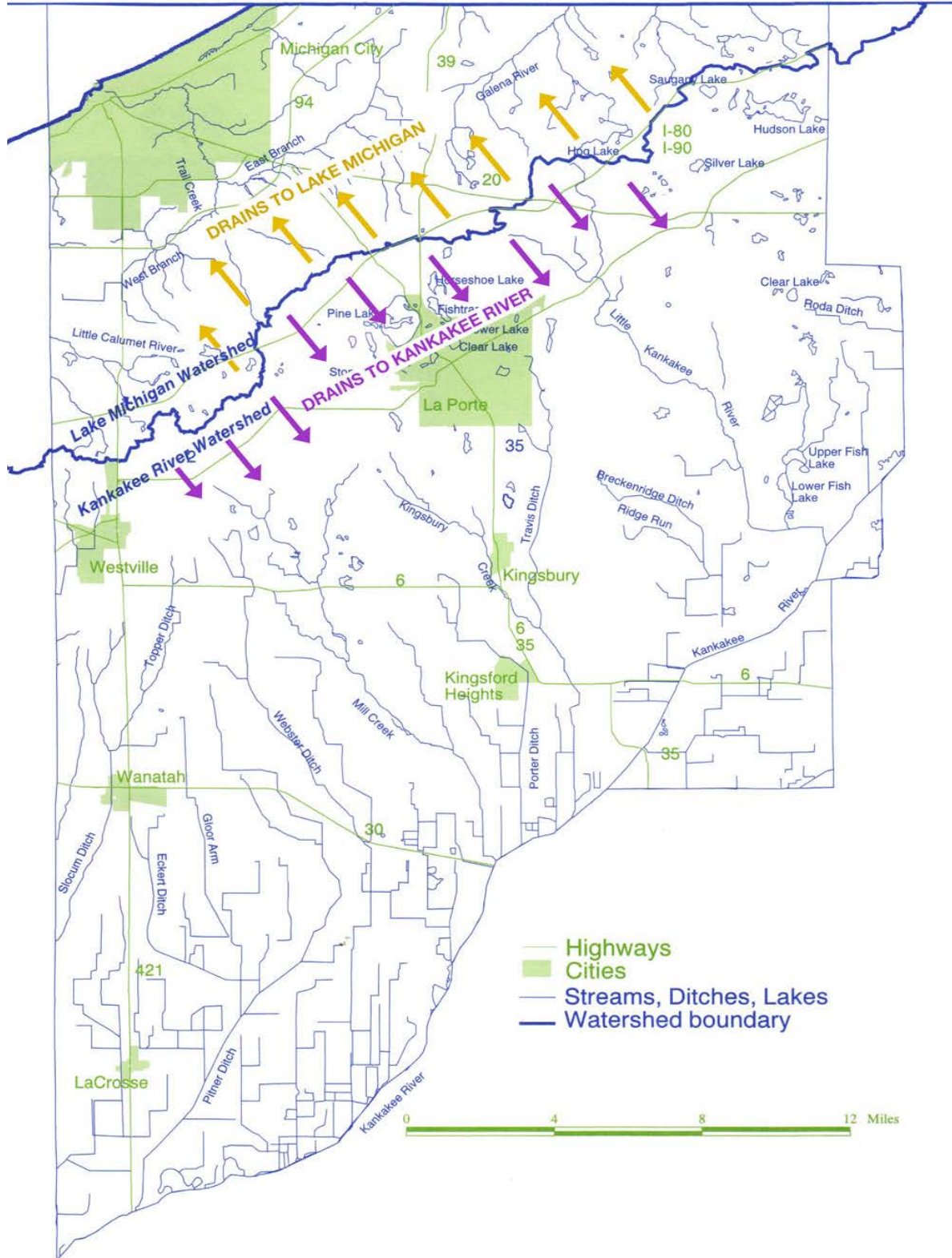












**LaPorte County watersheds**

Source: LaPorte County Soil and Water Conservation District

**Attachment JTP-4**

**Water Utilities and Towns / Cities within or adjacent to Michigan City's proposed Regulated Territory**

<b>Town / Utility</b>	<b>County</b>	<b>Water Provider</b>	<b>Distribution System Maintenance</b>
Homeowner's Association of Duneland Beach Water Utility	LaPorte Co., IN	Michigan City Dept. of Water Works	Self
JongKind Park Water Utility	LaPorte Co., IN	Self	Self
LaPorte Municipal Water Utility	LaPorte Co., IN	Self	Self
Michiana Shores, IN	LaPorte Co., IN	Michigan City Dept. of Water Works	Michigan City Dept. of Water Works
<b>Michiana Water Authority, Michiana, MI<sup>1,2</sup></b>	Berrien Co., MI	Michigan City Dept. of Water Works	Self
<b>New Buffalo Township, MI<sup>2</sup></b>	Berrien Co., MI	Michigan City Dept. of Water Works	Self
Prairie Lakes Conservancy District	LaPorte Co., IN	Michigan City Dept. of Water Works	Self
Thirty Nine North Conservancy District	LaPorte Co., IN	LaPorte Municipal Water Utility <sup>3</sup>	LaPorte Municipal Water Utility
Town of Beverly Shores, IN	Porter Co., IN	Michigan City Dept. of Water Works	Michigan City Dept. of Water Works
<b>Town of Long Beach, IN Municipal Water Utility<sup>2</sup></b>	LaPorte Co., IN	Michigan City Dept. of Water Works	Self
Town of Pines, IN	Porter Co., IN	Michigan City Dept. of Water Works	Michigan City Dept. of Water Works
Town of Pottawattamie Park, IN	LaPorte Co., IN	Michigan City Dept. of Water Works	Michigan City Dept. of Water Works
Town of Trail Creek, IN	LaPorte Co., IN	Michigan City Dept. of Water Works	Michigan City Dept. of Water Works

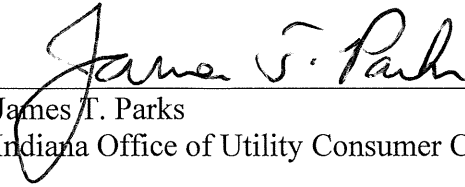
<sup>1</sup> Serves the Village of Michiana, MI; Michigan Shores, Country Club Subdivision, and bulk to the Village of Grand Beach, Michigan.

<sup>2</sup> Wholesale customers of the Department of Water Works, City of Michigan City, Indiana are shown in bold.

<sup>3</sup> Source: <http://39northconservancydistrict.com/insentives/water-and-utilities>

**AFFIRMATION**

I affirm, under the penalties for perjury, that the foregoing representations are true.

  
\_\_\_\_\_  
James T. Parks  
Indiana Office of Utility Consumer Counselor

December 15, 2016  
Date

Cause No. 44865  
Michigan City Municipal Water

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing *OUCC's Testimony of James T. Parks: Public's Exhibit No. 1* has been served upon the following counsel of record in the captioned proceeding by electronic service on December 15, 2016.

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