

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

CAUSE NO. 45578

VERIFIED PETITION

Hamilton Southeastern Utilities, Inc. (“Petitioner” or “HSE”), by counsel, respectfully requests from the Indiana Utility Regulatory Commission (“Commission”) approval to: (1) transfer to the City of Fishers, Indiana (“Fishers”) the assets and facilities of HSE used to serve the Certificates of Territorial Authority and indeterminate permits (together the “CTA”) comprising HSE’s Fishers service area (“Service Area”)(the “Transaction”); and (2) upon the closing of the Transaction, cancel HSE’s CTA’s comprising the Service Area. In support of this Petition, Petitioner states the following:

1. Petitioner’s Characteristics. Petitioner is a corporation duly organized under the laws of the State of Indiana with its principal office and place of business at 11901 Lakeside Drive, Fishers, Indiana, 46038. Petitioner owns, operates and controls utility plant, property and equipment for the collection and disposal of sewage. Petitioner is a “public utility” as that phrase is used in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission as and to the extent permitted by law. Petitioner is authorized to provide sewage disposal service to the Service

Area pursuant to CTA's granted by the Commission in Cause Nos. 38685, 38819, 38897, 39567, 41528, 41745, 41752, 41798, and 43435.

2. **Fishers Characteristics.** Fishers is a municipality located in Hamilton County, Indiana, which owns and operates a municipal sewer utility in accordance with Ind. Code § 36-9-23 *et seq.*

3. **The Proposed Transaction.** Petitioner has determined, subject to the approval of the Commission, to transfer substantially all of its assets for the Service Area (the "Assets") to Fishers pursuant to an asset purchase agreement (the "Agreement"). Fishers has completed its financial analysis of HSE's existing rates and charges and the revenues generated by such rates and charges and has determined HSE's existing revenues along with Fishers use of tax-free municipal financing presents an opportunity to accomplish the Transaction. Fishers has agreed to purchase the Assets for a purchase price of ninety million dollars (\$90,000,000.00), as may be adjusted in accordance with the Agreement, which is less than the appraised value of the Assets. Upon the closing of the Transaction, Fishers will own and operate the Assets as part of its municipal sewer utility. Fishers Board of Public Works and City Council will approve the Agreement ("City Approvals"). A fully-executed version of the Agreement and the City Approvals will be provided as late-filed Attachments.

4. **Relief Requested.** Petitioner seeks Commission approval to transfer the Assets to Fishers in accordance with the requirements of Ind. Code § 8-1-2-89(j) and Ind. Code § 8-1-2-83(a). Petitioner also requests that the Commission terminate the CTA's applicable to the Service Area upon the closing of the Transaction, excluding a portion of the CTA granted in Cause No. 38819, which consists of customers residing in the City of Noblesville, Indiana's ("Noblesville") municipal corporate boundaries that HSE will be retaining pursuant to the Agreement.

5. **Fishers Legal Authority to Serve.** Fishers has the legal authority to purchase Petitioner's system pursuant to Ind. Code § 36-9-23-2 and -6. Fishers is authorized to provide sewage disposal service within its corporate boundaries and within ten (10) miles outside of its corporate boundaries pursuant to Ind. Code § 36-9-23-36. The Service Area is within Fishers corporate boundaries, and Fishers is authorized to render sewage disposal service in accordance with Ind. Code § 8-1-2-89(j).

6. **Fishers Ability to Provide Comparable Service.** Fishers is prepared to render comparable sewage disposal service without loss of continuity of service to HSE's customers. Presently, HSE has contracts with Fishers to treat waste collected by HSE through treatment facilities owned and operated by Fishers, and HSE is connected to and transmits its waste to the Fishers treatment plants. Fishers plans to operate HSE's existing collection system facilities to serve the Service Area and therefore will provide a continuous, comparable service to HSE's customers. The change to the provision of service by Fishers will be transparent to HSE's customers.

7. **The Proposed Transaction is Reasonable.**

a. **Benefits to Petitioner's Customers.** The Transaction will result in several synergies that will benefit HSE's customers and the City of Fishers. Fishers has for many years owned and operated a sophisticated municipal sewer system consisting of a collection system and treatment facilities adjacent to the Service Area. Fishers has been providing wholesale sewer treatment service to the Service Area since HSE commenced operations more than 30 years ago pursuant to two wholesale sewer service agreements entered into with HSE in 1988 and 1989, as amended. As a result, Fishers is uniquely familiar with the Assets and the Service Area. Fishers has the expertise and resources to own and operate HSE's system in the Service Area. Upon the

closing of the Transaction, Fishers proposes to charge HSE's customers the same rates and charges as currently in effect for HSE without any changes to the rates and charges in the near future. In the long term, the Transaction is expected to result in significant rate benefits for HSE's customers due to the synergies created by the Transaction and tax advantages applicable to municipalities that are not available to HSE because of its status as a public utility corporation, such as the taxability of contributions in aid of construction as a result of the Tax Cuts and Jobs Act of 2017.

b. Benefits to Fishers. Fishers acquisition of the Assets provides Fishers with an established collection system and customer base within its corporate boundaries that will significantly increase its sewer utility assets and service area, creating economies of scale. The synergies created by the Transaction and Fishers' ability to provide low cost sewer service will benefit future development within the City of Fishers and the Service Area.

8. HSE's CTA's. Upon the closing of the Transaction, HSE will no longer require the CTA's applicable to the Service Area, except for a portion of the CTA granted in Cause No. 38819, which consists of current HSE customers residing within Noblesville's corporate boundaries that HSE will be retaining in accordance with the Agreement. HSE requests that the Commission terminate the CTA's for the Service Area upon the closing of the Transaction. HSE intends to maintain the CTA's for its other service areas (*i.e.*, Noblesville and Boone County) and is not seeking termination of those CTA's.

9. Applicable Statutes. Petitioner believes Ind. Code § 8-1-2-83 generally, and more specifically Ind. Code § 8-1-2-89(j), as well as other sections of Ind. Code § 8-1-2, are applicable to this Cause.

10. Notices. In accordance with Ind. Code § 8-1-2-61, Petitioner will publish notice of the filing of this Petition in a newspaper of general circulation published in any county in which Petitioner renders service. A copy of such notice will be provided as a late-filed Attachment.

11. Petitioner's Counsel. The names and addresses of Petitioner's attorneys in this matter, to whom all correspondence and communications in this Cause should be sent, are:

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12. Procedural Schedule. Petitioner requests consideration of the requested relief on a schedule that will allow for an Order to be issued by the Commission on or before November 17, 2021. Petitioner has conferred with the Indiana Office of Utility Consumer Counselor to explain the purpose of this proceeding, and the parties are finalizing an agreed to procedural schedule that will be submitted in a separate filing.

WHEREFORE, Hamilton Southeastern Utilities, Inc. respectfully requests that the Commission approve: (1) the sale and transfer of the Assets to the City of Fishers; (2) the termination of the CTA's for the Service Area upon the closing of the Transaction, excluding the portion of the CTA granted in Cause No. 38819 applicable to the existing Noblesville customers that will be retained by HSE; and (3) all other relief appropriate in the premises.

Respectfully submitted,




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Attorneys for Petitioner,
Hamilton Southeastern Utilities, Inc.

VERIFICATION

I hereby affirm, under the penalties of perjury, that the representations made in the foregoing Verified Petition are true to the best of my knowledge, information and belief.

By: 
Kendall W. Cochran
President, Hamilton Southeastern Utilities, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically delivered
this 8th day of July, 2021, to the following:

Office of Utility Consumer Counselor
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An attorney for Petitioner,
Hamilton Southeastern Utilities, Inc.