

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE)
TOWN OF WINFIELD, LAKE COUNTY, INDIANA,)
FOR APPROVAL OF A REGULATORY)
ORDINANCE ESTABLISHING A SERVICE) CAUSE NO. 45992
TERRITORY FOR THE TOWN'S MUNICIPAL)
SEWER SYSTEM PURSUANT TO IND. CODE § 8-)
1.5-6 ET. SEQ.)

CITY OF CROWN POINT, INDIANA'S MOTION TO ESTABLISH PROCEDURAL
SCHEDULE AND RESPONSE TO TOWN OF WINFIELD, INDIANA'S MOTION TO
ESTABLISH PROCEDURAL SCHEDULE

City of Crown Point, Indiana ("Crown Point") hereby files its Motion to Establish Procedural Schedule and Response to the Motion to Establish Procedural Schedule filed by Town of Winfield, Lake County, Indiana ("Winfield") on February 28, 2025 ("Winfield Motion").

Winfield's Motion completely ignores that the Commission did consolidate the critical issue of which of the two Petitioning municipal utilities will be allowed to serve the contested overlap area and the burden of proof on each of those Petitioners. Winfield's Motion inaccurately characterizes Crown Point's proposed procedural schedule as seeking to "have this case start completely over and have *all parties* file direct testimony, *all parties* file responsive testimony, and *all parties* file rebuttal testimony." Winfield Motion at 3, ¶ 8 (emphasis in original). That is not the case. Crown Point proposes only that Winfield and Crown Point, the parties *bearing the burden of proof* on the issues consolidated in this Cause by the Presiding Officers' February 11, 2025, docket entry ("February 11 Docket Entry"), file direct and rebuttal evidence, as is required by the Commission's procedural rules, Indiana Rules of Trial Procedure, and principles of due process. Winfield's proposed schedule deprives Crown Point of its right to file direct and rebuttal testimony regarding the contested issue of which municipality is best positioned to serve the overlapping area included in Winfield's and Crown Point's regulatory ordinances. Winfield's

proposed schedule also deprives the Indiana Office of Utility Consumer Counselor (“OUCC”) of the right to respond to Crown Point’s evidence in this Cause — and instead requires the OUCC and Crown Point to file at the same time.

Crown Point’s proposed procedural schedule, which is set forth below, is supported by Intervenor LBL Development, LLC (“LBL”) and the Town of Hebron, Indiana (“Hebron”). The OUCC has indicated it does not oppose Crown Point’s proposed schedule.

<u>Date</u>	<u>Event</u>
Friday, April 18, 2025	Crown Point and Winfield File Cases-in-Chief
Monday, June 2, 2025	OUCC and Intervenor, LBL and Hebron, File Cases-in-Chief and Winfield and Crown Point Respond to Each Other
Wednesday, July 2, 2025	Rebuttal for Crown Point and Winfield and Cross-Answering for Hebron, OUCC, and LBL
Wednesday, July 23, 2025	Hearing (One Full Day—Wednesday, Thursday, or Friday)
Wednesday, August 20, 2025	Proposed Orders Due
Friday, September 19, 2025	Replies to Proposed Orders Due
Wednesday, December 17, 2025	Target Order Date

In support of the foregoing schedule, Crown Point states as follows:

**THE COMMISSION’S RULES, TRIAL RULES, AND DUE PROCESS REQUIRE
THAT CROWN POINT HAVE THE RIGHT TO FILE DIRECT AND REBUTTAL TESTIMONY**

1. In the February 11 Docket Entry, the Presiding Officers denied Crown Point’s April 1, 2024, Motion to fully Consolidate this Cause with Cause No. 46035, but *did* consolidate a substantial critical issue in this Cause with Cause No. 46035 in part, finding “that the dispute between Winfield and Crown Point concerning the overlapping sewer territory *should be*

consolidated and addressed in this Cause.” February 11 Docket Entry at 2 (emphasis added). Winfield’s Motion and proposed procedural schedule wholly ignores the foregoing language.

2. Crown Point, as Petitioner in Cause No. 46035, seeks Commission approval of its Ordinance No. 2023-08-19, and any amendment,¹ under Ind. Code 8-1.5-6 *et seq.* and thereby bears the burden of proof as to the relief sought in that Cause. Part of the area for which it seeks to provide sewer service in Ordinance No. 2023-08-19 overlaps part of the territory Winfield is seeking to serve through approval of its own regulatory ordinance in this Cause. Thus, a substantial and significant portion of the relief Crown Point sought as the petitioner in Cause No. 46035 will now be decided in *this* Cause under the February 11 Docket Entry — meaning that Crown Point’s burden of proof with respect to those portions of the regulatory ordinance has now moved to this Cause, as opposed to Cause No. 46035.

3. Under 170 IAC 1-1.1-18, “In hearings upon complaints or petitions, the complainant, petitioner, or other party having the burden of proof *must* open and close the presentation of evidence and arguments.” (emphasis added) The party bearing the burden of proof also has the right to open and close the evidence at trial under Indiana Rule of Trial Procedure 43(D), and the Commission may be guided generally by relevant provisions of the Indiana Rules of Trial Procedure under 170 IAC 1-1.1-26.

4. Had the issue of the overlapping sewer territory not been consolidated in this Cause, Crown Point would have filed both direct and rebuttal evidence on that issue as the petitioner in Cause No. 46035. Under the February 11 Docket Entry, *this* Cause is now the proceeding where Crown Point must pursue the relief it originally sought in Cause No. 46035 related to the area for which both Crown Point and Winfield seek approval of their respective regulatory ordinances. To

¹ The fact that Crown Point may to amend its regulatory ordinance has no bearing on its proposed schedule in either this Cause or Cause No. 46035. Any amendment would be well before its proposed filing date of April 18, 2025.

deprive Crown Point of its right to present a full case, including rebuttal, on the consolidated issues, would violate 170 IAC 1-1.1-18, Ind. Trial Rule 43(D), Crown Point's due process rights and be inconsistent with Commission precedent. *See In re Duke Energy*, Cause No. 38707 FAC 76 S1, at 2 (July 24, 2008) ("The Petitioner, as the party initiating the underlying cause and seeking Commission approval, bears the burden of proof. The burden of proof does not shift by the creation of the subdocket. The Commission's rules at 170 IAC 1-1.1-8 [sic] provide that in hearings upon petitions, the party having the burden of proof must open and close the presentation of evidence and arguments.").

5. Consolidation of the dispute over the overlapping territory in this Cause promotes efficiency, saves the Commission's time, and reduces the risk of confusing or conflicting orders. Even with those issues consolidated in this Cause, however, Crown Point should not now be penalized and prevented from presenting a full case on a matter on which it bears the burden of proof. With respect to the contested area, Crown Point should have the same rights in this Cause as it had in Cause No. 46035. The overlap area has economic development value and the Commission is well served to hear the competing Petitioner's full evidence on the issue.

RESPONSE TO OTHER MISLEADING ASSERTIONS IN WINFIELD'S MOTION

6. Winfield indicates it has proposed a procedural schedule that mirrors the Town of Pendleton's and the City of Anderson's disputed regulated territory case in Cause Nos. 46087 and 46147. Winfield misleadingly states that, in that matter, "the Commission not[ed] (like here) that the two cases were in two different procedural positions." Winfield Motion at 3, ¶ 7. The full sentence referenced by Winfield reads as follows: "The two cases are also at different procedural points under a statute requiring review and a Commission decision *within 300 days of the filing of a petition*." November 21, 2024 Docket Entry in Cause No. 46147 at 1 (emphasis added).

7. Here, on the other hand, the Presiding Officers found in the February 11 Docket Entry, that, due to the length of time the case was voluntarily stayed, “the 300-day statutory deadline for the issuance of a Commission order *has been waived*.” February 11 Docket Entry at 2 (emphasis added). Thus, the concern about the 300-day statutory deadline established by Ind. Code 8-1.5-6-9 that was present in Cause Nos. 46087 and 46147 no longer exists in this Cause.

8. Winfield’s argument that “Winfield should not have to restart this entire case over fourteen (14) months after filing its Petition”, Winfield Motion at 4, ¶ 10, is misplaced given that Winfield itself is effectively proposing to start the case over. Notably, in this case Winfield has proposed a schedule that gives it an opportunity to file a revised case-in-chief. Winfield states in footnote 2 of its Motion that “Winfield needs to update its testimony in order to reflect any changes that have occurred during the passage of this time” and proposes to do so ten days after the Commission establishes a procedural schedule in this Cause. Both competing Petitioners should be allowed to present their full direct competing evidence. Winfield is not prejudiced by the Commission giving Crown Point the opportunity to file direct and rebuttal testimony as to issues over which it has the burden of proof contemporaneously with Winfield’s direct and rebuttal filings.

9. Winfield’s new focus on the passage of time and the lifting of the stay also is misplaced. Since the final agreed stay in this Cause ended on October 14, 2024, Winfield has not sought to extend the stay, updated its case-in-chief evidence or actively prosecuted its case. Until now, Winfield never asked that the Commission establish a procedural schedule. Regardless of any alleged delay, however, permitting Crown Point to file direct and rebuttal adds, at most, approximately a month to the length of the procedural schedule, an insignificant amount of time compared to how long this case has already been pending and how long it has left to go. Just

because one party “wins” the race to file with the Commission does not mean that the earlier-filing party has greater rights to present its case over the later-filing party.² Crown Point and Winfield, as Petitioners in cases seeking overlapping relief, both have the right to present direct and rebuttal evidence on the issues consolidated in this Cause pursuant to the Commission’s rules, the Indiana Rules of Trial Procedure, and principles of due process.

10. Winfield’s reliance on the schedules in the Town of Pendleton and the City of Anderson cases also is inapposite because it is Crown Point’s understanding that, after the docket entry was entered partially consolidating the proceedings in Cause Nos. 46087 and 46147, the parties agreed upon all changes to the procedural schedule, other than the hearing date. The parties’ agreement in those cases is not controlling here where Crown Point does not agree to be prejudiced by non-simultaneous filings on the contested overlap area.

WHEREFORE, for the foregoing reasons, Crown Point respectfully requests that the Commission enter the proposed procedural schedule contained herein, deny the Winfield Motion, and grant all other appropriate relief.

Respectfully submitted,

/s/ Robert M. Glennon
Robert M. Glennon, Attorney for
Crown Point, IN

/s/ Mark W. Cooper
Mark W. Cooper, Attorney for
Crown Point, IN

² Had Winfield served its Regulatory Ordinance upon Crown Point as Crown Point served its Regulatory Ordinance on Winfield, Winfield would not have filed at the Commission earlier than Crown Point. Had Winfield even served its Petition in this Cause on Crown Point, the two Petitions would have been filed closely in time. Now Winfield erroneously argues a timing advantage resulting from its failure to serve Crown Point.

Certificate of Service

I hereby certify that the foregoing Motion and Response was served upon the following
by delivering a copy thereof electronically this 3rd day of March 2025.

Daniel LeVay
Indiana Office of Utility Consumer Counselor
115 West Washington St., Suite 1500S
Indianapolis, IN 46204
dlevay@oucc.in.gov
infomgt@oucc.in.gov

David M. Austgen
AUSTGEN KUIPER JASAITIS P.C.
130 N. Main St.
Crown Point, IN 46307
akapc@austgenlaw.com

J. Christopher Janak
Jacob Antrim
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Ste. 2700
Indianapolis, IN 46204
cjanak@boselaw.com
jantrim@boselaw.com

Brett R. Galvan
121 N. Main Street
Hebron, IN 46341
brettgalvanlaw@gmail.com

Jonathan Lotton
LBL Development, LLC
14400 Lake Shore Dr.
Cedar Lake, IN 46303
jonathan.lotton27@gmail.com

Steven W. Krohne
Jack M. Petr
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, IN 46282-0200
steven.krohne@icemiller.com
jack.pet@icemiller.com

/s/ Mark W. Cooper
Mark W. Cooper

Mark W. Cooper
Attorney at Law, No. 4139-49
1449 N. College Ave.
Indianapolis, IN 46202
(317) 635-8312
Fax: (317) 685-2666
attymcooper@indy.rr.com

Robert M. Glennon, No. 8129-49
Robert Glennon & Associates
3697 N. 500 E.
Danville, IN 46122
(317) 694-4025
robertglennonlaw@gmail.com