

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'S REPLY TO TOWN OF WINFIELD'S OBJECTION TO
MOTION TO VACATE PROCEDURAL SCHEDULE AND TO CONSOLIDATE
AND TO WINFIELD'S MOTION TO STRIKE THE AFFIDAVIT OF ALBERT STONG**

The City of Crown Point, Indiana ("Crown Point"), by counsel, submits its Reply to Petitioner, the Town of Winfield, Lake County, Indiana's ("Winfield") Objection to Crown Point's Motion to Vacate Procedural Schedule and to Consolidate this Cause with Cause No. 46035 and to Winfield's Motion to Strike the Affidavit of Albert Stong. In support of its Reply, Crown Point states as follows:

I. INTRODUCTION

The Commission must grant Crown Point's Motion to Intervene, Motion to Vacate Procedural Schedule and Motion to Consolidate this Cause with Cause No. 46035 (collectively "Crown Point Motions") for the following reasons: (1) there is a clear dispute over which utility, Crown Point or Winfield, should and actually can provide service to an area that is disputed between Crown Point's Regulatory Ordinance and Winfield's Regulatory Ordinance (the "Disputed Area"); (2) the Commission must resolve that dispute in accordance with the public interest factors under Ind. Code § 8-1.5-6-9(c); (3) there are common issues of law and fact presented by this Cause and Cause No. 46035 that necessitate consolidation; (4) the current

Procedural Schedule in this Cause prejudices both the Commission and Crown Point by preventing Crown Point from presenting its evidence and denying the Commission the most complete information on critical public interest factors; and (5) Crown Point's procedural due process rights were violated by Winfield not providing notice of this Cause or even the approval of its regulatory ordinance, and Winfield's assertions otherwise should be rejected. Finally, the Commission must deny Winfield's Motion to Strike the Affidavit of Albert Stong, P.E. ("Stong Affidavit") because the Stong Affidavit complies with the requirements for affidavits under 170 IAC 1-1.1-12(b) and clearly does not operate as direct testimony as claimed by Winfield.

II. PROCEDURAL HISTORY

1. August 7, 2023: The Crown Point Common Council adopted Ordinance No. 2023-08-19 establishing a service area for water and wastewater utility services ("Crown Point Ordinance"). See Crown Point's *Verified Petition*, Cause No. 46035 at 2, ¶ 7.
2. August 28, 2023: Crown Point provides written notice of the Crown Point Ordinance to Winfield and all other neighboring municipalities and utilities, seeking the opportunity to discuss and resolve any concerns they may have had. See Crown Point's *Petition to Intervene*, Cause No. 45992 at 2, ¶ 5.
3. November 20, 2023: Crown Point attorney David W. Westland ("Westland") submits an Indiana Access to Public Records Act ("APRA") request to Winfield attorney David M. Austgen ("Austgen") requesting production of records pertaining to Winfield's sewer utility. See Winfield's Objection to City of Crown Point, Indiana's Motion to Vacate Procedural Schedule and to Consolidate, Exhibit 1 at 21-23. Notably, the APRA request did not contain any reference to current or planned regulatory ordinance approval filings with the Commission. *Id.*

4. November 27, 2023: Just 15 days before Winfield passes its regulatory ordinance and 16 days before it files this Cause, Winfield attorney Austgen responds in writing to Crown Point attorney Westland that the breadth and volume of the requested records would take some time to compile and that Austgen would routinely follow up with Westland on the status of Crown Point's APRA request. See *Id.*, Exhibit 2 at 25.

5. December 12, 2023: The Winfield Town Council adopted Ordinance No. 358 establishing Winfield's Sewer Service Area (the "Winfield Ordinance"). See Winfield's *Petition*, Cause No. 45992 at 2, ¶ 6. At this time, Winfield clearly knows that its Sewer Service Area overlaps with Crown Point's Sewer Service Area because Winfield was on notice of Crown Point's Sewer Service Area since August 28, 2023. But Winfield does not notify Crown Point.

6. December 13, 2023: Winfield files its *Petition* in this Cause and lists the Crown Point and Community Utilities of Indiana, Inc. as utilities that might be impacted by the Winfield Sewer Service Area. See Winfield's *Petition*, Cause No. 45992 at 2-3, ¶ 12. But, again, Winfield does not notify Crown Point.

7. January 10, 2024: Without Crown Point's prior notice or participation, an agreed procedural schedule between only Winfield and the Indiana Office of the Utility Consumer Counselor ("OUCC") is approved by the Commission, setting April 2, 2024 as the deadline for the OUCC and all intervenors to prefile prepared testimony and exhibits for their respective cases-in-chief with the Commission.

8. February 15, 2024: Crown Point attorney Westland receives a file box of thousands of pages of documents sent by Winfield in responding to Crown Point's APRA request (the "APRA Box"). See Exhibit A, Affidavit of David W. Westland. At this time, there was no indication or actual communication from Winfield to Crown Point of the passage of the

Winfield regulatory ordinance or the existence of this Cause, even though Crown Point was listed as an affected utility in Winfield's Petition.

9. March 6, 2024: The APRA Box is turned over to Commonwealth Engineering, Inc. ("Commonwealth") for engineering review of the thousands of pages of materials provided by Winfield. See Exhibit B, Counter-Affidavit of Albert Stong, P.E., ¶ 7.

10. March 29, 2024, Good Friday: Commonwealth engineer Albert Stong, P.E. finds the Winfield Ordinance and the Winfield Petition buried in the APRA Box and immediately brings it to the attention of Crown Point. See Stong Counter-Affidavit, ¶ 8.

11. April 1, 2024 to April 2, 2024: Crown Point files the following documents in this Cause: (1) Motion to Consolidate this Cause with Cause No. 46035; (2) Petition to Intervene; (3) Motion to Vacate Procedural Schedule; and (4) Affidavit of Albert Stong, P.E. ("Stong Affidavit") Also, on April 1, 2024, Crown Point filed its Verified Petition for approval of its August 7, 2023 Regulatory Ordinance including the Disputed Area of economic and residential development around S.R. 231 and I 65.

12. April 4, 2024: Winfield files its Objection to Crown Point's Motion to Vacate Procedural Schedule and to Consolidate and its Motion to Strike Affidavit of Albert Stong P.E in this Cause.

13. April 8, 2024: Winfield files its Corrected Motion to Substitute and Supplement Exhibits in this Cause, correcting the Affidavit of Michael P. Duffy, Jr., P.E. and filing the new Affidavit of Nick Bellar.

III. ARGUMENT

A. The Commission Must Grant the Crown Point Motions Because a Dispute Exists Between the Parties as to Who is Better Suited to Provide Service to the Disputed Area.

14. Pursuant to Ind. Code § 8-1.5-6-9, the Commission is required to resolve all issues presented in a petition in a manner which comports with the public interest. See Ind. Code § 8-1.5-6-9(c). In making its determination of public interest, the Commission must consider the public interest factors identified in Ind. Code § 8-1.5-6-8(g). Those factors are as follows:

- a. The ability of another utility to provide service in the regulated territory.
- b. The effect of a commission order on customer rates and charges for service provided in the regulated territory.
- c. The effect of a commission order on present and future economic development in the regulated territory.
- d. 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.
- e. Any other factors the commission considers necessary.

15. The issue before the Commission in this Cause is the ability of another utility, Crown Point, to provide better service to the Disputed Area. The Crown Point Ordinance was passed long before the Winfield Ordinance. In fact, on August 28, 2023, Crown Point's utility regulatory attorney served a copy of its ordinance on Winfield's attorney, who has appeared in this Cause. This was simple, transparent good faith service and an attempt to resolve any questions or concerns Winfield might have with the Crown Point Ordinance service territory.

16. This dispute arose on December 12, 2023, the date when the Winfield Town Council passed the Winfield Ordinance. The very next day, Winfield filed its Petition in this Cause and listed Crown Point as an affected utility. As explained above, Winfield had notice of

the Crown Point Ordinance on August 28, 2023, but the parties have no mutual agreement similar to those reached between Crown Point and three other neighboring municipalities and utilities. See Crown Point's *Verified Petition*, Cause No. 46035 at 4, ¶ 15.

17. Therefore, because an actual dispute exists between Crown Point and Winfield, the Commission must, after fair presentation of evidence by all parties, issue an order resolving the dispute and must do so in accordance with the public interest, measured by the public interest factors under Ind. Code § 8-1.5-6-8(g).

18. In its Objection, Winfield attached the Affidavits of Micheal P. Duffy, Jr., P.E., Jeremy C. Lin, P.E., and Nick Bellar in an effort to challenge the factual matters addressed in the Stong Affidavit. In response, Crown Point has attached the Counteraffidavit of Albert Stong, P.E. and the Affidavits of Attorney David M. Westland and Anthony Schlueter to this Reply as Exhibit B, Exhibit C and Exhibit D, respectively. Crown Point asserts that the above affidavits present additional compelling reasons why the Commission must grant the Crown Point Motions; the dueling affidavits inherently demonstrate that a genuine dispute of issues exists as related to Crown Point's and Winfield's respective abilities to serve the Disputed Area and the effect that such service will have on public interest, and in sum mandate a full evidentiary record and hearing.

19. First, the ability for Winfield to provide service to the Disputed Area is very questionable at best. After Mr. Stong pointed out the high costs and long delays associated with Winfield's initial plan to serve the Disputed Area, see Stong Affidavit, ¶ 19, Winfield quickly came up with a new plan. Winfield's new proposed plan is that the Disputed Area will be served by installing a force main to the edge of the Disputed Area that is connected to its existing Gibson Street Lift Station ("Lift Station"), which is located approximately 4,000 feet from the

Disputed Area. *See* Duffy Affidavit, ¶ 8. According to Winfield, it can “easily use its existing lift station and the proposed force main...to meet the needs of the Disputed Area if such area develops more quickly than the southern portion of Winfield’s proposed service area,” and that the existing lift station “has sufficient capacity to handle additional flows.” *Id.* at ¶¶ 9, 10.

20. This assertion ignores at least two key facts: First, the capacity of the Lift Station is already committed to the new Taft Middle School located outside of the Disputed Area and to the future development of approximately 330 single family homes. *See* Stong Counteraffidavit, ¶ 10. Thus, the assertion that Winfield’s existing lift station has sufficient capacity to handle the anticipated flows from the Disputed Area is misleading based on the clear capacity issues for the Lift Station. Second, assuming, *arguendo*, that the Lift Station would have some capacity available, the area where Winfield’s Lift Station is located and the area proposed to be served by it, are not expected to develop at a pace comparable to the southern portion of the Disputed Area, where current and expected development is occurring along US 231.¹ Thus, the assertion that the Lift Station could be used to meet the needs of the Disputed Area if such area develops more quickly than the southern portion of the Disputed Area is again misleading because the Lift Station is not located in the area of likely development in the Disputed Area. *See* Stong Counteraffidavit, ¶ 11.

21. Conversely, Crown Point’s existing sanitary sewer manhole is located approximately 5,000 feet west of the expected area of initial development in the US 231 Corridor. Crown Point will only need to install a sewer main that connects to its existing

¹ See, e.g., Franciscan Health, Franciscan Health Crown Point Marks Construction Milestone With Topping Off Ceremony, February 14, 2022, <https://www.franciscanhealth.org/about/news-and-media/franciscan-health-crown-point-marks-construction-milestone-with-topping-off-ceremony> (updating on status of construction on new \$200 million Franciscan Health Crown Point hospital at Interstate 65 and U.S. 231).

sanitary sewer manhole to serve the Disputed Area. *See Stong Counteraffidavit*, ¶ 14. Crown Point estimates that the costs of improvements needed to effectuate service to the Disputed Area are approximately \$1 million dollars and that such improvements could be made within seven (7) months or sooner. *See Id.*

22. Second, while Winfield claims that it will be able to provide service to the Disputed Area within nine (9) months at a cost of \$1 million dollars, it fails to identify any plan or associated costs with conveying flow from the likely area of development to the northeastern corner or building out its facilities to service the entire Disputed Area. *See Stong Counteraffidavit*, ¶ 12. However, Crown Point is more readily able to serve the entire Disputed Area through its new Iowa Street Lift Station and Wastewater Treatment Plant, which will be constructed regardless of whether Crown Point or Winfield ultimately serves the Disputed Area. *See Id.* at ¶ 14. As explained above, the capacity issues at Winfield's Gibson Lift Station limits Winfield's ability to serve the portion of the Disputed Area in close proximity to its existing facilities, and its ability to provide service to the entire Disputed Area cannot be effectuated without it incurring significant costs in improving its utility infrastructure as identified by the Stong Affidavit. *See Stong Counteraffidavit*, ¶ 18.

23. Third, Winfield's contention that Crown Point's ability to serve the Disputed Area hinges on the construction of its new wastewater treatment plant is incorrect and misleads the Commission. *See Duffy Affidavit*, ¶ 12; *Lin Affidavit*, ¶ 10. As explained in the Stong Counteraffidavit, the construction of Crown Point's new wastewater treatment plant and any associated Antidegradation Standards have no effect on Crown Point's ability to provide service to the Disputed Area by its existing sanitary sewer manhole and proposed sewer main installation. *See Stong Counteraffidavit*, ¶ 15. Crown Point's new wastewater treatment plant

will be constructed regardless of whether it or Winfield ultimately provides service to the Disputed Area and its construction is not confined to the sole purpose of providing service to the Disputed Area.

24. Fourth, notwithstanding the fact that Winfield's ability to service the Disputed Area is entirely limited due to the capacity issues of its Lift Station, the effect of a Commission order granting Winfield the ability to serve the Disputed Area could have a negative impact on the economic development of the Disputed Area because the location of its Lift Station is largely confined to an area where economic development is not expected to occur. *See Stong Counteraffidavit*, ¶ 12. As described above, Crown Point's existing facilities are located closer in proximity to the area of expected economic development along the US 231 Corridor, and the lack of similar capacity issues presented by Winfield's Lift Station would likely result in the continuation of economic development along the US 231 Corridor in the Disputed Area.

25. Therefore, because the public interest factors are clearly implicated by the dispute between Winfield and Crown Point for servicing the Disputed Area, the Commission must grant the Crown Point Motions and consolidate this Cause with Cause No. 46035 and vacate the current procedural schedule for this Cause so that Crown Point may present its evidence so that the Commission can resolve this dispute in accordance with the public interest.

B. Consolidation is Appropriate Because the Causes Share Common Issues of Fact and Law and Consolidation Will Not Unduly Broaden the Issues.

26. Pursuant to 170 IAC 1-1.1-19(a), causes sharing common issues of fact or law may be consolidated at the discretion of the presiding officer.

27. As explained above, this Cause and Cause No. 40635 share common issues of fact, namely the issue of providing service to the Disputed Area. Additionally, Ind. Code § 8-1.5-6 *et seq.* govern both Cause Nos. 45992 and 46035.

28. Winfield's proposed sewer regulatory ordinance area directly overlaps a southeast portion of Crown Point's Regulatory Ordinance and implicates the provision of service in the Disputed Area. Thus, consolidation would not unduly expand the issues of this Cause, but would in fact lead to an orderly resolution of which is the best provider of service in the Disputed Area that is in line with the public interest standards under Ind. Code § 8-1.5-6-8(g). The disputed area is an essential issue in both Causes.

29. The fact that Crown Point's Petition seeks approval of both a regulated water and sewer territory does not foreclose the need for consolidation of Causes 45992 and 46035. The requirements for consolidation are merely that causes share common issues of fact or law, not that such causes be identical in every aspect. These Causes can clearly be consolidated for purposes of selecting the final service provider to the Disputed Area. Attempting to hear and resolve these Causes separately would be procedurally very difficult, inefficient, duplicative, prejudice the interests of one or both Parties and not serve the public interest.

30. Winfield's contention that the Crown Point Ordinance "may not even be the finalized ordinance" is factually incorrect. The Crown Point Ordinance was approved by the Crown Point City Council on August 7, 2023. See Stong Counteraffidavit, ¶ 6. The Ordinance is a final ordinance in all respects. However, the Crown Point Ordinance, like any other regulatory ordinance presented for Commission approval by a municipality, may be subject to amendment as allowed or directed by the Commission based on the evidence presented.² Such amendments can satisfy the interest of other nearby affected utilities and promote efficiency and issue elimination.

² See *City of New Albany*, Cause No. 44860, 2018 Ind. PUC LEXIS 114, *101 (IURC 2018).

31. As such, because this Cause and Cause No. 46035 present common issues of fact and law and both call into question who should serve the Disputed Area, consolidation of this Cause with Cause No. 46035 is appropriate under 170 IAC 1-1.1-19(a) and would promote Commission efficiency in resolving the dispute between Crown Point and Winfield in accordance with the public interest factors under Ind. Code § 8-1.5-6-8(g). Therefore, the Commission should grant Crown Point's Motion to Consolidate this Cause with Cause No. 46035.

C. The Procedural Schedule in This Cause Must be Vacated and the Causes Must be Consolidated.

1. Crown Point and the Commission are Severely Prejudiced by the Lack of Adequate Notice of Winfield's Regulatory Ordinance and the Filing of This Cause.

32. Winfield asserts that Crown Point's statement that it did not know of the passage of Winfield's Regulatory Ordinance or discover the filing of this Cause until March 29, 2024 is "simply false," claiming that Crown Point has known about Winfield's Ordinance and the filing of its Petition in this Cause since at least February 8, 2024, evidenced by the Affidavit of David M. Austgen.³

33. While Exhibit 2 to the Austgen Affidavit does contain a letter from Mr. Austgen to Crown Point Attorney David Westland purporting to show that Winfield hand-delivered all of the many documents requested by Crown Point in its November 20, 2023 APRA request on February 8, 2024, the APRA Box was not received by Mr. Westland until February 15, 2024. *See*

³ By way of comparison, on August 28, 2023, IURC counsel for Crown Point gave notice to Winfield and all other affected utilities by providing them a copy of Crown Point's Regulatory Ordinance. That is the fair and proper way to give notice to "affected utilities." Conversely, Winfield buried a copy of its Regulatory Ordinance and a copy of its Petition in this Cause in a box of APRA Documents that was received by Crown Point on February 15, 2024, more than two months after Winfield filed its Petition in this Cause. Such efforts of stealth and subterfuge on the part of Winfield serve to deny Crown Point its basic due process rights and denies to the Commission the ability to resolve this service dispute in accordance with the public interest.

Exhibit A, Affidavit of David W. Westland. Moreover there was no communication by Winfield that the box contained a copy of its regulatory ordinance or the Petition filed in this Cause.

34. The APRA Box was then given to Commonwealth Engineering, Inc. (“Commonwealth”) on March 6, 2024. *See* Stong Counteraffidavit, ¶ 7. The APRA Box contained several thousand pages of documents. *See id.*, ¶ 8. No one for Crown Point or Commonwealth had any reason to know or even suspect that the APRA Box contained any time-sensitive material, such as the Winfield Ordinance or the Petition filed in this Cause.

35. In fact, it was Mr. Stong that found the Winfield Ordinance and the Petition filed in this Cause buried within APRA Box’s thousands of pages of documents on the Good Friday holiday, March 29, 2024, prompting Mr. Stong to alert Crown Point to the existence of those documents that same day. *See* Stong Counteraffidavit, ¶ 8. It is at this time that Crown Point first became aware of the pendency of this Cause and the existence of the Winfield Regulatory Ordinance. The existing procedural schedule in this Cause required intervenor prefiling on April 2, 2024.

36. Clearly, Crown Point could not possibly conduct discovery, prepare and file evidence in four days, and thus the existing procedural schedule prevented Crown Point’s full participation in this Cause. Crown Point’s inability to fully participate not only severely prejudices Crown Point, but it also prejudices the Commission by inhibiting its ability to fully assess the issues presented by this dispute and resolve them in a manner that promotes the public interest.

37. Winfield simply does not want the Commission to see Crown Point’s evidence. They do not want the Commission to learn that Crown Point is the better choice for serving the Disputed Area. That is why Winfield did not properly notify Crown Point of passage of its

Ordinance or the filing of this Cause in December 2023, and it is why Winfield now opposes Crown Point's request to offer evidence today. Winfield has acted to exclude Crown Point from the Commission's action on the S.R. 231/I-65 area which Winfield knew was already claimed by Crown Point. As detailed above, Winfield's proposal in this Cause significantly affects the public interest. Winfield proposes an exclusive regulated sewer territory, which will impact, for better or worse, customers, nearby municipalities, economic development and the public interest for decades to come. Yet, Winfield argues to deny the Commission the ability to hear all of the relevant evidence from the adjacent affected Crown Point utility before determining what best serves the public interest.

38. Moreover, Winfield had every opportunity to inform Crown Point of its intentions to pass its Ordinance and file its Petition in this Cause when it, along with all other neighboring municipalities and utilities, was provided with written notice of Crown Point's Ordinance on August 28, 2023. That notice provided Winfield with the opportunity to discuss any concerns that Winfield may have had with Crown Point's Ordinance. See City of Crown Point's *Petition to Intervene*. Crown Point's good faith transparent notice, and basic fair play, should have resulted in Winfield providing a reciprocal copy of its Ordinance when it was passed on December 12, 2023, but Winfield did not do so.

2. Winfield's Inadequate Provision of Notice Violates Crown Point's Basic Due Process Rights.

39. As a general matter, due process requires notice, an opportunity to be heard and an opportunity to confront witnesses. See *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008) (quoting *Ind. State Bd. of Educ. v. Brownsburg Cmty. Sch. Corp.*, 842 N.E.2d 885, 889 (Ind. Ct. App. 2006)). The opportunity to be heard "is a fundamental requirement of due process." *Id.*

(quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950)).

40. The failure to properly follow statutory requirements can lead to a violation of procedural due process rights. *Melton v. Ind. Ath. Trainers Bd.*, 53 N.E.3d 1210, 1220 (Ind. Ct. App. 2016).

41. Because Crown Point was identified as an affected municipality in Winfield's Petition in this Cause, Crown Point must be given notice and an opportunity to be heard to satisfy basic due process.

42. Winfield's contention that Ind. Code § 8-1.5-6 *et seq.* imposes no explicit notice requirement on a municipality to provide notice of the filing of a Petition for Commission approval to any other affected municipality or utility is an incorrect reading of that statute. See Winfield's *Objection to Crown Point's Motion to Vacate Procedural Schedule and to Consolidate* at 3, ¶ 6.

43. The statute requires that affected municipalities and utilities be listed on the Petition pursuant to Ind. Code § 8-1.5-6-9(b)(4). The statute further imposes a notice and hearing requirement under Ind. Code § 8-1.5-6-9(c), and such notice provision clearly means that notice must also be given to the affected municipalities and utilities listed under § 9(d)(4). Requiring that such entities be listed in a Petition makes no sense if no notice of the Petition is required to be given at the time the Petition is filed. The "affected utilities" would not have to be listed on the Petition if it was not expected that they would have fair opportunity to present evidence on the statutory criteria of which utility should be allowed to service a disputed area. To list a municipal utility as an "affected utility" and then not tell them they are affected in a service area

dispute case is an irrational, nonsensical and unfair result. The “affected utility” needs to receive notice so it may participate in the case.

44. The only reading of Ind. Code § 8-1.5-6 *et seq.* which comports with basic procedural due process is that notice must be given to the municipalities and utilities listed under Ind. Code § 8-1.5-6-9(b)(4) at the time a Petition is filed. Without such notice, the notice and hearing requirements of Ind. Code § 8-1.5-6-9(c) cannot be satisfied in a manner comporting with procedural due process because an affected municipality or utility will lack the opportunity to be heard and confront the testimony filed by a petitioner. *See Morton*, 898 N.E.2d at 1199 (“[g]enerally stated, due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses”).

45. The statutory notice requirement under Ind. Code § 8-1.5-6-9(c) would have no value in ensuring that disputes such as this are resolved by the Commission in accordance with the public interest if the affected utilities listed on a Petition are not required to receive notice that a Petition has been filed in the first place. Indeed, what good is it to list “potentially affected” utilities in the Petition if they are never told they are potentially affected?

46. Moreover, absent the notice requirement established above, IC 8-1.5-6 *et seq.* encouragement of reaching a mutual agreement could not be fully effectuated because affected municipalities and utilities would not have the opportunity to participate in negotiations within the filed Commission proceeding.

47. Crown Point’s provision of written notice and invitation to discuss and resolve potential disputes to all neighboring municipalities and utilities evidences its good faith attempt to reach a mutual agreement with any affected municipalities and utilities prior to filing its Petition in Cause No. 46035. Three such agreements with neighboring utilities have been

reached and will be described in Crown Point's testimony. See Crown Point's *Verified Petition*, Cause No. 46035, ¶ 15. Crown Point believed working with neighboring entities and assuring the Commission heard from all potentially affected utilities, as required by IC 8-1.5-6-9(b)(4) and (c), best serves the area and the public interest.

48. Winfield's decision to ignore Crown Point's good faith efforts frustrates the purpose of Ind. Code § 8-1.5-6-9(c) by limiting the ability of affected municipalities and utilities from participating in the creation of a mutual agreement or from reasonably investigating a proposed service plan due to the lack of notice.

49. As such, Winfield's contention that Crown Point has had knowledge of the Winfield Ordinance and this Cause since at least February 8, 2024 is directly contradicted by the affidavits of Westland and Stong, and should be disregarded by the Commission. Additionally, because Winfield's failure to provide appropriate notice to Crown Point prejudices both Crown Point and the Commission and violates Crown Point's basic due process rights, the Commission must grant the Crown Point Motions and consolidate this Cause with Cause No. 46035 and vacate the current procedural schedule in this Cause so that Crown Point has the opportunity to put forth its case-in-chief in this Cause as an affected municipality identified under Ind. Code § 8-1.5-6-9(b)(4), which in turn will give the Commission the ability to adequately resolve this dispute in a manner comporting with the public interest based on the public interest factors under Ind. Code § 8-1.5-6-8(g).

D. The Commission Should Deny Winfield's Motion to Strike the Stong Affidavit Because it Satisfies the Requirements for Supporting Affidavits Under 170 IAC 1-1.1-12(b).

50. In support of its Motions filed in this Cause, Crown Point submitted the Affidavit of Albert Stong, P.E. See Stong Affidavit. 170 IAC 1-1.1-12(b) is clear that motions which are based on a matter that does not appear of record shall be supported by affidavit. There is no

dispute that Crown Point's Motion to Intervene, Motion to Consolidate this Cause with Cause No. 46035 and Motion to Vacate Procedural Schedule are based on a matter, or matters, that did not appear in the record of this Cause.

51. First, the Stong Affidavit makes clear that it was based on a hurried, very limited review of Winfield's filings in this Cause, publicly available documents, Mr. Stong's knowledge of Crown Point's sewage utility, its service area and his engineering experience. *See* Stong Affidavit, ¶ 8. The Stong Affidavit is clear that because of the impracticable timeframe for intervenor testimony and exhibits to be filed in this Cause, based on Crown Point's lack of notice as explained above, Mr. Stong needed more time to fully conduct further investigation of the Winfield proposal and its deficiencies and accurately describe how Crown Point can serve the area south of Winfield with better quality, more efficient, more available, lower capital cost sewage service. *See id.*, ¶ 9.

52. Winfield's assertion that the Stong Affidavit cannot be relied on to describe how Crown Point learned of this Cause because Mr. Stong is not an official or employee of Crown Point is incorrect and, admittedly, confusing. The Commission can clearly infer that Mr. Stong has personal knowledge of whether or not Crown Point received adequate notice from Winfield based on his twenty-five (25) years of providing engineering services to Crown Point and his familiarity with Crown Point's water and sewer systems, service area and future plans and customers. In fact it is he that discovered the lack of service by Winfield when he found Winfield's petition in in the APRA Box. He has been Crown Point's engineer for 25 years and to pointlessly argue that Mr. Stong is not an official or employee of Crown Point does nothing to

negate the clear under oath statement of Mr. Stong that all material statements made in the Stong Affidavit are from his personal knowledge.⁴

53. Moreover, Winfield's contention that the Stong Affidavit substantively operates as direct testimony and fails to comply with the requirements for direct testimony under 170 IAC 1-1.1-18(g) is both inaccurate and inapposite. As stated above, the Stong Affidavit is an affidavit required by 170 IAC 1-1.1-12(b), not testimony for hearing governed by 170 IAC 1-1.1 18(g). The Commission Rules do not specify the form of affidavit required by 170 IAC 1-1.1-12 (b) and, thus, a reasonable format is acceptable. It is curious that Winfield somehow mistakenly mischaracterizes the Stong Affidavit, properly offered to support pre-hearing filings, as direct testimony, only appropriate at hearing. Crown Point's hearing testimony and exhibits in this Disputed Area controversy will take longer to prepare than over an Easter weekend and will be more thorough and compelling than what was hurriedly put together to bring this controversy to the Commission's attention. Even assuming, *arguendo*, that the Stong Affidavit was direct testimony, Section 18 (g) provides that direct testimony of a witness may be presented in written question and answer form, but does not mandate that such form be adhered to. Therefore, Winfield's argument of non-compliance with 170 IAC 1-1.1 18(g) cannot support its Motion to Strike the Stong Affidavit.

54. Finally, Winfield's attempt to discredit the Stong Affidavit's statement that Winfield and Crown Point had discussions for Crown Point to provide service within Winfield's existing service area due to a stated lack of Winfield's ability to provide sanitary sewer service to

⁴ Winfield's direction to *Gallatin Group v. Central Life Assur. Co.*, 650 N.E.2d 70, 73 (Ind. Ct. App. 1995) for the general requirements for affidavit reliability intentionally ignores and omits the Court's next sentence, which acknowledges that "an affidavit need not contain an explicit recital of personal knowledge when it can be inferred from its contents that the material parts thereof are within the maker's personal knowledge." *Id.*

those areas through the Bellar Affidavit must fail. *See* Affidavit of Nick Bellar, ¶ 8. The fact is that Winfield expressed its inability to serve the wastewater needs of its future growth within its jurisdiction limits on February 9, 2022 at a lunch meeting which Mr. Bellar attended. *See Exhibit D*, Affidavit of Anthony Schlueter, ¶¶ 4-5. It was at that time that former Winfield Councilman Gerry Steiner asked the representatives of Crown Point whether Crown Point would serve those areas within Winfield's jurisdictional limits, specifically to the west of Colorado Street. *See Id.*, ¶ 5. Therefore, the statement in the Stong Affidavit that Winfield and Crown Point were in discussions for Crown Point to provide service within Winfield's existing service area due to a stated lack of Winfield's ability to provide sanitary sewer service to that area is factually correct, even though the Bellar Affidavit suggests otherwise.

55. Because the Stong Affidavit is limited in scope as to the information it contains and is clearly not a full evidentiary detailed discussion of Winfield's proposal and its associated deficiencies, and does not have the benefit of information obtained through discovery in this Cause, it clearly serves the limited purpose of supporting Crown Point's Motion to Intervene and Motion to Vacate Procedural Schedule and supports consolidation of the Causes in accordance with 170 IAC 1-1.1-12(b). Moreover, because the Stong Affidavit is clearly based on Mr. Stong's personal knowledge as detailed above, it can be relied upon by the Commission in determining whether to grant the Crown Point Motions. Therefore, the Commission should deny Winfield's Motion to Strike the Stong Affidavit.

E. While an Intervenor May Take a Case as it Finds it, the Failure of Winfield to Disclose an Essential Issue of Known Disputed Area, Other Facts and Effect on Public Interest in this Case Outweighs Absolute Adherence to the Rule.

56. An intervening party typically takes the case as it finds it pursuant to 170 IAC 1-1.1-11. But it is simply a fact that the information and issues in a case may change and develop

as new information comes to light. In this case, the new essential information of the Disputed Area in the economic development areas of US 231 and I-65 was known by Winfield but concealed from the Commission. The new information is also that Crown Point never received notice of this Cause, and has filed a competing regulated territory case in Cause No. 46035 claiming the Disputed Area, and that Crown Point can better serve the Disputed Area in accordance with the public interest factors outlined under Ind. Code § 8-1.5-6-8(g).

57. Specifically, Crown Point can and will file direct testimony and can do so without unreasonably extending the timeframe for this Cause for the Commission to issue a final order. By doing so Crown Point will be assisting the Commission in its ability to fully resolve the issue of service to the Disputed Area by providing it with additional statutorily relevant information that will identify and explain the deficiencies in Winfield's proposed plan and why Crown Point will be the better service provider.

58. As explained above, Crown Point did not intentionally decide to wait until April 1, 2024 to file its Petition to Intervene in this Cause, and it would have done so much earlier had it been provided with notice of Winfield's intentions to file this Cause.

59. Winfield's attempts to assert that Crown Point has mislead the Commission regarding when Crown Point knew of this Cause is a clear misleading statement in and of itself. It is in fact Winfield that has engaged in dilatory gamesmanship by failing to advise Crown Point of its Regulatory Ordinance and the filing of this Cause and failing to disclose to the Commission that the US 231 and I-65 development areas are disputed.

60. Additionally, Winfield's suggestions that Crown Point somehow knew about the Petition initiating this Cause since February 8, 2024 because a copy of it was included with several thousand pages of documents in the APRA Box is laughable. Not only did Crown Point

not receive the APRA Box until February 15, 2024, but had Crown Point not had the forethought, or good luck, to request largely engineering documents from Winfield in the first place, there is no knowing when Crown Point would have finally learned of this Cause. Commission petition approval by ambush is not the way service area utility providers should be chosen.

61. As argued above, because the notice and hearing requirements of Ind. Code § 8-1.5-6-9(c) cannot be satisfied without having notice given to the affected municipalities under Ind. Code §8-1.5-6-9(b)(4), Crown Point asserts that the current procedural schedule must be vacated so that Crown Point has the full opportunity to conduct discovery, submit full direct testimony and associated exhibits to refute Winfield's proposed service plan for the Disputed Area and show that Crown Point is the better and preferred service provider. By vacating the current procedural schedule and consolidating these Causes, the Commission will have the ability to receive all evidence of the present dispute and can adequately make a determination as to the provider of service to the Disputed Area in accordance with the public interest. Therefore, the Commission should find that the public interest need to hear competing Disputed Area evidence outweighs any arguments about strict adherence to 170 IAC 1-1.1-11 regardless of the case facts, and should grant the Crown Point Motions.

WHEREFORE, the City of Crown Point, Indiana, by counsel, respectfully requests that the Commission grant Crown Point's Motion to Intervene in this Cause, Motion to Consolidate this Cause with Cause No. 46035 and Motion to Vacate Procedural Schedule, convene a pre-hearing conference to set a consolidated case schedule and for all other necessary and proper relief.

Respectfully submitted,

By: /s/ Mark W. Cooper

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Attorneys for Crown Point

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following via electronic mail this 15th day of April, 2024:

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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 TERRITORY FOR THE) CAUSE No. 45992
TOWN'S MUNICIPAL SEWER SYSTEM)
PURSUANT TO IND. CODE § 8-1.5-6 ET SEQ.)

AFFIDAVIT OF DAVID W. WESTLAND

David W. Westland, being first duly sworn upon his oath or under the penalty of perjury, states as follows:

1. I am over the age of 21. My Affidavit is based upon my personal knowledge, and I am competent to testify about the matters set forth herein.

2. I am an attorney at law admitted to practice by the Supreme Court of Indiana in 1995. My law office is Westland & Bennett P.C., and is located at 2929 Carlson Drive, Suite 300, Hammond, IN.

3. I represent the City of Crown Point with regard to various matters, including a Public Records Request issued to the Town of Winfield.

4. On November 20, 2023, on behalf of the City of Crown Point, I forwarded a Request for Public Records to the Town of Winfield, c/o Attorney David M. Austgen (Exhibit "A").

5. That based upon a review of my records, the Town of Winfield responded to the records request on February 15, 2024, by delivering documents to my office.

6. That I was not present in my office on February 15, 2024, to receive the documents delivered by the City of Crown Point; however, on February 16, 2024, I forwarded an email to assistant Crown Point City Attorney, Alexander Kutanovski indicating that the documents were delivered on the day before (February 15, 2024).

Further Affiant sayeth not.

Date: 4/9/24


Exhibit A


David W. Westland, #18943-64

David W. Westland
Westland & Bennett P.C.
2929 Carlson Drive, Suite 300
Hammond, IN 46323
Phone: (219) 440-7550 Fax: (219) 440-7551

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Subscribed and sworn to before me, a Notary Public, this 9th day of April 2024


Dijah Dickerson, Notary Public

Resident of Lake County
My Commission Expires: 10/22/2026





Dijah Dickerson <ddickerson@westlandbennett.com>

Town of Winfield Access to Public Records Act Request

1 message

Dijah Dickerson <ddickerson@westlandbennett.com>

Mon, Nov 20, 2023 at 2:32 PM

To: akapc@austgenlaw.com

Cc: alex@kutanovskilaw.com, David Westland <dwestland@westlandbennett.com>

Good Afternoon Mr. Austgen:

Attached please find the correspondence regarding the above matter.

Thank you,

—
Dijah Dickerson, Legal Assistant
ddickerson@westlandbennett.com



WESTLAND & BENNETT P.C.

2929 Carlson Dr. Suite 300

Hammond, IN 46323

Phone: 219-440-7550

Fax: 219-440-7551

westlandbennett.com



2023-11-20 DWW-Austgen Re Town of Winfield Access to Public Records Act Request.pdf

306K

EXHIBIT

A



November 20, 2023

VIA EMAIL ONLY akapc@austgenlaw.com

David M. Austgen
130 North Main Street
Crown Point, IN 46307

RE: TOWN OF WINFIELD ACCESS TO PUBLIC RECORDS ACT REQUEST

Dear Mr. Austgen:

Enclosed herewith please find the topics and items that we are requesting that the Town of Winfield produce pursuant to the Indiana Access to Public Records Act. If you would like a more formal request or if you would like me to forward this request to the Town of Winfield directly, please let me know immediately and I will do so.

Otherwise, please let me know when you believe these records will be made available. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'D. Westland', written in a cursive style.

David W. Westland
E-mail dwestland@westlandbennett.com

DWW:dd

cc: Mr. Alex Kutanovski via email (alex@kutanovskilaw.com)

Exhibit A

Privileged Confidential Atty Work Product, Deliberative document, Prepared in anticipation of litigation.

1. Draft and final Town of Winfield Ordinance(s) regarding extension of utility service jurisdiction, however described, and all exhibits, together with any amendments after initial adoption;
2. Town of Winfield Sewer Use Ordinance, and all amendments, including exhibits;
3. Town of Winfield Sewer Rate Ordinance, and all amendments, including exhibits thereto;
4. Town of Winfield latest Sewer Rate Sufficiency Report(s), all exhibits, and any workpapers upon which said Sufficiency Report(s) is premised upon;
5. Town of Winfield Financing studies and reports for proposed sewer extension and improvements, all exhibits, and any amendments thereto, whether generated by City Employees or City Financial Advisor;
6. Town of Winfield Grant Applications for any future Sewer Services Extension Initiative in the Town of Winfield, and all attachments;
7. Town of Winfield Y2021, Y2022 and Y2023, to date, Monthly Report of Operations to IDEM;
8. Town of Winfield engineering studies and reports for Town of Winfield Sewer Extension and Improvement Project for Collection System and Treatment Facility in the past 36-months;
9. Town of Winfield survey documentation and legal descriptions for the proposed parcel or parcels upon which any planed extension of Collection System and/or Wastewater Treatment Facility equipment and structures are to be constructed;
10. Town of Winfield Comprehensive Master Plan, latest version, and any such plan for the previous five (5) years, including sewer services and related components;
11. All Town of Winfield Sewer Engineering reports for past 36-months for any Town of Winfield Collection System and Wastewater Treatment Plant Facility extensions, construction, initiative or undertaking;
12. All Town of Winfield reports to IDEM of non-compliance with City NPDES Permit(s), including all exhibits related to same;
13. All Town of Winfield communications with IDEM, or any other government body, regarding any planed sewer main extensions, Wastewater Treatment Plant Facility Improvements and sewer Jurisdiction Extension Project/Initiative for the last five (5) years;

Exhibit A

Privileged Confidential Atty Work Product, Deliberative document, Prepared in anticipation of litigation.

14. Town of Winfield Sanitary Sewer NPDES Permit(s), and any attachments or exhibits thereto currently in effect;
15. Town of Winfield communications with any and all units of local government adjoining Town of Winfield, or governmental units, and any elected or appointed or employed representatives of each of such units and adjacent governmental entities pertaining to Municipal Utility Extension and Jurisdiction including, but not limited to, any and all Developers, Lake County Government, and any other units.
16. All engineering, economic and financial studies, projections, feasibility analysis performed for or by Winfield within the last five years regarding: its future extension of sanitary sewer collection mains. The improvements to or construction of sewage treatment facilities. The growth of new development or housing starts and the demands that growth will place on Winfield's sewage treatment and collection systems.
17. Winfield's most recent 5, 10, 20, and 30 years engineering and financial plans to provide sewer and water service to area residents and business.

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.)	

COUNTER AFFIDAVIT OF ALBERT STONG P.E.

Albert Stong, being first duly sworn upon his oath or under the penalty of perjury, states as follows:

1. I am over the age of 21. My Counter Affidavit is based upon my personal knowledge, and I am competent to testify about the matters set forth herein.
2. I am a Professional Engineer, licensed in the State of Indiana, and a Senior Project Manager for Commonwealth Engineers, Inc. where I have been employed for the past 27 years.
3. I have provided professional engineering, design, construction support and all engineering services associated with the design, construction, expansion and operations of sewer and water utilities throughout Indiana.
4. I have worked with and provided engineering services to the City of Crown Point, Indiana ("Crown Point") for over 25 years and am very familiar with Crown Point's water and sewer systems, its facilities, its operations, its service areas, its future plans and its customers.
5. I am generally familiar with the utility systems operating near Crown Point, including those operated by the Town of Winfield, Indiana ("Winfield").
6. I am familiar with Ordinance No. 2023-08-19, passed by the Crown Point Common Council on August 7, 2023 (the "Crown Point Ordinance") and the service territory identified therein. I am additionally familiar with Ordinance No. 358, passed by the Winfield Town Council on December 12, 2023 (the "Winfield Ordinance") and the service territory identified therein. Further, I am familiar with the overlapping area of service territory common to

both the Crown Point Ordinance and the Winfield Ordinance that is the subject of this dispute (the “Disputed Area”).

7. On, or about, March 6, 2024, I received a file box (“Box”) of documents from the office of Attorney David Westland which contained Winfield’s response to Crown Point’s November 20, 2023, Public Records Act Request.

8. On, or about, March 29, 2024, I examined the contents of the Box which consisted of several thousand pages of documents, including to my complete surprise, Winfield’s December 12, 2024 Regulatory Ordinance and Documents relating to IURC Cause 45992. I then immediately advised Crown Point.

9. I have reviewed the affidavits of Michael P. Duffy, Jr., P.E., and Jeremy C. Lin, P.E. submitted by Winfield in support of its Objection to Crown Point’s Motion to Vacate Procedural Schedule and to Consolidate. I additionally have reviewed the Indiana Department of Environmental Management (“IDEM”) Virtual File Cabinet as it relates to Winfield’s sewer facilities and operations.

10. As an initial matter, upon further review of the material contained in the IDEM Virtual File Cabinet, I can now agree with Mr. Duffy that the Winfield’s proposed wastewater treatment plant (“WWTP”) expansion is from 0.8 to 1.6 MGD rather than from 0.4 to 0.8 MGD as stated in my first affidavit. Winfield’s original engineering plan to serve the Disputed Area and the remainder of its requested new area was to install a new gravity sewer and lift stations within the Disputed Area. That plan would have been enormously expensive. However, now because Winfield has changed its original proposed plan to serving the Disputed Area through its existing Gibson Street Lift Station (the “Gibson Lift Station”), any expansion of Winfield’s WWTP is no longer directly related to service in the Disputed Area.

11. Based on my review of the IDEM Virtual File Cabinet, the total capacity of Winfield’s Gibson Lift Station, far within Winfield’s corporate limits, is already committed per the 2021 design construction permit application to serving the new Taft Middle School and a subdivision development of 330 single family homes. The new Taft Middle School is not located in the Disputed Area.

12. The Winfield Lift Station is inadequate to service the Disputed Area as its capacity is already committed to the Taft Middle School, homes already served by Winfield and a future subdivision of 330 homes. Therefore, Winfield’s ability to service the Disputed Area

through its existing Gibson Lift Station is severely limited, if not negated entirely, by those two existing capacity commitments.

13. The Gibson Lift Station is in Winfield's existing service area located some 4000 feet from the northeast corner and outside of the Disputed Area. The likely area of initial development in the Disputed Area will be to the south, southwest along the US 231 corridor. Even if the Gibson Lift Station had the capacity to initially serve the Disputed Area, Winfield does not explain how, when, or at what cost the Lift Station could serve the most likely area of initial development along US 231 in the southern, southwestern portions of the Disputed Area.

14. Again, notwithstanding the capacity issues of the Gibson Lift Station, Winfield would be required to incur extensive infrastructure improvements to convey flow from the southern, southwestern portions of the Disputed Area, to the northeast corner (currently largely farm field) in a manner similar to that shown in the Winfield Engineer's initial plan.

15. Crown Point's service to the Disputed Area can be initially effectuated through a main connected to its existing sanitary sewer manhole ("Existing Facilities") located approximately 5000-feet west along US 231 from the Disputed Area. As the area develops and demand for service dictates, this connection will then be transitioned over to Crown Point's nearby future Iowa Street Lift Station, which is currently under design. The Iowa Lift Station and Crown Point's new WWTP are moving forward to completion and will be completed. Both Crown Point's existing sewer and already planned future facilities are located much closer to the area of likely initial development along US 231 in the southern, southwestern portions of the Disputed Area. Crown Point estimates that the necessary improvements to provide initial service to the Disputed Area through its Existing Facilities and associated main installation can be effectuated within seven (7) months at a cost of approximately \$1 million dollars.

16. Crown Point's construction of its new WWTP and Iowa Street Lift Station is the result of Crown Point's previously approved Compliance Plans. The construction of the WWTP will absolutely occur regardless of whether Crown Point or Winfield ultimately serves the Disputed Area. Crown Point's new WWTP is not necessary for Crown Point to initially serve the Disputed Area through its Existing Facilities as explained above

17. Crown Point is in a better position to provide initial service to the Disputed Area because its Existing Facilities are located in close proximity to the probable location of initial development along US 231 in the southern, southwest portions of the Disputed Area. Further, the

Exhibit B

construction of Crown Point's proposed WWTP and Iowa Street Lift Station permits it to provide service to the entire Disputed Area as development continues to occur.

18. Winfield's proposed plan to initially serve the Disputed Area through its existing Gibson Lift Station is not practicable or achievable because its total capacity is identified in its IDEM construction permit to be currently committed to a school and a subdivision. Therefore, its capacity and conveyance capabilities are clearly inadequate to convey flows from a fully developed Disputed Area. Additionally, even if Winfield's Gibson Lift Station had available capacity, it would only serve as an initial "bridge" for flow conveyance as the area develops and future, larger capacity conveyance facilities would be required. Further, the Gibson Lift Station is not located in an area that can practically serve the area of initial development, the US 231 corridor, in the Disputed Area.

19. Winfield does not identify or provide details of any improvements i.e. gravity sewers, force mains, area lift stations etc. that would be required to collect or convey flow within the Disputed Area to the northeast corner of the Disputed Area, to then connect to Winfield's proposed 4,000 foot long force main, that would then convey the pumped sewage to the Gibson Lift Station. Finally, Winfield does not identify the necessary improvements to increase conveyance capacity of its Gibson Lift Station, which would be required to meet the needs of the Disputed Area as it continues to develop.

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

Date: April 15, 2024



Albert Stong, P.E.

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)
TERRITORY FOR THE TOWN'S MUNICIPAL) CAUSE NO. 45992
SEWER SYSTEM PURSUANT TO ID. CODE 8-)
1.5-6 ET SEQ.)

AFFIDAVIT OF
ANTHONY SCHLUETER

Anthony Schlueter, being duly sworn upon his oath and under the penalties for perjury, states the following:

1. I am over Twenty-One (21) years of age. This Affidavit is based on my personal knowledge and I am competent to testify regarding the matters set forth herein.

2. I am employed by the City of Crown Point, Indiana ("Crown Point") as Chief of Staff and my business address is 101 N. East Street, Crown Point, IN 46307. I have held various positions with the City of Crown Point since October of 2015.

3. On February 9, 2022, I attended a lunch meeting at Gamba's Restaurant in Merrillville, Indiana.

4. Present at the February 9, 2022, lunch meeting were: then Town of Winfield ("Winfield") Councilman Gerry Steiner; then Crown Point Mayor Dave Uran; Winfield Town Administrator Nick Bellar; Greg Falkowski; Alex Kutanovski; and, me.

5. At the February 9, 2022, lunch meeting in the presence of other meeting attendees, including me, then Winfield Councilman Steiner said that Winfield, at that time, was not going to be able to serve the waste water needs of its future growth within its jurisdiction limits. Former Councilman Steiner then asked if Crown Point would serve certain area within Winfield's jurisdictional limits West of Colorado Street.

Exhibit C

I affirm, under the penalties for perjury, that the foregoing representations are true and correct to the best of my knowledge and belief.

Date: 4/12/24



Anthony Schlueter