

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

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUR REPLY

Petitioner, the Town of Winfield, Lake County, Indiana (“Winfield”), by counsel, for its *Reply in Support Motion for Leave to File Sur Reply* on or before April 24, 2024, to address new arguments and materials submitted by Crown Point, and in support, states as follows:

1. In its Reply filed on April 15, 2024, Crown Point made new arguments and introduced new evidence from its original *Motion to Vacate Procedural Schedule* and *Motion to Consolidate with Cause No 46035*, each filed on April 1, 2024 (collectively, the “Crown Point Original Motions”).
2. Accordingly, on April 16, 2024, Winfield filed its *Motion for Leave to File Sur Reply*, seeking leave to address new arguments and new materials that Crown Point raised on Reply.
3. Now, on April 17, 2024, Crown Point has filed its *Response in Opposition to Town of Winfield’s Motion for Leave to File Sur Reply* (“Opposition”), claiming it made no new arguments on Reply, and that the three (3) new affidavits attached to its Reply require no response from Winfield.

4. Comparing the Crown Point Original Motions with Crown Point's Reply, Crown Point has made several new arguments, including (but not limited to) that (1) Winfield has violated Crown Point's constitutionally protected due process rights; (2) as part of its constitutional argument, that Ind. Code § 8-1.5-6-9(c) imposed a statutory requirement on Winfield to provide "notice" to Crown Point at the "same time a Petition is filed;" and (3) submitted three new affidavits with its Reply.

5. First, the Crown Point Original Motions are entirely devoid of any allegation that Winfield has violated Crown Point's constitutionally protected due process rights.

6. Accordingly, Crown Point's argument that Winfield violated Crown Point's procedural due process rights is a new argument that Crown Point has raised for the first time on Reply in support of the Crown Point Original Motions. It is therefore appropriate for Winfield to address this new alleged constitutional violation in a sur reply.

7. Second, as part of its alleged constitutional violation allegation, Crown Point has now argued for the first time in its Reply that Winfield was statutorily required pursuant to Ind. Code § 8-1.5-6-9(c) to provide "notice" to Crown Point "at the time a Petition is filed." (Crown Point Reply, ¶44).

8. Again, Crown Point never raised this alleged statutory notice violation argument in the Original Crown Point Motions. Moreover, claiming that Ind. Code § 8-1.5-6-9(c) imposed a statutory requirement on Winfield to provide "notice" "at the time a Petition is filed" is a change in position from the Crown Point Original Motions, and therefore, is a new argument that is appropriate for Winfield to address in a sur reply.

9. Related to its new constitutional and statutory arguments, Crown Point has also now changed positions from the Crown Point Original Motions on what Winfield provided to Crown Point. For example, in the *Motion to Vacate Procedural Schedule*, Crown Point claimed:

Crown Point **did not receive written notice, or informal notice, from Winfield** of the passage of Winfield's Regulatory Ordinance at issue in this Cause or the filing of this Indiana Utility Regulatory Commission ("IURC" or "Commission") Cause seeking approval of the Ordinance. (Motion to Vacate Procedural Schedule, ¶2) (emphases added).

10. Crown Point's allegations regarding notice in the Original Crown Point Motions were admittedly false. Now on Reply, Crown Point admits that Winfield provided a copy of its regulatory ordinance and its Petition in this Cause to Crown Point attorney Westland **in February**, but Crown Point appears to change its argument and claim this is not the type of "notice" it claims it is entitled to under Ind. Code § 8-1.5-6-9(c). (See Crown Point Reply, ¶¶32-49; Ex. A). Accordingly, Crown Point's new statutory arguments, coupled with its new constitutional violation arguments, that were newly included on Reply are appropriate to be addressed in a sur reply.

11. Lastly, Crown Point attached three new affidavits with its Reply, none of which were included in the Original Crown Point Motions. Accordingly, these are new materials and evidence that are appropriate for Winfield to address in a sur reply.

12. To be clear, Winfield's sur reply will not include any new affidavits for the Commission's consideration. As is customary in sur replies, Winfield will address the new arguments and new materials submitted by Crown Point in its Reply.

13. In other words, Winfield is not "inviting an endless cycle of sur responses and sur sur responses" as suggest by Crown Point. (Crown Point Reply, ¶10). Rather, Winfield is seeking leave of the Commission to address the new arguments and materials that Crown Point submitted

on Reply, as is customary in the adversarial litigation process. *See I-65 Plaza, LLC v. Indiana Grocery Group, LLC*, 167 N.E.3d 1161, 1172-1173 (Ind. Ct. App. 2021) (holding the trial court abused its discretion striking a sur reply that addressed new arguments and evidence presented by the opposing party).

14. Indeed, the Commission has previously permitted and considered sur replies on many occasions. *See e.g., In the Matter of the Petition of the City of Carmel, Indiana*, Cause No. 42725, 2005 WL 2508583 (Ind. U.R.C. Aug. 5, 2005); *In re Enviropower of Indiana, LLC*, Cause No. 41931, 2002 WL 997487 (Ind. U.R.C. Jan. 3, 2002); *In the Matter of the Petition of the City of Indianapolis*, Cause No. 41821, 2001 WL 36588267 (Ind. U.R.C. Feb. 9, 2001); *In re AT&T Communications of Indiana, Inc.* Cause No. 40571-INT-03, 2001 WL 798062 (Ind. U.R.C. April 18, 2001); *In re Local Telephone Exchange Competition*, Cause No. 39983, 1997 WL 808684 (Ind. U.R.C. Oct. 15, 1997).

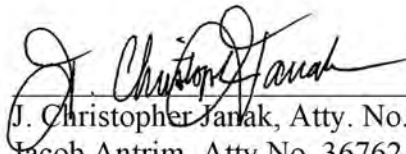
15. Accordingly, consistent with prior Commission practice, Winfield respectfully requests leave to file a sur reply to address the new arguments and materials submitted by Crown Point in its Reply.

16. As counsel for Winfield informed counsel for Crown Point prior to filing the *Motion for Leave to File Sur Reply*, undersigned counsel for Winfield is currently on vacation out of the country with limited connectivity, and will not return until Tuesday, April 23, 2024. Therefore, Winfield respectfully requests until April 24, 2024, to submit its sur reply.

17. In the alternative of a sur reply, Winfield reasserts its request that the Commission set this matter for oral argument for the parties to address Crown Point's *Motion to Vacate Procedural Schedule* and *Motion to Consolidate this Cause with Cause No. 46035* and the parties' related filings.

WHEREFORE, Petitioner, Town of Winfield, Lake County, Indiana, respectfully requests that the Commission enter an order granting its *Motion for Leave to File Sur Reply*, and grant Winfield to and including April 24, 2024, to file a sur reply to address new arguments and materials submitted by Crown Point, or in the alternative, set this matter for oral argument.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Christopher Janak", is written over a horizontal line.

J. Christopher Janak, Atty. No. 18499-49
Jacob Antrim, Atty No. 36762-49
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000 | (317) 684-5173 Fax
cjanak@boselaw.com | jantrim@boselaw.com

David M. Austgen, No. 3895-45
AUSTGEN KUIPER JASAITIS P.C.
130 N. Main Street
Crown Point, Indiana 46307
(219) 663-5600 | (219) 662-3519 Fax

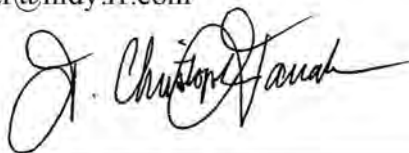
Counsel for the Town of Winfield, Indiana

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following by electronic mail this 18th day of April, 2024:

Indiana Office of Utility Consumer Counselor
PNC Center, Suite 1500 South
115 West Washington Street
Indianapolis, IN 46204
infomgt@oucc.in.gov
dlevay@oucc.in.gov

Robert M. Glennon – robertglennonlaw@gmail.com
Mark W. Cooper – attymcooper@indy.rr.com

A handwritten signature in black ink, appearing to read "J. Christopher Janak", written over a horizontal line.

J. Christopher Janak

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000

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