# In the Matter Of:

*CITY OF BLOOMINGTON*

*-v-*

*CATHERINE SMITH and STATE OF INDIANA*

---

**Victor Kelson**

*July 25, 2023*

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Exhibit R-5

STATE OF INDIANA )
) SS
COUNTY OF MONROE )

IN THE MONROE COUNTY CIRCUIT COURT

CITY OF BLOOMINGTON, )
)
Plaintiff, )
)
-v- )
) CAUSE NOs.: 53C06-2203-PL-000608
CATHERINE SMITH,in her ) 53C06-2203-PL-000609
official capacity as ) 53C06-2203-PL-000610
Monroe County Auditor, ) 53C06-2203-PL-000611
) 53C06-2203-PL-000614
Defendant, ) 53C06-2203-PL-000615
) 53C06-2203-PL-000616
and )
)
STATE OF INDIANA, )
)
Intervenor. )

The deposition upon oral examination of VICTOR KELSON, a witness produced and sworn before me, Barbara Ann Bourbina, a Notary Public in and for the County of Monroe, State of Indiana, taken on behalf of the Intervenor, Office of the Attorney General, State of Indiana, at Bloomington City Hall, 401 N. Morton Street, Allison Conference Room 225, on the 25th day of July, 2023, commencing at 9:52 a.m., pursuant to Indiana Trial Rule 30(b)(6).

A P P E A R A N C E S

FOR THE PLAINTIFF: CITY OF BLOOMINGTON
401 N. Morton Street
City of Bloomington Bloomington, Indiana 47404

Michael Rouker
City Attorney
roukerm@bloomington.in.gov

Larry D. Allen
Assistant City Attorney
allenl@bloomington.in.gov

Heather Lacy
Assistant City Attorney
heather.lacy@bloomington.in.gov

Stephen C. Unger
BOSE McKINNEY & EVANS LLP
111 Monument Circle
Suite 2700
Indianapolis, Indiana 46204
SUnger@boselaw.com

FOR THE DEFENDANT: Jeff Cockerill (not present)
Catherine Smith County Attorney
Monroe County Attorneys
Office, Courthouse, Room 220
Bloomington, Indiana 47404

FOR THE INTERVENOR: James A. Barta
Deputy Solicitor General
State of Indiana Office of Attorney General
IGC South, Fifth Floor
302 W. Washington Street
Indianapolis, Indiana 46204
James.Barta@atg.in.gov

ALSO IN ATTENDANCE: Sakethram Desabhotla
Legal Interns Andrew Eddington
Justin Fromke

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V I C T O R  K E L S O N, the witness herein, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. BARTA:

Q Good morning, Mr. Kelson.

A Good morning.

Q My name is James Barta. I'm one of the attorneys for the State today.

Have you given a deposition before?

A No, I have not.

Q Okay. Well, I'm just going to go over a few background principles to orient us, and then we'll get started. Okay?

A Okay.

Q So the basic format is, you know, I'm going to ask questions, and you will need to answer them. At some point the City's Attorney may object, but you'll still need to answer the question unless the attorney specifically tells you not to do so. Understood?

A Yes.

Q And as you're doing already, verbal answers are appreciated. Shaking of the head and nodding of the head doesn't show up very well on a transcript, so,

you know, please continue to answer verbally. Okay?
A Yes, I will.
Q Great.
If at any point you don't understand my question, please ask for clarification. If you start answering it, I'm going to assume you've understood it. Fair enough?
A Fair enough.
Q Okay. We'll both do our best to try to not speak over one another for the benefit of our court reporter here, who is by far the most important person in the room.
And then if you need a break at any time, please let me know. I'd only ask that you answer any question that's been asked before the break. Okay?
A I will do that. Thank you.
Q Great.
Is there any reason that you cannot understand my questions today?
A I don't have any reason to think so, no.
Q Any reason you can't answer them truthfully and accurately?
A No.
Q Okay.
MR. BARTA: I have a document I'm going to

introduce as Exhibit 1.

(Intervenor's Exhibit 1 was marked for identification.)

A Thank you.

Q What is this document?

A I believe this is the notice that we are going to do this deposition, and it outlines questions and -- well, issues to be considered during the deposition.

Q Okay. Do you understand today you're testifying as the City's representative?

A Yes, I do.

Q And you just mentioned the list of topics that was attached to this notice. Did you prepare to discuss the ones that you were designated to discuss?

A Yes, I did.

Q What did you do to prepare?

A I reviewed all the documentation that we prepared so far: so my affidavit; the interrogatories; all the other information that's been requested; all the documents that I've been asked to sign or review through this whole process. I discussed it with Mr. Rouker and the City legal team; and I reviewed a lot of the background material from my own e-mails that was involved in these matters.

Q Okay. Did you speak to anyone else besides the City's

attorneys?
A I did not.
Q And the e-mails you just mentioned, do you know if those have been provided to us?
A Yes. They were related to, and it's my understanding that our legal team has given you all the e-mails that they had at their disposal regarding requests for service outside of our service area and anything that was associated with waivers of remonstrance.
Q Okay. By way of background, you are, I understand, the Director of the City Utilities Department; is that correct?
A That is correct, yes.
Q How long have you been in that role?
A Since April of 2016, so seven-and-a-half years.
Q Generally what are your responsibilities?
A Our Utilities Department provides water, sewer, and storm water services. Our water services serve all of the residents of the City of Bloomington.

We have a group of wholesale customers who sell water to customers outside the City of Bloomington, but essentially serves the whole County. So for water, essentially, if you don't have a well, and you live in Monroe County, you're getting your water from us ultimately.

On the sewer side, our service area extends outside the City and covers the whole City. About 20 percent, in round numbers, of our customers are not within City limits right now.

And then for storm water services we serve only parcels that are inside the City. So any City resident pays a storm water fee on a monthly basis, and that's based on the nature of if it's a residential customer or if it's a larger customer. For example, a big parking lot, you pay for the number of acres of impervious service. That just pays for storm water services.

Q Okay. To clarify, you mentioned wholesale customers. Are those only customers for water?

A Yes.

Q Okay. And --

A So I didn't finish my answer.

I oversee all those activities. So basically I lead the Department, and all of the five assistant directors run separate aspects of the operation, but I'm the lead of the Department.

Q Have you held any other positions in the Utilities Department?

A No, I have not.

Q And who do you report to?

A I report to the Mayor and to the Utility Service Board.
Q And who sits on the Utility Service Board?
A There are seven members. Do you want their names or their --
Q Just generally.
A In general, okay.

It is a seven-member board. It is all appointed. Four of the members are appointed by the Mayor, and the other three members are appointed by the City Council.

In order to be appointed to our Board, you do not have to reside within the City of Bloomington, but you have to be a customer of the City of Bloomington Utilities. So we do have at least one board member, that I can think of, who lives outside the City but is served by us for water and sewer, and they can also serve on our Board.

Q So you may have touched on this, but how many sewer system customers does the City serve?
A In round numbers around 22,000; between 22- and 23-.
Q Approximately what percentage are individuals versus businesses?
A Oh, I would imagine the large majority of them are individuals.

Q What is the City's objective in running a -- in providing municipal sewer service?

A Well, in the eyes of the EPA and the Indiana Department of Environmental Management, the purpose of having a wastewater system, or a Publicly Owned Treatment Works, POTW -- and you'll see that abbreviation -- our objective is to live in an industrial-developed society without having a negative impact to downstream water bodies. So basically our job is to make sure that the rivers are not polluted with either industrial pollutants or the aftereffects of putting sanitary discharge -- basically, what comes out of your toilet -- directly into streams.

So if you go back a couple of hundred years, basically people had chamber pots, and they poured it into the street and the rain would carry it away, and it really didn't have a negative, detrimental effect on downstream waterways. As communities became larger and populations became denser, it became necessary to do other things to protect the waterways from those discharges.

So essentially what our job is to protect the stream, and, you know, so that's why we exist. As a City Department our job is to serve the City's residents and to serve our customers and to provide a

high level of service that protects the waterways and ultimately fosters the development of our community. So without our ability to treat wastewater and to collect wastewater and to prevent it from being discharged directly into the natural environment, our community can't exist in the way it exists, and it can't grow because we can't add more development to it.

Q Okay. So you mentioned a moment ago that there are people who live outside the City limits who have connected to the City's sewer system, correct?

A That is correct.

Q What is the process for connecting? Let me rephrase that.

If someone outside the City limits wants to connect to the sewer system, what is the process for doing that?

A And it comes in several different fashions. But typically when we're looking at the kinds of things that were described in the e-mails that I went back and reviewed, oftentimes what happens is someone will have a parcel of land that they may wish to subdivide it, or oftentimes that is exactly what's happening.

There's land that used to be a farm or used to be undeveloped. A person wants to subside it into

small parcels and build single-family homes, for example. They would need to go to the County Planning Department in order to do that subdivision. They don't live in the City. When they go to the Planning Department, and they want to do a subdivision or a project of these kinds of natures, what will happen is the Planning Department, before they even start, will say, will ask them basically, Can you get sewer service there?

And that's when they'll come to us right at the beginning. They will come to us looking for what we call a Will Serve Letter, a letter from us saying that we will serve the development that they're planning to do on that parcel. They need to have that in order to move toward with the planning process. So that is almost always handled by Nancy Axsom, who's in our Engineering Division at CBU, so she works for one of the divisions that's under my guidance.

Nancy will review the proposal in terms of, for example, How many houses do you plan to build? Where do you plan to connect? Is there already a sewer nearby that you can connect to?

We will review it to see if the nearby collection system, the sewers that are there, are sufficient to take the additional flow. We will look

at it to make sure that we have the capacity to treat it at our wastewater plant. Our wastewater plant is rated for 15 million gallons per day coming from inflow, and so over the last several years we're pretty tight on capacity, although we're working on increasing it. So we'll look at that.

We'll look at the nature of the development, whether it's residential or industrial or commercial. That will tell us something about the flow, but it also tells us something about the characteristics of the wastewater. And we will look at all of that right at the beginning to decide whether this is something we could take on.

The Will Serve Letter basically says that we are able to take it on the day that we issue the Will Serve Letter. So if something, you know, unexpected happened in the meantime, there may be issues, but that has not happened yet.

Once they've got the Will Serve Letter they move ahead with their design. Once the design is complete there's a complete plan review by the County Planning Department. We also have to review the plan to make sure that the pipes are properly sized and configured and so forth.

Once all of that's done, and once it's built,

the developer then will file an application for service, and we will allow them -- if everything has been done appropriately, we will allow them to tap into our sewer and connect.

Q Who handles the plan review?

A The plan review is handled by the staff in our Engineering Division. That division is led by Phil Peeden. He's our City Assistant Director for Engineering at CBU. CBU is City of Bloomington Utilities, just to be clear.

That review will be done by the group, so there's a number of inspectors and technicians and engineers in the department that will do that review.

Q How long does that review typically take?

A It can take months. Typically we try to turn them around in 30 to 60 days, I should think. Basically we're looking to see that they're choosing proper materials, construction standards, and so forth.

I should say this, that what happens is we have our own construction standards. If the plan and the design meet our construction standards, we will agree to adopt the infrastructure that's built once it's installed and inspected.

So if you build a system for your apartment building that we don't approve of the pipe that you

chose or whatnot, you may still be able to get it built, and you may still be able to connect, but we won't be responsible for any of the pipe.

If you build a residential subdivision and you install sewers, we will adopt the portion of the sewers that lie in the City's right-of-way or in the County right-of-way.

Q And by "adopt" you mean the City takes it over?

A That's right. We'll be responsible for maintenance and repairs.

Q Okay. So you also mentioned the submission of an application.

A Uh-huh.

Q What is the review process associated with that?

A I haven't really tracked that in extreme detail. But the application process, the application itself, lays out the location. Typically we ask them exactly what they're planning to do as we're going through the review process. And we require the person who's applying for the process to -- at the time service is provided, they have to sign a waiver of the right to remonstrate against annexation.

Q Who handles the review for the application?

A Our Engineering staff.

Q Okay.

MR. BARTA: I have a document I'm going to introduce as Exhibit 2.

(Intervenor's Exhibit 2 was marked for identification.)

A Thank you.

Q Okay. Mr. Kelson, what is this document?

A This is an application for new water or sewer connection.

Q So this would be the application form you mentioned a minute ago for an individual residence?

A That is true.

Q Okay. And just so I'm clear, this would be submitted after -- usually at the last stage of the process, not as part of the Will Serve Letter?

A That's right. What happens is this is sort of the last step.

Q And on the second page of the document, it's titled "Individual Customer Contract." Do you see that?

A Yes.

Q Is this document submitted with the application?

A I assume so. I actually have not handled these myself.

Q Okay. But someone applying for sewer service would need to sign the application and this contract to receive service from the City?

A Yes, they would.
Q And when they sign this, they're agreeing to pay the rates that the City charges?
A Yes.
Q All right. You can set this aside for the moment.
(The witness complied with the request.)
Q So the application we just looked at was for a residence. There's a business application as well; is that right?
A There is, yes.
Q Okay.
MR. BARTA: Also I want to introduce this document as Exhibit 3.
(Intervenor's Exhibit 3 was marked for identification.)
Q What is this document?
A This is the contract for a commercial customer.
Q Okay. And the business would need to sign this contract to receive sewer service from the City?
A Yes.
Q Would that be signed when they submit their application?
A I am not certain. I would assume so.
Q But it would need to be signed before they receive service?

A But before the connection was allowed, yes.
Q Okay. So you walked me through a moment ago the City's process for, you know, handling a request for sewer service from someone outside the City limits. Has that process ever looked substantially different from how you described it?
A To my knowledge, it has not. The process that we're using is the process that was explained to me when I came on at CBU. We have made a couple of -- there's been some modifications relating to the annexation waiver question that we have taken on, but other than that it's the same process that's been used for many years.
Q Okay.
MR. BARTA: I have a document that I'm going to introduce as Exhibit 4.
(Intervenor's Exhibit 4 was marked for identification.)
A Thank you.
Q What is this document?
A This is an application request for a new water or sewer connection at 4365 West Red Rock Road.
Q And this is from someone outside the City limits?
A Yes.
Q Okay. So looking at the first page, is this sort of,

you know, a typical sample of an application?
A Yes. Yes, it is.
Q So can you turn to the second page.
(The witness complied with the request.)
Q Do you see that there is a section where there's a box where it says, "Approved," there's a check mark, and then it says, "Recommendations or conditions of approval"?
A Yes.
Q So this section is something that the Utilities Department fills out?
A Yes.
Q And it looks like this was filled out by Nancy --
A Axsom.
Q -- Axsom; is that correct?
A Yes. It's A-X-S-O-M.
Q And she's the one who typically fills these out?
A That is right.
Q Is her recommendation here what you would expect to see on an application?
A Yes. It's basically standard for us to have a 1-inch yoke, and the yoke is the device where the meter is connected; and the three-quarter-inch meters are standard for a new development, yeah.
Q Okay. You can set that document aside.

(The witness complied with the request.)

MR. BARTA: I'm going to introduce another document as Exhibit 5.

(Intervenor's Exhibit 5 was marked for identification.)

A Thank you.

Q What is this document?

A This is also an application request for a new water or sewer connection.

Q This would be the application that a business or apartment unit fills out; is that right?

A Let me look. Yes.

Q So this is essentially the business version of the residential application you looked at a moment ago?

A Yes, either for commercial or multiple dwellings or industrial. Yes.

Q So can I get you to turn to the second page.

(The witness complied with the request.)

Q Do you see there's again a recommendation and approval section for the Utilities Department?

A Yes.

Q This is something that it looks like Nancy filled out as well?

A Yes.

Q Is this what you expect to see on a business

application recommendation?
A Yes.
Q So feel free to set that aside.
A Okay.
Q I'm finished with that document.
So you walked me through the process of the request to the application approval.
After the application is approved, what happens next?
A Once the application is approved, the customer is then allowed to connect to our sewer. So we would be there, or our staff would be there to oversee the installation of the tapping of the line and the installation of the pipe and connections.
Q Okay.
A And at that point we would start accepting their wastewater, and they would start being billed for that.
Q Who handles the construction and the changes to the infrastructure needed to connect?
A Usually it's the developer who does that. Sometimes we do the actual tapping of the line, sometimes we don't.
Q Okay. Who pays for the construction?
A The developer pays for the construction of the pipes.

Q When a person outside the City limits taps into the sewer system, do they pay any connection fees or charges?

A They do. And our connection fee covers the cost of us allowing the connection to be made in -- and I don't know the exact date -- but my recollection is it was 2018 we reviewed the connection fees and increased them.

The purpose of that increase was to create something called a system development charge. The system development charge, if I step back, we assumed that the current group of customers have paid for all of the entire utility. So they paid for all the pipes, they paid for all the pumps, they paid for the plants.

At the time someone installs a connection, they're going to be responsible for the sewer pipe that they run.

They also may be responsible for increasing the size of the sewer that they connect to. So if you imagine there's an 8-inch sewer, you got a 6-inch sewer coming from your development. If that 8-inch sewer already has a lot of flow in it, that may need to become a 12-inch sewer. And at that time the developer would be responsible for at least a portion

of the cost of increasing the size of the downstream infrastructure. But they may or may not have to pay for all of that increase going downstream.

If you think about going all the way to the plant, pipes 6 feet in diameter, by the time you get to the plant, that gets very expensive. So increasing the size of the downstream infrastructure oftentimes is shared with the existing customer base.

But what's not mixed up in all of that is the fact that one day we're going to have so much demand on our treatment plant, and there's going to be so much water going to our treatment plant, that we will be unable to treat all of that water.

So the system development charge is an acknowledgement of the responsibility of the new customer to pay for the eventuality that we will have to increase the size of the treatment plant. And it may take years, and it may be decades before we get there, but it's reasonable and proper that the new connection should have to pay for that eventuality because they're part of the reason that the plant needs to be made bigger.

Q Okay. So the system development charge, you charge them amounts sufficient to cover the costs of the immediate connection costs plus some share of this

future development, right?
A That's right, uh-huh.
Q Okay. Who calculates the system development charge?
A That was calculated at the time we established the system development charge. We did not do that. That was done by our financial advisor, which is Crowe. At the time I think they were Crowe Horwath.
Q So once someone connects to the City sewer system they then pay rates for sewage, correct?
A That's right.
Q Okay.
MR. BARTA: I'm going to introduce a document as Exhibit 6.
(Intervenor's Exhibit 6 was marked for identification.)
A Thank you.
Q What is this document?
A This is the first set of our interrogatories that were sent to the City, and I believe this contains answers to the questions that I was asked.
Q Okay. And if you look at the second-to-last page, Page 20, this is your signature at the bottom; is that correct?
A Yes.
Q Okay. Is there any way in which these interrogatory

answers are no longer correct or accurate?
A I reread these last night, and I do not see anything in here that would be incorrect.
Q Okay. Can I get you to turn to Page 13, please -- or, sorry, Page 14.
(The witness complied with the request.)
Q This chart, does this chart list the current rates charged by the City for sewer service?
A Yes.
Q So can you give me an overview of how the City calculates rates for sewer service?
A Certainly.
As a municipal utility, we're not a profit-making entity. We don't receive any funding from the City through taxes or any other vehicle, so we charge what it costs over time to provide the service. In any given year we have might be -- in a specific year -- well, let me step back.
The rates are calculated by looking at the cost of personnel services, the cost of chemicals and electricity, and all those kinds of things that we have to buy. They look at the cost of contract services for various things. For example, sending things to laboratories, hiring engineers, those kinds of things. And then, of course, our debt service.

People are surprised often to find out that one of the biggest parts of our annual budget is debt service because we have so much infrastructure. All of that is put together.

So there'll be some assumptions made about inflation for those things that increase over time. And then we will have a capital improvement plan that will outline the capital investments that we're planning to make. Expanding the capacity of the wastewater plant, for example. All of that goes together into a financial analysis that Crowe, our financial advisor, conducts. They will look at it at a period of time. So typically it's a four or five-year planning horizon.

When I joined the Utilities, it had been about a decade since the previous rate review. Counsel prefers that we do them more regularly so that customers don't experience huge price increases, so we've been doing them on about a four-year cycle.

So that analysis is done. The financial advisor calculates the cost of providing service and the cost of paying for the projects that are in the plan, any debt service that we might take on during the next rate period, and then calculates what it costs, or what the rate will have to be per customer to pay for

the cost that we've outlined.

So it's a break-even operation over time. So in a given year we may have more revenue than we spend, but over a period of time, we spend all the revenue that we collected during that time. So this is to account for inflation.

Q So I see on the chart sort of a couple different -- a breakdown between metered and non-metered users. What is that difference?

A If you have -- typically for a residential customer, if you're a residential customer, and you're our residential customer, then we know how much water you used and we calculate your sewer bill based on your water use. It's all done in terms of thousands of gallons, so each of these is based on a 1,000-gallon unit. So if you use three units in a month, you pay three times $8.95 if you're a residential customer inside City limits. There's also a fixed charge for the meter that goes into this.

We also have metered customers. Oftentimes they're industrial customers that -- well, just as an example, imagine you had a brewery and you bought a whole bunch of water from us, and you were going to brew beer, and a quarter of the water that you bought ended up in the beer that you sold to someone else.

If you don't have your own sewer meter, you will be charged the sewer fee based on the amount of water that you took in. If you think that you have a consumptive use inside your process, or the water that you're buying is going on to your customer, we will allow you to install a separate sewer meter, and we will charge your sewer bill based on how much water you sent down the sewer. So that's what the metered uses are.

You can also imagine you had a residence that had a well, so you weren't a water customer. You could either install a meter or pay the non-metered rate, which would be the non-metered fee is an annualized calculation that's based on an assumption of a certain number of gallons. I could figure out what that number was, but I don't know it off the top of my head.

Q Okay. So I see there's a -- it looks like customers outside the City limits pay higher rates for both metered and non-metered uses; is that right?

A That is right.

Q Why do they pay higher rates?

A That's a change that was made in our 2019 rate review.

As I explained the process, we do exactly the same process. And what happens is this: the

collection system, that's the pipes that are underground, if I imagine I have a sewer that's running through an unincorporated area outside the City, there will be fewer connections and fewer gallons per mile of pipe, but it costs the same to maintain that mile of pipe whether it's in the City or not. So it's reflecting the overall lower density, even though there may be pockets of higher density areas out there. It reflects the fact that our nfrastructure out there is sized for and has to be maintained for a smaller population of customers.

That analysis was also done by Crowe in the context of our 2019 rate review. It came out to be about 12 percent. There are other utilities in the State that do this, and it ranges from 14 to 50 percent. But, again, it's cost recovery. What we're doing is accounting for the fact that it costs more to serve on average customers outside of the City than customers inside the City for the pipe maintenance.

On the water it's not -- this isn't the only place we do a similar kind of thing. On the water utility our customers are broken into categories, depending on their type of use. So IU, industrial, residential, and so forth, they all get different charges for water based on the cost of us providing a

service.

For sewer the only place that we have the ability to separate is inside or outside. All sewer water is the same basically.

Q Okay. So the idea behind the different charges is that customers outside the City will be responsible for the higher costs associated with maintaining that?

A That's right.

Q Okay. And you mentioned this set of charges being established in 2019. Was there any difference in rates for customers inside and outside the City before 2019?

A No, there was not. Not for sewer.

Historically, many years ago we did have a different water rate for inside customers and outside customers. We just don't have very many outside water customers anymore, so we don't do that.

Q Okay. And I see on the next page, Page 15, there's a section called "Connection Fees."

A Yes.

Q Are these the fees that are charged when someone connects to the sewer system?

A That's right.

Q This is different from the system development charge you mentioned?

A The system development charge is in the fee.
Q Okay.
A So the fee includes a lot of things, and the system development charge is a big piece of it.
Q Okay.
MR. BARTA: I think that we've been going about an hour, I think?
MR. ROUKER: Just about. You want to take a break?
MR. BARTA: Would everyone be okay with a five-minute break?
MR. ROUKER: It works for us.
MR. BARTA: Okay. Why don't we do that.
THE WITNESS: Thank you.
MR. ROUKER: You got 10:35. We'll try to stick to 10:45.
MR. BARTA: Sounds good.

(AT THIS TIME THERE WAS A BRIEF RECESS TAKEN, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

DIRECT EXAMINATION,
QUESTIONS BY MR. BARTA:
MR. BARTA: I have a document I'd like to introduce as Exhibit 7.

(Intervenor's Exhibit 7 was marked for identification.)

A Thank you.

Q Mr. Kelson, what is this document?

A This is CBU's Rules, Regulations and Standards of Service.

Q And I see on the first page it says, "Approved by Utilities Service Board on April 28, 2008." Is that right?

A That is correct.

Q And am I correct that this document -- am I correct that this version was in effect till February of 2021?

A That's correct, yes.

Q What is the purpose of the Rules, Regulations and Standards of Service?

A They tell our customers and us what our responsibilities are in terms of what we -- the processes and the various actions the staff takes and that the Board will take, and the responsibilities of the City Department, and the responsibilities of our customers.

Q So the customers and the Utilities Department are required to adhere to this document?

A Yes.

Q Who adopts these regulations?

A The Utilities Service Board.
Q And what is the typical process for adopting them?
A Well, I was not present when these were adopted in 2008. I have seen them amended. Those amendments were done by -- our staff working with the Legal Department has developed amendments. Those amendments come in the form of a resolution to the Utility Service Board. They debate it and then ultimately decide whether to approve the changes or not.
Q All right. So can I get you to turn to Section 24 on Page 47.
A Okay, got it.
Q Do you see the Section 24, Growth Policies Plan, at the top?
A Yes.
Q What is this section's purpose?
A The purpose of this section is to specify the requirements and the rules for extending sewer service outside the City limits of the City of Bloomington.
Q Okay. So in Section 24.1 it refers to something called a Sewer Service Area Map. What is that?
A The Sewer Service Area Map delineates the -- it shows where the City of Bloomington boundary is. It shows an area that's called Area A, and then everything outside of Area A is called Area B.

Area A, not exactly but approximately, is intended to be conceptually congruent with what used to be called the Area Intended For Annexation, which came after the former two-mile fringe. The Area Intended For Annexation at the time that there was an AIFA was an area that was not inside the City, but it was expected to be annexed into the City and, therefore, planning jurisdiction was with the City. The City Planning Department had planning jurisdiction over that area.

Q Okay. And what is Area B?

A Area B is the rest of the world.

Q And approximately when was Area A established?

A Oh, that was before my time. It was sometime -- in my recollection, it was sometime in the early 2000s, somewhere in there. I don't know for certain.

And I remember there was some debate about it, a public debate, about this whole question of the sprawl of the City. Back at that time it was in the early 2000s. The planning jurisdiction extended before that, so I'm sure there was a similar kind of process in place at that time, but I don't know.

Q Okay.

MR. BARTA: I want to introduce as Exhibit 8 this document.

(Intervenor's Exhibit 8 was marked for identification.)

A Thank you.

Q What is this document?

A This is the Sewer Service Area Map dated 20 -- September 20th, '21 [sic].

Q So I see there's an area called Area A on this?

A Yes.

Q That's the Area A you referred to a moment ago?

A Yes.

Q And the white area here is Area B?

A Yes, everything outside Area A.

Q And the blue lines here appear to be the City limits; is that correct?

A Well, that's what I'm trying to identify here because -- I believe so, but I can't be certain. It's not labeled.

Q Okay. And --

A I presumed originally that the blue line was Area A, but that's not exactly right. Oh, I see Area A is the black line. The blue line is City limits, yes.

Q And all the green lines here is the City sewer service and construction?

A That's right.

Q Okay. You can feel free to set the map aside for now.

(The witness complied with the request.)

Q So turning back to the 2008 rules and regulations, in Section 24.2 it says, "The SSAM will designate Area A as the area in which the Utility shall allow sewer connections."

Did I read that correctly?

A That is correct.

Q So under these regulations the City was required to let anyone in Area A connect to the sewer system?

A I believe that inside Area A it was the Director's discretion. It's the second sentence: "The Utilities Service Board hereby authorizes the Director of the Utility to make the decision as to whether a request for extension of sanitary sewer service shall be granted in Area A."

Q Okay. What do you believe the Director would consider in making that decision?

A Well, the Director would consider, first of all, whether it's feasible to construct the sewer that would serve it. That would be probably an engineering decision.

The sewer water wants to flow downhill so if you have to -- if the flow would go all the way to the bottom of a hill and then have to be pumped, you'd have to put a lift station in to pump the water

farther. In some cases you would require so many lift stations that it would be infeasible to do it with a traditional gravity sewer. We do not want to have lots and lots of lift stations because it's a maintenance expense, so we would look at the feasibility of actually getting the sewer installed.

We would look at the amount of water that the proposed development would generate. We would look at the current capacity, rated capacity.

Just to fill in, the Indiana Department of Environmental Management is responsible for deciding how much sewer water we can take at our plant. So our rated capacity is 15 million gallons per day at the Dillman Road Wastewater Treatment Plant, and 6 million gallons per day at Blucher Poole Plant. And basically the reason we have two plants is there's a water divide that runs right through the middle of the City. So everything flows downhill to the Dillman Plant south of that divide and flows downhill to the Blucher Poole Plant on the other side.

So we looked at all of those things.

And currently we're still in a situation where the way IDEM does it is if we are at the point of regularly exceeding the rated capacity for a wastewater plant, you can actually put more water

through it. The rated capacity is just that we're absolutely sure you could treat that much every day is the way that works.

If we get really close to that capacity on average, IDEM will say -- if we say, for example, I want to build ten new homes inside the big City of Bloomington and hook them to the sewer, IDEM has the authority to say, No, you cannot make those connections because you don't have the ability to treat that water.

So in 2016 we received a letter from IDEM warning us that in the previous three years we had exceeded 90 percent of our rated capacity, and we had to come up with a plan for expanding that capacity. We've been working on it ever since. That was part of the reasoning behind the system development charge. We realized that we are not charging new customers for plant expansions, so that's part of what gave rise to that.

So if we're close on capacity, we are required -- we don't have -- I don't have that discretion to -- inside City limits, if the project's feasible, you can build it, and there's no discretion either for me or the Utility Service Board at that point.

The area inside Area A, the Director has the discretion to say, I'm sorry, we don't have enough capacity to take this on even though it's feasible. So we can. That's another thing to take into account.

We would consider whether it was an industrial user or whether it was, for example, an industrial user that might have a high level of some particular contaminant. We would consider that. What else? You know, obviously, the volume of flow that they would be sending, and the nature of the use.

Q And just so I make sure I captured everything.

A Uh-huh.

Q I got -- I heard you say the feasibility, the capacity of the system, the volume of the sewage, the nature of the use, and the type of waste you would be receiving.

Did I miss anything?

A Those are the things that I said, yes.

Q Is there anything else that would have been considered under the 2008 regulations?

A Under the 2008, I can't think of anything.

Q Okay. Can you turn to Page 55 of this document.

(The witness complied with the request.)

Q Do you see that there's a heading, "Definitions," at the top?

A Yes.

Q Is this a definition section for the entire document?
A I presume it is, yes.
Q Okay. Can you turn to Page 60.
(The witness complied with the request.)
Q Near the bottom it says, quote, "Shall" is mandatory; "May" is permissible.
Did I read that correctly?
A Yes.
Q Okay. Does that change your understanding of Page 47 where it says, "The SSAM will designate Area A as the area in which the Utility shall allow sewer connections"?
A It doesn't because the following sentence clarifies the circumstances under which those connections should be allowed.
Q Okay. So I see further down in the paragraph it says, "Utility staff will determine what information is required from the applicant and advise as to what information is necessary to process the request. Any connection or extension must be in compliance with all applicable federal, state and local rules and regulations. Any request must be in compliance with provision 24.8."
Did I read that correctly?
A Yes.

Q Okay. Does that clarify what the Director is supposed to consider?
A Yes.
Q So it would be compliance for federal, state and local rules and regulations would be one thing?
A Yes.
Q And compliance with provision 24.8 would be another thing?
A That's right.
Q But you think the Director could still consider things beyond those two considerations outlined there?
A Can you repeat that question?
Q I'm just trying to understand how the things operated under 2008 regulations.
A Okay.
Q So it looks to me like, you know, when the Director is asked to evaluate a request in Area A that he needs to consider, you know, whether it's in compliance with applicable federal, state and local rules and regulations; is that right?
A Which includes the capacity of the plant.
Q So that's where the capacity would come in, and it would be that you need to have the capacity to accept it.
A That's right.

Q Okay. So the local rules and regulations would include this regulations document?
A Yes.
Q And there's other sections that deal with capacity and so on.
A That's right. Our ability, if we can't treat the waste, we won't take it.
Q Okay, that helps me understand. Thank you. I was just trying to figure out how everything fit together.
A And, of course, it's all subject to having an annexation. The waiver is also required as part of the application at that time as well.
Q Right, right, okay.
And we also -- you mentioned Area B.
A Yes.
Q So it looks like 24.5 deals with Area B. It says, "The SSAM will designate all areas outside of Area A as Area B. Sanitary sewer service shall generally not be extended to Area B unless requests are made in writing to the Utilities Administration to be considered by the Utilities Service Board."
Do you see that?
A Yes.
Q And I read that correctly?
A Yes.

Q Okay. Area B, so how would the consideration process be different for Area B than Area A during the 2008 regulations?

A So the issue here is, again, it's going back. This is growth policy.

So the issue in Area B is extending beyond the service area that's already been established. Basically what Counsel and the administration at the time this was established, and the Utility Service Board was responsive to that, they were concerned that we were stretching far beyond, that we might stretch out far beyond areas that might be annexed in a reasonable period of time.

What basically this provision does is it allows for extensions when they're really necessary outside of the normal service area, and it creates another level, another step, in the requirements -- or in the approval process.

Typically sewer connections are managed entirely by staff inside the City. That's very simple. The sewer connections in Area A require the Director's approval, but if you wanted to go outside of Area A, it required an affirmative vote of the Utility Service Board.

In my time at Utilities there have been a

handful of requests, all of them back before 2017. We've had a number of requests for service outside of Area A.

In the Dillman basin, the southside of town, they have all been turned down by the Utility Service Board owing to the demand issue that I've already mentioned.

They did approve one extension outside of Area A on the northside for a particular development that had no other way to get wastewater treatment, and they did approve that one. So the only connection outside of Area A that's been approved since I've been here was on the northside.

Q I think in describing Area B you said it's to areas that the City doesn't expect to be able to annex within a reasonable period of time; is that right?

A I believe that was the standard.

So what would you want to approve out there? Typically, my understanding at the time I came on was that imagine somebody wanted to locate a large factory that was going to hire 2,000 people.

Q Uh-huh.

A You don't want to have the Area A line be a hard boundary that you can't go outside because someone might want to put something big outside that would

be -- a substantial customer would have a lot of benefits to the community overall. You don't want to simply say, No, we won't serve out there. But you need -- but you wanted to have a higher level of public input on whether it should happen. So whenever something goes to the Utility Service Board, then it's subject to being opposed in the meetings by members of the public.

Q Okay. You know, in establishing Area B, when they were trying to figure out what is a reasonable period of time, can you quantify that for me?

A I do not know.

Q Do you know if it was measured in decades?

A I do not know.

Q Okay. You don't --

A I just know there was a boundary, and my presumption is that if you did too much development out there, that you might not achieve -- I'm assuming. I don't know that for certain.

Q That would have all been before your time?

A Long before my time.

Q All right. So on Page 48 here there's Section 24.7.

A Yes.

Q It says, "Under no circumstances shall the Utility's approval of a request for permission to extend

sanitary sewer service obligate it to construct or pay for the construction of any sanitary sewer extension or connection to the City's sanitary sewer collection system. All such costs are to be borne by the party requesting the extension or connection. The applicant for a sewer service extension must make any upgrades to the Utility collection systems that are required to accommodate the impact of the new connection."

A Yes.

Q Did I read that correctly?

A Yes.

Q Okay. So, you know, can you break that down for me? What does that mean?

A What that means is that if we approve a new development's connection, we don't have to build the pipe. In short that's what it means. That the City is not promising to build anything for you.

Q And when it says, "upgrades to the Utility collection systems," is that referring to downstream upgrades?

A Yes, it's referring to anything that we already have.

Q So that would be similar to the example you gave earlier where you might need a bigger pipe downstream to accommodate the new flow.

A That's right. Or upgrade a lift station to like a larger capacity or, you know, anything that might have

to happen in response to the increase.
Q Okay. And this rule would apply to all requests for extensions, whether in Area A or Area B?
A That's right. And also, whether water or sewer. This is what we do always.
Q Okay. So you can feel free to set that document to the side.
(The witness complied with the request.)
Q So I think you touched on this earlier, but these rules were amended in February of 2021, right?
A That's right.
Q What was the change made to the rules?
A The change made to the rules was that the Utility Service Board, for any new connections outside City limits, would require voluntary or super-voluntary annexation to be requested by the person applying for the service.
Basically it was with the view towards the concerns about the waivers that came from the 2019 legislation. There's concern that we would not be able to rely on the waiver of remonstrance anymore. So the idea would be that if you applied for voluntary or super-voluntary annexation, that we would consider that.
Q Okay. And so that would be moving away from the

Area A and B, referring to the voluntary or super-voluntary annexation?

A I believe the 2021 rules did not -- it still had the Area A and Area B designation. So I would presume that had someone requested a connection in Area B, and was petitioning for voluntary or super-voluntary annexation, that that would be also part of the consideration the Board would have to consider. But I'll point out that there's no place in Area B that's contiguous with the City of Bloomington. So essentially requiring voluntary or super-voluntary annexation eliminates Area B.

Q Okay. So you mentioned part of what prompted the change was problems with waivers. Did anything else factor into the decision to make the change?

A It was -- that is my recollection.

Q And do you know when the process was began for planning the change in February of 2021?

A I don't know for certain. I do believe we did have one request for a connection outside of the City, that there were some -- but that lay within one of the proposed areas for annexation. And I think it was a consideration of what we would do with a situation like that. I believe that's what the circumstance was, but I don't know the -- I can't ...

Q Okay. Do you know if it was months before? years before? some other time period?
A I believe it would have been within months of February 2021. It wouldn't have been -- it was -- I don't remember the details of the particular circumstance. I have some recollection that there was a question about, Well, what if I just say I'll go ahead and be annexed now? I believe that may have been what led to the conversation, but I can't completely certain.
Q Okay. And I understand the Utilities Board made another change to the rules and regulations in August of 2022; is that right?
A Yes.
Q What did that change entail?
A That change eliminated the distinction between Area A and Area B, left it in the Director's discretion, and added a list of specific items that the Director was expected to consider when doing extensions outside City limits.
Q Okay. Do you know when that change was proposed?
A Well, I know it went to the Board in 2022, and I believe it was in the fall. The exact date, I -- I knew the exact date earlier, but I've forgotten it now.
Q Perfectly fine.

A But it was in that time frame, yes.
Q Okay. And what prompted the August 2022 change?
A It was the realization that there was some challenges with the rules and some clarification for especially the community that wants to make new connections. We want to make it as clear and explicit as possible what it is that we're doing and what things we're paying attention to. We didn't want to do anything that wasn't carefully considered, and we didn't want to do anything that was difficult for us to explain.

The biggest thing was clarifying our concerns about increasing population density outside the City limits in the possible absence of the annexation process. And so that's a lot of what we were trying to do.

Q Okay. Has the City extended sewer service to anyone outside the City limits since February of 2021 that was not a candidate for voluntary annexation?
A We had some that were in process, and even up to now we still have a couple of things that are still in process.

We weren't -- our philosophy has been that once someone has invested the time and money to start planning and development, they've begun the planning process, they've gone through the Will Serve process

and so forth, that it would be inappropriate for us to cut them off and say, Well, sorry, we changed our rules. So things that have been in process, we're continuing to do that.

Also, there have been some -- there's a new library being built outside the City limits. We approved that as an institutional facility. We've also approved some connections for some commercial and industrial connections as well.

Q Okay. Can you pull out Exhibit 6, the interrogatories again.

(The witness complied with the request.)

Q Can you flip to Page 8.

A Okay.

Q So Interrogatory No. 2 says, "Describe the considerations relevant to the City of Bloomington's decisions to extend sewer service within Areas 1A, 1B, 1C, 2, 3, 4, and 5."

Did I read that correctly?

A Yes.

Q And what are Areas 1A, 1B, 1C, 2, 3, 4, and 5?

A Those are the proposed annexation areas.

Q Okay. Under the "Answer" there's a sentence that says, "It is impossible for Plaintiff to identify the considerations that would have been relevant to such

decisions over that period of time. Without waiving the foregoing objections, it is reasonable to presume that Plaintiff earlier would have taken, and currently is taking, the following factors into consideration."

Did I read that correctly?

A Yes.

Q Okay. So about over what area of time were these sewer extensions approved?

A Oh, you mean, for clarification, in the extensions that are already present in these annexation areas?

Q Correct.

A Can you repeat the question?

Q For the extensions we're discussing here that already exist, Areas 1A through 5, over what period of time were those approved?

A That, I don't know specifically, but it would be over decades.

Q Okay. So when you say, "It's reasonable to presume that Plaintiff earlier would have taken, and currently is taking, the following factors into consideration," that's an educated guess of what the City would have considered?

A Yes.

Q But you don't know for sure.

A I don't have any documentation, so I don't know. I

only know it's been done since I've been here.
Q Understood.
But any considerations would have to be consistent with the rules and regulations governing at the time?
A Yes, that's true.
Q Okay. So I have a couple of questions about some of the specific factors you list here.
Factor 6 says, "The value of the proposed development to the broader community, including, but not limited to, the nature of the development's proposed use."
Did I read that correctly?
A Yes.
Q What exactly do you mean by "value of the proposed development to the broader community"?
A The library, for example. The Monroe County Public Library System is now building a new library that lies outside City limits on the southwest side of town. So that is considered as an institutional development that's considered to be of high value to the community.
Q Because it benefits everyone.
A It benefits everyone, that's right.
Q So some City residents, and some Non-City residents?

A That's right.

And the Monroe County Public Library is not a City institution. It's a County institution.

Q Okay. And then Factor 7 here says, "Whether the proposed development would place a significant increased burden on other non-utility municipal services."

Do you see that?

A Yes.

Q What are these -- what do you mean by "other non-utility municipal services"?

A So other non-utility municipal services would be all the other things that the City does. So that's -- we have housing and neighborhood development, we have parks, and we have fire and police, and we have a street department.

So imagine that you put a very large development adjacent, right adjacent to the City, so it's a large residential development. You have to presume that the people who live there might very well be going to work in Bloomington, which means the current streets may not be big enough anymore. And those streets are inside the City of Bloomington, so the City of Bloomington would incur additional costs to serve that additional traffic.

You'll presume that the person who lives -- the people who live there might want to enjoy the parks that the City is providing. Those are provided by the residents of the City. There would be additional costs associated with that, and those would be borne by the residents of the City.

Our fire department has agreements to assist in times of need with the outside fire departments. If that large development is sitting right adjacent to the City, it would be likely that they would be called in on emergency calls.

Similarly, anything that the police might be involved in inside the City that involved people who live outside the City, there would be the more possibility of that kind of thing.

So basically anything that the City, any services that the City provides, there would be a larger population of people who were very close by who would be likely to take advantage of those services.

Q When did the City start considering this factor?

A I don't have an answer. I don't know that.

Q And we also talked about in Factor 6 about "the value of the proposed development." When did the City start considering that factor?

A Well, explicitly, that came up in about the time that

the amendments were being made to the rules regarding connections outside the City.

Q Are you aware of anything, but before that amendment, that explicitly dealt with these considerations?

A I am not.

And a point of fact, I don't know of any circumstances where, and certainly I, as Director, prior to the considerations related to the waivers, and up until that time, I had never declined to serve a property in Area A and, to my knowledge, my predecessor didn't either.

So practically speaking, Area A was treated as -- it was not looked at in that way as being outside the City. It was looked at as being an area that the Director had discretion over. But I don't know of any cases at that time that we turned anything down in Area A. Area B we did, but Area A we did not.

Q And you're not aware of anything where requests for Area A was turned down for any of these reasons listed here?

A Certainly not in my tenure, no. I don't know of -- I don't know about my predecessor.

Q Okay. So Factor 9 here says, "Whether the proposed development was part of an 'Area Intended For Annexation' (AIFA) or within the two-mile fringe,

where the Plaintiff possessed planning jurisdiction."

Did I read that correctly?

A Yes.

Q What is the "Area Intended For Annexation" and "two-mile fringe"?

A The AIFA, or A-Fa [phonetic], as we usually say, was an area that was agreed upon between the City and the County, that the County and the City agreed that it was intended that those areas would be annexed, and, therefore, the City had planning jurisdiction over it.

The two-mile fringe was the rule prior to the establishment of the AIFA. The two-mile fringe is basically draw a two-mile border around the outside of the City, and the City had planning jurisdiction. It's my understanding that the AIFA is smaller than the original two-mile fringe. I think that reflects the likelihood that an area would be developable or not. But that was all an agreement between the City and the County.

The agreement that created the AIFA expired, so we don't have that anymore.

Q So approximately when was that agreement created?

A I don't know the exact date. It was in the 2000s.

Q And approximately when did it expire?

A It was before I became Utilities Director, but I don't

know the exact date.
Q Okay.
A So during my tenure there was no AIFA or two-mile fringe.
Q Can I get you to turn to Page 7.
(The witness complied with the request.)
Q At the top it says, "Interrogatory No. 1: During the period described in Paragraph 15 of the Complaints, describe the considerations relevant to whether the City of Bloomington would extend sewer service to unincorporated areas."
Did I read that correctly?
A Yes.
Q And I will represent to you the period described in Paragraph 15 is from the 1950s until now.
A Okay.
Q So under "Answer" it says, "Interrogatory No. 1 asks Plaintiff to describe the considerations that would have governed specific individual sewer extension decisions for a period of more than 60 years. It is impossible for Plaintiff to identify the considerations that would have been relevant to such decisions over that period of time. Without waiving the foregoing objections, it is reasonable to presume that Plaintiff earlier would have taken the following

factors into consideration."

Did I read that correctly?

A Yes.

Q And so when you say "it is reasonable to presume," this is, again, a situation where you don't know for sure, but you're making an educated guess, right?

A Yes.

Q Okay. And under here there's listed 11 factors, right?

A Yes.

Q So you don't know which of these factors were considered in any individual instance?

A I do not.

Q Okay. And different factors could have been considered at different points in time?

A That's true.

Q And you just don't know.

A I just don't know.

Q Okay. I will set this aside.

I would like to introduce the next exhibit, this document, as Exhibit 9.

(Intervenor's Exhibit 9 was marked for identification.)

A Thank you.

Q What is this document?

A This is the affidavit that was filed by me, or were filed, that I helped to prepare regarding the initial -- the initiation of the case.
Q Is there any way this affidavit is no longer accurate or correct?
A No, it is correct.
Q So in Paragraph 3, it says, "When new developments are built beyond the City's municipal boundaries without municipal wastewater service, they generally utilize septic systems as an alternative wastewater solution."
Did I read that correctly?
A Yes.
Q Okay. Do developments outside the City limits have any other options besides septic systems?
A The only other option they would have would be the creation of or construction of something we call a package plant. It's basically a wastewater treatment plant that's on a skid that they can deliver to a particular location.
There are, especially in the Lake Monroe Watershed, the County has been given that Lake Monroe is their only source of drinking water. The County's been very protective of Lake Monroe. So there are a couple of developments that took place in the Lake Monroe Watershed where the County required them to put

a package plant in rather than simply having septic for all the homes. So the homes basically have their own wastewater treatment plant.

Q If you have one of those package plants, does that allow for development as dense as connecting to the City's sewer service?

A It does not, not as dense, a higher density. Presumably over a very small area it could, but they're going to be limited in their capacity. So a package plant might be able to take 50,000 gallons per day, whereas our plant can take millions of gallons per day. So if it could, it perhaps could have density, but it wouldn't be very large.

Q Okay. But if you added several of these package plants, you could theoretically come up with something of similar density?

A Theoretically. Practically, no, because package plants are subject to the regulation of the Indiana Department of Environmental Management. So the County can't just say, Sure, put a package plant in, and that's all good. IDEM will still regulate the management and operation of the package plant and its affluence. So it is a wastewater treatment plant, and those are subject to the State's jurisdiction.

Q Okay.

A So I couldn't build a suburb and put 30 package plants along Clear Creek. And part of the reason for that is that imagine there were a bunch of package plants in the watershed of Bean Blossom Creek where one of our wastewater plants discharges into. Our affluent limits, the amount of the contaminant level that could be in the water that we discharge, is partially dictated by the current condition of the water in the receiving water body, the stream. So if there were a bunch of package plants upstream, then they would be discharging sewage upstream from us, which would probably restrict our limits, our concentration limits might go down, but it also might restrict us from a future expansion of the plant capacity because the stream's capability of handling wastewater loading would be reduced. So a stream can receive a certain number of pounds per day of the contaminants and then a certain number of gallons per day of water from these plants.

So proliferation of those package plants has affects on all the other treatment plants in the area as well. So, in general, the State doesn't like to have a lot of package plants around.

The other thing is that package plants -- this is not to denigrate any of my colleagues in the

wastewater industry, but package plants are usually less capitalized financially and probably don't receive the level of monitoring and oversight that a community-owned treatment works would do. So typically those private package plants will not receive the level of oversight that a large wastewater plant would. And ultimately, the issue, then, is the water quality in the receiving stream.

Q In the interplay between the City's sewage service and package plants, those are regulated by the State?

A That's right.

Q Okay. So in Paragraph 4 of your affidavit it says, "In most cases where the City declines to extend municipal wastewater service to a non-municipal proposed development, the development cannot move forward and is not built."

Did I read that correctly?

A You did.

Q So it sounds like there are some exceptions to -- some developments are still able to move forward?

A Some are subject to the ability of a particular development to institute septic.

I've owned homes that had sewer service, and I've had homes that had septic. If it were my choice, I would always have sewer service. It's much more

convenient. I don't end up having to treat wastewater on my premises. There's lots of things that can go wrong with a septic system.

So if you had a development that was proposed that had parcels large enough to accept a septic tank, and had the soil conditions appropriate for having a septic tank, a development like that might be proposed to the County, presuming this is outside the City.

Q Right.

A When that gets proposed to the County, they may propose it with sanitary sewer service because the homes will be more valuable, and the owners will be happier to have the sewer service if they could. If they couldn't, they could have septic as a fallback. So you might achieve the same density, but that density might be two-acre parcels.

If you have sewer service, you can have quarter-acre parcels or smaller, or large apartment buildings that you couldn't have on a septic system. Well, you couldn't have it as effective in a septic system. It'd be a large septic system.

So what I'm meaning here is that there may be cases where a residential development could be built on septic or on sewer, depending on whether it was authorized or not. But typically what we're talking

about is if they come to us, very often it's because they want to have a higher density development that's more like an urban development, and without septic you can't build that.

Q So if the City turns a developer down for sewer service, they could go back to the County and propose moving forward with septic or a package plant; is that right?

A They could propose going back with septic. They could propose a package plant. Chances are that won't ever be approved. IDEM's not going to let you build a package plant right next to an area that's served by a publicly-owned treatment works typically.

But if they did want to go ahead with the development, it's very likely that that development would have much lower density than if it could have had sewer because you're usually looking at one- to two-acre parcels by the time you're going to septic.

Q Okay. So it seems like just the main benefit of someone being able to connect to the sewers, City sewer service, is that they get to build more and build more densely; is that right?

A That's correct. So a higher density development means you get to sell more houses.

Q Okay. Does the City receive any benefit when it

allows someone outside the City limits to connect to its sewer service?

A For clarification, do you mean residential development, or do you mean development in general?

Q If there's a difference, please explain it.

A So if someone built a factory that was just outside City limits, and that factory hired 2,000 people to work in it, then there would be benefits all-round for the residents of the community whether they lived in the City or whether they don't.

If the residents of the City of Bloomington make more money at their job, whether they do the job in the City or not, they are going to do things in the City that they wouldn't have done otherwise. So that could be beneficial.

Residential development doesn't have any particular benefits to the City if it's not within the City limits. It creates additional burdens for City services that aren't water or wastewater.

Speaking from the perspective of the Utilities Department, as I said, we break even over the long term. Over the short term there could be additional hassles for us if things are going -- because our staffing could never keep up with rapid -- the pace of our staffing and the equipment that we have probably

can't keep up with rapid development.
Q Okay. Does the Utilities Department get any economies of scale from having more residential customers?
A No.
Q So there's no economies of scale in sewage management?
A Well, there are, but we're big enough that, in particular, if -- we got 22,000 customers. If I add 20- more, it's not making that big a difference for us. If we get big enough, say, we got up to -- say, we were suddenly 75,000 customers. If we had 75,000 customers, we'd have probably two more wastewater plants.

So we can't just keep making the current plant bigger and bigger because if the development happens in a concentrated area, you're going to have to expand the current plant. But if you start extending service farther out, it may not be feasible to actually collect the wastewater from over there and put it in the plant you have right now. You'd have to have a gigantic lift station to do that.

So what you would do is you would build another plant in another basin, which you would get no economies of scale from doing that, but you'd have to build the plant.
Q Okay. So for a given plant, there's a point where you

max out your economies of scale?
A Exactly, yeah.
Q But, you know, the closer you get to that point the better it is. Wherever that optimum point is, the closer you get to your optimum point, you want to sort of be there for a given plant?
A Yeah, you don't want to get bigger than -- you don't want demand to exceed your capacity, yeah.
Q Okay. When denser development happens just outside the City limits, does that increase the property values in the City?
A I'm not an economist. I don't know the answer to that.
Q Okay.
MR. BARTA: I think we've been going about another hour, and I think I have about one more section. So, you know, given the time, we could either take a five-minute break and then maybe go for -- you know, finish it out, or if you guys would prefer to break for lunch, I'm happy to do that, too.
MR. ROUKER: Well, I'd rather not break for lunch. Speaking for myself only, I'd rather take a five-minute break and then come back and knock it out, but I guess I'll defer to the group.
MR. UNGER: We don't need to have it. If you

want to take a break, we can take a break.

MR. BARTA: Five minutes is good for me.

MR. UNGER: Okay.

MR. BARTA: But I will leave it to our court reporter, who has been helping us get through this.

THE WITNESS: I'd be happy to take a five-minute break.

MR. BARTA: Okay. Well, why don't we do that.

(AT THIS TIME THERE WAS A BRIEF RECESS TAKEN, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

DIRECT EXAMINATION,

QUESTIONS BY MR. BARTA:

Q So I think that a concept that's come up, I think previously in this deposition, is the waivers against of the right to remonstrate against annexation.

Is it okay if I just refer to those as waivers?

A Yes. I was going to ask that, too.

Q Okay, great.

Just wanting to make sure we're on the same page, what is your understanding of the waiver?

A My understanding of the waiver is that you are saying that in return for being able to connect to the sewer that you are agreeing to have the parcel eventually

annexed into the City of Bloomington. And that waiver applies to the property and not to the person who signed it, so you and any future owners of the parcel will not remonstrate against a future annexation.

Q And we mentioned annexations that the City is currently trying to conduct for Areas 1A to 5, right?

A That's right.

Q And the City has waivers from people with -- or for properties within those waivers, right?

A Within those areas, yes.

Q Do you know about over what period of time the City obtained those waivers?

A I don't know specifically, but it's decades.

Q Is a waiver typically obtained at the time the development occurs?

A It's attained when the sewer connection is made. The agreement is that in return for us allowing you to connect to our sewer you're waiving your right to remonstrate.

Q Okay. And usually the sewer connection is made about the time the development is built?

A Yeah. Certainly before the people move into the houses, yes.

Q But it's not generally the case where someone connects to the sewer and waits years to build?

A No, they would not do that.
Q Okay. So if we have a waiver from 1985 that would suggest the property was probably developed around 1985?
A That's true, yes.
Q Which departments or persons at the City are responsible for determining whether to seek a waiver from someone wanting to connect to the sewer system?
A Well, it's part of our rules and regulations that you would have to sign a waiver in order to get a connection. So that would typically be someone from our Engineering Division at CBU, or it could be someone from the Legal Department. Historically, I don't know if any other departments would be involved in that or not. But prior to CBU's existence that might have been a different City department.
Q Okay. And when did the CBU come into existence?
A I don't know for certain. Our current structure was established in 1973 when the Utility Service Board was created.
Q Okay. And you mentioned that the current rules require the City to obtain a waiver?
A Yes.
Q Was there ever a point in time when the City's rules did not require that?

A I know for certain since 2008 we certainly have. Before that I know that the State -- there's statutory language regarding the importance of waivers for sewer extensions outside of cities. I'm not a lawyer, I don't know the specifics of that, but I know that there is statutory language establishing the importance of cities accepting and receiving waivers for sewer service.

Q As far as the City's own regulations and policies, you don't know for sure one way or the other what they said about waivers before 2008?

A I don't know at this moment. I'm sure I could find paperwork that would demonstrate one way or the other. But my assumption, and what I've been told, is that this has been the practice for as long as anyone at CBU can remember.

Q Okay. Do you know for sure whether this has been the practice all the way back to the 1950s?

A I don't know for certain. Personally I don't know.

Q Okay. So we talked about the Rules, Regulations and Standards of Service has language related to waivers, right?

A That's right.

Q Are there any other policies, rules, or regulations that govern the waiver process?

MR. ROUKER: Objection, calls for a legal conclusion.

Q Let me restate that.

Are you aware of any other regulations, rules, or policies the City looks at when obtaining the waiver?

A I'm not aware of any. It's simply a requirement in order to make a connection to the sewer, from my perspective.

Q There has been times in the past when the -- or let me restate.

There are properties connected to the City's sewer service system today for which the City does not have a waiver, correct?

A That is true, yes.

Q And some are outside the City limits?

A That's my understanding, yes.

Q Do you know why there's no waiver for those properties?

A As I said, certainly since 2008 it's been required. So if any of those have occurred since 2008, it would clearly be, to my mind, an omission and not an intentional decision that was made at any particular time. I've seen no documentation, and I've heard no assertions from staff, that anybody ever said, Nah,

you don't have to do a waiver. My understanding is if there isn't a waiver, it's because either the paperwork was lost or someone forgot or something like that.

Q Okay. And that's since 2008?

A Prior to that I know it's been the rule for as long as anyone can remember. So my assumption is if there were periods, there was something in the '70s or the '60s, I would presume it was the same.

Q But it could be different?

A I really don't want to speculate. I know that's been -- the State law has been that way for a long time.

Q But you're not aware of any -- you don't have specific knowledge --

A I have no specific knowledge.

Q -- of any rules from the '60s or '70s?

A No.

Q Okay. So you're making an educated guess about what the practice was before in the '60s and '70s.

A That's -- yes, certainly.

Q Okay.

A I do want to assert I also have not gone back through the paperwork from the '60s and '70s to see. But it's been required for as long as anyone can recall.

Q Okay. And when you say "as long as anyone can recall," what time period is that?
A Well, we have employees, believe it or not, who worked in the Utilities Department in the 1970s, and we have alumni from before that who are in regular conversations with us about all sorts of things, and we certainly do go back and talk to them from time to time.

Right now we're involved in identifying where there are lead service lines. It's a requirement, a federal requirement. We've interviewed a lot of people who go back to the 1960s to find out what their recollections were, so.

Q Have you interviewed those people specifically about the topic of waivers?
A The ones inside the Engineering Division, yes, we've talked with them.
Q Okay. And how long have they been around?
A Can't say for certain. Some of them are more than 30 years. Certainly back into the '80s and possibly before.
Q So after the City obtains a waiver from someone, what happens to the waiver?
A It gets recorded.
Q Who at the City is responsible for that?

A I don't know specifically. I presume it's someone in the Legal Department.
Q Why does the City record waivers?
A Because they have to be recorded.
Q They have to be recorded by what standard?
A I believe it's a -- I believe it's the law that they have to be recorded.
Q What is the City's understanding of why the law requires recording?
A I can't speak for the City.
MR. ROUKER: I'm going to object. It's asking for a legal conclusion again.
MR. BARTA: Okay.
Q You can still answer.
A I don't know.
Q Okay. If a waiver is not recorded, what would be the consequences of that?
A I --
MR. ROUKER: Hold on.
I'm going to object. Again, this is calling for a legal conclusion.
Q Let me see if I can -- if a waiver is not recorded, what impact could that have on property owners?
MR. ROUKER: I'm going to voice the same objection.

You can answer.
A I don't know what it could mean to property owners. It would depend on whether there was one or two of them or a thousand of them, I would presume. But I don't know.
Q Why do you say it depends on whether there's one or two or a thousand?
A Well, because it is my understanding that the process is that when an involuntary annexation is pursued, the people can -- the people who have not waived their right to remonstrate can remonstrate against it. If there are enough remonstrances, then it can either jeopardize or prevent an annexation. So if you were annexing an area that had 8,000 people in it, it would matter whether there were three that didn't have waivers or whether there were 3,000 that didn't have waivers.
Q Okay. Does the City have any regulations, rules, or policies governing the recording of waivers?
A I don't know that.
Q And just to clarify, the City does not have them, or you don't know one way or the other?
A I would presume that that would be in the jurisdiction of the Legal Department. I can't speak for how they operate. All I know is that we have people sign them,

and then we turn them in.
Q Okay. And the Legal Department records them?
A I can't speak to that. I don't know.
Q The Utilities Department does not take care of the recording?
A We do not do the recording.
Q Okay. So we've been talking about the annexation that kicked off in 2017.
A Uh-huh.
Q The City recorded a number of waivers right before the annexation, right?
A I don't know. I don't have specific knowledge of that.
Q That's fine.
MR. BARTA: I'm going to introduce a document as our next exhibit, Exhibit 10.
(Intervenor's Exhibit 10 was marked for identification.)
Q What is this document?
A This is a waiver of the right to remonstrate against annexation that was executed in return for the ability to tap into and connect to our sewer system.
Q Okay. Midway down on the page it says, "Before me, as Notary Public, personally appeared Jay Hall and owners of the above described real estate and acknowledged

the execution of the above release of the right to remonstrate against pending or future annexation to the City of Bloomington, Indiana to be their voluntary act and deed, this 29 day of October, 1998."

Did I read that correctly?

A Yes.

Q So it looks like this waiver was executed in 1998; is that right?

A Yes.

Q Okay. And I see at the top right of the document there's a stamp that says, "Monroe County Recorder IN" -- Indiana -- "Recorded as Presented." Is that right?

A Yes.

Q And it looks like the date there is "02/22/2017." Do you see that?

A Yes.

Q So it looks like this waiver was recorded in 2017?

A Yes.

Q Do you know why it took so long to record this waiver?

A No, I don't.

Q Do you know if there's other waivers that's taken years for the City to record?

A I can't speak to that specifically. It's possible.

Q Has there been any changes made to the process for

recording waivers since 2017?
A That's outside of my jurisdiction. I will say that my presumption is that these have never been questioned. This has never been an issue before. I'm sure they were kept on file, but I don't know any specifics of it.
Q So in the areas that the City is now trying to annex there are some waivers that date back decades, right?
A Well, this one does certainly, so, yes.
Q Are you aware there's other waivers that date back to the 1950s?
A I did not know that.
Q Okay. Does the City have any concerns about the passage of time between the execution of the waivers and their use?
MR. ROUKER: Objection, calls for a legal conclusion.
Q You can answer.
A I can't speak for the City. I can only speak to what we do, and from CBU's perspective, we assume that once there's a waiver, there's a waiver.
Q Do you think developers could have concerns about decades elapsing?
A I have never heard --
MR. ROUKER: Hold on.

Same objection: calls for a legal conclusion.
A I've never heard anyone complain about that.
Q So the City has communications with landowners about waivers?
A We have communications with landowners about waivers when they apply for sewer service.
Q Has the City had communications with landowners about waivers after the application period?
A Well, from the perspective of the Utilities Department, we don't have any. There's no particular reason why we would.
Q So I believe you were designated to sort of talk about communications between the City and landowners about waivers generally.
A Okay.
Q So I'm curious more broadly about, you know, has the City had conversations about landowners and waivers after the application period?
A Not that I'm aware of.
Q Have you asked --
A Well, prior to the annexation proposal I don't know of any.

After the annexation proposal came out, we had public meetings. People asked us questions about the waiver and how their property ended up with a waiver

on it and all that sort of thing. To our knowledge, it was a previous owner in some cases that had done it.

Q Okay. Well, when you say people had questions, that was about individual properties?

A Individual properties.

We had public meetings where individuals could come and talk to us about what it would take for them to get sewer and those kinds of things.

Q Okay. What did individuals express at these public meetings regarding waivers?

A I don't recall specifically anything that's -- how do I say this? There's a common thing that happens, and stepping back from waivers for a moment, we have -- there are lots of cases where the City or the Utilities Department has documentation associated with a parcel that a property owner might not become aware of. They might not read the deed closely when they bought their home, and then they discover that there's a storm easement, storm water easement. It's their job to maintain the property, and storm water is allowed to flow across the property.

We also have cases where people have accidentally built homes on top of buried infrastructure that we had to remove.

The common thread through all of those is I didn't know when I bought the property that this was the case. So to the extent that when we were having those conversations with people, I would say that that was -- When I bought the house, I didn't know that there was a waiver on it.

And we had that happen with other things. And what we typically say is, Well, it was attached to the property, attached to the parcel, so at that point I don't have anything more to say other than we acknowledge that it was a previous owner that gave this easement or whatever, or was paid for an easement, or whatnot. We recognize that that happened before your time, but it's still attached to the parcel, and you're still responsible for it.

Q Just to clarify, so there were landowners in the annexation area that expressed surprise a waiver had covered their property?

A Yeah. I suppose so, yeah.

Q Do you know if any of those instances -- do you know if any of those properties involved waivers that had not been recorded for a period of years?

A I do not know that.

I do know that we provided them the sewer service that was referenced in the waivers. They

would not have waived it had we not agreed to the connection.

Q Have any landowners in the annexation area, you know, expressed other concerns regarding waivers?

A Not to me. I don't know specifically.

Q Have they expressed it to the City generally?

A I would presume they would have expressed concerns about waivers, but I can't speak to specific instances.

Q Okay. I think just one last question for you: So are there any answers you've given today you need to go back and correct?

A No, I don't think so. No.

Q Okay.

MR. BARTA: I am done.

MR. ROUKER: Take a couple minutes?

MR. BARTA: Perfectly fine.

MR. ROUKER: Thanks, James.

(AT THIS TIME THERE WAS A LENGTHY RECESS TAKEN, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

REDIRECT EXAMINATION,

QUESTIONS BY MR. ROUKER:

Q I have just a couple questions for you, Vic.

You testified earlier that developers pay the cost of the installation of actual sewer infrastructure when there is a sewer extension; is that correct?

A I did testify to that, yes.

Q You did testify to that.

Can you think of any times when that may not be the case?

A We do have cases where -- well, first of all, the IURC has a rule that we forego three years of revenue from that new sewer extension under their rules, and that happens in every case.

Another thing that happens is that we have a requirement that imagine having a neighborhood in the City that isn't served by the sewer, they have septic tanks, and we do have those neighborhoods.

If a neighborhood wants to have sewer installed along their street, they can ask us to do that. Our requirement is that we calculate what it will cost, and then more than half of the people who are going to be served by that pipe have to pay their share of that cost at the beginning.

So, for example, if you have a street that has ten homes on it, and it isn't served by sewer, and they want it to be served by sewer, we'll calculate

that it costs whatever it is -- a hundred thousand dollars -- to run the sewer down that street. Six of those neighbors will have to agree up-front to pay their share of that cost when we build the sewer. The others will be charged with interest when they eventually -- so 10 years, 15 years later, they have a septic tank fail. They'll pay their share at that time with interest. In the meantime the utility has to pay for that other 40 percent. In practice you may never collect that. That cost may never be passed on to that resident because if they never connect, you never get the money.

And another one, an analogous one we've talked about, and I referred to it before, is the whole thing of having to upsize a sewer because a new development makes an existing sewer reach its capacity, and it has to be upsized.

I can't make a sewer exactly fit the new demand. have to make a sewer, and I have to make it at least big enough to handle the demands, which practically means that if I have a 10-inch sewer that was maxed out, you brought another 6-inch sewer onto it, that puts it over its capacity. I might upsize it to a 14-inch sewer, but I'm also going to look around to see what else might eventually might want to connect

to it.

And oftentimes when you're talking about new development, you're talking about being way out on the edge of the system. There may be five or six large parcels that are ultimately going to want to be subdivided and connected. A 12-inch sewer would do, but a 16-inch sewer would cover all those other folks as well eventually.

Well, what's going to happen is we're going to charge the developer who's putting in their new development. We're going to charge them for a share of that expansion. We're not going to charge them for all of that, and if those other parcels never get developed, then our rate payers never get reimbursed for that.

At times we are in a situation where we have to spend rate payer dollars to protect ourselves from having to spend more rate payer dollars later. So if I went from a 10 to a 12 and then to a 14 and then to a 16, I'm tearing everything up three or four times to do those expansions. Where the smarter thing would have been to plan for what will eventually be there because our planning horizon is 50 to a hundred years, not 5 to 10 years.

Q Switching gears, at what point in the process of

requesting a sewer extension for a connection outside the corporate boundary of the City of Bloomington is a requester notified that they'll have to execute a waiver of the right to remonstrate against a future annexation?

A And, as I said, a lot of times if it's outside the City, these things begin with an inquiry at the County Planning Department, and they have to come to us to get a Will Serve Letter. At that point our staff describes everything that has to happen in order to get the sewer, including the remonstrance waiver. That's explained at the very beginning of the process, even before the Will Serve Letter.

Q And I'm jumping around a little bit here.

I believe in your testimony to Mr. Barta you mentioned that you're not aware of any instance where the City said no to a request for a sewer extension within what was designated as Area A on the SSAM.

Can you explain a little bit more why that might have been the case?

A Well, first of all, there are just a limited number of situations that would have led us to that outcome.

A large factory that needed to be able to get rid of 5 million gallons a day of wastewater that we didn't have enough capacity to treat. That could have

happened, but it didn't, so we didn't have to turn that down.

We didn't have any requests for industrial facilities that would have made highly contaminated waste, so we didn't have anything to deal with there.

And, you know, frankly, we never anticipated that we wouldn't be able to annex once we had the annexation waivers. All of our decisions have assumed eventually we'll be able to annex the areas that we were serving with sewer because we had waivers on the properties.

Q So was that assumption in part based on the ongoing enforceability of those waivers?

MR. BARTA: Objection, leading.

A Yes.

Q What was that assumption based on?

A Well, it was based on the assumption that the waivers were tied to the parcels and that eventually we would be able to annex them as had been previously agreed.

Q You were asked a little bit about sort of a history of the Rules, Regulations and Standards of Service and about sort of how those existed over time.

Do you have any reason that a waiver was always required in exchange for a sewer extension by one of the rules in the CBU's Rules, Regulations and

Standards of Service?
A I have no reason to doubt that.
Q And then are you familiar with sort of the level of development that exists in the areas that are currently proposed for annexation in Areas 1A through 5?
A Yeah, I'm familiar with that. Yes.
Q Could the majority of development that is present in those areas have occurred in its form with its current density without the City having extended sewer service to those areas?
A No. Certainly large dense neighborhoods could not be served without sewer, and we are the only viable place to get sewer service in Monroe County -- well, sorry, in the Bloomington area. Ellettsville also has a sewer department themselves, but CBU would be the only place they could have gotten it.

MR. ROUKER: Nothing further.

FURTHER REDIRECT EXAMINATION,
QUESTIONS BY MR. BARTA:
Q Just a few follow-up questions.

In talking about different development scenarios, you mentioned a situation where a sewer line goes down a street, and half the people have to

agree to pay the up-front cost. Do you remember that?
A Yes.
Q Is that situation only applicable to people inside the City limits?
A No, it's also applicable to people anywhere in our service area.
Q And you also mentioned something about a three-year window of foregoing revenue under IURC rules, correct?
A Yes.
Q Why does the City forego three years of revenue?
A Because it's the requirement. We're required to.
Q What is the three-year period based on?
A I don't know the legislative history of the three-year period. I only know that it's the rules.
Q Okay.

MR. BARTA: I don't think I have anything further.

MR. ROUKER: Nothing else.

We will read and sign. Send the transcript directly to me.

MR. BARTA: I will take a full-size E-Tran transcript.

MR. ROUKER: I will take a full-size PDF transcript.

(Deposition proceedings conclude at 1:09 p.m.)

STATE OF INDIANA )
) SS
COUNTY OF MONROE )

IN THE MONROE COUNTY CIRCUIT COURT

CITY OF BLOOMINGTON, )
)
Plaintiff, )
)
-v- )
) CAUSE NOs.: 53C06-2203-PL-000608
CATHERINE SMITH,in her ) 53C06-2203-PL-000609
official capacity as ) 53C06-2203-PL-000610
Monroe County Auditor, ) 53C06-2203-PL-000611
) 53C06-2203-PL-000614
Defendant, ) 53C06-2203-PL-000615
) 53C06-2203-PL-000616
and )
)
STATE OF INDIANA, )
)
Intervenor. )

I, VICTOR KELSON, state that I have read the foregoing transcript of the testimony given by me on July 25, 2023, at my deposition;

That said transcript constitutes a true and correct record of the testimony given by me at said deposition except as so indicated on the errata sheet(s) provided herein.

FURTHER THE DEPONENT SAITH NOT

_____
VICTOR KELSON

Dated: _____

STATE OF INDIANA )
) SS:
COUNTY OF MONROE )

I, Barbara Ann Bourbina, a Notary Public in and for said county and state, do hereby certify that VICTOR KELSON, the deponent herein was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the aforementioned matter;

That the foregoing deposition was taken on behalf of the Intervenor, Office of the Attorney General, State of Indiana, at Bloomington City Hall, in Bloomington, Monroe County, Indiana, on the 25th day of July, 2023, pursuant to the Applicable rules;

That said deposition was taken down in Stenograph notes and afterwards reduced to typewriting under my direction, and that the typewritten transcript is a true record of the testimony given by said deponent;

And that the deposition upon oral examination was taken down in Stenograph notes and afterwards reduced to typewriting under my direction and thereafter presented to said witness for signature;

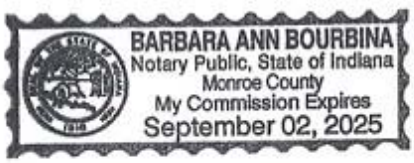
I do further certify that I am a disinterested person in this cause of action; that I am not a relative or attorney of any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 8th day of August, 2023.

Barbara Ann Bourbina, Notary Public

Commission Number: NP704124

My Commission Expires: September 2, 2025



**Exhibits**

**Victor Kelson Ex 01** 4:3 8:1,2

**Victor Kelson Ex 02** 4:5 18:2,3

**Victor Kelson Ex 03** 4:8 19:13, 14

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