

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT FILED BY) CAUSE NO. 44610
HERITAGE ENVIRONMENTAL SERVICES AND)
HERITAGE TECHNOLOGIES WITH THE) APPROVED: MAR 16 2016
CONSUMER AFFAIRS DIVISION)

[Handwritten signatures and initials]
APW

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Commissioner

Aaron Schmoll, Senior Administrative Law Judge

This matter originated as informal complaints filed by Heritage Environmental Services, LLC (“HES”) and Heritage Technologies, LLC (“HT”) with the Indiana Utility Regulatory Commission’s (“Commission”) Consumer Affairs Division (“CAD”) on August 21, 2014. The complaints addressed natural gas service provided by the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis doing business as Citizens Gas (“Citizens Gas”). CAD did not make a final determination on the informal complaints, and on April 6, 2015, pursuant to 170 IAC 16-1-5(e), the Commission created the docket for this Cause.

On October 29, 2015, the Commission conducted a hearing in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Complainants, Citizens Gas, and the Indiana Office of the Utility Consumer Counselor (“OUCC”) appeared and participated in the hearing. At the hearing, the parties offered their respective pre-filed testimony, all of which were admitted into the evidentiary record, and the witnesses answered questions from the Presiding Officers. The Commission took administrative notice of the Commission’s Order on Remaining Issues in Cause No. 37399 GCA 123 (Dec. 3, 2014) (“GCA Order on Remaining Issues”). No members of the public appeared or testified at the hearing.

The Commission, having considered the evidence and applicable law, finds:

1. Commission Jurisdiction and Notice. Proper notice of the hearing conducted in this Cause was given as required by law. Citizens Gas owns and operates a gas utility that provides service to customers located principally within Marion County, Indiana. The Commission has specific statutory authority pursuant to Ind. Code § 8-1-2-34.5, 170 IAC 1-1.1-5, and 170 IAC 16-1 to review informal complaints filed with CAD. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. Relief Requested. HES and HT seek a refund of overcharges from the D5 Gas Supply rate during periods they took service under the rate from September 2013 until each company switched to a different rate. HES and HT claim the D5 Gas Supply Rate was flawed, unjust, unreasonable, or discriminatory, but Citizens Gas did not act to advise customers or fix the rate.

3. Evidence Presented.

A. Complainants' Direct Evidence. Mr. Ted Moore, Vice President of HT testified regarding the problems HT and HES experienced with Citizens Gas on the D5 Gas Supply Rate. HES and HT are companies headquartered in Indianapolis, with approximately 960 and 125 employees, respectively. HT and HES noticed a large spike in their gas bills starting with their invoices for September 2013. Personnel began to investigate the reason for the higher bills and discovered a significant price difference between the D5 Gas Supply rate and the D3 and D4 Gas Supply Rates.

Mr. Moore testified that HES and HT initiated communication with Citizens Gas about the D5 Gas Supply Rate in January 2014. HES was advised by its Citizens Gas account representative that D3 was a better rate for it at that time, and HES could move to the D3 rate effective with the February 2014 billing cycle. He testified that HT however, did not learn that it could move to another rate, the D4 rate, until after a June 17, 2014 meeting with Citizens Gas.

The record reflects a number of communications from HT and HES to Citizens Gas attempting to resolve the dispute with Citizens Gas prior to the June 17, 2014 meeting. At that meeting, Mr. Moore testified that Citizens Gas indicated the high gas costs HES and HT had experienced were attributable to uncollected gas costs from customers who left the D5 class. Citizens Gas provided a graph to HES and HT showing a dramatic drop off in customers in the D5 rate beginning in 2012. Mr. Moore testified that HT and HES could not have anticipated the increase in the D5 Gas Supply Rate and that they expected Citizens Gas to take necessary actions to correct its rates when they are flawed.

Mr. Moore provided a calculation of overcharges HES and HT experienced as a result of being on the D5 Gas Supply Rate instead of the D3 or D4 Gas Supply Rates, respectively. The overcharges were calculated by determining the difference in the D5 Gas Supply Rate and the D3 or D4 rate applied to HES's and HT's respective gas usage. HES requested a refund of \$127,003.38 for the months of October 2013 through January 2014. HT requested a refund \$222,585.77 for the months of September 2013 through May 2014.

HT provided Pet. Late-Filed Exhibit 1 to clarify the date on which HT was switched to the D4 rate.

B. Citizens Direct Evidence. Mr. Korlon L. Kilpatrick II, Director, Regulatory Affairs testified that HES and HT were billed under approved rates and charges, as well as terms and conditions of service which were approved by the Commission. He testified that Citizens Gas' Rule 2.2.6 states when more than one rate is available for the class of service, the customer is ultimately responsible for its decisions regarding the desired rate. He also testified that Rule 2.2.5 prohibits Citizens Gas from issuing a refund in the event a customer is later dissatisfied with its rate selection.

C. Complainants' Rebuttal Evidence. On rebuttal, Mr. Moore testified that Citizens Gas has a duty to provide just, reasonable, and nondiscriminatory rates. He testified that

Citizens' response ignores the several months of dialogue over rates between Citizens Gas and HT during which Citizens Gas knew HT was dissatisfied with the D5 Gas Supply Rate but did not advise of the ability to switch to the D4 rate until June 2014.

4. **Discussion and Findings.** This matter originated as two complaints filed with the Commission's CAD. In lieu of a decision by the CAD, pursuant to 170 IAC 16-1-5(e), the Commission docketed the complaints for consideration in this Cause. HES and HT request refunds for the difference between the D5 Gas Supply Rate and D3 or D4 Gas Supply Rates respectively for time periods between September 2013 and May 2014.

During the time periods in question, it is undisputed that the D5 Gas Supply Rate was inflated due to prior period variances from D5 customers who left the D5 rate class without paying for the estimation errors that were not known until the reconciliation period. *See* GCA Order on Remaining Issues. The remaining D5 gas supply customers, therefore paid higher rates not because of their own actions, but because they remained in the class in which the estimation errors were applied.

Citizens Gas relied on general language from its terms and conditions of service that the utility does not guarantee that the customer will be served under the most favorable rate class, and no refund is required between an applicable rate and the rate under which the customer is served.

The evidence of record indicates that while HES and HT began noticing increasing gas costs in September 2013, neither party contacted Citizens Gas until January 2014. Following this contact, Citizens Gas switched HES to the D3 Gas Supply Rate beginning in February 2014. HT, however, was not switched to the D4 Gas Supply Rate until June 2014. Citizens Gas offered no explanation as to why an alternative rate was not offered to HT in January 2014.

In this Cause, the Commission must balance the utility's obligation to offer service pursuant to its approved tariffs with the utility's obligation to serve its customers in a fair and reasonable manner. The Commission has broad authority to issue orders to remedy an act or practice of a utility that is unjust or unreasonable. *Airco Industrial Gases v. Indiana Michigan Power Co.*, 614 N.E.2d 951, 954 (Ind. Ct. App. 1993). Further, Citizens Gas is required to furnish reasonably adequate services, at rates that are nondiscriminatory, just, and reasonable under Indiana Code § 8-1.5-3-8.

As the Commission noted in its GCA Order on Remaining Issues, Citizens Gas was properly billing its customers pursuant the approved rates on file. The cause of the billing volatility had to do with orphaned estimation costs that Citizens Gas could not bill to customers once those customers left the class in which the charges were created. While the responsibility for tariff design ultimately falls to Citizens Gas, the Commission finds that utilities are not obligated to advise their customers of preferential rates, which is consistent with the language in Citizens Gas' tariff. Customers, especially high-use customers such as the Complainants, should bear the responsibility of contacting the utility concerning any issues with billing or service, which then shifts the burden to the utility to respond to that customer.

Here, while HT and HES noted increases in gas bills starting in September 2013, neither party contacted Citizens Gas until January 2014. The record does not indicate a specific date on which the contact was made, but Citizens Gas did not offer any evidence to indicate that contact was not made in January 2014. Citizens Gas, in fact, did move HES to a different rate class beginning in February 2014. Accordingly, the Commission can reasonably infer that Complainants contacted Citizens Gas in January 2014 to inquire about switching to a different gas rate. Further, with respect to HES, the Commission finds that Citizens Gas' response to HES's concerns, once they were made, was reasonable, and HES is not entitled to a refund for any differences in gas costs prior to the contact with Citizens Gas.

HT, however, was not informed that it could move to a different rate class until a second meeting occurred with Citizens Gas in June 2014, and HT was moved to a different rate class at that time. Citizens Gas did not offer any reason why HT was treated differently from HES, or why HT could not have been switched to a new rate in February 2014. The Commission finds that the four-month delay in moving HT to a different rate class was unreasonable. Based on Pet. Ex. 1, the billing difference between the D4 Gas Supply Rate and the D5 Gas Supply Rate from February 2014 through May 2014, based on HT's usage, is \$110,684.86. This amount represents the overcharge that HT was billed due to Citizens Gas's failure to reasonably respond to HT in January 2014, and should be credited to HT, plus interest calculated from the dates of overpayment. The interest shall be calculated based on the rate approved by the Commission in GAO 2015-3 of 0.5%.

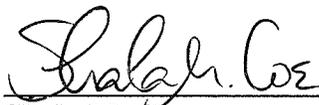
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. Citizens Gas shall credit \$110,684.86 with interest to Heritage Technologies, LLC within 30 days from the effective date of this Order.
2. This Order shall be effective on and after the date of its approval.

STEPHAN, MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: MAR 16 2016

I hereby certify that the above is a true and correct copy of the Order as approved.



Shala M. Coe

Acting Secretary to the Commission