

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPEAL BY PAUL CARMICHAEL OF) CAUSE NO. 44691
THE CONSUMER AFFAIRS DIVISION'S)
DECISION ON CASE #113938) APPROVED: MAR 16 2016

[Handwritten signatures and initials: CM, APW]

ORDER OF THE COMMISSION

Presiding Officers:

Carolene Mays-Medley, Vice-Chair

Jeffery A. Earl, Administrative Law Judge

This matter comes to the Indiana Utility Regulatory Commission (the "Commission") as an appeal from a decision of the Commission's Consumer Affairs Division (the "CAD"). On May 4, 2015, Paul Carmichael filed a complaint with the CAD alleging that CWA Authority, Inc.'s ("CWA") minimum monthly sewer charge is discriminatory against single occupant customers. On July 13, 2015, the CAD issued an informal decision (the "CAD Decision"). The CAD reviewed CWA's tariff and concluded that Mr. Carmichael was being charged properly under the tariff. On July 20, 2015, Mr. Carmichael appealed the CAD Decision to the CAD director. On September 15, 2015, the CAD director upheld the CAD Decision.

On October 6, 2015, Mr. Carmichael appealed the CAD decision to the Commission. The Commission held oral arguments at 9:30 a.m. on November 6, 2015, in Hearing Room 224, 101 West Washington Street, Indianapolis, Indiana. Mr. Carmichael, CWA, and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared and participated in the hearing.

Based upon the applicable law and the record before the CAD, the Commission finds:

1. Commission Jurisdiction and Review. Notice of the hearing in this case was given and published as required by law. Under Ind. Code § 8-1-11.1-3(c)(9), the Commission has jurisdiction over CWA's rules and rates for sewer utility service. Under Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5, any individual or entity may informally complain to the CAD about any matter within the jurisdiction of the Commission. Under Ind. Code § 8-1-2-34.5(b), the Commission has authority to review any decision of the CAD upon the request of an affected party. Therefore, the Commission has jurisdiction over the parties and the subject matter of this Cause.

2. Background. At the time the complaint was first filed with CAD, CWA's current Nonindustrial Sewage Disposal Service Tariff read:

In the case of one-, two-, or multi-family residences, the monthly billing for Sewage Disposal Service for the Months of May through November shall be based upon the monthly average of the water used or delivered for the previous Months December through

March. In the event the monthly average of the water used or delivered for such previous months December through March is less than 3,000 gallons (4 CCF), the Customer will pay the Monthly Minimum Charge reflected in the above table.¹

The tariff explains that a nonindustrial customer will pay a monthly minimum charge of \$30.71 if the customer's combined base charge, treatment charges, and Rider A charge are less than \$30.71, which is the billed amount for 3,000 gallons of water (4 CCF) per month.

3. Standard of Review. This cause involves an appeal of issues that were considered and decided by the CAD pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5. Therefore, a record of information upon which the CAD based its decision already exists (the "Record"). Most of the Record consists of information supplied by the parties. Therefore, consistent with the Commission's authority as set forth in Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5, the decision in this proceeding shall be based upon: (1) a review of the Record; and (2) consideration of arguments by the parties based upon the existing Record.

4. Mr. Carmichael's Argument. Mr. Carmichael argues that the application of a minimum monthly sewer charge based on 4 CCF of usage is unfair to households, especially single-person households, that use less than 4 CCF of water per month. Mr. Carmichael said that he uses approximate 20-24 CCF of water per year (1.6 CCF per month).

Mr. Carmichael seems to argue that the unfairness is exacerbated by CWA's policy of basing billing for the months of May through November on the monthly average water used or delivered for the previous months of December through March because the utility is assuming he is using 4 CCF of water per month from December through March, which he is not. Mr. Carmichael says that the practice is discriminatory.

5. CAD Decision. The CAD analyst obtained and reviewed copies of Mr. Carmichael's bills for the months of December 2014 through June 2015. The bills show that Mr. Carmichael used between .57 and 2.96 CCF per month averaging 1.72 CCF per month and was billed the monthly minimum charge for each month. The CAD analyst compared Mr. Carmichael's bills to CWA's tariff and found that CWA was charging Mr. Carmichael in accordance with the tariff. The CAD analyst told Mr. Carmichael that the Commission lacks jurisdiction over alleged discriminatory practices.

On appeal to the CAD director, the CAD director affirmed the CAD analyst's decision, found that the facts alleged in the complaint fail to state a violation of any statute, administrative rule, or Commission order governing the provision of utility services.

¹ This version of CWA's tariff was approved on April 8, 2015, pursuant to the Commission's Final Order in Cause No. 44305. CWA's current tariff was approved with minor changes not material to this case on Nov. 18, 2015, pursuant to 30-Day Filing No. 3390.

6. **Commission Findings.** We have reviewed the record before the CAD and we agree that CWA is charging Mr. Carmichael in accordance with its approved tariff. Therefore, we affirm that decision of the CAD.

The CAD analyst also told Mr. Carmichael that the Commission does not have jurisdiction over discriminatory practices. This is not true. Under Ind. Code § 8-1-2-54, certain entities may file a complaint before the Commission that a utility's rates are unreasonable or unjustly discriminatory. Under Ind. Code § 8-1-2-58, the Commission also has the authority to investigate any rate or charge that may be unreasonable or unjustly discriminatory on its own motion.

Ind. Code § 8-1-2-54 requires at least ten individuals to complain of the alleged discriminatory rates before the Commission is required to conduct an investigation. In addition, the Commission may not issue an order finding that rates are discriminatory without a formal public hearing.

Therefore, the Commission does have jurisdiction over alleged discriminatory practices of a regulated public utility. But because of the requirement that an evidentiary hearing be held, the CAD analyst is correct that the CAD may not make a finding on its own that a public utility's rates are discriminatory. Rather, such a complaint would have to be submitted to the Commission to be conducted as a fully docketed proceeding.

CWA has a pending rate case before the Commission under Cause No. 44685, and we created a subdocket (Cause No. 44685 S1) to consider certain cost allocation issues related to CWA's rates. Cause No. 44685 S1 may be a suitable venue to consider CWA's monthly minimum sewer charge because the Commission can receive evidence from multiple parties and can consider the issue in the context of CWA's rate design as a whole. As such, we will consider raising this issue in that case.

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

1. The decision of the CAD is affirmed consistent with the findings set forth in 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