

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION


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IN THE MATTER OF THE OUCC'S
COMPLAINT AND REQUEST FOR)
INVESTIGATION WITH RESPECT TO)
THE BILLING PRACTICES AND)
CERTAIN OPERATIONS OF SUGAR)
CREEK UTILITY COMPANY, INC.)

CAUSE NO. 43534

APPROVED

DEC 22 2009

BY THE COMMISSION:

David E. Ziegner, Commissioner

Angela Rapp Weber, Administrative Law Judge

On July 11, 2008, the Indiana Office of Utility Consumer Counselor ("OUCC") filed with the Indiana Utility Regulatory Commission ("Commission") its Complaint and Request for Investigation ("Complaint") with respect to the Billing Practices and Certain Operations of Sugar Creek Utility Company, Inc. ("Sugar Creek" or the "Utility"). More specifically, the OUCC primarily requested the Commission investigate Sugar Creek's practice of collecting its rates from the Riley Village Homeowners' Association ("Homeowners' Association" or "Association") and require the Utility to bill and collect payment directly from its individual residential customers. The OUCC further requested that the Commission investigate Sugar Creek's rate structure and require the Utility to collect a greater part of its required revenue from its affiliate, Heartland Resort Campground ("Heartland Resort" or the "Campground"). Finally, the OUCC requested the Commission investigate Sugar Creek's operational practices that impair its provision of adequate service, such as its practices with respect to the issuance of Boil Water Advisories.

On August 15, 2008, Sugar Creek filed its Motion to Dismiss. On August 18, 2008, the Commission held a Prehearing Conference in this cause in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana at which time it established a briefing schedule on the Motion to Dismiss. Having received the OUCC's Response and Sugar Creek's Reply to the Motion to Dismiss, the Presiding Officers denied the Motion to Dismiss pursuant to a Docket Entry issued on September 16, 2008.

On September 23, 2008, the Commission held another Prehearing Conference to establish a procedural schedule in this Cause in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. Pursuant to notice duly published as required by law, the Evidentiary Hearing was convened on February 5, 2009 at 9:30 A.M. in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. No member of the public appeared or attempted to participate.

The Commission, having examined and considered all of the evidence of record and now being fully advised finds as follows:

1. **Commission Jurisdiction and Authority to Review.** Sugar Creek is a “public utility” as that term is defined under Indiana Code § 8-1-2-1(a). The Commission has authority to investigate this matter and issue necessary orders to ensure that the Utility provides reasonable and adequate water and sewage service in the future pursuant to Indiana Code §§ 8-1-2-4, 8-1-2-37, 8-1-2-48 through 8-1-2-72. In particular, Indiana Code § 8-1-2-58 provides the Commission with broad authority to investigate public utilities, and Indiana Code § 8-1-2-59 provides the Commission with authority to hold a formal hearing regarding an investigation. After concluding an investigation, the Commission may pursuant to Indiana Code § 8-1-2-69 make such an order as to “fix just and reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed, and followed in the future” Accordingly, this Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. **Petitioner’s Characteristics.** Sugar Creek is a for-profit public water and sewer utility serving residential and commercial customers in rural Hancock County, Indiana. More specifically, Sugar Creek provides water and sewer service directly to the residents of the Riley Village subdivision (“Riley Village”), a residential neighborhood in Hancock County, and Heartland Resort, a camping resort, which is affiliated with Sugar Creek through common ownership. According to Sugar Creek’s 2007 Annual Report filed with the Commission, the Utility’s facilities consist of two water wells, two underground water storage tanks, a backup generator, and distribution mains. With respect to sewer service, Sugar Creek operates a Class I, 0.06 MGD, extended aeration wastewater treatment plant with a lift station, two aeration tanks, two final clarifiers, a chlorine contact tank, and dechlorination facilities. The collection system is a 100% separate sanitary sewer with no bypasses or overflows.

Riley Village consists of approximately eighty-four homes owned by residents who are members of the Homeowners’ Association. Within Riley Village, the Utility’s distribution and collection systems consist of water and sewer mains that are connected directly to the service lines, or laterals, of each residential unit. The Homeowners’ Association does not own or maintain any utility mains or equipment that conveys water or sewer service from Sugar Creek to the customers located in Riley Village. For water and sewer services provided to the residents of Riley Village, Sugar Creek bills the Homeowners’ Association.

Heartland Resort is Sugar Creek’s one commercial customer and includes approximately 280 camping sites, some of which include water and sewer service; an indoor swimming pool, two large banquet halls with a combined seating capacity of 450, a Dump Station, and a golf course. Heartland Resort offers daily, weekly, monthly, and seasonal rates for its campsites, with varying costs depending on the level of utility service provided.

3. **Background.** In Cause No. 39891, Sugar Creek petitioned the Commission for a grant of a Certificate of Territorial Authority to provide sewer service and for an emergency increase in its rates and charges. The parties in that Cause entered into a Settlement Agreement that established, among other things, Sugar Creek’s water/sewer rate at \$80.84 for Riley Village. The Settlement Agreement also allowed the OUCC to review Sugar Creek’s records at a later date, and the OUCC or the Homeowners’ Association could require the Utility to petition the Commission for an adjustment to its rates and charges to account for new construction in Riley Village. The

Commission issued a Final Order on April 10, 1996 approving the Settlement Agreement in Cause No. 39891.

In Cause No. 41913, the OUCC, after reviewing Sugar Creek's books, filed a Complaint with the Commission addressing several issues, including a request that Sugar Creek be required to lower its rates pursuant to the Settlement Agreement approved in Cause No. 39891. At the same time, the OUCC requested in Cause No. 41881 that the Commission require Sugar Creek to bill directly individual residences or customers in Riley Village for water and sewer service, rather than the Homeowners' Association for service to Riley Village as a whole. The Presiding Officers consolidated Cause Nos. 41913 and 41881 pursuant to a Docket Entry issued on May 14, 2001.

Sugar Creek and the OUCC submitted a Settlement Agreement in Cause Nos. 41913 and 41881, which the Commission approved in its Final Order issued on June 29, 2001. Pursuant to the Final Order and the Settlement Agreement, Sugar Creek reduced its rates for service to Riley Village to \$65.00 per month per equivalent dwelling unit ("EDU") for a period of two years, beginning July 1, 2001. Thereafter, Sugar Creek was permitted to increase its rates to \$69.00 per month per equivalent dwelling unit ("EDU"). In addition, Sugar Creek agreed to give a credit for four residences; eighty-four residential structures exist in Riley Village, and Sugar Creek agreed to charge for only eighty based on the average vacancy rate. Finally, the OUCC agreed to dismiss Cause No. 41881 without prejudice and agreed not to raise the issue of direct billing of Riley Village customers sooner than four years¹ or Sugar Creek's next rate case, whichever occurred first. The OUCC raised the issue of direct billing in its Complaint filed with the Commission on July 11, 2008 under the current Cause.

4. **Requested Relief.** In its Complaint, the OUCC requested that the Commission require Sugar Creek to directly bill the residents of Riley Village for services provided to those residents rather than billing the Riley Village Homeowners' Association. The OUCC also asked the Commission to investigate operational issues, such as the appropriate provision of Boil Water Advisories and cancellations, and ensure that Sugar Creek is addressing such issues appropriately. Finally, the OUCC's Complaint asked the Commission to investigate the Utility's rate structure and require the Utility to collect a greater part of its revenue requirement from Sugar Creek's affiliate Heartland Resort. However, the Commission notes that per agreement of the parties, consideration of the last matter will be deferred for determination in Sugar Creek's pending rate case in Cause No. 43579.

5. **OUCC's Evidence.** Scott A. Bell, the Director of the OUCC's Water/Wastewater Division, testified in this matter on behalf of the OUCC. Mr. Bell stated that over the past year, he has had numerous telephone conversations and meetings with the Secretary of the Riley Village Homeowners Association, Inc., Diana Tompkins, and with Bob McDaniels, President of the Riley Village Homeowners' Association. During these meetings, he stated that he obtained and reviewed copies of many documents related to the utility service within the Riley Village subdivision and

¹ The Settlement Agreement approved in Cause Nos. 41913 and 41881 is unclear as to when the four-year period began to toll. However, the Commission notes that the Final Order in those Causes was approved on June 29, 2001. The OUCC raised the issue of direct billing to the Riley Village's customers in Cause No. 43534 (the current Cause) in its Complaint filed with the Commission on July 11, 2008, which is approximately seven years from the date of the Final Order in Cause Nos. 41913 and 41881.

took several photographs within the Riley Village community. He also reviewed several documents that Ms. Tompkins sent to the OUCC on behalf of the Association. Mr. Bell added that he also reviewed Sugar Creek's responses to OUCC data requests, contacted the Indiana Department of Environmental Management ("IDEM"), and reviewed numerous Public Water System Sanitary Survey/Field Inspection Reports for Sugar Creek (dated from October 18, 2002 to June 2, 2008) as well as a copy of IDEM NPDES Permit No. IN0036528, which became effective on July 1, 2006 and places limits on the amount of pollutants that may be discharged.

Mr. Bell described Sugar Creek's regulatory history in Cause Nos. 39891, 41913, and 41881 detailed in Paragraph 3. Mr. Bell explained that the OUCC initiated this Cause because in October 2007, Ms. Tompkins contacted the OUCC about the Association's concerns regarding Sugar Creek. She initially explained that the Association sent to Sugar Creek a letter in September 5, 2007 detailing the Association's concerns. In the letter, the Association requested that (1) the Utility properly notify the customers when a Boil Water Advisory is issued and when the advisory has been cancelled, (2) the Utility install shut-off valves on eleven properties identified in the letter, and (3) the Utility not charge the Association for homes that are vacant and to which no service is being provided. Ms. Tompkins explained that the Association received no response from the Utility. On October 21, 2008, Ms. Tompkins sent a letter to Sugar Creek expressing the Association's concern with its inability to collect money for water and sewer service from each customer. Attached to this letter was a report identifying those customers who were delinquent in paying their water and sewer bills and those homes that were vacant.

Mr. Bell noted that on November 10, 2007, Ms. Tompkins wrote another letter to the OUCC explaining the Association's concerns with Sugar Creek. Some of the issues mentioned in her letter included the appropriate allocation of costs between Heartland Resort and Riley Village since Heartland Resort added new facilities; the assertion that Utility's backup generator was not working, which caused numerous interruptions of water service; the absence of shut-off valves on the individual units within Riley Village; and the Homeowners' Association's inability to collect money for water and sewer services from residents who continue to receive those services from Sugar Creek. As a result, the Homeowners' Association had lost thousands of dollars because it continued to pay Sugar Creek the entire bill due for service provided to Riley Village. In addition, on February 3, 2008, Ms. Tompkins provided the OUCC with additional information regarding the breakdown of the Homeowners' Association's monthly bill received for service to Riley Village; the ownership of the water distribution mains and the sewer collection mains; the number of vacant properties in Riley Village; and the number of Heartland Resort facilities that could be using water and sewer utility services.

Mr. Bell stated that on February 25, 2008, the OUCC attempted to initiate discussions with Sugar Creek's legal counsel regarding the Association's concerns and Sugar Creek's obligations under the Settlement Agreement approved by the Commission in Cause No. 39891. Notwithstanding a meeting with Sugar Creek's counsel and several subsequent communications, no resolution of the issues raised by the Association was reached. Therefore, Mr. Bell explained, the OUCC filed its Complaint and Request for Investigation in this matter.

Mr. Bell testified that with regard to Sugar Creek's billing practices, Mr. Bell noted that Sugar Creek does not issue bills and collect payment directly from the individual homeowners

within Riley Village. Rather, it bills the Homeowners' Association for approximately eighty residential customers that receive water and sewer service directly from Sugar Creek. The total bill is \$5,616 per month. Mr. Bell added that the Association does not itself receive water or sewer service and does not own or control any plant or equipment used to convey these two services to the residents of Riley Village.

In a letter dated October 21, 2008, which Mr. Bell attached to his testimony, the Homeowners' Association provided the OUCC with a financial statement documenting the individual customers that are more than ninety days in arrears as of September 30, 2008. According to the Association, it is owed over \$47,000 in outstanding dues, the majority of which consists of outstanding sewer and water charges the Association paid to Sugar Creek. The Association advised the OUCC it has been making full payment to Sugar Creek of all charges despite its inability to fully collect these funds from all recipients of the water and sewer services. However, Mr. Bell noted the Association announced that it does not have sufficient funds to make full payment to Sugar Creek for the services it has provided to residents. In a letter sent to Sugar Creek, the Association expressed its inability to provide full payment of the monthly charge, documented the individual customers that have not paid the most recent water and sewer bill for the month of September 2008, and listed the Riley Village homeowners in arrears as of September 30, 2008. Mr. Bell was advised that if this billing situation continues, the Association may be forced to dissolve due to insufficient funds.

Mr. Bell considered dissolution a significant and troubling possibility because it puts at issue whether the residents of Riley Village as a whole will continue to receive water and sewer service since the only entity Sugar Creek considers its customer would effectively cease to exist. Mr. Bell asserted that establishing a more direct relationship between the Utility and the actual recipients of the services will help assure continuation of these services. Mr. Bell added that the cost of continuing this billing practice may be the dissolution of an entity that helps provide other essential services not within the jurisdiction of the Commission (e.g., garbage removal, snow removal, and road maintenance). As a result of Sugar Creek's billing practice, Mr. Bell argued that the Association is an unwilling middleman and should not be required to pay Sugar Creek for services that it does not itself receive. Mr. Bell requested that the Commission order Sugar Creek to directly bill customers residing in Riley Village subdivision for water and sewer service instead of the Homeowners' Association for these services.

Mr. Bell acknowledged that the Association's covenants authorize the Association to collect from its members fees for utility services. In particular, Mr. Bell noted that Section 10.D of the Covenants for both Phase One and Phase Two of the subdivision provide that "in addition to the usual assessments authorized in Section C for general maintenance, the Association may levy assessments for water, electricity, and sewage utilities equal to the charges made by the provider of such utilities." Mr. Bell added that Section 10.B of the Covenants for both Phase One and Phase Two of the subdivision explain that a purpose of the Association's ability to levy assessments is to provide such services as "trash and garbage pick-up, sewage systems, water systems, electrical systems, cable T.V., which are not provided by the local municipal authorities or directly from a utility and billed to the individual owners." Mr. Bell suggested that the Association needs to levy these assessments to procure services when these services are not provided or billed directly.

But, Mr. Bell explained, the fact that the Association has the ability to levy assessments for water and sewer service does not mean the Utility should be able to rely on that relationship to continue to seek payment from the Association. Mr. Bell noted that Section 11 of the Covenants states that the Covenants "shall run with the land and shall enure to the benefit of the owners of other parcels within the described land and any homeowners' association, their legal representative, heirs, successors or assigns." He stated that while the Covenants describe and establish utility easements, these covenants only list parcel owners as parties that benefit from the Association's ability to levy assessments for utility services. Moreover, the portion of Section B recited above implies that the purpose of the Association's ability to levy assessments depends on a utility not directly providing the service and not billing the homeowner for the service. In other words, Mr. Bell explained, it is not the ability to assess for utility service that establishes the Sugar Creek's billing practice, but rather the Sugar Creek's billing practice that establishes the need for the Association to levy assessments. By way of example, Mr. Bell noted that the Covenants also allow the Association to levy assessments for electrical service but the local electric utility directly bills the residents of Riley Village.

With respect to operational issues, Mr. Bell stated that Sugar Creek should be required to provide more prompt and adequate notice to its customers of both the beginning of a Boil Water Advisory and when the Boil Water Advisory has been cancelled. Mr. Bell acknowledged that improvement has been made in recent years but that additional improvements could be easily made without any significant burden to the Utility.

Mr. Bell attached to his testimony copies of Sugar Creek's door hangers announcing Boil Water Advisories and cancellations that were distributed during a water outage. According to the Homeowners' Association, the door hangers do not always have the proper dates on them or they are not consistently used. Mr. Bell noted that the Association also expressed concern about the amount of time Sugar Creek takes to cancel a Boil Water Advisory. For example, Mr. Bell noted that Sugar Creek took eight days to cancel the May 12, 2008 Advisory; eighteen days to cancel the April 11, 2008 Advisory; and eleven days to cancel the January 31, 2008 Advisory. Mr. Bell proposed that Sugar Creek be required to amend its practices to provide more current information to its customers with respect to Boil Water Advisories and otherwise comply with IDEM's requirements regarding such Advisories. Mr. Bell attached to his prefiled testimony copies of several IDEM Public Water System Sanitary Survey/Field Inspection Report for the Commission's review. Included in these reports are several references to Boil Water Advisories and the necessity to issue and cancel the Advisories in an appropriate and timely fashion.

Mr. Bell testified that the Homeowners' Association also expressed concerns about the condition of Sugar Creek's facilities and the timeliness of repairs to those facilities. Mr. Bell noted that the June 2, 2008, IDEM Field Inspection Report, which he attached to his testimony, indicated that the water system had three Boil Water Advisories in May 2008, and two were caused by leaks, while one occurred as a result of the destruction of a bladder tank. Mr. Bell added that the Association expressed concern that Sugar Creek's lack of shut-off valves installed on individual homes has inhibited the Utility from promptly isolating a leak, especially when the leak is beneath a residential home.

During his visit to Riley Village in June 2008, Mr. Bell observed at least one water shut-off valve that was located next to a home in a meter pit that was easily accessible. Mr. Bell stated that the majority of the water service lines to the homes are located directly under each residence with no shut-off valve present. Mr. Bell noted that this configuration makes it very difficult for the Utility and homeowner to turn off the water and perform maintenance during a leak. Although this may not be the most appropriate configuration, Mr. Bell asserted that Sugar Creek still has the responsibility to properly maintain and repair its water distribution system. Therefore, Mr. Bell recommended that the Commission order the Utility to promptly repair water leaks and investigate the practicality of installing shut-off valves on all connections to its individual water customers. He added that Sugar Creek should be required to install shut-off valves where the direct recipient of the Sugar Creek's services is subject to having water service terminated for non-payment pursuant to the Commission's rules. Mr. Bell then recommended that Sugar Creek submit for Commission approval in its rate case a rule to recover the cost of installing a shut-off valve from the delinquent non-paying customer.²

Mr. Bell addressed issues concerning Sugar Creek's rate structure and stated that the rate structure, or EDUs, should be adjusted to more accurately reflect Heartland Resort's proportionate use of water and sewer services. Mr. Bell noted, however, that at the Prehearing Conference in this Cause, Sugar Creek stated that it intended to file a rate case. As a result, the OUCC advised that Commission that it would address Sugar Creek's rate structure as part of that case and would not address the issue as part of this investigation. Mr. Bell stated that since Sugar Creek filed the rate case in Cause No. 43579, the OUCC does not seek any relief with respect to the rate structure in this cause.

Mr. Bell concluded his testimony by restating his recommendations. Specifically, Mr. Bell recommended the Commission require Sugar Creek to individually and directly bill all of the residential customers within the Riley Village subdivision for water and sewer utility service. Mr. Bell recommended the Commission require Sugar Creek to provide more current information to its customers with respect to Boil Water Advisories and otherwise comply with IDEM's requirements regarding Boil Water Advisories. Mr. Bell recommended that the Commission order Sugar Creek to promptly repair water leaks and investigate the practicality of installing shut-off valves on all connections to its individual water customers. Finally, Mr. Bell stated that Sugar Creek should install shut-off valves where the direct recipient of the Utility's services is subject to having water service terminated for non-payment pursuant to the Commission's rules.

6. Sugar Creek's Evidence. John Salis, Sugar Creek Utility Company Inc.'s President; James W. Frazell, a professional engineer and president of Triad Engineering; and Pat Callahan, a Certified Public Accountant, testified in this matter on behalf of Sugar Creek.

Mr. Salis stated that if Sugar Creek is authorized to install shut-off valves and recover the cost of installation in order disconnect an individual resident for non-payment and if Sugar Creek is able to recover the increased operating costs created by individual billing, Sugar Creek does not object to billing residents individually. Mr. Salis also briefly addressed Sugar Creek's rate

² Sugar Creek filed a Petition with the Commission on October 2, 2008 requesting an adjustment to its rates and charges, which is docketed before the Commission as Cause No. 43579.

structure. Mr. Salis testified that he would rely on the observations and recommendations made by Mr. Frazell. Mr. Salis then stated that it would be prudent to measure the flow over several months and adjust the EDU allocation if the data indicates that the existing allocation between Riley Village and Heartland Resort is inaccurate.

Mr. Salis disagreed with the OUCC's assertion that Sugar Creek has failed to act diligently and reasonably with respect to Boil Water Advisories. Mr. Salis testified that a few years ago, at the request of the Association, the utility began notifying residents of Boil Water Advisories using door hangers. Mr. Salis explained that Sugar Creek distributes door hangers within twenty-four hours of the issuance of a Boil Water Advisory, and Sugar Creek includes the date of issuance on each door hanger. There have been isolated instances when, due to human error, the date on the Boil Water Advisory was inaccurate. If there have been widespread mistakes concerning the dates, Mr. Salis stated he was not made aware of them, and he can assure the Commission that any mistakes were unintentional and the result of human error.

Mr. Salis stated that Sugar Creek is not allowed to cancel a Boil Water Advisory until it receives approval from its testing laboratory. He explained that on average it takes between forty-eight and seventy-two hours to get a test back from the laboratory and the minimum time is twenty-four hours. Thus, Mr. Salis testified that depending on the time it takes the laboratory to return the test results, Boil Water Advisories can last up to three or more days. Mr. Salis stated that the Utility's practice is that once it receives the test result indicating that it is appropriate to cancel an Advisory, it issues those cancellations as soon as possible. In nearly all cases, Sugar Creek issues a cancellation within twenty-four hours after receipt of notification from the laboratory.

Mr. Frazell testified about the possibility of installing shut-off valves on individual residences in Riley Village (the "Project"). Specifically, Mr. Frazell addressed the feasibility, effectiveness, cost, and timing implications of the Project. He also discussed the appropriateness of the current EDU allocation for water usage between Riley Village and the Heartland Resort Campground.

According to Mr. Frazell, he visited Riley Village and inspected the Utility and its present configuration, and he reviewed the OUCC's Complaint filed in this proceeding. Mr. Frazell also consulted with Culy Construction Company regarding an estimate to install the Project. In addition, he reviewed photographs depicting the relative location of existing water service facilities in Riley Village along with original construction plans.

Mr. Frazell opined that the best and only common solution would be to install a new main adjacent to Fountain Lake Drive, while providing service connections for each structure along the route. By recreating a main line and service laterals, Sugar Creek would, like most utilities, then be able to bill each unit based on actual consumption along with the ability to shut off service to individual units. Mr. Frazell asserted that in order to install shut-off valves using the existing infrastructure for each service, the existing service line, which he said is installed beneath the structures, would need to be tapped outside the foundation area and new service lines then reinstalled within the structure. Mr. Frazell estimated that the cost of materials and labor for installing a service lateral would be approximately \$1,500 per home in Riley Village and speculated that the Project could be completed within sixty days of the start of construction.

Mr. Frazell also briefly addressed the OUCC's concern with respect to the allocation of usage between Riley Village and Heartland Resort. Mr. Frazell testified that some new campsites and other facilities have been added to the Campground since 2001, but added the impact of these additions has not been quantified. Mr. Frazell recommended that until individual meters are installed and data can be collected over a twelve-month period to develop metered rates, a flow meter should be placed at the head end of Heartland Resort and Riley Village to measure usage. Mr. Frazell stated that if the data reveals that either Heartland Resort or Riley Village is consuming more than the existing EDU allocation, then a true-up should be triggered where a credit is issued to any customer that overpaid, dating to the date that the Commission issues the rate order in the pending rate proceeding.

Finally, Mr. Callahan testified on behalf of Sugar Creek. He stated that the purpose of his testimony is to provide the revenue requirements for Sugar Creek's water and sewer divisions upon which the rates to be charged to its customers may be based. Mr. Callahan stated that he calculated the rate impact on the water utility customers in the event Petitioner completes the Project described in detail by Mr. Frazell. Mr. Callahan first addressed Sugar Creek's water and sewer revenue requirements.

Mr. Callahan noted that, based upon his financial rate study, Sugar Creek would have to increase its annual operating revenues by \$20,084, or 29.5%, to meet its annual revenue requirements for the sewer division. Mr. Callahan included two scenarios for the water utility. Scenario A presents the revenue requirements and rate increase without consideration of the Project. Scenario B assumes Petitioner will undertake the Project and install a new main with shut-off valves as described in Mr. Frazell's testimony. Mr. Callahan explained that under Scenario A, the water rates will have to be increased by \$33,311, or 146.7%, while Scenario B will require an increase of \$61,116, or 269.1%. Mr. Callahan explained that these increases were applied on an across-the-board basis and will allow Petitioner to recover the necessary revenues to operate.

He explained the Schedules used to determine rate structures for Sugar Creek's water and sewer services. The Schedules submitted provided figures for Scenarios A and B described above.

7. OUCC's Rebuttal Evidence. In the OUCC's rebuttal case, Mr. Bell emphasized that the OUCC is not seeking to terminate any settlement agreement, as was suggested by Mr. Salis. Rather, the OUCC asked the Commission to require Sugar Creek to bill residents of Riley Village directly for water and sewer service instead of billing the Homeowners' Association for services provided to the Riley Village subdivision. Mr. Bell then noted that pursuant to the Settlement Agreement approved by the Commission in Cause Nos. 41913 and 41881, the OUCC agreed to dismiss Cause No. 41881 and the issue of direct billing. In addition, that Settlement Agreement permitted the OUCC to raise the issue of direct billing not sooner than four years as discussed above in Paragraph 3. Mr. Bell added that the OUCC is not opposed to permitting Sugar Creek to recover a reasonable operating cost for individually billing the customers in Riley Village. He then recommended that these reasonable costs be determined in Sugar Creek's pending rate case in Cause No. 43579.

With respect to the Project, Mr. Bell testified that since it has a significant ratemaking impact, the approval and funding of the Project should be resolved as part of Sugar Creek's pending rate case.

Mr. Bell then noted that Mr. Salis did not accurately describe the OUCC's request regarding the installation of shut-off valves. Mr. Bell explained that the OUCC requested that Sugar Creek merely investigate the feasibility of installing shut-off valves on each water connection in Riley Village. Otherwise, he recommended that Sugar Creek should actually install shut-off valves only on those customer connections where service is in jeopardy of disconnection due to non-payment and per the Commission's rules. He reasoned that if the investigation shows that the cost of installing shut-off valves to every resident is cost prohibitive, the Utility should consider other methods. Mr. Bell also noted that Mr. Callahan's testimony discussed the cost of the Project, which should likewise be addressed as part of Sugar Creek's pending rate case in Cause No. 43579.

With respect to Mr. Frazell's testimony, Mr. Bell noted his description of the OUCC's position was also not accurate and offered the same clarification provided above. He also explained that the OUCC wants Sugar Creek to individually bill all of the residential customers within Riley Village subdivision for water and sewer utility service and cease billing the Riley Village Homeowners' Association for these services. Mr. Bell noted that individually and directly billing the persons receiving the service is a common practice of nearly all Indiana water and sewer utilities and should be Sugar Creek's practice. Mr. Bell added that it is good utility practice to be able to shut off service to those individual customers that do not pay for service.

Mr. Bell disagreed with Mr. Frazell's assertion that it would not be feasible and cost effective to install shut-off valves on a case by case basis. Mr. Bell noted that Sugar Creek's response to one of the OUCC's data requests suggested that installing shut-off valves when needed may be feasible rather than replacing the main. In addition, Mr. Bell testified that there is not sufficient evidence to conclude that each home's structure in Riley Village would have to be damaged in order to install shut-off valves. He also disagreed with Mr. Frazell's assertion that it would be more costly to install shut-off valves using the current configuration than installing a new main. However, Mr. Bell repeated that since the Project has a significant ratemaking impact, the issue should be resolved as part of the pending rate case.

Mr. Bell restated the OUCC's position that the Association should be relieved of the responsibility of collecting Sugar Creek's rates and charges. Further, the focus of this investigation should be whether the Utility should have the responsibility of directly billing those residents that actually receive the service Sugar Creek provides. Mr. Bell added that through a thirty-day filing, Sugar Creek can propose rules, charges and other means of assisting in collection efforts, including late payment charges, bad check charges, reconnection charges, and disconnection charges to recover the cost of installing shut-off valves. Mr. Bell also suggested that, as part of its rate case, the Utility might consider recovering bad debt expense and any additional labor costs associated with billing Riley Village residents.

8. Commission's Discussion and Findings. The OUCC's Complaint asked the Commission to investigate three issues: 1. Sugar Creek's operational issues that are identified by

the OUCC as the appropriate management of Boil Water Advisories and the repairs of leaks experienced on Riley Village's lines; 2. Sugar Creek's rate structure as it pertains to the allotment of EDUs between Heartland Resort and Riley Village; and 3. Sugar Creek's practice of billing the Homeowners' Association for water and sewer service provided to individual customers in Riley Village. The Commission addresses each of these issues separately.

The Commission first addresses Sugar Creek's operational issues as defined by the OUCC. According to Mr. Bell, Sugar Creek's system has experienced several leaks or failures in recent years. The OUCC attached an IDEM Field Inspection Report for June 2, 2008, which indicated that Boil Water Advisories were caused by leaks. Additionally, the Homeowners' Association expressed its concern with the prompt repair of leaks during discussions with Mr. Bell and suggested that the lack of shut-off valves installed on each home inhibits Sugar Creek's ability to isolate and subsequently repair leaks and perform maintenance. He suggested that Sugar Creek investigate the practicality of installing shut-off valves on connections to each individual customer in Riley Village. On page five of his prefiled testimony, Mr. Frazell stated that "the existing infrastructure has experienced leakage issues over the years" and suggested that the system or infrastructure may be the cause. Mr. Frazell opined that the Project may remedy such issues.

Maintenance of any utility system, including the repair of system leaks, is a part of a utility's duty to provide reasonable and adequate water and sewage service pursuant to Indiana Code § 8-1-2-4. When the Commission considers operational issues and system leaks, evidence such as a leak survey, a water loss report, and testimony or comments offered by customers at a public Field Hearing are provided to the Commission. However, neither a leak survey nor a water loss report was provided to the Commission. In such situations, the Commission may require that a utility conduct a leak detection survey and submit it to the Commission as a part of its next rate case.

The Commission notes that Sugar Creek acknowledged that leaks have occurred on its system. In addition, Mr. Bell and Mr. Frazell both suggest that the installation of shut-off valves on individual service lines in Riley Village may remedy the current system deficiencies. If a new main and service lines are installed in Riley Village, the Commission would likely not require a leak detection survey to be conducted because a new system would remedy such operational issues. Because of the impact on rates, the installation of shut-off valves, or the Project, shall be considered by the Commission in Sugar Creek's rate case currently pending before the Commission as Cause No. 43579, as suggested by the OUCC.³

With respect to Boil Water Advisories, the OUCC maintained that Sugar Creek should be required to provide prompt and adequate notice to its customers of both the beginning and cancellation of a Boil Water Advisory. Mr. Bell acknowledged that improvement has been made in recent years but that additional improvements could be easily made without any significant burden to the Utility. Mr. Salis testified that he is unaware of widespread issues with regard to how the Utility handles Boil Water Advisories and that any issues were isolated and due to human error.

The Commission notes that IDEM's Rules, and specifically 327 IAC 8-2.1-7, govern issues surrounding the public water supply. However, the appropriate handling of Boil Water Advisories

³ The Commission notes that Mr. Callahan's and Mr. Frazell's prefiled testimony submitted by Sugar Creek in Cause No. 43579 is the same as that which Sugar Creek filed in this Cause.

is an important part of the provision of reasonable and reliable service. Therefore, the Commission finds that Sugar Creek should work diligently to minimize human error when notifying its customers of the onset and cancellation of Boil Water Advisories in order to improve customer service and reduce any inconvenience to customers.

Secondly, with respect to its rate structure, the OUCC asserted that Sugar Creek's rate structure, or EDU allocation, should be adjusted to more accurately reflect the proportionate use of water and sewer services by its Heartland Resort. Mr. Bell noted, however, that at the Prehearing Conference in this Cause, Sugar Creek advised that it intended to file a rate case. The OUCC advised the Commission that since Sugar Creek would be filing a rate case, the OUCC preferred to address Sugar Creek's rate structure as part of that case. Mr. Bell stated that the rate case has been filed under Cause No. 43579. Therefore, OUCC does not seek any relief with respect to the rate structure in this Cause. The Commission shall defer consideration of this issue until our determination in Sugar Creek's pending rate case in Cause No. 43579.

Finally, the Commission addresses whether Sugar Creek may continue to bill the Homeowners' Association for water and sewer service provided to Riley Village instead of directly billing individual customers for that service. The Commission first notes that pursuant to the Settlement Agreement reached in Cause Nos. 41913 and 41881, the OUCC agreed to dismiss Cause No. 41881, which addressed the issue of directly billing individual customers in Riley Village. However, direct billing could be raised no earlier than four years. The Complaint, which raised the issue of direct billing, was filed with the Commission approximately seven years from the date of the Final Order in Cause Nos. 41913 and 41881. Hence, pursuant to the terms of the Settlement Agreement, the OUCC can now raise the issue of billing individually residents in Riley Village as opposed to the Homeowners' Association.

Sugar Creek is a for-profit utility, which provides water and sewer service directly to approximately eighty-four residences in Riley Village, while charging the Association for only eighty residential structures. The Association is required to pay Sugar Creek the full bill regardless of actual occupancy in Riley Village. Instead of billing individual customers directly, Sugar Creek bills the Homeowners' Association for service provided to Riley Village as a whole. Thus, the Homeowners' Association is responsible for collecting money from each customer for water and sewer service provided to them by Sugar Creek. The Homeowners' Association owns no plant or equipment used to convey water or sewer service to the residents of Riley Village and the Association does not itself receive service from Sugar Creek. According to Mr. Salis's testimony provided at the Evidentiary Hearing, Sugar Creek does not pay the Association for providing the billing service. (TR. B-30). The Commission finds Sugar Creek's current billing practice is problematic.

According to the Homeowners' Association's October 21, 2008 letter, it could only afford to pay to Sugar Creek that amount it could collect from Riley Village residents. Mr. Bell testified that the Association had been making full payment to Sugar Creek despite its inability to collect the total charges from all residents. The Association's October 21, 2008 letter asserted that its members owed the Association several thousands of dollars in outstanding sewer and water charges. Mr. Bell's testimony and investigation supported the claim made in the letter that the Association is owed money for water and sewer bills that it paid on behalf of delinquent residents in Riley Village.

In addition, the October 21, 2008 letter and Mr. Bell's testimony indicated that the Homeowners' Association continued to pay water and sewer bills for homes that were vacant.

Thus, Sugar Creek's billing practice has required residents who pay their water and sewer bills to the Homeowners' Association to subsidize those who have failed to pay their water and sewer bills. Moreover, the residents of Riley Village pay for water and sewer service for unoccupied homes. Finally, Sugar Creek has installed shut-off valves on only a few homes in Riley Village. As a result of Sugar Creek's current system configuration, Sugar Creek can shut off service to the entire Riley Village subdivision only, rather than individual customers who do not pay (excluding the few homes that have shut-off valves). Thus, if the Homeowners' Association pays only a portion of the bill to Sugar Creek, then Sugar Creek could disconnect service to the entire Riley Village. This possibility subjects individual residents who have paid their water and sewer bills to the threat of disconnection.⁴

The Commission finds that based on the evidence presented, Sugar Creek should bill customers individually for water and sewer service that it provides to those customers. Requiring residents who pay their bills to pay for those who do not is unjust and not in the public interest. In addition, subjecting those who pay their bills to the threat of disconnection because of those who do not pay their bills is also unjust and not in the public interest. Further, absent a settlement, the Homeowners' Association is not required to act as a billing agent for the Utility. 170 IAC 6-1-1 provides that the "customer" is the person who agrees to pay for service and is the person a utility may bill for service. The Association no longer wishes to act as the agent for Riley Village customers, and we see no reason to continue to require it to continue to act as such.⁵ Accordingly, the Commission finds that not later than sixty (60) days from the date of this Order, Sugar Creek shall cease billing the Homeowners' Association for water and sewer service provided to Riley Village and instead shall bill individual customers for service provided directly to that customer. Sugar Creek may, through a thirty-day filing, propose rules, charges, and other means of assisting in collection efforts, including late payment charges, bad check charges, reconnection charges, and disconnection charges.

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

1. No later than sixty (60) days from the date of this Order, Sugar Creek shall begin directly billing the residents of Riley Village for both water service and sewer service at Sugar Creek's current Commission-approved rate.

⁴ On December 2, 2008, Sugar Creek filed with the Commission Sugar Creek's Notice of Potential Disconnection ("Notice"), which indicated that the Homeowners' Association failed to pay in full for water and sewer service provided to Riley Village for the months of September 2008 and October 2008. Payment for December 2008 had yet to be sent to Sugar Creek as of the date of the filing of the Notice. In a Docket Entry dated January 5, 2009, the Presiding Officers indicated that Sugar Creek could not disconnect service to Riley Village during the pendency of this Cause.

⁵ A result of the Settlement Agreement in Cause No. 41913 was that the Association would continue to collect and remit to Sugar Creek the water and sewer bills collected from Riley Village residents. The Commission strongly encourages the Homeowners' Association to honor the terms of that Settlement Agreement and erase any arrearage owed to Sugar Creek for non-payment of water and sewer bills as soon as possible.

2. If Sugar Creek elects to propose rules or charges to assist in collection efforts, it shall submit to the Commission within sixty (60) days of this Order rules and proposed charges related to direct billing of its residential customers. Any proposals shall be made in accordance with the Commission's thirty-day filing rules.

3. Issues concerning Sugar Creek's rate structure and the Project shall be considered in Cause No. 43579.

4. This order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, AND ZIEGNER CONCUR, ATTERHOLT ABSENT:

APPROVED: DEC 22 2009

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



Brenda A. Howe
Secretary to the Commission