

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPEAL OF)
THE CONSUMER AFFAIRS DIVISION'S)
DECISION OF THE COMPLAINT OF PAUL)
GIESEKING)

CAUSE NO. 43741

APPROVED: JUN 03 2010

BY THE COMMISSION:

James D. Atterholt, Commissioner

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 March 19, 2007, Indian Lakes Campground ("Indian Lakes"), by its owner Paul Giesecking, filed a request for review with the CAD alleging the LaGrange County Regional Sewer District ("LaGrange") was impermissibly charging it a rate higher than that allowed under Indiana Code section 13-26-11-2. Indian Lakes filed its complaint after unsuccessfully attempting to resolve the matter with LaGrange directly.

On April 16, 2007, LaGrange filed a motion to dismiss the case because Indian Lakes failed to serve it with a copy of the request for review as required by Indiana Code section 13-26-11-2.1(b). The CAD denied LaGrange's motion to dismiss on November 14, 2007. LaGrange subsequently complied with the CAD's document requests and otherwise fully participated in this proceeding.

On July 6, 2009, the CAD issued an informal disposition (the "CAD Decision"). The CAD concluded LaGrange's calculation of the metered rate for Indian Lakes was not discriminatory and was materially correct. The CAD also concluded LaGrange had overcharged Indian Lakes for the months of August, September, and October, 2006. However, the CAD determined it lacked authority under Indiana Code section 13-26-11-2.1 to order LaGrange to refund those amounts because the overcharges did not occur while the case was pending before the Commission. The CAD also determined LaGrange overcharged Indian Lakes for its monthly reimbursement fee because LaGrange failed to provide evidence to support its expenses for meter calibration and rate monitoring. The CAD determined the monthly reimbursement fee should have been \$13.33 rather than \$52.90. Therefore, the CAD ordered LaGrange to refund the amount of overcharge paid by Indian Lakes since March 19, 2007.

On July 20, 2009, Indian Lakes filed a complaint with the Commission appealing the CAD's decision to uphold the metered rate charged by LaGrange. In its response brief, LaGrange argued the CAD had no jurisdiction over it because of Indian Lakes's failure to serve LaGrange with a copy of the request for review. Aside from its jurisdictional argument, LaGrange did not challenge the CAD's decision. The parties agreed to waive oral arguments in this matter and submitted written

briefs and designations of evidence. The Office of the Utility Consumer Counselor chose not to file any testimony or exhibits.

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

1. Commission Jurisdiction and Review. LaGrange filed a motion to dismiss the case, claiming the Commission lacks jurisdiction over the dispute because Indian Lakes never served LaGrange with a copy of the request for review. The CAD denied LaGrange's motion, and LaGrange renews its argument in this docketed appeal.

Indiana Code section 13-26-11-2.1(c) requires a campground owner to file a request for review with the Commission and the utility. The statute does not specify any particular method by which the campground owner must serve the request for review upon the utility. The owner of Indian Lakes maintains he sent a copy of the request for review to LaGrange via first class mail, but LaGrange did not receive it. However, the CAD sent LaGrange notice of the complaint on April 3, 2007, which LaGrange did receive. After the CAD denied LaGrange's motion to dismiss, LaGrange fully participated in each phase of the CAD's and the Commission's review of the case, including responding to requests for additional information, submitting evidence to the Commission, and filing legal briefs in support of its arguments. Therefore, LaGrange had notice of the substance of Indian Lakes's complaint and has had ample opportunity to be heard and to provide evidence. While we acknowledge the onus on the complaining party to provide notice of the complaint to the utility, in this case the failure of LaGrange to receive notice from Indian Lakes is immaterial because LaGrange has been given and has taken advantage of the opportunity to actively participate in a formal complaint review before this Commission. See In re Request of Washington Twp. Water Corp. (of Monroe County) for Comm'n Review of the Jan. 17, 2003, Consumer Affairs Div. Decision on the Informal Compl. of Bill Collier Pursuant to IC 8-1-2-34.5, Cause No. 42374, 2004 Ind. PUC LEXIS 242, at *26 (Aug. 11, 2004).

LaGrange is a "regional sewage district," as defined in Indiana Code section 13-11-2-164. Indian Lakes is a campground. Indiana Code section 13-26-11-2.1 allows a campground owner, who has previously filed a complaint with a regional sewage district regarding charges for sewer service and is dissatisfied with the resolution of the complaint, to file a request for review of the disputed matter by the CAD. The CAD made a finding on the matter, which Indian Lakes timely appealed. The Commission has specific statutory authority to review any decision of its CAD upon request pursuant to Indiana Code section 8-1-2-34.5. Therefore, the Commission has jurisdiction over the parties and subject matter of this cause.

2. Background. Indian Lakes is a campground located in LaGrange County. The Campground is open from April 15 to October 15 of each year. LaGrange provides sewage service to Indian Lakes. In July, 2001, LaGrange began planning construction of a wastewater collection, transmission, and treatment system ("the System") in the service area of the district referred to as Region A, which includes Indian Lakes. For purposes of designing the system, LaGrange utilized an

assumed monthly flow of 5,000 gallons per single family dwelling unit (“SFDU”). In 2004, LaGrange commissioned a rate design study to calculate a proposed flat monthly fee for Region A. The study calculated the rate by adding the estimated monthly costs for operating the System, the estimated annual costs for capital replacements to the System, and the anticipated monthly debt service fees and dividing the result by the number of equivalent SFDUs in Region A. The study arrived at a suggested flat monthly fee per equivalent SFDU of \$56.25, which LaGrange later adopted as its flat monthly fee for Region A. In July, 2006, LaGrange completed construction of the System and placed it into operation. Prior to August, 2006, Indian Lakes paid a flat monthly fee for sewage service, which was calculated by assigning each campsite a flat fee equal to three-tenths of the fee charged to an equivalent SFDU.

In July, 2006, Indian Lakes installed a meter to measure its actual flow of sewage. In August, 2006, Indian Lakes began metering its sewage discharge and asked to be billed at a metered rate. Because LaGrange had not previously billed customers at a metered rate, it commissioned a flow rate study to determine a metered rate that would be equivalent to the flat fee rate it currently charged. The study, which was completed on September 12, 2006, calculated an estimated average flow per SFDU of 2,317 gallons per month based upon the actual total flow in Region A of 1,663,452 gallons during the month of August, 2006. Using this estimated average flow and the flat monthly rate per SFDU of \$56.25, the study calculated an equivalent metered rate of \$24.27 per 1,000 gallons ($\$56.25/2,317 \text{ gallons} = \$0.02427 \text{ per gallon}$). Based upon the study, LaGrange passed an ordinance on November 8, 2006, establishing a metered rate charge of \$24.27 per 1,000 gallons for Indian Lakes plus an additional fixed monthly fee of \$52.90 to cover the additional expenses incurred by LaGrange related to the metered rate. During the months of August, September, and October, 2006, LaGrange calculated Indian Lakes’s monthly charge using a biological oxygen demand population equivalent rate and charged Indian Lakes \$2,727.35 per month. In December, 2006, LaGrange began billing Indian Lakes on a metered basis. In August, 2006, Indian Lakes actually produced 26,031 gallons of sewage according to its meter.

3. Standard of Review. This cause involves an appeal of issues that were considered and decided by the CAD pursuant to Indiana Code section 8-1-2-34.5 and 170 Indiana Administrative Code 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 Indiana Code section 8-1-2-34.5 and 170 Indiana Administrative Code 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. Argument Presented by Indian Lakes. Indian Lakes argues LaGrange improperly calculated its monthly metered rate by utilizing an estimated average monthly flow of 2,137 gallons per SFDU. Indian Lakes asserts the original flat monthly fee was calculated using an estimated average flow of 5,000 gallons per SFDU, and therefore, LaGrange should have used an estimated average monthly flow of 5,000 gallons per SFDU to calculate the metered rate. Under Indian

Lakes's calculation its monthly metered rate should be \$11.25 per 1,000 gallons (\$56.25/5,000 gallons = \$0.01125 per gallon).

5. CAD Decision. The CAD initially noted a rate analyst would typically use data from a twelve-month period in calculating rates. The CAD also noted given the monthly rate determination requirements for the months of September through May in Indiana Code section 13-26-11-2(b)(2), flow data from the months of June, July, and August only might even be more appropriate than a full twelve-month period for the purpose of calculating a metered rate for a campground. Nonetheless, the CAD acknowledged the August, 2006 data was the only data available to the rate consultant to determine an equivalent metered rate for Indian Lakes because the Region A System had just been placed into service and Indian Lakes had just begun metering its sewage discharge. Considering the limitations of the data available, the CAD determined "the flow rate calculation reviewed is not discriminatory to [Indian Lakes] and is materially correct." CAD Decision at 8.

The CAD further determined LaGrange "overcharged [Indian Lakes] for the months of August, September, and October[,] 2006." Id. Using the metered rate, the CAD determined Indian Lakes's August, 2006 bill should have been \$684.67, which is the total of the monthly flow charge of \$631.77 (26,031 gallons X \$24.27 per 1,000 gallons) plus the \$52.90 fixed monthly metering fee. In addition, the CAD determined Indian Lakes should also have been charged \$684.67 during the months of September and October, 2006, unless the monthly charge based upon actual usage in those months exceeded the August, 2006 bill. See Ind. Code § 13-26-11-2(b)(2) ("the amount charged by [LaGrange] for [Indian Lakes]'s monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the greater of: (A) the actual amount that would be charged for sewage discharged during the month by [Indian Lakes] as measured by the meter; or (B) the lowest monthly charge paid by [Indian Lakes] for sewage service during the previous period beginning June 1 and ending August 31.). However, the CAD read Indiana Code section 13-26-11-2.1(e) to limit its ability to order LaGrange to refund the overcharge "because the statute limits billing adjustments to the timeframe the review was pending at the IURC, or on or after March 19, 2007." Id.

6. Commission Findings.

Indiana Code section 13-26-11-2(b) provides:

If a campground is billed for sewage service at a flat rate under subsection (a), the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the actual amount of sewage discharged by the campground into the sewers.

The rate charged to a campground for metered sewage service cannot exceed the rate charged to residential customers for equivalent usage. Id. In addition, the amount charged by the utility for the campground's monthly sewage service for the period beginning September 1, and ending May 31, must be equal to the greater of the actual amount that would be charged to the campground based upon its metered usage for that month or the lowest monthly charge paid by the campground for

sewage service in the preceding months of June, July, or August. Id.

Indian Lakes is located in Region A of LaGrange's sewage service district. LaGrange charges all customers in Region A a flat monthly rate of \$56.25 per equivalent SFDU rather than charging on a metered basis. LaGrange's rate consultant calculated this rate by combining the estimated expenses for operation of the utility, annual capital replacements, and debt service and dividing that amount by the estimated number of equivalent SFDUs. Thus, the rate calculation is based upon LaGrange's revenue requirements, not the actual or estimated flow rates of its various customers. The flat rate fee calculation was not made by directly considering a flow rate of 5,000 gallons per month for each SFDU as Indian Lakes asserts. Rather, LaGrange used the 5,000 gallons per month flow rate for the purpose of designing the System.

Indian Lakes requested to be billed on a metered basis. Indiana Code section 13-26-11-2(b) requires LaGrange to bill Indian Lakes on a metered basis at a rate that does not exceed "the rate charged to residential customers for equivalent usage." Because LaGrange billed all of its residential customers on a flat fee basis without regard to actual usage, it was required to conduct a rate flow study to determine the estimated actual usage of a SFDU in order to arrive at an equivalent rate to charge Indian Lakes. The rate flow study calculated an estimated average usage per equivalent SFDU of 2,317 gallons per month. Therefore, an average residential customer effectively pays \$56.25 for a monthly discharge of 2,317 gallons. LaGrange used this basis to calculate Indian Lakes's metered rate of \$24.27 per 1,000 gallons, and the Commission finds that calculation is reasonable and results in a rate that does not exceed the rate charged to residential customers for equivalent usage.

The Commission acknowledges, as did the CAD, that a rate flow study based upon more than a single month would be preferable in determining a metered rate. However, the Commission also acknowledges the limitations placed upon LaGrange in determining a metered rate given the timing and immediacy of Indian Lakes's request to be billed on a metered basis. Therefore, we encourage the parties to revisit the issue of calculating a reasonable metered rate at a later time when more data is available.

We further agree with the CAD's conclusion that LaGrange overcharged Indian Lakes for the months of August, September, and October, 2006. Although LaGrange did not pass its ordinance setting the metered fee for campgrounds until November 8, 2006, the flow rate calculation study, complete with the proposed metered rate, was completed on September 12, 2006. In addition, LaGrange's ordinance No. 2003-6-11, which was in effect at the time Indian Lakes asked to be billed on a metered basis, states a campground electing to be billed on a metered basis, will initially be charged "on the basis of the highest amount of sanitary sewage in gallons discharged from the campground during any calendar week in a one-year period as measured by one or more sewage flow meters." LaGrange's Response to the CAD's Query #8. At the conclusion of the one-year period, the Ordinance requires LaGrange to establish a regular metered rate. Thus, the ordinance contemplates LaGrange will bill Indian Lakes on a volumetric basis in the interim between Indian Lakes requesting metered billing and LaGrange's calculation of the metered rate. Instead, LaGrange

improperly billed Indian Lakes on the basis of biological oxygen demand, which is a strength-based method of billing. Once the flow rate study was complete and LaGrange could calculate an equivalent metered rate, LaGrange should have begun billing Indian Lakes on a volumetric basis.

That said, the Commission does not directly regulate LaGrange and therefore does not have jurisdiction over the rates LaGrange charges its customers. Because of this the Commission's jurisdiction in this case is strictly limited by Indiana Code section 13-26-11-2.1. We agree with the CAD that Indiana Code section 13-26-11-2.1(e) limits the Commission's ability to order a refund of overcharged rates to that period during which a review by the Commission is pending. See LaGrange County Reg'l Util. Dist. v. Bubb, 914 N.E.2d 807, 814-15 (Ind. Ct. App. 2009) (concluding Commission has specific statutory authority to refund charges paid while the review is pending). Indian Lakes filed its request for review on March 19, 2007. As a result, the Commission lacks the authority to order LaGrange to refund any overcharged amounts prior to that date.

The CAD also concluded LaGrange overcharged Indian Lakes for the monthly reimbursement fee and ordered LaGrange to refund the overcharged amount from March 19, 2007. Neither party raised an argument regarding this portion of the CAD opinion, and therefore, we do not address that issue in this Order.

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

1. The July 6, 2009 decision of the Consumer Affairs Decision in this Cause 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.

HARDY, ATTERHOLT, MAYS, AND ZIEGNER CONCUR; LANDIS ABSENT:
APPROVED: JUN 02 2010

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



Brenda A. Howe
Secretary to the Commission

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**Sandra K. Gearlds, Acting
Secretary to the Commission**