

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

[Handwritten signatures and initials: JLG]

IN THE MATTER OF THE PETITION OF)
COMMUNITY SCHOOL CORPORATION)
OF SOUTHERN HANCOCK COUNTY FOR)
APPEAL AND COMMISSION REVIEW OF)
AN INFORMAL DISPOSITION RENDERED)
BY THE COMMISSION'S CONSUMER)
AFFAIRS DIVISION ON JULY 6, 2009,)
REGARDING A SERVICE DISPUTE WITH)
INDIANAPOLIS WATER)

CAUSE NO. 43744

APPROVED: JAN 27 2010

BY THE COMMISSION:

Larry S. Landis, Commissioner

Scott R. Storms, Chief Administrative Law Judge

This matter comes to the Indiana Utility Regulatory Commission ("Commission") as an appeal from a decision of the Commission's Consumer Affairs Division ("CAD"). On July 6, 2009, the CAD issued an Informal Complaint Resolution ("CAD Decision" or "Decision") regarding a consumer complaint presented by the Community School Corporation of Southern Hancock County ("Southern Hancock Schools" or "School Corporation") against the Department of Waterworks for the City of Indianapolis and its operator, Veolia Water (collectively, "Indianapolis Water"). Southern Hancock Schools sought to connect a new school that is currently under construction to an existing Indianapolis Water main that Southern Hancock Schools had previously paid to extend. The CAD found that Indianapolis Water could refuse the requested connection and instead require Southern Hancock Schools to pay for a second main extension in order to receive service at the new school. The CAD also made various rulings on the terms and costs associated with the main extension.

On July 23, 2009, Southern Hancock Schools appealed the CAD Decision to allow Indianapolis Water to require a new main extension. Southern Hancock Schools also appealed the imposition of public fire hydrant construction costs on Southern Hancock Schools as part of the main extension. Finally, Southern Hancock Schools challenged language in Indianapolis Water's main extension agreement as inconsistent with the Commission's rules. In its Response Brief, Indianapolis Water raised an appeal of the amount of the residential revenue allowance determined by the CAD.

The Commission held an Evidentiary Hearing in this matter on December 2, 2009. The record in this case is comprised solely of the information that was submitted when this matter was before the CAD and the CAD Decision, all of which was offered and admitted into evidence at the hearing as Joint Exhibit 1. The parties also submitted briefs and the Office of Utility Consumer Counselor ("OUCC") appeared on behalf of the public and filed its own brief. The parties also presented oral argument during the December 2, 2009 hearing.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearings conducted in this Cause were given as required by law. Indianapolis Water is a “municipally owned utility” as defined in Ind. Code § 8-1-2-1(h), and exists and operates pursuant to the authority of Ind. Code § 8-1.5-4 *et seq.* and Ind. Code § 36-3-4-23. In accordance with the Commission’s March 28, 2002 Order in Cause No. 41821, Petitioner is subject to the jurisdiction of the Commission for approval of rates and charges under Ind. Code § 8-1-2-1, *et seq.* In addition, Petitioner’s operation of its system is to be in accordance with the Commission’s rules of service and main extensions for water utilities contained in 170 IAC 6-1 and 6-1.5. The Commission has specific statutory authority to review any decision of its CAD upon request pursuant to Ind. Code § 8-1-2-34.5. The Commission has jurisdiction over the parties and subject matter of this proceeding.

2. **Background.** Southern Hancock Schools provides public education to over 3,400 students in New Palestine, Indiana and southwest Hancock County. Southern Hancock Schools owns approximately 120 acres of property (“School Campus”) that fronts both County Road 600 West (“CR 600”) and County Road 200 South (“CR 200”) in Hancock County. There are already two schools on the School Campus, and Southern Hancock Schools is now in the process of constructing a third school on the School Campus that is scheduled to open in August of 2010. In order to get water service to the School Campus, Southern Hancock Schools previously paid for a main extension along CR 600, and connected the two existing schools to that main.

In December 2008, Southern Hancock Schools requested permission from both Indianapolis Water and its sewer provider to connect the new school to separate water and sewer lines that are on the School Campus along CR 600. The sewer provider, GEM Utilities, granted the request. Indianapolis Water denied the request. In denying the School Corporation’s request to connect a service pipe to the existing main along CR 600, it indicated that if Southern Hancock School desired service it would be required to pay for a second main extension off the existing main on CR 600 and perpendicular along CR 200. In order to extend its new main, Indianapolis Water requested a deposit from Southern Hancock Schools based on an estimated cost of \$372,485. According to the School Corporation, even if the new main extension is constructed, Southern Hancock Schools would still also need to construct an over 800 foot service pipe to reach the main, at an estimated additional cost of \$40,000, for a total approximate cost of \$412,485. In contrast, Southern Hancock Schools could install a service pipe and connect to the existing main for approximately \$168,000.

As reflected in the Record, Southern Hancock Schools filed an informal complaint with the CAD on March 24, 2009, challenging the imposition of the main extension requirement by Indianapolis Water. Southern Hancock Schools also disputed the terms that Indianapolis Water imposes on applicants in its main extension agreements. Indianapolis Water filed a response on April 14, 2009, wherein it lowered its cost estimate for the new main to \$289,000, not including the \$40,000 cost of the service pipe that would still be required. Southern Hancock Schools filed a reply on May 11, 2009, and the CAD issued its informal disposition on July 6, 2009.

Based on the facts submitted, in its Decision the CAD determined that Indianapolis Water could appropriately require the construction of a new main extension. With respect to the terms of the main extension agreement, CAD found that Indianapolis Water was not reimbursing applicants for the full residential revenue allowance required by the Commission's rules under 170 IAC 6-1.5-8, and was charging easement costs but not including those costs in calculating subsequent connector fees. However, the CAD determined that Indianapolis Water could require an applicant to pay for public fire hydrants as part of the main extension. Finally, the CAD determined that Indianapolis Water would comply with the immediate three-year revenue allowance provisions of the Commission's rules under 170 IAC 6-1.5-26 and did not require it to revise its main extension terms to clarify that the allowance would be provided.

3. Standard of Review. As referenced in the Commission's Prehearing Conference Order in this matter, as the complaint filed in this Cause is an appeal of an issue that was considered and decided by the Consumer Affairs Division pursuant to Ind. Code 8-1-2-34.5 and 170 IAC 1-1.1-5, a record of information upon which that decision was based already exists (the "Record"). Most of the Record consists of information supplied by the Complainant and Respondent and considered by the Consumer Affairs Division in reaching its decision. 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 record to be considered in this proceeding shall be based on: (1) a review of the Record; and, (2) consideration of argument by the parties and the OUCC based on the existing Record.

4. Arguments Presented by the Parties. As reflected in the Record of the CAD Decision, there are four (4) general issues that the parties raised for the Commission to determine on appeal, which we restate as follows: (1) whether Indianapolis Water may deny connection to the existing main on the School Campus and require Southern Hancock Schools to pay for a new main extension; (2) whether Indianapolis Water may require Southern Hancock Schools to pay the cost of constructing public fire hydrants along the new main; (3) whether Indianapolis Water's main extension agreements are consistent with the Commission's rules; and, (4) whether Indianapolis Water is properly providing the full three-year residential revenue allowance to applicants as required by the Commission's rules. We begin our review of the CAD Decision regarding the Main Extension Issue presented by the parties.

A. Argument Presented by the Complainant on the Main Extension Issue. Southern Hancock School's principal appeal is that Indianapolis Water should not be permitted to require a main extension to provide service to the new school. Rather, Southern Hancock Schools argues that it should be allowed to extend a service pipe across its own property to connect to the existing main that abuts its property. Southern Hancock Schools notes that it previously paid to extend the existing main along CR 600 and that a new main is unnecessary. Southern Hancock Schools contended that Indianapolis Water discriminated against it by attempting to force it pay for the construction of an additional main in an effort to extend Indianapolis Water's service territory at Southern Hancock School's expense. Indianapolis Water argued in response that the Commission's rules and Indianapolis Water's rules give it the discretion to require a main extension under certain circumstances and that good engineering practices make the main extension appropriate. Southern Hancock Schools disputes that the rules provide Indianapolis Water with such discretion, and further argues that the main extension

is only an expression of Indianapolis Water's preferred approach to providing service to the new school.

B. Argument Presented by Indianapolis Water on the Main Extension Issue.

Pursuant to 170 IAC 6-1.5-13, " 'main extension' means the mains, hydrants, and appurtenances installed by the utility to provide the water utility service requested by or on behalf of the applicant or prospective customer, but does not include the service pipes." Indianapolis Water maintained that it has the discretion, under the Commission's rules and its own rules, to refuse the connection of a service pipe in favor of the use of a main extension. Indianapolis Water rule 7(J) states in part that "the Department shall not be under any obligation to permit connection and supply service to any customer whose premise does not abut a main." Similarly, Indianapolis Water rule 7(L) provides that "a service pipe to an isolated premises shall not be extended across a property" without a contract with Indianapolis Water and the owners of the adjacent land. Indianapolis Water also directs the Commission to its Rule 7(D)(2) which states that:

The service pipe shall run in a straight line perpendicular to the main or from the main to the property line or easement line of the premises being service. Any exceptions to this practice must be approved by the Department.

C. CAD Decision on the Main Extension Issue. In ruling in favor of Indianapolis Water the CAD correctly concluded that the School Corporation's property abuts a main. In addition, the CAD considered additional issues and concluded that "[Indianapolis Water's] tariff provides that it is under no obligation to 'provide connection or to supply service' to an irregularly located service pipe, as requested by the School Corporation, the language implies that [Indianapolis Water] has the discretion to so if it chooses." CAD Decision at 5. The CAD also concluded that the construction of the new school building created a new premise which does not abut the main. *Id.* The CAD went on to determine that "[i]n this matter Indianapolis Water supported its proposal to install a water main by highlighting public benefits including the prevention of possible water quality issues that may result from water remaining in the line for an extended period of time over the summer months and in its consideration of fire protection issues. The CAD agrees with these additional issues identified by [Indianapolis Water] and has great concern about the School Corporation's ability to effectively refresh the water supply if allowed to simply extend its service line. The CAD finds the water quality and fire protection issues addressed by IW to be persuasive and will not substitute our judgment for theirs on this issue." *Id.*

5. Commission Findings on the Main Extension Issue. As considered by the CAD, it appears that Indianapolis Water's rules were construed in such a manner as to lead to the conclusion that a choice may be made by Indianapolis Water with respect to the installation of a water main or a service pipe under the facts presented in this matter. This is not the case. While the Record reflects technically unsubstantiated issues regarding engineering and water quality issues in a letter from the Respondent's General Counsel that served to obfuscate the issue, this case is seemingly nothing more than a straightforward request for the connection of a service pipe to an existing main by the School Corporation. This request was rejected by Indianapolis Water in a manner not contemplated by its rules, the Commission's Administrative rules, or any other evidence in the Record.

In considering the issue presented in this matter, we start with a review of Indianapolis Water's Rule 7 that addresses *Service Pipes and Other Facilities*. While the CAD correctly concluded that the School Corporation's property abuts an existing main as required in Indianapolis Water's Rule 7(J), the CAD's discussion regarding what it believed to be the creation of an additional premise, and the irregular nature of the service pipe, resulted in an incorrect determination that the School Corporation must connect to a new additional water main.

Indianapolis Water's Rule 7(J) states as follows:

(J) Irregularly Located Service Pipes. A service pipe which is irregularly located shall, at the department's expense, be relocated and connected to a new main abutting the premises when subsequently installed for other purposes.

The Department shall not be under any obligation to permit connection or to supply service to any customer whose premises does not abut a main.

As an initial matter, we agree with the finding in the Record that indicates that the new school abuts an existing main that runs along CR 600. The School Corporation's property is not isolated and the service pipe will cross only the customer's property. The evidence in the Record provides that the service pipe that Southern Hancock Schools would install will run in a straight and perpendicular line from the main to the property line of the new school as contemplated by the rule. Based on this factual foundation, the creation of an additional premise, as discussed by the CAD in its Decision, is not at issue in this proceeding. Premises as defined in Indianapolis Water's rules, addresses the need to serve each premise with a separate service pipe. Indianapolis Water's Rules at 6. The School Corporation's proposal comports with this provision, as it requested the connection of single service pipe from an existing main to the new school premise which is located on property that abut an existing main. As this issue is not in dispute in this proceeding, it was not properly considered by the CAD and will not be considered further by the Commission.

Pursuant to Indianapolis Water's Rule 7(J), the only limitation with respect to the Department's obligation to connect a service pipe involves instances in which premises do not abut a main. The language in 7(J) allows the Department to supply a service pipe to a premise that does not abut a main, but does not require such a connection. As the School Corporation's property abuts a main, so long as the service line is constructed and installed by the customer as provided in Indianapolis Water's Rules, further examination of the possible "irregular nature" of the service pipe is not at issue. The fact that the specific provisions of 7(J) generally contemplate the existence of irregularly located service pipes provides additional support for the conclusion that the construction of an additional main extension cannot be required by Indianapolis Water based on the facts presented in the Record.

Still further, Indianapolis Water's rules explicitly place responsibility for the service pipe and its location with the customer. Indianapolis Water's Rules 7(A) and 7(B) absolve the utility

of all responsibility for the installation, maintenance, and ownership of the service pipe on the customer's property. In addition, Indianapolis Water's rules specifically provide that it will not interfere with a customer's decision of the best or most economical type of service arrangement. Indianapolis Water Rule 7(D)(9) states:

The Department, upon request, will review a customer's plans and specification with respect to the type, location and arrangement for the service, service pipe and other facilities downstream from the meter, but the Department is not responsible for the adequacy of such service pipe and facilities downstream from the meter or for selection by the customer of the best or most economical type of service or metering arrangement.

Here, Southern Hancock Schools has determined what it believes to be the "the best or most economical type of service arrangement" by electing to connect to the existing main on its property pursuant to Indianapolis Water's rules.

While the CAD Decision also noted engineering and potential water quality issues raised by Indianapolis Water, aside from technically unsupported contentions presented in a letter from the Department's General Counsel, there is no evidence in the Record that establishes or supports these contentions. While Indianapolis Water contends that an additional main extension represents the best engineering solution to provide service to the new school, as the new school abuts an existing main, pursuant to Indianapolis Water's rules a service pipe from the existing main may be utilized to provide service. If Indianapolis Water believes that construction of an additional main along CR 200 represents a better engineering solution and will provide an opportunity for long term growth by the utility it may independently pursue the main extension and cover any additional costs associated with the project. However, the Commission notes that such an equitable solution was recommended by the OUCC in its brief filed in this proceeding and summarily rejected by Indianapolis Water.

Pursuant to Indianapolis Water's rules it has an obligation to provide service from an existing main as long as the customer's property abuts the main. Based on our review of the Record, as an existing main abuts the School Corporation's property, a main extension is not necessary and cannot be required by Indianapolis Water. Accordingly, the Commission finds that Southern Hancock Schools shall be permitted to connect its new school to the existing main on CR 600 without delay.¹

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

1. Indianapolis Water shall permit Southern Hancock Schools to tap a water connection for its new school into the existing main on CR 600.

¹ As the Commission has determined that the School Corporation shall be permitted to connect its new school to the existing main on CR 600, we do not consider additional issues presented in this Cause related to conditions and requirements associated with main extensions.

2. Pursuant to Ind. Code 8-1-2-70, Indianapolis Water shall pay within twenty (20) days from the date of this Order into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause.

Commission Charges	\$3,772.77
OUCG Charges	\$1,848.90
Legal Advertising Charges	<u>\$ 162.10</u>
TOTAL:	\$5,783.77

3. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS AND ZIEGNER CONCUR; ATTERHOLT NOT PARTICIPATING:

APPROVED: JAN 27 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**