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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION)
OF DRIFTWOOD UTILITIES, INC.) CAUSE NO. 43746
FOR APPROVAL OF CHANGE IN)
BILLING PRACTICES FOR MOBILE) APPROVED: FEB 19 2010
HOME PARKS)

BY THE COMMISSION:

Jeffrey L. Golc, Commissioner
Angela Rapp Weber, Administrative Law Judge

On July 23, 2009, Driftwood Utilities, Inc. (“Petitioner” or “Driftwood”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Verified Petition seeking approval to change its billing practices with respect to mobile home parks. Specifically, Driftwood provides wastewater services to two mobile home parks: Heritage Heights, LLC (“Heritage Heights”) and Tannehill Park, LLC (“Tannehill”). Tannehill filed a Petition to Intervene on August 28, 2009, which the Presiding Officers granted pursuant to a Docket Entry issued on September 9, 2009. Heritage Heights did not file a Petition to Intervene in this matter.

In accordance with the procedural schedule set forth in the Prehearing Conference Order dated September 16, 2009, Petitioner filed its case-in-chief on September 21, 2009. The Office of Utility Consumer Counselor (“OUCC”) and Tannehill prefiled their respective cases-in-chief on October 14, 2009. On October 22, 2009, Petitioner notified the Commission that it intended not to file rebuttal testimony. On November 9, 2009, the Presiding Officers issued a Docket Entry requesting additional information from Driftwood and Tannehill. On November 9, 2009 and November 10, 2009, Petitioner and Tannehill filed their respective responses to that Docket Entry.

Pursuant to notice as prescribed by law, an Evidentiary Hearing in this Cause was held on November 10, 2009 at 1:30 p.m. in Room 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. At that Hearing, Petitioner, the OUCC, and Tannehill introduced into the record their respective prefiled testimony and exhibits without objection. No member of the public attended or participated in the Evidentiary Hearing.

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

- 1. Notice and Jurisdiction.** Due, legal, and timely notice of the public hearing in this Cause was given and published as required by law. Petitioner is a “public utility” within the meaning of that term in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission as provided for by the Public Service Commission Act, as amended, Ind. Code § 8-1-2 *et seq.* The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is a nonprofit corporation incorporated under the laws of the State of Indiana. Petitioner owns and operates a sanitary sewer collection system in Bartholomew County, Indiana and provides such service to approximately 1,487 customers. Driftwood has its principal office at 9560 Depot Street, Taylorsville, Indiana 47280 and a mailing address of PO Box 446, Columbus, Indiana 47202.

3. **Relief Requested.** Driftwood requests Commission approval for a change to its billing practices for mobile home parks. Specifically, under current billing practices, Driftwood issues individual bills to individual tenants of mobile home parks. However, prior to May 13, 1996, Driftwood issued one aggregate bill to each of the two mobile home parks Driftwood served, Heritage Heights and Henry Lakes Estates, rather than billing individual tenants of the two parks. Petitioner issued to Henry Lakes Estates an aggregate bill calculated by multiplying Driftwood's flat residential tariffed rate by the number of mobile home units being served. However, Petitioner billed Heritage Heights using metered commercial rates. Driftwood proposes to return to this prior billing practice of issuing aggregate bills using the flat residential tariffed rate to the mobile home park owners.

4. **Driftwood's Evidence.** Petitioner offered the testimony of Driftwood's Board President, Jason Newton. Mr. Newton provided an overview of Driftwood's billing practices with respect to mobile home parks and explained Driftwood's proposed change to its billing structure. Mr. Newton first stated that the only customers that will be affected by Petitioner's proposed billing change are Tannehill and Heritage Heights. According to Mr. Newton, Driftwood currently issues bills to each individual tenant in Tannehill and Heritage Heights. Bills are based on Driftwood's flat residential tariffed rate. Driftwood now proposes to issue one aggregated monthly bill to Tannehill and one aggregated monthly bill to Heritage Heights for wastewater services used by individual tenants.

Mr. Newton testified that from February 15, 1984 to May 13, 1996, Driftwood served two mobile home parks, Heritage Heights and Henry Lakes Estates.¹ Both mobile home parks were billed using a single, aggregated monthly bill. However, Driftwood billed Henry Lakes Estates based on Driftwood's flat residential tariffed rate multiplied by the number of occupied mobile homes in Henry Lakes Estates. Heritage Heights' aggregate bill was calculated by using Driftwood's metered commercial rate.

Consequently, on March 15, 1996, Henry Lakes Estates filed a Complaint with the Commission's Consumer Affairs Division ("CAD"). Henry Lakes Estates claimed that all mobile home landlords should be billed using Driftwood's metered commercial rate, rather than the flat residential tariffed rate because the commercial rate was lower than the residential rate. The CAD disagreed and issued a letter stating that Henry Lakes Estates should be billed using the tariffed residential rates.

For reasons unknown to Mr. Newton, Driftwood interpreted the CAD's letter as requiring Driftwood to send individual bills to each mobile home park tenant rather than sending a single bill of any kind to either mobile home park owner. Thus, Driftwood immediately began to bill

¹ According to Driftwood's Verified Petition, Henry Lakes Estates was later acquired by Heritage Heights.

each mobile home park tenant individually. Mr. Newton testified that Driftwood now wants to return to its earlier practice for several reasons.

First, Mr. Newton testified that the financial effect of Driftwood's billing practice has been disastrous. He testified that, since the billing change in 1996, Driftwood's bad debt expense has increased significantly. In 1997, Petitioner wrote off only \$337.13 in bad debt expense. In 2007, Driftwood wrote off \$13,153.97. \$11,818.42 of the \$13,153.97 was for uncollectible bills sent to tenants of Heritage Heights and Tannehill.

Second, Mr. Newton testified that amending Driftwood's billing practices with respect to Heritage Heights and Tannehill is in the public interest. Since implementing its current billing practice in 1996, Driftwood's bad debt expense has increased by over 3,800%. In addition, Petitioner plans to file a rate case soon. Mr. Newton testified if Driftwood is permitted to return to its prior billing practice, Driftwood would anticipate a significant decrease in bad debt expense, resulting in future lower rates for all Driftwood customers.

Third, Mr. Newton testified that Petitioner serves apartment buildings. He stated that apartment building and mobile home park landlords own the land and end-use sewer facilities, properties, and improvements to which Driftwood provides wastewater services. Driftwood provides apartment building landlords with a single, aggregate bill for monthly sewer service calculated by multiplying Driftwood's flat residential rate by the number of apartment building dwelling units.² However, Mr. Newton testified that while apartment building owners are billed directly for the usage of their tenants, mobile home park owners are never held financially responsible for their tenants' usage. Therefore, Mr. Newton suggested that apartment buildings and mobile home parks should be billed in the same manner.

Driftwood's Verified Petition also stated that its previous billing practice should be reinstated to ensure that customer classes are being charged according to the actual cost of service so that one customer class does not subsidize another. Finally, the Verified Petition stated that a reinstatement of Petitioner's previous billing practice would be consistent with Ind. Code § 8-1-2-1.2.

Mr. Newton concluded by requesting that the Commission permit Driftwood to return to the billing practice used for Henry Lakes Estates prior to 1996. Petitioner would like to bill each mobile home park by sending a single, aggregated bill calculated by multiplying Driftwood's flat residential tariffed rate by the number of occupied mobile homes. Mr. Newton stated that this would reduce Driftwood's bad debt expense, thus reducing rates for all of its customers in the future.

5. OUCC's Evidence. In response to Driftwood's case-in-chief, the OUCC submitted the testimony of Roger Pettijohn, Senior Utility Analyst for the OUCC's Water/Wastewater Division. Mr. Pettijohn testified that he prepared for this Cause by speaking

² On September 23, 2009, Driftwood filed a Petition for Rate Relief with the Commission under Cause No. 43790-U. The Commission notes that considering the business-like nature and operations of mobile home parks and apartment complexes, the use of Driftwood's commercial metered rate may be more appropriate and should be addressed by Petitioner in Cause No. 43790-U.

with Driftwood's president, Jason Newton, and Driftwood's Operations Manager, Al McKown. He also personally inspected Driftwood's facilities and service territory.

Mr. Pettijohn explained that Petitioner would like to reinstate its previous billing practice with respect to Tannehill and Heritage Heights as discussed by Mr. Newton. He also summarized Mr. Newton's testimony concerning the CAD letter and Driftwood's change in its previous billing practice. Mr. Pettijohn briefly summarized Driftwood's reasons for requesting a change in its billing practice.

He further testified that the utility facilities and infrastructure located on the premises of each mobile home park are owned and operated by the mobile home parks, not by Driftwood. He noted that, currently, Driftwood's only possible recourse for mobile home tenants who refuse to pay is to enter private property, pursuant to Driftwood's Rules, and disconnect each individual non-paying mobile home tenant. As Mr. Pettijohn observed, this approach presents numerous technical challenges and occasionally puts Driftwood personnel in physical jeopardy.

In order to disconnect a non-paying mobile home tenant, Driftwood personnel must remove the skirting around the home to expose the crawl space. A section of the riser pipe that enters the home must then be cut and removed so that a shut-off valve can be installed. Mr. Pettijohn testified that tenants obstruct disconnection by continually flushing while a shut-off is being installed or tying a pit bull to the premises.

In conclusion, Mr. Pettijohn recommended that Driftwood's proposed change to its billing practices be approved. He further recommended that Driftwood revise its Rules and Regulations prohibiting work on private property within sixty (60) days of the Commission's Final Order issued in this Cause.

6. Tannehill's Evidence. Tannehill submitted the testimony of Reed Taylor, Vice President of Tannehill, in opposition to Driftwood's request. Mr. Taylor generally described Tannehill's operations, noting that Tannehill owns approximately 191 lots that are served by Driftwood. However, Mr. Taylor stated that Tannehill does not own the mobile homes that occupy those lots. Tannehill rents the lots it owns to its tenants, or to the owners of the mobile homes.

Mr. Taylor explained that Tannehill was only recently connected to and served by Driftwood. Previously, Tannehill operated an onsite wastewater facility to serve its tenants. Mr. Taylor testified that Tannehill continues to maintenance the system within the park because it maintained the system prior to connection to Driftwood.

Mr. Taylor stated that Tannehill is different than an apartment complex because Tannehill does not own the actual residences in the way an apartment complex owner owns the apartments. Mr. Taylor repeated that Tannehill only owns the lots and not the mobile homes and fixtures hooked to the utility facilities. Mr. Taylor added that Tannehill has no involvement with the end use of the utility service.

Mr. Taylor stated that when Driftwood began to serve Tannehill, the current billing practice was in place. He added that he believes that the vast majority of Tannehill tenants are not delinquent in paying their sewer bills. Mr. Taylor testified that changing the billing practice

in the manner proposed by Driftwood would have a negative impact on Tannehill. He stated that Tannehill has only one administrative staff member and the handling of utility-related issues would be time consuming. He also stated that costs for tenants could increase as a result of a change in billing practices.

Mr. Taylor testified that a change in Driftwood's billing practice is not in the public interest because Driftwood's large bad debt expense may be the result of poor economic conditions. He repeated that shifting the burden concerning utility-related issues to Tannehill would cause costs to increase for Tannehill residents. Since, in Mr. Taylor's opinion, Tannehill residents are in good standing with respect to the payment of its sewer bills, a change in billing practice will not significantly benefit Driftwood. He then concluded by stating that Tannehill opposes Driftwood's proposed change to its billing practice.

7. **Supplemental Testimonies of Jason Newton and Reed Taylor.** Both Driftwood and Tannehill submitted supplemental testimony in response to the November 9, 2009 Docket Entry concerning the ownership of the collection system located within the boundaries of Tannehill. In Driftwood's supplemental testimony of Jason Newton, Mr. Newton stated, "To the best of my knowledge, the collection system within the boundaries of Tannehill Park is owned, operated, and maintained by Tannehill Park, Inc. Driftwood does not own or operate those facilities."

In supplemental testimony submitted by Tannehill, Reed Taylor explained that Tannehill's internal sewage system was installed in 1971 before Driftwood lines ran near Tannehill. In the early 1990s, Tannehill granted Driftwood an easement to run a line across Tannehill's property to connect to a nearby housing division. As a part of the discussions related to the granting of the easement, Tannehill was permitted to connect to Driftwood's system at a later date. In approximately 2004, Tannehill ceased using its internal treatment system and connected to Driftwood's system.

Mr. Taylor stated, "Tannehill owns the portion of the collection system running from the mobile home site to the street and from the street to the Driftwood line. The tenants own the portion of the system within their mobile homes, that is the fixtures and piping in the homes, and hooking onto the Tannehill line." Mr. Taylor continued by testifying that Tannehill maintains this system described in the previous quote. Mr. Taylor concluded by stating the fact that Tannehill owns and maintains this portion of the collection system does not make it like an apartment complex landlord.

8. **Commission Discussion and Findings.** The issue before the Commission in this matter is whether Driftwood should be permitted to amend its billing practices with respect to Tannehill and Heritage Heights, two mobile home parks that are served by Driftwood. Currently, Petitioner bills tenants residing within Tannehill and Heritage Heights individually. Driftwood is proposing to send one aggregated bill to the mobile home parks' landlords, calculated by taking the flat monthly residential tariffed rate and multiplying it by the number of tenants. Driftwood provided several reasons for its proposal as detailed by Mr. Newton, the Verified Petition, and Mr. Pettijohn. Tannehill, the sole intervenor in this matter, opposes Petitioner's proposal for the reasons offered by Mr. Taylor. The OUCC, however, recommended that the Commission grant Petitioner's requested relief in this Cause.

The Commission first notes that the wastewater infrastructure located within the Tannehill mobile home park is owned by Tannehill and not Driftwood. In response to the November 9, 2009 Docket Entry, Mr. Newton stated that he believed that Tannehill owns the infrastructure located within its boundaries. In response to the November 9, 2009 Docket Entry, Mr. Taylor, Tannehill's Vice President, stated, "Tannehill owns the portion of the collection system running from the mobile home site to the street and from the street to the Driftwood line. The tenants own the portion of the system within their mobile homes, that is the fixtures and piping in the homes, and hooking onto the Tannehill line." Clearly, Tannehill owns the collection system located within its boundaries.

The Commission's decision with respect to Driftwood's billing practice hinges on the identification of the customer. 170 IAC 8.5-1-1(d) defines "customer" as a:

- (1) person;
- (2) firm;
- (3) corporation;
- (4) municipality; or
- (5) other government agency;

that has agreed orally *or otherwise*, to pay for sewage disposal service rendered by a sewage disposal company (emphasis added).

The evidence presented in this matter indicates that Tannehill, rather than the individual tenants, is the customer.

According to Mr. Taylor's supplemental testimony, Tannehill struck a deal with Driftwood in the early 1990s. Tannehill granted Driftwood an easement to install a sewer line across Tannehill's property, and Driftwood agreed to allow Tannehill to connect to its sewage disposal system at a future date. In 2004, Tannehill connected its internal collection system to Driftwood's wastewater system. At the time of connection, Driftwood began to accept sewage that is collected by Tannehill's internal collection system and then distributed by Tannehill to Driftwood. There is no dispute in this Cause that Tannehill connected to Driftwood in 2004 in order to receive a utility service, and there is no dispute that Driftwood is providing that service to Tannehill. Any entity identified by 170 IAC 8.5-1-1(d) that connects to a utility's system in order to receive utility service becomes that utility's customer. Thus, Tannehill has been Driftwood's customer since 2004.

In addition, on page 6 of his prefiled testimony Mr. Newton stated, "Much like apartment building owners, Driftwood's two mobile home park customers, Tannehill and Heritage Heights, also own the end-use properties, improvements, and sewer utility facilities that are used to serve their tenants." Heritage Heights' connection of its system to Driftwood's system in order to receive wastewater utility services provided by Driftwood is not disputed in this Cause. Therefore, based on the evidence presented, Heritage Heights is Driftwood's customer.

The manner in which Driftwood proposes to bill Tannehill and Heritage Heights is the issue that Tannehill disputes in this Cause. Specifically, Tannehill prefers that Driftwood continue to bill Tannehill's tenants individually rather than sending one aggregated bill to Tannehill. However, 170 IAC 8.5-1 provides no right or entitlement to a particular form of billing for a customer. Accordingly, as set for the below, the Commission finds that Driftwood

should be permitted to provide an aggregated bill to Tannehill and Heritage Heights calculated by multiplying Driftwood's flat residential tariffed rate by the number of residential units, or tenants, being served in Tannehill and Heritage Heights.

The billing arrangement proposed by Driftwood is not an unusual one. In *Petition of Water Service Company of Indiana*, Cause No. 42863, 2006 Ind. PUC Lexis 50, (Ind. Util. Reg. Comm'n Jan. 31, 2006), the Commission approved a Settlement Agreement that proposed to amend the billing structure between a water utility and a mobile home park which was the same as the billing structure proposed by Driftwood in this Cause. Prior to approval of the Settlement Agreement, the water utility issued one bill to the mobile home park for the park's usage and the mobile home park then billed its tenants. (*Id.* at *3). Per the Settlement Agreement in Cause No. 42863, the mobile home park transferred ownership of and responsibility for the infrastructure located within the boundaries of the mobile home park to the water utility, excluding the portions beyond the meters located at the tenants' mobile homes. The tenants then became the customers of the water utility and were billed individually. (*Id.* at *5). In that Cause, the Commission found the Settlement Agreement to be in the public interest. (*Id.* at *7).

The Commission notes that the Indiana Legislature contemplated the billing practice proposed by Driftwood in this Cause as a result of the passage of Ind. Code § 8-1-2-1.2. This statute permits landlords such as Tannehill and Heritage Heights who distribute to its tenants water and sewage services to sub-bill for that service without becoming a public utility. Tannehill's and Heritage Heights' ability to collect from its tenants money for the payment of sewer bills may be better than Driftwood's because it owns the property inside of Tannehill's and Heritage Heights' boundaries and collects rent from its tenants.

The Commission also finds that based on the evidence presented, a change in Driftwood's billing practice in the manner proposed by Driftwood in this Cause is in the public interest. The evidence of record indicates that since amending its billing practice with respect to mobile home parks, Petitioner's bad debt expense has increased significantly. Of the \$13,153.97 in bad debt expense experienced by Driftwood in 2007, \$11,818.42 of it is attributed to Heritage Heights and Tannehill. Bad debt expense can affect the rates of all customers and not just the rates of those who fail to pay their bills. It also has the potential to adversely impact Driftwood's ability to provide reasonably adequate service. As Mr. Newton noted, a reduction in Petitioner's bad debt expense could reduce the rates of all of Driftwood's ratepayers.

Therefore, based on the testimony and exhibits of record, the Commission finds that Petitioner's request should be granted with respect to Tannehill and Heritage Heights. Driftwood is authorized to issue a single monthly bill to Tannehill and Heritage Heights calculated by using Driftwood's flat residential tariffed rate multiplied by the number of tenants within the mobile home parks.

The OUCR recommended that the Commission grant Driftwood's proposed billing change. As a result, the OUCR also recommended that the Commission require Driftwood to revise its Rules and Regulations within sixty (60) days from the date of this Order to prohibit Driftwood's work on private property. The Commission notes, however, that Driftwood may have reasons for entering private property to perform utility-related work that is not associated with the disconnection of mobile home park tenants specifically. For example, Driftwood may

need to enter private property to determine the existence of illegal connections to its collection system. Therefore, the Commission finds that Driftwood should not be required to revise its Rules and Regulations concerning the performance of work on private property at this time.

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

1. Driftwood's request to modify its billing practices for Tannehill and Heritage Heights is hereby granted, as set forth above. However, Driftwood shall not implement the billing practice approved herein sooner than the second billing cycle from the date of this Order.

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

HARDY, ATTERHOLT, GOLC AND ZEIGNER CONCUR; LANDIS ABSENT:

APPROVED: FEB 19 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