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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
CROSSROADS COMMUNITY CHURCH)
FOR APPEAL AND COMMISSION REVIEW)
OF AN INFORMAL DISPOSITION) CAUSE NO. 43842
RENDERED BY THE COMMISSION'S)
CONSUMER AFFAIRS DIVISION ON) APPROVED:
DECEMBER 10, 2009, REGARDING A) SEP 08 2010
BILLING DISPUTE WITH INDIANA-)
AMERICAN WATER)

BY THE COMMISSION:
James D. Atterholt, Commissioner
David E. Veleta, 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 December 10, 2009, the CAD issued an Informal Disposition of Consumer Affairs Division (“CAD Decision” or “Decision”) regarding a consumer complaint of the Crossroads Community Church (“Complainant”) against Indiana-American Water Company, Inc. (“Indiana-American”). The CAD found that the two water meters installed at Complainant’s premise accurately recorded the amount of water passing through the meters and that Indiana-American correctly billed Complainant for its water usage from December 2005 through March 2007. On December 28, 2009, Complainant appealed the CAD Decision to the Commission.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an Evidentiary Hearing was held in this Cause at 10:00 a.m. on February 22, 2010, in Room 224, National City Center, 101 West Washington Street, Indianapolis, Indiana. Indiana-American and the Indiana Office of Utility Consumer Counselor (“Public”) participated by counsel in the Evidentiary Hearing. All parties were afforded the opportunity to present oral argument at the Evidentiary Hearing and the Complainant, Indiana-American and the Public presented oral argument.

Based upon the applicable law and the Record, the Commission now finds that:

1. Notice and Jurisdiction. Due, legal and timely notice of the public hearing conducted in this Cause was given as required by law. Indiana-American is a “public utility” as defined in Indiana Code § 8-1-2-1(a), and is subject to the jurisdiction of the Commission under Indiana Code § 8-1-2-1 *et seq.* Complainant is a potable water customer of Indiana-American located in southern Howard County. The Commission has authority to review any decision of its CAD upon request pursuant to Indiana Code § 8-1-2-34.5 and 170 IAC 1-1.1-5. The Commission has jurisdiction over the parties and subject matter of this proceeding.

2. **Background.** Complainant receives potable water service from Indiana-American through two water meters installed in parallel on Complainant's premise. These meters are owned and maintained by Indiana-American. From the meters, the delivered water then travels approximately 300 yards under Complainant's property to the church and other facilities. Indiana-American does not own or maintain the service line.

The dispute in this case centers on spikes in water usage which were recorded at Complainant's premises during the period of December 2005 through March 2007. Each time that a bill was issued to Complainant showing higher than typical consumption, Complainant's meters were physically read and verified. In addition, Indiana-American opened service orders and sent out crews to assist Complainant in finding the source of its high water bills. On each of those occasions, Indiana-American found that the meters were spinning, but could not locate a leak given the very long service line, the size of Complainant's property, and the limited nature of its investigation. Complainant submitted affidavits asserting that it conducted two inspections of its lines and only discovered one leak, which it claimed to have promptly repaired. Complainant claimed that usage returned to typical levels after Indiana-American replaced both meters in January 2007, and therefore the bills should be adjusted to what Complainant would reasonably use. Indiana-American requested full payment of \$16,741.98 for the usage from December 2005 through March 2007. From December 2005 through March 2007, Complainant made monthly payments. Complainant's monthly payments were equal to Complainant's typical bill prior to the usage spikes.

The CAD reviewed the evidence submitted by the parties and concluded that Indiana-American properly billed Complainant for its water consumption during the period in question. The CAD Decision noted that the meters tested within the Commission's rules, and have since been placed back in the field at a different location.

3. **Standard of Review.** As referenced in the January 15, 2010 Docket Entry in this matter, the complaint filed in this Cause is an appeal of an issue that was considered and decided by CAD pursuant to Indiana Code 8-1-2-34.5 and 170 IAC 1-1.1-5, and 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 CAD in reaching its decision. Therefore, consistent with the Commission's authority as set forth in Indiana 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.**

A. **Argument Presented by the Complainant.** Complainant argued that its historical average was approximately 30,000 to 40,000 gallons of water per month. Indiana-American changed the meters that serve the Complainant, and immediately, the Complainant saw a spike in its billing records in excess of a million gallons per month for approximately a year. When Indiana-American changed the meters a second time, immediately the usage went back to typical levels and has since averaged approximately 30,000 to 40,000 gallons of water per month. Complainant's claim is that the consumption spikes resulted from faulty meters.

Complainant argued that a graph provided by Indiana-American that roughly plots Complainant's monthly meter readings and the dates of the installation and removal of the disputed meters demonstrates that the spikes in consumption correspond directly with the meter changes by Indiana-American. Complainant also stated that it did not consume the water measured by the meters and that there were no abnormal activities taking place on Complainant's property that would account for the increased water consumption. Complainant therefore concluded that the only possible explanation is that the meters were inaccurate.

B. **Argument Presented by Indiana-American.** Indiana-American argued that the meters in question were all tested and found to be accurate within the Commission's rules. Indiana-American further stated that the disputed meters have since been installed in other locations without any issue. Indiana-American described the numerous visits to the property and discussions with Complainant regarding the abnormal usage, and stated that while it attempted to help Complainant locate the cause of the unusual consumption, it is not the utility's responsibility to determine where the water ultimately went. Indiana-American opined that Complainant's expansive property (which includes a sizeable pond) and very long service line, coupled with construction in recent years, makes it difficult to identify potential leaks. Indiana-American maintained that it properly billed Complainant for water which actually passed through Complainant's meters, and that accordingly the Commission should affirm the CAD Decision.

5. **Commission Findings.** In considering the issues presented in this matter, we begin our analysis with a review of the timing of the extreme usage spikes and corresponding replacement of the meters by Indiana-American, a connection that is significant and cannot be ignored. Set forth below in *Figure 1* is a graph included by the CAD in its Decision that roughly plots the Complainant's monthly meter readings (in 100 cubic feet) and the dates of the installation and removal of the disputed meters.

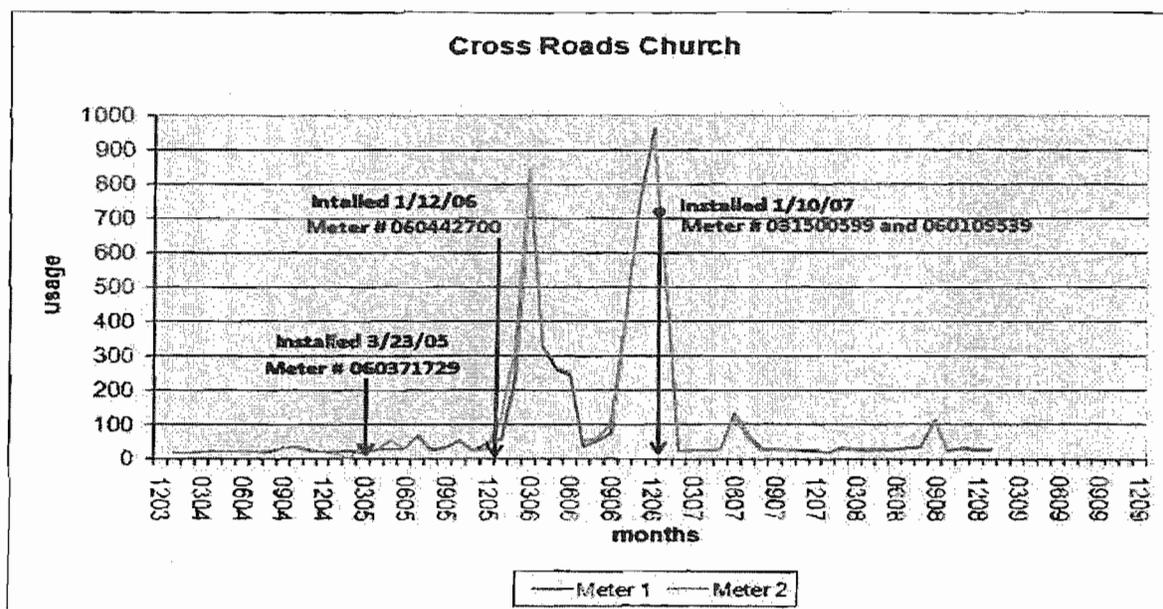


Fig. 1

Figure 1 depicts that the Complainant had a historical usage of around 30 to 40 thousand gallons per month, and the spike in usage readings started immediately upon the installation of the second meter (meter # 060442700).

The CAD apparently believed that the graph indicates the usage began to return to typical levels before the meters were removed and replaced in January of 2007, yet that is not the case. While the graph line starts to decline before the meters were replaced, that is a result of the monthly spread in data and not the actual circumstances. The Complainant's January 2007 bill (billing period between December 21 to January 23) sets forth the meter readings before and after the disputed meters were replaced. The actual bill shows that the disputed meters registered 737,250 gallons of usage for the first half of the month, or around 38,802 gallons of water per day. The disputed meters were then removed and replaced. After the meters were replaced, the new meters measured a total of only 15,750 gallons for the second half of the month, or around 1,125 gallons per day, which is consistent with the Complainant's historical usage. Stated differently, ninety-eight percent (98%) of the Complainant's bill was for only the first half of the month while the disputed meters were still in place. The bill highlights and demonstrates that the usage returned to typical levels at the exact time that the meters were changed. Indeed, in the next month, which was the first full month with the new meters, the usage reading was around the Complainant's historical 33,000 gallons per month usage and has generally remained consistently at this usage level ever since.

Equally significant is the extreme amount of water usage that the disputed meters were registering. The Complainant's bills increased from around 30,000 gallons per month to over 1,400,000 in one month, or well over fifty times more. Three of the months during the disputed year registered over 1 million gallons of usage; nine of the months were over 375,000 gallons; and only one month dropped below 90,000 gallons.

Particularly when considered in that light, the evidence of Record adequately demonstrates that the Complainant did not use that amount of water. Indiana-American visited the Complainant's property and found the meters spinning, but could not find a leak or source of extreme usage. Indiana-American suggested that there has been construction on the property that would have made a complete inspection by the utility difficult. Yet the Record includes affidavits from the Complainant that confirm that no construction occurred between March 2004 and March 2008. Further, the Record also included affidavits from the Complainant establishing that at least two independent inspections of the Complainant's water system were conducted and only a small leak was found. Indeed, if a leak were responsible for the usage spikes, the leak would have necessarily needed repair in order for the usage to return to typical levels. No such repairs were made and usage decreased. Moreover, millions of gallons of water never appeared on the property nor was there water damage or a sinkhole that would have resulted from such an extreme amount of water. The Complainant also provided evidence through affidavit that there were no unusual functions on the property that would account for millions of gallons of water.

While we recognize that water utilities and their customers at times experience water theft, we also believe it is unreasonable to speculate that the water was stolen in this case. There is simply no evidence to support a conclusion that the water was stolen.

Indiana-American argues that because it tested the disputed meters and the results were within accepted standards, it has complied with its obligations under the Commission's rules. However, as the Complainant points out, meters may read inaccurately despite testing within accepted ranges. In this case, the disputed meters were not tested until after they were removed. The American Water Works Association has recognized that metering malfunctions may not be detected under such circumstances, particularly for larger meters such as those here:

From a technical standpoint, the piping in a meter installation can have a definite influence on a meter's accuracy, and this irregularity can be detected by the on-site tests.

Water Meters – Selection, Installation, Testing, and Maintenance, AWWA M6 (4th Edition) at 73. Inaccurate readings can be caused by the manner in which the meters are installed, which would not be caught if the meters are not tested until after they are removed.

Indiana-American argues that it does not have control over the customer's private water system, which Indiana-American maintains prevents it from protecting against cases such as this. Yet Indiana-American does have sole and complete control over the meters. Indiana-American's rules confirm that meters "shall be furnished, installed, maintained, tested, repaired, removed and replaced only by and at the expense of the Company and shall remain its property." *Indiana-American Rules and Regulations Applicable to Water Service* § 9.2. In this case, the Complainant immediately complained to Indiana-American when the bill spiked. Indiana-American visited the property and found that the meters were spinning and, consistent with the Complainant's own findings, could not find a cause for the high purported usage. However, Indiana-American did not test the meters at that time. Indiana-American instead waited for approximately one year, while the meters continued to register upwards of a million gallons per month, before removing and only then testing the meters in-house.

The Commission's rules provide a mechanism for billing adjustments due to meter errors. 170 IAC 6-1-14. Notably, the rules contemplate billing adjustments not only based on meter tests, but also for "all other billing errors." 170 IAC 6-1-14(C). Additionally, the Commission's authority includes the implicit power necessary to effectuate the statutory regulatory scheme. *State v. Lake Superior Court, Room Three, 500 N.E.2d 737* (Indiana 1986). In considering the specific facts presented in this matter, the Commission recognizes that the application of the Commission's rules require flexibility for circumstances such as these, where the evidence demonstrates that the readings could not have been accurate.

Based on our review of the facts presented in this Cause, we find the Complainant has demonstrated that the extreme amount of water usage billed by Indiana-American could not accurately reflect the amount of water that passed into the Complainant's facilities or onto the Complainant's property. As discussed herein, the bill spikes appear to be tied to the replacement of meters by Indiana-American, and the facts of this case are highly unusual in that the amount of water alleged to have been used by the Complainant is incomprehensible in terms of quantity. While Indiana-American may have complied with the Commission's rules in a manner that supports the determination reached by our Consumer Affairs Division, we cannot conclude based

on the specific facts presented that such an enormous amount of water could have been used by the Complainant.

Accordingly, the Commission finds that Indiana-American may not charge the Complainant for the disputed usage spikes. During the period of December 2005 through March 2007, the Complainant made monthly payments equal to the Complainant's average bill prior to the usage spikes. We find that the amounts already paid by the Complainant during this period, are sufficient to resolve the issues presented in this matter. Indiana-American may not charge any penalties or late fees for the period of December 2005 through March 2007.

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

1. Indiana-American shall not charge the Crossroads Community Church for the disputed usage spikes.
2. This Order shall be effective on and after the date of its approval.

HARDY, ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: SEP 08 2010

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



Sandra K. Gearlds
Acting Secretary to the Commission