ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION FOR COMMISSION REVIEW AND ADJUSTMENT, IF NECESSARY, OF RATE AND CHARGE DIFFERENCE BETWEEN PROPERTY WITHIN AND PROPERTY OUTSIDE THE CORPORATE BOUNDARIES OF THE TOWN OF CUMBERLAND	))))))	**CAUSE NO. 46135** **APPROVED: JAN 22 2025**

ORDER OF THE COMMISSION

Presiding Officers:
David E. Veleta, Commissioner
Jennifer L. Schuster, Senior Administrative Law Judge

On October 2, 2024, Larry Lee and 34 other wastewater customers[1] (collectively, "Complainants") of the Town of Cumberland, Indiana ("Respondent" or "Cumberland") filed a Petition with the Indiana Utility Regulatory Commission ("Commission"). In the Petition, Complainants, whose property is located outside the corporate boundaries of Cumberland, seek Commission review of Cumberland's wastewater rates and charges pursuant to Ind. Code § 8-1.5-3-8.3(e),[2] which states, in pertinent part:

> (e) If a municipal legislative body, other than a municipal legislative body described in subsection (c), adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than fifteen percent (15%), either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality:
>
> (1) The municipality.
>
> (2) The lesser of:
>
> (A) ten percent (10%) of all; or
>
> (B) twenty-five (25);

[1] The full list of Complainants appears on pages ten through 13 of the Petition.
[2] Ind. Code § 8-1.5-3-8.3(e), not subsection (d) as stated in the Petition, actually applies to this case, as Cumberland has withdrawn from Commission jurisdiction.

> users of the works whose property is located outside the corporate boundaries of the municipality.

Complainants cite a September 18, 2024 Cumberland ordinance and allege that "[t]he percentage difference between the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and to property located within the corporate boundaries is more than 15% & excessive & unfair and must be reduced." Petition ¶ 4.

1. <u>Respondent's Motion to Dismiss</u>. On October 25, 2024, Cumberland filed a Motion to Dismiss for lack of subject matter jurisdiction ("Motion to Dismiss"), along with supporting testimony from Cumberland's financial advisor, Adam D. Stone ("Stone Testimony"). In the Motion to Dismiss, Cumberland argues:

> This Commission's jurisdiction is limited to reviewing "the rates and charges imposed by the ordinance on users of the works whose property is located outside the corporate boundaries of the municipality." Ind. Code § 8-1.5-3-8.3(f)(2). As the rates and charges set forth in Cumberland's ordinance are not different based upon whether the customer is located inside or outside the corporate boundaries, the Commission lacks jurisdiction over the petition and should dismiss.

Motion to Dismiss at 2, ¶ 6. Complainants filed no response to the Motion to Dismiss.

All of the Complainants are former customers of GEM Utilities, Inc. ("GEM"); we approved Cumberland's acquisition of GEM in our order in Cause No. 43892 on June 30, 2010 (the "43892 Order"), along with Cumberland's continued "use of the existing rates and charges of GEM Water, Inc." 43892 Order at 9. While Cumberland indicated in its evidence in Cause No. 43892 that it intended to continue charging former GEM customers the same wastewater rates and charges as GEM had, the Commission did not have the jurisdiction later established by Ind. Code ch. 8-1.5-3 to review such rates and charges. Accordingly, the Commission has not approved Cumberland's wastewater rates and charges.

All of the former GEM customers, are located outside of Cumberland's corporate boundaries, *see* Stone Testimony at 7, but there are non-GEM customers both inside and outside Cumberland's corporate boundaries, and the non-GEM rates are the same regardless of a customer's location. *Id.* Thus, Cumberland argues that it does not impose differential rates based on whether or not a customer is located within its corporate boundaries and the Commission lacks jurisdiction to consider the Petition. However, the Commission's jurisdiction under Ind. Code ch. 8-1.5-3 is not so limited. Instead, the statute applies to utilities that provide service to property located outside the corporate boundaries of the municipality, not just utilities that impose a rate differential based upon the location of their customers. Ind. Code § 8-1.5-3-8.3(a). Thus, regardless of the reason for differing rates, Ind. Code 8-1.5-3-8.3(e) authorizes the Commission to review the utility's rates when any rate imposed on customers to serve property located outside municipal boundaries exceeds by 15% or more the rate imposed on customers whose property is located inside municipal boundaries.

Cumberland Ordinance No. 2024-14 (the "Ordinance"), attached to Mr. Stone's testimony as Attachment AS-2, contains a schedule of current rates for both GEM and non-GEM customers and what the rates will be in each phase of the planned increase. Mr. Stone states that "this is an across the board increase, meaning it will be equally applied on both the non-GEM and GEM customers. The Town is only raising the GEM customers [sic] rates at the same percentage it is raising the non-GEM customers." Stone Testimony at 9.

Mr. Stone's assertion is supported by the schedule of rates attached to the Ordinance. The rate will increase for all of Cumberland's customers in three phases on January 1, 2025, January 1, 2026, and January 1, 2027.

	Current Rate (2024)	**1/1/2025**	**$ increase over 2024**	**1/1/2026**	**$ increase over 2025**	**1/1/2027**	**$ increase over 2026**
Cumberland Metered Rate (per 100 cubic feet)	$4.63	$5.56	$0.93	$6.67	$1.11	$8.00	$1.33
Cumberland Non-Metered Rate (single-family)	$63.33	$76.00	$12.67	$91.20	$15.20	$109.43	$18.23
Cumberland Non-Metered Rate (new, unoccupied, etc.)	$31.67	$38.00	$6.33	$45.60	$7.60	$54.73	$9.13
GEM Non-Metered Rate (single-family or per EDU)	$78.00	$93.60	$15.60	$112.32	$18.72	$134.78	$22.46
GEM Non-Metered Rate (new, unoccupied, etc.)	$31.67	$38.00	$6.33	$45.60	$7.60	$54.73	$9.13

It is undisputed that, under the Ordinance, Cumberland customers, whether they are GEM or non-GEM, will see their water rates increase by 20 percent on January 1 of 2025, 2026, and 2027. However, there is at least a 15 percent differential (approximately 23.16 percent) between the dollar amounts paid by GEM and non-GEM customers at each phase of the rate increase:

	Current Rate	**% GEM rate is greater**	**1/1/2025**	**% GEM rate is greater**	**1/1/2026**	**% GEM rate is greater**	**1/1/2027**	**% GEM rate is greater**
Cumberland Non-Metered Rate (single-family)	$63.33	N/A	$76.00	N/A	$91.20	N/A	$109.43	N/A
GEM Non-Metered Rate (single-family or per EDU)	$78.00	23.16%	$93.60	23.16%	$112.32	23.16%	$134.78	23.17%

Therefore, we find that we do have subject matter jurisdiction over Complainants' Petition under Ind. Code § 8-1.5-3-8.3(e)[3] and deny Respondent's Motion to Dismiss.

2. Analysis of Rate Differential Under Ind. Code § 8-1.5-3-8.3. Mr. Stone testified that the percentage differential has remained for Cumberland customers in the former GEM service territory rate for several years and stated that he does not believe that the planned rate increase is excessive and unfair because it is an across-the-board increase. He testified that he does not consider the GEM rate to be an out-of-town rate structure because the GEM rate structure does not exist because of the location of the corporate boundaries. He noted that the non-GEM service area also includes approximately 50 customers who are located outside the corporate boundaries, all of whom pay the same rates as that of the non-GEM customers who are located inside the corporate boundaries.

Mr. Stone indicated that Cumberland closed on a State Revolving Fund ("SRF") wastewater bond on October 3, 2024 to build a new wastewater treatment plant, which will be located in and predominately serve the GEM service territory, and to complete several smaller infrastructure replacement projects. He testified that Cumberland raised rates only to meet its 125% debt coverage obligations under the bond and opined that lowering the rates any further would prevent Cumberland from meeting its coverage requirements. He stated that Cumberland would not have closed on the bonds if they were aware of the Petition since the result may be reduced rates and the inability to meet minimum debt coverage obligations.

Under Ind. Code § 8-1.5-3-8.3(h)(1) and (2), the Commission "may consider the benefit and expense to all users of the works of extending the works outside the corporate boundaries of the municipality," but may not consider "any connection fees or capital surcharges imposed on" outside-city customers. Cumberland has provided no evidence that the circumstances present when its acquisition of the GEM system was approved in Cause No. 43892, 14 years ago, still exist today. If a cost of service study ("COSS") were to demonstrate that certain geographic areas have higher costs of service, then it is possible that we might find a hypothetical rate differential to be reasonable. However, no COSS was provided in this Cause. Thus, we find that Cumberland has not provided sufficient justification for its rate differential between GEM and non-GEM customers of approximately 23.16%.

3. Rate Determination. According to Ind. Code § 8-1.5-3-8.3(i), if the price difference is "not nondiscriminatory, reasonable, and just," the Commission may "(1) establish nondiscriminatory, reasonable, and just rates and charges for users of the works for service to property located outside the corporate boundaries of the municipality; and (2) order the municipal legislative body to adopt an ordinance imposing the nondiscriminatory, reasonable, and just rates and charges."

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[3] We are somewhat perplexed by Respondent's arguments in the Motion to Dismiss given that the Notice of Public Hearing on Proposed Sewer Rates and Charges, attached to the Complaint, states, "Following the adoption of the Rate Ordinance, the users of the Sewage Works located outside of the corporate boundaries of the Town of Cumberland, Indiana, may be entitled to petition the Indiana Utility Regulatory Commission under § 8-1.5-3-8.3 to review and adjust rates and charges imposed on such users . . . ." Complaint at 8 (attachment).

Mr. Stone testified that, if the Commission finds that Cumberland has not supported the 23% rate differential, he recommends a 15% rate differential because Ind. Code § 8-1.5-3-8.3(e) would allow Cumberland immediately to proceed to adopt a GEM rate structure that was 15% higher than the non-GEM area and there would be no Commission jurisdiction to review it.

Mr. Stone's Financial Impact and Feasibility Analysis Regarding Proposed Treatment Plant Project, Attachment AS-1 to his testimony, contains the following statement: "The Town has expressed interest long-term to unify rates between Cumberland and GEM . . . the decision was made to consider that adjustment in a future rate evaluation period. (e.g., 2028)[.]" Stone Testimony, Attachment AS-1 at 6. This statement seems to indicate that Cumberland's elected officials recognize that uniform rates should be implemented.

After reviewing the evidence, we decline to adopt Cumberland's proposed 15% rate differential. Cumberland has the "the burden of proof to demonstrate that the proposed rates and charges are nondiscriminatory, reasonable, and just." Ind. Code 8-1.5-3-8.3(g)(2). For any price differential to be supported, Cumberland would have needed to supply a COSS demonstrating that the costs to serve GEM customers are higher than the costs to serve non-GEM customers. The evidence Cumberland has submitted (which does not include a COSS) is insufficient to support any price differential.

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

1. Respondent's Motion to Dismiss is denied.

2. Cumberland shall adopt an ordinance charging the same prices for wastewater service for all of its customers, regardless of their location or whether they were once GEM customers.

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

HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:

APPROVED: JAN 22 2025

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

Dana Kosco

Digitally signed by Dana Kosco
Date: 2025.01.22 10:14:25 -05'00'

Dana Kosco
Secretary of the Commission