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**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE APPEAL OF )  
THE CONSUMER AFFAIRS DIVISION'S ) CAUSE NO. 44541  
DECISION OF THE COMPLAINT OF )  
SCHAPER V. LAGRANGE COUNTY ) APPROVED:  
REGIONAL UTILITY DISTRICT )**

**MAY 27 2015**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**Carol A. Stephan, Commission Chair**

**Aaron A. Schmoll, Senior 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 ("CAD"). On September 25, 2014, the CAD issued an informal disposition (the "CAD Decision") concerning a customer request for review presented by Brian Schaper, the owner of All American RV Resorts III, LLC, against the LaGrange County Regional Utility District (the "District"). The CAD concluded: 1) Mr. Schaper could seek an informal review; 2) the District could not bill the property at both a metered rate and a flat rate; 3) the District should charge the property solely at the metered rate; and 4) the District should refund the amount of the flat-rate charges for the five mobile homes from the date Mr. Schaper filed his request for review. On October 2, 2014, the District gave written notice of its appeal of the CAD Decision to the Commission, and this Cause was docketed.

The Commission conducted a hearing to allow the parties to present arguments on December 17, 2014 at 10:30 a.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, IN. Mr. Schaper, the District, and the Indiana Office of Utility Consumer Counselor appeared. The Presiding Administrative Law Judge identified the District's appeal, which include the CAD Decision, as IURC Ex. 1, and identified the CAD Record as IURC Ex. 2, which were admitted into the record without objection. The District and Mr. Schaper presented argument to the Commission. No members of the public appeared at the hearing.

Based on the applicable law and the record before the CAD and the Commission, the Commission now finds as follows:

**1. Jurisdiction and Notice.** Due, legal, and timely notice of the hearing conducted in this Cause was given as required by law. The District is a regional sewer district organized and operated as political subdivision of the State of Indiana and as a municipal corporation, pursuant to Ind. Code ch. 13-26-1. The Commission has specific statutory authority to review any decision of CAD upon request pursuant to Ind. Code §§ 8-1-2-34.5, 13-26-11-2.1(f), 170 IAC 1-1.1-5, and 170 IAC 16-1. Accordingly, for purposes of this complaint and appeal from the CAD Decision, the Commission has jurisdiction over the parties and the subject matter of the

complaint.

2. **CAD Record.** The CAD Record consists of the documents CAD relied on in making the CAD Decision, and were uploaded to the Commission's website pursuant to the Presiding Officers' November 25, 2014 Docket Entry.

The CAD Record indicates that Mr. Schaper's complaint was based on a March 31, 2014 letter that he received from the District, denying Mr. Schaper's request "to discontinue the single family flat rate billing of the mobile home located in the campground. . . ."

On April 2, 2014, Mr. Schaper submitted his written request for review of the District's March 31, 2014 letter. Mr. Schaper claimed that his campground, the Atwood Lake Campground ("Atwood"), is currently billed based upon the actual volume of sewage for the campsites, plus a flat rate for five mobile homes that are also located on the campground property. Mr. Schaper stated that all sewage from the campground, including from the mobile homes, flows through the meter, and thus, the flat rate charges for the mobile homes on top of the metered rate is excessive. Mr. Schaper stated that the monthly equivalent usage rate for a mobile home is \$68.30 based upon 5,000 gallons. Thus, in addition to paying for actual metered sewage, Mr. Schaper stated that he pays an additional \$341.50 per month for the five mobile homes.

On May 12, 2014, the District filed its response ("Response") to Mr. Schaper's request for review. The District asserted that Mr. Schaper waived his opportunity for Commission review because the District had been billing the campground and the mobile homes since 2010. Further, the District claimed that Mr. Schaper had not attempted to resolve his grievance prior to seeking Commission review. The District also claimed that Mr. Schaper's request did not fall within the types of review that could be requested under Ind. Code § 13-26-11-2.1. Finally, the District alleged that its billing practices are rationally based on the usage of the mobile homes as residential structures.

At the hearing, Mr. Schaper attempted to supplement the CAD Record by offering Complainant's Ex. 1, which was a letter sent to CAD prior to Mr. Schaper's initiation of the informal review process. The District objected to the exhibit. Since the exhibit was not considered by CAD in reaching its decision, the Presiding Officers sustained the objection and the exhibit was not admitted into evidence.

3. **CAD Decision.** On September 25, 2014, the CAD concluded that its review of Mr. Schaper's request for review was consistent with Ind. Code § 13-26-11-2.1 because when Mr. Schaper filed his request with the CAD on April 2, 2014, he did so within seven days of the District's response on March 31, 2014. The CAD further stated that it "could not find any language in the statute or rules that prevents a campground from disputing the same issue on more than one occasion."

The CAD also determined that "once Atwood established a method to allow LaGrange to bill the property using a meter that would measure the flow of the entire campground, including that of the mobile homes located on the campground, the billing should have been solely based on the measured usage from the point of installation going forward." CAD concluded:

CAD cannot find any valid reason for LaGrange to be able to bill both the flat rate for the mobile homes and the metered amount for campground that includes the sewerage from the mobile homes. Ind. Code § 13-26-11-2(b) states in part that a campground may be billed for sewage at a flat rate or by installing, at the campground's expense, a meter to measure the actual amount of sewage. It is the CAD's determination that the statute allows the utility or board to bill using one method or the other, but not both. (Emphasis in original).

The CAD recommended that the District bill Atwood "solely on the metered usage." CAD further recommended the District refund the amount resulting from the monthly flat-rate charges for the five mobile homes from the date CAD received Mr. Schaper's request for review.

**4. Commission Discussion and Findings.** The District raised several issues in its Response, which we restate as follows:

- A. Mr. Schaper failed to timely appeal the District's determination;
- B. Mr. Schaper did not meet the statutory prerequisites that would allow CAD or the Commission to have jurisdiction over the appeal;
- C. The issue presented by Mr. Schaper concerns issues that are outside the scope of Ind. Code § 13-26-11-2.1(b); and
- D. The District's decision was rational.

We address each issue below.

A. Timeliness of Mr. Schaper's Request Pursuant to Ind. Code § 13-26-11-2.1. The District argues that Mr. Schaper failed to petition the CAD for informal review of the Board's action within the time period specified by Indiana law. Ind. Code § 13-26-11-2.1(c) states that if a campground owner is "dissatisfied with the board's proposed disposition" of a disputed matter, the owner or operator "must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter." The District argued that the determination on billing at both metered and equivalency rates was made as early as 2010, and again in 2011.

In its determination, the CAD found Mr. Schaper's appeal to be timely as it was filed on April 2, 2014, which is within seven days of the District's March 31, 2014 letter. The CAD further stated, "CAD could not find any language in the statute or rules that prevents a campground from disputing the same issue on more than one occasion."

The CAD Record and CAD Decision reflect that Mr. Schaper's request for review was filed within seven days of his receipt of the District's letter. With respect to the District's argument that Mr. Schaper should have sought review in 2010, we note that the Commission's

rules relating to the CAD require a utility to “[a]dvice the customer that . . . the customer may submit an informal complaint to consumer affairs within seven (7) days of the date the proposed resolution is received.” See 170 IAC 16-1-4(c)(5).<sup>1</sup> At the hearing, the District’s counsel indicated that he did not believe the District advised Mr. Schaper of his appeal rights, and was not “obligated to do that under the statute.” Tr. at 45. Further, the CAD Record did not contain any evidence suggesting the District provided Mr. Schaper with that information, even in its March 31, 2014 letter.<sup>2</sup>

Billing disputes, such as the one presented in this Cause, can be ongoing and each bill potentially creates an additional dispute between a utility and customer. The time limitation on filing a request with CAD offers some protection to the utility, because unless a request for review is timely made, those bills are essentially final bills and not subject to refund. Moreover, the District failed to advise Mr. Schaper of his right to seek informal CAD review of the District’s decision.

We find that the CAD correctly determined that Mr. Schaper’s request was timely filed, as it was received within seven days of the District’s determination. The legislative intent for the informal review process through the CAD is to provide utility customers independent administrative review of disputes with a utility. This is the first request that Mr. Schaper has made to the CAD, and we find it appropriate that the CAD considered his request for review.

B. Good Faith Attempt to Resolve a Disputed Matter. The District also asserted that Mr. Schaper’s complaint is not eligible for review by the CAD or the Commission because he has failed to “make a good faith attempt” to resolve the dispute as required by Ind. Code § 13-26-11-2.1(c). As noted above, the District addressed similar billing disputes with Mr. Schaper in 2010 and 2011, and in both instances found the District’s billing appropriate. Mr. Schaper’s comments to the Commission at the hearing indicate that since 2010, he attended numerous LaGrange District Board meetings, sent a number of letters, and made phone calls in repeated attempts to resolve this dispute.

The statutory language found in Section 2.1(c) exists to encourage campground or youth camp owners and operators to attempt to resolve any dispute with the utility prior to seeking administrative review with the CAD, by using a grievance procedure adopted by the utility or other negotiations with the utility’s board. The CAD Record suggests that Mr. Schaper did make several attempts to have his billing dispute addressed by the District prior to seeking informal review from the CAD. The District did not present any other alternative procedure under which Mr. Schaper could have proceeded. Accordingly, we find that Mr. Schaper satisfied the Section 2.1(c) and the CAD properly considered Mr. Schaper’s complaint.

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<sup>1</sup> Ind. Code § 13-26-11-2.1(i) references the Commission’s ability to adopt rules to implement Section 2.1.

<sup>2</sup> We also note that 170 IAC 16-1-5 allows the CAD to waive the time limitation for good cause. At the hearing, Mr. Schaper indicated that he had previously contacted the Commission, but was informed that the Commission did not have jurisdiction over regional sewer districts. Tr. at 28.

C. Subject Matter of Dispute Under Ind. Code § 13-26-11-2.1. The District argued that Ind. Code § 13-26-11-2.1 does not apply to the issues raised by Mr. Schaper. Ind. Code § 13-26-11-2.1(b) describes the scope of disputes that are appropriate for review by the CAD. Ind. Code § 13-26-11-2.1(b) states as follows:

This section applies to an owner or operator of a campground described in section 2(b) or 2(c) of this chapter who disputes:

- (1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 2(b)(1) of this chapter;
- (2) the number of resident equivalent units determined for the campground under section 2(c) of this chapter; or
- (3) that any additional charges imposed on the campground under 2(d) of this chapter are reasonable or nondiscriminatory.

Further, Ind. Code § 13-26-11-2(d) states:

The board may impose additional charges on a campground under subsections (b) and (c) if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground including, but not limited to:

- (1) the installation of: (A) oversized pipe; or (B) any other unique equipment; necessary to provide sewage service for the campground; and
- (2) concentrations of biochemical oxygen demand (BOD) that exceed federal pollutant standards.

The CAD Record shows that the District charges the campground a metered rate for “campground use” and a flat rate for the mobile homes. While we address the billing of multiple uses below, the record is undisputed that the campground itself is billed for its metered sewer usage, in addition to the flat rates for the residential structures on the campground property. Accordingly, we find that the CAD properly reviewed Mr. Schaper’s request on the basis that the District is imposing “additional charges” to the campground.

D. Reasonableness of Additional Charges. The District argued that even if the CAD has jurisdiction over Mr. Schaper’s request, the Commission must defer to the District’s ratemaking decision as lawful because the District’s board acted rationally. The District notes that the standard for judicial review of the District’s action is whether it was arbitrary, capricious, or contrary to law. *Bd. of Dir. of Bass Lake Conservancy Dist. v. Brewer*, 839 N.E.2d 699, 701 (Ind. 2005). . . . “Under this narrow standard of review, we ‘will not intervene in a local legislative process[, if it is] supported by some rational basis.’” *Id.* (quoting *Borsuk v. Town of St.*

*John*, 820 N.E.2d 119, 122 (Ind. 2005)). “We will find a municipal entity’s action arbitrary or capricious only if it is ‘patently unreasonable.’” *Id.* (quoting *South Gibson Sch. Bd. v. Sollman*, 768 N.E.2d 437, 441 (Ind. 2002)). “In short, ‘[j]udicial review of whether a governmental agency has abused its rulemaking authority is highly deferential.’” *Id.* (quoting *Ind. High Sch. Athletic Ass’n, Inc. v. Carlsberg*, 694 N.E.2d 222, 234 (Ind. 1997)).<sup>3</sup> District’s Proposed Order at 5.

In the District’s May 12, 2014 “Response and Memorandum of Law in Opposition to Petition” (“Memorandum”), the District stated that Atwood is being charged both a flat rate and a metered rate for wastewater treatment because “the District twice had to reclassify the uses to which Schaper put his property for billing purposes.” *See* IURC Ex. 2 (Memorandum at 10). The District stated that each action taken to reclassify Mr. Schaper’s property and bill him both a metered and flat rate was rational:

In the first instance, . . . [s]ince the Board understood that Schaper would use the mobile or manufactured homes in the same way as the campsites on his property, it was rational for the District to charge Schaper for sewer service to the structures as it did for sewer service to the campsites. In the second instance, . . . [s]ince Schaper was using the mobile or manufactured homes as single-family dwellings, it was entirely rational to charge him for service to those structures in the same way as the owners of other single-family dwellings were charged.

*Id.* The District further argued that its board’s action was rational because “if a property is used in more than one way it is likely to produce more wastewater to collect and treat” and “the additional costs that would result [are taken] into account in the provisions of its rate ordinances.” *Id.* (Memorandum at 11).

Ind. Code § 13-26-11-2(b) states that a “campground . . . may be billed for sewage service at a flat rate or by installing, at the campground’s . . . expense, a meter to measure the actual amount of sewage discharged by the campground . . . into the sewers.” Here, there is no question that Atwood is a campground, as Mr. Schaper stated at the hearing that there are 225 campsites at the property. Tr. at 30.<sup>4</sup> Mr. Schaper installed a meter at the campground to collect all of the waste generated at the campground property. Counsel for the District confirmed that all the sewage from the campground goes through the meter. Tr. at 39. Based on the statutory language, the District is required to bill the campground based upon the volume measured by the meter.

However, as discussed above, the District’s billing practice is to bill the campground at a metered rate for the campground “use,” and at a flat rate for the residential use of the five mobile

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<sup>3</sup> We note that the District’s cited cases appear to speak to judicial review pursuant to Ind. Code § 13-26-11-15, rather than administrative review by the CAD under Ind. Code § 13-26-11-2.1.

<sup>4</sup> While the term “campground” was not defined in the statute, none of the uses Mr. Schaper described as being located at the campground, including those for campsite, mobile homes, camp store, etc., appear to be inconsistent with the nature of a campground property. *See* Tr. at 47-48. Mr. Schaper stated that the mobile homes were originally placed by the prior owner for housing campground staff. *Id.*

homes located on the campground property. This is contrary to the plain language of the statute. The statute states that a “campground . . . may be billed” through a meter. The statute does not state that only the campground “use” can be billed through a meter. By interpreting the statute to apply to different uses occurring at a campground property and separately billing for those different uses, the District is circumventing the statutory authorization for campgrounds to be billed based solely on the volume of waste generated at the property. Since all of the campground waste, including that generated by the mobile homes located on the campground property, flows through the meter, the actual volume of all of the waste from the property is billed by the District at the metered rate. Equivalent usage is an estimating technique appropriate when waste is not metered. By charging the equivalent usage for the mobile homes, when the actual volumes for the mobile homes have already been included in the waste measured by the meter, the District is double billing Atwood for that waste. The Commission finds the District’s interpretation of the statute contrary to law, unreasonable, and irrational.

Accordingly, we find that the CAD properly determined that the District could not bill the campground based on a flat rate for some uses and a metered rate for campsite uses when the campground has a single meter through which all waste is disposed. We further affirm the CAD’s determination with respect to a refund of the flat rates billed from April 2, 2014, which is the date the CAD received Mr. Schaper’s request for review.

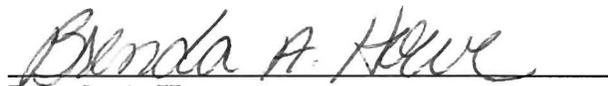
**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:**

1. The September 25, 2014 CAD Decision in this Cause is affirmed consistent with the findings in this Order.
2. The District shall credit to Atwood the monthly flat rate charges billed to the campground on and after April 2, 2014.
3. This Order shall be effective on and after the date of its approval.

**STEPHAN, HUSTON, AND WEBER CONCUR; MAYS-MEDLEY AND ZIEGNER**  
**ABSENT: MAY 27 2015**

**APPROVED:**

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

  
**Brenda A. Howe**  
**Secretary of the Commission**