

# ORIGINAL

## STATE OF INDIANA

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda			✓
Ober	✓		
Ziegner			✓

## INDIANA UTILITY REGULATORY COMMISSION

**APPEAL BY WYCKFORD COMMONS )  
APARTMENTS OF INDIANAPOLIS, LLC OF THE )  
CONSUMER AFFAIRS DIVISION'S DECISION IN ) CAUSE NO. 45478  
COMPLAINT 128461 CONCERNING THE )  
BILLING OF WATER SERVICE BY CITIZENS ) APPROVED: JUN 02 2021  
WATER )  
)  
)  
RESPONDENT: THE BOARD OF DIRECTORS )  
FOR UTILITIES OF THE DEPARTMENT OF )  
PUBLIC UTILITIES OF THE CITY OF )  
INDIANAPOLIS D/B/A CITIZENS WATER )**

### ORDER OF THE COMMISSION

#### **Presiding Officers:**

**David E. Ziegner, Commissioner**

**Carol Sparks Drake, Senior Administrative Law Judge**

This matter comes before the Indiana Utility Regulatory Commission ("Commission") as an appeal from a decision of the Commission's Consumer Affairs Division ("CAD"). On March 6, 2020, Nick Fuhrman, Vice President and Director of Financial Operations for The Ardizzone Group, contacted the CAD, on behalf of Wyckford Commons Apartments of Indianapolis, LLC ("Wyckford Commons" or "Complainant"), initiating complaint 128461 against The Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, d/b/a Citizens Water ("Citizens Water"). Mr. Fuhrman asserted there had been a billing error/meter issue at Wyckford Commons "for well over a year" and requested a refund.

The CAD subsequently reviewed and investigated Wyckford Commons' allegations, communicating often with Citizens Water personnel and Mr. Fuhrman. On June 30, 2020, the CAD Analyst who investigated the complaint issued her resolution finding that after review, no billing errors were found. She further advised that after requesting the meter at Wyckford Commons be tested, it was discovered the 1 ½ inch meter had been removed without authorization and replaced, so testing would not be helpful. As will be discussed more fully below, this was the second 1 ½ inch meter that went missing at the apartment complex. Ultimately, the CAD Analyst closed the complaint on June 30, 2020, as unsubstantiated. CAD Record p. 361.<sup>1</sup>

<sup>1</sup> The CAD Record consists of the information the CAD considered in reviewing complaint 128461, including written and verbal exchanges between the CAD Analyst, Mr. Fuhrman, and Citizens Water representatives, as well as copies

On July 6, 2020, Wyckford Commons appealed the CAD Analyst's decision to the CAD Director. CAD Record p. 368. More specifically, Mr. Fuhrman requested a CAD Director review of the CAD Analyst's resolution in accordance with 170 IAC 16-1-5(d). The CAD Record reflects supplemental, new information was provided by Mr. Fuhrman and exchanged with the CAD Director or her designee during this review. On December 16, 2020, the CAD Director's Designee upheld the CAD Analyst's determination, concluding the complaint was unsubstantiated ("Decision"). CAD Record p. 494. The propriety of the Decision is before the Commission for review in this appeal.

On January 5, 2021, pursuant to 170 IAC 16-1-6(a), Wyckford Commons initiated an appeal of the Decision. The CAD Record corresponding to this appeal was subsequently uploaded to the Commission's online case management system. At oral argument, in addition to admitting the CAD Record as Joint Exhibit 1, Wyckford Commons sought to augment Joint Exhibit 1 with what was identified as Complainant/Appellant's Exhibit 1. Complainant represented that this material was provided to the CAD Director's Designee on December 15, 2020, but omitted from the docketed CAD Record. Oral Argument Tr. pp. 5-6.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause and placed in the official files of the Commission, the Commission scheduled this matter for oral argument at a public hearing on March 5, 2021, commencing at 9:30 a.m. (EST) in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Due to the ongoing COVID-19 public health emergency, a docket entry was issued on February 26, 2021, advising the public hearing would be conducted via WebEx video and audio conference and providing related participation information. Wyckford Commons, Citizens Water, and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared, by counsel, at the oral argument and participated.

**1. Commission Jurisdiction.** Under Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5, an individual or entity may informally complain to the CAD about a matter within the jurisdiction of the Commission. Per Ind. Code § 8-1-2-34.5(b), the Commission has authority to review a decision of the CAD upon the request of an affected party. In this instance, Wyckford Commons is the affected party and initiated this appeal related to Citizens Water's provision of water service. Citizens Water provides water utility service in and around Indianapolis, Indiana, and under Ind. Code §§ 8-1-11.1-3 and 8-1-11.1-3.1, is subject to the Commission's jurisdiction in a similar manner as a municipally owned utility. Specifically, the Commission has jurisdiction over changes to Citizens Water's schedules of rates and charges and its terms and conditions of service. Ind.

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of Wyckford Commons' filing initiating this appeal. The CAD Record was uploaded to the Commission's online docket for this Cause on January 22, 2021, with a docket entry issued on January 26, 2021, notifying the parties of this action and incorporation of the CAD Record for purposes of this appeal. The CAD Record was admitted as Joint Exhibit 1 at the oral argument. Oral Argument Tr. pp. 2-4.

Code § 8-1-11.1-3(c)(9). The Commission, therefore, has jurisdiction over Citizen's Water and the subject matter of this Cause.

**2. Standard of Review.** This proceeding involves an appeal of how issues were considered and decided by the CAD pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5. The CAD Record consists of the information the parties supplied. Consistent with the Commission's authority under Ind. Code § 8-1-2-34.5, 170 IAC 1-1.1-5, and 170 IAC 16-1-6, the decision in this proceeding shall be based upon: (1) the Commission's review of the CAD Record; (2) consideration of the arguments the parties made based on the CAD Record; and (3) whether any clear errors were made in rendering the Decision.

**3. The CAD Record.**

A. Complaint. On March 6, 2020, Nick Fuhrman, on behalf of Wyckford Commons, contacted the CAD complaining about a "billing error/meter issue"<sup>2</sup> for water usage at Wyckford Commons' apartments located at 7701 West 10<sup>th</sup> Street in Indianapolis, Indiana, and this complaint was assigned to the CAD Analyst for review. As to the specifics of the complaint, Mr. Fuhrman stated:

This is for [name of specific CAD Analyst] as we have previously discussed this case and she is aware of the details.

Citizens Energy [sic] replaced our meter at our property 3-4 months ago and once the meter was replaced the usage was a normal usage which was half of what we were previously charged. I believe there has been a billing error/meter issue at this property for well over a year and I've requested a refund from Citizens Energy [sic] .... I initially requested a refund from Citizens Energy [sic] back on 2/12/2020 and I have not received a resolution.

CAD Record p. 1.

B. CAD Analyst's Investigation and Resolution. The CAD Record reflects that the CAD Analyst Mr. Fuhrman identified was assigned to this complaint, CAD Record p. 19, and she promptly forwarded the complaint to Citizens Water, initially following up on March 17, 2020. On March 17, 2020, Citizens Water provided the following response:

[O]ur Large Piping Supervisor and his crew [went] out to the property on March 3rd and 16th. On the third I asked them to check all the valves to make sure open. They

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<sup>2</sup> The CAD Record reflects extensive efforts by the CAD Analyst and Citizens Water to determine whether there were errors in Citizens Water's bills. CAD Record pp. 60, 94, 229, 307, 310, and 361. At oral argument, counsel for Wyckford Commons acknowledged Citizens Water correctly billed the usage reported by the original meter. Tr. p. 15.

reported that they pumped the vault, checked meter connection and the reads verified the billing is correct. They went back out on 3/16 and checked the two meters at 7801 W 10th St (10 West Apts.) and meter at Wyckford Commons. No anomalies were found and all reads verified that billing is correct.

CAD Record p. 32.

On March 19, 2020, the CAD Analyst asked Citizens Water to provide a timeline of events and reiterated that request on March 25, March 31, and April 3, 2020. CAD Record pp. 34, 36, 43, and 51. On April 3, 2020, Citizens Water responded with the following:

The 1 ½ in meter went missing here as well as at 10 West [Apartments], so that is similar.

Getting actual reads until September 2019

From 9-19 through when meter was removed on [sic] December 31, 2019 the 1 ½ inch meter read the same at 396185

We can surmise that the tech was reading the ERT. If the 1 ½ in meter was removed the ERT would continue to show no usage as no meter is there to drive the remote to change.

12/31/19 – Replaced 1 ½ meter and ERT

3/3/20 – Checked vault and pumped it. Checked meter no issues

3/16/20 – Sent techs out to investigate low usage. Read meter, no issues noted

This is a timeline of all activity to account concerning this meter. We did not find any valves off nor any problems. [sic] with this vault or new meter. The old 1 ½ inch meter could not be tested as it was missing but we billed no usage on it from Sept through December [2019].

CAD Record pp. 54-55.

On March 26, 2020, Mr. Fuhrman provided the CAD Analyst with a spreadsheet reflecting data upon billing, consumption, and occupied units at Wyckford Commons that also graphed consumption, total water and sewer expense, and occupancy. CAD Record pp. 39-41. On April 6, 2020, Citizens Water supplemented its earlier response, stating:

When the 1 ½ meter went missing we continued to read the ERT which showed no consumption from August through December [2019]. We did not estimate the reads so they [Wyckford Commons] were not billed for any usage on that meter and therefore no adjustment is necessary.

I apologize if Mr. Fuhrman was unhappy with my response time. I did have several delayed responses toward the end of February [2020] due to other obligations as well as the fact that I was consulting with several other departments to try to

determine if there was an issue. I did speak with Ms. Nitz and sent Mr. Fuhrman an account analysis. After lengthy review and several field visits we have not been able to find any problems with the billing of this account.

CAD Record p .60.

The CAD Analyst's investigation continued, with Citizens Water providing water usage data for the premises at issue and access to the invoices for Wyckford Commons' account. CAD Record pp. 93-95, 104-88. In conjunction with her investigation, the CAD Analyst on April 23, 2020, provided Citizens Water with the charts Mr. Fuhrman had shared, indicating the comparisons the customer provided showed "an excess of consumption used prior to the meter change" and asking whether it was "possible the meter was malfunctioning and providing a higher reading?". CAD Record p. 190-91. By this time, the CAD Analyst had also learned from Citizens Water that the 1 ½ inch meter in question at Wyckford Commons during 2019 had gone missing in September 2019 and not been replaced until December 31, 2019.

On May 11, 2020, Citizens Water's representative wrote the CAD Analyst, explaining:

The bills and the documents provided by the customer have been reviewed by our Billing Supervisor. Although she agrees that the usage was higher before the meter was changed [on December 31, 2019,] we could find no errors in our billing statements.

It is highly unlikely that the meter malfunctioned and over charged the customer. Water meters tend to slow down with age, not speed up. I sent a technical crew out on 3/3 to look for anything unusual such as a valve closed that would result in lower consumption. They did not indicate any issues with the meter or vault.

CAD Record p. 229. Thus, before the CAD Analyst received the complaint on March 6, 2020, and before the CAD Record reflects a refund having been requested from Citizens Water on February 12, 2020, (CAD Record p. 1) the meter at issue that Wyckford Commons asserts on appeal malfunctioned had gone missing and been replaced. When Citizens Water stated in the May 11, 2020, exchange that there appeared to be no "issues with the meter," this referred to the meter installed on December 31, 2019, that replaced the first missing meter that Mr. Fuhrman claimed on March 6, 2020, gave rise to a billing error/meter issue at Wyckford Commons.

That same date, May 11, 2020, Mr. Fuhrman wrote the CAD Analyst requesting an estimate of "[h]ow much longer do you anticipate the investigation will take?" He stated, "our legal counsel is asking for updates every week and is recommending we file suit against Citizens Energy [sic]." CAD Record p. 241. The following day, the CAD Analyst advised Mr. Fuhrman,

“We are still reviewing the information and working on the complaint. At this point I cannot say for sure exactly what the issue may have or may not have been. I appreciate your continued patience.” CAD Record p. 255. She followed up on May 26, 2020, after Mr. Fuhrman again requested an update, indicating she was “having another supervisor at Citizens review the documents and billings statements. I have requested an update and will let you know as soon as I have an update.” CAD Record p. 275. Discussion between the CAD Analyst and Citizens Water followed regarding the conversion factors used (CCF vs. TCF) on accounts like Wyckford Commons’ that have two registers assigned to the same meter, CAD Record pp. 291-96, as well as additional information exchanges between the CAD Analyst and the parties. CAD Record pp. 299-307.

On May 27, 2020, Citizens Water advised the CAD Analyst that this account had been reviewed, “including an analysis of consumption through 2016. All billing has been validated to be accurate. As I stated previously, the Billing Supervisor has also reviewed the account and determined it has been billed correctly, including the unit of measure. Please let me know if there is any other information you require.” CAD Record p. 310. Further inquiries continued in June 2020, including a request for the configuration of the compound meter used at the Wyckford Commons property. Citizens Water confirmed it is a multi-registered meter, with both a 6-inch and a 1.5-inch meter. CAD Record pp. 330, 340.

On June 11, 2020, the CAD Analyst provided Mr. Fuhrman with another update, indicating she was “working with my technical staff and they are researching the type of meter that is installed at the property as well as usage increase possibilities. They stated they should be able to get back with me by the middle of next week.” CAD Record p. 334.

On June 16, 2020, the CAD Analyst asked Citizens Water what it would take to test the compound meter at Wyckford Commons. CAD Record p. 340. This is the first request to test the meter evidenced in the CAD Record, and this was prompted by the CAD Analyst as opposed to a testing request from Wyckford Commons. On June 24, 2020, Citizens Water responded to the CAD Analyst, stating, “We would normally be able to test this meter on site but we were out at the address on 6/22 and found that the 1 ½ inch meter had again been removed without authorization. We had it replaced today.” CAD Record p. 351.

On June 30, 2020, the CAD Analyst issued her resolution and closed the complaint. CAD Record p. 361. She contacted Mr. Fuhrman and explained that she had “reviewed the billing and also had the billing reviewed by several people including technical staff and billing agents at Citizens. ... [N]o billing errors were found during the reviews.” CAD Record p. 361. In addition, her notes of this conversation with Mr. Fuhrman reflect the following:

I also advised that, after I had requested that the meter be tested, on 6/22/2020, the

1 ½ inch meter was discovered to have been removed without authorization again and it was replaced on 6/24/2020. I stated that, since there is now a new meter at the property, a meter test may not be helpful. We discussed options to help alleviate the unauthorized meter removals and the customer stated he would discuss those options with Citizens.

CAD Record p. 361.

C. CAD Director's Review. On July 6, 2020, Mr. Fuhrman notified the CAD that he wanted to file an appeal with the CAD Director regarding Wyckford Commons' complaint. CAD Record p. 368. On July 7, 2020, he provided new information he had not previously given the CAD Analyst entitled "Supplemental Appeal Information." In this two-page document, a refund was requested of overpayments or, in the alternative, remand of this case to the CAD Analyst to make various determinations. CAD Record p. 378. Some of the questions posed within this document had already been reviewed by the CAD Analyst, including whether and why Wyckford Commons' billed water usage was cut "nearly in half after the meter changeout" and the measurement of water consumption after the first 1 ½ inch water meter went missing. CAD Record p. 378.

In this supplemental submission, the various charts Mr. Fuhrman previously provided to the CAD Analyst were referenced, along with the assertion that water usage at Wyckford Commons had dropped while occupancy rates increased. CAD Record pp. 378-96. According to Mr. Fuhrman, "The exact same month the meter and/or register was replaced (October 2019),<sup>3</sup> our usage was reduced by almost 50%." CAD Record p. 378. Mr. Fuhrman asserted that water usage had been consistent since the meter and/or register was replaced "which indicates a problem with the previous meter." CAD Record p. 378. Wyckford Commons, via Mr. Fuhrman, also asserted, "Usage after the meter changeout is consistent with the property owner's experience at other multi-family properties." CAD Record p. 378. The supplemental information Mr. Fuhrman submitted included an acknowledgement that old meters typically run slow (*i.e.*, undercount usage), so the new (second) meter should have indicated higher consumption but, instead, documented lower consumption. CAD Record p.378. According to Wyckford Commons, "The ONLY factor that would have changed the usage month over month, was the fact that there was a new meter/register

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<sup>3</sup> Counsel for Wyckford Commons explained during oral argument that Wyckford Commons did not see the complete CAD Record until January 22, 2021, when it was posted on the Commission's website in this docket; therefore, Wyckford Commons apparently did not know until that date some of the information that Citizens Water had presented to the CAD Analyst during her investigation. Per the CAD Record, the original 1 ½ inch meter was replaced at the end of December 2019, after being removed without authorization in September 2019. CAD Record pp. 54-55. Wyckford Commons was billed for no usage on that meter from its disappearance through December 2019. CAD Record p. 76. Since the larger meter that remained at the apartment complex is not designed to record until the minimum flow threshold for that size meter is met, consumption that would have been recorded by the 1 ½ inch meter under normal conditions at the apartment complex was not billed nor were the reads for the missing 1 ½ inch meter estimated and billed after the first meter went missing until its replacement.

installed.” *Id.* As noted above in footnote 2, at the time of the supplemental submission in July 2020, Wyckford Commons represented that the first meter changeout was in October 2019, *Id.*, learning later what the CAD Analyst had known, that the second meter was not installed until December 31, 2019.

Wyckford Commons in this same supplemental submission stated, “None of the meters and/or registers were ever tested to prove or disprove any possible meter and/or register issue,” CAD Record p. 378, and rhetorically asked why the Commission waited to request a meter test “until almost 4 months AFTER the initial IURC complaint was filed?”. CAD Record p. 378. Per Wyckford Commons, “Because Citizens Water delayed its meter testing and in effect caused the absence of meter testing results, it should be required to bear the burden of proof on the issue of the meter testing results.” *Id.* Notably, Wyckford Commons did not show that it ever asked Citizens Water, the CAD Analyst, or the Commission to test any water meter at its property.

Wyckford Commons’ supplemental information in July 2020 also presented new facts not previously submitted to the CAD, shared with the CAD Analyst, or verified. Wyckford Commons alleged that extensive renovations were undertaken to all its 248 apartment units from January 2019 to December 2019, including significant work on plumbing facilities. CAD Record p. 379. Complainant represented that no major water leaks were discovered during the renovations, and washer/dryer connections were added, with new washers/dryers installed in 152 units. *Id.* In addition, Wyckford Commons purportedly added hot water submeters to every unit in September 2019 before the meter replacement it stated occurred in October 2019, with the consumption measured by the submeters not changing before and after that changeout. Wyckford Commons asserted this indicates a problem with the main (first 1 ½ inch) meter. CAD Record p. 379.<sup>4</sup>

On July 9, 2020, Wyckford Commons again provided additional information to the CAD Director. This included a survey and site map for the apartment complex. CAD Record pp. 419-26. The distribution list within that email chain shows copies of some of Mr. Fuhrman’s supplemental emails to the CAD Director were also shared with Wyckford Commons’ legal counsel appearing in this appeal. CAD Record pp. 419, 458. Wyckford Commons continued to provide new information through July and August of 2020, including billings from Citizens Water for water usage after the CAD Analyst’s resolution. CAD Record pp. 433, 453, 458-68. On August 31, 2020, Mr. Fuhrman wrote the CAD Director, asserting, “You can see that the usage dropped drastically in Dec. 2019.. [sic] I believe we were overbilled from Nov 2018 through Nov. 2019.” CAD Record p. 473.

On October 29, 2020, Mr. Fuhrman reached out to the CAD Director, contending, “It is

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<sup>4</sup> Since the original 1 ½ inch meter was removed without authorization in September 2019 and, as discussed earlier, not replaced until December 31, 2019, and Wyckford Commons was not billed for any usage on that meter after it went missing, CAD Record p. 76, the alleged absence of a change in consumption was not attributable to a meter changeout in October 2019.



very clear to me that the old meter that was replaced was reading a much higher consumption than the new meter and the ONLY thing that changed from Nov. '19 to Dec. '19 was the fact that Citizens replaced the meter.” CAD Record p. 480; *see* footnote 2 regarding the meter replacement date. According to Mr. Fuhrman, “The consumption dropped overnight when the meter was replaced which indicates that there was an issue with the old meter and/or billing. 905 CCF’s disappeared from Nov. 2019 to Dec. 2019 (676,987 gallons of water).” CAD Record p. 480.

An additional email from Mr. Fuhrman to the CAD Director Designee dated December 15, 2020, was attached to Wyckford Commons’ notice of appeal. CAD Record p. 534. This appears to be the last communication the CAD received before the Decision was issued. According to the email, graphs were attached showing consumption since Wyckford Commons purchased the property on September 21, 2018. *Id.* In his December 15, 2020, email, Mr. Fuhrman explains that Wyckford Commons is focused upon the “extremely high usage/billing that was prior to November 19<sup>th</sup> when the meter/register was replaced. I believe the bills and consumption readings were inaccurate prior to Nov-19. The 2<sup>nd</sup> time our meter/register was replaced was around June 2020 and the June-Aug billing was affected but has since been corrected.” *Id.*

The CAD Record posted to this docket on January 22, 2021, includes partial, black-and-white copies of the graphs that appear to have been referenced in Mr. Fuhrman’s December 15, 2020, email. CAD Record pp. 535-37. Wyckford Commons’ request to include complete, color copies of the attachments to Mr. Fuhrman’s email was addressed at the outset of the oral argument and in a docket entry issued on March 26, 2021. This resulted in Complainant/Appellant’s Exhibit 1 being included in the record.

D. CAD Director Designee’s Decision. The CAD Director Designee, after reviewing the complaint and the CAD Analyst’s investigation and resolution of complaint 128461, found the complaint was unsubstantiated. More specifically, the CAD Director’s Designee affirmed the CAD Analyst’s resolution, finding the materials Wyckford Commons and Citizens Water had provided did not show improper billing calculations or otherwise establish a lack of compliance by Citizens Water with any Indiana statute, administrative rule, Commission Order, or the utility’s tariff. CAD Record p. 498.

E. Appeal to the Commission. On January 5, 2021, Wyckford Commons initiated this appeal, pursuant to 170 IAC 16-6-1(a), requesting the Commission review the Decision. On January 22, 2021, the CAD Record corresponding to the appeal was uploaded to the Commission’s online case management system. This matter was established as a formally docketed proceeding and subsequently noticed for oral argument.

i. Wyckford Commons’ Appeal. In this appeal, Wyckford Commons contends Citizens Water violated 170 IAC 6-1-8(a). Per its notice of appeal, Wyckford Commons

asserts that Citizens failed to provide a meter that was in (1) good mechanical condition; (2) adequate in size and design for the type of service that was measured; and (c) accurate to within generally accepted standards. According to Wyckford Commons, “Water usage dropped dramatically after the water meter was replaced in September 2019.” CAD Record p. 5. Thus, Complainant asserts the meter serving its property through September 2019 was not accurate to within generally accepted standards. Wyckford Commons also claims it was harmed because the second meter was not timely tested. CAD Record p. 511. “[T]he meters installed in September 2019 and on June 24, 2020, provided more consistent usage readings, clearly controverting the meter readings from September 2018 through September 2019. Wyckford Commons was clearly overbilled for usage during the period that the original meter was in service.” CAD Record p. 511.

Neither the original meter at the apartment complex that went missing nor the second meter installed on December 31, 2019, that eventually also went missing were tested. Having both been inexplicably removed without authorization, neither meter is available for testing. Wyckford Commons contends that since there is no meter test, the best available evidence demonstrates the original water meter was not accurate to within generally accepted standards. In its request for relief, Wyckford Commons asks that Citizens Water be ordered to refund to Wyckford Commons \$114,527.56, calculated by multiplying the consumption average of 12,753.20 by Citizens Water’s average rate of \$8.9803 per CCF during the 12 months at issue. Alternatively, Wyckford Commons requests this matter be remanded to the CAD for purposes of calculating the refund due Wyckford Commons or, if the Commission determines more evidence is required to make its determination, to remand this matter to the CAD. CAD Record pp. 511-12.

**4. Commission Discussion and Findings.** In its notice of appeal, Wyckford Commons contends Citizens Water violated 170 IAC 6-1-8(a) by failing to provide a meter that was accurate to within generally accepted standards, and the Decision finding otherwise should be vacated. Wyckford Commons also asserts it was harmed because of delay before the second meter was tested, enabling that meter to also go missing before being tested.

For purposes of its notice, Wyckford Commons asserts that the meter serving Wyckford Commons’ property from October 2018 to September 2019 when, according to the notice of appeal, the first 1 ½ inch meter was replaced with a second meter, was not accurate to within generally accepted standards under 170 IAC 6-1-8(a).<sup>5</sup> Wyckford Commons is, however, mistaken

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<sup>5</sup> When the notice of appeal was filed, Wyckford Commons represented that the second meter was installed in September 2019, which coincided with Wyckford Commons’ charts and claims that water usage at the apartment complex dropped precipitously the first month the new, i.e., second meter was installed and fell in line with Complainant’s experience at its other apartment communities. Notice of Appeal p. 2. The CAD Record, once incorporated in this appeal, however, reflects the original meter went missing in September 2019 and was not replaced until December 31, 2019. CAC Record pp. 54-55. Based on the CAD Record, the billing reduction Wyckford Commons experienced from September through December 2019 was attributable to Citizens Water not billing Complainant for unregistered usage over the course of those months until the second meter was installed as opposed to a precipitous drop in usage when the second meter replaced the first meter.

about when the second meter was installed. Notice of Appeal p. 2; CAD Record pp. 54-55. The CAD Record demonstrates the first meter went missing in September 2019, but the second meter was not installed until December 31, 2019. It also reflects that Wyckford Commons initially contacted Citizens Energy on February 12, 2020, about a refund (CAD Record p. 1) and contacted the CAD on March 6, 2020, about a billing error/meter issue. No contact was initiated with Citizens Water or the CAD before the first meter was removed without authorization, and no meter test was requested by Wyckford Commons of either the first or the second meter.

170 IAC 6-1-8 states:

Sec. 8. (a) All meters and appurtenances used for measuring quantity of water delivered to a customer shall be:

(1) in good mechanical condition;

(2) adequate in size and design for the type of service that they measure;

and

(3) accurate to within generally accepted standards.

(b) For determination of minimum test flow and normal test flow limits, the specifications of the AWWA Standards shall be used for test flows for cold water meters.

Per 170 IAC 6-1-8, the first 1 ½ inch water meter at the apartment complex was required to be accurate to within generally accepted standards. Under 170 IAC 6-1-9, cold water meters are required to be tested according to the American Water Works Standards, with every customer afforded the right to request the utility to test its meter under 170 IAC 6-1-11(a) which states:

Section 11. (a) Each water utility shall make a test of the accuracy of registration of a meter upon written request by a customer. A second test of the customer's meter may be requested after twelve (12) months. The first and second tests of a customer's meter shall be at no cost to the customer.

Citizens Water's Water Service Tariff Rates, Terms and Conditions for Water Service Within Marion County, Indiana ("Tariff Rules") approved by the Commission in Cause No. 44644 include similar provisions related to water meter accuracy and testing as well as the circumstances under which a refund is appropriate. The Tariff Rules applied to Wyckford Commons at all times relevant to this appeal. Rule 7.8 within the Tariff Rules provides:

7.8. Meter Tests Requested by Customers. The Utility [Citizens Water] will test the accuracy of a Meter upon written request by a Customer. The Customer shall pay the Meter Test at Customer Request charge set forth in the Miscellaneous Service Charges tariff of the Utility's Rate Schedules for any Meter test after the

second test of such Meter if:

- (1) the Meter
  - (a) was tested within the prior thirty-six (36) months at the Customer's request; and
  - (b) any error of the Meter is found to be in compliance with Rule 7.6; and
- (2) the test is made
  - (a) at the Customer's request; or
  - (b) due to a billing dispute; and
- (3) Meter is found to be in compliance with Rule 7.6.

Under 170 IAC 6-1-12(a) and Tariff Rule 7.9, Wyckford Commons also had the option to request that the CAD, i.e., the Commission, have the meter tested at its apartment complex. 170 IAC 6-1-12 states:

Sec. 12. (a) Upon application of any customer to the commission, and at the discretion of the commission, a test shall be made of a customer's meter by the utility or its contractor under the supervision of an employee of the commission. The commission shall promptly notify the utility of any application. No fee shall be payable by the customer for the test, except as may be charged under section 11(b) of this rule.

Citizens Water's Tariff Rule 5.9 provides for a billing adjustment if a meter is discovered *during a test* to have an error greater than two percent.

5.9 Adjustments Due to Meter Error. If a Meter is found to have a percentage of error greater than two percent during a test conducted by the Utility [Citizens Water] or the Commission at the request of the Customer, in accordance with these rules, the following adjustments of bills shall be made:

5.9.1 Fast Meters. When a Meter is found to have a positive average error – i.e., is fast, in excess of two percent, the Utility will refund or credit to the Customer's account the amount in excess of that determined to be an average charge for one-half of the time elapsed since the previous test, or one year, whichever is shorter. This average charge shall be calculated on the basis of units registered on the Meter over corresponding periods, either prior to or subsequent to the period for which the Meter is determined to be fast. No part of a Monthly Service Charge as set forth on the Utility's Rate Schedules will be refunded.

## Tariff Rule 5.9

When initiating the CAD review on March 6, 2020, Mr. Fuhrman conveyed his belief that there had been a “billing error/meter issue” at Wyckford Commons’ property “for well over a year.” CAD Record p. 1. Neither Mr. Fuhrman nor Wyckford Commons explained over the course of the CAD’s investigation why Wyckford Commons did not act on this belief during that year and, instead, waited until February 12, 2020, to request a refund from Citizens Water. *Id.* Based on the notice of appeal, the majority owner of Wyckford Commons is Ardizzone Holding Company, LLC which has significant experience owning and managing large apartment complexes in Indianapolis, Indiana, and Cincinnati, Ohio, and is knowledgeable concerning anticipated water and sewer expenses at apartment complexes like Wyckford Commons. Yet, Complainant initiated no inquiry until well after the 1 ½ inch meter at Wyckford Commons went missing but now seeks a refund of over \$114,500 for the 12-months at issue. Effectively, Wyckford Commons wants the Commission to accept that Complainant, on average, acquiesced in overpaying more than \$9,500 per month for a year, waited another 4-5 months before seeking a refund, and should now be relieved of its plight. In the meantime, the first meter disappeared without any testing requested. The question presented is whether the Decision properly affirmed the CAD Analyst’s resolution because the complaint is unsubstantiated regarding Citizens Water’s alleged noncompliance with 170 IAC 6-1-8.

While Wyckford Commons contends there is no other explanation for the change in recorded water usage other than the water meter itself, the burden rests with Complainant to prove this premise and that the CAD Decision is erroneous. *See In re Complaint Against N. Indiana Pub. Service Co. by Raymond Spencer*, No. 42728, 2005 WL 592992, at \*3 (January 19, 2005); 170 IAC 1-1.1-18 (d). Wyckford Commons made this burden steep by its inaction for over a year. In one of the cases Wyckford Commons cited during oral argument, *In re Request of Rosewood Manor Estates for Comm’n Review*, Cause No. 42716 approved on April 20, 2005, in which the customer, Rosewood Manor Estates, sought no recourse with the Commission over the year in which bills were later disputed, the Commission noted, “Thus, the customer in this matter, Rosewood, based on the evidence of record, apparently did not dispute the bills it received from [the utility] for the twelve (12) month period. ... We are reluctant to reward a utility customer for not notifying the Commission of its plight before the sum of a billing dispute totals well above the amount at issue herein.” Cause No. 42716 at pp. 16-17. Wyckford Commons’ delay is not determinative of the result we reach, but based on the CAD Record, its inaction contributed to Wyckford Commons presenting the CAD with assertions that have morphed as facts, such as the removal and replacement dates of the first meter, became known.

Based on the CAD Record, the Commission finds that Wyckford Commons equated changes in its billing pattern to a non-functioning meter and, accordingly, claims the “ONLY factor that would have changed the usage month over month, was the fact that there was a new

meter/register installed,” CAD Record p. 378, but we find Wyckford Commons did not meet its burden of substantiating this allegation. As discussed above, billings did not precipitously decrease in October 2019 upon installation of the second meter. They decreased after the first meter went missing, and Wyckford Commons was billed for no usage on the 1 ½ inch meter—not even estimated usage, until after the second 1 ½ inch meter was installed on December 31, 2019. CAD Rec. p. 60.

In appealing the CAD Analyst’s resolution, Wyckford Commons advised that extensive renovations to all 248 units at the complex occurred from January 2019 to December 2019, with no “major” water leaks discovered. CAD Record p. 379. In its notice of appeal filed after the Decision, Wyckford Commons claims, “[N]o leaks were discovered during the course of the renovation and plumbing work”—major or otherwise. CAD Record p. 508. Higher water usage can be the result of multiple factors other than a meter issue, including non-major leaks across 248 apartment units, undetected leaks, tampering, unauthorized water usage, changes in usage during the renovations, etc. The Commission finds this record, including as supplemented by Complainant/Appellant’s Exhibit 1, includes many claims about the first meter, but Wyckford Commons fails to prove the Decision was erroneous. After studying the CAD Record, we find the complaint is unsubstantiated regarding Citizens Water’s alleged noncompliance with a statute, administrative rule, or Commission Order governing the provision of utility services. In addition, no meter error greater than two percent was shown as required under Tariff Rule 5.9 for a billing adjustment.

The Commission further finds that any delay in testing the second meter (which Wyckford Commons did not request) does not impact our affirmance of the Decision and, under the circumstances, would appear to have been a fruitless exercise.<sup>6</sup> The issue is whether the first meter malfunctioned or read inaccurately not how its readings before and during renovations compared with those from the second meter after renovations were completed. The Commission declines Wyckford Commons’ invitation to speculate upon the recorded water usage changes based on occupancy rates or other differences.

The lack of substantiation was true when the CAD Analyst reviewed the matter, true during the CAD Director-level review, and remains true. The applicable utility tariff provides a specific method for granting a customer relief in these instances, as do the Commission’s Rules in the Indiana Administrative Code. The Complainant had a year to request a test of the meter it now claims to have suspected of malfunctioning all along and did not do so, either to Citizens Water or to the Commission. Wyckford Commons had the opportunity to present whatever facts it deemed relevant over the course of the CAD’s review and assessment; consequently, we find it is not

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<sup>6</sup> The CAD Record reflects that responses to the CAD Analyst from Citizens Water too frequently required multiple prompts or follow up, taking up to two weeks in some instances for a response. It is important Citizens Water respond promptly to inquiries by the Commission and our CAD Analysts, and Citizens Water is directed to assure future exchanges with the Commission’s staff and with its customers are timelier.

appropriate to vacate the Decision and remand this matter to the CAD as Wyckford Commons alternatively requests. Indeed, the CAD assessment in this matter appears quite thorough, with Complainant afforded every opportunity to provide information for the CAD's consideration. The Commission has previously noted:

Implicit in the framework regarding appeals of CAD decisions under IC § 8-1-2-34.5 is an understanding that the statute [Ind. Code 8-1-2-34.5] is not intended to provide an opportunity for the parties to simply re-litigate their complaint before the Commission. In most instances, our review of a CAD decision will be based on the record presented to the CAD by the parties. This approach is consistent with IC § 8-1-2-34.5, and provides the parties with an appropriate incentive to present a full and complete case to the CAD in a manner that should allow the CAD to resolve most disputes without the need for further Commission review.

*In re the Request of Washington Township Water Corp.*, Cause No. 42374, at p. 8 (August 11, 2004). Wyckford Commons has not shown it was precluded in any respect from presenting its full case to the CAD. Under the circumstances, the alternative remand request seems to be a do over which the Commission finds is not appropriate.

Given the CAD Record and our discussion above, the Commission finds the Decision was not shown to be erroneous and should be affirmed.

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

1. The CAD Director Designee's Decision dated December 16, 2020 is affirmed.
2. Citizens Water shall owe Wyckford Commons no refund under complaint 128461 to the CAD in connection with water usage at the Wyckford Commons apartment complex from September 2018 through September 2019.
3. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, AND OBER CONCUR; KREVDA AND ZIEGNER ABSENT:**

**APPROVED: JUN 02 2021**

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

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**Dana Kosco**  
**Secretary of the Commission**