

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

**REPLY TO CITIZENS WATER'S OBJECTION TO COMPLAINANT/APPELLANT'S
CORRECTED EXHIBIT 1**

Complainant/Appellant, Wyckford Commons Apartments of Indianapolis, LLC ("Wyckford Commons" or "Complainant/Appellant"), by counsel, respectfully replies to Citizens Water's Objection to Complainant/Appellant's Proposed Exhibit 1 in this Cause. For purposes of clarity, Complainant/Appellant's Exhibit 1 is the document submitted to the Commission on March 10, 2021. It was a mistake of fact that the Excel document tendered on March 9, 2021 (and included in the Notice of Appeal) was provided to the CAD Director's Designee on December 15, 2020.

Citizens Water makes a laundry list of objections from not having seen the exhibit previously, to being untimely, to it should have been an Excel file. None of these objections hits the mark, and Citizens Water cites no prior Commission orders or rulings to support its position. The simple fact is that Complainant/Appellant's Exhibit 1 should have been included in the CAD Record when it was filed on January 22, 2021, because the CAD Director's Designee received an

email from Nick Fuhrman of Wyckford Commons on December 15, 2020, that included Complainant/Appellant's Exhibit 1 as an attachment. *CAD Record*, at 000534-000539.

Prior Commission orders conclusively demonstrate that the CAD Record is not as limited as Citizens Water argues. The Commission described the CAD Record in Cause No. 45366 to include the complaint, information reviewed by the CAD analyst, information reviewed by the CAD Director Designee, the CAD decision, and the appeal to the Commission. *Appeal by Wayne Clark*, Cause No. 45366, 2020 WL 6132216 at *2 to *5 (Ind. U.R.C. Oct. 14, 2020). Whether or not the opposing party reviewed the information is immaterial.¹ If it involved the CAD, it should be part of the CAD Record. Whether or not the evidence was mistakenly referred to as an Excel file is immaterial. Again, if it involved the CAD, it should be part of the CAD Record.

Moreover, as described at the March 5, 2021, oral argument in this proceeding, the Commission has within its power to supplement the record to the extent it deems necessary. *In re Rosewood Manor Estates*, Cause No. 42716, 2005 WL 1287416 (Ind. U.R.C. Apr. 20, 2005). Here, even if Wyckford Commons tendered the exhibit for the first time after the appeal were filed, the Commission would have the discretion to accept it into the record. *Id.* Citizens Water's timeliness objection is not well taken for these reasons. If there is a question as to the authenticity of Complainant/Appellant's Exhibit 1, the Commission should order that the email, including its attachment, received by the CAD Director's Designee on December 15, 2020, from Mr. Fuhrman should be made a part of the CAD Record in this proceeding. The email itself is in the CAD Record at 000534-000539. (Wyckford Commons notes that Citizens Water correctly identifies in its footnote 2 that the graphs depicted on Complainant/Appellant's Exhibit 1 are the same graphs


¹ Wyckford Commons notes that it did not even see any of the information Citizens Water provided to the CAD, and therefore, had no opportunity to respond to any of it, during the underlying process until January 22, 2021, when the CAD Record was filed.

appearing in black and white and partially cut off at CAD Record 000535-000537). Again, if the CAD receives information, it should be made a part of the CAD Record, and the Commission should reject the hyper-technical arguments made by Citizens Water opposing admission of Complainant/Appellant's Exhibit 1.

WHEREFORE, The Commission should admit Complainant/Appellant's Exhibit 1 into the CAD Record.

This 16th Day of March, 2021.

Respectfully submitted,



David T. McGimpsey (21015-49)
DENTONS BINGHAM GREENEBAUM LLP
212 W. 6th Street
Jasper, Indiana 47546
Telephone: (812) 482-5500
Facsimile: (812) 482-2017
E-mail: david.mcgimpsey@dentons.com

Attorney for Complainant/Appellant, Wyckford
Commons Apartments of Indianapolis, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served by e-mail this 16th day of March, 2021, to the following:

Citizens Water

Alejandro Valle, Esq.

Lauren Toppen, Esq.

avalle@citizensenergygroup.com

ltoppen@citizensenergygroup.com

OUCC

Daniel M. Le Vay, Esq.

dlevay@oucc.in.gov

infomgt@oucc.in.gov



An attorney for Complainant-Appellant,
Wyckford Commons Apartments of
Indianapolis, LLC