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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. 43708
DECISION OF THE COMPLAINT OF)
MICHAEL BRENSTON AGAINST)
NORTHERN INDIANA PUBLIC SERVICE) APPROVED:
COMPANY)

MAY 19 2010

BY THE COMMISSION:
David E. Ziegner, 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 May 11, 2009, the CAD issued an informal complaint resolution ("CAD Decision") regarding a consumer complaint of Michael Brenston against Northern Indiana Public Service Company ("NIPSCO"). The CAD found that Mr. Brenston was not entitled to a refund of money he had paid NIPSCO for electric and gas service. On June 12, 2009, Mr. Brenston appealed the CAD's decision that he was not entitled to a refund of funds paid to NIPSCO.¹

Mr. Brenston's appeal was docketed as Cause No. 43708 on June 12, 2009. The Presiding Officers issued a docket entry on June 23, 2009, taking administrative notice of and making a part of the record of this Cause the file generated by CAD in its initial investigation of Mr. Brenston's complaint.

The Commission convened a properly noticed prehearing conference on October 2, 2009, and issued a prehearing conference order on October 14, 2009. Mr. Brenston, counsel for NIPSCO and counsel for the Indiana Office of Utility Consumer Counselor ("OUCC") appeared. The Presiding Officers excused Mr. Brenston from further physical attendance at the hearings and allowed him to appear telephonically, to which NIPSCO had no objection.

1. Notice and Jurisdiction. Due, legal, and timely notice of the public hearings conducted in this Cause were given as required by law. NIPSCO is a public utility as that term is defined under Ind. Code § 8-1-2-1, et seq. Mr. Brenston is a customer of NIPSCO receiving electric and gas service, and filed a complaint with the CAD seeking reimbursement of deposit money paid

¹Under 170 I.A.C. § 1-1.1-5, appeals of CAD decisions should be made within twenty (20) days of the date the decision was rendered. While Mr. Brenston filed his appeal outside that time frame, we exercise our discretion to consider this matter under the powers granted to us by statute. "Inherent in this grant of power is the implicit power and authority to do that which is necessary to effectuate the regulatory scheme." South Eastern Natural Gas Co., Inc. v. Ingram, 617 N.E.2d 943, 948 (Ind. App. 1993).

to NIPSCO pursuant to Ind. Code § 8-1-2-34.5. The CAD made a finding on the matter, which Mr. Brenston appealed. Therefore, we have jurisdiction over the parties and the subject matter of this cause.

2. Background. On January 2, 2009, Mr. Brenston contacted the CAD to file a complaint against NIPSCO, on the grounds that he had paid \$700.00 in deposits toward his natural gas and electric accounts which he believed that NIPSCO should return. When Mr. Brenston terminated his service with NIPSCO, he received a final bill indicating there was no balance due and that none of his deposit would be returned. Mr. Brenston believed he had deposit money remaining on his accounts after the final bill was satisfied and NIPSCO was trying to withhold the funds.

During the CAD's investigation, it determined that Mr. Brenston had filed a CAD complaint against NIPSCO in September 2008 about the disconnection and removal of Mr. Brenston's natural gas meter for alleged unauthorized use. In reviewing that complaint, CAD determined that Mr. Brenston's natural gas service had been disconnected on June 3, 2008 for non-payment. Subsequent to that disconnection, NIPSCO read the meter on August 6, 2008 and determined that someone had been using gas, even though there had been no request for reconnection of service. As a consequence, NIPSCO removed the meter and billed Mr. Brenston \$111.03 for unauthorized usage and \$123.00 for investigation charges. NIPSCO asserted that Mr. Brenston was told that in order to restore his natural gas service, he would need to pay outstanding natural gas charges of \$415.23, a reconnection fee of \$45.00, and a deposit of \$400.00.

During its investigation, CAD also determined that Mr. Brenston's electric service was disconnected for non-payment on September 9, 2008. NIPSCO stated that it told Mr. Brenston that in order to get next-working-day restoration of electric service, he would need to pay his outstanding electric charges of \$435.57, a reconnect fee of \$45.00, and \$70.00 towards an electric deposit of \$135.00. CAD determined that there was no deposit on record for Mr. Brenston prior to this time.

Mr. Brenston provided documentation to CAD that he had made three payments on his account for a total of \$701.00 between September 4, 2008 and October 6, 2008. NIPSCO applied Winter Warmth² funds towards Mr. Brenston's account in the form of two \$95 payments applied to the outstanding deposit balance, and an additional \$130.23 applied to Mr. Brenston's deposit balance. NIPSCO originally requested that Mr. Brenston pay a \$535.00 deposit, but later reduced the amount to \$260.00, which was covered by Winter Warmth funds of \$190.00 and a cash payment from Mr. Brenston in the amount of \$70.00.

At the time that Mr. Brenston terminated service with NIPSCO, he had an outstanding balance of \$640.71 for his combined natural gas and electric service. Against that bill, Mr. Brenston received Winter Warmth assistance in the amount of \$529.65, which resulted in a balance payable by Mr. Brenston of \$111.06. Against that balance, NIPSCO applied the \$260.00 deposit, plus interest earned of \$2.33, resulting in a credit in the amount of \$151.27 on Mr. Brenston's account. Because Mr. Brenston was the beneficiary of financial assistance from NIPSCO's Winter Warmth program,

² "Winter Warmth" is a Commission approved NIPSCO program providing payment towards gas heating bills to low income consumers. It does not provide payment towards those consumers' electric service.

the remaining deposit funds were reclaimed by NIPSCO and placed back into the Winter Warmth program.

The CAD decision held that it was appropriate for NIPSCO to recoup the \$151.27 in order to redistribute funds to other customers qualifying for financial assistance from the Winter Warmth program. Therefore, CAD decided that NIPSCO did not violate any Commission rules and regulations and that Mr. Brenston did not have a deposit amount to be refunded to him. Mr. Brenston did not agree with the decision and appealed to the full Commission pursuant to 170 I.A.C. § 1-1.1-5(c).

3. Standard of Review. Our review of a CAD decision is based on the record presented to the CAD by the parties, consistent with Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5.

4. Arguments Presented by the Parties. On October 19, 2009, NIPSCO filed its *Notice of Intent Not to Supplement the Record*. On November 9, 2009, the OUCC filed its *Notice of Intent Not to File Testimony*. On December 17, 2009, the Presiding Officers issued a docket entry tendering to the record correspondence between a CAD analyst and a NIPSCO account representative that had occurred subsequent to the filing of this Cause. The correspondence discussed balances on Mr. Brenston's account.

The Presiding Officers issued a docket entry on December 18, 2009 directing questions to NIPSCO. The Presiding Officers requested answers to the following:

- (1) how much of the initial \$564.08 balance on Mr. Brenston's account on May 8, 2008 was related to gas service and how much was related to electric service;
- (2) how much of the \$111.06 balance was related to gas service and how much was related to electric service;
- (3) how much of the \$2.33 in interest on the deposits was related to the gas deposit and how much was related to the electric deposit; and
- (4) how NIPSCO allocates payments of customer's overdue bills for electric and gas service.

The Commission convened a properly noticed evidentiary hearing on December 22, 2009, which Mr. Brenston attended via telephone. The hearing was continued on the record to February 4, 2010, and again to February 12, 2010, to allow for documents to be sent to Mr. Brenston. At the evidentiary hearings, the OUCC appeared and counsel for NIPSCO and Mr. Brenston attended via teleconference.

In NIPSCO's January 13, 2010 reply to the Presiding Officer's questions, NIPSCO stated that on May 8, 2008, Mr. Brenston had a total bill outstanding in the amount of \$564.08. Of that amount,

\$371.04 related to gas service, and \$193.07 related to electric service. Regarding how much of the \$111.06 balance was related to gas service and how much was related to electric service, NIPSCO answered that on December 15, 2008, after all assistance had been applied to Mr. Brenston's account, and the account was "finaled," the balances showed that \$52.33 of the \$111.06 related to gas service and the remaining \$58.73 related to electric service.

In addition, NIPSCO advised that after Mr. Brenston's account was "finaled" on December 15, 2008, his \$260.00 deposit account was credited with interest totaling \$2.33, of which \$1.30 related to gas deposits and the remaining \$1.03 related to electric deposits. The combined amount of \$262.33 was then applied to the remaining balance due of \$111.06, leaving \$151.27, which was then transferred back to the Winter Warmth program. NIPSCO also stated that when it receives a payment on a customer's account, the payment is posted to the oldest receivable first.

The chart represents a running balance of Mr. Brenston's account.

Date	Electric	Gas	Late Charge	Re-connect Fee	Investigation Charges	Payments	Winter Warmth Funds	EAP Funds	Deposit Funds	Balance
5/8/08										\$564.08
6/6/08	\$ 66.28	\$ 53.49	\$ 3.44							\$ 687.29
6/27/08						\$(100.00)				\$ 587.29
7/11/08						\$(50.00)				\$ 537.29
7/15/08	\$ 78.52		\$ 3.78							\$ 619.59
8/15/08	\$ 79.86		\$ 2.41							\$ 701.86
8/20/08		\$111.03	\$(1.71)		\$123.00					\$ 934.18
9/05/08						\$(100.00)				\$ 834.18
9/08/08	\$ 70.20		\$ 2.45							\$ 906.83
9/09/08	\$ 9.37		\$ 5.03							\$ 921.23
9/19/08						\$(481.00)				\$ 440.23
9/19/08				\$45.00						\$ 485.23
10/07/08						\$(50.00)				\$ 435.23
10/14/08							\$(130.23)			\$ 305.00
11/4/08	\$ 53.38	\$ 49.38		\$45.00						\$ 452.76
12/15/08	\$ 58.73	\$129.22								\$ 640.71
12/15/08								\$(529.65)		\$ 111.06
12/15/08									\$(262.33)	\$(151.27)
REMAINING DEPOSIT FUNDS AVAILABLE										\$(151.27)

At the February 12, 2010 evidentiary hearing, counsel for NIPSCO stated that upon further review of the records of Mr. Brenston's account, NIPSCO had revised its position. Pursuant to the request of the Presiding Officers, NIPSCO filed a statement memorializing that position with the Commission on February 19, 2010. NIPSCO stated as follows:

At the time Mr. Brenston's account was closed, he had deposits with NIPSCO totaling \$260. Of that \$260, \$190 related to gas service, and had been provided on behalf of Mr. Brenston by NIPSCO's Winter Warmth program. The remaining \$70 in deposits related to electric service, and had been provided by Mr. Brenston himself.

When Mr. Brenston's account was "finaled" on December 15, 2008, his final bill

totaled \$111.06, of which \$52.33 related to gas service and the remaining \$58.73 related to electric service.

If the \$190 gas deposit is applied to the final gas bill of \$52.33, the amount left over should be returned to the Winter Warmth program, along with interest in the amount of \$1.30. This was done.

If the \$70 electric deposit is applied to the final electric bill of \$58.73, then \$11.27 would be left over. The amount left over, plus interest of \$1.03, totals \$12.30. This \$12.30 should have been returned to Mr. Brenston instead of being transferred to NIPSCO's Winter Warmth program.

Respondent NIPSCO's Clarification of Statements Made on the Record, p. 3.

5. Commission Analysis and Decision. The Commission is empowered to review appeals of CAD decisions upon timely request by an affected party. The date of the CAD decision was May 11, 2009, and Mr. Brenston's request for an appeal of that decision was dated June 11, 2009. The Commission docketed Mr. Brenston's appeal on June 12, 2009. As noted above, *infra* n. 1, we have considered this matter despite the fact that the deadline for the challenge of an informal decision of the CAD is twenty (20) days after the decision was rendered. *See*, 170 I.A.C. § 1-1.1-5(c). This is especially appropriate given the fact that Mr. Brenston is owed money.

This proceeding ensued because Mr. Brenston believed he was owed money from his deposits. In fact, the Winter Warmth program provided much of the deposit. Winter Warmth and other Low Income Heating Assistance Programs ("LIHEAP") provide much needed help for the payment of winter heating costs for low-income Hoosiers. However, they are programs meant to fund the payment of heating bills, which does not translate into a return of funds to consumers. In this case, money left over after payment of a customer's obligations was returned to the Winter Warmth fund so that the money could be used to assist others. In short, while Winter Warmth provides a financial benefit, that benefit does not extend to money being returned to consumers for uses other than heating.

Since the gas deposit money was provided from Winter Warmth funds, the remaining balance of \$138.97, after payment of Mr. Brenston's bill, was appropriately returned to the Winter Warmth fund. However, after applying the \$71.03 electric deposit to the \$58.73 outstanding electric bill, Mr. Brenston has \$12.30 of deposit funds available to be refunded to him. We take this opportunity to caution NIPSCO and other entities to which Winter Warmth or Universal Service Fund program authority has been given to maintain an accurate accounting of the application of such funds. In this case, money meant for payment of gas bills was initially applied to the customer's electric bill balance. Such cross-subsidization should be avoided at all costs.

We find that the CAD decision is modified consistent with this opinion. NIPSCO shall return \$12.30 to Mr. Brenston as a refund of his deposit for electric service within thirty (30) days of this

Order.

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

1. The May 11, 2009 decision of the Consumer Affairs Decision in this Cause is modified consistent with the terms of this Order.
2. The Northern Indiana Public Service Company shall refund \$12.30 to Michael Brenston within thirty (30) days of this Order.
3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, MAYS AND ZIEGNER CONCUR; HARDY AND LANDIS ABSENT:

APPROVED: MAY 19 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**