

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF) CAUSE NO. 43719
DENNIS FOREMAN AGAINST CITIZENS GAS)
AND COKE UTILITY) APPROVED: JUN 23 2010

BY THE COMMISSION:
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 June 8, 2009, the CAD issued an informal disposition (“CAD Decision”) regarding a consumer complaint of Dennis Foreman (“Complainant”) against Citizens Energy Group, Inc. (“Citizens”). The CAD found that Complainant was obligated to pay Citizens for gas service rendered to a property Complainant owned. On June 26, 2009, Complainant appealed the CAD’s decision.

The Commission held an Evidentiary Hearing in this matter on November 6, 2009. The record in this Cause is comprised solely of the information that was submitted when this matter was before the CAD and the CAD Decision. The parties presented oral argument during the November 6, 2009 hearing.

Based upon the applicable law and the record before the CAD, the Commission now finds that:

1. Notice and Jurisdiction. Due, legal, and timely notice of the evidentiary hearing conducted in this Cause was given as required by law. Citizens is a “municipal utility” as defined under Indiana Code §8-1-2-1(h), and is subject to the jurisdiction of the Commission to the extent and in the manner provided by the laws of the State of Indiana. The Commission has specific statutory authority to review any decision of the CAD upon request pursuant to Indiana Code §8-1-2-34.5. The Commission has jurisdiction over the parties and subject matter of this proceeding.

2. Background. Complainant is the sole owner of Property Management Service Company, Inc. (“PMSC”). PMSC owns multiple properties within the Indianapolis area, including the property at 1538 S. Ringgold Ave., Indianapolis, Indiana (“Rental Property”). Complainant also owns a property at 1717 Prospect St., Indianapolis, Indiana (“Prospect”). PMSC initiated service at the Rental Property on March 16, 2007, and turned off service on May 19, 2008 when Tenant #1 vacated the Rental Property.

In May 2008, PMSC and Tenant #2 entered into a written agreement in which Tenant #2 agreed to contact Citizens to establish gas service and be responsible for the gas bill. Tenant #2

did not establish gas service with the utility, did not comply with the terms of the rental agreement, and was thereafter evicted from the Rental Property.

At the time of the June 2008 meter reading, Citizens determined that there was unauthorized consumption subsequent to the May 2008 termination of gas service. Citizens thereafter placed an order to lock the meter, which was completed on October 27, 2008. Citizens noticed further consumption at the Rental Property in November and locked the meter again on December 1, 2008. Citizens did not receive a request for service during this time.

In December 2008, after Tenant #2 had moved out, Tenant #3 moved into the Rental Property. In the process of Tenant #3's efforts to obtain gas service, it was determined that Tenant #2 had failed to legally arrange for service and instead had fraudulently connected to the gas service. The last customer of record at the Rental Property was PMSC. Complainant is the sole owner of PMSC. On December 22, 2008 the Complainant contacted the CAD disputing charges totaling \$290.77 for unauthorized gas consumption and contended a tenant is responsible for the bill.

On March 5, 2009, Citizens transferred the charges from the Rental Property to Complainant's active account at Prospect. On April 6, 2009, a Citizens supervisor called Complainant and left a message asking for lease information to see if it would be appropriate to bill his tenant. On April 13, 2009 Complainant called a Citizens supervisor and stated that he would not provide Citizens with any information Citizens had requested in order to bill his tenant. Citizens initially scheduled the Complainant for disconnection at Prospect for non-payment, but after being advised of the Commission complaint, rescinded the disconnection.

On June 8, 2009, the CAD issued its decision. The decision stated that based on information provided by both parties, the CAD finds no evidence that Citizens has violated any rules or regulations.

3. Standard of Review. As referenced in the September 3, 2009 Prehearing Conference Order in this matter, as the complaint filed in this Cause is an appeal of an issue that was considered and decided by the CAD pursuant to Indiana Code §8-1-2-34.5 and 170 IAC 1-1.1-5, a record of information upon which that decision was based already exists (the "Record"). The Record consists of information supplied by the Complainant and Respondent and considered by the CAD in reaching its decision. Therefore, consistent with the Commission's authority as set forth in Indiana Code §8-1-2-34.5 and 170 IAC 1-1.1-5, the record to be considered in this proceeding shall be based on: (1) a review of the Record; and, (2) consideration of argument by the parties and the OUCC based on the existing Record.

4. Arguments Presented by the Parties. Complainant contends that he was not aware there was unauthorized usage of gas at the Rental Property and he should not be responsible for the resulting charges. Complainant declined to provide any information regarding who was residing at the Rental Property during the period in which the unauthorized usage of gas

occurred. Complainant states that Citizens has previously refused to provide him with account information regarding his rental properties, and so he is refusing to provide Citizens with any information regarding the Rental Property.

Citizens argued that Complainant is responsible for paying for the unapproved usage of gas by virtue of being the owner of the Rental Property and refusing to provide any information as to who was residing at the Rental Property.

5. Commission Findings. This proceeding ensued based on a claim by the Complainant that he was wrongfully charged for the unauthorized usage of gas at his Rental Property. The CAD found that Citizens billed the Complainant correctly for the unauthorized usage in accordance with its Commission approved Tariff. The Record in this Cause indicates that PMSC initiated service at the Rental Property on March 16, 2007, and turned off service on May 19, 2008 when Tenant #1 vacated the Rental Property. In May 2008, PMSC and Tenant #2 entered into a written agreement in which Tenant #2 agreed to contact Citizens to establish gas service and be responsible for the gas bill. Tenant #2 did not establish gas service with the utility, did not comply with the terms of the rental agreement and was thereafter evicted from the Rental Property. In December 2008, after Tenant #2 had moved out, Tenant #3 moved into the Rental Property. In the process of Tenant #3's efforts to obtain gas service, it was determined that Tenant #2 had failed to legally arrange for service and instead fraudulently connected to the gas service. Citizens billed the Complainant for the usage on March 5, 2009 by adding the charges to the account for Prospect, his active address.

The crux of Complainant's argument in this case is that Citizens was unlawfully demanding information about his tenant at the Rental Property. Based on a claim that Citizens had previously refused to provide information when a tenant had ostensibly left Complainant holding the bill, Complainant argued that he was therefore entitled to withhold tenant information from Citizens. According to Complainant, Citizens refused to provide the information because of concerns regarding liability, which Complainant adopted as his reason for refusing to provide the information to Citizens.

Once Complainant refused to provide information about the responsible party, Citizens was within its rights to place the balance on Complainant's account. Under the statute governing termination of service, a gas utility can disconnect residential utility service without a customer request "[i]f fraudulent or unauthorized use of electricity or gas is detected and the utility has reasonable grounds to believe the affected customer is responsible for such use." Indiana Code §8-1-2-121(e). In this case, the record establishes that fraudulent use was detected, and in the absence of evidence to the contrary and Complainant's refusal to provide such evidence, it was reasonable to find Complainant responsible for the use because he is the property owner. Therefore, based on the Commission's review of the record, the CAD's informal disposition is affirmed in its entirety.

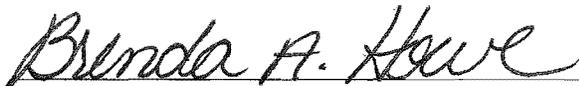
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Consumer Affairs Division's June 8, 2009, informal disposition is affirmed in its entirety.
2. This Order is effective on and after the date of its approval.

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

APPROVED: JUN 23 2010

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



Brenda A. Howe
Secretary to the Commission