

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF) CAUSE NO. 43841
DAVID EASTERLY AGAINST INDIANA)
GAS COMPANY, INC.) APPROVED:

JUN 23 2010

BY THE COMMISSION:

Larry S. Landis, 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 October 28, 2009, the CAD issued an Informal Complaint Resolution ("CAD Decision" or "Decision") regarding a consumer complaint presented by David Easterly ("Complainant") against Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren"). The CAD found that Vectren had properly billed Complainant for the gas service used and for investigation fees. On December 1, 2009, Complainant appealed the CAD Decision.

The Commission held an Evidentiary Hearing in this matter on January 26, 2010. 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 January 26, 2010 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 public hearings conducted in this Cause were given as required by law. Vectren is a "public utility" and a "gas utility" within the meaning of those terms as used in the Public Service Commission Act, as amended, 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 owns a rental property located at 1209 East 22nd Street, Muncie, Indiana ("Rental Property"). On November 20, 2008, Phyllis Moore moved out of the Rental Property and requested the gas service be disconnected. Brian Williams and Scott Clements moved in to the Rental Property on November 21, 2008. On November 21, 2008, Mr. Clements called Vectren to establish gas service at the Rental Property under his name. However, Mr. Clements did not complete the order after Vectren requested a deposit of \$150.00. From November 21, 2008 to December 8, 2008, the meter at the Rental Property registered a usage of 132 ccf's ("hundred cubic feet"). On December 16, 2008, Vectren made a site visit to the Rental Property, disconnected the gas service, and placed a lock on the meter. Vectren took a second reading on January 9, 2009 and the meter at the Rental Property showed a usage of 406 ccf's. On February 4, 2009, Vectren again went to the Rental Property and disconnected gas service. During the February 4, 2009 visit to the Rental Property, the meter showed a usage of 35 ccf's. On February 12, 2009, Vectren contacted Complainant to notify him of the unapproved usage of gas at the Rental Property. On March 2, 2009,

Vectren visited the Rental Property and the meter showed a usage of 96 ccf's. According to Vectren, since November 21, 2008, \$888.22 in gas had been used at the Rental Property without authorization. In March 2009, Vectren billed the Complainant for \$1,008.22 (\$888.22 for gas service and three investigation fees of \$70 each).

On or about March 11, 2009, the Complainant contacted the CAD disputing utility charges assessed to his account as a result of his previous tenants' unapproved use of gas at the Rental Property. On June 3, 2009, the Complainant provided the CAD with an electric bill and sewer bill for a customer named Scott Clements for service provided at the Rental Property. The electric bill and sewer bill were for service provided at the Rental Property during the same period the unapproved usage occurred. Complainant did not have a written lease with Scott Clements.

In its October 28, 2009 Decision the CAD found that Vectren had properly billed the Complainant for the gas service used and for the investigation fees. On October 29, 2009, the CAD Decision was sent to both parties through certified mail with a return receipt requested. However, Complainant's copy of the CAD Decision was sent to the wrong address. On November 9, 2009, the CAD sent the CAD Decision to Complainant's correct address. Complainant's return receipt showed that he received the CAD Decision on November 24, 2009. On December 1, 2009, the Commission received the Complainant's notice of appeal of the CAD Decision.

3. Motion to Dismiss. On January 11, 2010, Vectren filed a Motion to Dismiss asserting that the Complainant's appeal was not timely filed pursuant to 170 IAC 1-1.1-5. 170 IAC 1-1.1-5(c) provides for the applicable time frame in which a decision of the CAD may be appealed:

An informal disposition rendered by the commission's consumer affairs division may be appealed by any party thereto under IC 8-1-2-34.5 upon written request for appeal filed with the commission within twenty (20) days after the informal disposition is rendered. Prior to issuing an order on the appeal, the commission shall afford the parties notice and an opportunity to be heard.

In this case, the CAD Decision was sent to both parties through certified mail with a return receipt requested on October 29, 2009. However, Complainant's copy of the CAD Decision was sent to the wrong address. Complainant did not receive the CAD Decision until November 24, 2009. The Commission received the Complainant's notice of appeal on December 1, 2009. Because Complainant received the CAD Decision more than twenty days after it was rendered, it was not possible for the Complainant to file his notice of appeal within twenty days after the CAD Decision was rendered. The delay in receiving the CAD Decision was due to the CAD's error in sending the Decision to the wrong address. Complainant did file his notice of appeal within twenty days of actually receiving the CAD Decision. Therefore, the Complainant's notice of appeal was timely filed with the Commission.

Based on the above discussion, Vectren's Motion to Dismiss is denied.

4. Standard of Review. As referenced in the Presiding Officer's December 28, 2009 Docket Entry 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.

5. Arguments Presented by the Parties. As reflected in the Record of the CAD Decision, there are two issues that the Complainant raised for the Commission to determine on appeal, which we restate as follows: (1) whether Complainant is the customer by virtue of being the owner of the Rental Property; and (2) whether Vectren properly billed the Complainant for the usage of gas and investigation fees related to the unauthorized usage of gas at the Rental Property.

Complainant argued that Brian Williams and Scott Clements were responsible for the unapproved usage of gas at the Rental Property. Complainant pointed to Vectren's own acknowledgement that Mr. Clements contacted Vectren on November 21, 2009 and attempted to have gas service turned on. In addition, Complainant points to the other utility bills for service provided at the Rental Property in the name of Scott Clements. Complainant noted that all of the evidence in the record indicated Mr. Clements lived at the Rental Property during the time period in which the unauthorized usage of gas occurred. In addition, Complainant argued there was nothing in the record indicating that the Complainant used any gas at the Rental Property during the period in question. Finally, Complainant noted that while he owns the Rental Property, he was not Vectren's customer at the Rental Property.

Vectren argued that Complainant is responsible for paying for the unapproved usage of gas by virtue of being the owner of the Rental Property. Additionally, Vectren points to its tariff on file with the Commission, specifically Tariff Term and Condition No. 27. Vectren's Tariff states that customers or other users shall be responsible for payment of gas service, field calls, investigation and the cost of effecting repairs necessitated by unapproved usage of gas service.

6. 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 Record in this Cause indicates that Complainant rented the Rental Property to Brian Williams and Scott Clements in November 2008. On November 21, 2008, Mr. Clements called Vectren to place the gas service at the Rental Property under his name. However, Mr. Clements did not complete the order after Vectren requested a deposit of \$150.00. Between late November 2008 and March 2009, gas service was not established at the Rental Property. However, during this same time period, gas service was used at the Rental Property without Vectren's permission. While Vectren investigated and attempted to address this unauthorized usage of gas on four separate occasions, it did not notify the Complainant about the unauthorized usage of gas until February 12, 2009. Vectren then billed the Complainant for \$1,008.22 (\$888.22 for gas service and three investigation fees of \$70 each). Upon receipt of this bill the Complainant contacted the CAD disputing utility charges assessed to his account. Complainant provided the CAD with copies of utility bills showing that Mr. Clements established other utility services at the Rental Property during the time in which the unauthorized usage of gas occurred. The CAD found that Vectren correctly billed the Complainant for the unauthorized usage in accordance with Vectren's Commission approved Tariff.

Vectren's Commission approved Tariff defines customer as:

Any individual, partnership, association, firm, public corporation or any other entity receiving gas service provided by company with its consent. A customer

shall include any person receiving gas service from company irrespective of whether that person is the individual in whose name the gas service is being received.

Vectren's Tariff Term and Condition No. 27 ("Term No. 27") specifically addresses the fraudulent usage of gas and states that:

When Company identifies fraudulent or unapproved use of gas, or Company's regulation, measuring equipment or other service facilities have been tampered with, the Company may reasonably assume that Customer or other user has benefitted by such fraudulent or unapproved use of such tampering. Customer or other user shall be responsible for payment of the reasonable cost of Gas Service used during the periods such fraudulent or unapproved or tampering occurred or is reasonably assumed to have occurred and for the cost of field calls, investigation and the cost of effecting repairs necessitated by such use and/or tampering. Company may assess a Fraudulent Gas Usage Charge as set forth in Appendix C per occurrence for such field calls and repairs. Under such circumstances Company may, subject to any provision of Commission Rule 16 to the contrary, disconnect service without notice and Company is not required to reconnect the service until a deposit and all the above enumerated charges are paid in full. All Statutory penalties shall be fixed by court of competent jurisdiction or by agreement between Company and Customer.

Based on the facts contained in the Record, we disagree with the CAD's October 28, 2009 finding that Vectren properly billed the Complainant for the gas service used and for the investigation fees. Under Vectren's Commission approved Tariff, a person does not become a customer unless Vectren consents to provide gas service. The gas service to the Rental Property was unauthorized and therefore lacked the consent of Vectren. The Complainant was not the customer of record at the Rental Property and, based on the facts presented in this matter was unaware of gas use at his rental property until being notified on February 12, 2009 and billed by Vectren in March 2009.

We also find that Tariff Term No. 27 ("Term No. 27") does not support the actions of Vectren. Term No. 27 is in place to address the fraudulent use of gas. There is no evidence in this proceeding that Complainant engaged in any sort of fraud. Term No. 27 does not contemplate being applied to a property owner who is neither the customer of record nor a user that benefitted from the usage of gas service. Complainant provided Vectren with the names of the individuals who were staying at the Rental Property in November 2008 through March 2009, and Mr. Clements was an individual known to Vectren since his inquiry regarding gas service in November 2008. Mr. Clements could have been pursued by Vectren based on the most rudimentary of investigations.

Rather than taking an active role in resolving the unauthorized use of gas at the Rental Property, that Vectren knew was occurring, it appears based on the facts in the Record that Vectren determined it could appropriately take no action other than visiting the Rental Property on four occasions to disconnect unauthorized "service," and simply bill the Complainant at the end of the heating season, instead of actively pursuing individuals for the unauthorized use of gas. Vectren has unfairly penalized the property owner. Evidence of fraud on the part of the property owner is not reflected in the Record. Vectren should pursue the individuals who were living in the Rental Property and benefitted from the gas use during the winter of 2008-2009.

Based on the specific facts presented in this matter, the Commission finds that Vectren improperly billed the Complainant for the gas service and investigation fees related to the unauthorized usage of gas at the Rental Property from November 2008 through March 2009. Therefore, the Commission finds that Vectren shall refund David Easterly for gas service and investigation fees previously paid which are related to the unauthorized usage of gas service at 1209 East 22nd Street, Muncie, Indiana.

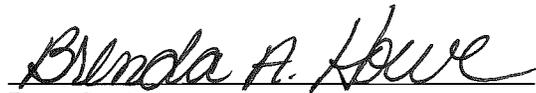
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Vectren shall refund David Easterly for gas service and investigation fees previously paid which are related to the unauthorized usage of gas service at 1209 East 22nd Street, Muncie, Indiana.
2. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS AND ZIEGNER CONCUR; HARDY ABSENT; MAYS NOT PARTICIPATING:

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**