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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. 43984
DECISION OF THE COMPLAINT OF A.)
TAYLOR AGAINST NORTHERN) APPROVED:
INDIANA PUBLIC SERVICE COMPANY)

SEP 07 2011

BY THE COMMISSION:

Carolene Mays, Commissioner
Angela Rapp Weber, 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 November 8, 2010, the CAD issued an Informal Complaint Resolution concerning a consumer complaint presented by Mr. A. Taylor against the Northern Indiana Public Service Company ("NIPSCO"). Mr. Taylor filed a Petition for Appeal and Correction of the Record on December 17, 2010. On December 29, 2010, CAD corrected its Informal Complaint Resolution issued on November 8, 2010 ("CAD Decision"). On January 25, 2011, the Presiding Officers in this Cause issued a Docket Entry, which set this matter for an Evidentiary Hearing. The Docket Entry also stated that the Commission's review of Mr. Taylor's appeal of the CAD Decision would be limited to the Record compiled by the CAD and oral argument presented at the Evidentiary Hearing. The oral argument should also be based on the Record.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an Evidentiary Hearing was held in this Cause on April 28, 2011 in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Mr. Taylor appeared *pro se* at the Evidentiary Hearing. NIPSCO and the Indiana Office of Utility Consumer Counselor ("OUCC") also appeared and participated by counsel. During the Hearing, the Presiding Officers took administrative notice of the Record compiled by the CAD during its investigation of this complaint. Mr. Taylor and NIPSCO (collectively, "Parties") informed the Presiding Officers that they tentatively reached a settlement agreement. The Presiding Officers directed the Parties to file with the Commission a motion to dismiss by May 13, 2011. Alternatively, if a settlement agreement could not be finalized, the Parties were to file a request for a hearing.

On May 17, 2011, the Parties filed a Joint Motion for Extension in this Cause requesting a thirty-day extension. The Presiding Officers provided an extension stating that the motion to dismiss or request for a hearing should be filed on or before June 1, 2011. On June 6, 2011, Mr. Taylor instead filed with the Commission a Status Notification to the Court, requesting additional time to execute a settlement in this Cause. Since the Parties were unable to reach a settlement, the Presiding Officers set this matter for an Evidentiary Hearing on June 29, 2011 at 3:00 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Mr. Taylor appeared *pro se* and presented oral argument, while NIPSCO and the OUCC appeared by counsel and presented oral argument in this matter.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearings conducted in this Cause was given as required by law. NIPSCO is a public utility as described by Indiana Code ch. 8-1-2 and is subject to the jurisdiction of the Commission as provided in the Public Service Commission Act. The Commission has specific statutory authority to review any decision of its CAD upon request pursuant to Indiana Code § 8-1-2-34.5, 170 IAC 1-1.1-5, and 170 IAC 16-1. Therefore, the Commission has jurisdiction over the parties and subject matter of this proceeding.

2. **Background.** In May 2008, Mr. Taylor requested that NIPSCO investigate a possible gas leak at his property. On May 13, 2008, a NIPSCO field technician arrived to investigate a possible gas leak. When a leak was not detected on the outside of the property, the technician, with Mr. Taylor's permission, continued to investigate inside of the building located on that property. The property consists of two units, an upstairs and a downstairs, which are separately metered. While in the upstairs unit, the NIPSCO field technician observed boxes and books placed next to a water heater. The technician informed Mr. Taylor that the location of the boxes and books next to the water heater constituted a hazardous condition and must be moved. Mr. Taylor stated the water heater was not functional; therefore, no hazardous condition existed, and he refused to move the books and boxes. As a result of Mr. Taylor's refusal to move the items, the NIPSCO field technician turned off his gas meter, thereby shutting off his natural gas service to the upstairs unit.

Even though Mr. Taylor's meter was turned off, his account remained active. Therefore, NIPSCO continued to bill Mr. Taylor a minimum monthly service charge. Over the course of several months, Mr. Taylor disputed NIPSCO's ability to charge the monthly service charge as a result of NIPSCO's involuntary and illegal disconnection of gas service. On December 8, 2008, the CAD received a letter from Mr. Taylor concerning his gas service. In the letter, Mr. Taylor complained that the location of the books and boxes did not constitute a hazardous condition. Also, he complained that NIPSCO continued to charge him a monthly fee when gas was not consumed since service was disconnected.

After examining the issues raised by Mr. Taylor, a CAD analyst sent Mr. Taylor a letter on December 30, 2008. The CAD analyst explained in the letter that pursuant to 170 IAC 5-1-16, a utility may involuntarily disconnect gas service if a hazardous condition exists. The CAD analyst also explained utilities may charge its customers a minimum usage or service fee to pay for fixed costs even if gas is not consumed.

In October 2009, Mr. Taylor contacted the CAD regarding a billing dispute concerning his natural gas service. He alleged that NIPSCO did not post and allocate all of his payments to the proper accounts. Mr. Taylor continued to dispute the inclusion of service charges on his natural gas bills. He also continued to dispute the existence of a hazardous condition in the upstairs unit. The CAD Decision affirmed the CAD analyst's decision with respect to the minimum monthly charge because Mr. Taylor's account remained active. The CAD Decision also stated Mr. Taylor's payments were posted correctly to his account. On December 17, 2010, Mr. Taylor appealed the CAD Decision.

3. **Standard of Review.** 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, 170 IAC 1-1.1-5, and 170 IAC 16-1. The Record, or the information upon which the CAD Decision was based, already exists. Most of the Record consists of information supplied by the Parties and was 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, 170 IAC 1-1.1-5, and 170 IAC 16-1, 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.** On February 2, 2011, NIPSCO filed with the Commission its Answer to Mr. Taylor's appeal. On February 17, 2011, Mr. Taylor filed his Reply to [NIPSCO's] Answer. In addition, at the June 29, 2011 Evidentiary Hearing, Mr. Taylor and NIPSCO provided oral argument concerning the issues raised in this matter.

A. *Argument Presented by Mr. Taylor.* Mr. Taylor argues that NIPSCO did not credit and allocate properly all payments to account number 4273260086 (downstairs unit) and account number 6382260029 (upstairs unit) for electric and gas service as specified on money orders sent to NIPSCO. He also asserts NIPSCO continues to estimate his bills, even though he requested that his bills represent actual readings. Mr. Taylor states NIPSCO involuntarily and unlawfully disconnected his gas service provided to the upstairs unit. Finally, Mr. Taylor argues a hazardous condition did not exist near the water heater and therefore, NIPSCO should not be permitted to bill for service charges when gas service was involuntarily disconnected.

B. *Argument Presented by NIPSCO.* NIPSCO states Mr. Taylor's complaint concerning the allocation and posting of payments to his accounts is moot because NIPSCO provided credits to Mr. Taylor's accounts. Also, pursuant to the Indiana Administrative Code, NIPSCO may estimate bills. NIPSCO contends the service representative acted appropriately regarding the disconnection of service due to a hazardous condition, as permitted by the Indiana Administrative Code. Finally, NIPSCO states that pursuant to its tariff, it may bill the minimum monthly charge when an account remains active.

5. **Commission Discussion and Findings.** Mr. Taylor contacted the CAD in December 2008 complaining that NIPSCO shut off his gas service to his upstairs unit when no hazardous condition existed. He also complains NIPSCO incorrectly continued to charge him a service fee when no gas was being consumed by the upstairs unit. A CAD analyst issued a decision in the form of a letter concerning these issues on December 30, 2008. Curiously, CAD's director revisited Mr. Taylor's complaint in October 2009. The subsequent CAD Decision addressed an issue not raised by Mr. Taylor and failed to address an issue raised by Mr. Taylor in his initial December 2008 complaint. Specifically, the CAD Decision addressed NIPSCO's posting and allocation of payments to Mr. Taylor's accounts and failed to address whether a hazardous condition existed.

Further, the Commission notes, Mr. Taylor complained about NIPSCO's estimation of his bills throughout his correspondence with NIPSCO. Mr. Taylor raised the issue again at the Evidentiary Hearing. Because of the inexplicably large size of the Record and length of the process; the incongruous decisions issued by the CAD; and Mr. Taylor's repeated complaints concerning the

estimation of bills, the Commission will also address this issue. Accordingly, the Commission has four issues to decide: (1) whether a hazardous condition existed in the upstairs unit thereby allowing NIPSCO to disconnect natural gas service, (2) whether NIPSCO properly posted and allocated payments made by Mr. Taylor, (3) whether NIPSCO may charge a minimum service fee when a meter has been turned off or gas service has been disconnected; and (4) whether NIPSCO may estimate bills.

Mr. Taylor argues that the improper posting and allocation of funds and the accumulation of service charges stem from NIPSCO's involuntary disconnection of natural gas service. Tr. at A-8. Even though the CAD Decision neglected to mention the right of the utility to disconnect natural gas service in the event of a hazardous condition, the letter sent to Mr. Taylor on December 30, 2008 by the CAD analyst correctly addressed this issue. Pursuant to 170 IAC 5-1-16(b)(1), a utility may disconnect service if a dangerous or hazardous condition exists. Further, NIPSCO's Commission-approved tariff provides in Paragraph 16(1) of the General Rules and Regulations¹ that NIPSCO may shut off services "if a condition dangerous or hazardous to life, physical safety of property exists." The rendering of what constitutes a dangerous or hazardous condition is at the discretion of the utility.

Mr. Taylor admits that household items (i.e., boxes and books) were stacked near the water heater. Mr. Taylor repeatedly asserts the water heater was not functioning and the pilot light was not lit; therefore no hazardous condition existed. However, evidence in the form of Mr. Taylor's own words exists that contradicts his assertion concerning the pilot light. On May 13, 2011, the day he states the NIPSCO field technician turned off his meter, Mr. Taylor sent a letter to NIPSCO concerning the technician's actions. He admitted, "[T]he only thing using gas was the Water Heater PILOT LIGHT solely." He further explained, "That the only reason the pilot light was on was in case we needed to use water at some time." Accordingly, based on the evidence in the Record, the Commission finds NIPSCO was justified in determining that a hazardous condition existed, thereby disconnecting the natural gas service.

NIPSCO continued to bill Mr. Taylor monthly service charges for natural gas service after service was disconnected. Even though the disconnection was involuntary, NIPSCO was justified in continuing to bill for service charges in accordance with NIPSCO's Commission-approved tariff quoted above. In addition, Paragraph 20 of the General Rules and Regulations states, "The Customer shall be responsible and pay for all gas service supplied to the Customer's premises until the third working day following notice duly given by the Customer at the office of [NIPSCO] to discontinue service."

Mr. Taylor could have avoided being charged the minimum monthly service charge by discontinuing, or deactivating, his account. The Commission notes NIPSCO informed Mr. Taylor of this on more than one occasion. In a letter dated October 3, 2008, NIPSCO's Director of its Customer Contact Center stated, "Even though you are not using gas and there is no consumption on your meter, since your account is still active and you have not requested a formal shut off to end your service, there will be a minimum monthly charge." Further, "[I]f a customer has active service, even if utilities are not used and the customer has zero consumption, there is a minimum monthly charge. Going forward,

¹ The tariff applicable for the timeframe of this complaint was authorized in Cause No. 38380 with an effective date of October 31, 1988. The current tariff in effect references these matters under Sections 11.5 and 12.2.

as long as your account is active, you will be assessed monthly charges and you will be liable for those charges.” In a letter dated May 15, 2009, Senior Counsel, Mr. S. William Grimes, explained that the incurrence of minimum monthly charges could be avoided by discontinuing service. Nonetheless, Mr. Taylor elected not to voluntarily discontinue his service, and NIPSCO charged him the minimum service charge. Therefore, the Commission agrees with the CAD Decision’s determination that NIPSCO justifiably billed Mr. Taylor the minimum monthly charge. However, the Commission notes NIPSCO propitiously credited Mr. Taylor’s account for charges incurred from July 2008 through September 2009. Thus, Mr. Taylor’s complaint concerning the allocation and posting of payments to his accounts is moot as a result of credits provided to Mr. Taylor’s accounts.

Finally, Mr. Taylor adamantly opposes the estimation of bills. However, 170 IAC 5-1-13(C) allows a utility to estimate a bill for good cause. Neither party provided evidence regarding whether good cause did or did not exist for the estimations. It is common practice for a utility to estimate bills especially during inclement weather. At a future date, an actual reading balances variations from estimated bills, thereby eliminating any under-/over-recovery. Since the practice of estimation of bills is acceptable and allowed by law, Mr. Taylor is obligated to make payments for amounts billed to his account by NIPSCO.

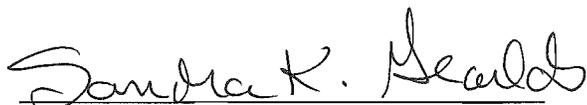
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Informal Complaint Resolution issued by the Commission’s Consumer Affairs Division in this matter on December 29, 2010 is hereby affirmed by the Commission in its entirety.
2. A hazardous condition existed pursuant to 170 IAC 5-1-16 and NIPSCO’s Commission-approved tariff, which justified NIPSCO’s disconnection of gas service as described herein.
3. NIPSCO is permitted to estimate natural gas bills pursuant to IAC 170 5-1-13.
4. This Order is effective on and after the date of issuance.

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

APPROVED: SEP 07 2011

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