

Handwritten initials and signatures: "AD", "JB", "CM", and "Lukach".

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPEAL OF THE)
CONSUMER AFFAIRS DIVISION'S)
DECISION CONCERNING THE PROVISION) CAUSE NO. 44200
OF WATER SERVICE TO WILLIAM J.)
LUKACH)
) APPROVED: OCT 24 2012
RESPONDENT: INDIANA AMERICAN)
WATER COMPANY)

ORDER OF THE COMMISSION

Presiding Officers:
James D. Atterholt, Chairman
Gregory R. Ellis, 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 March 20, 2012, the CAD issued an informal complaint resolution ("CAD Decision" or "Decision") regarding a consumer complaint by William J. Lukach ("Complainant" or "Lukach") against Indiana American Water Company ("Respondent" or "Indiana American").

The Director of CAD received written notice from Mr. Lukach on April 4, 2012 requesting that the Director review the March 20, 2012 CAD decision. The Commission issued a docket entry on May 24, 2012 establishing a procedural schedule in this cause. On June 13, 2012, Indiana American filed Respondent's Answer and Motion to Supplement the Record ("Answer") with a larger version of a map of Mr. Lukach's property which was already a part of the record of information upon which the Decision was based (the "Record") and a copy of a letter sent from the CAD to Mr. Lukach dated September 8, 2010 that had not been included in the Record.

Pursuant to notice given and published as required by law, proof of which was incorporated into the Record of this Cause by reference and placed in the official files of the Commission, the Commission held a public hearing on June 27, 2012, at 10:00 a.m., in Room 224, 101 West Washington Street, Indianapolis, Indiana. Mr. and Mrs. Lukach appeared pro se, while Indiana American and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared by counsel. At the outset of the hearing, the Commission granted Indiana American's Motion to Supplement the Record without objection. Pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5, the Record in this Cause is comprised solely of information supplied by the parties and considered by the CAD in reaching its decision. All parties were afforded the opportunity to present oral argument at the public hearing and the Complainant and Indiana American presented oral argument in this matter.

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 hearing conducted in this Cause was given as required by law. Indiana American provides water utility service to the public, is a public utility as described by Ind. Code ch. 8-1-2-1 and is subject to the jurisdiction of the Commission as provided in the Public Service Commission Act. Indiana American's operation of its system is to be in accordance with the Commission's rules of service and main extensions for water utilities contained in 170 IAC 6-1 and 170 IAC 6-1.5. In addition, Complainant initiated review of the CAD Decision in regards to Complainant's negotiations with Indiana American for connection to its potable water service. The Commission has authority to review any decision of its CAD upon request pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5. Therefore, the Commission has jurisdiction over the parties and subject matter of this proceeding.

2. **Background.** Mr. Lukach owns property located at 2841 Market Street in Porter, Indiana. Mr. Lukach originally contacted Indiana American with the intent of connecting to the utility for potable water service in January 2010. Indiana American is not currently providing water service to this part of Market Street and the closest water line is in Bote Drive approximately 100 feet from Complainant's property. Indiana American determined that in order to provide water service to Mr. Lukach's property it would need to run a water main extension down a route that followed Market Street to his property. Mr. Lukach requested Indiana American run a lateral or main extension from Bote Drive down an unimproved alley adjacent to his property, for which he has documented permission from the Town of Porter, instead of Market Street. Indiana American has provided Mr. Lukach with several cost estimates to establish water service in this area. Indiana American has also provided cost estimates to extend the water main to Mr. Lukach's neighbor to the south who had expressed interest in water service from Indiana American.

On March 20, 2012, the CAD issued its decision finding that Indiana American's determination as to placement of the proposed extension of a water main was based upon good engineering and water utility practices and consistent with 170 IAC 6-1.5-29. The CAD Decision further noted that as the original depositor of the main extension Mr. Lukach would be eligible for refunds if there are subsequent connections to the main extension in accordance with 170 IAC 6-1.5-35 and 170 IAC 6-1.5-36. Mr. Lukach has requested review of the CAD decision and claimed Indiana American has discriminated in its offer to provide water service to his property, refused to conduct business in a fair and balanced manner, and placed an unjust financial burden on him in his request for water service.

3. **Standard of Review.** As referenced in the Commission's May 24, 2012 docket entry, this Cause involves an appeal of an issue that was considered and decided by the Consumer Affairs Division pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5. A Record already exists, which consists mainly of information supplied by the parties. Therefore, consistent with the Commission's authority as set forth in 170 IAC 1-1.1-5 and the procedures detailed in Ind. Code § 8-

1-2-34.5, the decision in this proceeding shall be based upon: (1) a review of the Record; and (2) consideration of arguments by the parties based upon the existing Record.

4. Arguments Presented by the Parties. At the June 27, 2012 public hearing, both parties provided oral argument concerning the issues raised in this matter. As reflected in the Record of the CAD Decision, there are four (4) general issues that the parties raised for the Commission to determine on appeal, which we restate as follows: (1) whether Indiana American's determination as to the route of the water main extension down Market Street instead of the alley adjacent to Mr. Lukach's property was consistent with the Commission's rules; (2) whether Indiana American discriminated against Complainant by denying his request to run the water main extension down an alley right-of-way; (3) whether Indiana American will place an unjust financial burden on Complainant by charging him to run a water main extension down Market Street and not allowing him to use the alley right-of-way to extend water service to his property; and (4) whether Mr. Lukach's appeal of the CAD Decision was timely.

A. Argument Presented by the Complainant. Mr. Lukach's argument centers around a situation where Indiana American installed a water line under an alleyway in order to provide water service to property at 171 Bote Drive which he indicated is located approximately ¼ of a mile from his property. Mr. Lukach argued that Indiana American determined that the alleyway was the proper route to follow when it provided water service to the customer located at 171 Bote Drive several years ago, but is unwilling to use the same determination in providing water service to his property. Mr. Lukach maintained that Indiana American's determination to install an 8-inch water main extension down Market Street instead of the alleyway will cause him to incur more costs, although he noted that he was unable to obtain a firm cost estimate from Indiana American. He indicated that the cost estimates have continued to increase since he requested service. Mr. Lukach also argued that he was discriminated against by Indiana American by not treating him the same as the customer at 171 Bote Drive.

B. Argument Presented by Indiana American. Indiana American asserted it has consistently relied on existing rules and regulations that apply to providing service to new customers. Indiana American indicated its position was consistent with good engineering and water utility practices; where a roadway or easement along a roadway is available, the preferred location for a water main extension is in such roadway rather than in an unimproved alleyway as the Claimant requested here. Indiana American argued that its determination to run the water main extension along Market Street was consistent with 170 IAC 6-1.5-29.

Indiana American argued its prior use of an alley right-of-way for location of a water main extension for a different homeowner did not render its refusal to do so with respect to Mr. Lukach's property improperly discriminatory. In response to Mr. Lukach's claim, Indiana American indicated that the Record demonstrates the facts and circumstances surrounding the water main extension for the Bote Drive customer are distinguishable from the facts and circumstances of Mr. Lukach's request. Indiana American noted that, since the property located on 171 Bote Drive does not have a roadway that runs on either side of the property and Indiana American was unable to run a service

line across the customer's property, it was provided service via the only available route which was the alley right-of-way.

Indiana American argued that it has acted in good faith in responding to Mr. Lukach's request in a manner that allows it to remain in compliance with the rules and regulations applicable to provision of service to new customers. Indiana American further argued that it will not place an unjust financial burden on Mr. Lukach by requiring a water main extension down Market Street instead the alley right-of-way and by charging him the cost to extend water service to his property. Indiana American noted that the cost figures presented to Mr. Lukach were only estimates and were without the benefit of actual design, permitting, and bidding of the construction for the specific work. It indicated that the cost to Mr. Lukach would be the actual costs determined from completion of the design, permitting, bidding, and construction. Indiana American also noted that Mr. Lukach would only be responsible for the cost of a 4-inch main extension extended to the furthest point of his property on Market Street and Indiana American would bear the cost of any up sizing it may choose to do and that any neighboring property owners would be responsible for their own cost of the main extension if they choose to participate.

Last, Indiana American argued the Commission should affirm the CAD Decision in its entirety, indicating the substance of the Complaint is nearly identical to prior complaints filed by Mr. Lukach with the CAD, which have been determined to be unjustified based on the same reasoning used in the CAD Decision. Indiana American argued that no new evidence has been presented by Mr. Lukach to support the Complaint that has not already been presented in prior informal complaints.

C. Argument Presented by the OUCC. The OUCC briefly noted its position at the public hearing. It pointed out that Indiana American's decision to charge Mr. Lukach for the cost of a 4-inch main instead of an 8-inch main as originally indicated was a compromise. The OUCC indicated the CAD Decision was proper and in accordance with applicable rules and regulations.

5. CAD Decision. The CAD determined the best route to provide water service to Mr. Lukach's property would be for the utility to extend the water main from Bote Drive by running the main down Market Street instead of the unimproved alleyway that Complainant proposed. The CAD Decision was based on several factors that were discussed in its determination. The CAD addressed the issue that Mr. Lukach raised regarding the property at 171 Bote Drive by noting that the customer does not have a street that runs on either side of the property and Indiana American was unable to run a service line across the customer's property. Therefore, the only available route to provide water service to the customer at 171 Bote Drive was via the alley right-of-way, which has now become a private drive. The CAD Decision indicated that Mr. Lukach's property differs from property located at 171 Bote Drive in that Market Street runs along the front of his property allowing for access to his property and the properties located to the south. The CAD Decision explained that Market Street serves as the most logical route for Indiana American to run a water main extension and noted if Indiana American installed water service in the alley right-of-way as requested and the properties to the south of Mr. Lukach requested water service from Indiana American, it would then have to

extend the water main from Bote Drive to Market Street. The CAD found that to allow for placement of the water main extension in the alley right-of-way as requested would not be considered good engineering and water utility practices. The CAD noted that as the original depositor for the main extension, Mr. Lukach would be subject to a refund and may be eligible for a revenue allowance if new customers connect to the water main where the extension has already been made. The CAD ultimately concluded Indiana American followed the applicable rules and regulations in determining the appropriate route for the requested extension of water service.

6. Commission Discussion and Findings. The Complainant in this Cause contacted Indiana American and requested that water service be extended to his property. Indiana American indicated that water service could be extended to Mr. Lukach's property. However, the parties have been unable to reach an agreement on the route of the water main extension.

In considering the issues presented by the parties to this appeal, we start with a review of the Commission's rules regarding main extension. 170 IAC 6-1.5-29 requires the utility to use good engineering and water utility practices in determining the route for all main extensions and sets forth several factors to be considered. Indiana American has argued throughout the CAD complaint process that it has used good engineering and water utility practices in determining to use Market Street as the route for the proposed water main extension. Mr. Lukach did not dispute Indiana American's assertion that it used good engineering and water utility practices in determining to run the water main extension along Market Street. Instead, Mr. Lukach argued that running a water main extension along an alleyway would not be against the rules that govern water main extensions and that Indiana American had previously done so when it provided water service to Mr. Lukach's neighbor at 171 Bote Drive.

The Commission notes that Mr. Lukach's situation is different from that of the property serviced from Bote Drive. The CAD Decision and the Record indicate that the customer located at 171 Bote Drive was provided service via the best possible route available. The Bote Drive customer does not have a street that runs on either side of the property. Dearborn Street at one time ran east of the Bote Drive customer's property, but was vacated by the Town of Porter in 1987. Indiana American determined the only available route to provide water service to the customer on Bote Drive was via the alley right-of-way, which has now become a private drive. It should also be noted the Bote Drive customer's water main extension terminates in front of the property with no right-of-way available for further extension to the south and no other customers to serve to the south of the property. In Mr. Lukach's situation, Market Street runs along the front of his property providing access to his property and the properties located to the south of his property. If Indiana American were to extend water service to Mr. Lukach's property via the alley right-of-way as he requested, it would preclude future water service being extended to the properties to the south of Mr. Lukach without an additional water main extension from Bote Drive running down Market Street past Mr. Lukach's property. The Commission finds that Indiana American used good engineering and water utility practices as set out in 170 IAC 6-1.5-29 in determining the route of the water main extension. Therefore, we find the CAD Decision was correct with respect to the route of the water main extension.

Mr. Lukach also argued that Indiana American discriminated against him by denying his request to run the water main extension down the alley right-of-way because it had done so for his neighbor on Bote Drive. The Record indicates Indiana American asserted that it has consistently applied existing rules and regulations in providing service to new customers. As discussed above, the CAD Decision found that Mr. Lukach's situation differed from the Bote Drive property and to run the water main extension down the alley right-of-way would not be considered good engineering and water utility practice. Therefore, the Commission finds no evidence that Mr. Lukach was discriminated against by Indiana American through its offer of service to his residence.

Mr. Lukach's appeal from the CAD Decision claimed that Indiana American placed an unjust financial burden on his request for water service through its determination of where the water main extension should be located. The Record shows Mr. Lukach asserted that there is a considerable cost difference of running the water main extension along Market Street instead of the alley right-of-way and all costs will be borne by him. The Record demonstrates that Mr. Lukach is concerned over the amount of the estimates for the extension of water service to his property, which he claimed have increased over a two year period from a range of \$7,500-\$9,000 to over \$14,000. Mr. Lukach also indicated he had concerns about being charged for an 8-inch main extension. In Indiana American's Answer, it noted that the estimates presented to Mr. Lukach were without the benefit of actual design, permitting, bidding of construction, and that the cost to Mr. Lukach would be the actual costs determined from completion of the work. Indiana American's Answer also indicated that Mr. Lukach would be responsible only for the cost of a 4-inch main extension that extends to the furthest point of his property on Market Street and Indiana American will bear the cost of any up sizing it may choose to do. The CAD Decision noted in regards to costs that Indiana American does not charge a tap fee and in accordance with 170 IAC 6-1.5-35 and 170 IAC 6-1.5-36, Mr. Lukach may be eligible for certain refunds or revenue allowances as the original depositor for the main extension should future connections be made to the water main.

While we understand Mr. Lukach's frustrations in regards to a fluctuating price, the Commission finds the CAD Decision was correct in addressing the issue of costs and notes that 170 IAC 6-1.5-31 sets out how the cost of the main extension is computed. The Commission also notes that unlike extending the main through the alleyway, Mr. Lukach will be eligible for refunds or revenue allowances by extending the main down Market Street where properties to the south of him may connect.

The last issue to be addressed is the timeliness of Mr. Lukach's appeal. Indiana American indicated its position that the substance of Mr. Lukach's complaint is nearly identical to prior informal complaints that he filed with the CAD which have been determined to be unjustified and that by simply re-filing the same complaint two years later he is circumventing the CAD appeals process. Indiana American noted in its Answer that the complaint initiated by Mr. Lukach in 2010 was decided in favor of Indiana American as illustrated by the Commission's letter of September 8, 2010 and any appeal should have been made at that time. We find the September 8, 2010 letter was not a determination by the Commission, but merely a summation of the status of on-going

negotiations between Indiana American and Mr. Lukach. The letter directed Mr. Lukach to contact Indiana American in order to start the process of water service main extension. The letter did not mention a determination or a method for appeal. However, the March 20, 2012 letter contained a specific determination by the CAD and cited to 170 IAC 16-1-5 as a method for appeal. Based on the evidence in the Record, the Commission finds that Mr. Lukach has filed a single complaint, which was addressed by the CAD's March 20, 2012 letter. Therefore, Mr. Lukach's appeal of the CAD Decision was timely.

In conclusion, the Commission finds that Indiana American has complied with the applicable rules and regulations in determining the route of the water main extension. While we are sympathetic to Mr. Lukach's situation, the Commission affirms the findings of the Consumer Affairs Division.

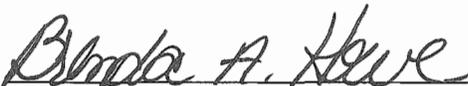
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The March 20, 2012 decision of the Consumer Affairs Decision in this Cause is affirmed in its entirety.
2. This Order shall be effective on and after the date of its approval.

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

APPROVED: OCT 24 2012

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



Brenda A. Howe
Secretary to the Commission