

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION



IN THE MATTER OF THE APPEAL OF THE)
 CONSUMER AFFAIRS DIVISION'S DECISION) CAUSE NO. 44784
 CONCERNING THE PROVISION OF)
 ELECTRIC SERVICE TO BRANDON) APPROVED: SEP 14 2016
 FLANAGAN)
)
)
 RESPONDENT: INDIANAPOLIS POWER &)
 LIGHT COMPANY)

ORDER OF THE COMMISSION

Presiding Officers:
Carol A. Stephan, Commission Chair
Marya E. Jones, Administrative Law Judge

This matter comes to the Indiana Utility Regulatory Commission (the "Commission") as an appeal from a decision of the Commission's Consumer Affairs Division (the "CAD"). On January 14, 2016, Brandon Flanagan ("Complainant" or "Mr. Flanagan") filed a complaint with the CAD alleging that Indianapolis Power & Light Company ("Respondent" or "IPL") overcharged him by estimating the amount due after his meter stopped working properly. On January 28, 2016, the CAD issued an informal decision (the "CAD Decision"). The CAD reviewed Mr. Flanagan's usage and found that Mr. Flanagan's meter had stopped registering usage for approximately one month, but that IPL made proper adjustments to that time period based on both previous and subsequent usage as permitted by the Indiana Administrative Code ("IAC"). Therefore, the CAD determined that Mr. Flanagan was being charged properly and no further adjustments to his bill were necessary. On January 29, 2016, Mr. Flanagan appealed the CAD Decision to the CAD Director. On April 13, 2016, the CAD Director's designee upheld the CAD Decision.

On April 21, 2016, Mr. Flanagan appealed the CAD decision to the Commission. The Commission held oral arguments at 10:30 a.m. on June 9, 2016, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Mr. Flanagan appeared *pro se*. IPL and the Office of Utility Consumer Counselor ("OUCC") appeared by counsel. Pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5, the record in this Cause is comprised 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. Mr. Flanagan, IPL, and the OUCC presented oral arguments in this matter.

Based upon the information contained in the CAD record and applicable law, the Commission now finds:

- 1. Notice and Jurisdiction.** Due, legal, and timely notice of the commencement of the public hearing in this Cause was given and published by the Commission as required by law. IPL is a public utility within the meaning of Ind. Code § 8-1-2-1(a). Mr. Flanagan initiated review of the CAD Decision in regard to his electric service billing provided by IPL. The Commission has authority to

review any decision of its CAD upon request pursuant to Ind. 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 the subject matter of this Cause.

2. **Background.** The facts in the record indicate that on October 8, 2015, a technician had been sent to Mr. Flanagan's home to complete a manual reading of his meter after IPL failed to receive a remote meter reading. The manual attempt was also unsuccessful and triggered a report which led to an order to change Mr. Flanagan's meter. IPL attempted to change the meter on October 12, 2015, but was prevented from completing a meter change because Mr. Flanagan's dog was outside in his yard. Mr. Flanagan was notified by IPL on October 21, 2015, that his meter was not functioning properly and that he needed to make arrangements to keep his dog inside so that IPL could replace the meter. The record indicates that the meter was successfully changed on October 22, 2015.

Mr. Flanagan asserted that following the meter change he examined his bills and determined that his usage was not what he would have expected given the fact that it was the end of the summer when his bills generally trended downward. Mr. Flanagan indicated that he called IPL on October 23, 2015, and spoke with an employee named Pamela Hardwick. He alleged that Ms. Hardwick advised that his billing statement dated September 7, 2015 to October 8, 2015 was estimated and that the estimation was based on the same month's usage in the prior calendar year. Mr. Flanagan indicated that he realized his billing statement dated October 8, 2015 to November 5, 2015, was also estimated because the meter had not been replaced for most of the billing cycle. Mr. Flanagan noted that Ms. Hardwick made an adjustment on the two billing cycles at issue by deducting \$37.84 from the total account balance. Mr. Flanagan believed this deduction was insufficient, so he stated that he called Ms. Hardwick repeatedly in an effort to resolve this matter; however, Ms. Hardwick was no longer available.

The record reflected that Mr. Flanagan next sent a letter to several IPL executives regarding his estimated bills. The letter reached an IPL employee named Angela. Mr. Flanagan stated that Angela contacted him and advised that an additional \$75.49 would be taken off his bill for a total adjustment of \$113.33 (\$37.84 + \$75.49). Mr. Flanagan stated that IPL never actually credited his bill in the amount of \$75.49 as advised by Angela. Mr. Flanagan stated that he called IPL again and another IPL representative advised him that no further adjustments would be made to his account.

Mr. Flanagan alleged that IPL acted contrary to 170 IAC 4-1-14(2) and was negligent in allowing his improperly working meter to remain in service for approximately 45 days before IPL attempted to change the meter on October 12, 2015. He stated that 170 IAC 4-1-14(2) allows a utility to charge its customers on an estimated basis when the customer's meter is slowed or stopped unless the utility negligently allows the stopped or slowed meter to remain in service. Further, Mr. Flanagan alleged that it was unreasonable for IPL to state that his dog prevented an IPL employee from coming onto his property without the IPL employee also attempting in some way to let Mr. Flanagan know of his presence. Mr. Flanagan's final argument was that IPL acted contrary to 170 IAC 4-1-13 in issuing customer bills that did not provide clear and conspicuous coding or other indication that the bills were estimated. Mr. Flanagan concluded that his charges should be waived and that he should not be held accountable for IPL's meter failure when IPL benefitted from his estimated bills and charged him more than his bill would have been had the meter worked properly.

3. **Standard of Review.** This Cause involves an appeal of issues that were considered and decided by the CAD pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5. Therefore, consistent with the Commission's procedures detailed in Ind. Code § 8-1-2-34.5, and authority as set forth in 170 IAC 1-1.1-5, the Commission's review in this Cause is based upon: (1) a review of the evidence presented to CAD by the parties; and (2) consideration of oral arguments by the parties at the hearing.

4. **Arguments Presented by the Parties.** At the June 4, 2016 hearing, Mr. Flanagan, IPL, and the OUCC presented oral arguments concerning the issues raised in this matter.

A. **Argument Presented by Complainant.** At the hearing, Mr. Flanagan stated that on October 21, 2015, an IPL representative called and requested access to his electric meter. Mr. Flanagan noted that the IPL representative advised him that IPL had been to his home on October 12, 2015 to change the electric meter, but could not gain access because Mr. Flanagan's dog was outside in his yard. Mr. Flanagan stated that he was immediately alarmed by this because he has an "indoor" dog, and if his dog was outside in the yard, he was at home. He stated that IPL could have gained access to his home had the representative knocked at his door as required by IPL's policies.

On October 22, 2015, an IPL representative again came to Mr. Flanagan's home. He asserted that the IPL representative did not knock as required by IPL's internal policies and that he knew the IPL representative was present because he heard a car door close. Mr. Flanagan stated that he questioned how IPL knew how much to charge for his electric service if his meter was not working. Mr. Flanagan stated that he called IPL and received no answers but was told that his meter would be tested. He argued that was a ridiculous course of action since the meter was broken. He stated that no one from IPL got back with him for a month. He stated that he called to follow-up on November 23, 2015, and was advised that \$37.84 had been deducted from his bill. Mr. Flanagan stated that he did not think that reduction was sufficient, so he called IPL consistently until he finally received a call back from an IPL employee named Angela in December 2015. He stated that Angela advised that his bill would be credited with an additional \$75.49, but this credit was never applied to his bill. Mr. Flanagan stated that he then filed this complaint with the Commission.

Mr. Flanagan argued that IPL did not have a right to estimate his electric service charges for the following reasons: a) IPL was negligent in allowing his broken meter to remain in service; b) IPL did not make a reasonable attempt to read his meter; and c) IPL did not have the right to charge him, even after estimating his billing statements because there was no clear and conspicuous notation on the billing statements to show that they were estimated. Mr. Flanagan stated that IPL's defense is that IPL used the word, "Adjusted," on one of his billing statements to indicate that it was estimated. Mr. Flanagan noted, however, that two billing cycles were involved in this matter and that the second bill bore no indication at all that it was estimated.

B. **Argument Presented by Respondent.** Counsel for IPL, Andrew Wells, argued that the Commission's CAD made an appropriate determination. Mr. Wells stated that the issue in this Cause was with Mr. Flanagan's meter and that IPL became aware of the issue in September or October of 2015. Mr. Wells stated that the meter was not faulty. He noted that Mr. Flanagan had a two-way meter and that it was the module sending the reading that was not operating properly. He noted that a

meter replacement is required when the module is not working properly, but that the meter still reads electricity. He also pointed out that because Mr. Flanagan never stated that he was not using electricity during the time period at issue in this Cause, he would have incurred electric service charges.

Mr. Wells indicated that IPL replaced the meter on October 22, 2015 because the module was not sending a proper signal. Consequently, the old meter required a manual read, but human error occurred in submitting that read. Mr. Wells stated that Mr. Flanagan's bill for the period September 7, 2015 to October 8, 2015 reflected a metered electric adjusted charge of \$113.42, based upon IPL's review of the previous year's same-month's usage to determine the adjusted electric charge. He stated that for the period October 8, 2015 to November 5, 2015, IPL billed electric charges of \$82.70. Mr. Wells stated that Mr. Flanagan subsequently called IPL to complain that the previous year's October metered electric adjusted usage was not a good indication of his current electric usage because there was more activity at Mr. Flanagan's home in the prior year than there was in October 2015. Mr. Wells noted that IPL cancelled the metered electric adjusted charge of \$113.42, and based the adjustment on Mr. Flanagan's then current usage in November 2015. Mr. Wells stated that IPL issued Mr. Flanagan a new metered adjusted electric charge of \$100.07.

Mr. Wells argued that once the new meter was in place and the human error confirmed for the manual read, IPL was able to make a more accurate determination of the metered usage for the period of September 7, 2015 to October 8, 2015. Mr. Wells stated that on January 8, 2016, the \$100.07 metered electric charge was cancelled and replaced with a metered electric adjusted charge of \$64.88. Mr. Wells stated that at the same time IPL also reviewed Mr. Flanagan's usage from October 8, 2015 to November 5, 2015, and adjusted the metered electric charge from \$82.70 as originally billed, to \$60.69.

Mr. Wells argued that IPL did all it was supposed to do in accordance with the Commission's rules. He noted that Mr. Flanagan was credited a total of \$70.55 for the two billing cycles covering the period from September 7, 2015 to November 5, 2015 once the new meter was in place. Mr. Wells argued that there was no record other than Mr. Flanagan's own representations that he was promised a credit of \$75.49 by an IPL representative. He noted, however, there may have been some miscommunication. Mr. Wells also noted that Mr. Flanagan incorrectly characterized his meter as "broken." Mr. Wells stated that there was no indication that the meter was ever broken. Rather, Mr. Wells noted that the module in a meter sometimes goes bad so that the reading may not be properly transmitted, but the electric use is still being read. He argued that IPL notices rather quickly when the module is not working properly and that these episodes typically last only a few weeks as was the case in this instance. He concluded that the issue with the module was discovered in a timely manner, that Mr. Flanagan was consistently consuming electricity during this period, and that it was improper for Mr. Flanagan to ask that payment of his electric usage during this time be waived. Mr. Wells added that the Commission has procedures in place to address circumstances like this so that IPL can reasonably determine what should be billed to a customer when there is an issue with a meter reading. Finally, Mr. Wells noted that IPL always labeled the bills to indicate that there had been an adjustment and that each such adjustment was clearly and conspicuously marked. Thus, IPL urged the Commission to uphold the CAD Decision and find Mr. Flanagan's complaint to be without merit.

C. Argument Presented by OUCC. Counsel for the OUCC, Lorraine Hitz-

Bradley, argued on behalf of the OUCC that this hearing probably would not have taken place if IPL had clearly and conspicuously marked Mr. Flanagan's billing statements as estimated. She stated that IPL is obligated to mark estimated billing statements as part of its tariff and that from the OUCC's perspective this is an obligation that IPL should continue to meet.

D. Complainant's Rebuttal Argument. Mr. Flanagan argued on rebuttal that IPL stopped receiving readings from his meter from September 7, 2015 through October 22, 2015, the date his meter was replaced. He noted that the readings took place over two billing cycles and that the second billing statement was not marked in any manner to show that it was estimated or that an adjustment had been made. He noted that IPL used the word, "Adjustment," in eight-point font on the first billing statement he received, and that the eight-point font was not clear and conspicuous. He stated that it was IPL's cost of doing business to have a properly working meter and that morally speaking, IPL should not have the right to charge customers when it failed to notify them of estimated charges even though the IAC allows utilities to bill estimated charges. Mr. Flanagan stated that IPL should be required to specifically follow the IAC.

5. Commission Discussion and Findings. The first issue in this Cause is whether Mr. Flanagan was overcharged by IPL when his meter failed to transmit his electric usage due to a failed module. Pursuant to 170 IAC 4-1-14(B), the utility may adjust the bill to the known date of the error or one year, whichever period is shorter.

The evidence presented by IPL demonstrates that Mr. Flanagan received a bill on October 12, 2015, with a metered electric adjusted charge of \$113.42, based on IPL's review of the previous year's same-month's usage. The record reflects that Mr. Flanagan subsequently contacted IPL to complain that the previous year's October electric usage was not a proper indication of his October 2015 electric usage based on the fact that there was more activity at his home in October 2014. IPL cancelled the metered electric adjusted charge of \$113.42, and based the adjustment on Mr. Flanagan's then current usage in November 2015, which led to a new metered adjusted electric charge of \$100.07.

The evidence further demonstrates that once the new meter was in place, IPL was able to make a more accurate determination of the metered usage for the periods of September 7, 2015 to October 8, 2015, and October 8, 2015 to November 5, 2015. This determination resulted in the \$100.07 metered electric charge being cancelled and replaced with a metered electric adjusted charge of \$64.88 for the period of September 7, 2015 to October 8, 2015. The record indicates that IPL also adjusted the metered electric charge for the period October 8, 2015 to November 5, 2015, from \$82.70 to \$60.69. Thus, IPL properly billed Mr. Flanagan pursuant to 170 IAC 4-1-14(B). Further, it appears that IPL went beyond the requirements of 170 IAC 4-1-14(B) by lowering the bill to reflect Mr. Flanagan's assertion that he had lower actual usage in October 2015 than in October 2014. Thus we find that Mr. Flanagan was not overcharged for his metered electric service, but was properly credited a total of \$70.55 for the two billing cycles at issue in this Cause once the new meter was in place.

The second issue in this Cause is whether IPL failed to comply with 170 IAC 4-1-13(a)(9) which requires that the bill indicate clearly and conspicuously that the meter reading was estimated. The facts in the record indicate that IPL estimated Mr. Flanagan's metered electric usage, and should have indicated that fact clearly and conspicuously on each of the billing statements for the affected

billing cycles as required by 170 IAC 4-1-13(a)(9). Furthermore, IPL's tariff states in item 27.1 Estimated Bills, that "[a]n estimated bill may be issued when an actual meter reading cannot be obtained for any reasons permitted under Commission Rule 13(d) [170 IAC 4-1-13(d)]. Any difference between the estimated bill and the Customer's actual usage will be adjusted in accordance with the next meter reading." According to the billing statements and usage history in the record, it appears the utility acted in accordance with this tariff provision regarding estimated usage. Thus, the meter readings for the billing cycles of September 7, 2015 to October 8, 2015, and October 8, 2015 to November 5, 2015, should have been listed clearly and conspicuously as "estimated" readings pursuant to 170 IAC 4-1-13(a)(9). Based on the evidence presented, we have concerns that IPL's labeling is not sufficiently clear and conspicuous. Therefore, we find that IPL shall adjust its billing statements to indicate in a clear and conspicuous manner to its ratepayers that a billing statement contains estimated electric meter charges.

Accordingly, we uphold CAD's determination that Mr. Flanagan was not overcharged for his metered electric service, but find that IPL must more clearly indicate on its bills when charges are estimated to better ensure understanding by its customers.

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

1. The CAD Decision that Mr. Flanagan was not overcharged for the two billing cycles at issue herein is affirmed by the Commission.
2. Within 20 days of this Order, IPL, in collaboration with the OUCC, shall file with the Commission under this Cause, a plan of action describing how IPL intends to clearly represent on customers' bills that the bill has been estimated. Additionally, IPL should include the timeframe for implementation.
3. The Order shall be effective on and after the date of its approval.

STEPHAN, HUSTON, AND ZIEGNER CONCUR; WEBER ABSENT:

APPROVED: SEP 14 2016

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



Mary M. Becerra
Secretary of the Commission