

ORIGINAL

STATE OF INDIANA

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober	√		
Ziegner	√		

INDIANA UTILITY REGULATORY COMMISSION

APPEAL BY WAYNE CLARK OF THE)
CONSUMER AFFAIRS DIVISION'S) CAUSE NO. 45366
DECISION IN COMPLAINT 127725)
CONCERNING THE BILLING OF WATER) APPROVED: OCT 14 2020
AND SEWER SERVICE BY COBBLESTONE)
CROSSING APARTMENTS)

ORDER OF THE COMMISSION

Presiding Officers:

David L. Ober, Commissioner

Brad J. Pope, 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 21, 2019, Wayne Clark called CAD to file a complaint (“Complaint”) against his landlord, Cobblestone Crossing Apartments (“Cobblestone”), regarding its provision of water and wastewater services and related billing practices. On January 23, 2020, the assigned CAD Analyst provided her Resolution, which closed the Complaint as “substantiated” and determined that Cobblestone overbilled Mr. Clark \$16.04 in water and wastewater charges from July 2019 through December 2019. The CAD Analyst also found that Cobblestone’s billing statements were missing certain information required by the Commission’s sub-billing rules under 170 IAC 15 and Ind. Code § 8-1-2-1.2

On January 29, 2020, Mr. Clark requested a CAD Director Review of the CAD Analyst’s Resolution in accordance with 170 IAC 16-1-5(d). After discussing the Complaint with Mr. Clark and Cobblestone, the CAD Director’s Designee issued a Director Review of the CAD Analyst’s Resolution (the “CAD Decision”) on March 17, 2020. The CAD Decision affirmed the CAD Analyst’s Resolution but found that Cobblestone over-collected \$67.11 from Mr. Clark rather than \$16.04, as initially determined.

On March 24, 2020, Mr. Clark initiated an appeal for Commission review of the CAD Decision regarding his Complaint (“Appeal”) pursuant to 170 IAC 16-1-6(a). On April 13, 2020, the CAD Record¹ corresponding to Mr. Clark’s Appeal was uploaded to the Commission’s online case management system as a formally docketed proceeding.

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 set this matter for a Public Hearing on June 24, 2020, at 1:30 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. On June 16, 2020, the

¹ The CAD Record consists of the information considered by the CAD Director in making the Director’s Decision, including written and verbal correspondence by and between CAD, Mr. Clark, and Cobblestone.

Presiding Officers continued the Public Hearing to July 30, 2020, at 2:30 p.m. at Mr. Clark's request. A docket entry was issued on July 24, 2020, advising that in accordance with Indiana Governor Holcomb's Executive Orders concerning the COVID-19 pandemic, the Public Hearing would be conducted via teleconference and providing related participation information. Mr. Clark and the Indiana Office of Utility Consumer Counselor appeared and participated at the Public Hearing via teleconference. Cobblestone failed to appear.

Based on the applicable law and the record before the Commission, the Commission finds:

1. Commission Jurisdiction. Under Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5, any individual or entity may informally complain to CAD about any matter within the jurisdiction of the Commission. Under Ind. Code § 8-1-2-34.5(b), the Commission has authority to review any decision of the CAD upon the request of an affected party. Mr. Clark initiated this Appeal concerning Cobblestone's provision of water and wastewater services and related billing practices. Cobblestone is a landlord sub-billing its tenants, including Mr. Clark, for water and wastewater utility services and is, therefore, subject to the Commission's jurisdiction under Ind. Code § 8-1-2-1.2 and the Commission's rules under 170 IAC 15. Accordingly, for purposes of this proceeding, the Commission has jurisdiction over the parties and the subject matter of this Cause.

2. Standard of Review. This proceeding involves an appeal of issues that were considered and decided by CAD pursuant to Ind. Code § 8-1-2-34.5 and 170 IAC 1-1.1-5. The CAD Record consists of information supplied by the parties. Therefore, consistent with the Commission's authority as set forth in Ind. Code § 8-1-2-34.5, 170 IAC 1-1.1-5, and 170 IAC 16-1-6, the decision in this proceeding shall be based upon: (1) a review of the CAD Record; (2) consideration of any arguments made by the parties based on the CAD Record; and (3) whether any clear errors were made in rendering the CAD Decision.

3. The CAD Record.

A. **Complaint.** On November 21, 2019, Mr. Clark called CAD to file a Complaint regarding Cobblestone's provision of water and wastewater services and related billing practices. Mr. Clark alleged that Cobblestone overbilled him for water and wastewater services because: (1) the quadrupled increase in water and wastewater charges from July 2019 through December 2019 did not reflect his consistent household size and usage; and (2) he requested actual bill copies to verify his usage but did not receive them. The Complaint was then assigned to a CAD Analyst to review.

B. **The CAD Analyst's Investigation and Resolution.** On November 26, 2019, the assigned CAD Analyst contacted Cobblestone and explained the details of Mr. Clark's Complaint. She stated that the customer is disabled and is frustrated with Cobblestone's unwillingness to be transparent with his utility usage. The CAD Analyst then requested the last 12 months of customer bills and the correlating master bills sent to Cobblestone by the water utility, Indiana American Water Company ("Indiana American").

On December 23, 2019, Mr. Clark called CAD and requested an update on the Complaint. The CAD Analyst stated that she had not received all the information required from Cobblestone and that she would call him after the Complaint was investigated further.

On December 23, 2019, December 31, 2019, January 3, 2020, and January 10, 2020, the CAD Analyst followed up with Cobblestone again requesting copies of Mr. Clark's bills and the master bills. The CAD Analyst cited 170 IAC 15-2-1, which provides that landlords shall retain all bills received from the utility and all sub-bills sent to tenants for a period of not less than one year.

On January 13, 2020, Cobblestone's Assistant Property Manager emailed the requested information to the CAD Analyst. Attached to the email were Mr. Clark's water and wastewater bills for the period March 15, 2019 through December 27, 2019, and ten invoices from Indiana American to Cobblestone for services rendered from January 26, 2019 through November 26, 2019.

The CAD Record states that Mr. Clark spoke with the CAD Analyst on January 14, 2020. During the call, Mr. Clark stated that it is critical to see if Cobblestone charged for water while no one lived there and that he was being charged for water leaks in the apartment building. He also voiced his frustration with Cobblestone's and CAD's handling of his disability.

On January 15, 2020, the CAD Analyst emailed Cobblestone regarding the information Cobblestone provided on January 13, 2020. The CAD Analyst explained that Cobblestone had outstanding requests including the master sewer bills and the actual statements sent to Mr. Clark. The CAD Analyst also requested the meter readings while the apartment was vacant after Mr. Clark moved out. Cobblestone responded that same day with Mr. Clark's actual billing statements.

On January 16, 2020, the CAD Analyst called Cobblestone who stated that Mr. Clark had moved out but did not give notice he was leaving until January 2, 2020. Cobblestone stated that since that time, the meter registered two gallons of water and that the meter was being tested. On January 17, 2020, Cobblestone followed up with the City of Terre Haute's wastewater bills and stated that Mr. Clark would not be charged by Cobblestone for additional water and wastewater services after the final bill on December 26, 2019. On January 21, 2020, Mr. Clark called for an update but did not leave a message when he was transferred to the CAD Analyst's voicemail.

On January 23, 2020, the CAD Analyst provided her Resolution to Mr. Clark and Cobblestone, ultimately finding the Complaint to be "substantiated." She stated that after reviewing the Complaint, billing statements, meter reads, and Indiana American's master billing statements, an amount of \$16.04 was over-collected from Mr. Clark. She stated that Cobblestone should see an adjustment on its final billing statement, or if a refund is due, it will be issued at that time. She also explained that the Commission does not have authority over leak adjustments and that Indiana American began billing for usage – rather than for fixed charges – in July. Attached to the email was a copy of the spreadsheet used to calculate the amount over-billed and another document that can assist sub-billing moving forward. Finally, she stated that Cobblestone's billing statements did not contain the correct language pursuant to 170 IAC 15 and Ind. Code § 8-1-2-1.2, copies of which were also attached.

C. The CAD Director's Designee's Review. On January 29, 2020, Mr. Clark appealed the CAD Analyst's Resolution. The CAD Analyst called Mr. Clark to determine exactly what he was appealing since the Complaint was found to be substantiated. According to the CAD Record, Mr. Clark wanted to know why it took so long to obtain meter readings from Cobblestone, and why it took CAD so long to get the information and process it. He believed he was owed more than \$16.04 and that Cobblestone is acting as a utility because it is making a profit. Notifications of the Appeal were sent to Cobblestone on February 10, 2020.

On February 17, 2020, the CAD Director's Designee called Cobblestone and spoke with its Assistant Property Manager. She asked how Cobblestone billed for the months that showed zero usage, asked for the November 2019 water billing statement, and asked when Mr. Clark left the premise. Cobblestone stated that Mr. Clark vacated on January 1, 2020. Cobblestone followed up with the requested information later that day.

D. The CAD Decision. On March 17, 2020, the CAD Director's Designee provided the CAD Decision to Mr. Clark and Cobblestone. The CAD Decision explained that Mr. Clark disagreed with the refund amount provided in the CAD Analyst's Resolution and questioned the timeliness of the complaint process and the amount of time Cobblestone was permitted to provide requested documentation to CAD. As previously stated, the CAD Decision affirmed the CAD Analyst's Resolution and found Mr. Clark's Complaint "substantiated."

The CAD Decision explained that after reviewing the master billing statements from Indiana American and Cobblestone's sub-bills to Mr. Clark, Cobblestone over-collected \$67.11 from Mr. Clark for the period in question rather than the \$16.04, as initially determined. As a result of this over-collection, the CAD Decision stated that Mr. Clark's remaining past-due balance for water and wastewater charges was \$385.61.

The CAD Decision then addressed the timing of the CAD Analyst's Resolution. The CAD Decision cited 170 IAC 16-1-5(c)(5), which provides that CAD will "Provide a decision to the customer and the utility within 30 days of the complaint submission date, except that if the complexity of issues or circumstances involved in a complaint require additional time, consumer affairs shall notify parties within 30 days of the complaint submission date that additional time is required." The CAD Decision explained that analyzing sub-billing complaints can be a complex process, which may require additional time. When reviewing the Complaint, the CAD Analyst advised Mr. Clark of the status of his Complaint within 32 days. However, he was also advised of the Complaint status on January 3, 2020, January 14, 2020, and January 21, 2020.

The CAD Decision next addressed Mr. Clark's contention that he was only provided seven days to submit information to CAD regarding his Complaint. 170 IAC 16-1-5(a) states, "A complaint must be submitted under this section within seven days of the date the customer receives the utility's proposed resolution. At its discretion, consumer affairs may waive the time limitation for good cause, including failure to receive timely notice of proposed resolution. A complaint shall be considered submitted upon receipt by consumer affairs." The CAD Decision noted that Mr. Clark submitted his Complaint in a timely manner after he received his November 2019 billing statement, and CAD did not request additional information from him.

The CAD Decision then responded to Mr. Clark's concern that CAD allowed Cobblestone more than 14 days to provide required documentation. The CAD Decision explained that when analyzing a sub-billing complaint, the analyst acquires and reviews specific documentation from landlords, property managers, and utility companies including customer billing statements, utility master billing statements, and detailed rate calculations. After collecting the billing information, the analyst calculates the billing statements in question to determine whether the customer was correctly billed. The CAD Decision cited 170 IAC 16-1-5(c)(3), which states, "To the extent that consumer affairs may deem necessary to ensure the accuracy and completeness of the consumer affairs record, meet with the parties or require additional information or documentation from the parties, to which parties must respond within 14 days unless otherwise directed by consumer affairs." As such, both parties are not necessarily limited to the 14-day requirement.

Finally, the CAD Decision concluded that Mr. Clark should be credited \$67.11, leaving an outstanding balance of \$385.61 with Cobblestone. Due to the complexity of the Complaint, the CAD Decision determined that the additional time spent reviewing the Complaint was in accordance with 170 IAC 16-1-5(c)(5).

E. Appeal to the Commission. On March 24, 2020, Mr. Clark requested that the CAD Decision be appealed to the full Commission pursuant to 170 IAC 16-6-1(a). On April 13, 2020, this matter was established as a formally docketed proceeding, and the CAD Record was disclosed to the parties. The proceeding was subsequently noticed for a Public Hearing to be held on June 24, 2020, but was later continued to July 30, 2020, at Mr. Clark's request.

4. Public Hearing. At the July 30, 2020 Public Hearing in this Cause, Mr. Clark and the OUCC appeared via teleconference. During oral argument, Mr. Clark explained that he had previously suffered a traumatic brain injury after which he was in a mild coma. He stated that this injury resulted in permanent disability and that it now takes him a longer time to process information. Regarding his Complaint, Mr. Clark stated that his water bill approached \$200 during the period in question, which was much higher than his previous average. He also stated that the proportion between his water and wastewater charges was erratic and that he believed there was a water leak when he moved into the apartment, although it was never discovered. Mr. Clark also thanked the OUCC for its help during the pendency of this review.

5. Commission Discussion and Findings. The CAD Record consists of multiple emails and telephone conversation summaries between Mr. Clark, the CAD Analyst, the CAD Director's Designee, and Cobblestone regarding the details of the sub-billing and utility master billing calculations. Upon review of the CAD Record and consideration of the issues presented, we will first focus on whether the CAD Decision made an error in determining that Cobblestone inaccurately sub-billed Mr. Clark for water and wastewater services pursuant to Ind. Code § 8-1-2-1.2 and 170 IAC 15-2. Ind. Code § 8-1-2-1.2(l)(1) provides that a landlord that separately bills tenants for water or wastewater service shall ensure that the total charge for the water or wastewater disposal services does not exceed what the landlord paid the water or wastewater utility for the same services, less the landlord's own use. For water service, 170 IAC 15-2-2(a)(1) states,

If the utility charges the landlord for usage measured by a master meter, upon receipt of a utility's water bill, the landlord shall divide the total net charges for water service, plus applicable tax, by the total amount of water master metered to obtain an average cost per unit volume. The average water cost per unit volume shall then be multiplied by the estimated or actual unit volume consumed by each dwelling unit. In no event shall a landlord charge its tenants more than the total net charge for water service.

After reviewing the CAD Decision's computations for the master billing, conversion factor for water and wastewater, customer usage, and customer charges, we concur with the CAD Director's Designee's calculation of the over-collected amount. While Mr. Clark's appeal of the CAD Analyst's Determination indicated general dissatisfaction with the determined amount over-billed, the March 24, 2020 appeal of the CAD Decision did not identify or allege any clear error. We are unable to identify any clear error made in the CAD Decision, and we find that the CAD Decision properly calculated the amount over-collected from Mr. Clark by Cobblestone. Therefore, the CAD Decision is affirmed in this regard.

We next address whether the CAD Decision made an error in determining a timely review was conducted in accordance with 170 IAC 16-1-5. While Mr. Clark's January 29, 2020 appeal of the CAD Analyst's Resolution indicated general dissatisfaction with the timeliness of resolving his Complaint, his Appeal of the CAD Decision did not identify or allege any clear error. The CAD Decision provided an analysis related to three different aspects of compliance with 170 IAC 16-1-5, which may have affected the review timeline: 1.) 170 IAC 16-1-5(c)(5) requires notice to Complainant if more than 30 days is required to investigate a complaint; 2.) 170 IAC 16-1-5(a) requires that a complaint be submitted within seven days of the utility (or, in this case, a landlord) informing the customer of its proposed resolution; and 3.) 170 IAC 16-1-5(c) requires that the parties respond within 14 days unless otherwise directed by CAD.

The only discrepancy identified in the CAD Decision was that under 170 IAC 16-1-5(c)(5), Mr. Clark was notified within 32 days that additional time was required to investigate the Complaint. We consider this deviation de minimis because it is not a significant amount of time beyond what our regulations prescribe, it did not impact the outcome of the review, and it has no legal remedy. We commend CAD for its diligence in seeking the required information from Cobblestone during the pendency of Mr. Clark's Complaint and for maintaining a detailed and systematic record of all communications between the parties. We also note that the Commission lacks jurisdiction over water leaks.

For the foregoing reasons, we affirm the CAD Decision in its entirety. Furthermore, Cobblestone is directed to submit a copy of its tenant sub-billing template, which includes computations of total net charge for water and wastewater services, to ensure compliance with Ind. Code § 8-1-2-1.2 and 170 IAC 15. This submission shall be made within 30 days of the date of this Order as a compliance filing under this Cause.

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

1. The March 17, 2020 CAD Decision in this Cause is affirmed consistent with the findings in this Order.

2. Cobblestone shall submit a copy of its tenant billing template for water and wastewater services as a compliance filing under this Cause within 30 days of the date of this Order.

3. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: OCT 14 2020

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

Mary M. Schneider
Secretary of the Commission