

FILED

June 1, 2017

INDIANA UTILITY
REGULATORY COMMISSION

From: Kelly Feiock [<mailto:kellyfeiock@gmail.com>]
Sent: Tuesday, May 23, 2017 12:43 PM
To: Atterholt, James <JAtterholt@urc.IN.gov>
Cc: URC General Counsel (URC) <URCGeneralCounsel@urc.IN.gov>; Beth Heline <BEHeline@urc.in.gov>
Subject: IURC Appeal of Complaint # 118290

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

May 23, 2017

Dear Mr. Atterholt,

I have attached my appeal to IURC regarding complaint # 118290. The attachment details my complaint against Duke Energy, but in this email I wish to express my disappointment in the IURC staff. This appeal could have been avoided had they understood 170 IAC 4-9.

Lisa Shoemake repeatedly argued with me that the only notification required by Duke was a legal notice in the local paper. She didn't know anything about personal contacts or written letters. She also argued that Duke may cut whatever is necessary. She didn't know anything about consent for trimming more than 25% of a tree's canopy. Finally, she seemed to be unaware that utility companies must respond to customer's complaints.

Once she overruled my appeal, it went on to Kenya McMillin, who repeatedly asked me to repeat dates and confirm information. She kept confusing my property details and complaint with a neighbor who had also filed a complaint. In her response to my appeal, she repeatedly lists incorrect dates that don't apply to me.

In my opinion, IURC is as much to blame as Duke. Why would or should Duke follow rules that your own employees don't even know about? I hope you will see this as a learning opportunity for all involved.

Sincerely,

Kelly Feiock

Kelly Feiock
2763 Mount Tabor Rd., New Albany, IN 47150

Mr. James Atterholt
Indiana Utility Regulatory Commission
101 West Washington Street, Ste. 1500 East
Indianapolis, IN 46204-3419

RE: Appeal of Complaint #118290

May 23, 2017

Introduction: I, Kelly Feiock, am the owner and resident of the property located at 2763 Mount Tabor Road., New Albany, IN 47150. On August 11, 2016, I came home to find the trees on the Mount Tabor Road side of my property (I live on a corner lot) were severely cut. I immediately called Mike Blackford of Townsend Tree Service and Duke Energy Vegetation Management. Neither answered, so I left messages on both of their voicemails; I never received a response from either. I am upset that I wasn't properly notified of the trimmings, my trees were severely trimmed and nobody returned my calls to discuss what happened. As of this date, neither party has yet to contact me.

Neither Townsend Tree Service nor Duke Energy followed 170 IAC 4-9 regarding vegetation management standards for electric utilities.

Per 170 IAC 4-9-4 Notice requirements for routine vegetation management
Sec. 4.

(a) At least two (2) calendar weeks prior to engaging in routine vegetation management, the utility must provide notice to customers and property owners whose vegetation will be subject to the vegetation management except under the following circumstances:

(b) A utility must provide notice to a customer in the following manner:

(1) At least one (1) attempt to contact must be:

(i) in person; or

(ii) via telephone call

(2) At least one (1) attempt to contact must include written notice.

NOTE: I received one letter, but I did not receive contact in person or by telephone.

(d) Written notice will also include the following:

(7) A website address and telephone number for customers to obtain the name of the contractor, if used by the utility, that will deliver the in person notice or conduct vegetation management.

NOTE: There was no website address on the letter.

(f) A utility must provide notice to a property owner by publishing notice in at least one (1) newspaper of general circulation in the county in which the property is located. The notice must include the following:

(5) The estimated date that vegetation management is scheduled to occur.

NOTE: Although Duke did publish legal notice in the local paper, it did not correspond with the date of trimming. The legal notice was posted June 22, 2016 stating that trimming would occur in the next two to six weeks. The trimming took place on August 11, 2016, seven weeks later.

Per 170 IAC 4-9-7 Vegetation management standards

Sec. 7. (b) There is not a uniform clearance requirement, but line clearances should take into consideration the:

- (1) characteristics of the locality;
- (2) electrical facility; and
- (3) health of the tree.

(c) Except in situations of emergency or public safety, if a tree would have more than twenty-five percent (25%) of its canopy removed, the utility or its agent or contractor shall do one (1) of the following actions:

- (1) Obtain consent from the property owner.
- (2) If the property owner and utility or its agent or contractor cannot mutually agree on how the tree can be trimmed to provide sufficient clearance in order to maintain reliable electric service, the utility or its agent or contractor shall take one (1) of the following actions:
 - (A) Remove the tree, at the utility's expense, as long as the utility has secured the requisite easements to allow its personnel onto the owner's property.
 - (B) Inform the customer that it will need to make non-ANSI standards cuts in order to provide clearance.

NOTE: More than 25% of canopy was removed from several trees without my permission. The trees were healthy, yet their tops were lopped off. Duke has claimed this was necessary for public safety, but I will remind them of the definition of public safety, which is posted below. None of these trees qualified as a public safety hazard.

170 IAC 4-9-2 Definitions

Sec. 2. The following definitions apply throughout this rule:

(9) "Public safety situation" means the following:

- (A) The existence of a vegetation condition that could reasonably be expected to cause imminent physical harm to electrical equipment necessary for the provision of electric service, including the following:
 - (i) Trees that are unstable to the point of representing a danger to utility equipment, facilities, or personnel in the course of repairs to said equipment or facilities due to disease, damage, or soil erosion. Personnel may include, but is not limited to safety workers such as fire, police, emergency medical personnel, utility line and repair crews.
 - (ii) Trees that lean to a degree that they can touch power lines.
 - (iii) Trees that have burn marks or other indicators that they have previously touched a power line.
- (B) A condition in vegetation unrelated to normal growth that would result in contact with power lines or high voltage equipment and cause imminent physical harm to the public if not immediately mitigated.

NOTE: None of these examples apply to my trees.

PER 170 IAC 4-9-10 Dispute resolution process after vegetation management

Sec. 10. (a) A customer may contact the utility regarding vegetation management on the customer's premises after the vegetation management occurred if one (1) of the following occurs:

- (1) The utility failed to provide the notice required under section 4 of this rule.
- (2) The utility engaged in vegetation management outside the scope of an agreement between the customer and the utility.
- (3) The utility did not have authority to enter the customer's property.
- (4) The utility failed to follow the vegetation management pruning standards required by the commission or by the utility's own vegetation management policy.
- (5) Another reason permitted by law.

NOTE: Duke did not provide notice in person or by telephone. The notice it provided in writing did not adhere to 170 Indiana Administrative Code 4-9-4. Duke allowed more than 25% of my tree canopy to be cut without my permission. Duke was on my property without my consent and without a prescriptive easement.

(b) A utility must respond within three (3) business days of receiving a customer's inquiry or dispute:

- (1) in person;
- (2) via telephone call; or
- (3) in writing.

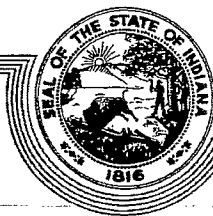
NOTE: I contacted Duke Energy and Townsend Tree Service the same day the trees were cut, August 11, 2016. Neither company responded to my voice mails.

Unless the hearings will take place in Floyd County, I will not attend in person. I am willing to provide any additional documentation as needed.

Sincerely,

Kelly Feiock

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3419

<http://www.in.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

April 28, 2017

Kelly Feiock
2763 Mount Tabor Rd.
New Albany, IN 47150

Dear Mr. Feiok,

Thank you for contacting the Indiana Utility Regulatory Commission's (Commission), Consumer Affairs Division (CAD) regarding Duke Energy Indiana, LLC. As you requested an appeal to the CAD Director, I have reviewed Complaint # 118290 and have made a determination based on the facts presented in the complaint. A copy of my decision is included with this letter for your records.

If you do not agree with my decision, you may appeal in writing directly to the Indiana Utility Regulatory Commission within twenty (20) days of receipt of my decision. An Administrative Law Judge from the IURC will mail you the date and time of a hearing regarding the appeal. As the appealing party, you may attend and participate in this hearing. Any subsequent dates to appear will be discussed at the initial hearing. If you do not attend the hearing, the case may be dismissed, unless you have communicated to the Commission that you prefer to submit a written statement detailing your complaint.

If you have any questions about this process, please contact our General Counsel, Beth E. Helene, at 317-232-2092 or BEHelene@urc.in.gov.

Best Regards,

Kenya McMillin
Kenya McMillin

Director, Consumer Affairs
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 E
Indianapolis, IN 46204
1-800-851-4268 ext. 291
kmcmillin@urc.in.gov

INDIANA UTILITY REGULATORY COMMISSION

DIRECTOR REVIEW OF CONSUMER AFFAIRS DIVISION ANALYST'S RESOLUTION

Director Review# 2016-14

To: Kelly Feiock
2763 Mount Tabor Road
New Albany, IN 47150

From: Kenya McMillin
Indiana Utility Regulatory Commission
101 West Washington St., Suite 1500 E.
Indianapolis, IN 46204

Copy: Duke Energy
Attn: Melissa Coffman
1000 E. Main St.
Plainfield, IN 46168

Complaint #; Kelly Feiock vs. Duke Energy

Pursuant to 170 IAC 16-1-5, the Director of the Consumer Affairs Division of the Indiana Utility Regulatory Commission has fully reviewed the Consumer Affairs Analyst's resolution regarding this complaint, and hereby reverses this resolution in part for the following reason:

- ☐ That the facts alleged in the complaint fail to state a violation under any statute, administrative rule or Commission Order governing the provision of utility services in the State of Indiana.
- ☒ That under the facts presented, the respondent utility appears to be in violation of 170 Indiana Administrative Code 4-9-10 (b) in that it did not contact Mrs. Feiock within three (3) business days of receiving the her dispute.
- ☐ Other _____

Background:

According to Duke Energy, the utility placed a door hanger at the customer's property on July 5, 2016. However, Ms. Feiock states she didn't not receive a door hanger in July 2016. Duke Energy provided the Director of CAD the log that dates the initial door hanger being provided on July 5, 2016 in accordance to 170 Indiana Administrative Code 4-9-2 (7) (B). A copy of the log is included in this letter. Duke Energy's notice of vegetation management to Ms. Feiock is in accordance with 170 Indiana Administrative Code 4-9-4 (b) 1-2.

In addition to the door tag, Ms. Feiock stated she was mailed a letter from Duke Energy dated July 13, 2016. Initially Duke Energy informed the CAD Director that they didn't mail such letter. After a copy of the letter was provided to Duke Energy, the CAD Director was advised that the letter was not mailed, but included in the pocket of the door hanger. When questioned as to why the date of the letter and door hanger were two different dates, Duke Energy stated the letter may have been predated prior to delivering it to Ms. Feiock. Due to the conflicting evidence as to


when the door hanger and letter was left, CAD cannot affirmatively say the customer never received the door hanger.

After notice was provided, vegetation management for Ms. Feiock's property started on July 20, 2016. According to 170 Indiana Administrative Code 4-9-7 (c) (1), the utility was not required to obtain customer consent, because the tree trimming was due to public safety. Ms. Feiock contacted Duke Energy on July 20, 2016 at the number provided on the letter to dispute the trimming. She stated Duke Energy never returned her phone call. Duke Energy is required to contact the customer within three (3) business days of receiving the customer's dispute in pursuant to 170 Indiana Administrative Code 4-9-10 (b). Duke Energy does not have record of returning Ms. Feiock's telephone call. As a result, Duke Energy is in violation of 170 Indiana Administrative Code 4-9-10 (b).

The 170 Indiana Administrative Code 4-9-3 (a) and (b) states, the utility is required to provide the customer a copy of the easement or public right away document upon request of the customer within five (5) business days of the customer's receipt of the notice prior to vegetation management. Ms. Feiock contacted Duke Energy on July 20, 2016, which was fifteen (15) days after the door tag was left on her door, although Ms. Feiock maintains she did not receive a door hanger from Duke Energy in July 2016. Duke Energy attempted to contact Ms. Feiock as a result of her filing a complaint with CAD. After multiple unsuccessful attempts to reach her, Duke Energy left Ms. Feiock a second door hanger on September 7, 2016. Ms. Feiock confirmed that she received the second door hanger. The door hanger stated if Raymond Goodwin, Townsend Tree Service's General Foreman, didn't hear from her, he would assume Ms. Feiock is "ok with the work that will be performed." Vegetation management should not occur while a dispute is pending in CAD. As of now, Duke Energy has stayed further tree trimming until after the complaint is closed. Duke Energy has agreed to meet with Ms. Feiock before trimming the additional trees on her property.

Conclusion:

Based on the information provided, the analyst's decision that there was not a rule violation is reversed in part. Duke Energy did not contact Ms. Feiock after the trees were trimmed in accordance with 170 Indiana Administrative Code 4-9-10 (b). The CAD doesn't have authority to require Duke Energy to compensate Mrs. Feiock for such violation. Outside of this rule, Duke Energy did not violate the rules that Ms. Feiock cited in her complaint to the Attorney General's Office that was forward to CAD. The CAD does recognize there were opportunities for Duke Energy to better communicate with Ms. Feiock. The CAD recommends that Duke Energy revisit the execution of its internal process as it relates to communication, documentation, record keeping, and tracking of inbound and outbound customer calls relating to vegetation management.



Kenya McMillin

Director, Consumer Affairs Division

Date: 4/28/17

155. 7/5/16		DH		1954	Mount Tabor Rd	New Albany
Comments						
156. 7/5/16		DH		2799	Mount Tabor Rd	New Albany
Comments						
157. 7/5/16		DH		2795	Mount Tabor Rd	New Albany
Comments						
158. 7/5/16		DH		2787	Mount Tabor Rd	New Albany
Comments						
Contact Date(s) & Time	Structure/ Tower# if app.	IP/DH/P/M	Phone # Called (if available)	House #	Street/Road	City
159. 7/5/16		DH		2773	Mount Tabor Rd	New Albany
Comments						
160. 7/5/16		DH		2767	Mount Tabor Rd	New Albany
Comments						
161. 7/5/16		DH		2763	Mount Tabor Rd	New Albany
Comments						
162. 7/5/16		DH		3601	Mount Tabor Rd	New Albany
Comments						