PUBLIC SERVICE COMMISSION: Service rules of utility; right to stop service because of delinquent bill.

March 8, 1944.

Opinion No. 24

Mr. J. B. Bailey, Director
Public Utility Tariffs,
Public Service Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in response to your recent request for an opinion as to the legality of a rule submitted by a public utility to the Public Service Commission of Indiana for its approval. The proposed rule is as follows:

"5.3 Company reserves the Right to discontinue Supply.

(a) The Company shall have the right to discontinue the supply of electrical energy without notice, and to remove any of the property of the Company upon the Customer's premises without legal process, for any of the following reasons:

(A) To facilitate repair.

(B) For non-payment of any bill for electric service when past due whether such service was used under the contract for such premises or under any other electric service contract between the Customer and the Company. For non-payment of any past due bill for electric service due the Company by any member of customer's household.

(C) For interference with any of the Company's meters, appliances, supply conductors, or any connections thereto.

(D) For non-compliance with the published rules on Customer's wiring, etc., or with the terms of the contract."
(E) Misrepresentation of facts at time of application for service.

"Such discontinuance shall not, however, invalidate any of the covenants of the contract; and the company shall have the right to enforce any contract notwithstanding such discontinuance."

Then you further say:

"Your particular attention is called to the portion of the rule which we have emphasized. We would like your official opinion as to the lawfulness of that portion of the rule, together with your opinion as to the lawfulness of the other portions of this same rule."

It is quite generally recognized that both privately owned utilities and municipal utilities must be afforded some reasonable method of enforcing the collection of their bills for service, and that service to a customer may be discontinued for default in the payment of a bill especially when there is no good faith dispute about the account.

Rushville Cooperative Tel. Co. v. Irvin (1901), 27 Ind. App. 62;
Dodd v. Atlanta (1922), 154 Ga. 33, 113 S. E. 166.

One reason for the necessity of some measure which will reduce to a minimum uncollected bills due a utility, is that unpaid accounts are charged by the utility to its expense and are paid finally by the other subscribers in their bills.

Rules have been approved by the commission which require advance payment for a period of service.

In Re Tri-County Teleph. Co., P. U. R. 1915 A. 129 (Indiana Commission);
Rushville Cooperative Tel. Co. v. Irvin, supra.

The rules and standards for service fees of electric utilities in Indiana effective July 15, 1942, provide in rule 21, that the utility may require from any customer or prospective customer, subject to the approval of the commission, a reasonable cash deposit to insure the payment of bills. There are
similar provisions in the rules of the gas and water utilities. A penalty for non-payment may be added to the bill. Re: Elkhart Water Works No. 8370, April 2, 1926 (Indiana Commission). Under some circumstances a credit statement may be demanded before service is furnished.


In some States, depending upon the statute or the charter of the utility, a utility acquires a lien upon the premises for unpaid accounts and may discontinue service until its bill is paid although the account may have been originally incurred by a former tenant or the owner of the premises.

Atlanta v. Burton (1892), 90 Ga. 486, 16 S. E. 214; 
Brumm v. Pottsville Water Co. (1888), 9 Sadler (Pa.) 483, 12 Atl. 855.

However, there is no such law in the State of Indiana. Moreover it appears to me that one or more of the recognized methods referred to above by which a utility may protect itself against delinquent bills afford ample protection without the addition of other rules.

In giving consideration to a proposed rule or regulation of a utility, it must be kept in mind that a public utility is required to give service without discrimination to all who ask for it and who are willing to comply with the established rules and regulations.

The proposed rule which you submit contains a provision that would permit service to be discontinued to a customer if some other member of the customer's family had neglected to pay a bill incurred by him. The Indiana Commission has already disapproved a similar method of enforcing the collection of an arrearage due from one customer by shutting off the service from another customer. In Re: Petition of Town of Hagerstown, No. 6849, November 16, 1922. The utility undertook to force the town to pay a debt due from a former customer by shutting off the service to the town. The commission required the utility to continue the service.

There is nothing in the Indiana Public Utility Law or any other statute of the State that makes users of water, gas or
electricity liable for the debts of former users on the same premises or from the same family.

In Turner v. Revere Water Co. (1898), 50 N. E. 634, the Supreme Judicial Court of Massachusetts ruled that in the absence of a statute a water company could not refuse to supply water to a customer on account of an unpaid bill of a previous occupant of the premises. The court said on page 636:

"* * * It may be desirable that a water company or a gas company should have an easy way of collecting its debts, but we see no reason why it should be enabled by the court to collect a debt from one who is not a party to the contract, when it sells its commodity on credit. * * *"

In City of Chicago v. Northwestern Mut. Life Ins. Co. (1905), 75 N. E. 803, 218 Ill. 40, the court held that a water tax bill due by a former owner of the property was illegally collected from the insurance company and should be refunded. The court said on page 804:

"* * * The bills were not contracted by appellee, and it was under no more obligation to pay them than it was to pay any other bills of any other person. * * *"

In 1 Farnham on Waters, Section 161, page 854, it is said (page 494, 28 A. L. R.):

"* * * 'The company may make reasonable rules for enforcing payment for the water, and may be allowed to shut off the supply in case payment is not regularly made. But it will not be allowed to use its power to shut off the water for an ulterior purpose, or to compel payment of disputed bills. The right is given it solely with reference to current matters and to compel payment of bills from period to period as they accrue; and if the transaction is closed, or there is doubt as to the validity of the bill, or the power to shut off the water involves an exercise of a right on the part of the company which is not clear, equity will interfere to protect the consumer.' * * *"

In Hochheim v. Cortland Telephone Co., P. U. R. 1933 E. 449, it was held by the Nebraska Commission that a wife could
not be held liable for unpaid telephone bills of her husband who had gone into bankruptcy.

There are many other decisions of courts and commissions in accord with those cited above. I advise that the above rule B insofar as it undertakes to make a customer liable for the bill of some other member of the household is unreasonable. Such a rule would operate unfairly, especially against the family of men who have been called into military service and perhaps have inadvertently left an unpaid utility bill.

The fore part of rule B which undertakes to permit a utility to discontinue service to a customer because of the nonpayment of a bill due under a former contract presents a more difficult problem. The rules and tariff regulations of railroad companies and other public utilities recognize the right of a utility to protect itself against a customer that is habitually delinquent in the payment of his bills, and rules have been approved which give a company the right to make and enforce reasonable rules to extend credit to customers and to determine what class of customers are entitled to have credit extended to them.


The reasonableness of the fore part of paragraph B depends upon how it is applied in individual cases. I see no reasonable objection to the following portion of paragraph B: “For non-payment of any bill for electric service when past due * * *.” The remainder of the first sentence of paragraph B following the words just quoted, is not as clear as a rule of this sort should be. The sentence should be stated more definitely or entirely eliminated.

In my opinion that provision of paragraph B that permits a utility to discontinue its service, or to refuse to furnish service to one member of a family because another member of the same household has not paid a past due bill, is unreasonable and therefore would be illegal, and the commission should disapprove such rule.