

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>MEL E. WACH, OWNER, YES MORTGAGE,</b>	)	
	)	<b>CASE NO. AVU-E-16-02</b>
<b>COMPLAINANT,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>AVISTA CORPORATION DBA AVISTA</b>	)	
<b>UTILITIES,</b>	)	
	)	<b>ORDER NO. 33490</b>
<b>RESPONDENT.</b>	)	
	)	

---

In December 2015, Mel E. Wach, owner of “Your Equity Source, Yes Mortgage,” filed a complaint with the Commission against Avista Corporation dba Avista Utilities. Mr. Wach alleged that for seven and a half years, he was billed for his neighbor’s (higher) electricity usage, and his neighbor was billed for his (lesser) electricity usage. Avista issued Mr. Wach a refund for the amount he was overbilled for the most recent three years, but not the remaining four and a half years. Commission Staff investigated the matter and determined that Avista’s action complied with its statutory obligation. Mr. Wach was unsatisfied with Staff’s efforts to informally resolve his complaint, thus Staff raised the matter as a formal complaint before the Commission in January 2016. IDAPA 31.01.01.024.

The Commission issued a Summons, notifying Avista of Mr. Wach’s formal complaint, and directed Avista to file an Answer. Avista responded, and Mr. Wach filed a reply. Consistent with prior decisions, applicable statutes, and Utility Customer Relations Rule 204, the Commission now denies Mr. Wach’s complaint seeking additional reimbursement, orders Avista to pay interest on the three-year reimbursement amount, and directs Avista to develop a protocol for identifying switched meters, as more fully discussed below.

**BACKGROUND**

Mr. Wach rents one unit of a two-unit building for his company, Yes Mortgage. Electric service for the building’s two units is separately metered by Avista. When Yes Mortgage first moved into the building in April 2008, Mr. Wach contacted Avista, questioning what he considered to be extremely high bills. According to Mr. Wach, Avista sent a technician to investigate Mr. Wach’s meter then assured him that everything was in order. Because Avista

converted to a new computer system, it purged records including customer communications from 2008. Reply at 1. However, Avista acknowledged that, if a customer contacted Avista with concerns about high bills, the Utility “would have sent a technician . . . as described by [Mr. Wach], to test the meter and ensure it was reading accurately.” Response at 5. Further, Avista does not dispute Mr. Wach’s assertions that he contacted Avista.

At the end of July 2015, Yes Mortgage’s neighbor moved out of the adjacent unit. *Id.* at 7. After that, Mr. Wach noticed a considerable decrease in his electric bill. Mr. Wach contacted Avista on October 15, 2015, and asked the Utility to check the building’s meters to see if they had been switched. *Id.* at 3. During an on-site visit on October 27, 2015, Avista’s technician determined that “the electric meters at [Mr. Wach’s] premise and the neighboring premise were indeed switched.” *Id.* Avista’s technician corrected the switched electric meters. *Id.* at 4. Mr. Wach also questioned whether he was overbilled for gas usage. Avista confirmed that Mr. Wach’s gas meter was correctly assigned to his premise. *Id.* at 3.

Avista noted that its responsibilities do not (and did not) include the wiring of the structure where Mr. Wach receives electric service. *Id.* at 5. Avista also indicated that the electric meter, though improperly wired, was properly operating. *Id.* at 8. According to Avista, there “was no way for [Avista] to know that the meters were switched . . . as both premises involved were occupied from April 2008 through July 2015 and the meters were accurately recording usage.” *Id.*

Comparing Mr. Wach’s usage record with that of his neighbor, Avista determined that Mr. Wach had been overbilled during the period from April 2008 until the neighbor moved out at the end of July 2015. *Id.* at 3-4. Mr. Wach was actually under-billed from July 31 until October 27, 2015, when the error was discovered. *Id.* In November 2015, Avista issued a refund to Mr. Wach for \$1,866.20, the amount he was overbilled from October 2012 to October 2015 – the three-year period before he contacted Avista to investigate the meter-switch. *Id.* at 4. This credit amount did not include interest. *Id.* at 7.

Mr. Wach requests the remaining \$5,085.98 that he overpaid between April 2008 and October 2012, but for which he was denied a refund.

#### **APPLICABLE LAW**

Idaho’s Public Utilities Law requires that all charges “made, demanded or received by any public utility . . . be just and reasonable.” *Idaho Code* § 61-301. Under the “filed rate

doctrine,” codified in Idaho’s Public Utilities Law, a “utility cannot charge more, and also . . . cannot charge less than” its approved rates and charges on file with the Commission. Order No. 30431 at 5; *Idaho Code* §§ 61-313, 61-315. The statute also provides that anyone may file a complaint with this Commission asserting violation of a right under the law. *Idaho Code* § 61-612.

Pursuant to its statutory authority, the Commission has implemented procedural rules, and rules governing utility customer relations. *Idaho Code* §§ 61-507, 61-601; IDAPA 31.01.01, 31.21.01. Under the Commission’s Utility Customer Relations Rules, if billing for utility service was not accurately determined, the utility shall prepare a corrected billing. IDAPA 31.21.01.204.01. Pursuant to *Idaho Code* § 61-642, if the time of the billing error “can be reasonably determined . . . the corrected billings shall go back to that time, but not to exceed three years.” IDAPA 31.21.01.204.02.b.

Where the Commission finds that a complainant was overcharged by a utility, the Commission “may order that the public utility make due reparation to the complainant . . . with interest from the date of collection.” *Idaho Code* § 61-641. The Idaho Supreme Court has held that, in applying interest to a refund ordered by the Commission, the proper interest rate is the 12% annual rate set forth in *Idaho Code* § 28-22-104(1), for money “after the same becomes due,” “due on the settlement of mutual accounts from the date the balance is ascertained,” or “due upon open accounts after three months from the date of the last item.” *In re Ryder v. IPUC*, 141 Idaho 918, 927, 120 P.3d 736, 745 (2005).

### **DISCUSSION AND FINDINGS**

The Commission has jurisdiction to hear this complaint under *Idaho Code* §§ 61-503 and 61-612. After reviewing the record in this case, we find there is sufficient evidence to decide the matter without further process.

The facts of Mr. Wach’s complaint are not disputed. Avista determined that Mr. Wach had overpaid a total of \$6,952.18 between April 2008 and July 2015 (when the neighbor moved out). Response at 4. Avista refunded Mr. Wach \$1,866.20 – the amount Mr. Wach overpaid from October 2012 to October 2015, but did not refund Mr. Wach the remaining \$5,085.98. *Id.* Avista asserted that the Commission’s Utility Customer Relations Rule 204.02.b limits Mr. Wach’s “allowable remediation period” to three years. *Id.* at 4. Mr. Wach seeks

reimbursement of the remaining \$5,085.98, the amount he overpaid during the four and a half years before the remediation period.

Mr. Wach does not allege nor has he presented evidence that Avista caused the improper installation or wiring of his meter. Further, Mr. Wach does not allege that he asked Avista in 2008 to check whether the meters in his building had been switched. However, we do not find it unreasonable that Mr. Wach failed to ask Avista (in 2008) to specifically check for a switched meter when the utility investigated Mr. Wach's report of extremely high electricity bills. Indeed, we are sympathetic to Mr. Wach's circumstance, seemingly at the mercy of a utility that is better-positioned than its customers to be aware of problems such as switched meters.

The record supports that, on Mr. Wach's request in 2008, Avista investigated and determined that Mr. Wach's meter was functioning properly. It is clear that Mr. Wach's billing errors, from April 2008 through October 2015, were not due to a malfunctioning meter, but due to the mis-wiring of his meter by a third-party, not identified in this proceeding. Avista has refunded Mr. Wach, without question or challenge, for the three years that Mr. Wach overpaid, as required by Rule 204.02.b.

Rule 204 operates to limit a customer's refund to the three-year period before a billing error was discovered, and also as a three-year limit to the period for which a utility may recover for underpayments from a customer. See generally Order Nos. 29372, 30507, 30431, 30175, 28212. Also, under the filed rate doctrine, a longstanding principle of utility regulation, the Commission cannot deny a utility recovery for a customer's underpayment based on a finding of inequity. Order No. 30431 at 5; *Idaho Code* §§ 61-313, 61-315.<sup>1</sup> The doctrine provides that utilities must charge, and customers are obligated to pay, the rate that is and was on file with the Commission. *Id.*

Unfortunately, our rules as currently written do not permit us the discretion to direct Avista to reimburse Mr. Wach for the remainder of his overpayment. Consequently, we find that the statute, our Utility Customer Relations Rules, and past Commission Orders support the three-year limitation here. However, we find it appropriate to exercise our discretion to order Avista to

---

<sup>1</sup> Rule 204.02.c limits the time period during which a utility may recover underpayment from its filed rate to six months "unless a reasonable person should have known of the inaccurate billing, in which case the rebilling may be extended for a period not to exceed three years." IDAPA 31.21.01.204.02.c.

pay interest on the amount of Mr. Wach's refund, at 12% per year, for a total of \$484.81.<sup>2</sup> *See Ryder*, 141 Idaho at 927, 120 P.3d at 745; *Idaho Code* § 28-22-104(1). In addition, we direct Avista to modify its protocol for responding to customer complaints about excessive bills for electricity usage to include inquiry and identification of switched meters for locations with multiple meters.

### ORDER

IT IS HEREBY ORDERED that Avista pay Mr. Wach \$484.81 in interest on his refund amount of \$1,866.20. As to Mr. Wach's request that Avista refund him an additional amount, Mr. Wach's complaint is denied and dismissed as discussed herein.

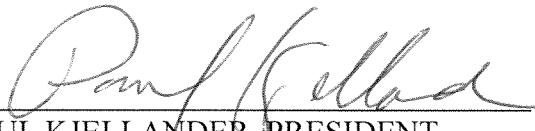
IT IS FURTHER ORDERED that Avista develop a protocol for identifying switched meters on receipt of customer inquiry or complaint about an excessive bill for electricity usage.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

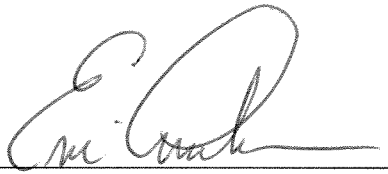
<sup>2</sup>

12% Interest Rate Compounded Annually				
Year	Balance Overpaid	Interest Accrued	Total Due	Total Paid
1	\$ 622.09	\$ 74.65	\$ 696.74	\$ 622.09
2	1,318.83	158.26	1,477.09	1,244.18
3	2,099.18	251.90	2,351.08	1,866.27
Total interest owed		\$ 484.81		

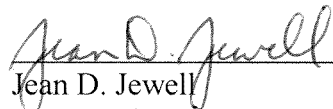
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 31<sup>st</sup>  
day of March 2016.

  
\_\_\_\_\_  
PAUL KJELLANDER, PRESIDENT

  
\_\_\_\_\_  
KRISTINE RAPER, COMMISSIONER

  
\_\_\_\_\_  
ERIC ANDERSON, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

O:AVU-E-16-02\_djh