

**ORIGINAL**

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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Petitioner

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

JERENE PHILLIPS,

Petitioner,

vs.

IDAHO POWER COMPANY,

Respondent.

Case No. *IPC-E-07-01*

**FORMAL COMPLAINT**

COMES NOW the Petitioner, JERENE PHILLIPS, by and through her attorneys of record, Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered, and pursuant to IDAPA 31.01.01.054 hereby files this Formal Complaint against the Respondent, Idaho Power Company (hereinafter "Idaho Power").

**LISTED REPRESENTATIVE:**

Stanley J. Tharp  
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**PETITIONER:**

Jerene Phillips  
16625 Basin Way  
Boise, ID 83714  
(208) 939-0375

**RESPONDENT:**

Idaho Power Company  
c/o its Registered Agent, Patrick Harrington  
1220 West Idaho Street  
Boise, ID 83702

**COMMON ALLEGATIONS**

1. The Petitioner, Jerene Phillips, is a customer of the Respondent, Idaho Power.
2. From January 1994 through March of 2006, Idaho Power was billing the Petitioner at the home address identified as "16625 Basin Way, Boise, Idaho 83714" (hereinafter the "Premises").
3. Idaho Power installed CTs and meter at the Premises on or about January 24, 1994. The CTs and meter installed by Idaho Power at all times functioned properly, and the meter installed never failed to function.
4. Thereafter, Idaho Power billed the Petitioner for correct readings from the installed meter. All bills received by Petitioner from January 1994 through March of 2006 were paid when received.
5. On March 26, 2006, as part of a planned maintenance exchange, a different meter was installed. Shortly thereafter, the Petitioner noticed a huge increase in her electricity bills and after further inquiry it was discovered that the incorrect CTs were installed by Idaho Power back in 1994. In fact, the multiplier should have been a 40; however the meter and CTs that were installed had a multiplier of 20.
6. In June of 2006, Idaho Power sent Petitioner a bill for three (3) years of additional electricity in the amount of \$6,359.44. Petitioner has disputed this bill ever since and in fact

approached Idaho Power in an attempt to compromise this matter; however, Idaho Power rejected Petitioner's offer to compromise.

7. A true and accurate copy of the bill is attached hereto as Exhibit "A" and incorporated herein by reference.

8. Originally, the basis and claim of the additional charges by Idaho Power was that the CTs and meter previously installed in 1994 were not properly functioning and as a result, the billings did not accurately reflect the services received by the Petitioner.

9. At no time in the past twelve (12) years did the meter and CTs installed by Idaho Power fail or malfunction. In fact, upon the removal and testing of the meter by Idaho Power it was found to be one-hundred percent (100%) accurate and fully functional.

#### **COUNT ONE**

10. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 9.

11. Under IDAPA 31.21.01.204, a utility may file a corrected billing only "[w]henver the billing for utility service was not accurately determined because the meter malfunctioned or failed, bills were estimated, or bills were inaccurately prepared, the utility shall prepare a corrected billing. If the utility has failed to bill a customer for service, the utility shall prepare a bill for the period during which no bill was provided."

12. Because the basis of the billing was that Idaho Power had installed the wrong CTs and meter, as opposed to an allegation that the meter failed or malfunctioned, Idaho Power lacks any legal authority to rebill the Petitioner for the months of April 2003, through March 2006.

## COUNT TWO

13. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 12.

14. The Idaho Public Utilities Commission (hereinafter "IPUC") jurisdiction is limited and has to be found entirely within the enabling statutes. *Afton Energy, Inc. v. Idaho Power Co.*, 111 Idaho 925, 729 P.2d 400 (1986); *Washington Water Power Co. v. Kootenai Environmental Land*, 99 Idaho 875, 591 P.2d 122 (1979). An administrative regulation cannot exceed the bounds of authority granted to it by the legislature. *Curtis v. Canyon Highway District No. 4*, 122 Idaho 73, 831 P.2d 541 (1992) (overruled on other grounds).

15. Idaho Power's billing authority is limited via statute and its authority cannot exceed the bounds of the statute.

16. Idaho Power's interpretation of IDAPA Rule 31.21.01.204 is not consistent with Idaho Code § 61-642. Idaho Code § 61-642 does not allow Idaho Power to back bill the Petitioner for three (3) years as alleged by Idaho Power pursuant to IDAPA 31.21.01.204.

## COUNT THREE

17. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 16.

18. Idaho Power's interpretation of IDAPA 31.21.01.204 and Idaho Code § 61-642 is arbitrary and capricious and not in accordance with law.

19. The IPUC should not enforce Idaho Power's arbitrary and capricious interpretation of IDAPA and the Idaho Code.

#### **COUNT FOUR**

20. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 19.

21. The principles of equity are applicable in proceedings before administrative bodies. *Duggan v. Potlatch Forests Inc.*, 92 Idaho 262, 441 P.2d 172 (1968).

22. Over the past twelve (12) years the Petitioner has in good standing, paid the bills sent to her by Idaho Power. Idaho Power's current attempt to back bill the Petitioner is inequitable because if she had known the true amount of her power consumption over the years she could have taken measures to budget and conserve even more. However, Idaho Power's installation of the wrong CTs prevented her from taking that opportunity.

#### **RIGHT TO AMEND**

23. Petitioner reserves the right to amend this Formal Complaint in any respect as motion practice and discovery proceeds in this matter.

WHEREFORE, Petitioner asks for the following relief:

A. The IPUC declare that the Respondent had no basis to charge the Petitioner for the additional amounts claimed.

B. The IPUC declare that the billing received by Petitioner from the Respondent from April 7, 2003 to March 26, 2006, including any late charges, is paid in full.

C. To the extent authorized by law, that the IPUC award the Petitioner its reasonable attorneys' fees and costs; and

D. For such other and further relief as the IPUC may deem just and equitable.

DATED this 11<sup>th</sup> day of January, 2007.

EBERLE, BERLIN, KADING, TURNBOW,  
McKLVEEN & JONES, CHARTERED

By:   
Stanley J. Tharp  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of January, 2007, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Tammie Estberg  
Idaho Public Utilities Commission  
P.O. Box 83720  
Boise, ID 83720-0074

- U.S. Mail
- Fax:
- Overnight Delivery
- Messenger Delivery

  
STANLEY J. THARP