

## DECISION MEMORANDUM

**TO:** COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSIONER KEMPTON  
COMMISSION SECRETARY  
COMMISSION STAFF

**FROM:** DON HOWELL  
DEPUTY ATTORNEY GENERAL

GNR-5-08-01

**DATE:** AUGUST 4, 2008

**SUBJECT:** SUSPENSION OF THE COMMISSION'S GAS SERVICE RULE 102,  
IDAPA 31.31.01.102

The Staff has received an inquiry from Avista Utilities regarding an apparent conflict between two Commission rules. The issue was brought to Avista's attention when a Post Falls City building official asked Avista about the utility's procedures for inspecting a customer's installation of a natural gas appliance. More specifically, the City official was referring to the Commission's Gas Service Rule 102, IDAPA 31.31.01.102. This rule provides in pertinent part:

The gas corporation shall inspect the customer's installation [of a gas appliance] before the connection of a meter to ascertain that the installation conforms to the provisions contained in the National Fuel Gas Code and the Uniform Mechanical Code, as adopted by the Commission.

Gas Rule 102, IDAPA 31.31.01.102 (emphasis added). This rule has not been amended since the Commission converted its administrative rules to the new Idaho Administrative Procedures Act numbering system in 1993.

In contrast, the Commission's Safety Rules 202 and 203 were most recently amended in 2008. IDAPA 31.11.01.202 and 203. The apparent conflict arises with subsection .02 of Rules 202 and 203. Safety Rules 202.02 and 203.02 are nearly identical<sup>1</sup> and read in pertinent part:

**02. Utility Compliance.** All gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the

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<sup>1</sup> Safety Rule 202 adopts the International Fuel Gas Code of 2006 and Safety Rule 203 adopts the International Mechanical Code of 2006. The International Codes are updated every three years by the International Code Council. The Legislature has adopted the International Mechanical Code and the International Fuel Gas Code in *Idaho Code* § 54-5001.

International Mechanical Code [or International Fuel Gas Code] and to connect for service and light only those installations that:

- a. Have been inspected and approved by authorized agencies; or
- b. When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the International Mechanical Code [or Fuel Gas Code] as a condition of receiving service or continuing to receive service.

Safety Rules 202.02 and 203.02, IDAPA 31.11.01.202.02 and 203.02 (emphasis added).

Briefly, the inconsistency concerns the requirement in Gas Service Rule 102 that utilities “shall inspect” the installation of gas appliances before providing service. In 2004, the Commission’s Safety Rule 203 underwent a major revision involving two components. First, the Commission adopted the “International Mechanical Code” and “International Fuel Gas Code” which superseded the Uniform Mechanical Code and National Fuel Gas Code, respectively. See *Idaho Code* § 54-5001 (2004 Idaho Sess. Laws, ch. 272, § 5 (adopting the International Codes). Second, and more specifically, the new International Codes no longer require a gas utility to inspect the installation of gas appliances. As the Commission explained in its 2004 Notice that adopted the International Mechanical Code and International Fuel Gas Code, the International Codes establish a new regulatory framework that was also adopted by the Idaho Legislature. *Idaho Code* § 54-5016 requires that any installation of a gas appliance be accomplished pursuant to the issuance of a permit. In addition, *Idaho Code* §§ 54-5001 and 54-5018 require an inspection for each permit.

The current regulatory practice is for local jurisdictions that have adopted the International Codes to issue permits and conduct subsequent inspections. For other parts of the State that do not have inspection agencies, then the Division of Building Safety issues permits and performs the inspections. IDAPA 07.07.01.<sup>2</sup> In addition, the installation of gas appliances is generally required to be performed by a licensed HVAC installer and the license holder is required to comply with the International Mechanical Code. Thus, gas utilities are no longer required to inspect the installation of gas appliances – inspections are the responsibility of other entities. Consistent with the applicable International Codes, Safety Rules 202.02.b. and 203.02.b. simply compel utilities to “require their customers to abide by applicable provisions of

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<sup>2</sup> *Idaho Code* § 54-5002 does list certain exemptions but even if exempted, the installation “shall comply with” the applicable International Codes.

the International Mechanical [and Fuel Gas] Code[s] as a condition of receiving or continuing to receive service.” IDAPA 31.11.01.202.02.b. and 31.11.01.203.02.b.

#### **STAFF RECOMMENDATION**

Returning to Gas Service Rule 102, it is Staff’s belief that this rule is incompatible with the Commission’s Safety Rules 202.02 and 203.02. Gas Rule 102 adopts superseded Codes and compels utilities to perform actions that are no longer required under the International Codes. Consequently, Staff recommends that the Commission on its own motion suspend Gas Service Rule 102 as it pertains to the three gas utilities in Idaho (Intermountain Gas, Avista Utilities, and Questar). Staff also proposes that it meet informally with representatives of the gas utilities and other interested persons to review all the Gas Service Rules, IDAPA 31.31.01. The informal rule review could be the basis for a negotiated rulemaking to update the Commission’s Gas Service Rules next year.

#### **COMMISSION DECISION**

1. Based upon your review and the Staff’s recommendation, does the Commission wish to suspend its Gas Service Rule 102, IDAPA 31.31.01.102?
2. Should the Staff initiate an informal review of the Gas Service Rules with utilities and other interested parties?



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Don Howell  
Deputy Attorney General

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