

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT OF) CASE NO. INT-G-19-03
RAUL MENDEZ AGAINST)
INTERMOUNTAIN GAS COMPANY)
) ORDER NO. 34336

On January 25, 2019, Raul Mendez filed a formal Complaint with the Commission against Intermountain Gas Company (“Intermountain Gas” or “Company”) alleging the Company wrongly applied a \$14.00 Account Initiation Charge to his account, improperly manipulated his bills, and violated the Fair Debt Collection Practices Act. Mr. Mendez also alleged Commission Staff violated his right to Due Process through the informal complaint process (collectively, the “Complaint”).

On March 14, 2019, the Commission directed the Commission Secretary to issue a Summons to Intermountain Gas requiring the Company to file a written answer to Mr. Mendez’s Complaint within 21 days of service of the Summons. Order No. 34273. The Commission also ordered Commission Staff to respond to Mr. Mendez’s Complaint within 21 days. *Id.*

On March 15, 2019, the Summons was issued to Intermountain Gas.

On March 29, 2019, Intermountain Gas filed its Answer to Mr. Mendez’s Complaint.

On April 4, 2019, Commission Staff filed its Response to Mr. Mendez’s Complaint.

On April 18, 2019, Mr. Mendez filed his Reply to the Company’s Answer and Staff’s Response.

Now, the Commission issues this Order denying Mr. Mendez’s claim on all counts.

THE COMPLAINT

There are two underlying allegations in Mr. Mendez’s Complaint. The first is that the Company improperly applied a \$14.00 Account Initiation Charge to Mr. Mendez’s account after Mr. Mendez voluntarily disconnected gas service to his residence in May 2018 and reconnected gas service to his residence in October 2018. Mr. Mendez alleges he was still a customer with the Company, and therefore the Account Initiation Charge was inappropriately applied to his account. Alternatively, Mr. Mendez argues that the Account Initiation Charge is actually a “deposit” and in imposing the charge, the Company did not comply with Commission rules regarding deposits. The second underlying allegation is that Intermountain Gas manipulated charges on Mr. Mendez’s

account. For evidence of this, Mr. Mendez states he does not use natural gas during the summer. Yet, the charges on Mr. Mendez's account for 2015, 2016, and 2017 differed.

Mr. Mendez makes two further allegations stemming from the above-described underlying allegations. The first is that the Company violated the Fair Debt Collection Practices Act ("FDCPA") by assessing and attempting to collect a charge not permitted by law. The second is that Commission Staff violated his Due Process rights through the informal complaint process by providing information that "conflicts or overshadows the language of the IPUC rules, or just misrepresented information to Mr. Mendez." Complaint at 7 - 9.

Mr. Mendez requests the Commission: 1) order Intermountain Gas to refund the \$14.00 Account Initiation Charge plus interest, 2) pay \$72.00 incurred by Mr. Mendez in drafting the Complaint, 3) issue an order prohibiting Intermountain Gas from charging fees for voluntarily disconnecting service, especially if the reason for disconnection is financial hardship, 4) issue an order warning Intermountain Gas that it must comply with Commission rules, 5) issue an order warning Intermountain Gas not to manipulate fees, and 6) provide more accountability and transparency of the IPUC complaint process and warn Staff not to give the appearance of bias. *Id.* at 10-11.

THE RESPONSE AND ANSWER

A. Intermountain Gas.

i. Account Initiation Charge.

The Company states it correctly applied the Account Initiation Charge. The Company states it uses the definitions of "applicant" and "customer" from the Commission's Utility Customer Relations Rules ("UCRR") to determine whether to apply the Account Initiation Charge. Because it had been more than ten calendar days since Mr. Mendez received service from the Company, the Company considered him an applicant and applied the Account Initiation Charge.

Regarding Mr. Mendez's allegation that the Account Initiation Charge is actually a deposit and therefore needs to comply with Commission rules regarding deposits, the Company asserts the definition of "deposit" in the Commission's rules forecloses Mr. Mendez's argument.

The Company notes that Mr. Mendez was informed before cancelling service that he would be charged a \$14.00 Account Initiation Charge when he resumed service in the fall. The Company also notes that the Account Initiation Charge has been in the Company's tariff since at

least 1987, citing to Order No. 21617, and is designed to recoup costs incurred by the Company when turning on gas service.

ii. Billing Discrepancies.

The Company states it accurately billed Mr. Mendez for his consumption of natural gas. Responding to Mr. Mendez's allegation in his complaint that he used no gas in the summer of 2016 or 2017, the Company states that Mr. Mendez used between 3 and 11 therms of gas during these periods, which the Company states is consistent with the amount of gas used for a pilot light for natural gas appliances. The Company attributes the different billed amounts during these periods to the Commission's approval of changes to the Company's monthly charges in April 2017. The Company states that in conjunction with the fluctuating usage, the increased summer charge explains the increase in Mr. Mendez's summer 2017 bills.

iii. Fair Debt Collection Practices Act.

The Company states that the Account Initiation Charge is included in the Company's Commission-approved tariffs, and therefore is not an unlawful charge. Additionally, the Company argues that the FDCPA does not apply to the Company because it is not a "debt collector" within the definition of the FDCPA because it does not collect debts owed to third parties.

B. Commission Staff.

Staff responded to each of Mr. Mendez's requests to the Commission. Like the Company, Staff applied the definitions of "customer" and "applicant" found in the UCRR to determine that Mr. Mendez was no longer a customer after ten calendar days without service. Staff noted the Account Initiation Charge is not unique to Intermountain Gas, and other utilities in Idaho assess a similar charge when an account is opened by a former customer.

Staff notes that the \$0.14 interest charge was already refunded to Mr. Mendez following Staff's recommendation to the Company. Staff notes the Account Initiation Charge is designed to recover costs directly attributable to the Company's efforts to connect or reconnect service. Staff, like the Company, refuted Mr. Mendez's characterization of the Account Initiation Charge as a deposit. Staff, like the Company, explained that the variation in fees complained of by Mr. Mendez is attributable to a Commission-approved change in rate structure.

Staff argues that it did not violate Mr. Mendez's Due Process rights. First, Staff notes it is not a decision-making entity and therefore, on its own, cannot violate a person's Due Process rights. Staff distinguishes the case law Mr. Mendez relies on and asserts that its interpretation of

the rules is consistent with the language of the rules and does not contradict them. Staff notes that Commission rules encourage informal proceedings to settle cases, and Staff made numerous good faith efforts to communicate the applicability, rationale, and justification for the Account Initiation Charge to Mr. Mendez and to explain to Mr. Mendez the variations in his bills.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under Title 61 of Idaho Code including *Idaho Code* §§ 61-502, 61-503, 61-507, 61-520, and 61-612. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered to determine the merits of a complaint made by any person “setting forth any act or thing done or omitted to be done by any public utility including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation of any provision of law or of any order or rule of the commission[.]” *Idaho Code* § 61-612.

Mr. Mendez alleges:

1) The Account Initiation Charge was incorrectly applied to his account when he restarted natural gas service to his residence in October 2018. Complaint at 7-8;

2) The Company manipulated charges, as evidenced by different bills for service between summers 2015, 2016 and 2017. *Id.* at 9-10. Additionally, Staff and the Company provided different bill amounts in their respective replies to Mr. Mendez, which Mr. Mendez takes as further evidence of bill manipulation. Complainant’s Reply at 2;

3) The Account Initiation Charge is a deposit and the Company did not follow Commission rules restricting the use of deposits. Complaint at 8;

4) The Company violated the FDCPA. *Id.* at 9; and

5) Commission Staff violated his Due Process rights through the informal complaint process. *Id.* at 7.

Mr. Mendez asks the Commission to:

1) Refund the \$14.00 Account Initiation Charge applied to his account when he restarted service in October 2018 along with accrued interest;

2) order the Company to pay costs incurred in drafting his Complaint, which he states is \$72.00;

3) bar the Company from charging fees for voluntary disconnection of service, especially if the reason is due to financial hardship;

4) warn the Company it must comply with Commission rules;

5) warn the Company not to manipulate fees to the detriment of customers; and

6) provide more accountability and transparency for the Commission complaint process, and to warn Staff not to appear biased. Complaint at 10-11.

The Commission has reviewed the record, including the Complaint, the Answer of Intermountain Gas, the Response of Commission Staff, and the Reply of Mr. Mendez. Based on a totality of the facts and evidence presented, we reject Mr. Mendez's complaint.

A. The Company Correctly Applied the Account Initiation Charge.

The Company and Commission Staff interpreted the criteria for applying the Account Initiation Charge in a manner that effectuates the language and intent of the Company's tariff and Commission rules. The Account Initiation Charge is a valid Commission-approved charge. It reads:

“An ‘Account Initiation Charge’ in the amount of \$14.00 during regular business hours and \$40.00 outside of regular business hours will be assessed on each account opened with the Company and will be billed with the first regular bill. This charge will not apply to landlord temporary service where a landlord has signed a Continuous Service Agreement or to code compliance inspections mandated by the Idaho Public Utilities Commission.”

Intermountain Gas Company Tariff 9.4. The Company applied the definitions of “applicant” and “customer” found in the UCRR to determine that Mr. Mendez was no longer a customer and therefore his account must be “opened.” UCRR 5.02 defines “customer,” in pertinent part, as “any person who has applied for, has been accepted by the utility, and is . . . [r]eceiving service from a utility; or . . . [h]as received service within the past ten (10) calendar days prior to termination by the utility” UCRR 5.01 defines an “applicant,” in pertinent part, as “any potential customer who applies for service from a utility.”

It would be unreasonable to conclude that the inclusion of “by the utility” in UCRR 5.02 could be construed to mean that only involuntary disconnection of a customer by the utility

could start the ten calendar day time period. Involuntary disconnection is addressed separately and would result in reconnection fees of \$22.00, \$44.00, or \$50.00. Intermountain Gas Tariff 9.3. Further, it would be an anomalous result to say that once a person is the Company's customer that person is always the Company's customer, and the Account Initiation Charge only applies once per lifetime so long as the customer voluntarily disconnects. Applying the definitions of "applicant" and "customer" found in UCRR 5.01 and UCRR 5.02, as the Company did here, creates a reasonable and administratively workable definition of the Account Initiation Charge and provides a reasonable limitation on the charge's applicability. We adhere to this interpretation.

The Company incurs identifiable costs whenever a customer turns off and turns on service. For example, the Company must send a technician to the customer's residence to ensure a safe connection to the Company's system. *See* Intermountain Gas Company Tariff 9.6 and 9.7. The Commission has determined it reasonable to allocate these costs directly to the person causing the costs, rather than distribute the costs to the Company's customers generally. We are sensitive to how charges and fees impact low-income customers, but as a matter of policy and regulatory practice, we find it is economically efficient and fair to allocate identifiable costs to the cost-causer whenever feasible.

Mr. Mendez's allegation that a signed application is a necessary prerequisite for the Account Initiation Charge is not supported by the language of the Company's tariff or Commission rules. Mr. Mendez relies on UCRR 206 to support his assertion. That section does not apply to Mr. Mendez's claim or support his assertion. UCRR 206 addresses a residential customer's responsibility to pay bills, and has its own definition of "customer." Moreover, UCRR 206 states that its definition of customer applies only to that rule. This Commission is not persuaded by Mr. Mendez's attempt to misapply and misconstrue the rules to his advantage. His interpretation is both illogical and unreasonable.

We further note that the Company told Mr. Mendez he would be charged the Account Initiation Charge when he resumed service before Mr. Mendez terminated his natural gas service. Staff also explained to Mr. Mendez that he would incur such fee upon reconnection. This communication to the customer of the Commission-approved charge he would incur upon reconnection alleviates any concern of unfairness or lack of notice.

B. The Company Did Not Manipulate Charges.

Mr. Mendez's claim that the Company manipulated charges is without merit. As evidence for his claim, Mr. Mendez asserts that he used no natural gas during the summers of 2015, 2016, and 2017, yet was charged different amounts for these periods. In his reply, Mr. Mendez states, "The manipulation of charges is best illustrated by years 2015 and 2016 when the customer charge was still \$2.50 and when the 'usage' shows as four therms for June to September. There was a charge of \$5.54 for 2015 and a charge of \$5.34 for 2016." Complainant's Reply at 2. Mr. Mendez ignores that, in September 2015, the Commission approved changes to the Company's annual Purchased Gas Cost Adjustment. *See* Order No. 33386. These Commission-approved changes account for the perceived discrepancy Mr. Mendez cites as his clearest proof of charge manipulation.

Other differences in billing can be attributed to both a range of consumption by Mr. Mendez and other Commission-approved changes to the Company's rates. Company records show that Mr. Mendez used between 3 and 11 therms during the periods in question, which is consistent with a pilot light for natural gas appliances. In September 2016, we approved changes to the Company's annual Purchased Gas Cost Adjustment. Order No. 33604. In April 2017, we approved an increase in summer monthly charges from \$2.50 to \$5.50. Order No. 33757. The variation in rates and rate structure between the summers explain the discrepancy in billed amounts.

Mr. Mendez notes that Commission Staff and the Company supplied differing bill amounts for Mr. Mendez in their responses to his Complaint, and infers that this is further proof of bill manipulation. The Commission finds that Staff submitted bills showing accumulated interest for late payments, whereas the Company submitted bills that showed the original billed amount, without accrued interest for late payment. The different amounts do not support Mr. Mendez's charge-manipulation claim.

C. The Account Initiation Charge Is Not a Deposit.

Rule 100 of the UCRR defines "deposit" as "any payment held as security for future payment or performance that is reimbursable after the customer establishes good credit." IDAPA 31.21.01.100.03. Mr. Mendez has provided no evidence that the payment collected as an Account Initiation Charge is held as security for future payment or that it is reimbursable upon establishing

good credit. Therefore, Commission rules that limit the Company's ability to charge deposits do not apply.

D. Mr. Mendez Does Not Make a Cognizable FDCPA Claim.

Mr. Mendez's FDCPA claim fails because the FDCPA does not apply to the Company because it does not collect debts on behalf of third parties. The FDCPA applies, in pertinent part, to "debt collectors," which it defines as "any person who . . . regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 USC § 1692a(6). The Company was not trying to collect a debt due to another. Further, we find no competent evidence that the Company engaged in any of the practices prohibited by the FDCPA.

E. Mr. Mendez's Due Process Rights Have Not Been Violated.

We also find that Staff did not violate Mr. Mendez's Due Process rights. Mr. Mendez bases his Due Process claims on assertions that 1) Staff interpreted the Company's tariff in a way that "conflicts or overshadows" the tariff's plain language; 2) because provision 9.4 of the Company's tariff does not state "termination by the utility" refers to voluntary and involuntary termination, there is no clearly ascertainable standard; and 3) the informal complaint process took too long. We find none of Mr. Mendez's Due Process claims persuasive.

First, Staff cannot violate a customer's Due Process rights because Staff has no authority to make decisions that deprive a customer of property rights or liberty interests. Second, because we found Staff's interpretation of the Account Initiation Charge to be reasonable, Staff's interpretation does not "conflict or overshadow" the plain language of the tariff. Finally, the amount of time taken to process Mr. Mendez's complaint informally does not raise a Due Process issue. Mr. Mendez could have filed a formal complaint at any time. *See* IDAPA 31.01.01.021-.026. Additionally, the record reflects a period of many months from the end of August 2017 through early June 2018 in which Staff had responded to Mr. Mendez's last inquiry and no further communication was received from Mr. Mendez.

Staff used the informal complaint process in an attempt to mediate this conflict, as encouraged by Commission rules. *See* IDAPA 31.01.01.022. Following the unsuccessful resolution during the informal complaint process, Mr. Mendez exercised his ability to file a formal Complaint, which brought the matter before the Commissioners. *See* IDAPA 31.01.01.023, and .024. Mr. Mendez will have the opportunity to request reconsideration of this final order and pending the Commission's decision on reconsideration, will have the opportunity to appeal to the


Idaho Supreme Court if necessary. *See Idaho Code* § 61-626, IDAPA 31.01.01.331, and .341. This is ample process, which balances efficient dispute resolution with Due Process protections through multiple review mechanisms.

ORDER

IT IS HEREBY ORDERED that Mr. Mendez's Complaint is denied on all counts, as explained in more detail above, and all remedies requested by Mr. Mendez are denied.

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 with regard to any matter decided in 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.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *23rd* day of May 2019.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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