

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. 34371

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 (“FDCPA”). Mr. Mendez also alleged Commission Staff violated his right to Due Process through the informal complaint process (collectively, the “Complaint”).

On May 23, 2019, the Commission issued an Order denying Mr. Mendez’s Complaint on all counts. Order No. 34336.

On June 11, 2019, Mr. Mendez filed a Petition for Reconsideration.

On June 18, 2019, the Company filed an Answer to Mr. Mendez’s Petition for Reconsideration.

Now, having considered the record before it, the Commission denies Mr. Mendez’s Petition for Reconsideration.

THE COMPLAINT AND PETITION FOR RECONSIDERATION

Mr. Mendez’s Complaint alleged the Company improperly manipulated his bills, improperly applied an Account Initiation Charge, and violated the FDCPA. Mr. Mendez also alleged Commission Staff violated his Due Process rights through the informal complaint process. In his Petition for Reconsideration, Mr. Mendez alleges he was not allowed to conduct discovery, and therefore his Due Process rights were violated and the Commission’s Order was not based on substantial evidence.¹

THE ANSWER

Intermountain Gas filed an Answer to Mr. Mendez’s Petition for Reconsideration. The Company noted Mr. Mendez never submitted discovery requests in the case, and did not identify

¹ Mr. Mendez styled his filing a “Motion for Reconsideration.” Because Commission Rules exclusively refer to “Petitions for Reconsideration,” we refer to Mr. Mendez’s filing as a Petition for Reconsideration.

in his Petition for Reconsideration how discovery would have changed the outcome of the Order. The Company also states the Commission's Order identified and discussed the evidence before it and applied the relevant law. Therefore, the Company recommends the Commission deny Mr. Mendez's Petition for Reconsideration.

COMMISSION FINDINGS AND DECISION

The Commission has the authority to grant or deny reconsideration under *Idaho Code* § 61-626(2). Reconsideration provides an opportunity for any interested person to bring to the Commission's attention any question previously determined, and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979); *see also Eagle Water Company v. Idaho PUC*, 130 Idaho 314, 317, 940 P.2d 1133, 1136 (1997). Consistent with the purpose for reconsideration, Commission Rules require a Petition for Reconsideration to "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." IDAPA 31.01.01.331.01. Rule 331 further requires the petitioner provide a "statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." *Id.* A petition must state whether reconsideration should be conducted by "evidentiary hearing, written briefs, comments, or interrogatories." IDAPA 31.01.01.331.03. Grounds for reconsideration or issues on reconsideration that are not supported by specific explanation may be dismissed. IDAPA 31.01.01.332.

Having reviewed the record, including the Complaint, the Answer of Intermountain Gas, the Response of Commission Staff, the Reply of Mr. Mendez, the Petition for Reconsideration of Mr. Mendez, and the Answer of Intermountain Gas to Mr. Mendez's Petition for Reconsideration, the Commission denies Mr. Mendez's Petition for Reconsideration because the Petition for Reconsideration does not bring to light a mistake or omission for the Commission to correct.

Mr. Mendez states he was "denied the opportunity to conduct discovery during the formal complaint proceedings[.]" Petition for Reconsideration at 2. Yet Mr. Mendez does not indicate who denied him the opportunity to conduct discovery or how he was denied the opportunity to conduct discovery. Mr. Mendez acknowledges both he and the Company had the right to conduct discovery in this case. *Id.* at 1 (citing Commission Rules 221-240, and specifically

Rule 222). And we note Mr. Mendez attached the Commission's Rules of Procedure, including discovery Rules 221-240, to his Reply. It thus appears that the only obstacle to Mr. Mendez's ability to conduct discovery in this case was his conscious decision not to conduct discovery, or his failure to realize the Commission's publicly available Rules clearly authorized him to conduct discovery. Pro se litigants are held to the same standards and rules as those represented by an attorney. *See Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009). We decline to reconsider our decision because Mr. Mendez now wishes to exercise his discovery rights but fails to explain how lack of discovery resulted in an erroneous or unlawful decision.

Mr. Mendez argues that because no discovery was conducted in this case, the Commission's decision could not have been based on substantial evidence. Petition for Reconsideration at 4. This position is untenable and demonstrates confusion regarding the purpose of discovery in relation to building the administrative record. The parties do not have to conduct discovery before the Commission can decide a case. The Commission's Rules of Procedure state that the Commission "bases its decisions and issues its orders on the hearing record (excluding exhibits denied admission), the Commissioners' record and items officially noted. The hearing record and the Commissioners' record are part of the Commission Secretary's official file." IDAPA 31.01.01.281. Thus, the hearing record and the Commissioners' record are items in the Commission Secretary's official file, but not all items in the Commission Secretary's official file are part of the hearing record or the Commissioners' record, and therefore, not all items in the Commission Secretary's file form the basis for a Commission decision. Discovery requests and responses are items that are included in the Commission Secretary's official file, but are not included in the hearing record, or the Commissioners' record. *See* IDAPA 31.01.01.282 (stating the Commission Secretary's official file includes discovery); IDAPA 31.01.01.283 (stating, "Workpapers, requests for discovery, answers to discovery and other documents filed with the Commission Secretary and served on the parties, whether or not discussed at hearing, are not part of the hearing records unless introduced as exhibits at hearing."); IDAPA 31.01.01.284.01 (stating, "The Commissioners' record in a proceeding automatically includes all pleadings, orders, notices, briefs, proposed orders and position papers. The Commission may add documents officially noticed to the Commissioners' record."). Unless incorporated in a document that is part of the hearing record or the Commissioners' record, or officially noticed, facts learned in discovery are not part of the record upon which the Commission bases its decisions.


Even though discovery was not conducted, the Commission's decision in this case is supported by substantial and competent evidence. Substantial and competent evidence is "more than a scintilla of proof, but less than a preponderance." *Matter of Wilson*, 128 Idaho 161, 164, 911 P.2d 754, 757 (1996). It is "relevant evidence which a reasonable mind might accept to support a conclusion." *Mancilla v. Greg*, 131 Idaho 685, 687, 963 P.2d 368, 370 (1998). Here, the Commission made its determination based on the parties' written filings, and the facts and analyses contained therein. The Commission determined the Account Initiation Charge was correctly applied after looking at the language in the Company's Tariff and the Commission's Utility Customer Relations Rules ("UCRR"), and reviewing the arguments of the parties. *See* Order No. 34336 at 5-6. The Commission determined the Company did not manipulate charges on Mr. Mendez's bill after reviewing the charges as submitted by Mr. Mendez, Staff, and the Company in light of Commission-approved changes and fluctuations in consumption during the period in question. *See Id.* at 7. The Commission determined the Account Initiation Charge is not a deposit after reviewing the definition of "deposit" in the UCRR and reviewing the arguments of the parties. *See Id.* at 7-8. The Commission determined Mr. Mendez did not make a cognizable claim under the FDCPA after looking at the text of that Act and reviewing the arguments of the parties. *See Id.* at 8. The Commission determined Mr. Mendez's Due Process rights were not violated after reviewing the facts alleged by Mr. Mendez and applying applicable legal principles to the facts, as advocated by the parties. *See Id.* In sum, each of the Commission's determinations was based on substantial and competent evidence in the record, and we therefore decline to reconsider Order No. 34336.

ORDER

IT IS HEREBY ORDERED that Mr. Mendez's Petition for Reconsideration is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3rd
day of July 2019.



PAUL KJELLANDER, PRESIDENT




KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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