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UTILITIES COMMISSION

RUL-0-04-02

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE AMENDMENTS TO)	
THE COMMISSION'S CUSTOMER)	CASE NO. 31-2101-0402
RELATIONS RULES, IDAPA 31.21.01)	
)	
)	COMMENTS OF THE
)	COMMISSION STAFF
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Donald L. Howell, II, Deputy Attorney General, and submits the following comments in response to the Notice of Rulemaking issued on October 5, 2005.

BACKGROUND

On July 22, 2004, the Idaho Community Action Network (ICAN) filed a "Petition for Rule Change." More specifically, ICAN proposed changes to six existing rules and the adoption of one new rule, all found in the Commission's Utility Customer Relations Rules, IDAPA 31.21.01. In response to ICAN's Petition, the Commission initiated a negotiated rulemaking so that interested persons would have the opportunity to discuss the merits of the proposed changes and determine whether there is consensus on the proposed changes or alternatives to the proposed changes. Public workshops were held in Boise and Coeur d'Alene on October 21 and 26, 2004, respectively.

Following the workshops, Staff recommended that the Commission propose amendments to Rules 305, 306, 311, and 701. Staff's recommendations differed from the revisions originally

proposed by ICAN. At its Decision Meeting on August 16, 2005, the Commission accepted Staff's recommendation.

The Commission's proposed rules were included in the Idaho Administrative Bulletin published on October 5, 2005. A public hearing concerning the proposed rules was held on October 19, 2005.

STAFF COMMENTS

Proposed Changes to Rule 306

A. Adding LIHEAP to Eligibility Criteria

Under the existing provisions of Rule 306, gas and electric utilities are prohibited from terminating service during the months of December through February to any residential customer who declares that he or she is unable to pay the utility bill in full and there are children, elderly or infirm persons in the customer's household. In its Order No. 29165, issued in November 2002, the Commission reaffirmed four goals for its winter moratorium policy:

In 1987, the Commission articulated four goals for its winter moratorium policy: 1) preserve public health and safety by limiting the circumstances under which service may be terminated during winter months; 2) encourage the development of good payment habits by customers; 3) provide relief from impossible financial obligations; and 4) facilitate collection of problem accounts. General Order No. 177. Although nearly 15 years have passed, we believe that these goals are still relevant today.

Order No. 29165 at 8.

The current policy balances the needs of certain vulnerable customers to retain service during the coldest winter months with utilities' need to receive payment in full during each of those months. However, it does not offer any protection to customers who may simply be unable to afford to pay their winter heating bills in full. Of particular concern are those customers who use natural gas for space heating, the cost of which has increased by up to 27% from last year. See Order No. 29875. Escalating energy prices are taking a bigger bite out of household budgets. Low income customers are hit the hardest by price increases. They pay a larger

percentage of their income for energy¹ and are less likely to have the ability to invest in weatherization or conservation measures. Although financial assistance programs such as the Low Income Home Energy Assistance Program (LIHEAP) and Project Share are available to help customers pay energy bills, funding for those programs has not kept pace with the rapidly escalating cost of energy. It is also important to note that in Idaho, LIHEAP is funded entirely through grants from the federal government. For the 2005-2006 heating season, eligible Idaho customers will receive between \$98 (minimum basic benefit) and \$442 (maximum basic benefit). Compared to the previous heating season, this represents a slight increase in the minimum benefit and a significant decrease in the maximum benefit; during the 2004-2005 heating season, basic benefit amounts ranged from \$95 to \$600.

Rather than expand the moratorium to include more months, as suggested by ICAN in its Petition and several of those who submitted comments or testified at the public hearing, the Staff supports the Commission's expansion of the eligibility criteria for the moratorium to include customers who receive LIHEAP. This would allow customers who do not meet the current moratorium eligibility criteria (elderly, children or infirm) but are low-income and facing financial hardship to receive moratorium protection if they so choose.

Customers who receive LIHEAP will not be automatically protected from disconnection. Under the proposed rule, a customer must apply for and be deemed eligible to receive LIHEAP benefits by the appropriate local agency. Then the customer must take the additional step of notifying the utility that a LIHEAP grant is pending and he or she is unable to pay the bill in full at the present time. Adding LIHEAP to the moratorium eligibility criteria would also encourage eligible customers to apply for assistance and receive the benefits to which they are entitled. If customers who previously did not apply for LIHEAP become motivated to do so, it would not affect the total amount of LIHEAP funds available during the program year or the benefit amount available to each qualified recipient.

According to data gathered by Idaho's energy utilities, 20,777 customers had LIHEAP benefits applied to their accounts during the 2002/2003 heating season. This represents 3% of total residential energy customers in Idaho. Of those 20,777 customers, only 20% (4,094)

¹ For example, as of May 2005, households at or below 50% of the Federal Poverty Guidelines paid 34.4% of their annual income for home energy bills. This calculation was done prior to the recent significant increase in natural gas rates. Idaho has 21,000 households meeting this income criteria. (*On The Brink: 2005*, Fisher, Sheehan & Coulton).

declared eligibility for the moratorium. Nationally, 94% of LIHEAP recipients have at least one member who is elderly, disabled, or a child under 18. It is reasonable to assume that the vast majority of LIHEAP recipients in Idaho would be covered under the existing eligibility criteria for the moratorium, although clearly most choose not to contact the utility to declare an inability to pay and request the protection from disconnect that the moratorium offers. However, there are some LIHEAP recipients, including handicapped adults and low income wage earners (also known as “the working poor”) who are unable to keep up with their winter heating bills but do not qualify for moratorium protection under the current rule. Although there are probably not a large number of customers who fall into this category, it is nevertheless important to extend to them the opportunity to seek protection from disconnection during the winter months.

Staff recognizes that adding LIHEAP to the eligibility criteria would alter the underlying logic of the moratorium, adding an income-based test to the existing public health and safety criteria. Staff sees the proposed change as being entirely consistent with the Commission’s stated goals for the moratorium. Making this change is not without risks, however. More customers will be able to qualify for the moratorium, and to the extent that those additional customers (1) contact the utility to declare their eligibility and (2) decrease the amount they would otherwise pay or stop paying altogether, utilities’ cash flow would be affected. However, Staff does not believe the additional risk will significantly impact bad debt or place an unreasonable burden on affected utilities.

B. Modifications to Winter Payment Plan

Staff supports eliminating monetary restrictions on when a customer can participate in a Winter Payment Plan. Under the Winter Payment Plan, a customer pays one half of the regular Level Pay Plan amount. Staff suspects that the existing restriction on participation in succeeding years - that the balance owing as of November 1 does not exceed \$75 or the amount of the customer’s previous monthly billing, whichever is greater – comes into play rarely, if ever.

Staff does not know how many of the relatively few customers who sign up for the Winter Payment Plan choose to sign up in succeeding years. Since the Winter Payment Plan requires customers to make regular monthly payments throughout the moratorium period - encouraging them to pay rather than not pay - customers should not be prevented from participating in succeeding years if the customer honored his or her previous payment agreement.

C. Customers and applicants who move

Staff supports the proposal to require utilities to provide service to customers and applicants who move to a different location during the moratorium period. It is Staff's understanding that energy utilities are willing to provide service to a customer who had previously signed up for the moratorium and subsequently moved to another location within the same utility's service territory during the months of December through February, regardless of the customer's payment history or the fact that a balance was owing. In other words, utilities are willing to treat an existing customer's moratorium eligibility status as portable to a new location. The existing Rule 306 allows, but does not require utilities to do this.

Staff also supports the proposed change to Rule 306 to require energy utilities, under certain conditions, to provide service to an applicant² during the moratorium period regardless of past payment history or an unpaid bill owing at the time of application for service. If the applicant had received service within the past 30 days, declared eligibility for the moratorium, and subsequently moves to a new residence, the utility would be required to provide service. Adding this provision as Rule 306.09 would provide a narrow exception to the general rule requiring applicants to pay outstanding bills prior to receiving service and would allow both customers and applicants who had been protected by the moratorium prior to moving to retain that protection at a new residence.

If this proposal is not adopted, someone who moves and has a gap in service of 10 days or less (a "customer") will be treated more favorably than someone who moves and has a gap in service of more than 10 days but less than one month (an "applicant"). Staff's proposal, in essence, gives former customers some additional time to move and reapply for service during the months of December through February without being held to the more stringent credit criteria that generally applies to applicants throughout the year.

Proposed Changes to Rule 305

A. Information about moratorium and payment plans on termination notices

Staff supports the proposed amendment. As revised, the rule requires disconnection notices issued during the months of November through February by electric and gas utilities to

² "Applicant" is defined as "any potential customer who applies for service from a utility". A customer who moves from one location to another continues to be considered a customer if he or she had received service from that utility within the past ten (10) calendar days. See UCRR 5.

either include or be accompanied by information about the winter moratorium and the availability of payment plans, including level pay and the winter payment plan. Staff prefers to see distinctive, targeted, and timely information provided to customers immediately before and during the moratorium period.

B. Exact time of disconnection

At the public hearing, one person recommended that utilities identify the exact date and time of disconnection. She indicated that customers need to know when service was scheduled for disconnection so that they could plan accordingly and hopefully prevent it from happening. For example, a customer could have a check ready to give to the service technician when he or she arrived to disconnect service. Staff does not support this suggestion.

Such a requirement could have the undesirable impact of encouraging customers to put off paying, making payment arrangements, or seeking financial assistance until the last possible minute. Customers who wait to pay at the door immediately prior to disconnection increase both their own costs (there is a fee assessed if an energy utility collects payment at the customer's premises) and general ratepayer costs (the fee does not pay all utility costs associated with a collection visit). Utilities maintain that it would be difficult, if not impossible, to include on notices the precise date and time that disconnection of service will take place. Even specifying morning or afternoon time frames would be problematic, interfering with the utility's ability to manage its workforce efficiently or respond to emergencies.

C. Languages other than English

Several people at the hearing recommended that utilities provide disconnection notices and bills in Spanish and other languages. Within the context of formal cases before the Commission as well as in informal discussions, Staff has encouraged utilities to identify and address any language barriers that exist within their service territories. One reason Staff has chosen this approach is that there is not a uniform distribution of non-English speaking customers throughout the state, making a one-size-fits-all solution less effective.³ Staff does not

³ According to the 2000 Census, there are more Hispanics living in southwestern Idaho than there are in other regions of the state. Of those counties, several had a relatively high Hispanic population; in particular, 26% of Minidoka County's residents are Hispanic.

believe that simply requiring utilities to create separate notices and bills in Spanish⁴ or other languages will resolve the larger issue of accommodating customers who speak languages other than English.

As a practical matter, Staff notes that Rule 305 speaks only to disconnection notices, not bills, and that water utilities as well as energy utilities are covered by the rule. Moreover, requiring utilities to include a particular type of foreign language statement on bills or disconnection notices would be inadvisable if the requisite customer support infrastructure was not in place. Rather than make additional changes to Rule 305 at this time, Staff recommends that the Commission initiate a separate investigation into how best to address the needs of utility customers who do not speak English. An investigation would include an analysis of what steps have already been taken by utilities, such as employing Spanish-speaking customer service representatives, having Spanish-language menu options on utility Call Center interactive voice response systems, and using on-call third-party translation services to communicate with customers via telephone.

Proposed Changes to Rule 311

A. Disconnection on days before holidays

Staff supports the proposal to prohibit disconnection on days before holidays. Very few, if any, involuntary disconnections are scheduled around the Thanksgiving, Christmas, and New Year's Day holidays. Five other holidays (Martin Luther King Jr. Day/Idaho Human Rights Day, President's Day, Memorial Day, Labor Day, and Columbus Day) occur on Mondays; the current rule already prohibits disconnection on weekends. The combination of current practice and Monday holidays means that prohibiting disconnection on the day before the remaining two holidays (Independence Day and Veteran's Day) is most likely to affect utilities. Therefore, Staff believes that prohibiting disconnection on days before holidays would have minimal impact on utilities.

⁴ The 2000 U.S. Census shows that the majority of Idahoans (91%) speak only English at home. Of the 111,879 Idaho residents who speak a language other than English at home, 77% also speak English well or very well. The foreign language most often spoken in Idaho homes is Spanish; almost 7% of the state's population (80,241 people) speak Spanish at home.

B. Disconnection on Fridays

Under the current rule, disconnection is allowed between 8 a.m. and 2 p.m. on Fridays. Prior to May 2003, no disconnection was allowed after noon on Fridays. The Commission approved the change from noon to 2 p.m. in response to Intermountain Gas' advocacy that disconnection should be allowed until 4 p.m. on Fridays. See Case No. 31-2101-0201. Staff recommends that, at a minimum, the Commission adopt the proposed amendment to Rule 311 to reinstate the Friday noon deadline.

At the hearing, two people recommended that the Commission prohibit disconnection on Fridays, saying it was difficult for customers to negotiate with utilities or attempt to secure financial assistance to either avoid disconnection or get reconnected on Fridays. Staff knows that energy utilities do not support total prohibition of disconnection on Fridays. PacifiCorp expressed a willingness to not disconnect residential customers on Fridays, but did not want a similar prohibition for business customers. Other utilities were opposed to prohibiting disconnection on Fridays, stating that it would impair their ability to efficiently manage their workforces. Intermountain Gas stated that 12% of all disconnections are done on Fridays, meaning that the proposed rule change would have a significant impact on the utility's operations. Staff notes that all of our neighboring states (Montana, Oregon, Washington, Nevada, Utah, and Wyoming) prohibit disconnection all day on Fridays.

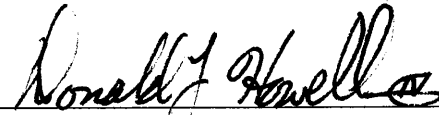
Proposed Change to Rule 701

Staff supports the proposed revisions to Rule 701. Adding more specificity with respect to what should be contained in rule summaries will help utilities better understand the Commission's expectations. Staff is developing model rule summaries to provide guidance to utilities, which will be made available upon request. Staff intends to prepare Spanish language translations of the model summaries as well.

SUMMARY

In summary, the Staff supports adoption of the proposed rules. The changes strike the appropriate balance of rights and responsibilities between customers and the utilities.

Respectfully submitted this 26th day of October 2005.

A handwritten signature in black ink, appearing to read "Donald L. Howell, II", written over a horizontal line.

Donald L. Howell, II
Deputy Attorney General

Technical Staff: Beverly Barker
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 26TH DAY OF OCTOBER 2005, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. RUL-U-04-02, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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