

DECISION MEMORANDUM

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

FROM: DON HOWELL

DATE: OCTOBER 26, 2007

RE: THE COMMISSION'S PROPOSED CHANGES TO THE UTILITY
CUSTOMER RELATIONS RULES, DOCKET NO. 31-2101-0701

On October 3, 2007, the Commission caused to be published in the Administrative Bulletin a Notice of Proposed Rulemaking. More specifically, the Commission proposed several amendments to its Utility Customer Relations Rules relating to electric, natural gas, and water utilities. As outlined in greater detail below, the Commission proposed substantive changes to eight different rules.¹ Comments on the rules were due no later than October 24, 2007.

In response to the Notice of Rulemaking, comments were filed by Avista, Intermountain Gas, Rocky Mountain Power, Idaho Power, the Commission Staff, the Idaho Community Action Network (ICAN), and four Idaho Power irrigation customers. The Commission also received two letters from Legislative Services dated August 24 and September 7, 2007. In the first letter, Legislative Services stated that it "appears that the Commission's proposed rules have been promulgated within the scope of statutory authority granted to the Public Utilities Commission." In the second letter, Legislative Services indicated that the Senate and House Subcommittees for Review of Administrative Rules had no objections to the proposed rules.

THE COMMENTS

To facilitate the Commission's review of the comments, this Memorandum outlines the particular comments that address the rules in primarily numerical order. Several proposed changes are reported in another rule – e.g., Rules 203 and 204, Rules 300 and 600, Rules 302 and

¹ The Commission also proposed to correct a citation in Rule 403.

310. The Commission Secretary has assembled the actual comments for your review. The proposed rules are attached to Staff's comments.

Before turning to the substantive comments, there is one procedural matter for the Commission's consideration. On October 17, 2007, ICAN submitted 39 letters from ICAN members and non-members. These nearly identical letters requested that the Commission hold a public hearing about the proposed rule changes. *Idaho Code* § 67-5222(2) states that an agency "shall provide an opportunity for oral presentation if requested by twenty-five (25) persons. . . ." The letters requesting a public hearing raise the question of whether a public hearing could be timely noticed and held so that the proposed rules could be submitted to the 2008 Legislature for review. The Rules Office has determined that November 16 is the "deadline for completing and filing all rulemakings that will be reviewed during the 2008 legislative session."

Because of this question, ICAN contacted its members that wrote the letters and subsequently withdrew the request for public hearing "because we understand that holding hearings would prevent the Legislative from considering these rules in 2008." ICAN Comments at 1. Although it withdrew its request for a public hearing, ICAN urged the Commission to schedule public hearings for future ratemaking proceedings.

Briefly, the Commission Staff supported all the proposed changes. Avista, Intermountain Gas, Idaho Power and ICAN supported some rules and opposed some rules. Rocky Mountain "is neutral to the majority of the proposed rule changes" but opposes three specific changes. Finally, the three irrigation customers all support the changes to the under-billing time period in Rules 203 and 204.

Rule 105 (Amount of Deposit)

Avista, Idaho Power, Intermountain Gas, and the Commission Staff all supported the changes to Rule 105. Rule 105 allows utilities to collect a deposit for service. The rule allows gas utilities to seek a deposit from space heating only residential customers (RS-1) based upon the two highest monthly bills. Although it supported the changes to Rule 105, Intermountain Gas pointed out that the existing two highest monthly bills for its RS-1 customers would result in an "insufficient deposit to adequately protect the Company. . . ." Intermountain Gas at 1. At the end of 2006, Intermountain Gas had approximately 253,200 residential customers. Of this amount, about 22.6% are RS-1 space heating customers. RS-2 residential customers are those that use natural gas for both space heating and water heating purposes.

Commission Decision: Does the Commission wish to adopt the proposed changes as its pending changes to Rule 105?

Rule 203 (Billing Under Inappropriate Tariff Schedule) and Rule 204 (Inaccurately Billed Service Under Correct Tariff Schedule)

These rules received the most comments. Rule 203 addresses customer billings under inappropriate tariff schedules. Rule 204 discusses inaccurate billing under a correct tariff or failure to bill for services. The Commission proposed several changes to these rules. First, the Commission proposed amendments that would allow refunds to customers in instances of over-billing to be applied to future utility bills. The utilities and the Staff supported this modification.

Second, existing Rules 203.03 and 204.02 provide that in instances where a utility has overcharged a customer, that the customer is entitled to a refund for a period not to exceed three years. Conversely, if the customer was undercharged, then the utility could seek to collect the undercharge for a period of three years. Thus, customers are entitled to a three-year period for overcharges and utilities may collect for three years for undercharges.² In its proposed rule, the Commission proposed that the rebilling period for a customer that was undercharged is

limited to six (6) months unless a reasonable person should have known of the inaccurate billing, in which the case the rebilling may be extended. Utilities shall implement procedures designed to monitor and identify customers who have not been billed or who have been inaccurately billed.

Rules 203.03 and 204.02.c. Avista, Idaho Power, Intermountain Gas³, and Rocky Mountain opposed the change in the length of period that a utility could collect for an undercharge.

The utilities generally object to a change in the symmetry in the allowed period of collecting undercharges and overcharges. “Although billing errors are most frequently the fault of the utilities, errors are not purposeful and cannot be completely eliminated in any business.” Idaho Power at 2. Idaho Power noted that utilities are already “incentivised” to minimize or eliminate errors because of the frustration such errors cause customers, the significant employee resources required to correct them, and the negative image caused by such errors. *Id.*

² *Idaho Code* § 61-642 provides that complaints concerning “excessive or discriminatory” (i.e., overcharges) by utilities “shall be filed with the commission within three (3) years from the time the cause of action accrues. . . .” See also *Idaho Code* § 61-641.

³ Intermountain Gas apparently supports the change to six months in Rule 203 but not in Rule 204. Intermountain Gas Comments at 1.

Intermountain Gas indicated that the change in the symmetry between the undercharge and overcharge period “has a built-in unfavorable financial bias to the Company.” Intermountain Gas at 2. Rocky Mountain and Idaho Power indicated that if the Commission feels the necessity to change the timeframe for undercharges, then the Commission should maintain the same timeframe for overcharges. Rocky Mountain at 2; Idaho Power at 4.

The four Idaho Power irrigation customers “strongly support the recommendations of changing the amount of time in which [a utility] can recover from their billing errors.” These four irrigation customers have more than 60 accounts between them and annual cumulative billings of approximately \$340,000. They urged the Commission to deny any recovery for billing errors. They pointed out that customers normally have no control over the metering equipment or the installation of measuring devices. They argued that utilities should not be able to recovery for any billing error due to the utility’s negligence or incompetence. They concluded by stating “No other business in Idaho has the ability to charge customers for past errors made on the businesses [sic] part.”

Third, Idaho Power suggests that the phrase “unless a reasonable person should have known of the inappropriate billing, in which case rebilling period may be extended” be deleted from the proposed change. Idaho Power at 3. Idaho Power asserted that this phrase could be subject to a variety of interpretations and it is unclear how long the “rebilling period may be extended.” *Id.*

Next, Idaho Power also recommended that the language of Rule 204.01 be clarified. Rule 204 is applicable in those instances where a customer was inaccurately billed under a correct tariff schedule. The Company proposed modifying language to address situations in which bills are incorrectly prepared “due to an error associated with complex metering equipment, such as current transformer (CT) metering.” *Id.* at 4. The Company proposed that subsection 204.01 be reworded to read:

Whenever the billing for utility service was not accurately determined for reasons such as a meter malfunctioned, failed, or was incorrectly installed, 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.

Staff believes that the Commission's proposed language more accurately reflects the Commission's intent but Staff acknowledges that adding the words "incorrectly installed" would be appropriate.

Finally, Rocky Mountain expressed concern with the Commission's proposal that utilities implement procedures to monitor and identify customers who may be misbilled. Rocky Mountain indicated that its account managers already review large client's usage and rate schedules. In addition, Rocky Mountain also provides optional rate schedules for customers at the time an application for service is made. If Rocky Mountain is "required to initiate new procedures and incur additional costs, the Company objects to this proposed change." Rocky Mountain at 2. For its part, Avista and Intermountain Gas supported this change while Idaho Power had no objection.

Commission Decision: Does the Commission wish to adopt the changes to Rules 203 and 204 that are unopposed? What is the Commission's pleasure regarding proposed changes to the time period for utilities to collect for past undercharges? Should "incorrectly installed" be added to 204.01? Does the Commission wish to make any changes to its proposal that utilities implement procedures to monitor and identify customers who are misbilled?

Rules 300 (Further Definitions) and Rule 600 (Definitions)

In these two rules the Commission proposed to adopt a new definition for the term "written notice." In particular, the Commission proposed that "Written notice may be provided by electronic mail (i.e., e-mail) if the customer is billed electronically and consents to electronic notification." Proposed Rules 300.04 and 600.05. The utilities and the Staff supported the changes to these rules so that a customer could choose to receive certain notices by e-mail.

ICAN opposed the change to Rule 300.04.⁴ ICAN expressed concern that a customer who uses the online billing option to save time is "locked" in for future billing and notification purposes. ICAN at 2. More specifically, ICAN urged the Commission not to allow utilities to replace written notices with electronic notices. ICAN observed that notices by e-mail "may be a good supplementary option for utilities to use them to ensure that customers receive written notices, but it should not be the only form of written notice that they send out to a household before turning off their power." *Id.*

⁴ It did not address the addition of Rule 600.05.

legal obligation to pay the other customer's bill) or for any other class of service." Idaho Power asserted that the struck-out language above causes confusion in the case of denial of service because a service denial does not always result in a termination of service. Idaho Power at 5. Staff believes that it is reasonable to delete this language.

Idaho Power also believes that proposed changes 311.01.c and .d are more appropriately related to "insufficient grounds for termination or denial service" and should be moved to Rule 310. Staff concurs with Idaho Power's suggestion to move 310.01.c and 310.01.d but the two subsections should be reworded for form and remain separate concepts.

Finally, based upon the changes outlined above, Idaho Power recommends that the Commission reword Rule 310.02 by adding the underlined text to read: "**Denial of Service.** No applicant shall be given notice of denial nor shall the applicant be denied service if any of the criteria listed in subsection 310.01.b through subsection 310.01.[f] apply to the unpaid bill cited as grounds for denial of service." Staff agrees.

Commission Decision: What does the Commission wish to do regarding Idaho Power's proposed text for 310.01.b, 310.01.c and .d, and 310.01.e?

Rule 311 (Times When Service May Be Denied or Terminated – Opportunity to Avoid Termination of Service)

1. No Fridays. The Commission proposes several changes to Rule 311. First, the Commission proposes to prohibit disconnection or denial service all day on Friday, except in certain instances, such as where there is illegal use of service or the premise has been abandoned. Currently, denial or disconnection is permissible until noon on Friday. Having denials and disconnections normally end on Thursday would allow customers an opportunity to make financial arrangements necessary to pay a bill and have service continued or reconnected before the weekend. This first change was supported by Staff and ICAN.

As ICAN noted in its comments, it originally proposed to end Friday shut offs in its 2004 Petition. It noted that fees for utility reconnection on weekends are higher than fees for reconnection during the business week. "Shutting off a family's power on a Friday places them in an impossible situation having to choose between paying a high reconnection fee on top of the bill they were unable to pay in the first place, or freezing through an Idaho winter weekend." ICAN at 1. It also noted that Oregon does not allow shut offs on Friday.

Avista, Idaho Power, and Intermountain Gas all opposed elimination of Friday for service disconnection or denials. Avista opposed the change in the Friday noon deadline. Allowing Avista to terminate service on Fridays until noon permits Avista to utilize its labor resources efficiently through the week. Avista and Intermountain Gas both argued that customers have access to agency assistance on Fridays and other financial resources just as they would on any other day. Avista at 2. Avista and Idaho Power did indicate that if the Friday noon deadline is changed that they support extending the time when services may be terminated from 4 p.m. to 5 p.m. for the other weekdays – See 311.02.b. *Id.* at 3; Idaho Power at 8.

For its part, Intermountain Gas indicated that 15% of its weekly disconnection workload is completed on Friday mornings. It noted that most banks are open through Saturday until noon or later and that the Company has 63 pay station locations open to accept payment after 5 p.m. weekends and evenings. Intermountain Gas at 3. It also indicated that a customer currently has a minimum of 45 days from receipt of the bill until actual disconnection. “At any point during this process, the customer is encouraged to contact Intermountain and make payment arrangements to extend or postpone the disconnection date.”

2. Rule 311.03. Idaho Power proposed that the Commission modify its proposed Rule 311.03 by removing the term “denial or” that the Commission has proposed to add on line 2. Idaho Power argued that because the act of denying service is separate and distinct from the act of terminating service, the Commission should remove its language “denial or” from subsections 311.04 and .05. The Company indicated that the addition of the “denial of service” language to subsections .04 and .05 will create a new requirement that utility representatives now make a site visit as a part of their service denial process. Intermountain Gas also supported the elimination of the phrase “denial or” from Rule 311.04. Intermountain Gas at 4. Staff agrees with Idaho Power’s reasoning and would support the removal of the text “denial or” from 311 Title, 311.01, 311.02, 311.03, 311.04, and 311.05.

3. Customer Requested Termination. Idaho Power proposed that Rule 311.06 be revised to read: “~~Applicant Without Service—~~ **Customer Request Determination.** Nothing in this rule prohibits a utility from ~~denying service to an applicant who is not connected at the time of the application for service or from~~ terminating service at any time pursuant to a customer’s request.” Staff believes this is an appropriate change.

4. Confidential Information. Intermountain Gas also proposed a change that was not proposed by the Commission. Rule 311.04 currently provides that the utility employee at a customer's premise to perform a disconnection shall have in his or her possession "the past due account record of the customer. . . ." Intermountain Gas opposes the "requirement of providing confidential information to the service technician concerning reasons why service is being denied." *Id.* However, Staff asserts the rule only requires that the employee have the past due account record of the customer for the purpose of knowing the balance.

Commission Decision: What does the Commission desire about Friday terminations? Should the term "denial or" be removed from Rule 311? Should 311.06 be clarified as agreed to by Idaho Power and Staff? What about the "confidential information" in 311.04?

OTHER COMMENTS

In its written comments, ICAN proposes three other changes to the Commission's Utility Customer Relations Rules. First, ICAN recommends that the Commission add two additional months (November and March) to the winter moratorium months (December, January, February) in Rule 306. That Rule 308 (Medical Certificates) should be changed to permit certain chronically ill customers to avoid termination of service for up to a year. More specifically, medical providers should indicate in the medical certificate how long the customer's condition is expected to last. Finally, ICAN proposes that the Commission's rules be changed to accommodate customers who speak in languages other than English or Spanish. In particular, ICAN recommends that the Commission amend its rules to require utilities to translate critical correspondence "including shut off notices and in the summary of rules," in languages other than English for customers who request them. ICAN at 3.

Idaho Code § 67-5227 addresses the Commission's ability to adopt a pending rule that varies in content with an originally proposed rule. This section allows the Commission to adopt a pending rule different from what was originally proposed if: (1) the subject matter of the rule remains the same; (2) the pending rule is a logical out growth of the proposed rule; and (3) the original notice was written so as assure that citizens were reasonably notified of the subject of the agency action and "were reasonably able from that notice to determine whether their interests could be affected by agency action on that subject." *Idaho Code* § 67-5227.

Commission Decision: Does the Commission find that ICAN's three proposals meet the requirements of *Idaho Code* § 67-5227?



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