

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FORMAL) CASE NO. IPC-E-22-09
COMPLAINT OF KAREN ERICKSON)
) ORDER NO. 35454
)

On February 25, 2022, and March 23, 2022, Karen Erickson (“Complainant” or “Ms. Erickson”) submitted emails to the Idaho Public Utilities Commission (“Commission”) alleging, in part, that Idaho Power Company (“Company” or “Idaho Power”) violated Idaho statutes and federal law.

Three public comments were received on March 7, 9, and 28, 2022.

At the March 29, 2022, Decision Meeting, the Commission determined to treat the emails as a formal complaint (“Complaint”), accept the formal complaint, issue a Summons to the Company, give the Company 35 days to answer or otherwise respond to the formal complaint, and set a 14-day comment reply period.

On May 3, 2022, the Company filed an answer (“Answer”) to the formal complaint along with the Declaration of Dan Smith.

On May 17, 2022, Commission Staff (“Staff”) filed comments and supporting attachments. No other comments were filed.

With this Order we dismiss the Complaint with prejudice.

FORMAL COMPLAINT

In the Complaint¹, the Complainant asserted that the Commission had violated, and continued to violate, federal Americans with Disabilities Act (“ADA”) requirements. February 25, 2022, Email from Karen Erickson.

The Complainant further asserted that Idaho Power had “demonstrated, before witnesses, unjust and unreasonable practices which are prohibited according to Idaho Statutes.” *Id.* The Complainant continued, stating that Idaho Power had “demonstrated disregard for [Complainant’s] safety, health, comfort and convenience” in violation of Idaho statutes. *Id.* The Complainant asserted that the Company had violated state and federal law for the last eight years. *Id.*

¹ The Complainant insisted that she did not give permission for a Deputy Attorney General (“DAG”) to represent the Complaint to the Commission. The DAG does not represent complainants or their complaints before the Commission. Rather, the DAG represents Commission Staff and the Commission.

The Complainant requested “Auxiliary aids and services” specified by the ADA and additional “case management services because of the complexity of the current unaddressed complaints and ADA violations.” *Id.*

IDAHO POWER’S ANSWER

The Company responded that the Complainant’s claim of Disability Discrimination under Title II of the ADA, to the extent she was making such a claim, failed because the Company was not a “Public Entity” under Title II of the ADA and, therefore, not beholden to the Title II requirements. Answer at 18. The Company further replied that the Complainant failed to establish that “she [was] an individual with a ‘disability’ . . . entitled to the protections of the ADA.” *Id.* at 19. The Company contended that because the Complainant had not established she had a physical or mental impairment that substantially limited a major life activity, her claim under the ADA must be dismissed. *Id.*

The Company noted that, based on its interactions with the Complainant, it appeared to the Company that the Complainant was “very articulate when conversing and seemingly ha[d] the capability, or necessary assistance, to submit payment, send electronic correspondence (e.g., submitting iWebster complaints to the Company and emails to Staff), drive to the [Company’s Canyon Operations Center in Nampa] or [corporate headquarters in downtown Boise], or call the Company when it suit[ed] her to do so.” *Id.* at 19-20. The Company stated that the Complainant had “also clearly demonstrated in front of Staff her ability to read and understand the Company’s text message notifications.” *Id.* at 20 (citing *In the Matter of Karen Erickson’s Petition that the Idaho Public Utilities Commission Require Public Utilities to Comply with the Americans with Disabilities Act*, Case No. IPC-E-21-22, Staff Decision Memorandum at 2 (July 9, 2021)).

The Company further explained that, even if the Complaint was meritorious under the ADA, and the Company was required to follow ADA protocol in providing service to the Complainant, that the Company had offered “Accommodations” and “Auxiliary Aids.” Specifically, the Company stated that for the past six years it had continually ensured that its website was accessible to disabled customers, consistent with federal government standards. *Id.* at 21. The Company detailed its history of “communicating in multiple formats, meeting with [the Complainant] in person, offering multiple dedicated individuals to explain her bill and services to her, offering regular meetings at locations convenient to her, and also offering to provide technical solutions to purported communication barriers, such as software or relay telephones.” *Id.* at 22.

In sum, the Company claimed that the Complainant’s claim of disability discrimination under the ADA, to the extent she was making such a claim, must fail.

In addition to failing to make out a claim under the ADA, the Company raised the following affirmative defenses: (1) that the Complainant did not present a claim the Commission was empowered to remedy; and (2) the Complainant did not allege any specific violations of Idaho Public Utilities Law or Commission Rules.

STAFF COMMENTS

Staff noted the Complaint reiterated claims identical to those made in Case No. IPC-E-21-22. Staff Comments at 3. The Commission issued a final order—Order No. 35124—in that case on August 4, 2021. In Order No. 35124, the Commission stated that Ms. Erickson requested the Commission: (1) require public utilities to comply with the federal ADA and provide disabled persons equal access to utility services; and (2) itself comply with the accessibility requirements of the ADA. Order No. 35124 at 1. With the issuance of Order No. 35142, the Commission explained that it could not enforce ADA-based claims against public utilities because it lacked the statutory authority to do so. *Id.* The Commission further explained that the Complainant’s Petition referred to the ADA and ‘ADA Regulations’ but did not refer to any statutory provision or rule upon which the Petition was based. *Id.* at 2.

Regarding Ms. Erickson’s request that the Commission itself comply with the accessibility requirements of the ADA in Case No. IPC-E-21-22, the Commission noted that she failed to provide facts “upon which this request [was] based and fail[ed] to refer to any particular provisions of statute and regulation upon which her request [was] based.” *Id.* at 2-3. The Commission further noted that Staff “went to great lengths to try to reach Ms. Erickson so that Staff could determine what reasonable accommodation[s] she needed” and “would ‘continue to work with Ms. Erickson to determine what reasonable accommodations she requires to participate in and enjoy the services, programs, or activities’ of the Commission.” *Id.* at 3.

Staff noted that, on December 17, 2021, Commission legal counsel served a letter by process server to Ms. Erickson’s address (“Letter”). Attachment 1 to Staff’s Comments. In an affidavit, the process server certified that he offered to read the Letter out loud to Ms. Erickson and she declined. Attachment 2 to Staff’s Comments. Staff noted that the Letter outlined resources and options available to Ms. Erickson to pay and understand her bill, including Caption Call, Hamilton Relay, smart dictation applications for Androids, iPhones or iPads, Idaho Assistive

Technology Project, payment options allowing her to make payment to the Company in person or by courier, and a third-party notification system. Staff Comments at 4. Staff noted the Letter also stated that Staff had continued to meet with Ms. Erickson and her representatives on several occasions and corresponded with Ms. Erickson in an effort to assist her. *Id.*

Staff believed the Complaint failed to state any facts, allegations, or issues not previously addressed by Case No. IPC-E-21-22. *Id.* at 4. Staff commended the Company’s extensive efforts in communicating with Ms. Erickson and assisting her with paying her bill. *Id.* Staff saw no evidence that the Company had violated any of its Commission-approved tariffs or failed to accommodate or interface with Ms. Erickson in a reasonable manner. *Id.*

Staff stated that Ms. Erickson had not alleged what specific rules or statutes—other than the ADA—that Idaho Power had violated. Staff did not believe that, based on the evidence presented, Idaho Power had violated any Commission rules or its tariffs in its provision of service to Ms. Erickson. Staff further noted the Commission’s previous statement that it lacked the jurisdiction to investigate whether itself or a regulated utility had violated the ADA.

Staff specifically believed the Complaint failed to state any facts upon which it was based or “refer to the particular provisions of statute, rule, order or controlling law” as required by the Commission’s rules regarding formal complaints and petitions. For this reason, Staff recommended the Complaint be dismissed with prejudice under procedural Rule 65, IDAPA 31.01.01.065.

FINDINGS

Having reviewed the record in this case, we dismiss the Petition with prejudice pursuant to procedural Rule 65, IDAPA 31.01.01.065. Notwithstanding Ms. Erickson’s lack of citation to the relevant authority, nothing in Ms. Erickson’s Complaint or the Company’s Answer suggests that a statutory provision, law, or rule enforced by the Commission has been violated.

Formal complaints must “[f]ully state the facts constituting the acts or omission of the utility . . . against whom the complaint is filed and the dates when the acts or omission occurred” and “[r]efer to the particular provisions of statute, rule, order or other controlling law upon which [the petitions] are based.” IDAPA 31.01.01.054.02-.03.

Ms. Erickson asserts that the Company and the Commission have committed multiple violations of the ADA over a ten-year period: these claims are identical to the claims she made in her informal complaint in IPC-E-21-22. We previously stated in that case that:

The facts upon which Ms. Erickson's Petition is based are not fully stated We decline to enforce ADA-based claims against public utilities because we lack the statutory authority to do so The ADA and supporting federal regulations are clear: the Commission is not the appropriate government entity to investigate an alleged ADA violation. An individual who believes it has been subjected to discrimination because of disability may file a civil action. 42 U.S.C. § 12133 (enforcement against a public entity); 42 U.S.C. § 12188 (enforcement against a private entity). Additionally, the U.S. Attorney General has broad investigative authority under the ADA. 42 U.S.C. §§ 12117 and 12188. When an individual believes it has been subjected to discrimination because of disability by a public entity, federal regulations provide an administrative process. 28 C.F.R. § 35.190. Therefore, the ADA clearly describes by what means ADA-based claims may be made. This Commission has not been delegated the authority to process such a claim.

Order No. 35124 at 1-2. Our reasoning in that Order regarding Ms. Erickson's 2021 informal complaint applies here to Ms. Erickson's Complaint. We take compliance with the ADA very seriously. We also note the extensive efforts of the Company and Staff in working with Ms. Erickson to address her concerns and assist her with paying and understanding her bill—efforts which Ms. Erickson appears to have rejected multiple times. Regardless of these good faith efforts, Ms. Erickson has, again, simply failed to state the facts and specific statutory authority supporting her allegations.

Aside from the Complaint's general assertions that the Commission and the Company have violated the ADA, Ms. Erickson fails to point to any other law or statute that the Company violated in its provision of service to her or the dates of or the specific factual circumstances underlying these alleged violations.

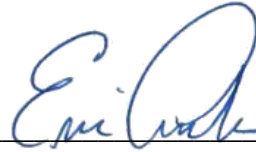
For these reasons, Ms. Erickson's Complaint is defective and insufficient under procedural Rule 65, IDAPA 31.01.01.65. We dismiss the Complaint with prejudice.

ORDER

IT IS HEREBY ORDERED that Ms. Erickson's Complaint is dismissed with prejudice pursuant to procedural Rule 65, IDAPA 31.01.01.065.

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 regarding 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 28th day of June 2022.



ERIC ANDERSON, PRESIDENT

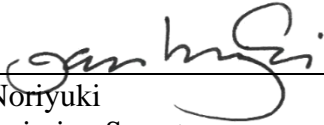


JOHN CHATBURN, COMMISSIONER

//Abstained to Avoid Conflict//

JOHN R. HAMMOND, JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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