

September 28, 2023

VIA ELECTRONIC DELIVERY

Jan Noriyuki
Commission Secretary
Idaho Public Utilities Commission
11331 W Chinden Blvd.
Building 8 Suite 201A
Boise, ID 83714

RE: NOTICE OF APPEAL OF IDAHO PUBLIC UTILITIES COMMISSION
ORDER #35904

Dear Ms. Noriyuki:


Please find enclosed our Notice of Appeal in the above referenced matter.

Informal inquiries may contact us at 208-270-7939. We are also available via
email at pegandsam@gmail.com.

Respectfully,



Samuel Z. Edwards, Sui Juris



Peggy M. B. Edwards, Sui Juris

Samuel & Peggy Edwards
333 Shoshone Ave.
Rexburg, ID 83440
208-270-7937
pegandsam@gmail.com

In Sui Juris

**IN THE IDAHO PUBLIC UTILITIES COMMISSION
OF THE STATE OF IDAHO**

| | | |
|--|---|----------------------------------|
| JACOBA H. VAN MASTRIGT, et al, |) | CASE NOS. PAC-E-23-04; |
| APPELLANTS, |) | PAC-E-23-05; PAC-E-23-06; |
| vs. |) | PAC-E-23-07; PAC-E-23-08; |
| IDAHO PUBLIC UTILITIES COMMISSION |) | AND PAC-E-23-11 |
| AND PACIFICORP, |) | |
| d/b/a ROCKY MOUNTAIN POWER, |) | NOTICE OF APPEAL |
| RESPONDENTS. |) | |

TO: THE ABOVE NAMED RESPONDENTS: PACIFICORP d/b/a ROCKY MOUNTAIN POWER ("COMPANY") AND THE PARTY'S ATTORNEYS:

NAME: JOE DALLAS
ADDRESS: 825 NE Multnomah, Suite 2000
Portland, OR 97232

NAME: MARK ALDER
ADDRESS: 1407 West North Temple, Suite 330
Salt Lake City, Utah 84116

AND THE SECRETARY OF THE IDAHO PUBLIC UTILITIES COMMISSION,
MS. JAN NORIYUKI.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants appeal against the above named Respondents to the Idaho Supreme Court from Idaho Public Utilities Commission Order #35904 recorded on the 25th day of August 2023, signed by President Eric Anderson, Commissioner John R. Hammond Jr., and Commissioner Edward Lodge. A copy of the order (#35904) being appealed is attached to this notice, as well as a copy of the order (#35849) which preceded it. Hereafter, the term 'Appellants' in this Notice refers particularly to Case No. PAC-E-23-05 of Samuel and Peggy Edwards.
2. Appellants have a right to appeal to the Idaho Supreme Court, and the orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Code § 61-627 and Rule 11(e), I.A.R.
3. Orders #35904 and #35849 have carefully avoided key legal issues raised by the Appellants, which are first: that merely objecting to installation of advanced metering infrastructure ("AMI meter") at their residence is grounds for denial or termination of service under IDAPA 31.21.01 (Utility Customer Relations Rules, UCRR 302). The Appellants have stated and repeated this objection on multiple occasions:
 - a. Complaint, received 23 March 2023: "We have attempted over and over again, in good faith to resolve all issues with ROCKY MOUNTAIN POWER/PACIFICORP which have led up to this point where they are now threatening to shut our power off, in spite of the fact that access to the meter has never been impeded for service and that we have always paid our power bill each month and are currently not late with payment. They, in turn, are the aggressor operating in bad faith, using strong-arm intimidation tactics, threat,

duress, and coercion in order to upgrade the meter without consideration for the will, privacy or medical effects which this upgrade would have upon us, the property owners.”

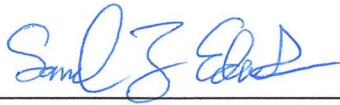
- b. Objection to Motion to Dismiss, received 22 May 2023: “CLAIM... our family has fulfilled our contract responsibilities for electric service and not given reason for termination of service as described by Utility Customer Relations Rules (UCRR) 302.”
 - c. Also stated in Objection to Motion to Dismiss: “Our meter is not damaged, and we have provided company representatives with safe, unencumbered access for the purposes required in Electric Service Regulation No. 6. Yet, ROCKY MOUNTAIN POWER/PACIFICORP has threatened our family with service disconnection because we wish to decline ROCKY MOUNTAIN POWER/PACIFICORP’s “Advanced Metering Infrastructure” (AMI) program. Termination of our family’s service is not justified by UCRR 302.”
 - d. Petition for Reconsideration, received 31 July 2023: “Is declining replacement of our meter with a meter of substantively different capability equivalent to denying access to the meter, per UCRR 302? Where is the law that authorizes ROCKY MOUNTAIN POWER/PACIFICORP to disconnect our electric power?”
4. Idaho Public Utilities Commission (“Commission”) has found that “refusing to allow the Company’s representatives access to replace existing meters with AMI meters is a violation of the [Electric Service Regulation, ESR] agreed to as a condition of receiving the Company’s service.” The Appellants disagree. Agreeing to installation of AMI meters is not one of the purposes listed in ESR 6(2)(d) “reading meters, inspecting, repairing or removing metering devices and wiring of the Company”, and is only loosely inferred in ESR No. 7(1) “repairing or removing metering devices”.

5. Nevertheless, for the sake of argument, assuming the Commission's finding is correct, the second legal issue is whether violating UCRR 302 is grounds for termination of electrical service under IDAPA 31.21.01? ROCKY MOUNTAIN POWER/PACIFICORP has alleged, but never proven, that Appellants have denied or willfully prevented the utility's access to the meter, stating that "refusing a meter upgrade is not safe and unencumbered access". The fact is that Appellants have never denied any ROCKY MOUNTAIN POWER/PACIFICORP representatives physical access to the meters. Further, the Commission has never found as a matter of fact that Appellants are refusing access to the meter.
6. Third, as a matter of law, is objecting to the installation of AMI meters the legal and factual equivalent of denying physical access to the meter, given that Appellants have never prevented the Company from physically accessing the meter – as evidenced in the original Complaint (particularly pictures and notarized statements of two neighbors) and by regular and full monthly payments based on the Company's readings of the meters?
7. No order has been entered sealing all or any portion of the record.
8. Is a reporter's transcript requested? No.
9. The Appellants request that the Commission Secretary file this Notice of Appeal and case record PAC-E-23-05 with the Idaho Supreme Court, including all documentation listed under Rule 28(b)(3), I.A.R., including "Objection to Motion to Dismiss" dated 5/22/2023 and "Objection to PACIFICORP Answer" dated 8/8/2023.
10. I certify:
 - (a) That the estimated fee for preparation of the agency's record has been paid.

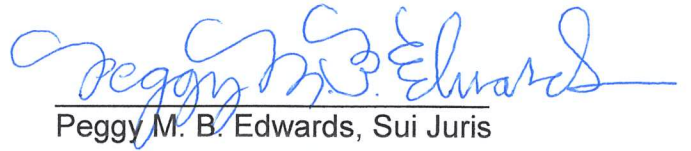
(b) That the appellate filing fee has been paid.

(c) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 28th day of September, 2023.



Samuel Z. Edwards, Sui Juris



Peggy M. B. Edwards, Sui Juris

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| JACOBA H. VAN MASTRIGT, et al, |) | CASE NOS. PAC-E-23-04; PAC-E- |
| |) | 23-05; PAC-E-23-06; PAC-E-23-07; |
| COMPLAINANTS, |) | PAC-E-23-08; AND PAC-E-23-11 |
| |) | |
| vs. |) | |
| |) | ORDER NO. 35849 |
| PACIFICORP, d/b/a ROCKY MOUNTAIN |) | |
| POWER, |) | |
| |) | |
| RESPONDENT. |) | |
| |) | |

Between March 22, 2023, and March 27, 2023, the Commission received six formal customer complaints (collectively the “Complaints”)¹ filed against PacifiCorp dba Rocky Mountain Power (“Company”) by the Company’s customers (collectively the “Complainants”). The Complaints concern the Company’s notification to terminate electric service if customers refuse to allow the installation of advanced metering infrastructure meters (“AMI meter(s)”) at their residences.

On April 19, 2023, the Commission issued a Summons directing the Company to file an answer to the Complaints within 21 days of service. On May 10, 2023, the Company filed an Answer and Motion to Dismiss (“Answer”) countering the issues cited in the Complaints and asking that the Complaints be dismissed with prejudice.

On May 22, 2023, the Commission received five objections to the Company’s request for dismissal and two “AMENDED CRIMINAL COMPLAINT(s).”²

Having reviewed the record in these cases, we now issue this Final Order dismissing the Complaints.

THE COMPLAINTS

In their Complaints, the Complainants presented various reasons for not wanting an AMI meter installed on their property including the age and health of the complainants, a claimed lack of legal authority allowing the Company to install AMI meters, and concerns over data privacy. Some Complainants also requested the ability to opt-out of having an AMI meter. Five of the

¹ The Complaints were filed by the Company’s electric service customers Jacoba H. van Mastright, Samuel and Peggy Edwards, Judy Twede, Karen Lane, Christy Armbruster, and Diane Huskinson. The Complainants all appeared *pro se*.

² Jacoba H. van Mastrigt and Judy Twede filed the “AMENDED CRIMINAL COMPLAINT(s).”

Complainants refused to have an AMI meter installed on their residence, the sixth provided consent to allow an AMI meter to be installed but alleged that the consent was unlawfully obtained. Several of the Complainants presented almost identical “Factual Counts” that allege that the Company: (1) breached the peace by attempting to install AMI meters on their residence; (2) attempted extortion of Complainant’s will; (3) impaired contracts; (4) attempted extortion by trying to take over the Complainant’s private property for commercial use; (5) attempted illegal wiretapping; and (6) threatened the Complainant’s with intent to commit harm. Some of the complainants allege additional “Factual Counts” of (1) gross and hazardous negligence; and (2) “actionable fraud.” Two of the Complainants also alleged the Company was committing elder abuse.³

The Complainants all asserted that they have attempted in good faith to resolve their issues with the Company regarding the deployment of AMI meters, and the Complainants alleged the Company is operating in bad faith, and using strong-arm intimidation tactics, threat, duress, and coercion. *See, e.g.*, Complaint of Jacoba H. van Mastrigt at 1. The Complainants also argued that they have paid their bills for electric service they receive from the Company on time.

Several of the Complainants argued the Company only has the authority to enter their properties for specific reasons (i.e., meter reading) and that any other access must be authorized by the property owner for certain matters including troubleshooting and making repairs to electrical equipment. The Complainants further claim they do allow the Company to access their properties to read meters but are not granting the Company access to exchange meters.

COMPANY ANSWER

The Company responded to the Complaints by first describing the notification process it engaged in and its discussions of alternatives for customers who did not want an AMI meter on their residences. Then the Company described the allegations and requests made by the Complainants. Lastly, the Company answered the Complaints lodged against its AMI meter roll-out and moved to dismiss the Complaints with prejudice.

Communication

The Company represented that it started deploying AMI meters in Idaho in the fall of 2021 and has since completed over 84,000 exchanges. The Company stated that it communicated with customers during AMI meter deployment with “letters, emails, and outbound phone calls

³ Most of these claims are civil tort claims or criminal. The Commission is not the appropriate body to the extent the Complaints seek any damages or the imposition of criminal liability.

informing customers of the Company's AMI installation process." Company Answer at 3. The Company asserted that "AMI allows for cost savings by reducing meter reading costs and provides improved customer service through enhanced information and billing options." *Id.* During the deployment of the AMI meters, the Company stated that about 160 customers objected to the installation of AMI meters, and the Company then worked with those customers to reach a resolution. The Company explained it "was willing accommodate customers by relocating the AMI [meter] to a different location of the property" at the customer's expense. *Id.* at 4. The Company represented it "expressed a willingness to continue working directly with these customers to find a resolution. However, keeping their current meter is not an option for any of our customers in Idaho, and disconnection of service will only be used as a last resort after proper notice has been provided." *Id.* The Company represented that it successfully resolved the concerns of 110 of the customers who had initially objected, and the Company exchanged those meters. *Id.*

For the 50 remaining customers, the Company represented that it began to formally notify them that, pursuant to the Utility Customer Relations Rules ("UCRR"), their service would be terminated if they continued to refuse the installation of an AMI meter. *Id.* The Company cited UCRR 302, IDAPA 31.21.01.302, which allows for termination of service if meter access is denied, as the Company's primary argument for its formal process to begin disconnection. *Id.* Along with UCRR 302, the Company cited UCRRs 304 and 305, IDAPA 31.21.01.304-.305, for the notification requirements to disconnect a customer under UCRR 302. *Id.*

The Company asserted it sent an initial letter ("First Letter") to the customers who refused the meter exchange informing them of the Company's inability to access the meter for a meter exchange, and the Company followed that letter with additional correspondence ("Second Letter") providing an explanation of the benefits and customer privacy protections afforded by AMI meters. *Id.* at 5 and 7-8. The Company then sent a final letter ("Final Letter") notifying customers that their service would be terminated. The Company also stated that the Second and Final Letters informed customers, including the Complainants, how to avoid termination of service. *Id.* The Company represented that the Final Letter also stated that "a certificate notifying the utility of a serious illness or medical emergency in the household may delay termination of service as prescribed by Rule 308." *Id.* Finally, the Company stated that its employees began delivering notices in person and attempting to resolve the issues customers cited regarding AMI meters before it planned on terminating service. *Id.* at 8.

Answer and Motion

The Company: (1) denied all factual allegations in the Complaints that were not admitted in its Answer; (2) explained its belief that industry standards have determined AMI meters do not provide a threat of harm to customers; and (3) claimed that the required UCRR notices it sent to customers who refused access were not threats and the Company did not violate any contract, procedure, rule or law with its requirement for AMI meter installations. The Company asked the Commission to dismiss the Complaints with prejudice for failure to state a claim.

The Company denied using “threats, duress, or coercion to induce Complainants to accept AMI [meter] installation.” *Id.* at 7. The Company discussed its communication efforts where it ultimately warned customers that without access to meters, the Company would initiate the termination process and terminate service if unable to resolve the issue of meter access. The Company noted that those communications were “developed in accordance with the UCRR’s approved by the Commission...” and merely warned customers of the possibilities if access was refused. *Id.* at 8.

The Company maintained that it is allowed to terminate customers’ service if not allowed to access the meters, and without an opt-out in Idaho, that is the only option available. The Company stated that it did discuss alternatives available to customers like relocating the new AMI meter on the customer’s property.

The Company cited Electric Service Regulation (“ESR”) No. 6(2)(d), which provides that “[t]he Customer shall provide safe, unencumbered access to Company’s representatives at reasonable times, for the purpose of reading meters, inspecting, repairing or removing metering devices and wiring of the Company,” and which its customers agree to as a condition of service. *Id.* at 9 quoting ESR No. 6(2)(d). The Company disputed the assertion in the Complaints that the Company does have physical access to the meters stating that “refusing a meter upgrade is not safe and unencumbered access” under ESR 6(2)(d). *Id.* Further the Company stated that ESR No. 7 requires the Company “to furnish and maintain all meters and other metering equipment” and does not prohibit or proscribe a specific type of meter. *Id.* quoting ESR No. 7.

The Company discussed the Federal Communication Commission’s (“FCC”) jurisdiction over devices emitting radio frequency, like AMI meters. The Company represents that the FCC ensures the safety of these devices pursuant to “the National Environmental Policy Act of 1969, among other laws.” *Id.* at 10.

The Company also asserted “[i]ndustry research and standards agencies, such as the American National Standards Institute (“ANSI”) and the Institute of Electrical and Electronics Engineers, Inc. (“IEEE”) have compiled the research” concerning exposure to radio frequencies energy and created guidelines that the FCC and federal Occupational Safety and Health Administration have adopted. *Id.* The Company stated those standards define the maximum permissible exposure (“MPE”) standards and the two categories they are assigned to, the controlled and uncontrolled environments. *Id.* The uncontrolled environment applies to the general public, like residential homes, and includes heightened safety requirements by FCC standards. The MPE for the controlled environment is 5:1, meaning the FCC’s MPE limit for the general public is 50X less than research shows can cause harm to humans. *Id.* at 11.

The Company discussed the history of AMI meters in Idaho and represented that the Company is the last major electric utility to install this infrastructure. The Company noted that AMI meters first became available almost 20 years ago. The Company cited previous cases for Avista, Idaho Power, and itself where the Commission dismissed complaints about AMI and/or denied a request to require public utilities to provide an opt-out provision. Case Nos. PAC-E-22-09, AVU-E-17-11, and IPC-E-12-04. The Company stated that the Commission has never “ruled that a public utility’s AMI project, which does not include an opt-out option, violates an administrative rule, order, statute, or applicable provision of the Company’s tariff.” *Id.* at 12.

The Company stated the Complaints “do not identify any specific administrative rule, order, statute, or applicable provision of the Company’s tariff” violated by the Company. *Id.* at 13. Further, the Company claimed it acted in compliance with rules and regulations that apply to notice and termination for complainants’ refusal to grant access to meters.

Objection and Amendments

In their Objection and Opposition to Motion to Dismiss (“Objections”), van Mastrigt and Twede stated that until the Company produces a rule that specifically authorizes termination for refusing to accept an AMI meter, the Company cannot install the AMI meter or terminate service. The Objections reiterated several points first addressed in the original Complaints about access, safety, data acquisition, and trespassing technology. The Objections also argued matters raised in

the “AMENDED CRIMINAL COMPLAINT(s)” filed by each.⁴ The Objections also ask the Commission to address all criminal counts they allege have been committed by the Company.

The Commission received various other documents in response to the Company’s Answer that essentially restated the same claims from the original Complaints and asked the Commission to reject the Company’s Motion.

COMMISSION DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter under Idaho Code Title 61 and IDAPA 31.01.01. The Commission is charged with determining all rules and regulations of a public utility are just and reasonable. *Idaho Code* § 61-303. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of all public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provisions of law, and to fix the same by order. *Idaho Code* §§ 61-501 through 503.

The Commission addresses informal and formal complaints through the process outlined in its administrative rules and does not provide preferential treatment to any party participating in the process. IDAPA 31.01.01.054 and .057.02. The Commission has had previous opportunities to review AMI meter complaints and the prevailing scientific research on customer safety, and in each instance the Commission has concluded that AMI meters do not pose a risk to the safety and health of customers, comply with *Idaho Code* § 61-302, and should be allowed in Idaho. *See* Case Nos. IPC-E-12-04, AVU-E-17-11, and PAC-E-22-09. The Commission has also recognized that the FCC has jurisdiction over what constitutes a safe level of radio frequency radiation that is permitted by AMI meters, and that the FCC has found it to be safe. *See* Order No. 35544 at 2. The Commission has also never required a utility to offer an opt-out for AMI meters.

The Complainants in these cases raise similar claims as those previously reviewed and decided by the Commission, claims that go against well-established evidence on AMI meter safety and seek an outcome that is not required under state or federal law. As we have stated previously, the FCC has jurisdiction over the approval of devices that use radio frequency, like AMI meters, and the FCC has approved AMI meters as safe for consumer use.

The Commission is authorized to ensure that every public utility furnishes service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and

⁴ The “AMENDED CRIMINAL COMPLAINT(s)” generally allege the same facts and “FACTUAL COUNTS” as the Complaints.

convenience of its customers and the public. *Idaho Code* § 61-302. The Commission is once again asked to weigh the FCC's safety approval of the use of AMI meters and similar devices and withhold the benefits and efficiencies that customers derive from the use of such devices, and the history of AMI meter use by electric utilities in Idaho, against the claims presented in the Complaints.

Having reviewed the record, the arguments of the parties, and all submitted materials, the Commission finds that the Complainants have not provided evidence to support a finding that AMI meters present a legitimate safety concern, or that public utilities in Idaho should be required to provide an opt-out option for AMI meters.

The Commission finds the record demonstrates that the Company and the Complainants have been in contact with each other about the issues surrounding the Company's deployment of AMI meters. The record also shows that the Company intends to replace meters that it owns, and the Company has complied with the UCRR through its communications with the Complainants.

We find that refusing to allow the Company's representatives access to replace existing meters with AMI meters is a violation of the ESR agreed to as a condition of receiving the Company's service. ESR No. 6(2)(d) requires Complainants to provide access to the Company representatives "for the purposes of . . . [among other things] repairing or removing metering devices" Under this ESR, the Company may remove the existing meter to replace it with an AMI meter. If Complainants refuse to allow the Company to remove the Company-owned meters, they are violating the ESR. Further, ESR No. 7(1) requires the Company to "furnish and maintain all meters and metering equipment." When read together, ESR Nos. 6 and 7 require that the Company provide its customers with the meter and associated metering equipment and requires the customer to provide the Company with access to the meter to accomplish this. Based on the foregoing, the Company has the necessary authority to install an AMI meter on the Complainants' property in its furnishing of electric service as a public utility.

The Commission also finds that the Company has been clear about its willingness to relocate AMI meters to a different location on the Complainants' property at the Complainants' expense if requested to. ESR No. 12 provides information on the Company's line extension and relocation policies. The Commission finds that the Complainants have been offered an opportunity to resolve this matter, and they have chosen not to do so. The Commission finds that the facts in


these cases do not justify ordering the Company to provide an option to opt-out of receiving an AMI meter. Accordingly, the Complainants' Complaints are dismissed.

ORDER

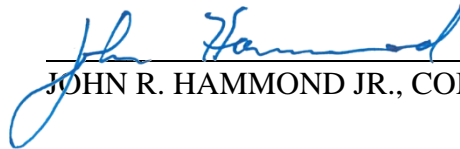
IT IS HEREBY ORDERED that the Complaints filed in the above captioned cases are dismissed.

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 11th day of July 2023.



ERIC ANDERSON, PRESIDENT

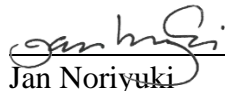


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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Between March 22, 2023, and March 27, 2023, the Commission received six formal customer complaints (collectively the “Complaints”)¹ filed against PacifiCorp dba Rocky Mountain Power (“Company”) by the Company’s customers (collectively the “Complainants”). The Complaints concerned the Company’s notification to terminate electric service if the customers refused to allow the installation of advanced metering infrastructure meters (“AMI meter(s)”) at their residences. The central theme of the Complaints focused the customers’ desire to avoid installation of AMI meters at their homes. Reasons cited for not wanting AMI meters included age and health of the complainants, a child with special needs in proximity to the home’s meter, lack of legal authority allowing the Company to install the AMI meters, data privacy, and a request for an opt-out provision.

On April 19, 2023, the Commission issued a Summons directing the Company to file an answer to the Complaints within 21 days of service. On May 10, 2023, the Company filed an Answer and Motion to Dismiss (“Answer”) countering the issues cited in the Complaints and asking that the Complaints be dismissed with prejudice. Subsequently, the customers filed five objections to the Company’s request for dismissal and two “AMENDED CRIMINAL COMPLAINT(s).”²

On July 11, 2023, the Commission entered a Final Order dismissing the Complaints. Order No. 35849. The Final Order provides, in pertinent part:

The Complainants in these cases raise similar claims as those previously reviewed and decided by the Commission, claims that go against well-established evidence

¹ The Complaints were filed by the Company’s electric service customers Jacoba H. van Mastrigt, Samuel and Peggy Edwards, Judy Twede, Karen Lane, Christy Armbruster, and Diane Huskinson. The Complainants all appeared *pro se*.

² Jacoba H. van Mastrigt and Judy Twede filed the “AMENDED CRIMINAL COMPLAINT(s).”

on AMI meter safety and seek an outcome that is not required under state or federal law. As we have stated previously, the FCC has jurisdiction over the approval of devices that use radio frequency, like AMI meters, and the FCC has approved AMI meters as safe for consumer use. . . .

Having reviewed the record, the arguments of the parties, and all submitted materials, the Commission finds that the Complainants have not provided evidence to support a finding that AMI meters present a legitimate safety concern, or that public utilities in Idaho should be required to provide an opt-out option for AMI meters. . . .

We find that refusing to allow the Company’s representatives access to replace existing meters with AMI meters is a violation of the ESR agreed to as a condition of receiving the Company’s service. ESR No. 6(2)(d) requires Complainants to provide access to the Company representatives “for the purposes of . . . [among other things] repairing or removing metering devices” Under this ESR, the Company may remove the existing meter to replace it with an AMI meter. If Complainants refuse to allow the Company to remove the Company-owned meters, they are violating the ESR. Further, ESR No. 7(1) requires the Company to “furnish and maintain all meters and metering equipment.” When read together, ESR Nos. 6 and 7 require that the Company provide its customers with the meter and associated metering equipment and requires the customer to provide the Company with access to the meter to accomplish this. Based on the foregoing, the Company has the necessary authority to install an AMI meter on the Complainants’ property in its furnishing of electric service as a public utility.

Id. In the Final Order, the Commission also found that the Company had communicated its willingness, upon request, to relocate the AMI meter to a different location on the Complainants’ property at their expense. Accordingly, the Commission determined that the facts in each case did not justify ordering the Company to provide an option to opt-out of receiving an AMI meter and dismissed the complaints. Pursuant to *Idaho Code* § 61-626 and IDAPA 31.01.01.331, the Complainants were given twenty-one (21) days following entry of the Final Order in which to petition for reconsideration.

PETITION FOR RECONSIDERATION

On July 31, 2023, Complainants Samuel and Peggy Edwards filed a Petition for Reconsideration (“Petition”) of Order No. 35849.³ The Edwards base their claim that the Commission erred in Order No. 35849 upon two contentions: (1) that the Commission

³ Mr. Edwards represents that he requested the other complainants refrain from seeking reconsideration to “reduce confusion or generalization” from consideration of multiple complaints. Pet. for Recon. at 3.

misinterpreted the relevant Electronic Service Regulations (“ESR”) applicable to the Company; and (2) that requiring 100 percent compliance AMI metering requirement is unreasonable. In their Petition, the Edwards contend that AMI meters lack surge protection and, therefore, constitute a “downgrade” from the electromechanical metering already installed at their property. According to the Edwards, ESR 6(2)(d) does not authorize meter access for purposes of installing technology to replace that already in place, nor does ESR 7(1) provide the Company sole discretion to replace a meter with any technology. The Edwards also suggest something less than 100 percent customer compliance with the Company’s AMI metering initiative would be just and reasonable.

As evidence that AMI meters pose a safety concern, the Edwards attached a document purporting to be an amicus brief filed by Children’s Health Defense, and Building Biology Institute in a case before the Pennsylvania Supreme Court, *Povacz v. Penn. Pub. Utility Comm.*, 280 A.3d 975 (Pa. 2022).⁴ Included in an addendum to the purported brief are a “Physicians Statement,” “Scientists Statement,” and reports by engineers expressing opinions regarding the function and health risks associated with AMI meters. However, it does not appear that the statements or reports were given under oath or otherwise certified true and correct under penalty of perjury, nor does the purported brief bear a file stamp indicating it was in fact filed in the Pennsylvania case.⁵

COMMISSION DISCUSSION AND FINDINGS

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 specify “why 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. Commission Rule of Procedure 331 further requires the petitioner to indicate “the nature and quantity of evidence or argument the petitioner

⁴ In *Povacz*, the Pennsylvania Supreme Court addressed a challenge by electric customers to the installation of AMI meters (termed “smart meters” in the opinion) on their property. In that case the Pennsylvania Supreme Court held that the customers failed to show that the AMI meters were unsafe or that forced exposure to AMI meters constituted unreasonable service. *Id.* at 1009-13.

⁵ On August 4, 2023, the Company filed an Answer to the Petition for Reconsideration (“Answer”) requesting that it be denied. On August 8, 2023, the Edwards filed an Objection to the Company’s Answer.

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. As discussed below, the Edwards have not shown in their Petition that Order No. 35849 (or an issue decided in it) is unreasonable, unlawful, erroneous or not in conformity with the law. Nor have the Edwards identified evidence that warrants granting their petition.

The Edwards’ argument that the Commission misinterpreted the ESR is, at best, a slight variation of their previous argument that the ESRs do not obligate them to permit the Company to upgrade their existing meter. Rather than characterizing installation of an AMI meter as an upgrade, the Edwards contend it would be a downgrade because such meters lack surge protection. However, the Edwards did not present evidence supporting their conclusory assertion that the AMI meter the Company seeks to install would lack surge protection, even if the absence of such protection renders an AMI meter a downgrade in the Edwards’ opinion. More importantly, beyond the conclusory assertion that “a substantive change of metering capability to residents’ electric meters” differs from furnishing and maintaining meters and equipment under the ESR, the Edwards have not supported their argument that the Commission misinterpreted the ESR with cogent argument or citation to legal authority.

Similarly, the Edwards have failed to show declining customers an opt-out option is unreasonable. According to the Edwards, failing to allow opt-outs has left disconnection as the only option open to “a medically sensitive minority of the public.” Ostensibly, the Edwards are concerned about adverse medical effects resulting from radio frequency (“RF”) radiation that AMI meters emit. As noted in previous Commission orders (*e.g.*, Order Nos. 32500, 33979, and 35544), the Federal Communications Commission (“FCC”) has adopted safety limits for RF devices operating near humans. *See* 47 C.F.R. 1.1307(b), 1.1310, 2.1091, 2.1093. The Edwards do not contend that the Company intends to install an AMI meter that does not comply with FCC requirements. Rather, the Edwards ostensibly assert that AMI meters pose a safety concern, regardless of FCC requirements. In support of this contention, the Edwards attached the aforementioned amicus brief filed by Children’s Health Defense, and Building Biology Institute. However, the Edwards have not authenticated the document as being what they claim it to be, nor does the purported brief bear a file stamp indicating it was in fact filed in the Pennsylvania appeal.

Moreover, although an addendum to the purported brief includes a “Physicians Statement,” “Scientists Statement,” and reports by engineers expressing opinions regarding the function and health risks associated with AMI meters, the reports and statements do not appear to have been given under oath or otherwise certified true and correct under penalty of perjury. Such unauthenticated and unsworn evidence is insufficient to overcome the conclusions of the FCC regarding generally safe levels of RF radiation.⁶ Even if it were, the Edwards have not presented evidence indicating AMI meters pose a demonstrable, credible health and safety concern to those residing in their home to suggest that our decision in Order No. 35849 was unreasonable, unlawful, erroneous or not in conformity with the law. Finally, the Edwards have not addressed why placing such a meter away from their home as the Company agreed to do would not sufficiently address their health and safety concerns about and AMI meters.

In sum, despite the sincerity of the Edwards concerns, the Commission will continue adhering to the FCC’s position on safe levels of RF radiation. Accordingly, the Commission concludes that the Edwards’ Petition should be denied.

ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this case may appeal to the Supreme Court of Idaho within forty-two (42) days pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See* Idaho Code § 61-627; I.A.R. 14.

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⁶ In their Petition, the Edwards cite an argument presented in the amicus brief that FCC guidelines cannot support conclusions regarding RF safety because a federal court remanded a decision by the FCC not to revisit the limits on RF radiation established in 1996. Specifically, in *Env’t Health Tr. v. Fed. Comm’n Comm’n*, a divided panel of the D.C. Circuit held that the FCC failed to respond to evidence in the record indicating that exposure to RF radiation below current FCC limits may cause negative health effects unrelated to cancer. 9 F.4th 893, 906 (D.C. Cir. 2021). Although *Environmental Health Trust* suggests that relevant scientific knowledge has evolved since the FCC last updated the limits for RF radiation, the case does not support a claim that RF radiation at, or below, current FCC limits causes adverse health effects in humans.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 25th day of August 2023.



ERIC ANDERSON, PRESIDENT

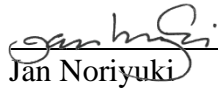


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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