

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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. 35904
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 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

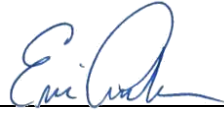
IT IS HEREBY ORDERED that the Petition for Reconsideration is denied.

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.

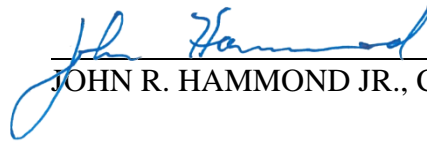
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⁶ In their Petition, the Edwards cite an argument presented in the amicus brief that FCC guidelines cannot support conclusions regarding RF safety because a federal court remanded a decision by the FCC not to revisit the limits on RF radiation established 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

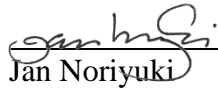


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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