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IDAHO PUBLIC
UTILITIES COMMISSION

IN THE SUPREME COURT OF THE STATE OF IDAHO

Samuel and Peggy Edwards, **Complainants-Appellants,** **vs.** **IDAHO PUBLIC UTILITIES COMMISSION and PACIFICORP, dba ROCKY MOUNTAIN POWER COMPANY,** **Respondents.**	**Complainants-Appellants Brief** **Supreme Court Docket No. 51238-2023** **Public Utilities Commission No. PAC-E-23-05**

Appeal from the Idaho Public Utilities Commission, The Honorable Eric Anderson presiding.

Appellants, pro se

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I. Statement of the Case

A. Nature of the Case

Advanced Metering Infrastructure (AMI) has been installed by Electric Utilities in the State of Idaho during the past nearly 20 years (R. at 152 & 168). During this time, the Idaho Public Utilities Commission (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." (R. at 168)

In October 2021, ROCKY MOUNTAIN POWER / PACIFICORP (the "Company") began installations of Advanced Metering Infrastructure (AMI). Between that time and May 10th, 2023, when the Company submitted its "Answer and Motion to Dismiss" (R. at 142), it had completed 84,926 AMI meter exchanges. The Company was successful in deploying AMI meters to >99.8% of its customers due to advanced briefings held before the Commission which noted that no "opt-out" option would be extended to customers. Since customers were offered no choice in the AMI installation, few objected.

"Over the course of the [Company's] AMI installation project, approximately 160 customers refused AMI installations for various reasons – primarily due to fears of radio frequency or privacy of customer data." (R. at 145) These remaining <0.2% of customers were approached by Company agents seeking to address customers' concerns, including offers to relocate the meter (at customers' expense) elsewhere on their property. In the cases of 50 customers, including the Complainants-Appellants, negotiations did not reach an agreement with the Company; so the Company notified them of intent to terminate

service, following the Utility Customer Relations Rules (UCRR 304) which is also known as IDAPA 31.21.01.304. Initial notice letters uniformly alleged that "our installer couldn't access the meter base". (R. at 157) Final notices informed customers that electric service termination would occur "for failure to provide access as required under UCRR 302(e)." (R. at 161)

Upon receipt of termination notices, the Complainants-Appellants formally complained to the Commission, stating 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." (R. at 5) This notarized complaint also included a signed affidavit (R. at 13-16) which listed many of the circumstances leading up to Company termination notifications, including efforts to communicate with Company agents. Also, pictures and witness statements were included in the complaint affirming that access to the meter has remained unimpeded. (R. at 31-37)

The complaint was combined with five other diverse complaints[1] which arrived to the Commission about the same time. A Summons was issued to the Company to address all unique grievances (R. at 40-41). On 11 July 2023, the Commission issued Order #35849 addressing selected issues raised by the six complainants. However, Complainants-Appellants appealed Order #35849 (see R. at 172) and raised two legal issues:

1) Is declining replacement of our meter with a meter of substantively different capability equivalent to denying access to the meter, per UCRR 302?

[1] As an illustration that bundled complaints dealt with diverse legal issues, PAC-E-23-08 had received an AMI meter and desired it to now be removed. (R. at 131)

2) Where is the law that authorizes ROCKY MOUNTAIN POWER/PACIFICORP to disconnect our electric power?

These two legal issues were not answered in the Commission's subsequent Final Order on Reconsideration #35904. Instead, the Commission reframed these two legal questions as a contention that "the Commission misinterpreted the relevant Electronic (*sic*) Service Regulations ("ESR") applicable to the Company". (R. at 388) Since Order #35904 studiously avoided answering Complainants-Appellants' key legal questions, the Complainants-Appellants have appealed to the Idaho Supreme Court pursuant to I.C. § 61-627 and Rule 11(e), Idaho Appellate Rules (I.A.R.). (R. at 636 & 655)

B. Course of Proceedings

The Complainants-Appellants have agreed to the course of proceedings as listed in the Agency Record.

C. Statement of Facts

1. The Company issued initial notice claiming that their "installer couldn't access the meter base" located out our home. The letter continued its claim that "as required by the Idaho Public Service Commission, clear and safe access must be available to electric meters for inspection, maintenance, *meter upgrades*, and to enable us to respond to any emergencies." (R. at 13 & 30, italics added)
2. The Company re-issued electric service termination letters soon after Final Order Denying Reconsideration #35904. (R. at 627)
3. Complainants-Appellants have disputed the Company's claim that "installer couldn't access the meter base" located at 333 Shoshone Ave,

Rexburg Idaho, 83440. (R. at 5 and 22) Further, Complainants-Appellants claim that there has always been unimpeded physical access to the meter base since initiating electric service in October 2019. (R. at 22) These statements are affirmed by affidavit (see #7 in R. at 13-14), pictures and notarized witnesses (R. at 31-38).

4. The Commission found 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." (R. at 615, italics added)

II. Issues Presented on Appeal

A. Is it reasonable that the Commission find whether Complainants-Appellants have provided grounds for termination of service under UCRR 302.01?

B. Is mere objection to AMI Meter Installation the factual and legal equivalent of denying physical access to the meter?

C. Is Man's right to "secure safety" preserved by Commission Orders?

III. Attorney Fees on Appeal

None to report

IV. Legal Standard

> The review on appeal shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order appealed from violates any right of the appellant under the constitution of the United States or of the state of Idaho. Upon the hearing the Supreme Court shall enter judgment, either affirming or setting aside or setting aside in part the order of the commission. In case the order of the commission is set aside or set aside in part, the commission, upon its own motion or upon motion of any of the parties, may alter or amend the order appealed from to meet the objections of the court in the manner prescribed in section 61-624, Idaho Code. I.C. § 61-629

The party appealing a Final Order has the burden to first show whether and how the Commission erred in regularly pursuing its authority. Also, the Supreme Court has asserted that when it reviews a lower tribunal's decision to grant or deny a motion for reconsideration, it uses "the same standard of review the lower [tribunal] used in deciding the motion for reconsideration." Pandrea v. Barrett, 160 Idaho 165, 171, 369 P.3d 943, 949 (2016) (quoted in Idaho Power and IPUC vs. Tidwell, 157 Idaho 616, 621, 338 P.3d 1220, 1225 (2018)). It may therefore be helpful to review the standard used by the Commission:

> Petitions for reconsideration must specify (a) why the order or any issue decided in it is unreasonable, unlawful, erroneous or not in conformity with the law, and (b) the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted. (IDAPA 31.01.01.331)

I.C. 61-629 continues by explaining that the review on appeal may include "a determination of whether the order appealed from violates any right of the appellant under the constitution of the United States or of the state of Idaho."

The Supreme Court must affirm the Final Orders of the Commission, unless it determines that the Commission has not regularly pursued its authority, including

violation of some right of the appellant, as stated above. Therefore, if the Complainants-Appellants were to demonstrate that the Final Orders were unreasonable, unlawful, erroneous, not in conformity with the law or violated some right of the appellant as described above, then this Court shall enter judgment either setting aside or setting aside in part the order of the Commission. In this case, the Commission, "upon its own motion or upon motion of any of the parties, may alter or amend the order appealed from to meet the objections of the court in the manner prescribed in section 61-624, Idaho Code." (I.C. § 61-629)

V. Argument

A. It is Unreasonable that Final Orders Do Not Determine Whether Complainants-Appellants Have Provided Reason for Termination of Service under IDAPA 31.21.01.302.01 Because the Commission is Vested With Power and Jurisdiction to Supervise and Regulate the Company, and A Formal Complaint Was Submitted to Dispute this Allegation.

According to I.C. § 61-501, the Commission is "vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act". Moreover, the Commission has "power to investigate and fix rates and regulations" by I.C. § 61-503.

A standardization of naming conventions may now be helpful. Idaho Administrative Procedures Act (IDAPA) 31.21.01 – Customer Relations Rules for Gas, Electric, and Water Public Utilities – is known as the Utility Customer Relations Rules, or UCRR. Hereafter, this briefing will use IDAPA 31.21.01 to refer to the whole UCRR, and UCRR ### to refer to a specific subsection under the UCRRs. IDAPA 31.21.01 lists rules that apply to all regulated utilities and their customers. These rules implement the following statutes passed by the Idaho Legislature: general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and the specific legal authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, and 61-520, Idaho Code.

According to UCRR 002, "written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission." Further, UCRR 301 explains that "if the utility intends to deny service to an applicant under [UCRR] 302… the utility will advise the applicant what action(s) the applicant will take to receive

service, and that if there is a dispute, the applicant may file an informal or formal complaint with the Commission." Clearly, it is the intention of IDAPA 31.21.01 that the Commission issues written interpretations and that the complaint process be the means for settling a dispute between the customer and the utility (Company).

UCRR 302.01 provides reasons under which the utility may terminate service to a customer without the customer's permission. The Company has alleged, but never proven that "the customer or applicant denied or willfully prevented the utility's access to the meter." (UCRR 302.01.e, also Fact #1) Specifically, the "Company believes that having a meter that is physically accessible but where the customer is refusing a meter upgrade is not safe and unencumbered access as defined in Electric Service Regulation No. 6". (R. at 150) Yet, it is UCRR 302 and not "Electric Service Regulations (ESR) of Rocky Mountain Power…" which identifies reasons for denial or termination of service.

Final Orders #35849 and #35904 (R. at 606 & 614) are notably silent on any findings of whether Complainants-Appellants have "denied or willfully prevented the utility's access to the meter" which is alleged by the Company, denied by Complainants-Appellants, and would – if true – constitute legal grounds for service termination under UCRR 302.01.e. Why would the Commission remain silent when repeatedly asked variations of this question:

a) Where is the law that authorizes ROCKY MOUNTAIN POWER/PACIFICORP to disconnect our electric power?

b) Is merely objecting to AMI meter installation at their residence grounds for a customer's termination of service under UCRR 302? (R. at 172, other examples listed on R. at 622).

As explained in Section I.A, Nature of the Case, the Commission reframed Complainants-Appellants' questions in "Petition for Reconsideration" so that findings in its Final Order Denying Reconsideration, Order 35904 (R. at 615-616), would be entirely answerable using the "Electric Service Regulations (ESR) of Rocky Mountain Power…". Thus, the Commission made no interpretation related to UCRR 302.01 in Final Order Denying Reconsideration #35904.

In English, "unreasonable" is defined as "not in accordance with practical realities", also "acting at variance with or contrary to reason; not guided by reason or sound judgment".[2] In the first sense of the term "unreasonable", Complainants-Appellants conclude that Final Orders #35849 and #35904 (R. at 606 & 614) are unreasonable because the Commission dismisses our Complaint without finding whether the utility has grounds to terminate our family's service, per UCRR 302. The practical reality is that once Complainants-Appellants' complaint is dismissed, the Company has demonstrated (see Fact #2) that service termination without customer permission will be its next action.

Before discussing the second stated definition of "unreasonable", Complainants-Appellants remind the Court of the duties of Public Utilities.

[2] https://www.dictionary.com/browse/unreasonable, accessed on 1/1/2024

> Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. (I.C. § 61-302)
>
> All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. (I.C. § 61-303)

It is already established that Complainants-Appellants and the Company disagree whether access to the meter has been denied. Legal questions pertaining to UCRR 302 constituted an important part of the Complainants-Appellants' "Petition to Reconsider". (R. at 172) If the Commission is allowed to side-step questions of legal authority and interpretation of UCRR 302.01, then the Commission has essentially communicated to the Company and Complainants-Appellants that so long as notifications are made in accordance with UCRR 304 and 305, the utility may terminate customer's service without the Commission addressing a formal complaint, filed in accordance with UCRR 301. The utility currently has a conflict of interest in the disputed matter of terminating Complainants-Appellants' service, and the Company cannot fulfill duties listed in I.C. § 61-302 and § 61-303 which both require that its service to the public be "just and reasonable". An impartial resolution of the dispute is required before the utility can take any official action against Complainants-Appellants.

Complainants-Appellants, therefore conclude that the Commission erred by issuing an unreasonable Order #35904 that does not address the practical realities of Complainants-Appellants' Petition for Reconsideration. Also, the Commission erred in not regularly pursuing its authority to supervise and regulate the Company, per I.C. § 61-501. The Commission's failure to determine whether grounds are found under UCRR 302

leaves the Company with a conflict of interest regarding its duties listed in I.C. § 61-302 and § 61-303. Final Order Denying Reconsideration #35904 must therefore be set aside or set aside in part until the Commission amends this unreasonable Order.

B. Mere Objection to AMI Meter Installation is not the Factual and Legal Equivalent of Denying Access to the Meter, per UCRR 302.01, Because the Company Has Never Been Denied Access for Purposes Listed in the Electric Service Regulations of Rocky Mountain Power (ESRs).

> The 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. ESR No. 6(2)(d)
>
> The Company will furnish and maintain all meters and other metering equipment. ESR No. 7(1)

Complainants-Appellants assert that Company representatives have never been denied access to Complainants-Appellants' meter for the purposes written in ESRs No. 6 & 7. (see Fact #3). These ESRs document, as regulation, the purposes for which Company representatives must be allowed access customer premises, and UCRR 302.01.e authorizes a utility to terminate service to that customer if access is denied or willfully prevented. The Complainants-Appellants could not be found to have denied access to the Company, in the sense of UCRR 302.01.e, if Company representatives had insisted upon access to build a pool in our backyard. Therefore, denying access for reasons not listed in the ESRs is not the factual and legal equivalent of denying access to the meter, per UCRR 302.01.

> In accepting electric service from the Company, each Customer agrees to comply with and be bound by said regulations and the applicable electric service schedules… They may be revised, when occasion requires, upon approval of the Idaho Public Utilities Commission. ESR No. 1(2)

While the ESR is a regulation upon the Company issued by the Commission; yet, ESR No. 1(2) also obligates Customers "to comply with and be bound by said regulations" in exchange for electric service (offer and consideration), showing unconditional acceptance through accepting electric service.[3] As Complainants-Appellants already had accepted electric service from the Company before notices were received advising of AMI meter installs in our neighborhood (Facts 1 & 3), each of the written notices documented by Complainants-Appellants constitutes an offer to change the contract by allowing Company representatives access for the AMI meter installation, despite the ESRs being silent about this purpose for access.

As affirmed in Section I.A, Nature of the Case, Complainants-Appellants have paid bills on time, and have not provided any grounds for termination of service. Therefore, UCRR 304 notifications received by Complainants-Appellants demanding access to customer premises *for a purpose not listed in the ESRs* constitute a strong-arm negotiation tactic to motivate Complainants-Appellants to receive AMI meter installation. Ability to issue UCRR 304 notifications for purposes of access outside of the ESR substantially reduces the Company's motive to negotiate in good faith.

Yet, the ESRs "may be revised, when occasion requires, upon approval of the Idaho Public Utilities Commission." (ESR No. 1[2]) Complainants-Appellants assert that Commission Orders #35849 & #35904 do not provide a revision to the ESR, but rather an interpretation of the ESR.

> The commission shall have power, upon a hearing, had upon its own motion or upon complaint, to *investigate* a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number

[3] https://www.law.cornell.edu/wex/express_contract, accessed on 3/6/2024

> thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or any thereof, of any public utility, and to *establish* new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices or schedule or schedules in lieu thereof. I.C. § 61-503, italics added

When Complainants-Appellants formally complained to the Commission about the Company's termination notices – issued as required by UCRR 304 prior to the Company's termination of service without the customer's permission – the Commission responded with a finding 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." (see Fact #4) The finding is based upon the constructive interpolation of ESR No. 6(2)(d) and ESR No. 7(1), quoted above. Based on this generous interpolation which added "among other things", the Commission concluded that "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." (R. at 612 and 615) One wonders what the Commission intends by "among other things". Assuming it is not to build a swimming pool; yet, if "among other things" only refers to reading meters and inspecting, then there is not authority in the ESR No. 6(2)(d) for replacing the meter with an AMI meter, as the Commission interprets.

The Commission's finding paints Complainants-Appellants into an appearance of denying or willfully preventing the utility's access to the meter which did not exist before these Orders and which still does not exist within the ESRs. The ESRs form an express contract for electric service, so while Complainants-Appellants object to an unlisted purpose for the Company's representatives to access customer premises, yet Company

representatives are welcomed "at reasonable times for the purposes of reading meters, inspecting, repairing or removing metering devices and wiring of the Company."

Final Order #35849 does not appear to be in conformity with law, specifically I.C. § 61-503. It appears to be the Commission's intention to provide the Company with authority to install an AMI meter at all customers' properties in its furnishing of electric service. Therefore, a new regulation must be established or at least the ESRs must be revised. Otherwise, the interpreted AMI meter installation authority found in Final Order #35849 is not available to all of the Company's customers, giving an appearance of discrimination or preference, contrary to I.C. § 61-315.

> The public utilities commission is hereby vested with power and jurisdiction to supervise and *regulate* every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act. I.C. § 61-501

In English, "regulate" is "to control or direct by a rule, principle, method, etc" or "to adjust to some standard or requirement, as amount, degree, etc."[4] The Commission is to control or direct the public utility to a rule (or regulation); however, the effect of Final Orders #35849 and #35904 is not to adjust the Company's practices to the written ESRs, but rather to loosen ESR No. 6(2)(d) and ESR No. 7(1) so as to permit the Company access to Complainants-Appellants' property for the purpose of meter replacement.

Further, the Commission has tolerated the Company's constructive interpretation of the ESR in termination notification letters. The Company's provided Initial Notice letter (R. at 157) borrows loosely from ESR No. 6(2)(d), but adds "meter upgrades" (Fact #1) apparently to mislead Customers to believe that AMI meter installations are "required

[4] https://www.dictionary.com/browse/regulate, accessed on 3/6/2024

by the Idaho Public Service Commission". Thus, the Commission tolerates the Company's use of UCRR 304 to send misleading notices, deceptively informing customers that they have no choice but to accept an AMI meter installation or else have their electric service terminated without the customer's permission. Simultaneously, the Commission – which has the power to establish new rates – neglects to update the ESR to list "meter upgrades" or equivalent purpose of access.

The Commission has not regulated the Company according to published ESRs, and the Supreme Court must hold the Commission accountable to its duties as documented in I.C. § 61-501 and § 61-503. As the Court found in *Higginson v. Westergard*, 604 P.2d 51, 100 Idaho 687 (1979):

> Indeed, some courts have gone so far as to hold that in suits involving a public administrative agency the rules and regulations of such agency should be strictly construed against it." See *Cole v. Young*, 351 U.S. 536, 556, 76 S.Ct. 861, 100 L.Ed. 1396 (1956); *Ferguson v. Union Nat'l Bank of Clarksburg*, 126 F.2d 753, 757 (4th Cir.1942). Any ambiguities contained therein should be resolved in favor of the adversary. *State ex rel. Merrill v. Greenbaum*, 75 N.E.2d 598, 603 (Ohio Com.Pl. 1947), rev'd on other grounds, 83 Ohio App. 484, 84 N.E.2d 253 (Ohio 1948); *Theodore v. State*, 407 P.2d 182, 189 (Alaska 1965), cert. denied, 384 U.S. 951, 86 S.Ct. 1570, 16 L.Ed.2d 547 (1966).

Therefore, the Commission ought to strictly act in its duties. If a new regulation is needed, then the Commission has the power to add it, but Orders #35849 and #35904 do not constitute revisions to ESRs 6 & 7.

Complainants-Appellants conclude, therefore, the following:

1. objecting to the installation of AMI meters is not the factual and legal equivalent of denying access to the meter for purposes listed in ESR No. 6(2)(d) and ESR No. 7(1)
2. the Company's written notices documented by Complainants-Appellants constitute offers to change the contract for electric service (ESR No. 1[2]) without actually changing the ESR

3. constructive interpolation of ESRs (including the words "among other things") recorded in Orders #35849 and #35904 do not establish a new regulation and may not be available to all of the Company's customers, as required to comply with I.C. § 61-315
4. rather than regulate the Company, the Commission tolerates the Company's use of UCRR 304 to send misleading notices under threat of service termination

Complainants-Appellants do not understand why, if it is the Commission's intent to require AMI meter installation as a condition of electric service, they do not exercise the power vested in them to update the ESR or establish a new regulation. Conclusions #2-#4, above present a disconcerting appearance of collusion. Therefore, we conclude that the Supreme Court enjoin the Commission to supervise and regulate the Company consistent with I.C. § 61-501 and cease from all misleading practices.

C. Company Termination Notices Evidence Intent to Punish Customers Securing Their Safety Because Alternative to AMI Meter Installation Is Required.

"It is a well-settled rule that in an appeal from the [C]ommission matters may not be raised for the first time on appeal and that where the objections were not raised in the petition for rehearing, they will not be considered for the first time by this court." McNeal v. Idaho Pub. Util. Comm'n, 142 Idaho 685, 688, 132 P.3d 442, 445 (2006) (quoting Eagle Water Co. v. Idaho Pub. Util. Comm'n, 130 Idaho 314, 316–17, 940 P.2d 1113, 1135–36 (1997)), abrogated on other grounds by Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011). "The exception to this rule is that constitutional issues may be considered for the first time on appeal if such consideration is necessary for subsequent proceedings in the case." Murray v. Spalding, 141 Idaho 99,

101–02, 106 P.3d 425, 427–28 (2005). Quoted in "Idaho Power and IPUC vs. Tidwell" (2018).

AMI meters have become a condition of electric service by the Company, and Complainants-Appellants have been served with Termination Notices, per UCRR 304, that force a decision between risking health impacts or suffer electric service termination. Termination Notices delivered by the Company (R. at 17-21, 157-161) demand access to complete the AMI meter installation at our property, otherwise notifying us of a date when the Company will terminate service, per UCRR 302(e). The complaint establishes that Complainants-Appellants have never prevented the Company from physically accessing the meter. (Fact #3) Also, the complaint documents that Complainants-Appellants declined the AMI meter installation due to concerns of the affect upon a special needs family member. See, for example Affidavit #2, #3 & #6. (R. at 13-14) Therefore, anticipating the subsequent proceedings of this case listed above, Complainants-Appellants appeal to the Constitution of the State of Idaho, Article 1, Section 1 as our last and greatest protection of inalienable right.

> INALIENABLE RIGHTS OF MAN. All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and *securing safety*. (The Constitution of the State of Idaho, Article 1, Section 1. italics added)

The Complainants-Appellants assert primary responsibility to secure our safety and the safety of our family members. Please consider the decision of the United States Court of Appeals, Ninth Circuit, when Sherar was faced with a similarly untenable decision regarding a constitutional right – freedom from unreasonable searches or keeping his job. In this ruling, the court determined that “no sanction or penalty [be]

imposed upon one because of his exercise of constitutional rights." (Sherar v. Cullen, 481 F. 2d 946 [1973])

Complainants-Appellants already had electric service through the Company when contacted in 2021 that AMI meters would be installed in our neighborhood (Fact #3). Subsequently, the Commission has interpolated between two ESRs (Fact #4) to find that the Company has the necessary authority to install an AMI meter on Complainants-Appellants' property. While Complainants-Appellants have contested Orders' #35849 & #35904 conformity with law; yet, by law, the Commission may still revise the ESRs to permit access to customer premises for purpose of meter upgrades. Complainants-Appellants do not assert electric service as a right; however, termination of electrical service solely because we exercise judgment, in so far as we are capable, to secure the safety of ourselves and our family members appears to be punishment.

> To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort. (Bordenkircher v. Hayes, 434 US 357, 363 [1978] and U.S. v. Goodwin, 457 US 368, 372 [1982])

The Commission clearly has a complementary responsibility regarding safety. It's duty to provide safety regulations is thus quoted below:

> The commission shall have the power, after a hearing had upon its own motion or upon complaint, by general or special orders, or regulations, or otherwise, to require every public utility to maintain and operate its line, plant, system, equipment, apparatus and premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public, and to this end to prescribe the installation, use, maintenance and operation of appropriate safety or other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand. (I.C. § 61-515)

Thus, the Commission requires public utilities to both operate "in such a manner as to promote and safeguard the health and safety of its employees, customers and the public", and perform "any other act which the health or safety of its employees, customers or the public may demand." The Commission's duty to require safety regulations does not replace individuals' responsibilities to secure their own safety, but rather appears intended to create an atmosphere in which employees, customers or the public may more readily choose health and safety.

While I.C. § 61-515 appears supportive of Article I, Section 1, yet the Commission has repeatedly dismissed customers' complaints about the AMI Installations which are based upon safety concerns. In Orders #35849 and #35904, the Commission repeatedly defers to the Federal Communications Commission's (FCC) safety approval of AMI meters, yet FCC is under court order to explain that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer (*Environmental Health Trust v. FCC*, 9 F.4th 893 [D.C. Cir. 2021]). Complainants-Appellants remain unconvinced that FCC has adequately considered the material record evidence provided to them.

Since neither the FCC, nor the Commission, can prescribe what is safe for each Idahoan family, Complainants-Appellants assert that a clear boundary must be drawn by the Commission to protect the public from the Company's motives. True, we met multiple time with Company representatives, trying to determine relocation options to allow AMI meter installation; yet, when these negotiations were unsuccessful, the Company chose "strong-arm" techniques (e.g.- UCRR 304 notifications) instead of finding its own way to preserve the existing service of a tiny minority of customers which

expressed safety concerns. Unless required by the Commission, the Company will not allow metering alternatives to customers with safety concerns about AMI meters. Such metering alternatives are commonly referred to as an "opt-out" option. According to the Company:

> Despite previous complaints, at no time has the Commission 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… The Company respectfully requests that the Commission deny the relief sought in the Complaints, dismiss the Complaint with prejudice, and not allow an opt-out option for AMI installation. (R. at 153-154)

Likewise, according to the Commission:

> 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 I.C. § 61-302, and should be allowed in Idaho. See Case Nos. IPC-E-12-04, AVU-E-17-11, and PAC-E-22-09. (R. at 646)

> 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. (R. at 647)

The Commission's decision to not require utility companies to let Idahoans "opt-out" of AMI meter installations changes the meaning of "should be allowed" used in the above quote to actually mean "are required as a condition of electric utility service". As previously stated, when meter relocation negotiations stalled, the Company reverted to strong-arm negotiation: issue UCRR 304 notifications. In the end, the Company offers only two options: service disconnection or receive AMI meter installation at Complainants-Appellants' residence in violation of our judgment of what may constitute a threat to the safety of ourselves and our family.

Rather than defend Customers' rights to secure their own safety and supervise public utilities in their duty to "promote the safety, health, comfort and convenience of… the public" (I.C. § 61-302), the Commission has deferred to FCC's judgment and left the Company to issue UCRR 304 notices and decide whether to terminate service under UCRR 302. Therefore, Complainants-Appellants conclude that the Commission's policies do not currently recognize customers' safety concerns regarding AMI meters.

The Commission has assumed an unlawful role to determine whether AMI meters pose a risk to the safety and health of customers as evidenced by no requirement for public utilities to offer alternatives to AMI meters. The rules for Commission policies to regulate public utilities have been cited above in I.C. § 61-501 and § 61-515 for the purpose that public utilities "promote the safety, health, comfort and convenience of its patrons, employees and the public" (I.C. § 61-302). Idaho laws do not empower the Commission or the Company to make final determination of whether AMI meters "pose a risk to the safety and health of customers", as the Commission wrote (R. at 647) The Commission appears within its authority to allow AMI meters in Idaho, but not to mandate these. The effect of not requiring Idaho public utilities to offer an alternative to AMI metering is that public utility companies negotiate with safety-conscious citizens using their electric service as collateral. This is a dangerous encroachment upon inalienable rights.

> The United States Supreme Court's statement that a court's "motto should be obsta principiis" is telling. The Latin phrase means "[w]ithstand beginnings; resist the first approaches or encroachments." *Id.*; *Obsta principiis*, BLACK'S LAW DICTIONARY (10th ed. 2014). In other words, the U.S. Supreme Court in *Boyd* cautioned against allowing even tiny governmental encroachments on individual rights, lest those small encroachments lead to ever larger ones. Such an encroachment could "*only* be obviated" by broadly interpreting constitutional provisions that

> protected individual rights. *Boyd v. United States*, 116 U.S. 616, 635, 6 S.Ct. 524, 29 L.Ed. 746 (1886) (italics added). As quoted in *Planned Parenthood Great Northwest v. State*, 522 P.3d 1132, 171 Idaho 374 (2023)
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> The plain language of Article I, sections 1 and 21, the historical legal context at the time of the constitutional convention, and the framers' placement of the inalienable rights provision as the first, most prominent, provision of our constitution demonstrates that the framers intended the inalienable rights provision to be a broad retention of personal rights enjoyed by Idahoans. The provision expressly protects the rights to enjoy and defend life and liberty, pursue happiness and secure safety. The rights to both enjoy and defend life, and the right to secure safety were promised to all of Idaho's citizens. (*Planned Parenthood Great Northwest v. State*, 522 P.3d 1132, 171 Idaho 374 [2023])

However well-meaning that administrative agencies may be, encroachments upon Article I, Section 1 must be defended against and personal rights broadly retained. "Indeed, some courts have gone so far as to hold that in suits involving a public administrative agency the rules and regulations of such agency should be strictly construed against it." *Higginson v. Westergard*, 604 P.2d 51, 100 Idaho 687 (1979). See also *Cole v. Young*, 351 U.S. 536, 556, 76 S.Ct. 861, 100 L.Ed. 1396 (1956); *Ferguson v. Union Nat'l Bank of Clarksburg*, 126 F.2d 753, 757 (4th Cir.1942). Therefore, the Commission ought to strictly act in its duties (I.C. § 61-501 and § 61-503) and re-emphasize the duty of every public utility to "promote the safety, health, comfort and convenience of its patrons, employees and the public" (I.C. § 61-302) and avoid punishing customers with safety concerns.

Consistent with I.C. § 61-629, Complainants-Appellants conclude that Order #35849 does not defend our constitutional right of securing safety (Art. I, Sec. 1) as it allows the Company to punish customers seeking to avoid AMI meter installations in order to secure their safety. For instance, Complainants-Appellants expect to be punished

by the Company with service termination, unless the Commission defends our right to secure safety. Therefore, we conclude that the Supreme Court ought to issue an injunction that the Commission require public utilities to offer customers other metering options in the spirit of I.C. § 61-302 and in preservation of customers' inalienable rights.

VI. Conclusion

Final Order Denying Reconsideration #35904 is unreasonable, because Complainants-Appellants have demonstrated that Final Order #35904 is not responsive to the legal clarification requested in the Petition for Reconsideration: it does not determine whether Complainants-Appellants have provided grounds for termination of service under UCRR 302. Final Order #35904 is also unreasonable because while the Commission is vested with power and jurisdiction to supervise and regulate the Company, in not addressing the legal clarification, it leaves the Company with a conflict of interest between its duty as a public utility and the disputed intention to terminate the Complainants-Appellants' service. In accordance with IDAPA 31.01.01.331, reconsideration of Final Order #35904 is justified. Therefore, Final Order Denying Reconsideration #35904 must be set aside or set aside in part and a writ of mandamus is justified to compel the Commission to determine whether the Complainants-Appellants' have provided grounds for termination of service under UCRR 302.

Also, it has been shown that mere objection to AMI meter installation is not the factual and legal equivalent of denying access to the meter, per UCRR 302.01, because purposes for Company representatives' access to customer premises are listed in ESR No. 6(2)(d) and ESR No. 7(1) and do not include meter upgrades or installation of AMI meters. Also, Complainants-Appellants conclude that:

1. the Company's written notices documented by Complainants-Appellants constitute offers to change the contract for electric service (ESR No. 1[2]) without actually changing the ESR,
2. constructive interpolation of ESRs (including the words "among other things") recorded in Orders #35849 and #35904 do not establish a new regulation and may not be available to all of the Company's customers, as required to comply with I.C. § 61-315, and

3. rather than regulate the Company, the Commission tolerates the Company's use of UCRR 304 to send misleading notices under threat of service termination

Conclusions #1-#3, above, present a disconcerting appearance of collusion. Therefore, Complainants-Appellants recommend that the Supreme Court enjoin the Commission to supervise and regulate the Company consistent with I.C. § 61-501 and cease from all misleading practices.

Finally, Complainants-Appellants conclude that without an "opt-out" from AMI Meter installation, customers attempting to secure their safety are subject to punishment (service termination) when meter relocation negotiations are not productive. Strong-arm techniques, in the form of UCRR 304 termination notices impair negotiation in good faith. Encroachments upon Article I, Section 1 of the Constitution of the State of Idaho must be defended against; therefore, the Commission should be enjoined to regulate public utility companies in the spirit of I.C. § 61-302 by allowing other metering options for customers.

RESPECTFULLY SUBMITTED this 7th day of March, 2024.

Samuel Z. Edwards, Sui Juris

Peggy M. B. Edwards, Sui Juris

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of March 2024, served the "Complainants-Appellants Brief" which Peggy and I signed on 7 March 2024 for Supreme Court docket # 51238-2023, by forwarding a copy thereof, to the following, via e-mail addresses listed:

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