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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

SAMUEL and PEGGY EDWARDS Complainants-Appellants, v. IDAHO PUBLIC UTILITIES COMMISION and PACIFICORP, dba ROCKY MOUNTAIN POWER COMPANY Respondents.	**Supreme Court Docket No. 51238-2023** Public Utilities Commission No. PAC-E-23-05

RESPONDENT'S BRIEF OF THE IDAHO PUBLIC UTILITIES COMMISSION

Appeal from Idaho Public Utilities Commission,
Commissioner Eric Anderson, Presiding

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STATEMENT OF THE CASE

A. Nature of the Case

Samuel and Peggy Edwards appeal from Order No. 35904 of the Idaho Public Utilities Commission (the "Commission") denying their petition for reconsideration of Order No. 35849 in Idaho Public Utilities Commission Case No. PAC-E-23-05. The Edwards assert that the Commission failed to address certain issues they raised, erred in interpreting their electric company's tariff,[1] and encroached upon their right under the Idaho Constitution to secure their personal safety.

B. Statement of Facts

In November 2022, the Edwards received a letter from their electric company, Rocky Mountain Power Company (the "Company"), indicating that an installer had been to their home to "upgrade" the electric meter, but could not access the meter base. (R. 13). The letter directed the Edwards to call a toll-free number in the next fifteen days to "resolve any access issues and set an appointment" to update the electric meter at their residence. (R. 30). This update to the Edwards' electric meter was part of the Company's rollout of "Advanced Metering Infrastructure"[2] throughout its service territory. (R. 144-46) The Company wanted to update the existing meter at the Edwards residence by replacing it with a "smart meter."[3] (R. 19-20).

In correspondence with the Company over the next few months, the Edwards asserted that the electric meter at their residence had always been physically accessible since 2019 when they moved in. (R. 97). However, they objected to installation of a smart meter at their residence—claiming, among other things, that such meters "can negatively impact health" when placed near homes. (R. 24-25). After letters, phone calls, and emails attempting to resolve the matter (R. 13-

[1] A *tariff* is a document filed with the Commission that sets out the terms, conditions, and rates for utility services provided to customers. *See* Idaho Code § 61-305 (requiring public utilities, other than common carriers to file a schedule of rates, terms, and conditions for the provision of utility service). The Commission can modify these terms, conditions, and rates. Idaho Code § 61-503.

[2] "Advanced Metering Infrastructure" refers to a system of metering devices, communication networks and data management that enables two-way communication between utilities and their customers. *See* U.S. Department of Energy, *Advanced Metering Infrastructure and Customer Systems: Results from the Smart Grid Investment Grant Program* (2016) at *4, https://www.energy.gov/sites/prod/files/2016/12/f34/AMI%20Summary%20Report_09-26-16.pdf (last accessed March 29, 2024).

[3] Smart meters are an integral component of Advanced Metering Infrastructure. *See id.* at 12. A "smart meter" is a device that measures electricity consumption at certain intervals and communicates those readings back to a utility. *See id.* at *11; *see also* (R. 19).

24), the Company sent the Edwards a final notice, indicating that their electrical service would terminate in fourteen days for failure to allow access to the electric meter at their residence as required by Utility Customer Relations Rule 302(e).[4] (R. 17). However, if the Edwards allowed the Company to update the electric meter at their residence, their electrical service would not be terminated. *Id.* The Edwards responded by filing a formal complaint against the Company with the Commission. (R. 5). The Company did not terminate the Edwards' electrical service. (R. 148).

C. Course of Proceedings

On March 23, 2023, the Edwards filed the formal complaint[5] against the Company underlying this appeal. (R. 80).[6] The Edwards formal complaint alleged, among other things, that the Company tried to change the terms of their "long standing 'contract'" to install a smart meter at their residence "without . . . full disclosure that they were" attempting to make such a revision. (R. 7). Specifically, according to the Edwards, the Company was attempting to unilaterally expand the meaning of "access" under the UCRRs and the Company's Electric Service Regulations[7] ("ESR") to require customers to allow access to existing meters to install a smart meter. *Id.*

The Edwards acknowledged their prior agreement to allow the Company to access the electric meter at their residence in exchange for electrical service, but believed that agreement was limited to access "specifically for [the Company] to read [their] electrical power meter." (R. 81). If the Company wished to access the electric meter for any other reason, however, separate prior permission was necessary. *Id.* Thus, despite objecting to the installation of a smart meter, the Edwards believed they had not denied the Company *access* to their existing meter as contemplated

[4] As discussed more thoroughly later in this brief, the Utility Customer Relations Rules ("UCRR"), also known as the "Customer Relations Rules for Gas, Electric and Water Public Utilities," are a set of rules the Commission adopted to "provide a set of fair, just, reasonable, and non-discriminatory rules with regard to deposits, guarantees, billing, application for service, denial of service, termination of service and complaints to utilities." IDAPA 31.21.01.001. For ease of reference, this brief references these rules in textual sentences by their assigned UCRR rule number and in citation sentences by their IDAPA citation.

[5] A "formal complaint" is a written document charging a public utility with acts or omissions that violates "any provision of law" or any Commission rule or order. Idaho Code § 61-612. If the Commission determines that a violation has occurred, it can act within its statutory authority to address the violation.

[6] The Edwards' formal complaint was consolidated with other similar complaints from other customers of the Company that were filed around the same time. Although none of the other complainants timely appealed the final orders dismissing their complaints, the Agency Record contains filings submitted by the other complainants.

[7] The ESRs are part of the Company's approved tariff filed with the Commission. The complete tariff is posted on the Commission's website and can be accessed via the following URL: https://puc.idaho.gov/Fileroom/PublicFiles/ELEC/PAC/General/0tariff/Pacificorp%20dba%20Rocky%20Mtn%20Power%20ID%20Rules.pdf.

by their "long-standing contractual agreement." (R. 83-87). Therefore, the Company's efforts to install a smart meter were tortious or criminal. *Id.*

On May 10, 2023, the Company filed a combined Motion to Dismiss and Answer to the Edwards' formal complaint. (R. 142-55). Specifically, the Company argued that the Edwards failed to state a viable claim because they had not identified an administrative rule, order, statute, or tariff provision the Company violated; and, in any case, the Company had complied with applicable law in seeking termination of the Edwards' electrical service. (R. 143). In support of the second argument, the Company recounted its transition to advanced metering infrastructure across its service territory, including a description of communications with customers who objected to the installation of smart meters. (R. 144-50).

The Company alleged that, after addressing the concerns of many objecting customers via telephone calls, it began sending written correspondence to the 50 customers who continued refusing smart meters. (R. 145). The first letter the Company sent notified customers that it was unable to access the existing meter at their residence to install a smart meter. (R. 146). The second letter the Company sent not only described the benefits and privacy protections provided by smart meters, but also notified recipients their electrical service could be terminated for continued refusal of a smart meter. *Id.* The Company's final letter to the objecting customers notified them that their electrical service would terminate on a specific date due to their failure to allow access to their electric meter as required by UCRR 302, unless the Company was allowed to install a smart meter. *Id.*

The Company argued that it properly sent the above-described series of letters to objecting customers, like the Edwards, because they had agreed to follow the Company's tariff by accepting electrical service. (R.150). According to the Company, two provisions of its tariff, ESR Nos. 6 and 7, obligated customers to permit installation of smart meters. *Id.* Consequently, the Company believed its efforts to replace older electric meters with smart meters were consistent with its tariff and requested dismissal of the Edwards' formal complaint. *Id.*

The Edwards opposed the Company's motion to dismiss, arguing that they were not obligated to permit a meter upgrade under the Company's tariff. (R. 162-63). Specifically, the Edwards asserted that they did not have to allow the Company access to their existing meter to upgrade it because that was not expressly stated as an activity for which they had to grant meter access under ESR No. 6. *Id.* The Edwards urged the Commission to "correct" the Company's

interpretation of the ESRs and compel the Company "to negotiate alternative metering arrangements." *Id.*

After reviewing the parties' written arguments, the Commission issued Order No. 35849, dismissing the Edwards' formal complaint. (R. 164-71). In support of this decision, the Commission determined that "refusing to allow the Company's representatives access to replace existing meters" with a smart meter violates the ESRs customers accept as a condition of receiving electrical service. (R. 170). The Commission observed that ESR No. 6(2)(d) required the Edwards to permit the Company to access the electric meter at their residence "for the purposes of . . . [among other things] repairing or removing metering devices." *Id.* The Commission further observed that ESR No. 7 required the Company to "furnish and maintain all meters and metering equipment." *Id.* The Commission reasoned that, when read together, these two provisions authorized the Company to remove the Edwards existing meter to replace it with a smart meter, and the Edwards refusal to allow the Company to do so violated their terms of service. *Id.* In sum, the Commission concluded that the Edwards had to allow the Company to access the existing meter at their residence to replace it with a smart meter. *Id.*

The Commission also concluded that the Edwards failed to present sufficient evidence to support a finding that smart meters present a legitimate safety concern. *Id.* In this vein, the Commission noted that the Federal Communications Commission ("FCC") has authority to determine "what constitutes a safe level of radio frequency radiation" and that smart meters have been deemed safe for use around humans. *Id.* Moreover, the Commission noted the Company's willingness to relocate the electric meter at the Edwards' residence to a different location on their property at their expense. *Id.* However, the Edwards did not elect to do so. *Id.* Thus, the Commission concluded that the Edwards failed to show that requiring the Company to allow customers to opt-out of receiving a smart meter was justified. (R. 170-71).

The Edwards petitioned for reconsideration of the order dismissing their formal complaint. (R. 172-74). In their petition, the Edwards questioned whether "declining replacement of [their] meter with a meter of substantively different capability" constituted denying access to their existing meter under UCRR 302. (R. 172). The Edwards asserted that smart meters "represent a substantive change of metering capability" and that such "changes of capability" are distinct from furnishing or maintaining metering equipment. *Id.* Additionally, with a passing reference in a

single sentence, the Edwards also asked what law authorized the Company to terminate their electrical service. *Id.*

The Edwards also recited a litany of scientific opinions and factual allegations that they believed undermine the conclusion that smart meters are safe for use around humans. (R. 173-74). These factual allegations are almost exclusively supported with citations to an amicus brief filed in *Povacz v. Pennsylvania Public Utility Commission*, a case in which the Pennsylvania Supreme Court held that certain Pennsylvania utility customers failed to show that smart meters were unsafe or that forced exposure to smart meters constituted unreasonable service. 280 A.3d 975 (Pa. 2022). Based on this information, the Edwards sought an answer to their "[l]egal question" and careful review of the "evidence provided." (R. 174).

The Commission then issued Order No. 35904, denying the Edwards' petition for reconsideration. (R. 649-54). In support of this decision, the Commission concluded the Edwards failed to show that the order dismissing their formal complaint was unreasonable, unlawful, erroneous, or not in conformity with the law.[8] (R. 653). The Commission noted that "the Edwards' argument that the Commission misinterpreted" the ESRs varied only slightly from "their previous argument that the ESRs do not obligate them" to accept a meter upgrade. (R. 652). The Commission rejected this argument, reasoning that the Edwards' conclusory assertion that "a substantive change of metering capability to residents' electric meters" differs from furnishing and maintaining meters and equipment under the ESR was not supported with cogent argument or citation to legal authority. *Id.*

Similarly, the Commission concluded that the Edwards failed to present evidence that smart meters pose a credible health or safety risk. *Id.* The Commission observed that the Edwards failed to authenticate the amicus brief they submitted, which included a "Physicians Statement," "Scientists Statement," and reports by engineers expressing opinions about the function and health risks of smart meters. (R. 652-53). Moreover, both the reports and statements were ostensibly unsworn. *Id*. The Commission reasoned that such unauthenticated and unsworn evidence was insufficient to overcome the conclusions of the FCC about radio frequency radiation. (R. 653). Consequently, the Commission determined that the Edwards failed to show that the dismissal of the formal complaint was unreasonable, unlawful, erroneous or not in conformity with the law and

[8] A petition for reconsideration must specify why the order to be reconsidered or an issue decided there therein "is unreasonable, unlawful, erroneous or not in conformity with the law." IDAPA 31.01.01.331.01

denied the Edwards' petition for reconsideration. *Id.* The Edwards timely appealed to the Idaho Supreme Court from the order denying their petition for reconsideration. (R. 655).

I. ISSUE PRESENTED ON APPEAL

The Edwards identify the following three issues presented on appeal:

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

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

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

The Commission rephrases these into the following single issue:

> Whether the Edwards have failed to show that the Commission did not regularly pursue its authority to deny their petition for reconsideration.

II. ARGUMENT

The Commission regularly pursued its authority to deny the Edwards' petition for reconsideration.

A. Introduction

The Edwards contend the Commission committed three errors in denying their petition for reconsideration. Specifically, the Edwards assert that the Commission erred by (1) failing to address whether refusing a smart meter is grounds for termination of utility service under UCRR 302; (2) concluding that objecting to installation of a smart meter "is the legal and factual equivalent" of denying access to an existing meter; and (3) impermissibly encroaching on their right to secure their safety under Article I, Section I of the Idaho Constitution by obligating them to accept a smart meter.

As discussed more thoroughly below, the first argument fails because the Commission's findings and conclusions adequately address issues raised in the Edwards' formal complaint, which does not reference UCRR 302. Moreover, although the Edwards made short, conclusory statements about the scope of UCRR 302 in two subsequent filings, those undeveloped assertions did not necessitate a Commission interpretation of the rule because the Edwards did not assert that the Company's tariff restricted rights the rule conferred to them. The second argument similarly fails because objecting to installation of a smart meter effectively denies the Company access to remove the existing meter as required by the Company's tariff. The Edwards' third argument is not preserved for appellate review and, therefore, should not be considered. For these reasons, this Court should affirm the Commission's order denying the Edwards' petition for reconsideration.

B. Standard of Review

The Idaho Constitution confers appellate jurisdiction upon this Court to review orders of the Commission, but grants the legislature authority to establish the conditions, scope, and procedure for such appeals. IDAHO CONST. art. V, § 9. Exercising that constitutional prerogative, the legislature limited this Court's review to determining only whether the Commission regularly pursued its authority. *See* Idaho Code § 61-629. Accordingly, factual findings by the Commission must be affirmed unless it appears that the clear weight of the evidence is against the conclusion or there is strong and persuasive evidence that the Commission abused its discretion. *Rosebud Enterprises, Inc. v. Idaho Pub. Utilities Comm'n*, 128 Idaho 609, 618, 917 P.2d 766, 775 (1996).

Review of the Commission's legal conclusions is limited to determining whether the Commission regularly pursued its authority. *In re Jay Hulet's Complaint Regarding Idaho Power Co.'s Irrigation Buy-Back Program*, 138 Idaho 476, 478, 65 P.3d 498, 500 (2003).[9]

C. The Commission's Findings and Conclusions Are Sufficient to Affirm the Denial of the Edwards' Petition for Reconsideration

The Edwards contend that the Commission's order denying their petition for reconsideration should be set aside until it is amended to address whether UCRR 302 permits termination of electrical service for objecting to installation of a smart meter. App's Br. at 17. This argument fails for two reasons. First, the Edwards did not assert that the Company violated UCRR 302 in their formal complaint as required under the Commission's rules of procedure. *See* IDAPA 31.01.01.054. Second, even if the Edwards' subsequent filings properly brought an issue related to UCRR 302 before the Commission, the Edwards' conclusory assertions regarding the scope and application of the rule did not raise an issue necessitating its interpretation.

Under Rule 54 of the Rules of Procedure of the Idaho Public Utilities Commission, a person may file a formal complaint charging a utility with acts or omissions under law administered by the Commission. IDAPA 31.01.01.054. This written document functions like a complaint in a civil action, notifying the utility of the allegations against it and framing the issues. Accordingly, a formal complaint must, among other things, allege "facts constituting the acts or omissions of the utility," reference the specific legal provision the utility violated, and "state the relief requested." *Id.* The reference to the legal provision violated is particularly important because, unlike a district court with general jurisdiction, the Commission is a tribunal of limited jurisdiction that arises exclusively from enabling statutes. *Afton Energy, Inc. v. Idaho Power Co.*, 111 Idaho 925, 928, 729 P.2d 400, 403 (1986). Requiring formal complaints to state the legal provision a utility

[9] The Commission recognizes that this Court added to the well-established standard of review applicable to Commission orders in *Idaho Power Company v. Tidwell* by indicating that the Court applies the same standard of review as the Commission when reviewing decisions to grant or deny petitions for reconsideration. 164 Idaho 571, 575, 434 P.3d 175, 179 (2018). To support applying this standard of review, the Court cited *Pandrea v. Barrett*, 160 Idaho 165, 369 P.3d 943 (2016). However, *Pandrea* was an appeal from a partition action in a district court and provides no support or useful guidance on the proper standard of review for Commission orders, including those denying a petition for reconsideration. Moreover, this Court applying the same standard as the Commission effectively results in *de novo* review, expanding the scope of review on appeal beyond that established under Idaho Code § 61-629 and in violation of Article V, section 9 of the Idaho Constitution. Accordingly, the expansion of the standard of review established in *Tidwell* should be disavowed.

allegedly violated ensures that the Commission receives sufficient information to initially determine whether it has jurisdiction.

Another salient distinction between pleading practice before Commission and district courts concerns amendments to pleadings. Although both the Commission and district courts liberally grant leave to amend complaints, *see* IDAPA 31.01.01.066 and *DAFCO LLC v. Stewart Title Guar. Co.*, 156 Idaho 749, 755, 331 P.3d 491, 497 (2014), the Commission's procedural rules do not contain a provision authorizing unpled issues to be tried by consent like Idaho Rule of Civil Procedure 15(b)(2). Thus, issues not raised in an initial or amended pleading are not properly before the Commission for determination.

The Edwards' formal complaint recounts the Company's attempts to replace the existing electric meter at the Edwards' residence with a smart meter. (R. 5-6). These efforts ended with the Company notifying the Edwards that their electrical service would be terminated. (R. 6). According to the formal complaint, this "whole issue surrounds a matter of an existing 'contract'" that the Company was "attempting to impair." (R. 7). The Company was allegedly attempting to "change the terms" of this "longstanding 'contract'" and "bully [its] way onto [the Edwards'] property to make a non-repair (or install Trespassing Technology)" in violation of their "existing contractual agreement." *Id.* The formal complaint then presented eight "Factual Counts," alleging the Company committed torts or criminal offenses, and requested that the Commission "investigate . . . this criminal and wanton behavior." (R. 8-11). The formal complaint did not, however, allege a violation of or otherwise reference UCRR 302.

The first time the Edwards referenced UCRR 302 was in their written objection to the Company's motion to dismiss the formal complaint. (R. 162). The Edwards' objection provided, in pertinent part:

> CLAIM (as referenced in our 3/23/2023 complaint to Idaho Public Utility Commission): 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.
>
> IMPLIED CLAIM: the purposes of meter access listed in the Company's tariff, "Electric Service Regulation of Rocky Mountain Power", Regulation No. 6(2)(d), do not include meter upgrades. Therefore, declining a meter upgrade is not equivalent to denying access to the meter, per UCRR 302.

(R. 162). However, the "claim" quoted above and its reference to UCRR 302 does not appear in the formal complaint. And, notably, labeling a claim as "implied" essentially concedes that any violation of UCRR 302 that could be inferred from it was not specifically stated in the formal complaint.

The only other reference to UCRR 302 in the Edwards' filings with the Commission appears in a question posed in their petition for reconsideration. Specifically, the Edwards asked, "Is declining replacement of our meter with a meter of substantively different capability equivalent to denying access to the meter, per UCRR 302?" (R. 172). However, the Edwards do not develop this question into a cogent argument that the Company violated UCRR 302. Rather, the bulk of the petition is devoted to arguing that smart meters constitute a technological downgrade from electromechanical meters and reiterating information that questions the safety of smart meters. (R. 172-74). Almost all the safety related information came from an amicus brief from a case in which the Pennsylvania Supreme Court held certain electrical customers had failed to sufficiently prove that smart meters were a safety threat. (R. 173-74). Because the Edwards did not reference UCRR 302 as a legal provision the Company violated in a pleading, the Commission did not need to address that rule to properly dismiss the Edwards' formal complaint.

That the Edwards are pro se litigants does not excuse them from application of procedural rules. *Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009). An individual's choice to represent themselves does not entitle them to additional latitude or special consideration. *Id.* In short, pro se litigants are held to the same standard as attorneys under Idaho law. *Id.* Accordingly, because the Edwards failed to reference that UCRR 302 in their complaint, or amendment thereto, the Commission properly dismissed the Edwards' complaint without addressing the rule.

Even if the Edwards' properly put UCRR 302 at issue, the Commission still properly dismissed the Edwards' formal complaint because the conclusory assertions regarding the scope and application of UCRR 302 did not frame an issue necessitating interpretation of that rule by the Commission. The Edwards ostensibly believe that UCRR 302 directly controls the Company's ability to terminate electrical service. *See* App's Br. at 14 (asserting "it is UCRR 302 and not 'Electric Service Regulation No. 6 of Rocky Mountain Power . . ." which identifies reasons for denial of service"). To the extent this is an assertion UCRR 302 gives the Company affirmative authority to terminate service, it is incorrect. As discussed below, the Company's tariff, which includes ESR No. 6, is the source of the Company's affirmative authority to terminate the Edwards'

electric service. To understand why this is so, some discussion of the legal duties of public utilities in Idaho is necessary.

Idaho Code section 61-305 requires public utilities, other than common carriers, to file "schedules showing all rates, tolls, rentals, charges and classifications collected or enforced, or to be collected or enforced," and all rules and regulations "which in any manner affect or relate to rates . . . or service," including grounds for termination of service. These documents, commonly called "tariffs," bind both the customer and public utility with the force of law upon filing and approval by the Commission. *See Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939). The provisions of the Company's tariff authorizing it to terminate service when a customer obstructs access to an electric meter are found in ESR No. 6. (R. 21).

The Idaho Utility Customer Relations Rules, also known as the Utility Customer Relations Rules for Gas, Electric and Water Public Utilities, found under IDAPA 31.21.01, *et seq*., "provide a set of fair, just, reasonable, and non-discriminatory rules" for, among other things, denial or termination of a customer's utility service. IDAPA 31.21.01.001. In this vein, UCRR 302 provides reasons a utility may terminate a customer's service involuntarily. *See* IDAPA 31.21.01.302.01. This is not properly construed, however, as affirmatively granting authority to a customer's utility service. Rather, UCRR 302 is best understood as a passive limitation on the grounds for terminating service that a utility may include in its tariff. If a utility's tariff authorizes termination of service for a reason not listed under UCRR 302, the UCRRs "supersede the conflicting tariff provisions." *See* IDAPA 31.21.01.010. A contrary interpretation would allow a utility to terminate service regardless of the contents of its tariff—despite Idaho Code § 61-305 requiring a utility's tariff to include all rules and regulations affecting service.

Considering this legal backdrop, interpreting UCRR 302 would have been necessary to resolve the Edwards' formal complaint only if they alleged the rule superseded the Company's tariff. They did not. Instead, the Edwards argued that, because ESR No. 6 of the Company's tariff did not expressly require them to permit the Company to access the meter at the residence to upgrade it, objecting to such an upgrade did not constitute denying meter access as contemplated by UCRR 302. (R. 162). This argument does not assert that ESR No. 6 exceeds the permissible bounds of UCRR 302. To the contrary, it is an argument that ESR No. 6 informs and, in the Edwards' view, narrows the scope of UCRR 302.

Moreover, even if the ESRs inform the scope of UCRR 302, which they do not, the Commission's determination that the Company's tariff authorized the Company to access existing meters on customer property and replace them with smart meters resolves the issue the Edwards assert the Commission failed to address. (R. 169-71). In other words, because the Commission determined that the ESRs gave the Company authority to access and replace existing meters with smart meters, objecting to that process would violate UCRR 302 under the Edwards' ostensible conception of how the ESRs interact with UCRR 302. Accordingly, the Edwards have failed to show that the Commission did not regularly pursue its authority by denying their petition for reconsideration without whether objecting to installation of a smart meter constitutes denying access to the meter under UCRR 302.

D. The Commission Properly Interpreted the Company's Electric Service Regulations

The Edwards contend that the Commission erred by interpreting the ESRs as providing the Company with authority to install a smart meter on their property. App's Br. at 19. This issue should not be considered because the Edwards have failed to support it with relevant argument and authority. If this Court decides to consider this issue, however, it fails on the merits because the Commission's interpretation is a permissible and reasonable interpretation that conforms with the intent of the drafters of the Company's tariff.

It is well-settled that this Court will not consider issues lacking either support from cogent argument and relevant legal authority. *See Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1153 (2010). Despite arguing that the Commission's interpretation of the Company's tariff is erroneous, the Edwards failed to provide any citations to relevant legal authority supporting a conclusion that the Commission erred. In short, the Edwards failed to identify the legal standards applicable to the interpretation of utility tariffs. Nor did they provide cogent argument showing how, under these unidentified legal standards, the Commission erred such that they should prevail on appeal. Accordingly, the Edwards have waived consideration of this issue.

Even if considered on its merits, the Edwards' challenge to the Commission's interpretation of the Company's tariff fails. A tariff is interpreted like a contract. *See Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 376, 597 P.2d 1058, 1066 (1979). Contract interpretation begins with an evaluation of the language of the document. *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285*, 148 Idaho 630, 633, 226 P.3d 1277, 1280 (2010). If the contractual text is susceptible

to only one reasonable reading, "the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument." *Id.* However, the interpretation of a utility tariff can entail "construction of technical terms and provisions . . . peculiarly within the realm of the Commission's expertise." *Utah-Idaho Sugar Co.*, 100 Idaho at 376, 597 P.2d at 1066. Accordingly, this Court will sustain the Commission's interpretation of a tariff if it is reasonable. *See id.*

The Commission interpreted the Company's tariff as authorizing the Company to install a smart meter on the Edwards' property. To reach this conclusion, the Commission interpreted two provisions of the Company's tariff. First, the Commission considered ESR No. 6(2)(d). (R. 170). That provision provides: "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." (R. 21). The Commission also considered ESR No. 7, which obligates the Company to "furnish and maintain all meters and metering equipment." (R. 170). Reading these two provisions together, the Commission determined that, under its tariff, the Company was obligated to "provide its customers with the meter and associated metering equipment" and customers were required to "provide the Company with access to the meter to accomplish this." *Id.*

The Commission's interpretation of the applicable ESRs is reasonable. Electric Service Regulation No. 6(2)(d) unambiguously requires customers to provide the Company access to an existing meter to *remove* it. In their petition for reconsideration, the Edwards dispute whether removing their existing meter and exchanging it for a smart meter constitutes a technological upgrade. (R. 172). However, nothing in the text of the regulation restricts the Company to removing a meter for only certain reasons. Thus, if the Company wishes to remove a meter installed on a customer's property to replace it with a different meter, customers must allow the Company to access the meter at a reasonable time to do so. However, once a customer's existing meter is removed, the Company is obligated to furnish the customer with another meter under ESR No. 7. Nothing in the text of that regulation obligates the Company to negotiate with the customer regarding the particular meter to be furnished. In sum, the Commission reasonably read ESR Nos. 6(2)(d) and 7 as authorizing the Company to remove the existing meter on the Edwards' property and replace it with a smart meter. Accordingly, the Edwards have failed to show that the Commission did not regularly pursue its authority in interpreting the ESRs in the Company's tariff.

E. The Edwards' Constitutional Arguments Are Not Preserved for Appeal

The Edwards argue, at length, that termination of their electrical service for rejecting a metering device they believe is unsafe violates their right to secure their safety under Article I, section 1 of the Idaho Constitution. App's Br. at 24-29. The Edwards never presented this argument in their petition for rehearing or during earlier proceedings on their formal complaint before the Commission. Based on this Court's now well-established precedent barring consideration of new arguments on appeal, this Court should decline to address the Edwards' constitutional arguments.

This Court has long held that appellate review "is limited to the evidence, theories and arguments that were presented . . . below." *Obenchain v. McAlvain Const., Inc.*, 143 Idaho 56, 57, 137 P.3d 443, 444 (2006) (quoting *State v. Vierra*, 125 Idaho 465, 469, 872 P.2d 728, 731 (Idaho App. 1994)). This error preservation requirement applies to appeals from the Commission's decisions. *See Eagle Water Co. v. Idaho Pub. Utilities Comm'n*, 130 Idaho 314, 316-17, 940 P.2d 1133, 1135-36 (1997). Accordingly, issues that were not raised in a petition for rehearing before the Commission generally will not be considered by this Court for the first time on appeal. *Id.* The purpose of this rule is to afford the Commission an opportunity to rectify a mistake before presenting it to this Court. *Id.*

Error preservation requirements, however, are neither absolute nor inflexible in civil cases. *Riverton Citizens Grp. v. Bingham Cnty. Commissioners*, 171 Idaho 898, 904, 527 P.3d 501, 507 (2023). Indeed, this Court has recognized two circumstances where an unpreserved issue might be considered on appeal. However, as discussed below, neither exception applies here to permit consideration of the Edwards' constitutional challenge.

Apparently anticipating a preservation challenge to their constitutional arguments, the Edwards argue that consideration of their constitutional argument is proper because they anticipate subsequent proceedings in this case. App's Br. at 23. This Court has held that unpreserved constitutional issues can be addressed for the first time on appeal when "such consideration is necessary for subsequent proceedings in the case." *Idaho Power Co. v. Tidwell*, 164 Idaho 571, 575, 434 P.3d 175, 179 (2018) (quoting *Murray v. Spalding*, 141 Idaho 99, 101-02, 106 P.3d 425, 427-28 (2005). However, as discussed above, the Edwards have failed to establish grounds for this Court to set aside or partially set aside the Commission's order denying their petition for rehearing. Thus, there will be no further proceedings in this case that might necessitate consideration of the Edwards' unpreserved constitutional arguments.

Recently, this Court recognized a second error preservation exception that applies when the proper resolution of a case on an unpreserved issue is beyond doubt. In *Riverton Citizens Grp. v. Bingham Cnty. Commissioners*, this Court applied this exception to determine whether a district court properly dismissed a petition for judicial review under I.R.C.P. 84 due to defects in the petition. 171 Idaho 898, 527 P.3d 501 (2023). Even though the parties failed to argue the issue, this Court held that the Idaho Appellate Rules governed petitions for judicial review and that, under a proper application of those rules, resolution of the appeal was beyond doubt. *Id.* at 905, 527 P.3d at 508.

Regardless of any potential merit it may hold, the Edwards' argument that they have a right under the Idaho Constitution to reject a smart meter does not place the proper resolution of this appeal beyond doubt. For example, the validity of the Edwards' constitutional claim depends substantially upon the notion that smart meters are unsafe for use near their residence. Whether smart meters pose such a threat would require this Court to resolve factual questions regarding the effect of such meters on humans. This, by itself, distinguishes resolution of the Edwards' constitutional arguments from the simple application of established court rules to the undisputed procedural history of a case that this Court performed in *Riverton Citizens Group*. Accordingly, because the Edwards constitutional arguments are unpreserved and no exception to the error preservation doctrine applies, this Court should not address those arguments.

III. CONCLUSION

The Edwards have failed to show that the Idaho Public Utilities Commission did not regularly pursue its authority in denying their petition for reconsideration. Accordingly, the Commission respectfully requests that this Court affirm the order denying the Edwards' petition for reconsideration and deny any other relief sought by the Edwards.

Respectfully submitted this 5th day of April, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of April, 2024, served the foregoing *Respondent Brief of the Idaho Public Utilities Commission*, in Supreme Court Docket No. 51238-2023, by forwarding a copy thereof, to the following, via the manner indicated:

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