

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FORMAL) CASE NO. ROC-W-21-01
COMPLAINT OF NICOLE BURBANK)
AGAINST THE ROCKY MOUNTAIN)
UTILITY COMPANY, INC.) ORDER NO. 35418
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On June 1, 2021, Nicole Burbank (“Ms. Burbank”), filed a formal complaint (“Complaint”) against the Rocky Mountain Utility Company, Inc. (“Company”). Ms. Burbank submitted supplementary information to the Idaho Public Utilities Commission (“Commission”) on July 28, and August 17, 2021. Previously, Ms. Burbank filed an informal complaint with the Commission Staff (“Staff”) about the Company. Staff was unable to resolve the dispute between Ms. Burbank and the Company informally.

On September 27, 2021, the Commission issued a Summons requiring the Company to answer the allegations in the Complaint and to address additional questions raised by the Commission in the Summons. The Company responded on November 1, 2021. Ms. Burbank filed a Declaration and Response to Respondent’s Answer on November 19, 2021. On November 30, 2021, Staff filed comments.

Having reviewed the record, the Commission now issues this Order granting in part and denying in part the relief requested in the Complaint.

BACKGROUND

A. The Complaint

Ms. Burbank asserted that the Company failed to provide her a “Terms of Agreement or Contract” for water service. *Complaint* at 1. Ms. Burbank claimed her builder connected to the Company’s water system without giving her notice and “due to confusion moneys were paid to [the Company]”. *Id.* Ms. Burbank also alleged that she had not received invoices from the Company. *Id.* When invoices were provided to her, Ms. Burbank claimed that the Company billed her a customer deposit but labeled it as a hook-up fee so it would not violate the Commission’s Customer Relations Rules. *Id.* Ms. Burbank also alleged that the Company violated the Commission’s Customer Relations Rule 102 by “basing the deposit on her sex, marital status, and

children.” *Id.* Ms. Burbank then claimed that the Company increased her water bill each month by adding “multiple line items to the Utility bill” without seeking approval of the Commission. *Id.* at 1-2. Ms. Burbank asserted that the Company used the nonpayment of these unapproved line items to threaten to shut off her water service. *Id.* at 2. Ms. Burbank asserted these billing practices violated the Commission’s Customer Relations Rules 201.01(a-i), 202.01, 203.01-.03 and 206.01 through 207. *Id.*

Ms. Burbank next alleged that the Company overcharged her for a customer deposit for \$850.00 and billed her \$97.50 for utility service in the same month. *Id.* Ms. Burbank also argued that the Company wrongfully charged her \$58.00 for sewer services every month. *Id.* Ms. Burbank also claimed that the Company violated Rule 109.02 because the Company “drafted NEW documents”. *Id.* Last, Ms. Burbank alleged that she does not have a meter on her property for “water usage but more important for water pressure” and that “[n]o one has investigated the water pressure to this day.”. *Id.* Ms. Burbank also alleged the Company failed to disclose the terms and conditions for water usage to her. *Id.* at 3.

Ms. Burbank requested that all alleged over-payments for monthly services and the customer deposit be refunded to her or applied against future water service charges. Ms. Burbank also requested that the Company follow proper procedures for billing and send her a utilities bill only to:

Nicole Burbank
3890 East Ash Lane
Rigby, Idaho 83442
Email: nursenikki0818@gmail.com

On July 28, 2021, Ms. Burbank filed correspondence alleging that Staff’s Decision Memorandum about her Complaint was inaccurate. *See July 28, 2021, Correspondence.* Ms. Burbank asserted that since filing her Complaint, she had received multiple letters from the Company threatening to shut off her water service. *Id.* Ms. Burbank attached these disconnection notices to her correspondence. *Id.* Ms. Burbank stated that the Commission had notified the Company not to disconnect her service.

Ms. Burbank asserted that the Company “has extorted over 100 residents in our neighborhood for years.” *Id.* Ms. Burbank asserted that she provided documents from other residents in the subdivision to counsel for Staff that included line item increases on water bills to

allegedly pay for a “new water Well” that she contends was not built. *Id.* Ms. Burbank further complained that “low water pressure has never been investigated.” *Id.*

On August 17, 2021, Ms. Burbank filed additional correspondence advising the Commission that on August 16, 2021, her “water was temporary [sic] shut off.” *See August 17, 2021, Correspondence.* Ms. Burbank also alleged that on this same day, the owner of the Company came to her house unannounced and threatened to dig up the water and septic lines if she didn’t pay her bill. *Id.* Additionally, Ms. Burbank attached disconnection notices she received from the Company and her bill that contained amounts charged for water and septic usage. *Id.*

B. The Company’s Response

The Company asserted that its hook-up fee information was located on its website. *Company’s Response* at 1. The Company stated that on February 10, 2020, it was contacted by First American Title Company, who “said that it was okay to pay [hook-up] fees through escrow.” *Id.* The Company attached copies of the information it received from the title company including the letter about fees, a Warranty Deed, and a check for the hook-up fee and first month’s utilities. Exhibit 1, attached to the Company’s submitted documentation, shows that \$850.00 was charged for a hook-up fee and an additional \$97.50 was charged for monthly dues (\$82.50 for water and \$15.00 for septic).

Additionally, the Company attached a copy of Check No. 29924 that it received from First American Title for \$947.50 for File No. 818616-RI, Re: 3890 East Ash Lane. *Id.*; Exhibit 1B. The Company also attached an itemized statement to its Response for the monthly water service provided to Ms. Burbank’s residence at 3890 East Ash Lane beginning in April of 2020. *Id.*; Exhibit 2. The Company’s itemization showed that Ms. Burbank made four payments of \$39.50 totaling \$158.00 to the Company for water service but that she has not made any further payments since August of 2020; however, Ms. Burbank has continued to receive water service from the Company. *Id.* The Company asserted that Ms. Burbank had a past due balance of \$592.50 as of the October 2021 billing period. *Id.* The Company also asserted that it had separated invoices for water and sewer service as of September 2, 2021. *Id.*

C. Ms. Burbank’s Declaration and [Reply] to the Company’s Response

Ms. Burbank again asserted that “the Company’s owner and operator showed up at her house on August 16, 2021, and threatened to dig up her property if she did not pay money owed to him.” *Declaration* at 1. Ms. Burbank also asserted that the Company shut off her water without

notice or cause on August 16, September 1, 10, 24, and October 14, 2021. *Id.* at 2-3. Ms. Burbank next alleged that the Company shut off her water in retaliation for the Complaint. *Id.* Ms. Burbank also stated she deposited a large sum of money into escrow with First American Title Company for closing costs and miscellaneous expenses, but never agreed to pay the Company for a hook-up fee despite the money being withdrawn from escrow. *Id.* at 4. Ms. Burbank also asserted that when she purchased her home she received no documentation from the escrow company, nor did she receive information from the Company. *Id.*

Ms. Burbank asked the Commission to stop the Company from extorting her. *Id.* Ms. Burbank also requested that the Commission “correct the fraud that has been committed against [her]” and prevent the Company from retaliating against her. *Id.* Ms. Burbank also requested that the Commission require regular testing of the water pressure by a third-party with no affiliation to the Company. *Id.*

STAFF COMMENTS

On November 30, 2021, Staff filed comments in the case. Staff commented on: (1) the hook-up fee; (2) Monthly Charges for Water Service; (3) Disconnection Notices; (4) Termination of Service; and (5) Water Pressure.

1. The Hook-Up Fee

Staff noted that the filed rate doctrine prevents a utility from charging more or less than its Commission approved rates. *Staff Comments* at 6. Staff stated the Company’s Commission-approved hook-up fee is \$150.00. *See* Order No. 30703. Ms. Burbank contended that she paid an \$850.00 fee through Escrow when she closed on her residence but provided no documentation or other evidence corroborating this contention. *See Staff Comments* at 6-7. Staff sent Ms. Burbank a production request seeking documentation that could help Ms. Burbank demonstrate that she had paid the hook-up fee, but she failed to respond. *Id.* Staff did receive a copy of the “ALTA Settlement Statement-Seller” from Higley Developments, LLC who sold 3890 East Ash Lane to Ms. Burbank. *See Supplemental Affidavit of Jolene Bossard.*¹ The Seller’s Statement showed that Higley Developments, LLC paid the \$850.00 “Hook-Up Fee to Rocky Mountain Utility.” *Id.* at Exhibit B. Staff noted the \$850.00 fee was paid when Ms. Burbank closed the purchase for her residence at 3890 East Ash Lane to connect her to the Company’s water and sewer systems. *Id.* Staff reasoned if Ms. Burbank did not pay the hook-up fee, she would not have any standing to

¹ Staff also received the same Seller’s Statement from the Company.

make a claim for a refund. *Company Response* at 1 and Exhibit 1B attached thereto. Staff recognized the Company's assertion that it charged \$150.00 to connect to its water system (implying that the additional \$700 is to hook up to sewer) and cited its webpage for this information.² Staff pointed out that the \$850.00 was not separated for the water and sewer system connections on this Company's summary which could cause confusion for customers. *Staff Comments* at 6. Staff recommended that the Commission direct the Company to modify its invoices and webpage information to clearly inform new customers that the hook-up fee to connect to the Company's water system for water service is \$150.00.

2. Monthly Charges for Water Service

On May 10, 2021, Staff spoke with a Company representative who advised that a "new service" for Ms. Burbank's residence started on March 20, 2020, and payments were made by Ms. Burbank for water service until August 4, 2020. *Affidavit of Jolene Bossard*, at Confidential Exhibit A. The Company asserted that it sent Ms. Burbank an invoice every month and that disconnection notices were also mailed to Ms. Burbank at the address Ms. Burbank had identified as her mailing address. *Id.* The Company confirmed that its technician had recently spoken with Ms. Burbank and discussed disconnecting her service. *Id.*

On May 10, 2021, Staff requested that the Company provide it with: (1) a copy of Ms. Burbank's most recent bill; (2) a copy of the Final Notice of Disconnection; and (3) payment and billing history for Ms. Burbank. *Id.* Staff inquired whether invoices were sent to a standard mail address and if it was the same as the service address for the customer. *Id.* Staff also asked what payment arrangement the Company would propose for Ms. Burbank to bring her account current. *Id.* The Company provided Staff with copies of Ms. Burbank's most recent bill, final notice, and payment/billing history. *Id.* at Exhibit B. Company billing history for Ms. Burbank showed charges of \$39.50 for water service and \$58.00 for septic service or \$97.50 each month. *Id.* The Company billed Ms. Burbank for these services on the same invoice and said that all invoices were sent to Ms. Burbank's home address. *Id.* The Company also represented that it was open to payment arrangements for the past due balance for water service. *Id.*

Staff noted that Ms. Burbank had received water service from the Company since April of 2020, something she had not denied. *Staff Comments* at 8. Staff also pointed out that Ms. Burbank paid for water service for April, May, June, and July of 2020 but not made payments since then.

² See rockymountainutility.com/water-ratesfees/.

Id.; see also *Company Response* at Exhibit 2. According to the Company's Response, Ms. Burbank has a past due balance of \$592.50 for water service through October 2021. *Response* at Exhibit 2.

Staff recommended that the Company send separate invoices for water and sewer service to resolve any confusion over what services the Company is billing for. *Staff Comments* at 8. Despite this, Staff asserted that the Company documentation demonstrated that Ms. Burbank was billed the Commission approved amount of \$39.50 per month for water service. *Id.* Staff encouraged Ms. Burbank to make payment arrangements with the Company for the past due balance for the water service she has received. *Id.*

3. Disconnection Notices

The Company sent disconnection notices to Ms. Burbank for failure to pay past due balances for water and sewer service. See Exhibit A attached to *Complaint*; see also attachments to July 28, 2021, Correspondence. Staff explained that the Company may terminate a customer's service consistent with the Commission's Customers Relations Rules ("UCRR") for failure to pay for water service. See IDAPA 31.21.01.302.01.ii, -304, and -305. However, Staff believed that the Company could not include past due charges for sewer service in its termination notices for water service. See Rule 310, IDAPA 31.21.01.310.01.c. Accordingly, Staff recommended that the Commission direct the Company to update its disconnection notices to include only past due charges for water service. *Staff Comments* at 9.

4. Termination of Service

After the filing of the informal complaint, Staff notified the Company it could not terminate Ms. Burbank's service while it, and then later the Complaint, was pending. *Id.* Ms. Burbank alleged her water service was temporarily shut off five times in August through October of 2021. *Id.* The Company submitted responses to Staff regarding the water service outages Ms. Burbank asserted she experienced. See *Second Supplemental Affidavit of Jolene Bossard* at Exhibit A. The Company explained that on August 16, 2021, the wrong valve was closed, which interrupted Ms. Burbank's water service. *Id.* The Company also asserted that on August 20, 2021, it notified customers that an outage would occur to tie the two wells together. *Id.* The Company further disclosed there was an outage on September 10, 2021, that affected certain customers on a specific water line which Ms. Burbank is not served by. *Id.* Last, the Company represented that it notified customers on October 14, 2021, about a water outage necessary to bring the new generator online. *Id.* The Company claimed there were no outages on September 1 or 24, 2021. *Id.*

5. Water Pressure

Ms. Burbank asserted that the Company had not investigated the water pressure on the Company's system. *Complaint* at 2; *see also* July 28, 2021, Correspondence at 2.

Staff described a public utility's statutory requirements to deliver adequate and reliable service to its customers. *Staff Comments* at 10. Staff also discussed the Commission's statutory investigatory powers to respond to customer complaints. *Id.* Staff noted that generally, a regulated water corporation must maintain a minimum pressure of 20 psi throughout its distribution system, at ground level, as measured at the service connection or along the property line adjacent to the consumer's premises. *See* Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08.552.01.b. ii. When water pressure falls below 20 psi, the Company must notify the Idaho Department of Environmental Quality, provide public notice to the affected customers within 24 hours, and disinfect or flush the system. *Id.*; *see also Staff Comments* at 10.

The Company represented that the Company's system operates consistently at 70 psi and the water pressure is tested daily. *See Supplemental Affidavit of Jolene Bossard.*

Based on the record in this case, Staff could not determine whether there were water pressure issues on the Company's system. *Staff Comments* at 10. Staff recommended that the Company provide the Commission with a daily water pressure report from appropriate locations on the Company's system for 14 days following a final order in this case. *Id.*

COMMISSION FINDINGS AND DECISION

The Company is a water corporation and a public utility. *Idaho Code* §§ 61-125 and -129. Accordingly, the Commission has jurisdiction over the Company and this matter under *Idaho Code* §§ 61-501, - 502, -503, -507, -520, -523, and -622.

1. Provision of Utility Service

Ms. Burbank asserted that there is no agreement for water service between her and the Company. The Company alleged that First American Title Company contacted it on February 10, 2020, and stated "that it was okay to pay [hook-up] fees through escrow." *Id.* The Company attached copies of the information it received from the title company and a check for the hook-up fee and first month's utilities. Further, the Company asserted that it provided Ms. Burbank with a new customer packet. *See Bossard Affidavit* at Exhibit C. Ms. Burbank disputes receiving this new customer packet.

However, Ms. Burbank is not asking for the Commission to determine that a contract does or does not exist between Ms. Burbank and the Company, rather Ms. Burbank's "Pray for Relief" provides:

In accordance with IPUC 31.21.01 Sub. Section 200.04 Refund; Ms. Burbank request that all over payments for monthly services and the over charge for the deposit be refunded or put towards future water usage. Ms. Burbank request RMUCI to follow the proper procedures for billing laid out in the IPUC. Ms. Burbank request a Utilities bill only and for that bill to be sent to her home at the address listed above. Ms. Burbank request that the IPUC issue any and all thing [sic] that are deemed and [sic] proper and apprioate [sic].

Complaint at 3. Based upon the record, Ms. Burbank requested that she continue receiving utility service from the Company, and for the Commission to exercise its authority over the Company to ensure compliance with the appropriate rules and regulations.

To the extent that any finding is necessary on this issue, the Commission finds that, as noted above, the Company is a water corporation and a public utility. Idaho Code §§ 61-125 and -129. Accordingly, the Commission has jurisdiction over the Company and this matter under Idaho Code §§ 61-501, -502, -503, -507, -520, -523, and -622. Further, Rule 5.02 defines "customer" as "any person who has applied for, has been accepted by the utility and is . . . [r]eceiving service from a utility; or [h]as assumed responsibility for payment of service provided to another or others." IDAPA 31.21.01.005.02(a), (c). "If the person receiving service is not the same person as the person assuming responsibility for payment of service, the latter is the customer for purposes of obtaining or terminating service, receiving refunds, or making changes to the account." *Id.* The record shows that the Company has provided, and Ms. Burbank has paid for, utility services. Thus, the Commission finds that Ms. Burbank is a customer and has standing to bring a formal complaint, and the Company is subject to the regulatory authority of the Commission.

2. Hook-up Fee and Monthly Charges

Together, *Idaho Code* §§ 61-313 and 61-315 codify the concepts that make up the filed rate doctrine in Idaho. This doctrine requires utilities to file their rates with the Commission and creates the obligation to charge only those rates.³

³ The filed rate doctrine is explained in *Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94, 35 S.Ct. 494, 59 L.Ed. 853 (1915).

The evidence produced in this case demonstrates that Ms. Burbank did not pay the \$150.00 hook-up fee. As such the Commission finds that she is not entitled to any refund of the hook-up fee.

The record also shows that the Company invoiced Ms. Burbank the Commission approved amount for water service each month, \$39.50. Ms. Burbank claimed she did not receive invoices for water service from the Company; however, the Company claimed to have sent invoices to the same address that Ms. Burbank identified as her mailing address in this case. Further, the record shows that Ms. Burbank, in fact, paid for four months of water service from the Company. The Commission finds this is compelling evidence that she received invoices from the Company.

As of October of 2021, Ms. Burbank's past due balance for water service was \$592.50. This past due balance may have increased if Ms. Burbank continued to receive water service from the Company and continued to not pay for it at the rate of \$39.50 per month. Staff instructed the Company to continue providing Ms. Burbank water service during the pendency of her Complaint. This Order resolves the allegations made in the Complaint. After issuance of this Order, if Ms. Burbank does not bring her past due balance for water service current or make arrangements with the Company to do so, the Company may seek to terminate her service in compliance with Rules 301 through 313 of the Commission's Rules of Procedure. *See* IDAPA 31.21.01.300-313 *et seq.* We encourage Ms. Burbank to work with the Company to address her past due balance for water service.

The Commission also instructs the Company, if not already corrected at the time of issuing of this Order, to issue separate invoices for its water and sewer services to provide customers with better and clearer billing information, starting with the Company's next billing period for water service.

3. Disconnection Notices

The Commission finds that the Company's disconnection notices fail to comply with the appropriate regulations. A utility company may terminate a customer's service consistent with the UCCR for failure to pay for water service. *See* IDAPA 31.21.01.302.01.ii, -304 and -305. However, a Company may not terminate water service for non-payment of septic service since that service is not regulated by the Commission. *See* IDAPA 31.21.01.310.01.c. The Company shall revise its disconnection notices for water service to comply with the Commission's UCCRs to reflect only past due balances for water service.

4. Termination of Service

The Commission finds that Ms. Burbank's water service was not wrongfully disconnected. We find that on August 16, 2021, a temporary water disconnection occurred but was unrelated to Ms. Burbank failure to pay for water service. *See Second Supplemental Affidavit of Jolene Bossard, Exhibit A.* The Commission also finds that on August 20, 2021, the Company sufficiently notified residents of a planned water outage as permitted by its tariffs. *Id.* We also find that on September 10, 2021, there was an outage that affected few residents; however, Ms. Burbank was not one of them. *Id.* We find that on October 14, 2021, Ms. Burbank was notified of a planned water outage to bring a new generator online. *Id.* Finally, we find no corroborating evidence to support Ms. Burbank's assertion that there were water service outages on September 1 and 24, 2021. *Id.*

5. Water Pressure

The record contains conflicting evidence concerning the water pressure on the Company's system. Public water systems must maintain a minimum pressure of 20 psi throughout its distribution, at ground level, as measured at the service connection or along the property line adjacent to the consumer's premises. *See IDAPA 58.01.08.522.01b.ii.* The Idaho Department of Environmental Quality is primarily responsible for the enforcement of this Rule's water pressure requirement. However, to assure that the Company's water system complies with this Rule the Company shall take daily water pressure readings from appropriate locations on the Company's water system for 14 days, starting the day after the issuance of this Order. At the end of the 14-day pressure testing period the Company shall submit a report to the Commission containing the daily water pressure readings within 21 days of issuance of this Order.

ORDER

IT IS HEREBY ORDERED that Ms. Burbank is not entitled to a refund of the \$150.00 hook-up fee to connect to the Company's water system.

IT IS FURTHER ORDERED that the Company has billed the Commission approved rate of \$39.50 per month to Ms. Burbank for water service. As of October 2021, Ms. Burbank had a past due balance for water service of \$592.50, which may have grown if she has continued to not pay for water service from the Company.

IT IS FURTHER ORDERED that the Company shall bill its water services on a separate invoice from any other services the Company may provide. The Company must also revise its website's information on hook-up fees to accurately reflect water and septic fees separately. The

Company shall revise its disconnection notices so that they comply with the Commission's UCCRs, specifically Rule 310, IDAPA 31.01.01.310. The Company shall work with Staff to ensure that its disconnection notices comply with the Commission's authorities.

IT IS FURTHER ORDERED that the Company shall take daily water pressure readings from appropriate locations on the Company's water system for 14 days, starting the day after the issuance of this Order. At the end of the 14-day water pressure testing period the Company shall submit a report to the Commission containing the daily water pressure readings within 21 days of issuance of this Order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 25th day of May 2022.



ERIC ANDERSON, PRESIDENT

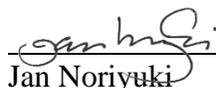


JOHN CHATBURN, COMMISSIONER

//ABSTAIN TO AVOID CONFLICT//

JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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