

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

MARY BAENEN)
) **CASE NO. AVU-E-17-11**
 COMPLAINANT,)
) **ORDER NO. 33979**
 v.)
)
 AVISTA CORPORATION,)
)
 RESPONDENT.)
 _____)

On October 10, 2017, Avista Corporation (“Avista” or the “Company”) customer Mary Baenen (“Baenen”) filed an “Urgent Petition” that asked the Commission to order the Company to allow customers a choice in meters used to monitor their utility service. Baenen expressed health, privacy, and security concerns regarding the Company’s radio-frequency/electromagnetic radiation-emitting meters (“smart meters”).¹ See Commission Rule of Procedure 54 (IDAPA 31.01.01.054, discussing formal Complaints). On November 17, 2017, the Commission issued a Summons directing the Company to answer Baenen’s Complaint within 21 days. Avista filed a timely Answer on December 8, 2017.

BAENEN’S COMPLAINT

In her Complaint, Baenen argued that the smart meters are an unsafe and unhealthy carcinogen. Complaint at 2. Baenen claimed Avista’s smart meters violate Idaho Code § 61-302, which states:

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.

Id.

Further, Baenen expressed concern that the smart meters can “obtain confidential information” in violation of the Fourth Amendment of the United States Constitution. *Id.*

¹ Baenen’s petition also asked the Commission to deny Avista’s proposed rate increases in Case Nos. AVU-E-17-01 and AVU-G-17-01, and the Company’s proposed merger in Case Nos. AVU-E-17-09 and AVU-G-17-05. Her requests to deny the Company’s proposed rates and merger are not at issue in this case, but have been filed as comments in the respective cases and will be addressed there accordingly.

Baenen asked the Commission to prohibit Avista from using smart meters, require Avista to use analog meters, and penalize Avista for any continued use of smart meters. *Id.*

AVISTA'S ANSWER

In its Answer, Avista provided a factual background of the purpose of the smart meters, their placement, and how they function generally. Answer 2-3. The Company explained that its meters transmit energy similar to the sun, radio and television antennas, personal computers, cell phones, residential wireless routers, and baby monitors. *Id.* at 2-3. The Company cited to authoritative studies that have concluded that such emissions are safe, and that “there is no clear evidence that additional standards are needed to protect the public from smart meters or other common household electronic devices.” *Id.* at 3-4.

With regard to Baenen’s claim that the smart meters obtain personal information in violation of the Fourth Amendment, the Company stated it has stringent procedures in place for the use and protection of customers’ personal information and that it complies with all privacy rules contained in the Commission’s customer relations rules. *Id.* at 4 (See IDAPA 31.21.01)

For these reasons, the Company asked the Commission to dismiss Baenen’s Complaint.

COMMISSION FINDINGS AND DECISION

The Commission has previously addressed the health and safety issues raised in Baenen’s Complaint. *See Menth v. Idaho Power Company*, Case No. IPC-E-12-04, Order 32500 (Mar. 27, 2012). In that case, the Commission found that there is not “sufficient demonstrable, credible factual evidence to support a finding that the meters present legitimate safety or potentially inappropriate communication concerns.” *Id.* at 3. Baenen’s Complaint does not alter that finding, as it presents no evidence, beyond the personal assertions of Ms. Baenen, that the smart meters are a health risk or a privacy concern. Rather, record evidence shows that the smart meters now being utilized by Idaho utilities are safe and otherwise comply with Idaho Code § 61-302.

The Fourth Amendment also is not implicated here, because Avista is a private actor, not a governmental entity. *See Wechsler v. Wechsler*, 407 P.3d 214 (Idaho 2017). Moreover, Baenen has produced no evidence suggesting that Avista’s smart meters can gather confidential or private information.

For these reasons, we find it fair, just, and reasonable to dismiss Baenen’s Complaint.

ORDER

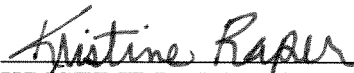
IT IS HEREBY ORDERED that Mary Baenen's Complaint is dismissed.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this case 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 or in interlocutory Orders previously issued in this case. 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 *2nd* day of February 2018.



PAUL KJELLANDER, PRESIDENT

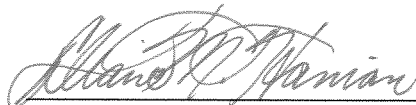


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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