

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>HERBERT PAWLIK,</b>	)	
	)	
<b>COMPLAINANT,</b>	)	<b>CASE NO. AVU-E-09-05</b>
	)	
<b>vs.</b>	)	
	)	
<b>AVISTA UTILITIES,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>ORDER NO. 30920</b>

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On May 27, 2009, the Commission issued a summons to Avista Utilities (Avista, Company) in response to a formal complaint filed by Herbert Pawlik against the Company for what Mr. Pawlik alleges are “unethical and perhaps criminal procedures” related to Avista’s rebilling practices. Specifically, the Company rebilled the Pawliks after discovering that its metering equipment failed to operate correctly for a period of approximately five months.

Avista filed its answer on June 17, 2009. The Company requested dismissal of the complaint. On July 20, 2009, Mr. Pawlik filed a reply to Avista’s answer asking the Commission to “revoke in its entirety Avista’s unsubstantiated claim for utility charges” because the charges were based on a defective meter. Reply at 5. For reasons set out in greater detail below, the Commission grants Avista’s Motion to Dismiss.

**MR. PAWLIK’S COMPLAINT**

Mr. Pawlik alleges that he was notified by Avista in late January 2009 that the Company had experienced a “communication problem” with the electric meter at the Pawlik’s property. Tests performed by Avista technicians revealed that although the meter had been registering electricity usage properly, the Two Way Automated Communication System (TWACS) that transmits meter readings automatically back to the Company had ceased to function. As a result, the Pawlik’s electric usage had been estimated for the prior five months resulting in a billing shortfall of 9620 kilowatt hours, or \$1,647.30.

Mr. Pawlik questions Avista’s authority to demand payment for additional energy usage after under-estimating his power consumption. The Pawlik’s maintain that they have “ardently invested in energy conserving measures,” and that a shortfall of more than \$1,400 over a five-month period is “absurd at best.” Complaint at 2.

## AVISTA'S RESPONSE

Avista asserts that a billing representative received a warning regarding the Pawlik's account on December 12, 2008, indicating that the Pawlik's meter had been estimated for the previous three months. Avista states that if the estimated read is for the first month and the meter reader has commented on the reason for the estimate, the billing representative will estimate use based on the customer's usage history during the equivalent time of year.<sup>1</sup> In response to the warning received on the Pawlik's account, an internal tracker was created for the electric meter in question (meter #12093810).

The meter was subsequently removed from the Pawlik's premises and sent to a billing specialist for investigation. The meter tested at 99.79% accuracy. During a field visit by a Company representative, Mr. Pawlik was informed that although the Pawlik's electric usage had not been communicated through TWACS, the meter was properly registering usage. Consequently, the Pawliks would be receiving adjusted billings based on their actual usage. The Company made adjustments when recalculating the Pawlik's actual usage that amounted to a \$213.74 savings. After further review and to assist with positive Company/customer relations, Avista provided an additional \$200 credit. The Company offered the Pawliks an option to pay their remaining account balance over a 12-month period, and reaffirmed its willingness to honor that arrangement in the Company's answer to the Pawlik's complaint. Avista also offered to provide the Pawliks an on-site weatherization audit to assist the Pawliks in energy conservation and bill reduction.

While investigating the Pawlik's meter, it was noted by the Company that several customers' meters in the immediate area surrounding the Pawlik's residence had also stopped sending in reads during the same timeframe. All of the meters with malfunctioning TWACS, including the Pawlik's, were changed out.<sup>2</sup>

## MR. PAWLIK'S REPLY

On July 20, 2009, Mr. Pawlik filed a reply alleging "factual inaccuracies, distorted time lines, and the omission of facts" in Avista's answer. Reply at 1. Mr. Pawlik argues that the

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<sup>1</sup> Avista reports that "no reads" that require a billing representative to estimate usage are typically due to access issues. Answer at 2.

<sup>2</sup> After determining the root cause of the missed reads with respect to multiple meters in the immediate area, additional documentation and rigor were built into the Company's routines and tasks. Answer at 3-4.

Company was delinquent in realizing and responding to his meter's "no read" status. He emphasizes that access to his meter was never obstructed or denied. Mr. Pawlik questions the validity of the testing performed on his meter and objects to taking "financial responsibility for the defects and failings of Avista's systems and processes." Reply at 4.

Mr. Pawlik asserts that "Avista falls short of reasonably explaining an approximately 300% usage increase recorded by a faulty meter over a five months [sic] period." Reply at 5. Mr. Pawlik indicates a willingness to pay for the power that he actually used, but states that "in lieu of verifiable data, we would accept billing based on prior years' consumption averages." Reply at 4. Further, Mr. Pawlik characterizes Avista's offer of a payment plan as "nothing short of extortion." *Id.* He explains that failure to accept the Company's offer of a payment plan would have resulted in disconnection of his electric service.

### **DISCUSSION AND FINDINGS**

Pursuant to *Idaho Code* §§ 61-501 and 61-612 the Commission has jurisdiction to resolve the complaint brought against Avista by Mr. Pawlik. The Commission finds that a hearing is not required to consider the issues presented in Mr. Pawlik's complaint. Therefore, the Commission issues its decision based on the written record submitted including the materials submitted prior to this matter becoming a formal complaint. *See* IDAPA 31.01.01.201.

The Utility Customer Relations Rules (UCRR) state that

[w]henver the billing for utility service was not accurately determined for reasons such as a meter malfunctioned or failed, bills were estimated, metering equipment was incorrectly installed or programmed, or bills were inaccurately prepared, the utility shall prepare a corrected billing.... IDAPA 31.21.01.204.01, UCRR Rule 204.01.

If the time when the malfunction or error can be reasonably determined and the utility determines the customer was undercharged, the utility may rebill for a period of six (6) months unless a reasonable person should have known of the inaccurate billing, in which case the rebilling may be extended for a period not to exceed three (3) years. Utilities shall implement procedures designed to monitor and identify customers who have not been billed or who have been inaccurately billed. IDAPA 31.21.01.204.02.c, UCRR Rule 204.02(c).

Avista does not dispute that the TWACS unit at the Pawlik's address malfunctioned and failed to report the Pawlik's actual electric usage from September through December 2008. Following an investigation, it was determined that although the TWACS was not properly transmitting the Pawlik's usage back to the Company's office for billing purposes, the meter was properly

recording the Pawlik's actual usage. In fact, the Pawlik's meter tested at 99.79% accuracy – well within the acceptable limits of 2% variance.

Avista acknowledged that a flawed query in its system prevented the Company from identifying the “no read” meters in the Pawlik's immediate area more quickly. In response, Avista implemented additional documentation and more rigorous reporting procedures to avoid similar problems in the future. The Company did not bill the Pawliks for the visits by the technicians, the testing of the old or new meter, the installation of the new meter, or any of the time and effort that it took to investigate the Pawlik's complaint. Contrary to the Pawlik's assertions, the Company does not expect, nor would the Commission allow, “customers to take financial responsibility for the defects and failings of Avista's system and processes” based on the facts as they have been presented here. Reply at 4.

However, pursuant to the Utility Customer Relations Rules, the Company is entitled to recover compensation for electricity consumed by its customers. Rule 204.01 specifically addresses rebilling based on meter malfunctions and billing estimations. Rule 204.04 further directs that

[t]he utility shall promptly prepare a corrected billing for a customer who has been undercharged indicating the amount owed to the utility. An unbilled or undercharged customer shall be given the opportunity to make payment arrangements under Rule 313 on the amount due. At the customer's option, the term of the payment arrangement may extend for the length of time that the underbilling accrued or the customer was not billed. IDAPA 31.21.01.204.04, UCRR Rule 204.04.

Commission Staff investigated the Pawlik's informal complaint and determined that Avista had complied with the Commission's rules regarding the rebilling of the Pawliks. Mr. Pawlik argues that the Company's rebilling practices are unethical and criminal. While the Commission understands Mr. Pawlik's frustration regarding the meter and malfunctioning TWACS that resulted in an account balance owed to Avista, the Commission in reviewing the record in this case cannot find that Avista's actions were unreasonable. Testing regarding electricity usage revealed the meter was 99.79% accurate. Despite the TWACS malfunction, the Pawlik's usage was being recorded accurately. In rebilling the Pawliks, Avista utilized the guidelines provided by the Commission's rules. In fact, Avista exceeded the minimum requirements of rebilling procedures by offering to spread the Pawlik's undercharged balance over 12 months.

The Commission encourages the Pawliks to accept the Company's offer to provide an on-site weatherization audit of their home. Avista is well-equipped to provide suggestions and/or identify rebates that might assist the Pawliks in reducing their future energy bills.

Based on the foregoing, the Commission grants Avista's Motion to Dismiss.

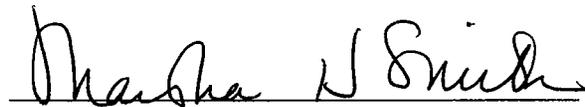
**ORDER**

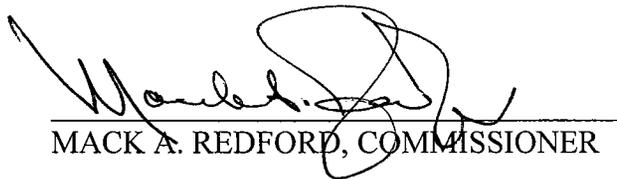
IT IS HEREBY ORDERED that Avista's Motion to Dismiss is granted. Consequently, Herbert Pawlik's complaint against Avista is denied.

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. 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 7<sup>th</sup> day of October 2009.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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