

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO PUBLIC UTILITIES COMMISSION)	
STAFF,)	CASE NO. PAC-E-12-01
)	
COMPLAINANT,)	
)	
vs.)	
)	
PACIFICORP DBA ROCKY MOUNTAIN)	
POWER,)	ORDER NO. 32506
)	
RESPONDENT.)	

On January 11, 2012, Commission Staff filed a formal complaint, after informal negotiations failed, against PacifiCorp dba Rocky Mountain Power (RMP). Staff alleges RMP violated Customer Relations Rule 201.03.c in April 2010 by inappropriately billing Idaho Travertine Corp. under Schedule 6 (General Service-Large Power) instead of Schedule 23 (General Service). Staff asserts that RMP has now switched Travertine to the desired Schedule 23. However, RMP refuses to refund Travertine the inappropriately billed amount, \$15,952.31.

RMP filed its “Answer, Affirmative Defenses, and Motion to Dismiss” (“Answer”) on January 31, 2012, which denied that RMP inappropriately billed Travertine. RMP also argues that it need not adjust the bills because it acted in good faith and gave Travertine written notice of scheduling options under Customer Relations Rule 203.02. Accordingly, RMP asks the Commission to dismiss the complaint.

Staff and RMP subsequently filed supplementary pleadings further explaining their positions. See Commission Staff reply dated February 7, 2012, and PacifiCorp’s Response to Commission Staff Reply dated February 16, 2012. The Commission, having reviewed the parties’ filings and all matters of record, enters the following Order.

THE COMPLAINT

Staff alleges RMP violated Customer Relations Rule 203.01.c, which states:

203. BILLING UNDER INAPPROPRIATE TARIFF SCHEDULE

01. Rebilling Required. If a customer was billed under an inappropriate tariff schedule, the utility shall recalculate the customer’s past billings and correctly calculate future billings based on the appropriate tariff schedule. A customer has been billed under an inappropriate tariff schedule if:

...

c. The customer, who is eligible for billing under more than one (1) tariff schedule, was billed under a schedule contrary to the customer's election, or the election was based on erroneous information provided by the utility.

IDAPA 31.21.01.203.01.c.

All parties agree Travertine was eligible for billing under both Schedule 6 and Schedule 23. Staff claims, however, that RMP arbitrarily assigned Travertine to Schedule 6 when RMP knew or should have known to assign Travertine to Schedule 23 because Travertine had previously filed a similar improper billing complaint against RMP. Specifically, Staff maintains that when Travertine signed up for service in 2010, RMP knew or should have known that Travertine was a returning customer that had complained in March 1997 that RMP was improperly billing under Schedule 6 instead of Schedule 23. Further, RMP resolved Travertine's prior complaint by agreeing to switch Travertine to Schedule 23. Based on these prior events, RMP knew or should have known to place Travertine on Schedule 23 when Travertine re-established service in 2010.¹

Staff also notes that RMP would have automatically placed Travertine on Schedule 23 in 2010 but for the fact that RMP violated the 1997 agreement by not placing Travertine on Schedule 23 in 1997. No documentary evidence shows whether RMP switched Travertine from Schedule 6 to Schedule 23 in 1997. However, Staff notes that RMP's records back to December 1997 show that RMP continuously billed Travertine under the less favorable, Schedule 6 from December 1997 until Travertine sold its business in 2008.² Staff notes that RMP then billed the business's new owner under Schedule 6 from 2008 until Travertine repurchased the business in 2010. Staff also notes that, regardless of whether documentary evidence exists, Travertine says it has *never* elected to be placed on Schedule 6. In light of the 1997 agreement, Travertine assumed RMP would place it on Schedule 23 when it re-established service in 2010.

According to Staff, when Travertine learned RMP was still billing it under Schedule 6 and not Schedule 23, it visited RMP's local office where it was told to call RMP's 800 number

¹ RMP, on the other hand, argues that Travertine's similar 1997 complaint is evidence that Travertine "clearly knew" in 2010 – 13 years later – that Schedule 23 remained a service option offered by RMP. RMP argues that despite this putative knowledge, Travertine did not elect Schedule 23. Answer at 3, Response at 7.

² RMP argues this fact alone does not mean that RMP did not switch Travertine to Schedule 23 in March 2007, as agreed. RMP argues that it could have placed Travertine on Schedule 23 as agreed in March and then switched Travertine back to Schedule 6 sometime before December 2007 per Travertine's request. Answer at 7.

for more information. Travertine did not call that number, however, but informally complained to the Commission in November 2011. RMP then switched Travertine to Schedule 23. *See* Complaint at 1.³

RMP would not, however, refund Travertine the \$15,952.31 difference between what Travertine paid under the Schedule 6 and the lesser amount that Travertine would have paid under Schedule 23. Accordingly, Staff filed its formal complaint. Staff summarizes its position as follows:

Rocky Mountain Power's tariff includes two general service rate schedules for commercial customers: Schedule 6 (Large Power) and Schedule 23 (General Service). Neither schedule has specific eligibility criteria related to demand or energy usage. According to RMP, at the time of *initial* connection of a new business building, the Company, in consultation with the customer, determines the appropriate schedule.

After initial assignment of a rate schedule to a service location, existing and subsequent customers stay on the same rate schedule until the customer contacts the Company to change service requirements or question rates. Customers do not have sufficient expertise or resources to compare schedules. It may be difficult for customers who are eligible for more than one rate schedule to conduct a comprehensive billing analysis in order to determine the least cost rate option. Since Schedules 6 and 23 have no specific eligibility criteria, there is no way to determine the appropriateness of a rate schedule assignment without doing such an analysis.

In Mr. Orchard's case,⁴ he assumed at the time he signed up for service again in 2010 that he would be assigned by RMP to the most favorable schedule. The Company never asked about Idaho Travertine's planned usage or any other information that would have allowed for a reasoned selection between rate schedules. The customer service representative's passive statement that "optional rate schedules" were available did not prompt Mr. Orchard to ask for a rate schedule comparison.

Rocky Mountain Power arbitrarily assigned Mr. Orchard to a rate schedule without any inquiry into customer usage or assessment of appropriate criteria to assist the customer in choosing a schedule. Consequently, Staff maintains that this customer is entitled to a refund of \$15,952.31.

³ RMP deemed Travertine's informal complaint to be a written request for a schedule change under RMP's applicable tariff provisions, which state in pertinent part: "Where optional electric service schedules are available, the Company, upon request, will assist the Customer in the selection of the . . . schedule most favorable to him. . . . A Customer . . . may elect to be billed on any other applicable . . . service . . . by notifying the Company in writing." *See* Answer at 3-4.

⁴ Mr. Orchard owns Travertine. *See* Complaint at 1, Answer at 2.

Commission Staff Reply at 5-6.

RMP'S DEFENSE

RMP defends by arguing that Staff cannot show RMP inappropriately billed Travertine as described in Rule 203.01.c. RMP also argues that adjusting Travertine's bills is not appropriate because RMP falls under Rule 203.02's "good faith" and "notice" exceptions.

As an initial matter, RMP denies it inappropriately billed Travertine under Rule 203.01.c. *See* Response at 2. RMP says while Travertine may have *assumed* RMP would assign Travertine to "the most favorable rate," there is no evidence that Travertine *actually told* RMP that it expected RMP to assign it to Schedule 23 in 2010. *See* Answer at 6-7. In fact, RMP states that "Travertine elected Schedule 6." Response at 2; Answer at 7. According to RMP, when Travertine called in April 2010 to transfer service from the existing account holder, RMP determined that the account was billed under Schedule 6 but that it also could qualify for Schedule 23. RMP claims that, per a script, its customer service representative told Travertine that "the default Schedule for this service is based on how much power you use regardless of when usage occurs," but that the "service is eligible for optional rate billing based on the time of day you use your power as well as how much power you use." RMP says its customer service representative then asked Travertine: "Would you like more information regarding optional rates or would you prefer our default billing?" and that Travertine declined to receive the additional information. *See* Response at 3-4.⁵ RMP thus disagrees with Staff's contention that RMP arbitrarily assigned Travertine to Schedule 6. Rather, Travertine "was assigned to [Schedule 6] consistent with the customer's request to 'transfer' service from a prior account and with its confirmation of the 'Default Rate.'" *Id* at 4.⁶ RMP says it rationally decided to assign Travertine

⁵ RMP does not ask new commercial customers who sign up for existing service locations about specific usage characteristics before assigning a tariff schedule. Rather, the Company defaults to the prior customer's schedule. If RMP observes that the new customer is eligible for both Schedules 6 and 23, RMP recommends that the customer call back if the customer wants additional scheduling information. However, RMP offers no unsolicited advice about which schedule would be better for the customer. Staff argues that RMP should be required to provide more meaningful information to new customers because RMP possesses information that the new customer needs to know to make an informed choice; namely, the prior customers' usage and billing history. Reply at 4-5.

⁶ RMP also disagrees with Staff's contention that "but for an omission by Rocky Mountain Power in failing to switch Idaho Travertine to the appropriate schedule [in 1997], the succeeding customer . . . would have automatically been assigned to Schedule 23." RMP notes that Staff has no evidence that the succeeding customer would have been assigned to Schedule 23, or that the succeeding customer (which, like Travertine would have been eligible for multiple schedules) did not consciously elect Schedule 6. *Id*

to Schedule 6 based on the fact that RMP's set-up process required Travertine to qualify for a particular schedule and to consent to the "default rate" or the "optional rate." *Id.*

RMP also argues that even if it inappropriately billed Travertine within the meaning of Rule 203.01.c, the Rule 203.02 "exceptions" to a billing adjustment apply. Rule 203.02 states:

Exceptions. The utility shall not be required to adjust billings [1] when it has acted in *good faith* based upon available information or [2] when the customer was given *written notice of options* under the tariff schedules and did not make a timely election to exercise available options. [emphasis and bracketed numbers added].

RMP says the "good faith" exception applies because RMP acted in good faith based upon Travertine's verbal assent to be billed on the "Default Rate" when the account in question was established in April 2010.

RMP says the "written notice" exception applies because RMP gave Travertine at least three written notices of available schedule options in the seven months after Travertine established its April 2010 account: (1) on Travertine's first bill in May 2010; (2) in the new customer welcome letter sent in May 2010; and (3) on the annual Consumer Information disclosure mailed in December 2010. *Id.* (citing Confidential Attachment A, and Attachments B and C). RMP says that despite these notices, Travertine did not make a "timely" election to change to an optional account; rather, Travertine delayed 18 months and then informally complained to the Commission that it should have been placed on Schedule 23. *Id.* at 4-5. RMP says its tariff, Electric Service Regulation No. 3, demonstrates the timeframe for a "timely" election. The tariff states:

Original Sheet No. 3R.1. Electric Service Regulation No.3.
Selection and Changes of Electric Service Schedule: Where optional electric service schedules are available, the Company, **upon request** will assist the Customer in the selection of the electric service schedule most favorable to him. The recommendation to the Customer will be based on his statement of the class of service required, **the amount and manner of use** and other pertinent information. The Company shall not be required to adjust billings when it has **acted in good faith based upon available information or when the customer was given written notice of options under the tariff schedules and did not make a timely election to exercise his\her\its options.** A Customer being billed under one of two or more optional electric service schedules applicable to his class of service may elect to be billed on any other applicable electric service schedule **by notifying the Company in**

writing. The Company will bill the Customer under such elected Schedule **from and after the date of the next meter reading.**

Answer at 4. RMP argues that the tariff's statement that "[t]he Company will bill the Customer under such elected Schedule from and after the date of the next meter reading" demonstrates that a reasonable time for a customer to select a different schedule is one billing period, not the 18 months taken by Travertine. Response at 5.

Lastly, as a "compromise in settlement of the complaint," RMP offers to add tools on its website to facilitate any customer making a comparison between Schedule 6 and Schedule 23 based on past use. *Id.* at 7. The Company would also be willing to include an annual bill message for customers billed on Schedule 6 to notify them of this tool and remind them the Company will perform a rate comparison of historical use upon request. However, no recommended changes would occur until the customer complies with Electric Service Schedule No. 3 by submitting a written request to change and the Company would then implement the new schedule as of the next billing period. *Id.*

FINDINGS AND DISCUSSION

Idaho Code § 61-501 empowers the Commission to supervise and regulate every utility, including RMP, and to do "all things necessary to carry out the spirit and intent of" the Public Utilities Law. Further, under *Idaho Code* § 61-612 the Commission has jurisdiction to resolve Staff's complaint against RMP. The Commission finds that the parties adequately presented their positions through written submissions and that a hearing is not required to consider the issues presented in Staff's complaint. Therefore, the Commission issues its decision based on the written record, including the materials submitted prior to this matter becoming a formal complaint. *See* IDAPA 31.01.01.201.

This unfortunate case stems from miscommunication. Nevertheless, based on the totality of the circumstances, the Commission finds that Travertine reasonably expected that RMP would place it on Schedule 23, and RMP should have assigned Travertine to Schedule 23, when Travertine called to reschedule service in 2010. RMP instead assigned Travertine to Schedule 6, and then billed Travertine an extra \$15,952.31 from April 2010 to November 2011 in violation of Customer Relations Rule 203.01.c. We are not persuaded that the Rule 203.02 exceptions apply. Therefore, equity requires that RMP promptly adjust Travertine's bills and refund \$15,952.31 to Travertine.

Finally, RMP appears to acknowledge that “there may be room for improvements to the rate schedules and eligibility criteria,” and both Staff and RMP recognize that RMP can implement changes that will improve its customer communications about rate schedule options. *See* Staff’s Reply at 4-5; RMP’s Response at 7 (stating that RMP could (1) augment its website with tools to facilitate customer rate schedule comparisons based on past use; and (2) notify customers through annual billing inserts about the new website tools and that RMP will perform a rate comparison upon request). We believe RMP’s suggestions are good ones, and we hope the Company has already implemented them.

ORDER

IT IS HEREBY ORDERED that RMP shall refund \$15,952.31 to Travertine within thirty (30) days of the date of this Order.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by 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 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 6th
day of April 2012.



PAUL KJELLANDER, PRESIDENT

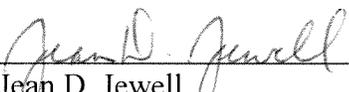


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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