BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT OF
RAUL MENDEZ AGAINST INTERMOUNTAIN GAS COMPANY

CASE NO. INT-G-19-03

RESPONSE TO COMPLAINT
(REDACTED)

The Staff of the Idaho Public Utilities Commission files its Response to Raul Mendez’s Complaint against Intermountain Gas Company.

BACKGROUND

On August 7, 2017, Staff received an informal complaint from Mr. Mendez regarding his summer gas bills.

On August 31, 2017, Staff closed Mr. Mendez’s first informal complaint.

On May 4, 2018, Mr. Mendez requested Intermountain Gas Company ("Intermountain Gas" or "Company") terminate service at his residence. His account was closed the following day.

On September 14, 2018, Mr. Mendez applied for service at the same address.

On October 4, 2018, a $14.00 Account Initiation Charge was included on Mr. Mendez’s bill from Intermountain Gas in addition to $ for gas service.

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On October 30, 2018, a payment of $14.00 posted to Mr. Mendez’s account, leaving a $14.00 balance. The account balance was not paid and became past due, at which time an interest charge of $14.00 was assessed.

On November 14, 2018, the account was left with a credit balance of $14.00.

On January 25, 2019, Mr. Mendez filed a formal complaint with the Commission against Intermountain Gas alleging the Company wrongly applied the Account Initiation Charge to his account, the Company violated the Fair Debt Collections Practices Act ("FDCPA"), and Commission Staff violated his right to due process ("Complaint").

On March 5, 2019, Commission Staff presented its February 28, 2019, Decision Memorandum regarding the Complaint to the Commission at the Commission’s regularly scheduled Decision Meeting.

On March 14, 2019, the Commission issued Order No. 34273 directing a Summons be served on Intermountain Gas, and setting response and reply deadlines for the parties. The Commission also encouraged the parties to meet informally to continue efforts to resolve some or all of the issues. See IDAPA 31.01.01.054.05.

COMPLAINT

Mr. Mendez questions whether the Account Initiation Charge is "a valid charge on an already existing account" and whether a customer “can disconnect gas service without incurring additional fees such as an initiation fee for restarting service." See Complaint at 1. Mr. Mendez also questions amounts billed by the Company during previous summers when he believes no gas was consumed at his residence. See Complaint at 1, 2, 3, 9 and 10.

Mr. Mendez requests the Commission:

(1) Order the Company to refund a $14.00 Account Initiation Charge plus accumulated interest applied to his account in October 2018;

(2) Order the Company to pay costs of $72.00 that he incurred in the drafting of his Complaint;

(3) Prohibit the Company from charging fees for voluntarily disconnecting service, especially if the reason for requesting disconnection is due to financial hardship;

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(4) Warn the Company that it must comply with the Commission’s rules; and
(5) Warn the Company “about manipulation of fees to the detriment of Idaho customers.” See Complaint at 10. In addition, Mr. Mendez asks the Commission for “more accountability and transparency of the IPUC complaint process and to warn staff of not giving the appearance of bias.” Complaint at 11.

Mr. Mendez also alleges Commission Staff violated his right to due process during informal proceedings because, he alleges, Staff insufficiently explained the Commission's rules and the Company's rates and charges. Complaint at 7, 9 and 10. Finally, Mr. Mendez's Complaint refers to the Fair Debt Collections Practices Act. See Complaint at 9 and 10.

STAFF RESPONSE

Staff reviewed Mr. Mendez’s formal complaint and addresses the issues raised by Mr. Mendez individually below. Staff maintains that Intermountain Gas complied with the Commission’s Utility Customer Relations Rules (IDAPA 31.21.01) (“UCRR”), and appropriately applied the rates and charges contained in its Tariff as approved by the Commission. Mr. Mendez was appropriately assessed the Account Initiation Charge and accurately billed for his usage. Finally, Staff did not and could not violate Mr. Mendez’s due process rights.

I. Request for Refund of the Account Initiation Charge Plus Accumulated Interest.

When Mr. Mendez contacted Intermountain Gas on July 7, 2017, to ask about disconnecting service, he was told there would be a “14.00 dollar reconnection fee to restart service in the winter.” Complaint at 2. Mr. Mendez took issue with being charged a “reconnection fee” and requested information about the fee. Upon contacting the Company again, “[Intermountain Gas] explained to Mr. Mendez that the $14 fee is not a reconnect fee but an initiation fee for starting new service.” Complaint at 2. A reconnection fee applies when a customer’s service is involuntarily disconnected and is subsequently reconnected a short time later, typically after the customer has paid any past due amount owed. Intermountain Gas did not charge Mr. Mendez a reconnection fee, nor would such a charge have been applicable under the circumstances. Though Intermountain Gas used the term “reconnection fee” during the initial contact with Mr. Mendez, the Company correctly referred to the Account Initiation Charge in subsequent communication.
a. The Account Initiation Charge was correctly applied to Mr. Mendez’s account.

Intermountain Gas is authorized by the Commission to assess an Account Initiation Charge to “each” account “opened.” “An ‘Account Initiation Charge’ in the amount of $14.00 during regular business hours and $40.00 outside of regular business hours will be assessed on each account opened with the Company and will be billed with the first regular bill.” Intermountain Gas Tariff, Section A, Sheet No. 6, Section 9.4. The present dispute therefore revolves around whether Mr. Mendez’s account was “opened” when he restarted service at his residence.

The UCRR defines the terms “Applicant” and “Customer.” An “Applicant” is “any potential customer who applies for service from a utility.” IDAPA 31.21.01.005.01. A “Customer” is “any person who has applied for, has been accepted by the utility, and is: (a) Receiving service from a utility; or (b) Has received service within the past ten (10) calendar days prior to termination by the utility[.]” IDAPA 31.21.01.005.02. Mr. Mendez ceased being a customer ten calendar days after his service was terminated in May 2018. Therefore, when he applied for service on September 14, 2018, he was an Applicant. The Company assessed the approved Account Initiation Charge because Mr. Mendez was no longer a Customer at that point in time.

Staff notes that Intermountain Gas’ Account Initiation Charge is not unique. Other regulated utilities in Idaho assess a charge when an account is opened, although the name of the charge, criteria and amount of the charge varies for each utility.

b. The interest Mr. Mendez seeks has already been returned to his account.

In February 2019, Staff became aware that Mr. Mendez’s account was charged a interest charge. Intermountain Gas is authorized to assess a 1% per month interest charge whenever an account balance is unpaid at the time the next billing cycle occurs. Intermountain Gas Tariff, Section A, Sheet No. 3, Section 4.5. Although the Company’s Tariff authorizes the assessment of interest charges, Staff requested the Company remove the interest charge because Mr. Mendez was disputing the Account Initiation Charge. Intermountain Gas agreed to credit to Mr. Mendez’s account. This credit subsequently appeared on his March 4, 2018 bill.
II. Request to Bar the Company From Charging Fees for Voluntarily Disconnecting Service.

Intermountain Gas does not charge a fee when a customer voluntarily requests disconnection of service, nor does it charge a fee when a customer is involuntarily disconnected. A fee is charged when an account is either opened by an applicant (Account Initiation Charge) or when a customer who has been involuntarily disconnected from service is reconnected (Reconnection Charge). The fees are designed to recover costs directly attributable to the Company’s efforts required to connect or reconnect service, such as sending a Company employee to the residence to safely connect or reconnect service and relight pilot lights. The Commission has approved these charges as just and reasonable.

III. Request to Warn the Company It Must Comply with Commission’s Rules.

Mr. Mendez misidentifies the Account Initiation Charge as a deposit and then argues that the preconditions to a deposit found in IDAPA 31.21.01.101 do not apply to his case and therefore the charge/deposit is contrary to Commission Rules. Complaint at 8. “Deposit” is defined as “any payment held as security for future payment or performance that is reimbursable after the customer establishes good credit.” IDAPA 31.21.01.100.02. Mr. Mendez makes no showing that the Account Initiation Charge is reimbursable, or in any other way functions as a deposit instead of as a charge. Staff verified that Intermountain Gas did not ask for security on Mr. Mendez’s account and did not charge Mr. Mendez a deposit. In sum, Intermountain Gas did not violate any Commission Rules.

IV. Request to Warn the Company “About Manipulation of Fees to the Detriment of Idaho Customers.”

Mr. Mendez alleges the Company improperly billed him for prior summer months and states that he did not consume any gas during those months. Complaint at 1, 2, 3, 9 and 10. Staff reviewed Mr. Mendez’s billing history from 2012 to 2017 for the months of June, July, August, and September, and determined Mr. Mendez used anywhere from 3 to 10 therms a month. See Staff’s Usage Summary, Attachment No. 1. Additionally, rates and charges can vary from year to year. When Mr. Mendez filed his informal complaint on August 21, 2017, he questioned why his monthly bill had increased to [redacted] during the summer when in the past, his bill was [redacted]. Staff determined that the increase was due to a variation in usage and a rate increase.
change that became effective in May 2017. Prior to 2017, the customer charge varied by season (April - November $2.50; December - March $6.50). The Commission approved a year-round monthly customer charge of $5.50 effective May 1, 2017. See Case No. INT-G-16-02. In that same case, the cost per therm also increased.

The increase in the summer customer charge and the cost of gas, along with a variation in gas usage during the summer caused Mr. Mendez’s 2017 summer bills to be higher than the previous year. Staff did not find any evidence that the Company “manipulated fees” and maintains that Mr. Mendez was appropriately charged.

V. Request for More Accountability and Transparency of the IPUC Complaint Process and a Warning to Staff of not Giving the Appearance of Bias.

Mr. Mendez asks the Commission for “more accountability and transparency of the IPUC process and to warn staff of not giving the appearance of bias.” Complaint at 11. Commission Rules “encourage the use of informal proceedings to settle or determine cases.” IDAPA 31.01.01.022. As part of the informal complaint process, Commission Staff mediates disputes between customers and regulated utilities with the goal of finding a timely and mutually-satisfactory solution to matters in dispute. Staff routinely provides information about utilities’ policies, practices, and tariffs as well as the Commission’s rules and regulations. Staff is not always successful in its attempts to resolve complaints informally. A complainant may then file a formal complaint with the Commission, as Mr. Mendez has done in this case. “[A]ny person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the Commission[.]” IDAPA 31.01.01.023. The formal process serves as a backstop to the informal complaint process, and working in tandem, the informal and formal processes provide the accountability and transparency Mr. Mendez requests.

Staff advised Mr. Mendez that he could file a formal complaint and provided him with information about how to do so. Staff answered Mr. Mendez’s questions about the formal complaint process. Staff confirmed several times that the charge Mr. Mendez is contesting is approved by the Commission. Mr. Mendez may not have liked the answers Staff gave him, but Staff was in no way biased.

Staff is not a decision-making entity and does not have the authority to deprive Mr. Mendez of his liberty or property interests. Commission Staff has investigative and mediation authority under the IPUC Rules of Procedure, IDAPA 31.01.01.021 -.024, but has no adjudicative authority. Commission Staff, on its own, cannot violate Mr. Mendez’s right to due process.

The case law Mr. Mendez cites does not support his claim. In K.W. v. Armstrong, the U.S. District Court of Idaho held the Idaho Department of Health and Welfare (“IDHW”) violated the rights of developmentally disabled Medicaid recipients seeking eligibility for in-home care by defining the term “health and safety” for eligibility purposes solely based on an unpublished algorithm. 180 F.Supp.3d 703 (D. Idaho 2016). The court found the algorithm-only definition violated the plaintiffs’ due process rights. The court stated, “Due process requires IDHW to ‘establish written standards and regulations.’” Id. at 715 citing Carey v. Quern, 588 F.2d230, 232 (7th Cir. 1978).

Besides a clearly ascertainable standard, due process also requires the opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 424 U.S. 319, 333 (1976). As mentioned in the previous section, Commission Rules encourage the use of informal proceedings to resolve disagreements. IDAPA 31.01.01.022. Commission Staff attempted to resolve Mr. Mendez’s Complaint through the informal complaint process before submitting the dispute to the Commission for adjudication. Commission Rules also explicitly state that informal proceedings do not exhaust or prejudice administrative remedies. IDAPA 31.01.01.024. The informal process that Mr. Mendez complains is violating his right to due process is in fact an additional layer of process designed to ensure disputes can be efficiently resolved.

Following the informal complaint process, Mr. Mendez will have full opportunity to submit his case to the Commission at a meaningful time and in a meaningful manner. Mr. Mendez will then have the right to request reconsideration from the Commission. Idaho Code § 61-626. Mr. Mendez will then have the right to appeal the Commission’s decision—either on reconsideration or upon denial of reconsideration—to the Idaho Supreme Court in the normal course proceedings. Idaho Code § 61-627. This is clearly sufficient process.

Mr. Mendez also refers to the Fair Debt Collections Practices Act. As an initial matter, the Commission is not charged with enforcing the FDCPA. Additionally, even if it were, the
FDCPA does not apply to Intermountain Gas Company’s actions here (there are no suggestions, for example, that Intermountain Gas tried to collect a debt that Mr. Mendez owed to a third party, or used another name to collect a debt owed to it by Mr. Mendez), but recourse to this federal law is unnecessary and superfluous. If the Commission finds Intermountain Gas improperly implemented the $14.00 Account Initiation Charge in this case, there are remedies available under Idaho law. If the Commission finds the $14.00 Account Initiation Charge was proper, then Intermountain Gas is not collecting an unlawful charge.

CONCLUSION

Staff maintains that Intermountain Gas complied with the Commission’s Utility Customer Relations Rules (IDAPA 31.21.01), and appropriately applied its rates and charges contained in its Tariff as approved by the Commission. Mr. Mendez was appropriately assessed the Account Initiation Charge and accurately billed for his usage. Staff notes that Intermountain Gas has credited Mr. Mendez account for the interest charge in dispute, so no further action on this issue is necessary.

Staff recommends the Commission deny Mr. Mendez’s request to refund the $14.00 Account Initiation Charge. Additionally, Staff recommends the Commission find: (1) it is appropriate for Intermountain Gas to assess an Account Initiation Charge when an account is opened by an applicant; (2) Intermountain Gas complied with Commission Rules; (3) Intermountain Gas did not manipulate fees; (4) the informal complaint process continues to be reasonable and just for addressing consumer complaints and continues to be a good preliminary step before initiating a formal complaint; (5) the Commission’s informal and formal complaint process and judicial review provide ample due process, and Staff’s actions did not violate Mr. Mendez’s right to due process; and (6) the Fair Debt Collection Practices Act is inapplicable in this case.
Respectfully submitted this day of April 2019.

Edward Jewell
Deputy Attorney General

Technical Staff: Beverly Barker
Curtis Thaden

rumisc/comments/intg19.3ejbabct response to complaint_ej edits
This Attachment of Staff’s Response contains confidential information
CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 4TH DAY OF APRIL 2019, SERVED THE FOREGOING RESPONSE TO COMPLAINT (REDACTED), IN CASE NO. INT-G-19-03, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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