



RICHARDSON & O'LEARY, PLLC
ATTORNEYS AT LAW

Peter Richardson

Tel: 208-938-7901 Fax: 208-938-7904
peter@richardsonandoleary.com

P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

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2009 APR 13 PM 4:00

IDAHO PUBLIC
UTILITIES COMMISSION

April 13, 2009

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

RE: **Case No. IPC-E-09.02**

Dear Ms. Jewell:

We are enclosing an original and seven (7) copies of the COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER in the above case.

An additional copy is enclosed for stamping and return to our office.

Sincerely,

Nina M. Curtis
Administrative Assistant for Peter Richardson

encl.

Peter J. Richardson ISB 3195
RICHARDSON & O'LEARY PLLC
515 N. 27th Street
PO Box 7218
Boise, Idaho 83700
Telephone: (208) 938-7900
Fax: (208) 938-7904
peter@richardsonandoleary.com

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2009 APR 13 PM 4:01
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for the Industrial Customers of Idaho Power

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
IDAHO POWER COMPANY'S)	CASE NO. IPC-E-09-02
APPLICATION FOR APPROVAL OF ITS)	
AGREEMENT WITH ENERNOC TO)	
IMPLEMENT AND OPERATE A)	COMMENTS OF THE INDUSTRIAL
VOLUNTARY COMMERCIAL DEMAND)	CUSTOMERS OF IDAHO POWER
RESPONSE PROGRAM)	
_____)	

COMES NOW, the Industrial Customers of Idaho Power ("ICIP") by and through its attorney of record, Peter J. Richardson, and pursuant to that Notice of Application and Notice of Modified Procedure issued by the Commission on March 20, 2009 and hereby provides its Comments on Idaho Power Company's ("Company" or "Idaho Power") Application.

I
SUMMARY

The ICIP supports the concept of demand side response programs, but believes the Company's proposal needs modification prior to approval. The ICIP makes specific recommendations below relating to various contract issues, pricing issues, timing issues and missed opportunities. In conclusion the ICIP recommends Idaho Power be required to conform

Comments of the Industrial Customers of Idaho Power IPC-E-09-02

its proposal to more closely align its terms and conditions to recently approved demand response programs for its irrigation class of customers.

In its application Idaho Power is seeking Commission approval of an agreement between it and EnerNOC under which EnerNOC, acting as a third party aggregator, will implement a commercial demand response program (“Program”) that would be made available to Idaho Power’s commercial and industrial customers. Although the Program is outlined in the application, the specific contracts and details of each individual commercial or industrial participants’ relationship with EnerNOC are not included in the application. EnerNOC will be paid by Idaho Power for a target number of MW reduction, which reduction will be guaranteed by EnerNOC. EnerNOC then will individually contract with Idaho Power’s commercial and industrial customers and strike individual deals, presumably paying less than it is receiving from Idaho Power, to meet its demand reduction target. The program’s costs do not equal what the commercial and industrial customers will receive in exchange for their participation. We do not know what EnerNOC will be paying for acquiring its target demand reduction. Because the individual arrangements between EnerNOC and the commercial and industrial participants are not public, the specific terms and conditions of those relationships are not known at this time.

Idaho Power recently had its Irrigation Peak Rewards tariff approved by the Commission in Docket No. IPC-E-08-23. That program acquires demand response from irrigators by paying them directly for curtailment rights. The Program for the commercial and industrial customers purchases an identical product – dispatchable demand response – as does the Irrigation Peak Rewards program. It is therefore reasonable to use the Irrigation Peak Rewards Program as a benchmark against which to measure the EnerNOC aggregation Program. As a result of that

comparison it became apparent that the Irrigation Peak Rewards tariff has many attractive features not likewise available under the EnerNOC Program.

The Application observes, and the Commission repeats in its Notice of Application, that Idaho Power “presented an overview of the Program to a meeting of the Industrial Customers of Idaho Power.” Application at p. 5. The ICIP was indeed presented an overview of the program at its meeting in February. It should not be inferred from that statement that the ICIP participated in any manner in the program’s development or had any role in making decisions relative to its formation. Unlike Idaho Power’s inclusion of the irrigators in the settlement of the Irrigation Peak Rewards docket, the Company formulated this proposal without input from the industrial customers.

II

CONTRACT ISSUES

1 Lack of Transparency is a Concern

The Application is silent on any details of the contractual relationship between EnerNOC and the program participants. EnerNOC will negotiate contract terms and rates individually with each potential participant. Those agreements will be maintained confidentially between EnerNOC and each participant. The lack of transparency as to how each participant will be treated is troubling. This is because there will exist a large difference in the relative bargaining strengths between EnerNOC and Idaho Power’s customers. EnerNOC is a successful aggregator of commercial and industrial demand response. It operates on a national scale. It is in the business of buying demand reductions and aggregating them for bulk sale to utilities. Idaho Power’s commercial and industrial customers, on the other hand, have no experience in selling their demand back to the power company. In addition, EnerNOC’s incentive, and profit, are tied

its striking a series of best deals with the individual participants. That said, more transparency – not less – is called for.

2. Advance Notice Provisions

The Irrigation Peak Rewards program provides that the participant will receive notice of an event of curtailment by four p.m on the day BEFORE the event begins. Idaho Power's EnerNOC proposal provides that notice of an event of curtailment be given four HOURS before the event begins. The rationale for this disparity is not addressed in the application. However it seems that curtailing an operating business or a factory would have much more complex and difficult ramifications than simply turning a pump off in the middle of a potato field. If day ahead notice is sufficient for the Irrigation Peak Rewards participants, it should also be made available to the commercial and industrial participants in the EnerNOC managed program.

3. Opt Out and Drop Out Rights

The Irrigation Peak Rewards program has several provisions built in that offer some protections for the participants that should also be built into the industrial/commercial program. Those protections include Opt Out Rights under which each irrigation participant is permitted to opt out of an event of curtailment up to five times each growing season. In addition, each irrigation participant is given Drop Out Rights under which it is permitted to drop out of the program completely upon a one time payment of \$500. These protections should likewise be available to all commercial and industrial participants under Idaho Power's proposal.

4. Price

The ICIP has examined the cost to the ratepayer of Idaho Power's proposed Program and compared it to the payments the Company will make under the Irrigation Peak Rewards program and finds the two numbers to be essentially identical at \$4.65 per kw. However, it is not

reasonable to compare the cost of the commercial/industrial program to the price paid under the Irrigation Peak Rewards program because EnerNOC will be taking its operating costs and profits out of that \$4.65. This means that the commercial/industrial price will likely be less than the price paid to the irrigation class. There is no offer of justification for this price disparity for the purchase of an identical product – dispatchable demand reduction. One possible justification for the price differential between the Irrigation payments and what EnerNOC ends up paying is, undoubtedly, that EnerNOC will be incurring costs in packaging together a large enough bundle of different commercial/industrial customers to meet its MW reduction target. We do not know what that number is, however. The commercial/industrial curtailment rights would seem to have more value than the irrigation curtailment right due to the different advance notice requirements – four hours for the commercial/industrial classes and a day ahead for the irrigation class.

In addition to the price disparity between customer classes, there will likely be price disparity within the industrial/commercial classes because each individual participant will strike its own unique deal with EnerNOC. The application offers no justification for variations in price for demand reduction WITHIN the commercial or industrial classes.

5. Dates of Potential Curtailments

Irrigators may only be curtailed between June 15 and July 31 while the EnerNOC commercial/industrial program proposes to curtail those two classes between the dates of June 1 through August 31. There was no discussion in Idaho Power’s application as to why the dates June 1 through August 31 were selected. As one might expect, there was also no discussion of why the Irrigation Peak Rewards program only targets six weeks while the commercial/industrial program targets three full months. This puts the commercial/industrial customers at much more

risk of incurring an event of curtailment and should therefore require either higher compensation or a justification for this disparity between classes.

The longer time period for the commercial/industrial program is made more perplexing when one reviews Idaho Power's testimony supporting the six week irrigation program that was prepared and filed just five months ago. In support of a stipulation regarding the terms and conditions of the Peak Rewards program, Mr. Timothy Tatum provided the following testimony:

Q. Why is the Company proposing to reduce the number of weeks over which the program is operated annually?

A. As part of the research and analysis process that led to the proposed Program design, the internal Program design team at Idaho Power held several discussions with subject matter experts that work within the generation dispatch and power supply planning functions of the Company. According to perspectives shared by representatives from the generation dispatch and power supply planning groups, the value of the load reduction capability of the Program is in its ability to reduce loads when the demand on the electrical system is at or near the annual system peak. Furthermore, these discussions confirmed that currently there is a near zero probability that Idaho Power's electrical system will experience a annual system peak demand outside of the time period of June 15 through July 31. With that in mind, the Program Season was revised to align with the June 15 through July 31 period.

IPC-E-08-23, Tatum, Di at pp 14 – 15.

The dates used by the Irrigation Peak Rewards program were specifically approved by this Commission in its order adopting a settlement among the parties to resolve outstanding issues on how that program was to be implemented. In its order the Commission made the following finding:

The changes also reduce the number of weeks over which the program is available, from the three summer months of June through August to a six-week period, June 15 through July 31. The time period was shortened because the value of the load reduction capability of the program is its ability to reduce loads when the demand on the electrical system is at or near the annual system peak. Idaho Power's witness testified that "currently there is a near zero probability that Idaho Power's electrical system will experience a annual system peak demand outside of the time period of June 15 through July 31." Tatum Direct, p. 15. Thus, the program season was revised to align with the June 15 through July 31 period.

Order No. 30716, issued January 14, 2009.

Should the Commission approve the commercial/industrial demand response program proposed by Idaho Power, then it is recommended that the time period in which curtailment may take place be revised to match the Irrigation Peak Rewards time period.

VI
CONCLUSION

Approval of Idaho Power's application in this docket should be made contingent upon (1) greater transparency in contract terms and conditions; (2) a requirement that the advance notice provision be increased to day ahead notification (3) a requirement that customer protection measures be offered to all commercial/industrial participants such as Opt Out and Drop Out clauses; (4) the implementation of a pricing mechanism that either matches the price being paid to the irrigation class or a clear and defensible justification for any variations in price; and (5) shortening the season during which curtailments may take place to June 15 through July 31..

Respectfully submitted this 13th day of April, 2009.

RICHARDSON & O'LEARY PLLC

By 
Peter J. Richardson
Attorneys for the Industrial Customers of
Idaho Power

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of April, 2009, a true and correct copy of the within and foregoing COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER, was served in the manner shown to:

Ms. Jean Jewell

Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise, ID 83720-0074

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Lisa Nordstrom

Barton L. Kline
Idaho Power Company
PO Box 70
Boise, Idaho 83707-0070

lnordstrom@idahopower.com
bkline@idahopower.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

John R. Gale

Vice President, Regulatory Affairs
Idaho Power Company
PO Box 70
Boise, Idaho 83707-0070
rgale@idahopower.com

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail



Nina Curtis

Administrative Assistant