



RECEIVED

2012 APR 19 PM 4:42

IDAHO PUBLIC
UTILITIES COMMISSION

LISA D. NORDSTROM
Lead Counsel
lnordstrom@idahopower.com

April 19, 2012

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho 83702

Re: Case No. IPC-E-12-04
*BONNIE MENTH AND VICKY DAVIS, COMPLAINANTS, VS. IDAHO
POWER COMPANY, RESPONDENT*

Dear Ms. Jewell:

Enclosed for filing are an original and seven (7) copies of Idaho Power Company's Answer to Petitions for Reconsideration in the above matter.

Very truly yours,

Lisa D. Nordstrom

LDN:csb
Enclosures

LISA D. NORDSTROM (ISB No. 5733)
JULIA A. HILTON (ISB No. 7740)
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-5825
Facsimile: (208) 388-6936
lnordstrom@idahopower.com
jhilton@idahopower.com

Attorneys for Idaho Power Company

RECEIVED

2012 APR 19 PM 4:42

IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

BONNIE MENTH AND VICKY DAVIS,)	
)	CASE NO. IPC-E-12-04
Complainants,)	
)	IDAHO POWER COMPANY'S
vs.)	ANSWER TO PETITIONS FOR
)	RECONSIDERATION
IDAHO POWER COMPANY,)	
)	
Respondent.)	
)	

Pursuant to the Idaho Public Utilities Commission's ("Commission") RP 331.05, Idaho Power Company ("Idaho Power" or "Company"), by and through its attorneys of record, hereby submits its Answer to the Petitions for Reconsideration filed by Vicky Davis on April 12, 2012 (captioned as an "Appeal of IPUC Final Order 32500") and by Bonnie Menth on April 17, 2012 (an electronically filed comment in which Ms. Menth wishes "to appeal my case IPC-E-12-04 and IPUC Order No. 32500").

I. BACKGROUND

On January 4, 2012, Vicky Davis and Bonnie Menth (referred to collectively as "Petitioners") filed formal complaints against Idaho Power in which they objected to the

installation of Advanced Metering Infrastructure (“AMI”), which is often referred to as a “smart meter,” at their residences. Citing concerns about privacy, health, and sale of personal data, Ms. Davis and Ms. Menth requested that the Commission require the Company to offer an opt-out opportunity for customers who do not want a smart meter, and to order Idaho Power to remove the smart meters and replace them with analog meters.

On January 19, 2012, the Commission issued a Summons directing the Company to file an answer to the complaints. Idaho Power timely filed its Answer on February 9, 2012, in which it objected to the creation of an unnecessary opt-out from its standard service because, unlike AMI installed in other states, Idaho Power’s AMI technology does not send a wireless signal and cannot measure or control the operation of individual appliances. Ms. Davis and Ms. Menth filed Responses to the Company’s Answer on February 22, 2012.

On March 27, 2012, the Commission found that “the meters Idaho Power installed do not have the capability to control appliances or other devices, nor initiate surveillance of electrical usage at individual customer residences.” Order No. 32500 at 3. Because the “complainants have not provided sufficient demonstrable, credible factual evidence to support a finding that the meters present legitimate safety or potentially inappropriate communication concerns,” the Commission dismissed the complaints. *Id.*

II. ARGUMENT

As explained in the paragraphs that follow, the Commission should not grant the relief requested by the Petitioners.

A. Petitioners Failed to Comply with Procedural Rule 331.

When seeking reconsideration (or “appeal”) of any final Commission order, Procedural Rule 331 requires that petitioners “set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.” Neither Petitioner has met the standard for review set forth in Procedural Rule 331. Although Ms. Davis sets forth various reasons why she believes the Commission’s order is unlawful, she does not explain the nature and quantity of evidence to be offered if reconsideration is granted. Ms. Menth does neither, instead asserting a right to appeal because the Commission’s redaction of certain documents she received pursuant to a public records request constituted “an improper procedure.” Menth Petition at 1. Ms. Menth does not contend that receipt of the unredacted documents containing the names of other AMI complainants would evidence different or more compelling reasons than the redacted copies already in her possession.

Ms. Davis also requests that the Commission “open a new case for her complaint to be considered individually on the issues presented” – separate from the issues raised by Ms. Menth. Davis Petition at 1. Procedural Rule 331.03 requires the petition to state whether the petitioner requests reconsideration “by evidentiary hearing, written briefs, comments, or interrogatories.” Opening a new case in the reconsideration phase of the docket is not one of the Rule’s enumerated options and would undermine the efficiency of the Commission’s review.

The Commission has discretion to determine how it will process review the matters that come before it. See RP 54.05 and *Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n*, 112 Idaho 10, 13 (1986). Idaho Code § 61-613 and RP 247 expressly allow the Commission to consolidate proceedings for hearing when it finds that they present issues that are related and that the rights of the parties will not be prejudiced. Ms. Davis did not object to the consolidation of her complaint with that of Ms. Menth at the time the Commission's Summons was issued to consider similar issues presented in both Petitions. In fact, Ms. Davis and Ms. Menth both employed the identical legal argument in the last two paragraphs of their respective Responses to Idaho Power's Answer filed on February 21, 2012. Even assuming, as Ms. Davis contends, that the grounds of the two complaints were not similar, the Commission routinely deals with complex issues and can effectively review all AMI-related issues in one docket. It is not appropriate to request a "do-over" proceeding merely because a negative verdict was received. There is no evidence to suggest that the outcome would have been any different had the complaints not been combined. Thus, based upon the foregoing procedural deficiencies, the Commission could dismiss the petitions if it was so inclined. Rule of Procedure 332 also provides the Commission with the authority to dismiss grounds for or issues on reconsideration that are not supported by specific explanation.

B. The Commission Has Jurisdiction Over Utility Investments Like AMI.

On page 3 of her Petition, Ms. Davis alleges that the Commission "desire[s] to draw residential electric customers into their regulatory purview" and that mandatory installation of AMI meters constitutes "regulatory overreach." Davis Petition at 3. The Commission's authority and jurisdiction is determined by the Idaho Legislature, which

has delegated authority to the Commission to regulate a wide array of utility activities, including the relationship between utilities and their retail customers by setting rates, charges and terms of service. I.C. §§ 61-501, 61-502, 61-507.

The Commission is empowered by Title 61, Chapter 5 of the Idaho Code with the authority to set customer rates and direct the utility to make reasonable investments supportive of those rate structures so long as the utility recovers the cost and earns a return on those investments. As evidenced by the 2012 Idaho Energy Plan and the \$47 million matching grant funded by the American Recovery and Reinvestment Act of 2009, AMI investments enjoy Congressional support at both the state and federal level. *2012 Idaho Energy Plan* at 119. While the Commission can prescribe the manner in which a utility operates pursuant to its legislative grant of authority, customers are free to choose whether or not to take service under the terms of service set by the Commission.

C. Constitutionality of AMI Installation.

Ms. Davis describes her complaint as “having called forth constitutional issues regarding the lawfulness of forced installation of a device that contains an open two-way communications system” that attaches her home to “the Smart Grid.” Davis Petition at 2. However, Ms. Davis does not describe with any specificity how the installation of AMI meters violates the state or federal Constitution. As explained on pages 8-9 of its Answer dated February 9, 2012, Idaho Power’s AMI meters collect whole-house energy usage data and communicate this information daily via its power line, which is not “open” to interaction with other meters or any appliance inside the home. There is no “electronic intrusion or invasion of privacy”; the new meters record energy consumption

at the service point and have no capability to identify any specific device or load beyond the meter. The meters used on Idaho Power's system are standard electricity meters capable of recording total demand and energy use only. Other than a Two-Way Automatic Communications System ("TWACS®") communication module installed to send the data back to the substation via the power line on request, they have essentially the same functionality as the previous meters. Idaho Power's meters are part of an intelligent "poll and response only" system and are controlled by the secure substation locations. When substation control equipment sends a request to a meter, the AMI meter relays service point consumption data back through the electrical system. Idaho Power's AMI meters are simply not capable of initiating communication or communicating with any device other than the substation.

Ms. Davis argues that once the Smart Meter is installed, the additional functionality does not require replacement of the meter or even physical access to the meter, but this is not accurate. Meter capability is determined by both hardware and software attributes installed in the meter; any functionality by the meter outside of whole-house energy consumption registration and communication would require additional physical equipment.

In addition, Ms. Davis argues that "Regardless of current configuration of the meter, the option to add additional functionality for demand side management of devices is at the option of Idaho Power and the Idaho Public Utilities Commission with no input or permission by the Complainant." *Id.* This statement is simply not true. Participation in all Idaho Power demand-side management ("DSM") programs is voluntary. Customers had opportunity to comment on and/or object to each of its three

voluntary DSM programs prior to Commission approval. See Case Nos. IPC-E-02-13 and IPC-E-04-47 (A/C Cool Credit), IPC-E-09-02 (FlexPeak Management), and IPC-E-04-03 and IPC-E-04-26 (Irrigation Peak Rewards).

The AC Cool Credit program, which reduces air conditioning load during peak summer hours, is the only DSM program currently offered to residential customers like Ms. Davis. This program is voluntary. Public input was requested by the Commission in Case Nos. IPC-E-02-13 and IPC-E-04-47 when it reviewed Idaho Power's requests to offer the program and fund the incentives through the Energy Efficiency Rider. Customers who requested to participate gave Idaho Power permission to install the equipment necessary to cycle their air conditioners. This "additional functionality" was added at the customers' option and required physical installation of equipment capable of communicating either through paging technology or through the substation control equipment via the power line. However, this additional communication equipment functions independent of the meter. Thus, there is no current basis in fact for Ms. Davis's claim. Ms. Davis's concern as to what devices may be installed at a future date is speculative and not ripe for Commission decision.

Ms. Davis argues that "the presence of a net metering device on the home of a residential customer could allow their property to be defined as being engaged in interstate commerce in electricity through systematic connection to the network, thereby allowing homes to improperly fall under the regulatory jurisdiction of the Idaho Public Utilities Commission." Davis Petition at 3. As discussed above, the Commission has jurisdiction over retail transactions between the electric utility and customers. I.C. §§ 61-501, 61-502, 61-503, and 61-507. The Federal Energy Regulatory Commission has

jurisdiction over wholesale transactions in interstate commerce. 16 USC § 824. Although it is unclear as to why interstate commerce has any impact on the Idaho Commission's jurisdiction, Idaho Power does not agree that the installation of AMI meters changes the way retail electric customers like Ms. Davis interact with interstate commerce. AMI meters do not "draw residential customers into the interstate stream of commerce" to any greater extent than non-AMI meters, all of which are distribution components of the multi-state transmission grid comprising the Western Interconnection.

III. CONCLUSION

Prior to issuing Order No. 32500, the Commission thoroughly reviewed the issues raised by both Petitioners in the context of the consolidated docket. The Petitions do not present or describe the existence of evidence that would result in an outcome different than the one previously reached by the Commission. For the reasons described herein, Idaho Power requests that Commission Order No. 32500 be affirmed.

Respectfully submitted this 19th day of April 2012.



LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of April 2012 I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S ANSWER TO PETITIONS FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff

Weldon B. Stutzman
Idaho Public Utilities Commission
472 West Washington Street (83702)
P.O. Box 83720
Boise, Idaho 83702

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email Weldon.stutzman@puc.idaho.gov

Bonnie Menth
306 Shadetree Trail
Twin Falls, Idaho 83301

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email

Vicky L. Davis
145 Avenida Del Rio
Twin Falls, Idaho 83301

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email


Christa Beary, Legal Assistant