

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

BONNIE MENTH AND VICKY DAVIS,)	
)	CASE NO. IPC-E-12-04
COMPLAINANTS,)	
)	
v.)	
)	
IDAHO POWER COMPANY,)	ORDER NO. 32536
)	
RESPONDENT.)	

On March 27, 2012, the Commission issued a final Order in Case No. IPC-E-12-04 dismissing complaints filed by Bonnie Menth and Vicky Davis against Idaho Power Company. Order No. 32500. The complainants objected to installation of Idaho Power’s advanced meter infrastructure (AMI), or Smart Meters, at their residences. In dismissing the complaints, 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, p. 3. In addition, the Commission found that the claimants did not provide “demonstrable, credible factual evidence to support a finding that the meters present legitimate safety or potentially inappropriate communication concerns.” *Id.*

Ms. Davis’s Petition for Reconsideration

The period for filing petitions for reconsideration of the Commission’s final Order ended April 17, 2012. Vicky Davis filed an “appeal of IPUC Final Order 32500” on April 13, 2012. Although the pleading is labeled an appeal, the document appears to properly argue issues that might be raised in a petition for reconsideration. The purpose of reconsideration is to bring to the Commission’s attention alleged procedural errors or errors of fact and law made. Ms. Davis contends the Commission in its Order did not adequately address the issues raised in her complaint, which is a proper argument for a petition for reconsideration. Despite its label, the Commission regards Ms. Davis’s pleading as a timely-filed Petition for Reconsideration.

The first error Ms. Davis contends the Commission made in its Order was to combine her complaint with that of Ms. Menth. Ms. Davis distinguishes her complaint as calling forth “constitutional issues regarding the lawfulness of forced installation of a device that contains an open two-way communications system attaching her home to a network of devices the sum total

of which are intended to manage and control the electric grid including all devices attached to the network.” Davis Appeal, p. 2. Ms. Davis contends the Smart Meter provides the open door gateway to the devices in her home. She contends “there are no communications firewalls on the electric circuits and devices in Complainants home; hence there is no way to block electronic intrusion and/or invasion of privacy by Idaho Power or other unspecified third parties.” Davis Appeal, pp. 2-3. Ms. Davis asserts that the objective of the Smart Grid project is end-point management of electronic consumption, and that the installation of the mechanisms of control is progressive. Ms. Davis is concerned 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 systemic connection to the network, thereby allowing homes to fall improperly under the regulatory jurisdiction of the Idaho Public Utilities Commission.” Davis Appeal, p. 3. Ms. Davis asserts that conservation goals combined with the Commission’s Order for Idaho Power to pursue comprehensive demand-side management programs, “is evidence of the IPUC’s desire to draw residential electric consumers into their regulatory purview.” Idaho Power filed an answer to Ms. Davis’s Petition on April 19, 2012.

Ms. Davis’s assertion that the Commission erred by combining her complaint with that of Ms. Menth is not a basis to grant her Petition for Reconsideration. *Idaho Code* § 61-613 and the Commission’s Rule of Procedure 247 provide for consolidating two or more proceedings that present related issues and where the rights of the parties will not be prejudiced. IDAPA 31.01.01.247. Consolidating the two complaints merely assisted efficient processing of the cases, and in no way minimized the Commission’s due consideration of Ms. Davis’s complaint.

The Commission also finds that Ms. Davis has not raised a valid argument of legal error by the Commission in issuing Order No. 32500. Ms. Davis’s concern that the installation of AMI meters amounts to “regulatory overreach,” or is part of a plan to “draw residential electric consumers into [the Commission’s] regulatory purview” is without foundation. The Legislature establishes the extent of the Commission’s authority, and it has delegated to the Commission a responsibility to regulate certain relationships between utilities and their customers, including by setting service rates, charges and terms of service. See *Idaho Code* §§ 61-501, 61-502, 61-507. Ms. Davis does not present a valid claim that the Commission’s approval of AMI meters was beyond the authority granted it by the Legislature.

Nor can the Commission find that a colorable constitutional claim is presented by Ms. Davis's complaint and Petition for Reconsideration. At the core of her claim is a belief that Idaho Power's AMI meters have a potential to serve as improper surveillance or communication devices. The Commission fully considered this argument, but 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, p. 3. The Commission finds that Ms. Davis has not raised a legitimate Commission error to be corrected on reconsideration, and the Commission accordingly denies her Petition.

Ms. Menth's "Appeal"

Bonnie Menth did not file a Petition for Reconsideration, but did send an electronic mail message to the Commission Secretary on April 17, 2012. The e-mail message from Ms. Menth, however, does not address any issue discussed by the Commission in final Order No. 32500. Instead, Ms. Menth only addresses the Commission's response to her earlier request for public records. Ms. Menth previously requested that the Commission provide copies of records of formal and informal complaints against Idaho Power regarding its implementation of AMI. The Commission provided copies of complaints to Ms. Menth, but redacted the names, addresses and telephone numbers of the individual complainants. Ms. Menth asserted in her e-mail message her belief that the redaction was an improper procedure by the Commission. She concludes her message by stating that she wishes "to appeal my case IPC-E-12-04 and IPUC Order No. 32500."

Unlike Ms. Davis's pleading filed with the Commission, Ms. Menth does not raise issues or present an argument properly raised in a petition for reconsideration. In fact, the only remedy for the issue Ms. Menth raises is provided in Idaho Code, Title 9, Chapter 3 that controls the release of public information by state agencies. *Idaho Code* § 9-343 states that "the sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some parts thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection." *Idaho Code* § 9-343(1). The pleading must be filed in a district court within 180 days from the date the Commission responded to the public records request, which occurred on December 29, 2011. Given the exclusive remedy set forth in Section 9-343,

the Commission is without authority to further address the issue raised by Ms. Menth in her e-mail message.

ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration filed by Vicky Davis is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. IPC-E-12-04 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

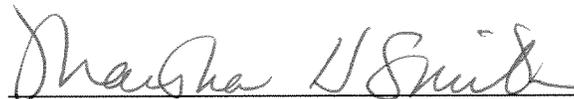
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 25th day of April 2012.



PAUL KJELLANDER, PRESIDENT



MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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