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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER IDAHO OF IDAHO POWER'S APPLICATION FOR APPROVAL OF ITS AGREEMENT WITH ENERNOC TO IMPLEMENT AND OPERATE A VOLUNTARY COMMERCIAL DEMAND RESPONSE PROGRAM	)	**CASE NO. IPC-E-13-04** COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER

COMES NOW, the Industrial Customers of Idaho Power ("ICIP") and pursuant to Order No. 32777, issued by the Idaho Public Utilities Commission ("Commission") on April 2, 2013 in the above captioned docket, and hereby provides its Comments on the Application by Idaho Power Company ("Idaho Power" or the "Company") for approval of a second amendment of its agreement with EnerNOC, Inc. ("EnerNOC").

In case No. IPC-E-09-02, Idaho Power proposed to institute a demand side response ("DSM") program that was to be administered by a commercial and industrial DSM aggregator. In November 2008, Idaho Power issued a Request for Proposals ("RFP") that resulted in the selection of EnerNOC to administer the program known as the FlexPeak Management Program ("FlexPeak"). Idaho Power and EnerNOC entered into a five-year agreement in February 2009,

which was subsequently approved by the Commission in May 2009.[1]

The original contract set lower and upper bands of peak reduction that EnerNOC was to achieve each year of the five-year agreement. The bands began with a range from a low of 2 MW to a high of 35 MW in 2009 and subsequently expand to a lower band of 35 MW with an upper band of 65 MW by 2013. Idaho Power and EnerNOC also agreed to targets for each year from 2009 through 2013. The specific targeted demand reductions were 2 MW, 30 MW, 40 MW, 50 MW and 65 MW respectively for each of the five years.

The anticipated cost of the FlexPeak program over the five year period was approximately $12.2 million which was based on the expected number and duration of peak shaving events during the contract period. The estimated annual cost ranged from just under $315,000 in the first year to nearly $3.5 million in the fifth year. During the term of the agreement the allocated shares of program expenses were forecast to be 85% for capacity payments and 6% for energy payments. Ninety-one percent of the incentive payments were to accrue to either the participants or EnerNOC itself and Idaho Power was allocated 9% of the incentive payments for administrative expenses. Over the past three full years of the FlexPeak Program, EnerNOC received 97% for total program costs,[2] but we do not know how those funds were allocated by EnerNOC to the program's participants.

In early 2010, Idaho Power filed a petition with the Commission to approve an amendment to the EnerNOC agreement. The changes requested were to clarify language regarding energy payments, adjustments to the baseline calculations, and a correction of an error in EnerNoc's penalty calculations. This first amendment also added language regarding a non-solicitation clause

[1] Order No. 30805.
[2] Idaho Power DSM Reports, 2010 – 2012.

covering both companies. The Commission approved the first amendment in June 2010.[3]

During the first four years of the program, Idaho Power had called for 8, 4, 14 and 4 peak response events respectively. The average load reduction achieved in years three and four was 38 MW. Program participation has grown to 102 participants in 2012, with the highest hourly reduction achieved in July at 47.0 MW of achieved demand side management.

Idaho Power is now essentially asking the Commission to freeze the FlexPeak program through the end of the contract term, which is scheduled to terminate on February 2014. This second amendment would cap the weekly nominated demand reduction at 35 MW and decrease the dispatch hours available from 60 to 30 and reduce the event days from 20 to 10. In addition, this second amendment reduces the level of per kilowatt payment to EnerNoc. Idaho Power states the second amendment will save program expenses of approximately $500,000 in 2013. Idaho Power indicates the future of the FlexPeak program and its relationship with EnerNOC after February 2014 will likely be determined based on the outcome of planned workshops this coming summer:

> The determination of the future of the FlexPeak program, and subsequently the EnerNOC contract, beyond the 2013 season is pending the outcome of Phase II of this case.[4]

In case IPC-E-09-02, the case that initiated the FlexPeak program, the ICIP submitted comments supporting the program, albeit with certain modifications. The ICIP continues to support the program, but also continues to believe that certain modifications are necessary.

The original comments filed by the ICIP relate to two major areas. First, was a comparison of the demand side offers under FlexPeak versus the demand side offers under the Irrigation Peak Rewards. The second major area of concern expressed by the ICIP dealt with the transparency (or lack thereof) inherent in the FlexPeak program. In its IPC-09-02 comments the ICIP stated:

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[3] Order No. 31098.
[4] IPCo response to ICIP data request no. 7.

> In its application Idaho Power is seeking Commission approval of an agreement between it and EnerNOC under which EnerNOC, acting 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 participant's 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 will then 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 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.[5]

And,

> 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, <u>and profit</u>, are tied [to] its striking a series of best deals with individual participants. That said, more transparency – not less – is called for.[6]

Idaho Power stated in Comments filed in the original docket that:

> EnerNOC has publicly stated that participating customers who contract with EnerNOC will likely receive between $25 and $35 per kW annually, depending on the number of events called, frequency of events called, and the equipment and installation costs EnerNOC must invest at the site of each participating customer.[7]

Both the Commission Staff and the ICIP have attempted to be allowed, under protective

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[5] ICIP Comments, Docket No. IPC-E-09-02 at p. 2.
[6] Id at pp 3 – 4. Emphasis in original.
[7] Idaho Power Comments, Docket No. IPC-E-09-02 at pp 5 – 6.

agreements, to verify that, in fact, the 100 plus commercial and industrial customers who contract with EnerNOC are in fact receiving between $25 and $35 per kW annually. However, the contract arrangement between EnerNOC and Idaho Power appear to dictate that even Idaho Power is not allowed to know what EnerNOC is paying to the participating industrial and commercial customers or what amounts EnerNOC is keeping as profit.

In Docket No. IPC-E-12-15 (the first amendment docket) in response to Staff's Second Production Request, Idaho Power stated:

> **REQUEST NO. 10:** Please quantify and explain the customer incentive structure used in the FlexPeak Management Program and include the number of participants in each incentive category.
> **RESPONSE TO REQUEST NO. 10:** The incentives paid to participants in the FlexPeak Management program are made by EnerNOC, Inc. based on agreements with each participant. Idaho Power does not know the amount of these incentives. At the end of the 2011 cycling season, there were 103 service locations participing in the program.[8]

EnerNOC, itself, filed comments in that docket, stating:

> Staff's recommendation that Idaho Power publicly disclose confidential terms of EnerNOC's relationships with program participants has the potential to significantly impact EnerNOC's ability to negotiate with participants and threatens to substantially damage the aggregator business model that supports the effectiveness of the FlexPeak program.
>
> ...
>
> The customer payments generally consist of a capacity (availability) component and an energy component (based on actual kWh reductions during events). The customer incentives are not disclosed in the contract between EnerNOC and Idaho Power. If this confidential information is publicly disclosed, current and potential EnerNOC competitors and potential program participants would be able to gain important insights into EnerNOC's unique pricing, business, and technical strategies causing substantial harm to the competitive position of EnerNOC and, consequently, adversely affecting the FlexPeak Program. EnerNOC respectfully requests that the Commission not require EnerNOC to publicly disclose confidential customer incentives.[9]

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[8]Docket No. IPC-E-12-15. Idaho Power Response to Staff's second production request no. 10.
[9] Docket No. IPC-E-12-15. EnerNOC comments, July 20, 2012.

Despite Staff's and the ICIP's objections, the Commission agreed with EnerNOC, stating:

> Based on our review of the record, we find no need for the Company's future DSM reports to disclose EnerNOC's incentive payment information so long as the Company pays a reasonable price and the FlexPeak Managemetn Program is cost-effective. We will continue to evaluate the FlexPeak Management Program based on its cost-effective performance.[10]

The ICIP appreciates that the Commission said it will continue to evaluate the program, based on cost-effectiveness. However, it is difficult to imagine how a thorough cost effective evaluation can take place in a vacuum. That is, the cost of the program is known, but the opportunity cost of the program is not. The ratepayers are buying a product, demand reduction, the cost of which neither the regulator nor the utility have any true idea as what it actually costs. Only EnerNOC knows the true cost of the DSM it is procuring.

The ICIP does not agree with EnerNOC that disclosing the portion of incentive payments received by the commercial and industrial participants in the FlexPeak Program would do damage to EnerNOC's business model or would cause substantial harm to the competitive position of EnerNOC. EnerNOC is engaged in providing a utility service to the public without having its rates, terms or conditions of service approved by the Commission. But only the Commission is charged with setting fair just and reasonable rates – EnerNOC does not have that authority. That the service EnerNOC is providing is a utility service cannot be questioned. Payments are received by participants enrolled in the FlexPeak Program for reducing their loads during peak periods, when power to the grid is most valuable. EnerNOC is essentially setting the participants' retail rates for power received from Idaho Power. In 2012 ratepayers paid approximately three million dollars for the FlexPeak Program through the DSM rider. Those ratepayers, as well as the program participants, have the right to be assured that these program costs are cost effective. The fact that participation in the program is voluntary does not obviate the fact that EnerNOC is acting as a

[10] Order No. 32667.

monopoly provider of demand response service in Idaho Power's service territory. Participants have no other option if they want to sell peak reductions to Idaho Power -- EnerNOC is the sole provider. This the classic rationale for rate regulation.

The ICIP is also concerned about the continued viability of the FlexPeak Program once the contract with EnerNOC expires. The program appears popular with the participants, at least with those participants who responded to an EnerNOC survey. Presumably if the program were unpopular more would have responded. According to Idaho Power's 2012 DSM report:

> EnerNOC sent a post-event survey via email after the first event in June 2011 to 195 participants representing all the sites enrolled in the event. Eighteen participants responded, for a 9-percent response rate. When asked how prepared they felt for the demand response event on a scale of 1 t0 10, 10 being "fully prepared." The average response was 8.4. When asked how likely they were to recommend EnerNOC to a peer or business partner on a scale of 1 to 10, 10 being "definitely will," the average response was 8. When asked how satisfied they were with how EnerNOC managed the demand response event on a scale of 1 to 10, 10 being "very satisfied," the average response was 8.3. [11]

Idaho Power states in its Application that the "amendments to the contract that would align with both Idaho Power's needs and EnerNOC's current level of participation in the FlexPeak Program."[12] Apparently Idaho Power's 'need' being addressed by the application is that it forecasts a capacity surplus for the next three years -- despite the fact that the FlexPeak program only fully ramped up just three years ago. The Commission should also take note of the fact that Idaho Power's current summer peak is now forecast to grow by 40 MW a year for the 2013 – 2032 time period as compared to the historic growth of just 30 MW a year for the past decade.[13]

The Commission recently approved a stipulation to temporarily suspend Idaho Power's other two DSM programs in Case No. IPC-E-29-12. In that docket, the Commission suspended the A/C Cool Credit and the Irrigation Peak Rewards programs, but allowed for token payments to be

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[11] Idaho Power 2012 DSM Report, p. 96.
[12] Application at p. 9.
[13] Idaho Power Integrated Resource Plan Advisory Council presentation November 15, 2012, slide 3.

made to the participants in those programs to avoid losing that resource altogether. Apparently the Commission was concerned about the continuity and ongoing effectiveness of DSM programs if the Company shuts them down only to find that it may be more difficult to restart them down the road when Idaho Power is once again capacity deficit. The other problem identified by the Commission was the inability of the Company to accurately predict the need for peak resources over the three year period between 2013 and 2016:

> We also appreciate the thoughtful comments offered by customers about encouraging and maintaining participants in the A/C Cool and Peak Reward programs. When we initially authorized the pilot A/C Cool program in 2003, we recognized that DSM programs are powerful tools in managing peak loads and mitigating the impact of potential rate increases. Order Nos. 29207 at 8. In particular, reducing the peak summer loads lessens the utility's reliance upon purchasing power or constructing supply side generation. We are disappointed that the Company proposed to discontinue their use completely.
>
> We are concerned about implementing measures in the short-term that may reduce the effectiveness of both programs. Valuable time and resources were used to develop effective DSM programs, and we do not want to impair the effectiveness of these programs in the future when the Company's peak loads surpass its supply resources. This is especially true after the Company recently replaced most of the older A/C control devices. For example, as one customer indicated, it may be cheaper for the Company to cycle the air conditioning units than to purchase or generate power from its own supply resources.[14]

Of course, the reason Idaho Power has a capacity surplus is that it just energized the 300 MW Langley Gulch gas plant in June of 2012. On July 12, 2012, Idaho Power issued a press release observing that temperatures reached 108 degrees in Boise, and that as a result the Company reached a near record peak of 3,198 MW on July 9, 2012. In that press release Idaho Power disclosed a significantly higher customer growth rate than in the previous two years. It also indicated that in the years 2009, 2010 and 2011 it was able to handle peak loads with their "successful" demand response programs, along with milder weather and declining economic activity. According to Idaho Power's press release of July 12:

"Langley Gulch has come online at a perfect time to help us meet some of the highest loads

[14] Order No. 32776 pp. 7 – 8.

> we have seen in several years," said Mark Stokes, Idaho Power's Manager of Power Supply Planning.
>
> On Monday, July 9, temperatures in Boise reached 108 degrees. Idaho Power's overall peak-hour average load topped out at 3, 177 MW and on Tuesday reached 3,198 MW, just short of a new system peak record.
>
> Idaho Power's all-time peak-hour average load reached 3,214 MW in June 2008. The company's successful demand reduction programs, along with weather conditions and a general decline in economic activity lowered Idaho Power' peak demand in 2009, 2010 and 2011.
>
> Idaho Power experiences its highest demand during the summer months, when air conditioners and irrigation pumps add to everyday electrical usage. An increase in customer growth over the past year has added to that demand.
>
> From the second quarater of 2011 to the second quarter of 2012, Idaho Power added 5,240 general business customers in its service area – roughly double the second-quarter growth of the previous two years. Residential customers grew by 4,155 from the second quarter of 2011 to the second quarter of 2012 – also significantly higher than the growth seen in the two previous years.[15]

However, on July 9, 2012, Idaho Power also called on the FlexPeak program for power to help meet its peak demand from 98 participants, for the 4 p.m. to 6 p.m. time period. The program yielded 42.1 average MW and 84.2 MWh. Idaho Power also used the programs after the on-line date of Langley Gulch in 2012 on July 12th and again on August 7th, for a total of 74 average MW and 276 MWh.[16] It is apparent there isn't a need to wait for an emergency to utilize the FlexPeak Program, as presently constituted, to help meet system peak. With unknown weather conditions and peak load growth on the increase, the program should be allowed to continue to grow.

One of the commenters the Commission was likely referring to is former Commission Staff member Bill Eastlake. He shares the Commission's concerns about the Company's foresight in projecting the need for peak power in 2013. Mr. Eastlake noted that Idaho Power is not a "self-sufficient island." He stressed the importance of demand response programs to meet, not only the

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[15] Idaho Power press release "Langley Gulch Providing Needed Power," July 10, 2012.
[16] Docket No. IPC-E-13-04. Idaho Power Response to ICIP's First Date Request No. 2.

Company's own needs, but to profitably help other utilities to meet their peak demands. Mr. Eastlake provided the following comments in the A/C Cool Credits and Peak Rewards docket, which are apropos to the Commission's decision in this docket:

> I remain dismayed that the Company shows such a dismissive attitude toward programs that it said were vital not so long ago. The Company says it now doesn't need such programs and doesn't anticipate using them during 2013. Such an attitude assumes perfect foresight as to demand and supply conditions for the summer of 2013 and seems to ignore the fact that the Company is not a self-sufficient island but a player in an integrated regional power system. Surely it is possible for some unforeseen peak load problem to arise, either in the Company's own resources or in its ability to access regional resources. And surely it is possible that, even if the Company doesn't have peak deficits of its own, some other regional utility might have need for additional resources that could be profitably supplied by the Company via demand response. Or, it may even be possible that it is cheaper for the Company to turn off a kw than to supply it from its own available resources.[17]

It is hoped the Commission will take Mr. Eastlake's comments to heart in this docket as well as the prior DSM dismantling docket.

Due to required lead times, economies of scale, efficiency, etc., utilities tend to add plant in relatively large increments. This means in actual practice, generation capacity is periodically added in a 'lumpy' fashion. The 300 MW Langley Gulch generation plant is one such 'lump.' Given this practice, an actual electrical system will have either more or less than the optimum amount of generating capacity. Because generating resources are typically added to systems in moderately large MW increments (e.g. 100 MW or more), and even if units are carefully sized to correspond to the system size, and expected rate of load growth, it is unrealistic to expect the mix of different types of generating plants to be precisely optimum. Utilities add plant in increments that exceed their short term needs to serve load. Therefore, unless it is due to some unforeseen factor or under-forecasting, a utility will almost always be in a surplus capacity situation for the foreseeable future.

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[17] Docket No. IPC-E-12-29. Comments by Bill Eastlake, March 4, 2013.

Demand response programs should not be ramped down because the utility is in a temporary capacity surplus situation. As described above, the status of being capacity surplus is typical – it is the rule rather than the exception. Under Idaho Power's logic, DSM programs become the exception rather than the rule. DSM programs, like FlexPeak, allow the utility to meet system demands in smaller increments and they smooth out the 'lumpy' nature of adding generation plant like the Langley Gulch plant. Programs, such as FlexPeak, do not have an "on/off switch" as the Commission noted in Order No. 32776. The FlexPeak contract between Idaho Power and EnerNOC needed a full two year "ramp-up" period with fewer participants and lower committed megawatts during its first two years.

In a presentation to the 2013 Integrated Resource Plan Advisory Council meeting on March 14, 2013, Idaho Power presented its preliminary portfolios to be analyzed in its 2013 IRP. In all seven of the proposed resource portfolios, demand response will play a significant role. The ICIP is concerned the paring back of the Company's three demand response programs at this time will hamper the role DSM will be able to play in meeting future peak hour needs. Even during times of surplus capacity, deploying DSM in order to delay future generating resources from being built has positive economic value to the ratepayers. For example, PacifiCorp calculated investment deferral credits in determining resource timing in a demand side management decrement study for its 2011 IRP.[18] In that study, PacifiCorp calculated the value of various DSM measures in order to prioritize spending on such measures relative to investing in new resources or power purchase agreements. PacifiCorp, using its PDDRR modeling calculated a $16.69/MWh benefit attributable to deferred expenditures on new capacity. It also calculated a stochastic risk reduction benefit (compared to fueled capacity resources) of $14.98/MWh, and deferred transmission and distribution benefits ranging from $1.75 to $16.63/MWh.

[18] PacifiCorp 2011 IRP, Chapter 2.

The ICIP urges the Commission to allow the FlexPeak Program to continue on its proven path of success. As the Commission observed, along with Bill Eastlake, Idaho Power does not have perfect foresight in forecasting peak needs. The effectiveness of the FlexPeak Program may well be harmed by Idaho Power's proposal. Switching programs such as the FlexPeak Program on and off again is surely to discourage future participation when such participation may be vital to Idaho Power's needs. Further, even if Idaho Power finds that it doesn't need this peak resource to meet its own needs in the short term, such a resource may be able to provide another regional utility with peaking power on the market and at a profit. Smaller incremental resources, such as those provided by the FlexPeak Program help level out the lumpiness caused by such large additions as the Langley Gulch Plant. Even during times of capacity surplus, the FlexPeak Program provides Idaho Power with cost effective peak hour reserves, and it is valued by the participating commercial and industrial customers.

Going forward, however, the FlexPeak Program should be made more transparent – regardless of whether EnerNOC continues on as the third party administrator.

The ICIP will constructively participate in workshops and collaborate with all parties to insure that these and other programs are available to meet Idaho Power's energy and capacity needs in a least cost manner.

DATED this 17th day of April, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of April, 2013, a true and correct copy of the within and foregoing **COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER** were served in the manner shown to:

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