

ORIGINAL

C. Tom Arkoosh, ISB No. 2253
ARKOOSH LAW OFFICES
802 W. Bannock Street, Suite 900
P.O. Box 2900
Boise, ID 83701
Telephone: (208) 343-5105
Facsimile: (208) 343-5456
Email: tom.arkoosh@arkoosh.com

David H. Arkoosh, ISB No. 8742
Law Office of David Arkoosh
PO Box 2817
Boise, ID 83701
Telephone: (208) 297-6031
Facsimile: (208) 242-3037
david@arkooshlaw.com

Attorneys for Idaho Clean Energy Association

RECEIVED

2017 OCT 27 PM 4:07

IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION FOR)	Case No. IPC-E-17-13
AUTHORITY TO ESTABLISH NEW)	
SCHEDULES FOR RESIDENTIAL AND)	IDAHO CLEAN ENERGY
SMALL GENERAL SERVICE)	ASSOCIATION'S MEMORANDUM
CUSTOMERS WITH ON-SITE)	IN SUPPORT OF MOTION TO
GENERATION)	DISMISS

The Idaho Clean Energy Association ("ICEA"), by and through its attorneys, C. Tom Arkoosh of Arkoosh Law Offices and David H. Arkoosh of Law Office of David Arkoosh, and in accordance with Rules of Procedure 56 and 256, hereby moves the Commission for an Order dismissing this case with prejudice because Applicant Idaho Power Company ("Idaho Power" or the "Company") has failed to satisfy the conditions precedent to it applying to the Commission for other relief. *See* IDAPA 31.01.01.056.03 and 31.01.01.256.

BACKGROUND

In November 2012, Idaho Power applied to the Commission for authority to modify its net metering service. Following technical and public hearings and upon its review of the record

JAM12190

and relevant testimony, on July 3, 2013, the Commission issued *Order No. 32846*, (1) declining to cap net metering capacity and instead directing the Company to periodically report on its net metering service; (2) declining to modify the net metering pricing structure or move residential and small general service net metering customers into new classes; (3) requiring the Company to issue a per kWh credit for excess generation, with the credits to expire only when the customer ends service; and (4) approving Exhibit 8, which resolved parties' concerns about interconnection language proposed in proposed Schedule 72. While testimony was lengthy on both sides of the issue, the Commission "advise[d] the Company that it would enhance consideration of future major program-specific changes if it informed and obtained feedback from its customers and other stakeholders before proposing them." *Order* at 5. The Company's 2013 *Application* further requested that the Commission create a separate rate class and place those customers onto a different schedule than general residential and small general service classes. In response, the Commission found that changing energy charges "should not be examined in isolation but should be fully vetted in a general rate proceeding." *Order* at 13.

On July 27, 2017, Idaho Power filed its *Application* in this case, requesting that the Commission establish new schedules for residential and small general service customers with on-site generation. Among the requests in its *Application*, Idaho Power requests further proceedings in front of the Commission by which it can come to "better understand the unique benefits and costs these customers may add to the overall system." *Application* at 14.

RELEVANT LAW

"In Idaho, '*res judicata*' means that in an action between the same parties upon the same claim or demand, the former adjudication concludes parties and privies not only as to every matter offered and received to sustain or defeat the claim but also every matter which might and

should have been litigated in the first suit.” *Magee v. Thompson Creek Mining Co.*, 152 Idaho 196, 202, 268 P.3d 464, 470 (2012) (internal quotations omitted); Idaho Code § 61-625. *Res judicata* applies to decisions of Idaho administrative agencies. *Magee*, 152 Idaho at 202, 268 P.3d at 470 (2012).

For purposes of applying the doctrine of *res judicata*, the “sameness” of a cause of action “is determined by examining the operative fact underlying the two lawsuits.” *Farmers Nat’l Bank v. Shirley*, 126 Idaho 63, 69, 878 P.2d 762, 768 (1994) (internal citation and quotations omitted).

The Court in *Ticor Title Co. v. Stanion* held that *res judicata* serves three fundamental purposes:

- (1) it preserves the acceptability dispute against the corrosive that would follow if the same matter were twice litigated to inconsistent results;
- (2) it serves the public interest in protecting the courts against the burdens of repetitious litigation; and
- (3) it advances the private interest in repose from the harassment of repetitive claims.

Ticor Title Co. v. Stanion, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007).

ARGUMENT

1. Idaho Power’s *Application* Presents the Same Set of Operative Facts as its 2012 *Application*.

In 2012, Idaho Power brought to the Commission the issue of pricing for consumers with on-site generation. In its *Application*, it complained that, “Between 2002 and 2010, installed net metering capacity steadily increased from 39 kilowatts ("kW") to just under 1,000 kW in 2010. Since 2010, growth has increased dramatically, rising by nearly 1,500 kW over two years.” 2012 *Application*, at 1.

In 2017, Idaho Power is returning with the same complaint, namely:

In recent years, the number of customers choosing to install on-site generation and to take bi-directional services from Idaho Power has increased notably. The rates currently charged to net metering customers were not designed to reflect the value of the bi-directional service being provided to them by the grid nearly every hour of every day, nor do they accurately reflect any potential benefits of on-site generation. These unnecessary inaccuracies in pricing could result in unfair cost shifting between customers who choose to install on-site generation and those who do not.

2017 Application, at 1-2.

In both instances, Idaho Power complains, in essence, that an increasing number of customers are installing on-site generation and that the current rate structure charged to these customers does not reflect the economic realities of what Idaho Power delivers to them. While Idaho Power has changed its description of the rate of growth of adoption of on-site generation from “dramatically” to “notably,” it is referring to the same type of production and the same rate as it was in 2012. This, the rate for on-site generation customers of Idaho Power, brings to the Commission the same set of operative facts as are contained in Idaho Power’s 2012 *Application*.

2. The Commission Has Previously Decided the Issue Idaho Power Presents.

The Commission has previously decided, in 2013, the issue that Idaho Power presents here. The Commission’s 2013 *Order* refused to establish a new rate class and different schedule for residential and small general service customers outside of a general rate proceeding. In other words, where Idaho Power asked whether the Commission would change rates in response to its concerns of increased customers with on-site generation, but outside of a general rate proceeding, the Commission answered in the negative, stating that the matter “should not be examined in isolation but should be fully vetted in a general rate proceeding” 2013 *Order* at 13. The issue brought in Idaho Power’s *Application* has been decided.

3. Idaho Power Has Not Met the Conditions Precedent Set by the Commission for its Consideration of a New Rate Class.

Idaho Power has not met the condition set by the Commission's 2013 *Order* with regard to considering this matter a second time. In issuing its 2013 *Order*, the Commission set clear conditions precedent to its giving any new consideration to major program-specific changes, including establishing a new rate class, instructing Idaho Power to take different approach, namely, by "inform[ing] and obtain[ing] feedback from its customers and other stakeholders before proposing them." 2013 *Order* at 5. The Commission also advised Idaho Power that it should bring the matter in a general rate proceeding. In its *Application*, Idaho Power has not shown that it has informed or obtained feedback in any meaningful way from its customers and other stakeholders or brought such that this new *Application* is ready for consideration apart from what the Commission found in its 2013 *Order*. Idaho Power held a workshop in 2016, and two meetings in 2017, with stakeholders and industry representatives. As described in the testimony of Aschenbrenner, pp. 15-24, Idaho Power's purpose in these gatherings was to announce its purpose and solicit feedback from attendees regarding Idaho Power's intent. It does not appear from the testimony that Idaho Power's intended to craft a consensus. Further, it makes no sense to even file the *Application* as Idaho Power did in light of the Commission's 2013 *Order*, given that it stated unequivocally that it would not consider the matter absent a general rate case, its second condition precedent to the matter of rates for on-site generation customers. Idaho Power has not shown that it has satisfied these conditions prior to bringing this matter back to the Commission for its consideration.

In Idaho Power's answer to Request No. 13 of *Idaho Power Company's Response to Vote Solar's First Set of Data Requests to Idaho Power Company*, see Attachment 1 hereto, Idaho Power appears to desire to adopt this approach:

The Company has recommended that, in order to establish a methodology that determines the appropriate amount of costs and accurately reflects their utilization of the grid, the Commission establish a formal process by which a comprehensive review of the compensation structure for customers with on-site generation can be analyzed and vetted collaboratively with interested parties. Idaho Power believes this would best be done through a collaborative process where stakeholders and other utilities can participate.

ALTERNATIVE RELIEF

Given the Commission's previous mandate of public and industry input, the resolution of net metering costs and benefits may best be set by the same process used in the solar integration Case No. IPC E-14-18, see Attachment 2 hereto. Therefore, this motion seeks such alternate relief similar to the attached in timeline, methodology, source of inputs, and technical group to study the costs and benefits of net metering, and would request a settlement conference to discover whether the parties can agree upon such a concept.

REQUESTED RELIEF

For the foregoing reasons, ICEA asks the Commission for an Order granting this *Motion to Dismiss* the case with prejudice on the grounds provided above; or, alternatively, for a process similar to that set forth in Case No. IPC-E-14-18.

DATED this 27th day of October, 2017.

LAW OFFICE OF DAVID ARKOOSH



David H. Arkoosh
Attorney for Idaho Clean Energy Association

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 27th day of October, 2017, I served a true and correct copy of the foregoing document(s) upon the following person(s), in the manner indicated:

Original and 7 copies to:

Diane Hanian
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☒ Hand Delivered
☐ Via Facsimile
☐ E-mail
diane.hanian@puc.idaho.gov

Copies to:

Sean Costello
Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington (83702
P.O. Box 83720
Boise, ID 83720-0074

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail
sean.costello@puc.idaho.gov

Lisa D. Nordstrom
Idaho Power Company
PO Box 70
Boise, ID 83707

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail
lnordstrom@idahopower.com
dockets@idahopower.com

Timothy E. Tatum
Connie Aschenbrenner
Idaho Power Company
PO Box 70
Boise, ID 83707

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail ttatum@idahopower.com
caschenbrenner@idahopower.com

Matthew A. Nykiel
Idaho Conservation League
P.O. Box 2308
102 E. Euclid, #207
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail
mnykiel@idahoconservation.org

Eric L. Olsen
ECHO HAWK & OLSEN, PLLC
505 Pershing Ave., Ste. 100
P.O. Box 6119
Pocatello, Idaho 83205

____ U.S. Mail, Postage Prepaid
____ Overnight Courier
____ Hand Delivered
____ Via Facsimile
__X__ E-mail elo@echohawk.com

Anthony Yankel
12700 Lake Avenue, Unit 2505
Lakewood, OH 44107

____ U.S. Mail, Postage Prepaid
____ Overnight Courier
____ Hand Delivered
____ Via Facsimile
__X__ E-mail tony@yankel.net

Elias Bishop
Auric Solar, LLC
2310 S. 1300 W.
West Valley City, UT 84119

____ U.S. Mail, Postage Prepaid
____ Overnight Courier
____ Hand Delivered
____ Via Facsimile
__X__ E-mail
elias.bishop@auricsolar.com

Preston N. Carter
Deborah E. Nelson
Givens Pursley LLC
601 W. Bannock St.
Boise, ID 83702

____ U.S. Mail, Postage Prepaid
____ Overnight Courier
____ Hand Delivered
____ Via Facsimile
__X__ E-mail
prestoncarter@givenspursley.com
den@givenspursley.com

Kelsey Jae Nunez, LLC
Sierra Club
920 N. Clover Drive
Boise, ID 83703

____ U.S. Mail, Postage Prepaid
____ Overnight Courier
____ Hand Delivered
____ Via Facsimile
__X__ E-mail
kelsey@kelseyjaenunez.com

Zack Waterman
Idaho Sierra Club
503 W. Franklin St.
Boise, ID 83702

____ U.S. Mail, Postage Prepaid
____ Overnight Courier
____ Hand Delivered
____ Via Facsimile
__X__ E-mail
zack.waterman@sierraclub.org

Michael Heckler
Electronic Service Only

__X__ E-mail
michael.p.heckler@gmail.com

Abigail R. Germaine
Deputy City Attorney
Boise City Attorney's Office
105 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail agermaine@cityofboise.org

David H. Arkoosh
Law Office of David Arkoosh
P.O. Box 2817
Boise, ID 83701

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail david@arkooshlaw.com

David Bender
Earthjustice
3916 Nakoma Road
Madison, WI 53711

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail dbender@earthjustice.org

Briana Kobor
Vote Solar
360 22nd Street, Suite 730
Oakland, CA 94612

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail briana@votesolar.org

John R. Hammond, Jr.
Fisher Pusch LLP
101 S. Capitol Blvd., Suite 701
P.O. Box 1308
Boise, ID 83701

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail jrh@fisherpusch.com

Snake River Alliance
Electronic Service Only

☒ E-mail wwilson@snakeriveralliance.org

NW Energy Coalition
Electronic Service Only

☒ E-mail diego@nwenergy.org

Ryan B. Frazier
Brian W. Burnett
Kirton McConkie
50 East Temple, Suite 400
P.O. Box 45120
Salt Lake City, UT 84111

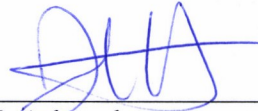
☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail rfrazier@kmclaw.com
bburnett@kmclaw.com

Intermountain Wind and Solar, LLC
1952 West 2425 South
Woods Cross, UT 84087

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail
doug@imwindandsolar.com
dale@imwindandsolar.com

Benjamin J. Otto
710 N 6th Street
Boise, ID 83701

☐ U.S. Mail, Postage Prepaid
☐ Overnight Courier
☐ Hand Delivered
☐ Via Facsimile
☒ E-mail
botto@idahoconservation.org



David H. Arkoosh