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IDAHO PUBLIC  
UTILITIES COMMISSION

*Attorneys for the Snake River Alliance and NW Energy Coalition*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

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

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COMES NOW the Intervenor Snake River Alliance and the NW Energy Coalition (collectively the “Intervenor” for purposes of this pleading) and file this Joinder and Memorandum in Support of the Idaho Clean Energy Association’s (“ICEA”) Motion to Dismiss and Memorandum in Support of Motion to Dismiss pursuant to the Idaho Public Utilities Commission Rule of Procedure, IDAPA 31.01.01.256.04.

The Intervenor also file this pleading to discuss their interests in this case that include, but are not limited to: 1) developing of renewable energy resources, including those from net-metering customers of regulated utilities; 2) developing incentives to assist regulated utilities and their customers to integrate renewable energy resources into the electric system; 3) protecting consumers’ interests and demand for renewable energy resources and the businesses and jobs that have grown from such interests and demand in Idaho; 4) participating in public processes to determine the costs and benefits of renewable energy resources; 5) working to reduce the chilling

impacts that cases like these have on the Intervenors, their members and businesses in the community that they work with; and 6) ensuring equitable rate design that assigns customer prices based on real and known costs to the utility.

As is discussed in more detail below, the Intervenors assert, consistent with ICEA's Motion to Dismiss, that Idaho Power Company's ("Idaho Power" or the "Company") Application in this case should be dismissed primarily for failing to seek the relief requested in the proper proceeding, a general rate case, as previously ordered by the Commission in Case No. IPC-E-12-27, Order No. 32846.

In the alternative to dismissal, the Intervenors respectfully request that the Commission establish a proceeding in which the Company, the intervening parties in this case, Idaho Power's customers and any other interested parties may participate to determine the value of net metering generation, including solar generation on Idaho Power's system.

### **BACKGROUND**

The parties in this case have previously set forth the history of net metering cases before the Commission. Included within that history, the Commission had established a total nameplate generation capacity limit of 2.9 MW for net metering customers of Idaho Power in 2002. *See* Order No. 28951 at p. 12, Case No. IPC-E-01-39. Subsequently, the Commission in Order No. 29094, in Case No. IPC-E-02-04, directed Idaho Power to make a filing with it when the cumulative nameplate of for net metering customers of 2.9 MW was reached. Order No. 29094 at p. 7. In 2012, Idaho Power filed an Application in Case No. IPC-E-12-27 wherein it represented:

In Order No. 29094 issued in Case No. IPC-E-02-04, the Commission directed the Company to make a filing before the Commission when the cumulative nameplate generation capacity limit set forth in Order No. 28951 was reached. . . . The Company is making this filing in accordance with the Commission's directive

issued in that case. While the Commission's directive states that the Company is to provide notification when the cap is reached, the Company believes the timing of this request is appropriate in order to prevent the refusal of new applications for net metering service.

*Application* at pp. 3-4, ¶ 5, Case No. IPC-E-12-27 (emphasis added).

As set forth in ICEA's Memorandum in Support of Motion to Dismiss in Case No. IPC-E-12-27, Idaho Power sought to modify its net metering service, including a request to create new rate schedules and rates for its net metering customers. *See Commission Order* No. 32846 at pp. 1-3.

After receiving public testimony and holding a technical hearing in Case No. IPC-E-12-27, the Commission entered Order No. 32846 which contained the following directive:

IT IS HEREBY ORDERED that the Company's request to double the capacity cap is denied. Rather, the Company shall file an annual status report with the Commission discussing the net metering service. The report shall discuss, without limitation, the net metering service provisions and pricing and how distributed generation may be impacting system reliability. The Company also shall promptly file an earlier report if at any time it expects its net metering service will materially and negatively impact its system. The existing 2.9 MW capacity cap is removed.

*See Order* No. 32846 at p. 19 (emphasis added). Complying with this requirement, Idaho Power has filed annual net metering reports in Case No. IPC-E-12-27.

As noted by several intervening parties in this case, in Order No. 32846 the Commission found that dramatic changes in rates such as those proposed by Idaho Power for its net metering customers "should not be examined in isolation but should be fully vetted in a general rate proceeding. If the Company wishes to raise these issues again, then it should do so in the context of a general rate case." *See Order* No. 32846 at p. 13. Consistent with the foregoing, the Commission stated:

IT IS FURTHER ORDERED that the Company's request to change the net metering pricing structure by modifying Schedule 84 to move residential and

small general service net metering customers to newly created Schedules 6 and 8 is denied. The Company shall continue using Schedule 84 to offer net metering service to all customers. To the extent the Company wishes to increase the monthly customer charge, or implement a BLC for the residential and small general service customer classes, it shall raise that issue in a general rate case. Net metering shall not offset the customer charge.

*See* Order 32846 at p. 19.

On July 27, 2017, Idaho Power filed its Application in this case, requesting in part: 1) closure of Schedule 84, Customer Energy Production Net Metering ("Schedule 84"), to new service for residential and small general service customers with on-site generation after December 31, 2017; *Application* at p. 2; and 2) approval of two new customer classifications for new residential and small general service customers who install on-site generation on and after January 1, 2018. *Id.* The Company also stated it was not currently seeking changes in rates for new or existing net metering customers despite segregating them between schedules until further proceedings vetted the costs and benefits of net metering. *Id.*

### ARGUMENT

1. The Company's Application does not comply with Commission Order No. 32846.

The Intervenors agree with ICEA's argument that this case should be dismissed in its current form. Idaho Power clearly has not complied with the Commission's direction in Order No. 32846 by filing its Application for the relief requested outside of a general rate case. *See* Order No. 32846 at pp. 13 & 19. This noncompliance seems unusual due to the fact Idaho Power has complied with other Commission directives borne out of net metering proceedings before it.

2. The Company's Application and associated materials provide insufficient justification for the relief requested.

A set of factors that should be considered by the Commission in establishing differences

between classes of customers and associated rates are set forth in several Idaho Supreme Court cases. In *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350, (1984) held that:

[n]ot all differences in a utility's rates and charges as between different classes of customers constitute unlawful discrimination or preference under the strictures of I.C. § 61-315. A reasonable classification of utility customers may justify the setting of different rates and charges for the different classes of customers. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, supra. Any such difference (discrimination) in a utility's rates and charges must be justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use.

*Idaho State Homebuilders v. Washington Water Power*, 690 P.2d 350, 355, 107 Idaho 415, 420 (1984) (emphasis added). In *Homebuilders*, the Court, citing its previous decision in *Grindstone Butte Mut. Canal Co. v. Idaho Public Utilities Commission*, 102 Idaho 175, 181, 627 P.2d 804, 810 (1981) also found that the Commission may consider other criteria for establishing different rates, including energy conservation, optimum use, and resource allocation. *Id.*

In *Grindstone* the Court discussed the weight of such criteria:

[w]e do not find one criterion to be necessarily more essential than another. Nor do we find the criteria as listed above as being exclusive. . . . Cost of service is not a per se essential element without which rate making is invalid. It is an important criterion and, in a given case, it may even be largely dispositive of the issue of basis for price differentiation.

*Grindstone*, 102 Idaho 175, 180, 627 P.2d 804, 809 (1981) (emphasis added).

In *Grindstone* the Court also cited its previous decision in *Agricultural Products Corporation v. Utah Power & Light Company*, 98 Idaho 23, 557 P.2d 617 (1976) where it had endorsed the following procedure taken from the New York Public Utilities Commission:

[u]nder the procedure we adopt here, a determination of undue discrimination or preference must first be made in a rate proceeding wherein all pertinent factors are considered, including, among others, the provisions of the special contract, the

relationship between the contracting parties, the cost of service, the financial condition of the utility, and the effect of contract rates on other customers. In the rate proceeding, the commission will consider whether some preferential rate may be appropriate in light of the specific circumstances surrounding each special contract.... Re Consolidated Edison Co., 4 P.U.R. 4th 199 (N.Y.Pub.Ser.Comm'n 1974).

*Grindstone*, 102 Idaho at 180-81, 627 P.2d at 809-10<sup>1</sup> quoting *Agricultural Products*

*Corporation v. Utah Power & Light Company*, 98 Idaho 23, 30-31 557 P.2d 617, 624-25 (1976)

(emphasis added). *Grindstone* continues:

Again cost of service is but one criterion to consider. The question then is not whether one particular type of evidence is present in support of the rate differentiation, but, rather, whether the evidence as a whole in light of the circumstances of the particular case supports the differentiation, substantially, competently and with a just and reasonable result.

*Grindstone*, 102 Idaho at 180-81, 627 P.2d at 809-10.

In support of its requests, Idaho Power asserts net metering customers utilize the grid differently than similarly situated customers because they can export their excess power generation onto it. *Application* at p. 8, ¶ 13. Second, the Company contends that while net metering customers may have daily power demand requirements similar to other customers “their net monthly energy as a basis for billing does not reflect their utilization of the grid.” *Id.*

The Intervenors assert that making dramatic changes in customer classifications and

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<sup>1</sup> In *Grindstone* the Court found that the Commission identified three primary objectives of current utility rate design:

They are (a) the revenue-requirement or financial-need objective, which takes the form of a fair-return standard with respect to private utility companies; (b) the fair-cost-apportionment objective, which invokes the principle that the burden of meeting total revenue requirements must be distributed fairly among the beneficiaries of the service; and (c) the optimum-use or consumer-rationing objective under which the rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between costs incurred and benefits received. J. Bonbright, *Principles of Utility Rates* at 292 (1961). Application of *Utah Power & Light Co.*, IPUC Order No. 13448 at 39 (Sept. 29, 1977).

*Grindstone*, 102 Idaho at 181-82, 627 P.2d 810-11.

future rate design based on limited factors can have long term consequences and should not be considered in a bubble without examination of a greater scope of criteria related to serving all customers. Many additional relevant factors as set forth in *Homebuilders* and *Grindstone* should be examined in cases like these. Further, the Intervenors contend that the Company's case does not evaluate the benefits that power generation by net metering customers could provide. Prior to any new customer classifications being created, such benefits must be evaluated and quantified, along with considering other factors enumerated in *Grindstone* and *Homebuilders*. See generally, *Homebuilders*; see also, *Grindstone*, 102 Idaho at 180-81, 627 P.2d at 809-810 (all pertinent factors should be considered in determining justification for differentiation), see also, Order No. 32846 at pp. 12-13 (issues arising from Idaho Power's net metering Application should not be decided in isolation but rather "vetted in a general rate proceeding" where many of the factors above would be reviewed). See Order No. 32846 at pp. 12-13. Such potential benefits include, but are not limited to, 1) avoided energy benefits; 2) avoided system losses; 3) avoided generation capacity benefits; 4) avoided transmission capacity benefits; 4) avoided distribution capacity benefits; and 5) avoided environmental costs of carbon based generation, including health costs.

Additionally, Idaho Power's case as currently situated is producing a chilling impact on consumers who may wish to install renewable generation and the businesses that provide such products and installation. The uncertainty created by this case has slowed the development of new generation and negatively impacts consumer choices. Prior to this case being filed, over the last two (2) years, the Snake River Alliance's "Solarize the Valley Program" helped more than 1,000 families evaluate the practicability of adding rooftop solar panels to their homes. As a result, over 100 of these families have recently installed rooftop solar panels on their homes or

are under contract with local installers to do so this winter. These efforts have resulted in over a \$2,000,000.00 consumer investment in the long-term capacity of our community to generate renewable power. The Intervenors believe that such direct consumer investment at little cost to the Company helps to provide low-cost, clean energy to all consumers in Idaho Power's service territory. These consumers who are customers of Idaho Power and who take service under Schedule 84, believed the Company shares their goals to obtain access to low-cost, clean power. The Company's Application though seems contrary to these shared goals or at least goals that the parties should have in common.

The Intervenors believe all electric customers should pay fair prices to access and maintain the electric grid. However, net metering customers should not be treated differently than customers that invest in residential conservation measures that reduce energy use. This filing by Idaho Power singles out net metering customers who are a very small portion of its customer base with the aim of applying an as of yet unspecified rate hike and charges to them alone.

In conclusion, based on the foregoing and the content of the previous pleadings filed by ICEA and Auric Solar, the Intervenors respectfully request that this case be dismissed.

#### **ALTERNATIVE RELIEF**

Similar to ICEA, Auric Solar, LLC ("Auric Solar") and the Idaho Conservation League ("ICL"), the Intervenors recognize that the issues raised by Idaho Power in its case must be considered and resolved along with other factors in order for a just and reasonable result to be reached. The Intervenors are encouraged and appreciate that Idaho Power has made the request for the Commission to open a generic docket to determine a compensation structure for customer-owned distributed energy resources that incorporates the costs and benefits that it



brings to the electric system.

In the event the Commission declines to dismiss this case, or even if it does, it seems logical for it to establish a process by which all concerned parties can study and evaluate the costs and benefits of distributed generation that would potentially lead to a negotiated solution that benefits the Company, its customers and the collective intervenors' interests.

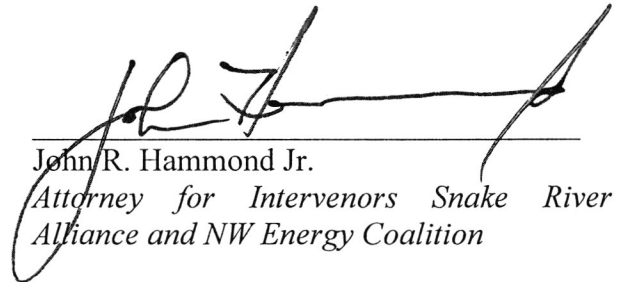
By way of example, in the state of Oregon, Idaho Power participated actively in a docket setting the necessary elements to be included in a resource value of solar methodology for each of Oregon's regulated utilities. Phase I of that docket has concluded. Phase II, whereby each of Oregon's regulated utilities - including Idaho Power - plugs respective values into the methodology, has just recently begun. It seems to make sense that Idaho Power simultaneously use the Oregon methodology or a variant thereof to accommodate any differences between jurisdictions, to determine resource value of solar figures for its Idaho service territory. Understandably, the Commission could certainly develop its own methodology for all regulated utilities in Idaho should it determine that to be most prudent path forward.

Another Idaho neighbor, Montana, has also recently wrestled with the net metering question. As a result of continued battles to both expand and limit net metering, the legislature ordered NorthWestern Energy to conduct a cost/benefit study for net-metered systems. Subsequently, the Montana Public Service Commission initiated a docket to determine the minimum information requirements, with input from stakeholders, for the cost/benefit study. NorthWestern Energy has hired a third-party consultant to conduct the study, to be filed with the Montana Commission by April 1, 2018. Based on the foregoing, and in the alternative to dismissal, the Intervenors respectfully request that the Commission vacate the current case schedule and order the parties to come together to discuss, as Auric Solar states, "a timeline,

methodology, source of inputs, and technical group to study the costs and benefits of net metering and on-site generation, with the results to inform an eventual general rate case.” See Auric Solar, LLC’s Joinder and Memo in Support of ICEA’s Motion to Dismiss at p. 8.

DATED this 3<sup>rd</sup> day of November 2017.

FISHER PUSCH LLP



John R. Hammond Jr.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November, 2017, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by electronic mail, addressed as follows:

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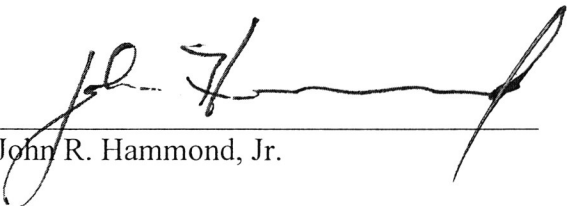
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