



EARTHJUSTICE

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May 29, 2018

Idaho Public Utilities Commission
Office of the Secretary
RECEIVED

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Boise, Idaho

By Federal Express and Electronic Mail

Diane Hanian
Commission Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, ID 83702

Re: Case No. IPC-E-17-13, Vote Solar's Petition for Reconsideration

Dear Ms. Hanian:

Enclosed, please find for filing in the above-referenced case the original and seven copies of Vote Solar's Petition for Reconsideration.

Please contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

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Enclosures

I. The Company's Application.

The Company's Application to separate on-site generation customers from standard service R&SGS customers was "based on two underlying rationales: (1) traditional R&SGS customers are subsidizing on-site generators because they are billed on a net-monthly basis; and (2) their load service requirements and usage characteristics are fundamentally distinct." Final Order at 5. However, as the case progressed, the Company focused only on the difference in load shapes (time, nature, and pattern of use), rather than an alleged subsidy based on cost-of-service. *See* Surrebuttal Testimony of Timothy E. Tatum at 4:4-15 (The Company's evidence is based on load service requirements and usage characteristics and not the cost to serve); Hr'g Tr. at 257:19-258:9, 261:5-9, 275:9-16, 530:10-16. All of the Company's evidence related to different load shapes—or time, nature, and pattern of use—was limited to net metering customers. *See e.g.*, Hr'g Tr. at 758:2-12. There was no evidence at hearing showing the loads, usage, or impacts on the grid from customers who self-generate but who do not net meter and do not export any electricity to the Company's distribution system. For example, there was no evidence regarding customer load shapes for customers who self-generate and store excess generation in a battery rather than exporting it to the grid. In fact, Company witness Mr. Tatum confirmed that the Company does not possess any such evidence.

Q And you don't have any load data for what a load shape for that type of customer with battery storage and no exports looks like; is that right?

A I do not, no, and I'm not aware of the Company having any such customer to evaluate.

Q Right, and so the Commission has no data to compare a load shape of a storage with a solar customer to an average or other non-generating customer's load shape?

A I don't know if they do or not, but the Company doesn't possess that and we haven't presented it in this case, because we don't possess it.

Hr'g Tr. at 349:16-350:2.

II. The Commission's Final Order.

The Commission approved the Company's request to separate customer-generators into a separate class. However, in doing so, the Commission's findings, conclusions, and reasoning were specific to customer-generators who export electricity. The findings and reasoning do not support a decision to separate customer-generators who do not export electricity to the grid.

As a result, and based on the evidence before us, we find it is time to distinguish a class of customers that uses the grid for standard energy import and use [sic], from a class of customers that uses the grid to both import and export energy.

...

To reiterate, we recognize the fundamental difference between, as an example, a residential customer with no on-site generation and one that can both import energy from, and export it to, the Company's grid using the same infrastructure. This bi-directionality is distinct from a customer purely offsetting its own energy usage outside of the grid. The bi-directional customer can push energy back to the grid whenever its generation source and timing allows it to, with the Company having limited control over the use and distribution of this somewhat unpredictable resource. Because of this bi-directionality, we conclude that net-metering customers with on-site generation present unique load and usage characteristics that lend toward class distinction. These characteristics include increased volatility in demand and load factors, excess net-energy exportation in the spring and summer, and more volatility in contributions to the Company's peak(s).

Final Order at 16-18 (emphasis added).

While the Commission focused on bi-directional customers, the approved new classes are not limited to customers who export. The Final Order closes Schedule 84 (Net Metering) and creates new Schedules 6 and 8. Final Order at 30-31. Schedules 6 and 8, as proposed by Idaho

Power,² apply to all R&SGS customers who own or operate a “Generation Facility fueled by solar, wind, biomass, geothermal, hydropower or represents fuel cell technology, with a total nameplate capacity rating of 25 kilowatts (kW) or less, that is connected in parallel with the Idaho Power System.” See Application Attachments 2 and 3. Those new classes apply broadly to any customer who generates with the specified technologies, not just those who export power to the Company’s distribution system.

III. Grounds For Reconsideration: The Hearing Record and Commission Findings Do Not Support Inclusion of Non-Exporting Customer-Generators in Schedules 6 and 8.

The Commission’s Final Order is “unreasonable, unlawful, erroneous or not in conformity with the law,” IDAPA 31.01.331.01, to the extent that it approves new schedules that apply to more customers than the Commission’s findings and the evidence presented at hearing justify.

Creating a new customer class must be based on “factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of use.” *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 420, 690 P.2d 350, 355 (1984); see also *Building Contractors Assoc. of Sw. Idaho, Inc. v. Idaho Pub. Util. Comm’n*, 128 Idaho 534, 539, 916 P.2d 1259, 1264 (1996). Creating a new customer class—based on one or more of those factors—must be done by making adequate findings of fact supported by competent and substantial evidence in the record. *Washington Water Power Co. v. Idaho Pub. Util. Comm’n*, 101 Idaho 567, 575, 617 P.2d 1242, 1250 (1980) (“[I]n regularly pursuing its authority the Commission must enter adequate findings of fact based upon competent and

² The Commission’s Final Order appears to approve Schedules 6 and 8 as proposed by the Company. See e.g., Final Order at 15 (“Based on our review of the record, we find it fair, just, and reasonable for the Company to separate on-site generation . . . customers into the newly proposed Schedules 6 and 8.”) (emphasis added).

substantial evidence.”) (citing *Boise Water Corp. v. Idaho Pub. Util. Comm’n*, 97 Idaho 832, 555 P.2d 163 (1976); *Hartwig v. Pugh*, 97 Idaho 236, 542 P.2d 70 (1975)). Thus, the Commission must make proper findings justifying a new customer class based on factors such as differences in conditions of service or time, nature, and pattern of use, and those findings must be supported by evidence. *Washington Water Power Co.*, 101 Idaho at 575 (citing *Oregon Shortline R. Co. v. Pub. Util. Comm’n of Idaho*, 47 Idaho 482, 484, 276 P. 970, 971 (1929); *Baltimore & Ohio R. Co. v. Aberdeen & Rockfish R. Co.*, 393 U.S. 87, 92 (1968)).

The Commission’s findings focused on the differences between customers who export electricity and those who do not, Final Order at 17-19, whereas the approved Schedules 6 and 8 apply to customers who self-generate but do not export. The Commission’s findings about customers who export electricity—that such customers “can push energy back to the grid,” have “excess net-energy exportation in the spring and summer,” and can have “effect on circuits, voltage management, islanding, and load cycle adjustments”—do not apply to customers who do not export. Final Order at 18. The Commission’s distinctions between non-exporting customers and those whose load variations are “tied to a load that includes an export component” also do not apply to non-exporting customer generators. Final Order at 19. Further, without exports there is no “netting” of electricity flows across the meter during the billing period, so the Commission’s findings “that customers with on-site generation are differentiating themselves by exporting” and that customers can avoid paying “their fair share of fixed costs” by “[t]he present netting” do not apply. Final Order at 17. In other words, to the extent that the Commission’s findings support segregation of customer-generators who export electricity to the grid, those findings do not also support segregating customers who do not export. Rather, a non-exporting

customer does not “mask”³ consumption with net-use through exports, but is “purely offsetting its own energy usage outside of the grid,” which the Commission distinguished from bi-directional, exporting customers. Final Order at 17-18.⁴

The “fundamental difference” the Commission identified as the basis to separate customers into new Schedules 6 and 8 was the ability of customers with generation to “both import energy from, and export it to, the Company’s grid using the same infrastructure.” Final Order at 17. The Final Order does not address non-exporting customer-generators, and there was no evidence presented by any party about the load characteristics of customers with behind-the-meter generation but who do not export. For example, there was no evidence of residential or small general service customers who limit self-generating capacity to less than the customer’s minimum daytime load, install a minimum import relay, reverse power relay or dynamically controlled inverter, or install a battery or other energy storage device.⁵ In short, the Final Order makes no findings and provides no reasoning for including customers who are not “bi-directional” in the new customer classes that the Commission specifically approved “[b]ecause of . . . bi-directionality.” Final Order at 18.

Therefore, because the Final Order approves Schedules 6 and 8, which apply to customers who do not export and are not “bi-directional,” it is not supported by record evidence

³ The term “mask” was used by Company witness Tatum, who also used it to refer to monthly netting exports and imports through bi-directional flow. Hr’g Tr. at 278:24-279:5, 283:20-284:20, 345:7-16.

⁴ The evidence in the hearing also confirmed that there is “some good overlap” in the distribution of loads of customers with and customers without self-generation when export flows are removed. Hr’g Tr. at 770:1-771:15; *see also id.* at 775:23-776:9.

⁵ *See e.g.*, Mike Coddington *et al.*, Photovoltaic Systems Interconnected onto Secondary Network Distribution Systems –Success Stories, National Renewable Energy Laboratory, Technical Report NREL/TP-550-45061 at iii-iv (April 2009) (identifying methods to prevent solar PV energy from being fed back to the utility’s distribution system), <https://www.energy.gov/sites/prod/files/2014/11/f19/45061.pdf>.

or findings, which were limited to bi-directional customer-generators. The Final Order is “unjust or unwarranted” and should be changed. Idaho Code § 61-626(3).

IV. Requested Relief.

For the reasons stated above, and pursuant to the Commission’s authority and duty to correct errors in its final orders, Vote Solar respectfully requests the Commission issue an order on reconsideration reversing its approval of Schedules 6 and 8 as proposed by the Company and, instead, require that Schedules 6 and 8 apply only to customer-generators who export electricity to the Company’s distribution system. No further evidentiary hearing, written briefs, comments, or interrogatories are required for this change.

DATED this 29th day of May, 2018

Respectfully submitted,

/s/ David Bender

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of May, 2018, served the foregoing VOTE SOLAR'S PETITION FOR RECONSIDERATION upon all parties of record in this proceeding, via the manner indicated:

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