



ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES

NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

RECEIVED
2018 AUG 24 AM 9:59

IDAHO PUBLIC
UTILITIES COMMISSION

August 24, 2018

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 Response Brief on Reconsideration

Dear Ms. Hanian:

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

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

Sincerely,

Nick Thorpe, Earthjustice
Litigation Assistant, Clean Energy
Earthjustice
1625 Massachusetts Avenue N.W., Suite 702
Washington, D.C. 20036
(202) 797-4303
nthorpe@earthjustice.org

Enclosures

David Bender, WI Bar # 1046102 (Pro Hac Vice)
Earthjustice
3916 Nakoma Road
Madison, WI 53711
(202) 667-4500, ext 5228
dbender@earthjustice.org

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
IDAHO POWER COMPANY FOR)	
AUTHORITY TO ESTABLISH NEW)	CASE NO. IPC-E-17-13
SCHEDULES FOR RESIDENTIAL AND)	
SMALL GENERAL SERVICE CUSTOMERS)	VOTE SOLAR'S RESPONSE
WITH ON-SITE GENERATION)	BRIEF ON RECONSIDERATION
)	

Vote Solar respectfully submits this Response Brief on Reconsideration responding to new arguments and evidence proffered by Idaho Power Company ("Idaho Power" or "Company") as well as comments made by Rocky Mountain Power ("RMP") and the Idaho Irrigation Pumpers Association, Inc. ("IIPA").

The Idaho Public Utilities Commission's ("Commission") Order No. 34046, dated May 9, 2018 ("Final Order"), in this docket was clear that the decision to separate net metering customer-generators from the residential and small general service classes ("R&SGS") was based on those customers' distinguishing characteristic of exporting electricity to the grid. Final Order at 16-17 ("a class of customers that uses the grid to both import and export energy" and 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"), 17-18 ("bi-directional" customers that "push energy back to the grid").

I. The Commission Should Not Countenance Idaho Power's Attempt to Relitigate This Case With New Evidence Not Admitted At Hearing And Which No Party Was Allowed To Test Through Discovery and Cross Examination.

It was Idaho Power's burden at hearing to produce sufficient competent evidence showing that customer-generators have a sufficiently different characteristic from other R&SGS customers based on cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of use.¹ To the extent Idaho Power met that burden, it did so only based on customer-generators' unique attribute of exporting electricity to Idaho Power's grid. Idaho Power failed to produce any evidence at hearing that non-exporting customer-generators who consume all of their generation behind the meter to reduce purchases from the company but do not export are sufficiently different from the wide array of diverse R&SGS class customers to exclude them from the existing class.

As IDAPA 31.01.01.331.03 and .332 make clear, reconsideration may be based on briefing if the Commission determines that no additional fact finding is required, or it can be based on additional evidence adduced through a further hearing. Vote Solar petitioned for reconsideration on the limited question of whether—consistent with the Commission's original findings and reasoning—Schedules 6 and 8 should be limited to bi-directional customers who export. As Vote Solar's Petition for Reconsideration made clear, Vote Solar did not request that the Commission take additional evidence. Vote Solar's Petition for Reconsideration at 1 n.1 (May 29, 2018) ("Vote Solar Petition"); Commission Order No. 34098 at 1 (June 28, 2018)

¹ *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 420, 690 P.2d 350, 355 (1984); see also *Application of Boise Water Corp. to Revise & Increase Rates Charged for Water Serv.*, 128 Idaho 534, 539, 916 P.2d 1259, 1264 (1996). Contrary to IIPA's Brief in Opposition (Aug. 10, 2018) ("IIPA Brief"), it was not Vote Solar (or any other intervenor's) obligation to produce evidence about self-generating customers' ability to export or not export to the grid. (IIPA Brief at 2). As the movant seeking to create new classes, Idaho Power had the burden of proof and production to show that the customers it seeks to force into a new class meet the criteria for separate class treatment. IIPA provides no legal authority for its mistaken attempt to shift the burden to Vote Solar and its arguments are without merit.

(“Order Granting Reconsideration”). The Commission’s Order Granting Reconsideration asked for “briefing related to whether a customer’s ability to export energy should determine if the customer should be included in new Schedules 6 and 8.” Order Granting Reconsideration at 2. The Commission specifically did not order additional hearings and did not find that the petition presented issues of fact requiring admission of new evidence through a hearing. *Id.*; IDAPA 31.01.01.332.

Notwithstanding the limited scope of the request for reconsideration and the Commission’s request for briefs, rather than evidence, Idaho Power’s August 10, 2018 submission goes well beyond a “brief” and contains load data and analysis not previously provided in this case. The Company concedes that the load analysis it offers is new. Idaho Power Company’s Opening Brief on Reconsideration at 4 (Aug. 10, 2018) (“IPC Brief”). The other parties are not able to conduct discovery into the new analysis and cannot test it through cross-examination. The Commission should not countenance Idaho Power’s attempt to backfill the record with analysis it could have, but failed to introduce, in the company’s direct case at hearing. Idaho Power could have, but did not, address non-exporting customers in its application and direct case. Its attempt to re-litigate this case through new evidence in a “brief” exceeds the grant of reconsideration. The Commission should reject Idaho Power’s arguments and evidence.

II. The Commission’s Final Order Was Based On The Unique Ability to Export and Not Fixed Cost Collection.

Even if the Commission were to consider Idaho Power’s inappropriate *post hoc* attempt to introduce new evidence through a “brief” on reconsideration, the Commission should still reject the substance of Idaho Power’s arguments as a revisionist interpretation of the Commission’s Final Order. The Commission separated bi-directional customers into a new class based on those customers’ exports, not based on their ability to reduce their consumption and

“avoid paying the full fixed cost to serve them” as Idaho Power and RMP contend. IPC Brief at 2.

During the hearing in this case, Idaho Power failed to produce a cost of service study supporting its argument that customers with distributed generation do not cover their costs. Nor did Idaho Power show that any under-collection of costs, if it exists, is unique to customer-generators, rather than common to many customers as a natural result of large heterogeneous classes in ratemaking. The Commission—while “informed” by arguments regarding “cost shifting or subsidization,” Final Order at 16-17—explicitly based its decision to create new classes solely on the distinction of bi-directional flow. In fact, the Commission expressly found that analyses about cost shifts “were incomplete,” *id.* at 17, and “the cost of serving on-site generation customers, when the true value of their interconnection is realized, may be less than the cost of serving standard service customers,” so postponed making any conclusions regarding costs until after a separate docket to address issues regarding costs and benefits through a “thorough, data-driven evaluation.” *Id.* at 22-23. Thus, the Commission’s decision to separate customers with generation was not based on cost shifts, but because “customers with on-site generation are differentiating themselves by exporting energy to the Company’s grid.” *Id.* at 17.

Moreover, to the extent the Commission’s Final Order addressed the concern that a two-part rate fails to collect “the full fixed costs to serve” customers with low energy usage, IPC Brief at 2, 13-17, it recognized that those concerns apply to all customers with low energy usage.

There is great diversity within the current R&SGS classes and, again, other potential groups (such as cabin owners and other low-use customers or EE adopters) may not be paying their fair share of fixed costs being recovered through the variable rate. However, these customers do not export excess energy to the Company’s system, and they cannot “mask” their consumption characteristics with net-energy use.

Final Order at 17. Like other subgroups in the R&SGS classes that may have lower use of grid-supplied electricity and lower revenues—*e.g.*, those who are seasonal, those who heat with wood stoves, those who switch to gas water heating, those who are efficient, those with smaller family sizes, or those who work outside the home—a customer-generator who do not export “uses the grid for standard energy import” and “purely offset[s] its own energy usage outside of the grid.” *Id.* at 16-18. The Commission distinguished such customers from those who export and ordered the Company “to undertake a comprehensive customer fixed-cost analysis to determine the proper methodology and ‘spread’ of fixed costs as they relate to the Company’s customers.” *Id.* at 23. That is, contrary to the arguments made by Idaho Power and RMP on reconsideration, the Commission recognized that the collection or spread of fixed costs was the basis for ordering a broad analysis, while limiting the basis for separating customer-generators to the fact that those customers export. *Id.*

Idaho Power’s attempt to read the Commission’s Final Order as separating customer-generators based on their cost of service or recovery of fixed costs—as opposed to because of their exports—misreads the Final Order. Therefore, Idaho Power’s attempt to extend the Final Order to non-exporting customers based on fixed cost collection arguments also fails.

III. Idaho Power’s New Evidence Incorrectly Focuses On Average Loads Before and After Generation Rather Than Whether the Loads of Non-Exporting Generators’ Loads Fall Within the Range of the Diverse R&SGS Classes.

Idaho Power’s August 10, 2018, submission also uses the wrong metric when it alleges a distinction between non-exporting customer-generators and the wide range of loads within the diverse R&SGS classes. Idaho Power compares the loads of customer-generators before and after they install generation. IPC Brief at 4-12, Attachments 1 and 2. There is, unsurprisingly, a difference. There would also be a difference in loads before and after many customer changes—before and after air conditioning, an electric vehicle purchase, or switching from electric to gas

water heating. But, that comparison is not relevant to creating a new customer class. The Commission's decision to create Schedules 6 and 8 was due to the bi-directional flow from those customer-generators distinguishing them from the range of loads within the diverse R&SGS classes. Unlike the unique characteristic of exports, Idaho Power does not claim and cannot show that the proxy load data Idaho Power submits for non-exporting customer-generators show loads outside the broad range of loads within the R&SGS classes.²

Moreover, Idaho Power's implicit metric of differences between a customer's loads before and after some change in consumption or equipment is unworkable as a basis to create new classes. Such a metric has no logical end point. It could justify new classes for almost any customer change, from air conditioning and electric vehicle purchases to increased family size and appliance replacement. The Commission should retain its original metric based on the unique attribute of exports and reject Idaho Power's attempt to invent an expansive and unworkable basis for creating new customer classes.

IV. Parallel Connection Is Unrelated to Whether Non-Exporting Customers Should Be Separated Into a New Class.

There is no dispute that customers with on-site generation connect in parallel to the Company's system, are "grid-tied," and take service (and pay for it) from the Company when their generation is not meeting the customer's full needs. IPC Brief at 17-25; Rocky Mountain Power's Comments in Opposition of Vote Solar's Petition for Reconsideration at 2-3 (Aug. 10,

² To the extent that the Commission allows new evidence through reconsideration—despite limiting reconsideration to briefing through Order No. 34098—Vote Solar incorporates the proffered reply testimony of Rick Gilliam filed with Vote Solar's Notice of Motion for Leave filed on March 7, 2018, in this case. That testimony shows that when exports are excluded, customer-generator loads are within the wide range of the diverse R&SGS classes. That is consistent with Dr. Faruqui's testimony on the stand that, when exports are excluded from customer-generator load shapes, those loads overlap with the wide range of loads in the diverse R&SGS classes. Hr'g Tr. at 770:1-771:15; *see also* Final Order at 17 ("There is great diversity within the current R&SGS classes.").

2018) (“RMP Comments”). However, that fact is unrelated to whether parallel option customers who do not export have the unique characteristic upon which the Commission based its decision to create Schedules 6 and 8: bi-directional flow. Final Order at 16-19. The Commission’s reasoning and decision in this case should not be limited by prior tariff language using parallel generation as the distinguishing characteristic.

V. Idaho Power’s Choice to Use Hourly Metering is Unrelated to Whether Customer-Generators Have the Unique Characteristic of Bi-Directional Flow Upon Which The Commission Based its Decision to Create Schedules 6 and 8.

Idaho Power explains how its current metering configuration only allows determination of hourly net flow. IPC Brief at 25-27. Thus, Idaho Power argues, intra-hour bi-directional flow cannot be detected with its current meter configurations. *Id.* at 27. But, Idaho Power is only correct that bi-directional flow cannot be detected if a customer is able to manage generation and loads in every single hour, indefinitely, so that there is never an export. If an hourly export ever exceeded the imports that hour, the net flow would register a negative value and the export would be detectable. As Staff’s Technical Brief points out, in practice, it is virtually impossible that customers could size their generation and manage their loads so that they would have undetectable exports even under the Company’s current metering configuration. Staff’s Technical Brief in Response to Commission Order No. 34098 at 5-6 (Aug. 10, 2018) (“Staff Technical Brief”).

Moreover, an inability to detect bi-directional flow with Idaho Power’s current meter configuration does not mean limiting Schedules 6 and 8 to exporting customers “is not enforceable” as the Company asserts. IPC Brief at 27. Rather, it just means that something other than the meter must be used. As Staff’s Technical Brief points out, meters can be configured to only record imports and there are devices other than meters to make exports impossible and, therefore, any prohibition on exports “enforceable.” Staff Technical Brief at 3-4 (explaining

metering and export limiting devices to ensure against exports), 6 (grid-tie inverters make exports impossible).

Furthermore, making a limitation on exports “enforceable” is not necessary, and concerns about customers modifying their export limiting devices are also overblown. *See* RMP Comments at 7. As Idaho Power acknowledges, customers intending not to export will limit the size of their generation to prevent production greater than usage to avoid wasted generation.³ Customers who elect out of Schedule 6 or 8 by avoiding exports will not receive any credit for exports under Schedules 1 and 7 so they will have no incentive or reason to export or remove an export limiting device. Thus, while it is possible that a customer could install an export limiting device and later remove it, there is no reason for the customer to do so.⁴ Safety concerns related to incidental customer exports, or islanding, are resolvable through interconnection standards. It is not necessary that every interconnected parallel generator take and pay service under the same tariffs to ensure safety.

VI. Safety Concerns Can Be Addressed Regardless of Which Schedule Customers Take Service Under.

Vote Solar agrees with the Company and Staff that parallel operation of any generation should comply with safety protections and interconnection requirements. However, there is no reason that compliance with safety and interconnection standards—through Schedule 72 for example—can only be accomplished when customers pay for their electricity service through

³ *See, e.g.*, IPC Brief, Attachment 1 at 3 (customers with export limiting devices will limit the size of their system). In fact, the Company’s analysis assumes customers still net hourly flows, sizing their system to avoid generation in excess of “hourly energy needs.” *Id.* (emphasis in original). However, because export limiting devices prevent any outflow, customers with export limiting devices would size their generation even smaller than the Company assumes to avoid any export.

⁴ Moreover, an export limiting device is no different than the many other customer equipment behind the meter that could impact the Company’s system but over which “[t]he utility does not have direct control.” RMP Comments at 7. Rocky Mountain Power provides no authority for the implicit premise that the utility must control every aspect of a customer’s use behind-the-meter.

Schedules 6 and 8. Compliance with safety standards and taking service under Schedules 1 and 7 are not mutually exclusive.

Conclusion

For the foregoing reasons, and for the reasons set forth in Vote Solar's Petition for Reconsideration and Brief on Reconsideration, new Schedules 6 and 8 must be limited to bi-directional customer-generators who export electricity to the grid.

DATED this 24th day of August, 2018

Respectfully submitted,

/s/ David Bender

David Bender (Admitted *Pro Hac Vice*)

Earthjustice

3916 Nakoma Road

Madison, WI 53711

(202) 667-4500, ext. 5228

dbender@earthjustice.org

Counsel for Vote Solar

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on or before this 24th day of August, 2018, served the foregoing VOTE SOLAR'S RESPONSE BRIEF ON RECONSIDERATION upon all parties of record in this proceeding, via the manner indicated:

FedEx and Electronic Mail

Diane Hanian
Commission Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, ID 83702
Diane.holt@puc.idaho.gov
(Original and seven copies provided)

Electronic Mail

IDAHO POWER COMPANY

Lisa D. Nordstrom
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, ID 83707
lnordstrom@idahopower.com
dockets@idahopower.com

Timothy E. Tatum
Connie Aschenbrenner
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, ID 83707
ttatum@idahopower.com
caschenbrenner@idahopower.com

IDAHO CONSERVATION LEAGUE

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

COMMISSION STAFF

Sean Costello
Deputy Attorney General
Idaho Public Utilities Commission
472 West Washington (83702)
PO Box 83720
Boise, ID 83720-0074
Sean.costello@puc.idaho.gov

IDAHYDRO

Idahydro c/o C. Tom Arkoosh, and
Idaho Clean Energy Association c/o C. Tom
Arkoosh
Arkoosh Law Offices
802 W. Bannock Street, Suite 900
P.O. Box 2900
Boise, ID 83701
Tom.arkoosh@arkoosh.com
Erin.cecil@arkoosh.com

**IDAHO IRRIGATION PUMPERS
ASSOCIATION, INC.**

Idaho Irrigation Pumpers Association, Inc.
Eric L. Olsen
ECHO HAWK & OLSEN, PLLC
505 Pershing Ave., Ste. 100
P.O. Box 6119
Pocatello, Idaho 83205
elo@echohawk.com

Idaho Irrigation Pumpers Association, Inc.
Anthony Yankel
12700 Lake Ave., Unit 2505
Lakewood, OH 44107
tony@yankel.net

AURIC LLC

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

Preston N. Carter
Deborah E. Nelson
Givens Pursley LLC
601 West Bannock Street
Boise, ID 83702
prestoncarter@givenspursley.com
den@givenspursley.com

VOTE SOLAR

David Bender
Earthjustice
3916 Nakoma Road
Madison, WI 53711
dbender@earthjustice.org

Briana Kobor
Vote Solar
360 22nd Street, Suite 730
Oakland, CA 94612
briana@votesolar.org

SIERRA CLUB

Kelsey Jae Nunez
KELSEY JAE NUNEZ LLC
920 N. Clover Dr.
Boise, ID 83703
kelsey@kelseyjaenunez.com

Tom Beach
Crossborder Energy
2560 9th Street, Suite 213A
Berkeley, CA 94710
tomb@crossborderenergy.com

Zack Waterman
IDAHO SIERRA CLUB
503 W. Franklin St.
Boise, ID 83702
Zach.waterman@sierraclub.org

Michael Heckler
3606 N. Prospect Way
Garden City, ID 83714
Michael.p.heckler@gmail.com

CITY OF BOISE CITY

Abigail R. Germaine
Deputy City Attorney
Boise City Attorney's Office
150 N. Capitol Blvd.
P.O. Box 500
Boise, Idaho 83701-0500
agermaine@cityofboise.org

**IDAHO CLEAN ENERGY
ASSOCIATION**

Preston N. Carter
Deborah E. Nelson
Givens Pursley LLC
601 West Bannock Street
Boise, ID 83702
prestoncarter@givenspursley.com
den@givenspursley.com

**SNAKE RIVER ALLIANCE AND NW
ENERGY COALITION**

John R. Hammond Jr.
Fisher Pusch LLP
101 South Capitol Blvd., Suite 701
PO Box 1308
Boise, Idaho 83702
jrh@fisherpusch.com

Snake River Alliance
wwilson@snakeriveralliance.org

NW Energy Coalition
diego@nwenergy.org

**INTERMOUNTAIN WIND AND SOLAR,
LLC**

Ryan B. Frazier
Brian W. Burnett
KIRTON McCONKIE
50 East South Temple, Suite 400
P.O. Box 45120
Salt Lake City, UT 84111
rfrazier@kmclaw.com
bburnett@kmclaw.com

Intermountain Wind and Solar, LLC
1952 West 2425 South
Woods Cross, UT 84087
doug@imwindandsolar.com

/s/ Nick Thorpe

Nick Thorpe, Litigation Assistant
Earthjustice