

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) CASE NO. IPC-E-17-13
AUTHORITY TO ESTABLISH NEW)
SCHEDULES FOR RESIDENTIAL AND)
SMALL GENERAL SERVICE CUSTOMERS) ORDER NO. 33946
WITH ON-SITE GENERATION)**

On July 27, 2017, Idaho Power Company (“Idaho Power” or “the Company”) applied for authority to establish new schedules for residential and small general service customers (“R&SGS customers”) with on-site generation (“Application”). Idaho Power contends that its existing retail pricing structure does not accurately reflect the cost to serve its customers with on-site generation who require services from Idaho Power, but who also meet some of their own energy needs with on-site, customer-owned systems, such as rooftop solar.

The Commission issued a Notice of Application (Order No. 33843), and the following parties intervened in the case: Auric Solar (“Auric”); City of Boise (“Boise”); Idaho Conservation League (“ICL”); Idaho Clean Energy Association (“ICEA”); Idahydro; Intermountain Wind and Solar (“Intermountain”); Idaho Irrigation Pumpers Association (“IIPA”); Sierra Club (“Sierra”); Snake River Alliance (“SRA”); NW Energy Coalition (“NWECA”); and Vote Solar. The Company, Staff and intervening parties’ subsequently proposed a case schedule, which the Commission adopted. *See* Order No. 33901. The Commission also suspended the Company’s proposed effective date. *Id.*

On October 27, 2017, ICEA moved to dismiss the Company’s Application. *See* Motion to Dismiss. Auric, Boise, SRA, NWECA, ICL, Sierra, and Intermountain either fully or partially joined in ICEA’s Motion. Commission Staff, Idahydro, IIPA, and Vote Solar, on the other hand, took no position on the motion.

Idaho Power subsequently filed an Answer to ICEA’s Motion to Dismiss and to the other intervenors’ corresponding joinders. Intervenor Auric then moved for leave to file a reply to Idaho Power’s Answer. Its reply was attached to the motion. *See* Auric’s Motion to File Reply to Idaho Power Company’s Answer to ICEA’s Motion to Dismiss (“Auric’s Motion”). No one responded to Auric’s Motion.

The Commission considered the parties' motions at its December 4, 2017, open meeting. Following the discussion, the Commissioners voted to deny the motions. With this Order, the Commission further memorializes its decision.

SUMMARY OF PLEADINGS

A. ICEA's Motion to Dismiss

ICEA's Motion urged the Commission to dismiss the Company's Application as *res judicata* because the Commission had previously decided, in Case No. IPC-E-12-27, Order No. 32846, that on-site generation rates "should not be examined in isolation but should be fully vetted in a general rate proceeding." ICEA's Memorandum in Support of Motion to Dismiss at 2. ICEA argued that Idaho Power's Application brought forward the same facts as the prior case, but outside of a general rate case and without first having sufficiently discussed the issues with stakeholders, as directed by the Commission's prior order. *Id.*

ICEA thus asked the Commission to dismiss this case and order alternative relief "similar to . . . [that used in Case No. IPC-E-14-18] in timeline, methodology, source of inputs, and technical group to study the costs and benefits of net metering, and . . . a settlement conference to discover whether the parties can agree upon such as concept." *Id.* at 6.

B. Intervenor's Joinders in ICEA's Motion

Auric, Boise, SRA/NWEC, ICL, Intermountain, and Sierra fully or partially joined ICEA's Motion as summarized below.

Auric

Auric joined ICEA's Motion and added that Auric's distributed energy resource ("DER") customers cannot accurately analyze the potential costs and benefits of net metering if the customers only know they will be treated differently but not *how* they will be treated differently. Auric's Joinder at 2.

Auric asked that, "as an alternative to dismissal . . . the Commission order the Parties to come together to discuss 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." *Id.* at 8.

Boise

Boise joined ICEA's Motion and added that proposing to separate net-metering customers from other R&SGS customers creates too much uncertainty. Boise Joinder at 4. Boise argued that its public policy goal of providing and using more renewable energy requires more certainty for Idaho Power's customers. *Id.* at 3.

Boise argued that in lieu of outright dismissal, the Commission should order stakeholders to convene settlement conferences and workshops alongside the formation of a technical advisory committee. *Id.* at 5.

SRA/NWEC

SRA/NWEC joined ICEA's Motion and argued that Idaho Power has not shown, or sufficiently analyzed, the difference between customer classes and rates under the criteria established in *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984). SRA/NWEC Joinder at 4-5.

SRA/NWEC asserted the Company should not be allowed to separate on-site generators from the existing R&SGS class without first studying avoided energy benefits, avoided system losses, avoided transmission capacity benefits, avoided distribution capacity benefits, and avoided environmental costs (including the health costs of decreased carbon emissions). *Id.* at 7.

SRA/NWEC also argued that customers who choose to decrease their consumption should not be treated differently from regular customers, and provided examples of DER case studies in Oregon and Montana. *Id.* at 9.

ICL

ICL partially joined ICEA's Motion, asserting that Idaho Power has ignored three ICL-proposed alternative processes for net metering. ICL Joinder at 2-3. ICL further argued that, while ratemaking inevitably involves cost shifting, Idaho Power should analyze net metering under the current class structure before claiming to need new net metering classes. *Id.* at 8.

ICL recommended that objective criteria be set through a public forum that addresses transparency, energy efficiency cost-benefit tests, relevant elements, a timeframe that aligns with the life of the resource, and a respect for state energy policies. *Id.* at 7-9.

Intermountain

Intermountain partially joined ICEA's Motion and argued that Idaho Power has not shown that changed circumstances require new, separate classes. Intermountain Joinder at 2. Intermountain contended that the costs and benefits of distributed energy should first be studied before a new class is allowed. *Id.*

Intermountain recommended that, in lieu of dismissing the Application, the Commission should process the case over three years, and order workshops on rates and the value of distributed energy, and hold an expert credit proceeding to include a load study and separate technical hearing. *Id.* at 5-6.

Sierra

Sierra partially joined in ICEA's Motion and argued that Idaho Power has not studied or quantified benefits of on-site generation, and no cost-shifting emergency exists that might warrant class separation. Sierra Joinder at 3.

Sierra also proposed an alternative case procedure, including a settlement conference to set a technical review process with a full cost-benefit analysis. *Id.*

C. Idaho Power's Answer

Idaho Power argued *res judicata* does not apply because this case presents different facts from those raised in Case No. IPC-E-12-27. Specifically, the Company claimed that, between June 2017 and October 31, 2017, "net metering customer generated capacity has increased by 42 percent," (*Id.* at 13) while certain industry participants have misinformed customers about net metering rates. *Id.* at 5-6, 17. The Company thus argued that continued cost subsidization must be dealt with through class separation. *Id.* at 5-6.

The Company further argued that the Commission has broad regulatory, legislative, and judicial functions, and that narrowly and strictly adhering to a previous decision would lead to absurd results, in that the Commission could not undertake ratemaking. *Id.* at 7-8. The Company also claimed it has complied with prior Order No. 32846 by filing annual net-metering reports since 2013 as well as engaging stakeholders through focus groups and other meetings over the past two years. *Id.* at 8-12.

The Company also noted that it does not know when it will file its next general rate case, and that the new facts relating to net metering should be addressed now in order that the end result might be used as an input in its next general rate proceeding. *Id.* at 12.

Idaho Power cautioned that the rooftop solar industry and similar industries are misinforming customers that electric rates can be locked in when, in fact, the Company's rates are subject to change. *Id.* at 14-18. The Company characterized its Application as its attempt to prevent its customers from making "five digit investments under a faulty premise" that they can expect long-term locked rates. *Id.* at 18.

With respect to the motions for alternative relief, Idaho Power noted that, in its Application, it asked the Commission to initiate a generic case after this case ends so the Company, other utilities, and stakeholders can study net-metering costs and benefits. *Id.* at 21-22. The Company then agreed to engage in a multi-utility settlement process on the proper value of distributed generation when the issues on this case have been decided.

The Company also contended that the movants' improperly point to Case No. IPC-E-14-18—a case involving Solar Integration Rates and Charges—as a potential model for alternative relief when the issues in that case were distinct from the net-metering issues presented here. *Id.* at 22.

D. Auric's Motion for Leave to File a Reply to Idaho Power's Answer

After Idaho Power filed its Answer, Auric asked for permission to file a reply to address what Auric claims were "inaccurate assertions against Auric Solar and others in the industry." Auric Reply at 1. Auric included its reply as part of its motion.

No one responded to Auric's motion.

FINDINGS AND CONCLUSIONS

Idaho Power Company is an electric corporation and public utility subject to the Commission's regulation under the Idaho Public Utilities Law. The Company's rates, charges, classifications, rules, and practices related to electric service are subject to the Commission's jurisdiction. *See Idaho Code* §§ 61-119, 129, 501, 502, and 503.

Having reviewed the record, the Commission finds that all pending motions should be denied because the movants' *res judicata* arguments are misplaced. While we are aware that *res judicata* may preclude parties from relitigating claims before agencies, *see e.g., Magee v. Thompson Creek Mining Co.*, 152 Idaho 196, 268 P.3d 464 (2012), and *Welch v. Del Monte Corp.*, 128 Idaho 513, 915 P.2d 1371 (1976), *res judicata* does not preclude Idaho Power from filing the current Application because that Application presents different operative facts, both in time and substance, from those presented in Case No. IPC-E-12-27.

This case involves a request to reclassify certain net-metering customers five years after IPC-E-12-27 concluded and after demonstrable growth in the net-metering sector, public outreach, and the procurement of more relevant data. The facts here are simply different from those presented in the prior case.

Further, while the Commission decided in the prior case not to move net-metering customers into separate classes, based on the facts that existed at that time, it recognized that this issue could be reassessed later on. It is well settled that the Commission, as a legislative agency, “is not bound to decide future cases in the same way it had decided similar cases in the past.” *Intermountain Gas Co. v. Idaho Public Utilities Comm’n*, 97 Idaho 113, 119, 540 P.2d 775, 781 (1975). Therefore, “[s]o long as [the Commission] adequately explain[s] [its] departure from prior rulings so that a reviewing court can determine that their decisions are not arbitrary or capricious, orders based upon positions substantially different than those taken in previous proceedings can be upheld.” *Id.*; see also *Building Contractors Ass’n of Southwestern Idaho v. Idaho Public Utilities Comm’n*, 151 Idaho 10, 253 P.3d 684 (2011).

Regardless of the Commission’s prior decision not to reclassify net-metering customers under the facts presented in Case No. IPC-E-12-27, and that the classification issue should be vetted in a later general rate case, we find the rapid, large growth in net metering since that time makes it reasonable for us to reexamine classification now instead of waiting to decide that issue in a general rate case to be filed at some unspecified future time. We thus decline to dismiss this case.

With regard to the Parties’ arguments for alternative relief, we note that Idaho Power’s Application states that, as a result of stakeholder and installer input, the Company is asking the Commission to open a generic multi-utility docket after this case ends. The purpose of the generic case would be to establish “a compensation structure for customer-owned DERs that reflects both the benefits and costs that DER interconnection brings to the electric system” Idaho Power Answer at 12. This outcome appears to be almost consensual among the parties to this case. While the parties may have distinct notions of *how* the generic docket should operate, e.g., from a procedural standpoint and substantive elements of analysis, all participating parties desire a forum to determine DER costs and benefits and determine rate structures. If we later choose to open a generic docket, we would be amenable to having interested parties confer in that case about how best to process it, and to report their recommended procedure to us for possible adoption.

In closing, we share the Parties' concerns about certainty but, from a public policy perspective, we also worry that additional delays in grappling with DER classification could foster further uncertainty and have a chilling effect on the still nascent Idaho DER industry, the Company, policy makers and the general public.

ORDER

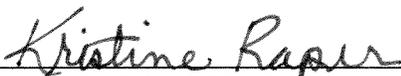
IT IS HEREBY ORDERED that ICEA's Motion to Dismiss, the associated joinders, and Auric's motion to reply are denied.

THIS IS AN INTERLOCUTORY ORDER. Any person interested in this Order may file a petition for review within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. A petition to review may request that the Commission: (1) rescind, clarify, alter, amend; (2) stay; or (3) finalize this Interlocutory Order. After any person has petitioned for review, any other person may file a cross-petition within seven (7) days. See Rules 321, 322, 323.03, 324, 325 (IDAPA 31.01.01.321-325).

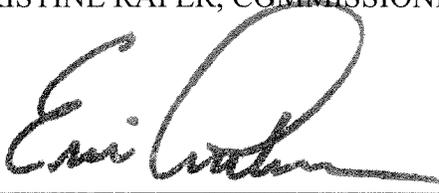
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *13th* day of December 2017.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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