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IDAHO PUBLIC
UTILITIES COMMISSION

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**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE PETITION OF
IDAHO POWER COMPANY TO STUDY
COSTS, BENEFITS, AND COMPENSATION
OF NET EXCESS ENERGY SUPPLIED BY
CUSTOMER ON-SITE GENERATION

Case No. IPC-E-18-15

BOISE CITY'S COMMENTS
REGARDING EXISTING ON-
SITE GENERATION
CUSTOMERS

COMES NOW, the city of Boise City, herein referred to as "Boise City", by and through its attorney of record, and pursuant to Rules 202 and 203 of the Rules of Procedure of the Idaho Public Utility Commission (IDAPA 31.01.01.202; 31.01.01.203) and, pursuant to that Notice of Motion to Approve Settlement Agreement, Notice of Briefing, and Notice of Schedule, Order No. 34460, filed on October 17, 2019, hereby submits its comments related to existing on-site generation customers:

BOISE CITY'S COMMENTS REGARDING EXISTING
ON-SITE GENERATION CUSTOMERS

I. INTRODUCTION

On October 19, 2018, pursuant to this Idaho Public Utility Commission's ("Commission") Order No. 34046 in Docket No. IPC-E-17-13, Idaho Power Company (the "Company") petitioned the Commission to open this docket ("Docket") to comprehensively study the costs and benefits of on-site generation on the Company's electric power system. Order No. 34046 at 31.

Numerous parties intervened in the Docket, including Idaho Clean Energy Association, Boise City, Sierra Club, Idaho Conservation League, Industrial Customers of Idaho Power, Idaho Irrigation Pumpers Association, Inc. and Russell Schiermeier (herein after this group shall be referred to as the "Parties"). Boise City having been a party to Docket No. IPC-E-17-13 and having a vested interest in the outcome of this Docket, both as a net metering customer itself and as the representative of Boise City customers, intervened to be a part of the process. The Commission instructed Commission Staff ("Staff") to coordinate with all parties and the Company regarding the procedure of the Docket. Staff and parties then began the process of attempting to negotiate toward a settlement. One pre-hearing conference, eight settlement conferences, various settlement proposals, and extensive discussions took place between the parties to try and resolve the Docket.

After nearly a year and a half of negotiations, the Company, Staff and the Parties reached a settlement agreement ("Settlement Agreement") which resolved many of the issues presented in the Docket. On October 11, 2019, the Company and Staff submitted a Motion to Approve Settlement Agreement signed by the Parties. Although the Settlement Agreement demonstrates extensive compromise and resolution of many issues, one issue the Parties were unable to resolve is whether or not existing customers with on-site generation will be subject to the terms of the

Settlement Agreement. To foster the settlement of many issues in this Docket, the Parties agreed to submit the issue of treatment of existing customers to the Commission for determination. The Parties, Company, and Staff would have the opportunity to present their position on the issue to the Commission and ultimately the Commission would decide the issue of existing customer treatment.

II. FACTS AND BACKGROUND

1. Current Net Metering Program.

In 1983, the Company established its net metering service program which established the structure under which customers with on-site generation could off-set their own energy consumption and transfer excess generated electricity to the Company for its use and redistribution. *See generally*, I.P.U.C. Tariff No. 101, Schedule 84 Customer Energy Production Net Metering. The net energy metering program consisted of a net monthly billing cycle and a kilowatt hour credit for excess exported energy ("NEM Program"). *Id.* The net monthly billing period meant that an on-site generation customer's energy consumption and energy exports were netted on a monthly basis. *Id.* Exported energy was credited to the on-site generation customer's account on a kilowatt-hour basis, which reflected the customer's respective schedule retail rate.

Under the NEM Program, on-site generation customers installed systems based on the then applicable program rules and framework. These customers made investments and financial determinations based on the rules, information, and requirements imposed on them by the Company's NEM Program structure. These rules included net monthly billing and receiving

kilowatt-hour credits for excess net energy provided to the Company at the customer's specific schedule retail rate.

Practically, this meant that on-site generation customers designed their systems to maximize monthly generation. When considering system configuration, customers would consider their monthly data and consumption. This monthly billing program requirement dictated system components such as orientation, size, and other technologies. Customers were not given an option on billing periods and were not aware that such billing periods would change, thereby effecting the productivity or efficiency of their systems. The Company established the monthly billing framework and the on-site generator customers were required to follow that framework and install compatible systems.

Regarding the kilowatt-hour export credit, existing on-site generation customers considered the financial feasibility of system installation based on the NEM Program's kilowatt-hour credit for exports. Customers reasonably relied on the export credit structure of the program to calculate payback periods and the overall economics of on-site generation systems. Although customers were aware that rates for consumption could change pursuant to a general rate case, nothing indicated to these customers that the rate for exported energy would be decoupled from the rates for consumption or that a separate export credit rate would be established and imposed on them. Again, customers reasonably relied on the NEM Program's configuration, requirements, and rules to analyze the economics of system installation and make costly investments.

2. New Net Hourly Billing Program.

The Settlement Agreement reached by the Parties establishes a new program for on-site generation customers. This program's structure is distinct from the NEM Program and creates an entirely new framework for on-site generation customers who wish to offset consumption and export excess energy to the Company's grid. This new net hourly billing program ("Net Hourly Billing Program") will implement a new hourly net billing timeframe with different rules and requirements than those in existence at the time the current on-site generators installed their systems and signed up for the program. New on-site generation customers will now be billed on a net hourly billing period, not a net monthly billing. Settlement Agreement at 2. This means customers' excess energy exports will be measured on an hourly basis. *Id.* Current on-site generating customers did not have the ability to configure their systems to operate most efficiently with the new program design. In order to make these customer's systems efficient and economically advantageous, customers would have to redesign their systems, which in many cases, is not financially feasible.

In addition, on-site generation customers will now be compensated for their exported excess energy at an export credit rate. *Id.* at 6. This export credit rate will be lower than the current compensation structure for existing on-site generation customers. Currently, on-site generation customers are receiving the per kilowatt-hour credit based on the retail rate for that customer's service schedule. *Id.* at 6. If required to take service under the new Net Hourly Billing Program, this change would affect on-site generation customer's ability to offset their bills by exporting excess generation, will extend payback periods, and will make these investments less economical.

Existing on-site generation customers had no way of reasonably anticipating the compensation change or establishment of a decoupled export credit rate, separate and untied to the customer's rate of consumption.

III. ARGUMENT

1. Existing On-Site Generation Customers will not be Similarly Situated to New Net Hourly Billing Customers.

Existing on-site generation customers should not be required to take service under the new Net Hourly Billing Program established by the Settlement Agreement because they will not be similarly situated to new customers taking service under the new Net Hourly Billing Program. Although it is well established that this Commission cannot discriminate between similarly situated customers, by for example, charging different rates to those customers, this Commission is free to distinguish between customers based on various factors. Idaho Code § 61-315; *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 419 (1984).

The Idaho Supreme Court has held, "a utility is forbidden to treat a customer preferentially through its rates and charges or to maintain unreasonable differences in its rates and charges as between classes of service." *Homebuilders*, 107 Idaho at 419. However, the Court has also been clear that, "[n]ot all differences in utility's rates and charges as between different classes of customers constitutes unlawful discrimination under the strictures of I.C. § 61-315." *Id.* Specifically applicable to the facts here, the Court has found, "justification for rate discrimination as between customers within a schedule and as between customers in different schedules." *Id.* at 420 (citing *Grindstone Butte Mutual Canal Co. v. Idaho Public Utility Commission*, 102 Idaho 175 (1981)).

In drawing distinctions between customers, the Commission can look at a wide range of factors. *Agricultural Products Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 30-31 (1976). “A reasonable classification of utility customers may justify the setting of different rates and charges for different classes of customers.” *Homebuilders*, 107 Idaho at 420. In determining these classifications and exercising its authority under Idaho Code § 61-315, the Commission has the broad power to make factual determinations on reasonable distinctions. *Application of Boise Water Corp. to Revise and Increase Rates Charged for Water Service*, 128 Idaho 534, 537 (1996).

In this circumstance, as discussed above, existing on-site generation customers will be distinct from new on-site generation customers. Existing customers were required to install systems in congruency with the Company’s current NEM Program. These customers have systems configured in accordance with a net monthly billing program and under an expectation of a kilowatt-hour credit. Their size, orientation, and technologies all align with the requirements of the existing program. Now, if required to take service under the new Net Hourly Billing Program, their systems will no longer align with the program they were designed after.

On the other hand, new customers’ systems will be distinct from existing customers. New customers taking service under the new Net Hourly Billing Program will be able to configure their systems consistent with the components of the new program. These systems will look distinctly different based on the operational nature of the new program. New customers will orient and customize their systems to maximize hourly net metering. Existing customers did not have this opportunity. The Commission should acknowledge this distinction among existing and new customers and permit existing customers to remain on the current net metering program because

these customers will not be similarly situated to new net hourly billing customers and will be disadvantaged if they are required to take service under the Net Hourly Billing Program.

2. Allowing Existing Customers to Take Service Under the Current NEM Program Would be Just and Reasonable.

This Commission has the authority to determine charges, rules, and regulations that are just and reasonable. Idaho Code § 61-502. Furthermore, the Commission is not required to make these charges and rules the same for all customers. “The Commission is not required to create equality of rates among classes of the utility’s customers if the rates set are reasonable.” *Grindstone Butte Mutual Canal Company v. Idaho Power Co.*, 98 Idaho 860, 866 (1978).

Just like this Commission cannot treat similarly situated customers differently, so would treating distinctly different customers the same be unjust and unreasonable. These existing customers have different and distinct systems from those which will be installed by new customers under the Net Hourly Billing Program. “A discrimination as to rates is not unlawful where based upon a reasonable classification corresponding to *actual differences in the situation of the customers* for the furnishing of the service....” *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 377 (emphasis added) (quoting 64 Am.Jur.2d, Public Utilities s 117 (1972)). Existing and new customers demonstrate actual differences in their situations and systems based on the Company’s programs frameworks. Current on-site generation customers purchased and installed systems based on the program rules and regulations in place at the time they installed their systems. These existing customer’s systems present actual differences from those that will be installed by future Net Hourly Billing Program customers. It would be unjust and unreasonable to

treat existing customers, with systems designed under the current NEM Program the same as new customers under the new Net Hourly Billing Program.

In addition to the Commission's responsibility to establish fair and reasonable charges, rules, and regulations, the Commission is also permitted to perform legislative functions and in doing so, can make policy determinations. *Building Contractors Ass'n of Southwestern Idaho v. Idaho Public Utilities Com'n*, 151 Idaho 10, 15 (2011). "Absent a legislative pronouncement to the contrary, we find it within the Commission's jurisdictional province to consider in its rate making capacity all relevant criteria including energy conservation and concomitant concepts of optimum use and resource allocation." *Grindstone Butte Mut. Canal Co. v. Idaho Public Utilities Commission*, 102 Idaho 175, 181 (1981). The Commission should make a policy determination that allowing these existing customers to continue under the current NEM program is just and reasonable considering their investments and contribution to the Company's system and energy conservation.

Customers who purchased and installed on-site generation systems should not be required to follow new rules and regulations now that the Company chooses to implement a new program. If existing customers are subject to the new net hourly billing timeframe and the export credit rate proposed in the Net Hourly Billing Program, these customers will be unjustly harmed by abiding by the program requirements in effect at the time they installed their systems. When these existing customers installed their systems and signed up for the net metering program, there was nothing within their power they could have done to anticipate or plan for how the Company may want to change or modify the program. Therefore, these customers had no ability to mitigate or plan for


such changes and were instead required to follow the guidelines of the program that the Company had implemented and established.

If required to operate under this new Net Hourly Billing program, existing on-site generation customers will suffer unfairly from reasonably relying on a certain understanding based on the current construct of the NEM Program. As discussed above, the Commission has the ability to treat these customers differently based on the *actual difference in the situations* of these existing versus new customers. These customers made financial investments based on their understanding of how the program would operate. Although customers are aware that rates may change, nothing alerted these customers to the possibility that their export credit rate would be unbundled from the retail rate of consumption or that the program would be changed to a net hourly billing framework. Allowing these existing customers to remain on the existing net metering program would be just and reasonable because these customers made investments in their system and are distinctly situated from those customers who will take service under the new Net Hourly Billing Program.

IV. CONCLUSION

Boise City respectfully requests that this Commission issue an Order allowing existing on-site generation customers to remain under the current NEM Program. Existing customers should not be not required to take service under the new Net Hourly Billing program established by the Settlement Agreement because doing so would be unjust and unreasonable based on existing customers installing systems under the current NEM Program requirements.

DATED this 13 day of November 2019.


Abigail R. Germaine
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CERTIFICATE OF SERVICE

I hereby certify that I have on this 13 day of November 2019, served the foregoing documents on all parties of counsel as follows:

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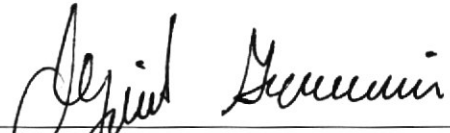
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