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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 REPLY BRIEF
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 this reply brief relating to existing on-site generation customers. In the interest of brevity, Boise City's reply brief only rebuts the arguments put forward by Idaho Power Company's Opening Brief.

I. INTRODUCTION

Existing on-site generation customers should be permitted to remain on the current net energy metering program (“NEM Program”) because they will be distinctly situated from future net hourly billing customers (“Net Hourly Billing Program”). This Commission has the legal authority to implement different rates and programs for differently situated customers when such rates and changes are reasonable and just. This position is supported by the opening briefs and comments by Boise City, Commission Staff, Idaho Clean Energy Association (“ICEA”), Idaho Conservation League (“ICL”) and Vote Solar. The only party to argue to the contrary is Idaho Power Company (the “Company”). The Company attempts to assert three main theories to support its conclusion that existing customers are not entitled to remain on the current NEM Program.

First, the Company asserts that allowing existing on-site generation customers to remain on the current NEM Program is creating a distinction based solely on the date the individual became a customer which is prohibited under Idaho case law or by the Commission and that no other distinctions between existing and future customers exists. *Idaho Power Company’s Opening Br.*, November 13, 2019, at 2. Second, the Company argues that all existing customers were on notice that rates and tariffs are subject to change. *Company’s Br.* at 11-19. Third, the Company provides a lengthy case analysis in what seems to be an attempt at suggesting that even when an individual is guaranteed a rate of return on an investment, the Commission may change the individual’s compensation.

As Boise City will demonstrate below, the Company’s arguments are misguided and irrelevant to the questions before the Commission; questions which contain both legal and factual issues, as well as valid policy determinations. Because the Company has failed to show that these

customers are not distinctly different and because treating these existing customers differently would be just and reasonable, the Commission should enter an order allowing existing customers to remain on the NEM Program.

II. ARGUMENT

A. **Existing NEM Program Customers are Distinctly Different from Future Net Hourly Billing Customers in Numerous Ways Other Than Their Chronology of Becoming Customers.**

The Commission specifically acknowledged the concept that existing on-site generation customers may deserve different treatment based on their distinct characteristics. *In the Matter of the Application of Idaho Power Co. for Authority to Establish New Schedules for Residential and Small Gen. Serv. Customers with On-Site Generation*, Case No. IPC-E-17-13, Order No. 34046. In Order No. 34046, the Commission specifically stated, “we find it reasonable to consider arguments related to protecting investments already made, or other transitional periods, and other pertinent and legally sufficient distinctions, by customers with on-site generation systems.” *Order No. 34046* at 23-24.

The Company, however, asserts that existing customers are not distinctly different from future Net Hourly Billing Program customers in any way other than the time they joined the system. *Company’s Br.* at 11. The Company argues that “where new customers cannot be distinguished from existing customers based on valid factors such as quality of electricity they use, the pattern, nature and timing of their usage, the conditions of service, or cost of service, it would be a violation of Idaho Code § 61-135 to subject new customers to different rates than the rates paid by existing customers.” *Id.* at 9. However, this Commission and the Idaho Supreme Court have held that the factors listed by the Company are not exhaustive. *Grindstone Butte Mutual*

Canal Co. v. Idaho Pub. Util. Comm'n, 102 Idaho 175, 180 (1981). In *Grindstone Butte*, the Court stated in reference to the factors listed above, “[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.” *Id.* The Commission is not limited to the factors illustrated in determining whether customers are distinctly different. Whether the specific factors listed by the Court are exhibited by these existing and future customers is irrelevant and to whether the Commission may draw a distinction among customers.

The Company argues that because it believes existing customer are not distinctly different, providing them distinct treatment is not required. The Company relies on *Idaho State Homebuilders v. Wash. Water Power*, to support its argument that current residential on-site generation customers cannot be charged a different rate. *Idaho State Homebuilders v. Wash. Water Power*, 107 Idaho 415 (1984). The Company cites *Homebuilders* for the proposition that the Commission cannot distinguish customers, or charge distinct rates of consumption, based solely on their distinction of “old” and “new” or “existing” and “future.” However, allowing existing customers to remain on the current NEM Program is not analogous to the facts of *Homebuilders*.

First, these customers are not being charged a different rate of consumption. Their rate of consumption will be the same, not lower, than non-participant residential customers. In *Homebuilders*, the issue was charging a rate for customers utilizing space heating prior to a certain date and charging a different rate for customers utilizing space heating after that date. *Id.* at 418. Here, the distinction is not requesting a lesser rate of consumption for existing customers, but instead is requesting these customers remain in a distinct program.

Second, these existing on-site generation customers are doing the opposite of what the Court found existing customers to be doing in *Homebuilders*. In *Homebuilders*, the Court found that existing customers, like new customers, were contributing to the need for additional capacity and therefore the burden to pay for this additional capacity should not be born solely by new customers. *Id.* at 421. Here, existing on-site generation customers are *reducing* the need for new system capacity. By allowing customers to remain on the existing NEM Program, they are not avoiding their fair share of a specific cost they are causing or contributing to, instead they are contributing to the reduction for such a need.

Furthermore, Boise City would submit that existing customers and new customers do in fact exhibit some of the factors recognized by the Idaho Supreme Court and listed by the Company. The pattern, nature, and timing of use between existing customers and new on-site generation customers will be different. As described by ICEA's President, Mr. Kevin King, in the affidavit submitted by ICEA, existing customers designed their systems based on monthly consumption, while new customers will likely design and operate their systems based on hourly consumption. *Aff. of Kevin King in Supp. of ICEA's Br. Regarding Treatment of Existing Customers ("King Aff.")* ¶ 14. These differences in customers' systems will affect the customers' nature, pattern, and time of use by designing and operating their systems to correlate with those different patterns and times of the day. *Id.*, ¶¶ 14-17.

B. Whether Existing Customers Were on Notice of the Fact That Their Rates for Consumption Could Change is Irrelevant to the Question of Whether These Customers Should be Required to Take Service Under the New Program.

The Company argues that existing on-site generation customers should not be allowed to remain on the current NEM Program because they were on notice that rates could change. The

Company cites to numerous venues including Commission orders, to support this supposition. *Company Opening Br.*, at 14-19. The Company also lists multiple notices they claim were provided to customers by the Company. *Id.* However, most of these notices have only recently been produced by Idaho Power (for example the Solar Checklist referenced was created in 2017) and others referenced provide no date at all on when they were added to Idaho Power's website or when they were sent to customers by Idaho Power. *Id.* at 17. As is illustrated by the large volume of public comments already filed on the Commission's website, despite Idaho Power's attempts to notify these customers, these customers obviously were not fully aware of what types of program changes would be implemented and when. *Idaho Public Utilities Commission, Case No. IPC-E-18-15* (last visited November 25, 2019), <https://puc.idaho.gov/fileroom/cases/summary/IPCE1815.html>.

Although it could be said that these existing customers have knowledge that their rates for consumption are not fixed, on-site generation customers had no knowledge as to the changes that would be implemented by this new Net Hourly Billing Program. For example, although existing on-site generation customers were aware that rates for consumption may change, nothing indicated that the rate of consumption and the rate for exported energy would be decoupled. Likewise, existing customers had no indication that the billing period of net monthly would be changed to net hourly, affecting the efficiency of their systems and making their investment less secure. As stated by the Commission Staff, "anticipating changes in retail rates differs from reasonably predicting the wholesale restructuring of the Company's on-site generation offering." *Br. of the Commission Staff*, at 7.

Even though the Commission and the Company may have made existing customers aware that their tariff rate, just as all customers, could change this does not mean that the Commission should not choose to make a policy call that protects these customers. The Commission has the authority based on the facts of this case and the governing law to allow existing on-site generation customers to remain on the existing NEM Program despite the fact that these customers may have known their rates of consumption could change.

C. The Commission's Responsibility to Set Just and Reasonable Rates is the Very Reason Existing On-site Generation Customers Should be Permitted to Remain on the NEM Program.

Idaho Power provides a long case analysis of the facts and circumstances in *City of Pocatello v. Murray*, 21 Idaho 180 (1912). It appears this is an attempt to make an analogy of Mr. James Murray's, a water utility infrastructure provider, circumstances and existing on-site generation customers in this case. This analogy is misplaced. If anything, the *Murray* case illustrates principles that support Boise City's request to have existing customers remain on the current NEM Program. In *Murray*, Mr. Murray was guaranteed a large rate of return for his personal investment in a water delivery system for the general public's use and welfare. *Id.* at 818. The Court held that Mr. Murray's rate of return had drastically increased over the years due to a larger rate base and increased investment, which may have caused it to rise to an unreasonable rate. *Id.* In determining that Mr. Murray was no longer entitled to such a large rate of return, the Court acknowledged Mr. Murray's investment and ability to charge a reasonable maximum rate and to "collect such rates as will guarantee him a reasonable profit and income on his investment." *Id.*

Here, Boise City, and customers with existing on-site generation, are asking for far less than what the Court in *Murray* acknowledged was reasonable. Unlike Mr. Murray's large rate of return, existing customers are not asking for financial income or profit from their investments, but instead are asking to not be harmed by their decision to invest in a renewable resource and add to the Company's generation capacity. The Company frames these existing customers' investments as a matter of serving the public for private gain. *Company's Opening Br.* at 13. This is an inaccurate characterization. Here, existing customers are not making a rate of return on their capital investments, to the contrary, these customers are being paid no premium for their decision to invest in a renewable resource benefitting the public at large, reducing the Company's need for new system capacity, and helping reduce the Company's reliance on fossil fuels. *Murray* in fact generally supports the position that existing customers should receive just compensation for the resource they are putting onto the Company's grid and should not be harmed by being forced to take service under the new program requirements of the Net Hourly Billing Program.

D. Limiting Existing Customers to an Eight (8) Year Transition Period Minimally Reduces the Already De Minimis Effect on Non-participant Customers.

The Company states in its brief that it supports an 8-year transition period for existing customers and states that this will protect the customers investment while minimizing the cost shift to other customers. *Company's Opening Br.*, at 20-21. Nevertheless, the Company has failed to identify or quantify what this alleged cost shift amounts to and how it compares to other cost shifts or subsidies that the Company does not seek to remedy or discontinue. Commission Staff, however, actually attempts to analyze what this alleged cost shift could consist of. Commission Staff states,

[d]ata from Idaho Power's 2017 Net Metering Report suggests that the then-current cost shift from participants to non-participants was .023% of residential class revenues, which is almost imperceptible in individual customers rates and is dwarfed by other, much larger rate-making inequities.

Br. of the Commission Staff at 8. In support of this finding Commission Staff points out that, "Idaho Power's Fixed Cost Recovery report, filed September 30, 2019, shows that residential customers are paying approximately \$19.3 million annually above their cost-of-service, which means they are providing a significant subsidy to other customers classes" not just existing on-site generation customers as the Company makes it seem. *Br. of the Commission Staff* at 8, fn3.

The Company also states it would be an administrative burden to allow these existing customers to remain on the NEM Program, but again, has failed to quantify that amount or even to identify what the administrative undertaking is. *Company's Opening Br.* at 22.

On the other hand, requiring these existing customers to take service under the new Net Hourly Billing Program has identifiable and quantifiable harmful effects to these customers. ICL and Vote Solar conducted a simple payback analysis to help demonstrate the harmful result that moving existing customers to the new program could have:

In fact more than 30 percent of customers analyzed would have their investments rendered uneconomic as a result of the transition to Net Billing. That ratio applied to current customer levels means that roughly 1,300 families and small businesses would have their investments put underwater if forced onto the Settlement Agreement's Net Billing Program.

Br. of the Idaho Conservation League and Vote Solar on Treatment of Existing Customers, November 13, 2019 at 11. ICL and Vote Solar go on to point out, [i]n addition roughly 31% of residential customers and 24% of small commercial customers, over 1,300 families and small businesses, will see bills increase more than 100%...." *ICL/Vote Solar Br.* at 14. Not only are these

customers not receiving a return on their personal capital investment, unlike the Company's analogy to Mr. Murray in the *Murray* case, who also provided a resource to the public and the customer base as a whole, but now these customers may struggle to make these investments even viable.

Boise City asserts that these existing customers should be allowed to remain on the current NEM Program indefinitely. However, should a timeframe be considered, Vote Solar and ICL astutely point out that among the handful of states that changed from traditional net metering to alternate compensation programs, all have protected customers with existing generation, most of which have provided at least a 20-year grace period. *ICL/Vote Solar Br.*, at 6 -7.

The Company also suggests that existing customers, should they be allowed to remain on the current NEM Program, must be prohibited from expanding or relocating these systems. Boise City proposes that this criterion, not a time period, be used to determine how long an existing customer may remain on the current NEM Program. Under this framework, a customer would be permitted to remain on the existing NEM Program until such time as they materially expand or relocate their systems. This is consistent with allowing these customers to utilize the full life of their systems. Allowing a customer to maximize the full life of their systems, while limiting them from expanding or enlarging the system without complying with the new program strikes the balance of economic efficiency and fairness.

III. 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 on-site generation customers should be allowed to continue under the NEM Program because they will be distinctly

situated from future Net Hourly Billing customers and this Commission has the legal authority to implement different reasonable and just rates and programs for differently situation customers.

DATED this 27 day of November 2019.



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CERTIFICATE OF SERVICE

I hereby certify that I have on this 27 day of November 2019, served the foregoing

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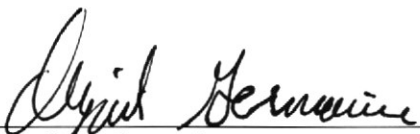
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