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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Clean Energy Association

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

IDAHO CLEAN ENERGY ASSOCIATION,
INC.'S BRIEF REGARDING TREATMENT OF
EXISTING CUSTOMERS

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Pursuant to Order No. 34460, the Idaho Clean Energy Association, Inc. ("ICEA") submits the following brief regarding treatment of existing customers under the Settlement Agreement filed with the Commission on October 11, 2019. This brief is supported by the accompanying Affidavit of Kevin King in Support of ICEA's Brief Regarding Treatment of Existing Customers ("King Aff."), which provides factual information to support this brief. If the Commission would find it helpful, ICEA is prepared to present testimony, whether written or oral, to provide additional factual information.

FACTUAL BACKGROUND

1. The components of the Net Metering Program dictated customer decisions regarding system design, system configuration, and other aspects of onsite generation systems.

The Net Metering Program for Idaho Power customers, initially established by the Commission in 1983, has two key components.¹ First, generation from a customers' onsite generation system is netted on a monthly basis. That is to say, at the end of each month, the energy exported to the grid from the customer's generation system is subtracted from the energy imported to the customer's house or business, and the customer's monthly power bill is the difference between the energy consumed and the energy exported over the course of the month.

Second, a customer receives a kilowatt-hour credit for each kilowatt-hour exported to the grid. (What counts as an "export" is, as noted above, determined on a net monthly basis.) In this manner, the customer is neutral as to whether generation is consumed on-site or whether, instead, the energy is exported to the grid.

¹ As ICEA understands it, the Net Metering Program was established in 1983. For all thirty-six years of its existence, ICEA understands that customer consumption and generation has been netted monthly. As ICEA understands it, except for a 7-year period between 1995 and 2002, customer exports (measured on a net monthly basis) have been valued at retail, either through a monetary credit or kilowatt-hour credit.

In ICEA's experience, these two components dictate how customers and solar installers make decisions regarding onsite generation under the Net Metering Program. For example, when a customer and an installer look at the customer's consumption data, they often—if not *always*—looked at the customer's annual consumption data on a monthly basis. King Aff. ¶ 14. The customer and installer then considered how different onsite generation systems would generate energy, again on a monthly basis. *Id.* On this basis of this monthly data, customers considered how to configure their system. Decisions included what size of system to install; how to orient those systems; what technologies, such as battery storage, to incorporate into the system; and others. *Id.* ¶¶ 14, 16.

Because exports were measured on a net monthly basis, and because exports were valued using a kilowatt-hour credit, customers reasonably and justifiably configured their systems typically—to reflect the customers' peak monthly consumption. *Id.* ¶ 16. The comparison of exports and consumption on an intra-monthly basis—not to mention on an hourly basis—was at most a secondary concern. *Id.* ¶ 14. Indeed, Mr. King does not recall a single instance in which a customer or installer considered or discussed hourly production and consumption data in the course of making decisions regarding an onsite generation system. *Id.* In addition, the timing of consumption and exports on a month-to-month basis was largely a secondary concern as well; because net monthly exports were valued on a kilowatt-hour per kilowatt-hour basis, customers were neutral as to whether the energy produced by the onsite generation system was consumed or exported. *Id.* ¶ 15.

As noted, as dictated by the components of the Net Metering Program, customers typically sized their system based on peak monthly consumption. *Id.* ¶ 16. This was true whether peak monthly consumption matched up with the peak monthly generation of the system. *Id.* ¶ 17.

Customers that (for example) use electric heating experience monthly peak consumption during the winter months. *Id.* The monthly peak generation of systems that these consumers often installed, however, occurred during the summer. *Id.* These customers, which tend to be more rural and less affluent than those with natural gas heating, often made decisions on what types of onsite generation to install (such as solar) and what size of system to obtain (to match peak monthly consumption) based on the components of the Net Metering Program. *Id.*

2. The Net Hourly Billing Program will dictate different decisions regarding system design, system configuration, and other aspects of onsite generation systems.

The Settlement Agreement proposed by the parties, if adopted by the Commission, would establish a new program, a Net Hourly Billing Program. The Net Hourly Billing Program has three key components that are different from the Net Metering Program. First, under the Net Hourly Billing Program, customers' exports are measured on an hourly basis. That is to say, Idaho Power will measure energy exported to the grid every hour of every day, and all this energy will be considered exports.

Second, customers will no longer be provided a kilowatt-hour credit for exported energy. Instead, exports will be compensated at a separately established rate. This export credit rate is completely decoupled from the customers' electrical rates; it differs in value; it will be updated every two years; and there is no historical data to determine whether the rate will trend upward or downward.

Third, the Net Hourly Billing Program contains a non-export option. Once the parties agree on the specific process, customers will have access to a streamlined application process to install systems that do not export to the grid. This formal program was not available under the Net Metering Program.

The key components of the Net Hourly Billing Program dictates that customers and installers use different data and make different decisions regarding system configuration. First and foremost, customers and installers will now have to use hourly consumption and hourly generation data to determine system size, configuration, and to make the other decisions regarding onsite generation systems. *Id.* ¶ 18. The need to obtain, interpret, and use net hourly data is a very large change from the decision-making that has occurred under the Net Metering Program during the thirty-six years it has been in place. The net hourly exports of customers differs across customers more than net monthly exports, requiring more customer-specific system design, configuration, and other considerations. *Id.* ¶ 19.

Second, the Net Billing Program increases the importance of the timing of a customer's consumption and of a system's generation. *Id.* ¶ 20. The importance of more closely matching a customer's consumption and the system's generation will lead to different choices in system size and configuration. *Id.* While it is difficult to predict precisely how customers will react, Mr. King anticipates greater diversity in system choices and an increase in systems that are configured to incorporate technologies such as battery storage that help match system generation with customers' consumption. *Id.*

Third, certain segments of customers are unlikely to invest in onsite generation, or at least in solar onsite generation. In particular, customers whose peak consumption differs widely from the onsite generation systems' peak generation are not likely to invest in onsite generation. This includes, for example, rural customers who use electric heating that would have benefitted from the Net Metering Program, but who will not benefit under the Net Hourly Billing Program. *Id.* ¶ 17. Accordingly, this segment of new customers is unlikely to invest in onsite generation. If

those customers that invested under the Net Metering Program are forced onto the Net Hourly Billing Program, those customers' investments will be severely undermined. *Id.*

Fourth, the Net Hourly Billing Program formalizes a non-export option. This provides customers with a streamlined process to install systems that do not export to the grid. *Id.* ¶ 22. ICEA expects more customers to select this option, particularly as technologies such as storage and electric vehicles continue to develop.

3. The options available to customers under the Net Hourly Billing Program are not reasonably available to customers that participated in the Net Metering Program.

Customers that made decisions to configure their systems under the Net Metering Program cannot economically take advantage of systems that comport with the components of the Net Hour Billing system. *Id.* ¶ 23. Customers making decisions under the Net Hourly Billing Program can take advantage of battery storage and other technologies to better time their generation and consumption; it is not economically feasible to retrofit systems configured under the Net Metering Program to do so. *Id.* ¶ 24. Customers making decisions under the Net Hourly Billing Program can size their system based on hourly data; customers that sized their system based on the thirty-six year history of monthly netting cannot. *Id.* ¶¶ 24, 26. And so on.

Customers whose consumption peaks in the wintertime are particularly tied into the choices made based on the key components of the Net Metering Program. As noted, in Mr. King's experience, these customers tend to be more rural and less affluent than others. *Id.* ¶ 17. These customers relied on annual consumption and generation data, compiled from monthly data, and tended to size their system such that exports during times of peak generation (typically summer) offset peak consumption (typically winter). *Id.* The change to hourly billing, and to an export credit rate rather than kilowatt-hour credit, will hit these customers particularly hard—the onsite generation systems that made economic sense under the Net Metering Program do not

make economic sense under the Net Hourly Billing Program. *Id.* These customers' systems cannot be retrofit with sufficient storage or other technology to come into alignment with the components of the new Net Hourly Billing Program. *Id.* ¶¶ 23, 26.

Finally, customers under the Net Hourly Billing Program have the option of selecting a streamlined and formalized non-export option. This streamlined, formalized option was not available to customers under the Net Metering Program.

ARGUMENT

1. The Commission is free to distinguish between customer groups that are differently situated.

Under Idaho law, the public utilities must charge rates that are “just and reasonable.” Idaho Code § 61-301. Utilities (and, by extension, the Commission) cannot “establish or maintain any *unreasonable* difference as to rates, charges, service, facilities or in any other respect.” Idaho Code § 61-315 (emphasis added).

While the Commission cannot maintain unreasonable differences, the Commission is free to draw reasonable inter- and intra-class distinctions between customer segments. *Utah-Idaho Sugar Co. v Intermountain Gas Co.*, 100 Idaho 368, 377 (1979) (“A discrimination as to rates is not unlawful where based on a reasonable classification corresponding to actual difference in the situation of the consumers for the furnishing of the service; and a public utility or a municipal corporation . . . may make reasonable classification as to rates for public service.” (internal quotation marks and citation omitted)); *Grindstone Butte Mutual Canal Co. v. Idaho Pub. Utilities Comm’n*, 102 Idaho 175, 180 (1981) (noting that the Commission can engage in “rate differentiation as between classes of service, whether those classes be as between schedules or as between customers within a schedule”).

The Commission has broad discretion to determine whether customers are differently situated. Factors that may be considered include cost of service; quantity of utility used; differences in conditions of service; the time, nature and pattern of use; the actual differences in the situation of the consumers for the furnishing of the service; costs of storage; and economic incentives. *Grindstone Butte*, 102 Idaho at 180. This is a non-exclusive list of criteria; the Commission is free to distinguish between customer groups on other bases as well. *Id.*

Each case involves a fact-specific exercise of the Commission's judgment:

Each case must depend very largely upon its own special facts and every element and every circumstance which increases or depreciates the value of the property, or of the service rendered, should be given due consideration, and allowed that weight to which it is entitled. *It is, after all, very much a question of sound and well-instructed judgment.*

Id. (emphasis added).

2. The Commission is free to apply policy changes on a prospective basis.

The Idaho Supreme Court has recognized that the Commission is free to make legislative, policy-based decisions that apply prospectively. For example, in *Building Contractors Ass'n of SW Idaho v. Idaho Public Utilities Commission*, 151 Idaho 10 (2011), the Commission approved a new line-extension tariff that applied an increased hookup fee to new customers. The increased hookup fee reflected a change in policy—the old hookup fee reflected a policy of imposing upon new customers a level of investment equal to that of existing customers; the new policy reflected a policy of imposing upon new customers all new costs imposed upon the system. *Id.* at 15.

The Building Contractors Association of Southwest Idaho ("Building Contractors") appealed, arguing that the hookup fee discriminated against new customers. *Id.* at 13-14. The Court rejected this argument. Even though the increased hookup fee did indeed distinguish between old and new customers based on the date the customers were added to the system, the

Court held that the fee was not discriminatory because the Commission “made a policy change,” moving from a level cost of investment to an increased cost for new customers. *Id.* at 15. In the exercise of its legislative authority the Commission was free to make such a policy determination on a prospective bases. *Id.*

In so holding, the Court distinguished cases in which the Commission attempted to draw a distinction between customers solely on the basis of chronology. *Id.* (distinguishing *Building Contractors Ass’n of SW Idaho, Inc. v. Idaho Public Utilities Comm’n*, 128 Idaho 534 (1996) and *Idaho State Homebuilders v. Wash. Water Power*, 107 Idaho 415 (1984)). Stated another way, the Court in *Building Contractors Ass’n* distinguished between changes in policy, which could prospectively be applied to new customers only, and changes in rates, which cannot be applied solely on the basis of when a customer joins the system.

Synthesizing these cases, the Commission is free to reasonably distinguish between inter- and intra-class customer segments based on a variety of factors, in the exercise of its sound judgment. In addition, the Commission can implement policy changes on a prospective basis. It cannot, however, impose different rates on like-situated customers solely on the basis of when those customers joined the system.² As discussed in more detail below, customers that participated in the Net Metering Program are distinct from customers that will participate in the

² The caselaw encompasses only decisions that were appealed to the Idaho Supreme Court. The Commission has drawn distinctions that were not appealed and, therefore, that are not embodied in controlling caselaw. In perhaps an extreme instance, Idaho Power’s tariff refers to “grandfathered” customers, such as grandfathered mobile home parks. Idaho Power Company Tariff No. 101, Schedule 3, Master-Metered Mobile Home Park Residential Service at Sheet No. 3-1 (“Service under this schedule is available to master-metered mobile home parks included on the Company’s list of ‘grandfathered’ mobile home parks on file with the Idaho Public Utilities Commission receiving electric service under Schedule 1 as of March 20, 2009.”). ICEA does not believe that its proposal constitutes “grandfathering,” but regardless that concept does not appear to be *per se* unlawful in at least some circumstances.

Net Hourly Billing Program. In addition, the Net Hourly Billing Program reflects a policy change that can be applied prospectively. Accordingly, the Commission is free to let participants in the Net Metering Program continue on that Program, while prospectively implementing the Net Hourly Billing Program.

3. Customers that participated in the Net Metering Program are distinct from customers that will participate in the Net Hourly Billing Program.

A customer considering investing in onsite generation must make numerous important decisions. These decisions include, among other things, what size of system to install; how to configure the system, including details such as which direction to orient the system, which impacts the timing of generation; whether to install battery storage or other technologies to control the amount and timing of exports; and others. King Aff. ¶ 13. Customers that participated in the Net Metering Program made these decisions based on the key components of the Net Metering Program. In making their decisions, they typically relied upon monthly data, and annual data compiled from monthly data, regarding their energy consumption. *Id.* ¶ 14. Customers and installers typically relied upon monthly data, and annual data compiled from monthly data, regarding the anticipated generation of onsite generation systems, both with respect to size and to configuration of the systems. *Id.* Decisions regarding storage were made on the basis of this data as well. *Id.* ¶¶ 14, 16. These choices were reasonable, given that monthly netting had remained unchanged for thirty-six years, and that historical hourly data has not been reasonably accessible to customers and installers. Accordingly, the majority—if not all, or a vast majority—of onsite generation systems installed by customers under the Net Metering Program are tailored to monthly measurement of a customer’s consumption and a system’s generation.

In addition, customers made decisions that were effectively neutral as to whether the actual energy produced by the onsite system was consumed, or whether it was exported, because

exports received a kilowatt-hour credit. *Id.* ¶ 15. The kilowatt-hour credit component of the Net Metering Program was particularly important for customers whose consumption patterns do not closely match the system's generation. This system can be seen, for example, in customers that use electric heating, which tend to be more rural and less affluent than a typical customer under the Net Metering Program. *Id.* ¶ 17.

Accordingly, the majority—if not all, or a vast majority—of onsite generation systems installed by customers under the Net Metering Program are tailored to monthly measurement of a customer's consumption and a system's generation. In addition, systems installed under the Net Metering Program do not typically include storage or other technologies that would more closely align consumption with generation. *Id.* ¶ 16.

By contrast, customers that will choose to install onsite generation under the Net Hourly Billing Program are likely to make decisions based on hourly data. ICEA anticipates that this will influence the choice that customers make, particularly regarding the size of systems, the orientation of systems, and whether customers configure their systems to incorporate battery storage or other technologies. *Id.* ¶¶ 19-21. In addition, customers are likely to more closely consider the timing of the customer's consumption as compared to the system's generation. *Id.* ¶ 20. Certain segments of customers, such as customers that use electric heating, are therefore unlikely to install onsite generation systems, or at least solar systems, at all. And customers are free to choose a formalized non-export option. *Id.* ¶ 22. As a result, customers that install onsite generation systems will do so using different sets of data, and are likely to install systems of different size, of different orientation, and that incorporate different technologies. This segment is likely to not include more rural and less affluent customers that, for example, use electric heat.

Customers that invested in onsite generation under the Net Metering Program cannot economically convert their systems to meet the components of the Net Hourly Billing Program. *Id.* ¶ 23. For example, system size cannot effectively be changed. Incorporating storage or other technologies does not involve simply buying new equipment; typically the entire system must be reconfigured, which is prohibitively expensive. *Id.* ¶ 24. Customers, such as those with electric heating, that would not have invested in onsite generation at all are stuck with their investments. And the formalized non-export option was not available under the Net Metering Program. Customers that participated in the Net Metering Program, therefore, cannot readily flow to the Net Hourly Billing System.

These distinctions between customer subsets provides a sound, factual, and reasonable basis to distinguish between customers that participated in the Net Metering Program and customers that will participate in the Net Hourly Billing Program. The Commission need not draw a distinction based solely on chronology, which may be legally suspect. The Commission can draw the distinction, based in this unique, discrete, and factually supported record, based on the choices customers have made and are likely to make under the respective programs. ICEA respectfully submits that this will be a careful, supportable, and legal exercise of the Commission's "sound and well-instructed judgment." *Grindstone Butte*, 102 Idaho at 180 (internal quotation marks and citation omitted).

4. The Net Hourly Billing Program constitutes a change in policy that can (and should) apply prospectively.

As noted, customers that participated in the Net Metering Program are distinct from those that will participate under the Net Hourly Billing Program. As such, the Commission is free to distinguish between them. The change from a Net Metering Program to a Net Hourly Billing

Program also reflects a legislative change in policy that can be prospectively applied under *Building Contractors*, 151 Idaho at 15.

The policy embedded in the Net Metering Policy involves the Commission's legislative determination that exports are appropriately valued on a monthly, rather than hourly, basis, even though monthly netting was less accurate than hourly netting. The Net Metering Policy reflects the Commission's legislative policy determination that customer exports should be valued by using a kwh-credit, despite the Commission's prior recognition that valuing exports at effectively retail rate may overvalue exports. The Net Metering Program also reflects the Commission's legislative policy determination, consistent with the intent of PURPA, to incent customer investments in distributed onsite generation. The Commission considered the various components of the Net Metering Program over the years. While it recognized that, from the perspective of certain attributes of ratemaking, the Net Metering Program may have imperfections, it consistently made the legislative policy decision to maintain the Program.

The Net Hourly Billing Program reflects a change in policy. In moving to net hourly billing, it reflects a legislative policy that exports should be considered more accurately, even if hourly billing is more difficult to understand and to predict than monthly exports. Moving to an export credit rate that is uncoupled from the retail rate, and that will be updated every two years, reflects a legislative policy judgment to move towards an avoided-cost value of export, at the expense of reducing incentives to invest in on-site generation and an increase in complexity. The availability of a formalized non-export option also reflects the legislative policy judgment that customers should be entitled to offset their own consumption without having to export to the grid.

This shift in legislative policy judgments is analogous to the shift in calculating hookup

fees in *Building Contractors*. There, the Commission moved from a hookup fee that was intended to reflect the approximate average value of historically connecting customers to a hookup fee that approximated the full cost of connecting new customers. *Building Contractors*, 141 Idaho at 15. The Idaho Supreme Court did not require that the Commission go back and impose increased fees to customers that had hooked up under the old system; it held that the Commission was free to apply this legislative policy change prospectively to new customers only. *Id.*³

5. It is fair, just, and reasonable to apply the Net Hourly Billing Program on a prospective basis.

As discussed throughout this brief, the Commission implemented the Net Metering Program to achieve particular policy goals. Customers and installers responded to the components of that Program and made rational decisions based on those components. It is not economically feasible for Net Metering Program customers to convert their systems to meet the new components of the Net Hourly Billing Program. Allowing customers to continue under the Net Metering Program will avoid rate shock; will respect the decisions of customers that were responding to the incentives provided by the Commission; and will facilitate orderly implementation of the Net Hourly Billing System. ICEA joins the other intervenors in submitting that it is fair, just, and reasonable to apply the Net Hourly Billing Program on a prospective basis, and to allow existing customers to continue under the Net Metering Program either indefinitely or, at the very least, for a reasonable period of time such as twenty years.

³ The Court also noted that “[t]here need not be facts in the record supporting the Commission’s policy determinations made in exercising its legislative function.” *Building Contractors*, 151 Idaho at 14 (citation omitted). ICEA submits that a decision grounded in the facts presented here would be prudent, but the Commission is not required to base a prospective policy decision on facts in the record if it chooses that route.

6. Specific proposal regarding customers that participated in the Net Metering Program.

Based on the facts and arguments in this Brief, ICEA requests the following treatment for customers that participated in the Net Metering Program. This request is substantially similar to, or identical to, the proposals made by ICL, Vote Solar, and potentially other intervenors.

- Close participation in the Net Metering Program 60 days following the Commission's Order, and open participation in the Net Hourly Billing Program as of that date.
- Define participation in the Net Metering Program based on the date customers submit their applications.
- Allow participants to remain on the Net Metering Program indefinitely, or for at least 20 years.
- Define participants in the Net Metering Program by the system, not by the identity of the customer.
- Prohibit participants in the Net Metering Program from materially increasing system size, defined as an increase of up to the greater of 10% of system size or 1kW.

CONCLUSION

ICEA respectfully submits that customers who participated in the Commission's Net Metering Program are distinct from those that will participate in the Net Hourly Billing Program. The Net Hourly Billing Program also reflects new legislative policy decisions, which the Commission can implement on a prospective basis. Further, and perhaps more importantly, it is fair, just and reasonable for the Commission to honor the choices and commitments made by participants in the Net Metering Program. Those customers complied with the rules in place at the time, and were indeed responding to the incentives created by the Net Metering Program. ICEA therefore respectfully requests that the Commission allow customers to continue under the Net Metering Program, and to prospectively open the Net Hourly Billing Program, as set forth in more detail above.

Dated: November 13, 2019.

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I certify that on November 13, 2019, a true and correct copy of the foregoing comments were served upon all parties of record in this proceeding via the manner indicated below:

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