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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 RESPONSE BRIEF REGARDING  
TREATMENT OF EXISTING CUSTOMERS

Pursuant to Order No. 34460, the Idaho Clean Energy Association, Inc. ("ICEA") submits the following response brief regarding treatment of existing customers under the Settlement Agreement filed with the Commission on October 11, 2019.

**INTRODUCTION**

As the Commission is well aware, the question of how to treat customers that participated under the Net Metering Program is not an easy one. The opening briefs submitted by ICEA, Commission Staff, Idaho Power Company ("Idaho Power" or "Company"), Idaho Conservation League and Vote Solar ("ICL/Vote Solar"), the City of Boise ("City"), and the Idaho Irrigation Pumpers Association, Inc. ("IIPA") clarify and refine the question before the Commission. The opening briefs seem to coalesce around the following two points: 1) While the Commission cannot lawfully distinguish between customers simply because some customers are "old," and some customers are "new," the Commission has broad discretion to distinguish between

customers that are situated differently from one another; and 2) it is fair, just, and reasonable to afford some consideration to customers that participated in the Net Metering Program, whether that be allowing customers to continue under that Program indefinitely; allowing customers to continue under the Program for twenty years; allowing customers to continue under the Program for eight years; or transitioning all customers to the Net Hourly Billing Program over a period of eight years.

Under these facts, and in light of the parties' briefing, ICEA submits that it is fair, just, and reasonable—and non-discriminatory—to implement the Net Hourly Billing Program on a prospective basis, and to allow customers that participated in the Net Metering Program to continue on that program indefinitely. In the alternative, ICEA submits that allowing customers to continue on the Net Metering Program for a period of twenty years is reasonable in light of the large financial expenditures that customers have made under the Net Metering Program.

#### **ARGUMENT**

**1. The Commission may distinguish between customers that participated in the Net Metering Program and those that participate in the Net Hourly Billing Program.**

ICEA agrees with Commission Staff, ICL and Vote Solar, and the City of Boise that, under the facts of this case, the Commission may (and should) lawfully distinguish between customers that participated in the Net Metering Program and those that participate in the Net Hourly Billing Program. *See* Commission Staff Opening Br. at 2-7; ICL/Vote Solar Opening Br. at 3-17; City of Boise Opening Br. at 6-8.

ICEA also submits, as explained in its opening brief, that the Commission may lawfully implement the policy changes reflected in the Net Hourly Billing Program on a prospective basis. ICEA Opening Br. at 6-12.

Idaho Power takes the position that “it is not aware of any valid distinction” that can

lawfully distinguish between customers under the Net Metering Program and the Net Hourly Billing Program. Idaho Power Opening Br. at 11.<sup>1</sup> ICEA submits that the Company omits key portions of the Idaho Supreme Court caselaw on this point. For example, the Company states,

where new customers cannot be distinguished from existing customers based on valid factors such as the quantity of electricity they use, the pattern, nature and timing of their usage, the conditions of service, or the 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.

Company Opening Brief at 9. The Idaho Supreme Court has identified these factors (quantity, pattern, nature, and timing, conditions of service, and cost of service) as legitimate bases for distinguishing between customers. *Idaho State Homebuilders v. Wash. Water Power*, 107 Idaho 415, 420 (1984). However, the Court has explicitly indicated that this list is non-exclusive; that none of the criteria in *Homebuilders* is more essential than the other; and that the Commission may lawfully distinguish between customers on other bases as dictated by the particular facts of the case before it. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utilities Comm'n*, 102 Idaho 175, 180 (1981). The Commission may, therefore, look to factors other than those identified by Idaho Power.

It should also be noted that even the non-exclusive factors identified by the Company may well distinguish customers under the Net Metering Program from customers under the Net Hourly Billing Program. The Net Hourly Billing Program, for example, provides strong incentives for customers to match the timing of their consumption with the timing of their generation. Affidavit of Kevin King ¶20. The Net Hourly Billing Program also provides strong incentives to consume more energy behind the meter rather than to export energy. If customers

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<sup>1</sup> IIPA states its belief that the 8-year transition period for all customers is reasonable, but it does not analyze existing caselaw. IIPA Opening Br. at 2. ICEA therefore does not separately address IIPA's comments.

respond to these incentives—and there is no reason to believe that they won’t—the pattern, nature, and timing of consumption and production of Net Hourly Billing Program customers may vary significantly from that of Net Metering Customers. This is ultimately a moot point. To address the question currently before it, the Commission does not need to guess about the quantity of electricity that customers under the Net Hourly Billing Program will use, or the pattern, nature and timing of use, conditions of service, and other information. Other factors distinguish between customers under the Net Metering Program and the Net Hourly Billing Program, as ICEA set forth in its Opening Brief. ICEA Opening Br. at 1-6.

Second, the Court has held that the Commission is free to prospectively apply changes in policy. *Building Contractors Ass’n of SW Idaho v. Idaho Public Utilities Commission*, 151 Idaho 10 (2011). As explained in ICEA’s Opening Brief, the change from the Net Metering Program constitutes a change in policy that can lawfully be applied prospectively under *Building Contractors Association*. ICEA Opening Br. at 7-9. Idaho Power does not cite or discuss *Building Contractors Ass’n*, much less acknowledge its implication for customers that participated in the Net Metering Program.

In addition, Idaho Power states that it “is not aware of any valid distinctions that can be made between current customers with on-site generation, and those who may participate in the future, that would warrant giving current customers more favorable rates.” Idaho Power Opening Br. at 11. Importantly, the Company does not *deny* that there may be valid distinctions between the two groups; the Company merely purports to be aware of one. *Id.* Regardless, there is a valid basis for distinguishing between the two groups—customers who participate in the Net Hourly Billing Program have the opportunity to make choices regarding system configuration, system size, storage, and other components of onsite generation systems to best benefit the customer

under the Net Hourly Billing Program or to allow the customer to remain on Schedule 6 or 8. Given the economics and feasibility of retrofitting existing systems, those choices available to future customers are different than the choices now available to customers who had onsite generation systems designed and installed under the existing Net Metering Program. King Affidavit at ¶¶13-29; ICEA Opening Br. at 9-11.

Finally, this case is about much more than “more favorable rates.” Idaho Power Opening Br. at 11. It is about an entirely new program. The Commission is free to implement the new Net Hourly Billing Program on a prospective basis, while allowing those that participated in the Net Metering Program to continue under the contours of that program.

**2. That customers had notice of potential rate changes does not justify imposing an entirely new program on them.**

The Company spends nine pages arguing that customers have had ample notice that rates under the Net Metering Program are subject to change. Idaho Power Opening Br. at 20. That is true. However, that customers were on notice that rates may change does not support the position that the Net Hourly Billing Program should be imposed upon customers that participated in the Net Metering Program.

First, and most importantly, the fact that rates may change does not dictate *how* rates should change. The Commission would, rightly, never accept an argument that electric rates should double because customers know that electric rates can change at any time. So it is here. An argument that rates *can* change does not support an argument that rates *should* change in any particular way. The Commission is currently faced with the question of how programmatic changes should be implemented. More specifically, the Commission is currently faced with the question of whether it should impose drastic programmatic changes retroactively or, instead, prospectively. The Commission maintains control over how the Net Hourly Billing Program

should be implemented. ICEA respectfully submits that it should be implemented prospectively, or with a twenty-year period during which customers that participated in the Net Metering Program can continue under that Program.

Second, each of the notices identified by Idaho Power involve *rates*. Idaho Power Opening Br. at 11-20.<sup>2</sup> None of the notices indicate that exports would be measured on an hourly basis rather than a monthly one. Monthly netting has been a feature of the Net Metering Program since it was established in the 1980s. Not a single customer of Mr. King's has ever requested or made decisions upon hourly data. King Aff. ¶14. As such, customers and installers have (understandably) used monthly data to make decisions regarding onsite generation systems. ICEA Opening Brief at 2. The change from monthly netting to hourly netting is not merely a change in rates; it changes a fundamental component of the program that dictated customer decision-making. It requires use of a whole other set of data. The notices that Idaho Power identifies indicate that rates can change, but do not provide notice of the dramatic, programmatic changes reflected in the change from the Net Metering Program to the Net Monthly Billing Program.

Third, through the kwh-credit system, the Net Metering System makes a customer indifferent as to whether electricity is consumed or exported; the customer's rates for consumption and rates for export are the same. While Idaho Power has notified customers that rates can change, customers could easily interpret this statement as irrelevant because exports are compensated on a kilowatt-hour basis. Perhaps a very well-informed, very well-engaged, quasi-prophetic consumer could have predicted that, some day, 1) the kwh-credit would be converted

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<sup>2</sup> The disclosure required under the Residential Solar Energy System Disclosure Act—which ICEA supported in the legislature—does include the concept that credit or compensation for excess power generated by a system could be reduced or eliminated. That Act went into effect October 1, 2019. The required notice was therefore not provided to the vast majority of customers that participated in the Net Metering Program.

to a monetary credit; 2) the monetary credit for exports would be decoupled from the rate for consumption; and 3) the monetary credit for exports would be reduced to *half* the rate for consumption. But that level of understanding of ratemaking concepts, and that ability to predict the future, is not realistic and should not be imputed to consumers. Indeed, as recently as last year, the Commission itself could not predict whether onsite generation provided value that exceeded its costs.<sup>3</sup> ICEA submits that it is fair to impute to consumers the knowledge that rates can change. But it is not fair or reasonable to impute to consumers the knowledge that the Net Metering Program would change to a Net Hourly Billing Program like that proposed in the settlement agreement.

Certainly, customers were on notice that rates may change. It is important, however, to recognize the limitations on such notice. Customers had to make decisions based on *some* criteria. They did so based on the components of the Net Metering Program. ICEA respectfully submits that it is reasonable to allow those customers to continue under the Net Metering Program. That customers were provided notice that rates may change does not, and should not, justify imposition of an entirely new program upon them.

Finally, Idaho Power cites a case in which the Idaho Supreme Court held that rates for water provided by a utility service provider could change, and more specifically that the utility service provider was not guaranteed a 5% rate of return indefinitely as the service provider's rate base expanded. Idaho Power's Opening Br. at 12-13 (citing *City of Pocatello v. Murray*, 21 Idaho 180 (1912)). That is not analogous to the situation presented here. Neither ICEA nor any other party argues that customers are entitled to a guaranteed rate of return on their investment—

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<sup>3</sup> See Case No. IPC-E-17-13, Order No. 34046 at 19 (“The benefits that on-site generation provide to the Company’s infrastructure and resource allocation, once quantified, may well prove to outpace any alleged costs, increases in fixed-cost responsibility or decreases in net excess energy compensation credit.”).

much less a *5% rate of return*, which would be well above the expected rate of return for a typical onsite generation system (although well below the rate of return a utility typically receives on its generation assets). Nor does ICEA or any other party argue that an onsite generation customer is entitled to maintain a guaranteed rate of return as their system expands over time. Indeed, ICL/Vote Solar and ICEA specifically state that customers under the Net Metering Program should not be allowed to continue under that program if they materially expand their systems. ICEA Opening Br. at 14 (“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.”); ICL/Vote Solar Br. at 10 (“Prohibit material increases to system size.”). All ICEA requests is that the Commission not impose the Net Hourly Billing Program retroactively to customers who participated in the Net Metering Program.

**3. It is fair, just, and reasonable to allow customers to continue under the Net Metering Program indefinitely, or for a period of twenty years.**

In its opening brief, ICEA sets forth the argument that it is fair, just, and reasonable to allow customers to continue under the Net Metering Program indefinitely, or at the very least, for a period of twenty years. ICL and Vote Solar persuasively set forth examples of other states, and technical analysis demonstrating the severe detrimental impacts to existing customers, balanced against nominal impacts to other customers. ICL/Vote Solar Opening Br. at 10-15. ICEA does not see the need to repeat those arguments here. ICEA respectfully requests that the Commission allow customers to continue under the Net Metering Program as proposed in the opening briefs of ICEA, ICL/Vote Solar, and the City of Boise.

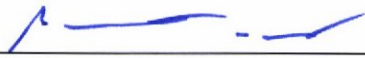
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Dated: November 27, 2019.

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## CERTIFICATE OF SERVICE

I certify that on November 27, 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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