

Preston N. Carter (ISB No. 8462)
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
prestoncarter@givenspursley.com
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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 TO IDAHO POWER
COMPANY'S PETITION FOR
RECONSIDERATION AND/OR
CLARIFICATION

The Idaho Clean Energy Association, Inc. ("ICEA") submits this Response to Idaho Power Company's Petition for Reconsideration and/or Clarification ("Petition").

INTRODUCTION

After considering the materials in the record, extensive public testimony, and approximately one-thousand public comments, the Commission rejected the settlement agreement ("Settlement Agreement") proposed by several parties to this case. ICEA signed the Settlement Agreement. As expressed in ICEA's comments, the Settlement Agreement "incorporate[d] some positions that ICEA d[id] not agree with," but, on the whole, represented a "reasonable resolution of the difficult issues presented by this case." ICEA Comments in Support of Settlement Agreement at 1-2 (filed Nov. 6, 2019). While ICEA stands by these comments, it also recognizes and respects the Commission's understanding and interpretation of the public

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testimony. In light of the Commission’s determination, ICEA submits that the procedure ordered by the Commission in Order No. 34509 represents a reasonable path forward.¹

In its Petition for Reconsideration, Idaho Power asserts that the parties engaged in a “comprehensive study” in a number of “workshops,” and that despite public testimony to the contrary, the public had adequate notice that the case would result in fundamental changes to the net metering program. Petition at 10-22. On this basis, Idaho Power requests that the Commission approve the Settlement Agreement. *Id.*

In the alternative, Idaho Power requests that the Commission implement one part of the rejected Settlement Agreement—net hourly billing—while a limited additional study is carried out. *Id.* at 27.

ICEA respectfully submits that Idaho Power does not provide a valid basis for the Commission to reconsider Order No. 34509. If the Commission is inclined to reconsider some portions of Order No. 34509, ICEA submits that Idaho Power’s specific requests should be rejected.

RESPONSE TO IDAHO POWER’S REQUESTS

1. The Commission cannot, and should not, implement portions of the Settlement Agreement in piecemeal fashion.

Idaho Power argues that, if the Commission does not accept the entire Settlement Agreement, the Commission should implement net hourly billing while a limited “value of exported energy” study is carried out. Petition at 27-28.

Net hourly billing was one component of the proposed Settlement Agreement. Settlement

¹ As ICEA noted in its Petition for Reconsideration, extending the eligibility for grandfathering to the date on which a replacement program is adopted will provide clarity and prevent customer confusion. ICEA Petition for Reconsideration at 3-5 (filed Jan. 10, 2020). ICEA stands by this recommendation.

Agreement at ¶IV.A.² As ICEA noted in its comments, the Settlement Agreement was intended to reflect a comprehensive agreement among the parties. It reflected tradeoffs made by each party. Implementing one component of the Settlement Agreement, while ignoring others, is inconsistent with the entire concept of a settlement agreement. The parties' understanding that the Settlement Agreement would either be adopted or rejected wholesale is embodied in the Agreement itself:

The obligations of the Parties under this Agreement are subject to the Commission's approval of this Agreement in accordance with its terms and conditions and upon such approval being upheld on appeal by a court of competent jurisdiction, if challenged. **Only after such approval, without material change or condition**, has been received shall the Settlement Agreement be valid.

Settlement Agreement ¶XIII (emphasis added). The Commission should not implement one term of the Settlement Agreement in piecemeal fashion.

Idaho Power asserts that implementing net hourly billing will "reduc[e] inequitable cost shifting." Petition at 27-28. Idaho Power has repeatedly *alleged* that the current net metering program creates a cost shift. However, it has never actually *proven* as much. *See* Order No. 34147 at 13 ("The Company's cost-shifting arguments also are unpersuasive. . . . Despite the Company's claims about cost shifting and subsidization, **we cannot make specific findings** about cost shifting absent evidence and analysis of cost of service, fixed costs, and other rate design elements." (emphasis added)). Idaho Power has not proven or quantified such a cost shift in this case. The continued assertions of cost-shifting do not justify immediate imposition of net hourly billing.

Changing Idaho Power's net metering program before conducting a comprehensive study

² The proposed Settlement Agreement was filed with the Commission as Attachment 1 to the Motion to Approve Settlement Agreement (filed Oct. 11, 2019).

is inconsistent with the Commission's directives in Order No. 34046 and Order No. 34509. In Order No. 34046, the Commission created new customer classes for customers with on-site generation "for purposes of **analysis and not ratemaking**," to allow interested parties "analytical focus as it relates to **future** ratemaking and compensation." Order No. 34046 at 18 (emphasis added). Consistent with this direction, in Order No. 34509 the Commission made clear that it expects a study first, and any changes flowing from the study later: "It is critical for the Commission to have a credible and fair study in front of it **before** it can make a well-reasoned decision on the Company's net-metering program design." Order No. 34509 at 9 (emphasis added). The Commission has also made clear that changes to the net metering program must occur in a separate case: "**Before** the Company files a case to change its net-metering program structure, the Commission must approve the study as credible and fair." *Id.* (emphasis added).

It should be clear enough that the cart (changes to the net metering program) should not come before the horse (comprehensive study). If that were not obvious enough on its own, here the Commission has specifically ordered that the horse should pull the cart. Idaho Power's Petition does not provide a good reason to put the cart back in front of the horse.

Finally, as the Commission noted in Order No. 34509, this case was noticed as a comprehensive study. No specific proposals to change the net metering program were proposed or noticed. ICEA also notes that Idaho Power has provided no testimony to support its proposal for net hourly billing. Changing the course of the case on reconsideration cannot make up for the lack of notice at the outset of the case. It would not be appropriate for the Commission to implement net hourly billing as a matter of procedure as well as a matter of substance.

For these reasons, ICEA respectfully submits that the Commission reject Idaho Power's proposal to implement net hourly billing while a limited initial study is carried out.

2. ICEA does not agree with Idaho Power's characterization of the settlement conferences as a "comprehensive study" that flowed from "workshops."

In its Petition, Idaho Power asserts that "the Parties comprehensively studied the issues as the Commission directed and filed the analysis in the evidentiary record." Petition at 11. The Company also states that the parties engaged in "workshops" that "developed an export credit rate calculation methodology." *Id.* at 14.

The contents of the settlement discussions are confidential. ICEA intends to respect that confidentiality. Suffice it to say that ICEA strongly disagrees with Idaho Power's characterization of the settlement discussions as a "comprehensive study" that flowed from "workshops" and that ultimately led to the parties "develop[ing] an export credit rate calculation methodology." *Id.*

The settlement conferences were just that: conferences to discuss settlement. Before each meeting, a confidentiality statement was read. Each party was required to sign a confidentiality agreement. Each member of the party that received information regarding the contents of settlement discussions was required to sign a form agreeing to abide by the confidentiality agreement. While no non-party member of the public attempted to attend, given the confidentiality statements, any non-party member of the public would have been required to sign a confidentiality agreement. The settlement conferences were not "workshops" within any reasonable meaning of that word.

The result of the settlement conferences was, unsurprisingly, a Settlement Agreement. The Agreement reflected compromises made by the signing parties as to various aspects of the net metering program. The Settlement Agreement does not purport to be a comprehensive study. None of the signing parties agreed that the Settlement Agreement was a comprehensive study. Indeed, neither the existence, nor the scope, nor the outcome of any comprehensive study was

presented to the Commission in this docket. The materials filed by Idaho Power with the Commission are just that—Idaho Power’s materials, that Idaho Power decided to file with the Commission. Those materials are not part of the Settlement Agreement. ICEA has never agreed, does not now agree, and never would have agreed that the Settlement Agreement constituted or flowed from a comprehensive study of the costs and benefits of on-site generation.

Due to confidentiality, ICEA cannot fully rebut Idaho Power’s characterizations of the settlement discussions.³ But ICEA strongly disagrees with Idaho Power’s assertions that the settlement discussions constituted a comprehensive study that took place in a series of workshops.

3. The Commission appropriately considered public testimony.

As the Commission noted, public opposition to the Settlement Agreement was nearly unanimous. Order No. 34509 at 3.

As a signatory to the Settlement Agreement, ICEA believes that the Settlement Agreement was a reasonable compromise under the circumstances. However, ICEA cannot disagree with the Commission’s interpretation of that testimony. ICEA respectfully submits that reversing course at this stage will only heighten the concerns expressed by the public and further undermine any additional proceedings regarding the net metering program. For this reason, ICEA does not agree with Idaho Power’s petition for reconsideration to the extent that it would have the Commission disregard public testimony.

³ Idaho Power’s attempt to provide a narrative of the settlement discussions comes up against, and perhaps even crosses, the confidentiality of settlement discussions. *See* Petition at 10-21 (purporting to provide a narrative of what was presented and discussed in the settlement discussions). Again, due to confidentiality, ICEA cannot fully present its interpretation of the course of the discussions. Suffice it to say that Idaho Power’s description is one-sided, incomplete, and appears to be tailored to fit the Company’s arguments on reconsideration. Other parties would undoubtedly present different narratives or interpretations of the course of the settlement conferences.

4. The Commission's guidance on future steps is appropriate in light of the public testimony.

In response to the public testimony, the Commission ordered a procedure to complete a *bona fide* comprehensive study with sufficient public input. Order No. 34509 at 9-10. ICEA agrees that, particularly in light of the public comments, a well-defined process such as that set forth by the Commission is a reasonable path forward. ICEA particularly appreciates the fact that the final scope of the study will be determined by the Commission. The three-step process of designing a study; completing the study; and proposing any changes supported by the study is an understandable and commonsense way to process the case. ICEA respectfully submits that the Commission clarify that Staff rather than the Company should take a leading role in crafting details of the process.

Idaho Power takes the position that the Commission should implement net hourly billing before the comprehensive study occurs, and that the Commission should then require the Company to conduct a less-than-comprehensive study that focuses only on the value of exported energy. Petition at 27-30. ICEA respectfully submits that this approach would skip over what was supposed to occur in this docket—a **comprehensive** study of the costs and benefits of on-site generation.⁴ In light of the Commission's rejection of the Settlement Agreement, ICEA submits that the Commission's guidance on the components of a comprehensive study are reasonable and should be followed. ICEA requests that the Commission not accept Idaho Power's offer to implement changes first and to then conduct a less-than-comprehensive study.

During this comprehensive study, parties do not need to entirely reject any work that was previously accomplished. That work must, however, be presented to and vetted by the public,

⁴ As noted above, ICEA submits that 1) it is not appropriate to implement net hourly billing, one component of the Settlement Agreement, in a piecemeal fashion; and 2) it is inaccurate to characterize the settlement meetings as a comprehensive study.

stakeholders, and by the Commission before any changes to the net metering program are implemented. This is appropriate in light of the public testimony.

5. Comments on the process for reconsideration.

Idaho Power proposes that the Commission grant reconsideration to allow Idaho Power to 1) present additional evidence to support net hourly billing; and 2) present evidence on how to complete a study that, in Idaho Power’s words, “builds on the parties’ substantial work to date.” Petition at 35. Again, ICEA rejects the characterization that the materials Idaho Power submitted in support of the Settlement Agreement reflects the work of the parties. It was a settlement—nothing more, nothing less.

Further evidence cannot address the issues raised by public testimony in this case. Nor is further evidence on reconsideration a substitute for the full-blown docket that would be necessary to implement changes to the net metering program. Finally, here again Idaho Power proposes to put the cart before the horse and implement changes to the net metering program before engaging in a *bona fide* comprehensive study. ICEA respectfully requests that the Commission decline to accept Idaho Power’s offer to present additional evidence at this time. If the Commission does decide to reconsider any portion of Order No. 34509, ICEA requests that the order granting reconsideration make clear that the reconsideration process will not implement piecemeal portions of the Settlement Agreement and that it will not result in changes to the net metering program without a comprehensive study.

6. Other issues.

Idaho Power requests clarification on the definition of “customer,” as that term is used for grandfathering purposes. ICEA recognizes the potential confusion over this term, and submits that the simplest way to resolve this confusion would be to apply grandfathering to systems rather than customers as proposed in the Petition for Reconsideration filed by Richard

Kluckhohn.

Idaho Power devotes several pages of briefing, and numerous pages of exhibits, on customer complaints regarding a small number of solar installers. Petition at 33-34. It is not clear how this relates to the request for reconsideration—the Company does not make any specific requests in this section of its brief. ICEA nonetheless feels the need to respond.

In all candor, the statements made by the small number of installers as identified in Idaho Power's Petition are not the types of statements that should be made by solar installers. The vast majority of statements, made by the vast majority of installers, do not fall in line with the sorts of statements contained in Idaho Power's materials. ICEA submits that it is not appropriate to judge an industry based off a small number of statements made by a small number of participants in the industry. Part of ICEA's mission is to move the industry forward and to avoid such behavior. That is why ICEA, for example, supported passage of the Residential Solar Energy System Disclosure Act.

In addition, in response to the statements made by one installer, Idaho Power approached the appropriate agency, the Attorney General's office, which investigated and concluded that the actions at issue had been addressed. That is the appropriate method for proceeding—the State's consumer protection mechanism worked. ICEA fully appreciates that a goal of ratemaking, and therefore a goal of the Commission, is to implement rates and rate structures that are understandable to the public.⁵ However, the Commission is not primarily an agency devoted to consumer protection. ICEA respectfully submits that this section of Idaho Power's Petition is not relevant to the issues currently in front of the Commission and should not weigh into any

⁵ Indeed, as ICEA has repeatedly emphasized, providing rates and rate structures that are consistent and understandable is extremely important to customer satisfaction. The more uncertainty there is, the more likely it is that customers make investments based not on the merits of the investment but, instead, on the assumptions or presentations made by the solar installer. The more predictable and understandable the rates and rate structures are, the easier it is for solar installer to provide, and customers to receive, uniform, verifiable, and accurate information.

decision on reconsideration.

Dated: January 17, 2020.

GIVENS PURSLEY LLP



Preston N. Carter

Givens Pursley LLP

Attorneys for Idaho Clean Energy Association

CERTIFICATE OF SERVICE

I certify that on January 17, 2020, a true and correct copy of the foregoing comments were served upon all parties of record in this proceeding via the manner indicated below:

Commission Staff

Diane Hanian, Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste. 201-A
Boise, ID 83714
Diane.holt@puc.idaho.gov

Hand Delivery & Electronic Mail
(Original and 7 Copies)

Edward Jewell, Deputy Attorney General
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste. 201-A
Boise, ID 83714
Edward.Jewell@puc.idaho.gov

Electronic Mail

Via Electronic Mail

Lisa D. Nordstrom
Regulatory Dockets
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, ID 83707
lnordstrom@idahopower.com
dockets@idahopower.com

Timothy E. Tatum
Connie Aschenbrenner
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, ID 83707
ttatum@idahopower.com
caschenbrenner@idahopower.com

Benjamin J. Otto
Idaho Conservation League
710 North 6th Street
Boise, Idaho 83702
botto@idahoconservation.org

Idaho Irrigation Pumpers Association, Inc.
c/o Eric L. Olsen
Echo Hawk & Olsen, PLLC
505 Pershing Avenue, Suite 100
P.O. Box 6119
Pocatello, Idaho 8305
elo@echohawk.com

Idaho Irrigation Pumpers Association, Inc.
c/o Anthony Yankel
12700 Lake Avenue, Unit 2505
Lakewood, Ohio 44107
tony@yankel.net

Idahydro
c/o C. Tom Arkoosh
Arkoosh Law Offices
802 W. Bannock Street, Suite LP 103
P.O. Box 2900
Boise, ID 83701
Tom.arkoosh@arkoosh.com
Erin.cecil@arkoosh.com

Ted Weston
Rocky Mountain Power
1407 West North Temple, Suite 330
Salt Lake City, UT 84116
ted.weston@pacificorp.com

Briana Kober
Vote Solar
358 S. 700 E., Suite B206
Salt Lake City, UT 84102
briana@votesolar.org

Al Luna
Aluna@earthjustice.org

Abigail R. Germaine
Boise City Attorney's Office
105 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
agermaine@cityofboise.org

Zack Waterman
Mike Heckler
Idaho Sierra Club
503 W. Franklin Street
Boise, ID 83702
zack.waterman@sierraclub.org
Michael.p.heckler@gmail.com

NW Energy Coalition
c/o Benjamin J. Otto
Idaho Conservation League
710 N. 6th Street
Boise, ID 83702
botto@idahoconservation.org

Micron Technology, Inc.
c/o Austin Rueschhoff
Thorvald A. Nelson
Holland & Hart, LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202
darueschhoff@hollandhart.com
tnelson@hollandhart.com

Yvonne R. Hogle
Rocky Mountain Power
1407 West North Temple, Suite 330
Salt Lake City, UT 84116
yvonne.hogle@pacificorp.com

David Bender
Earthjustice
3916 Nakoma Road
Madison, WI 53711
dbender@earthjustice.org

Nick Thorpe
nthorpe@earthjustice.org

Idaho Sierra Club
c/o Kelsey Jae Nunez
Kelsey Jae Nunez LLC
920 N. Clover Drive
Boise, ID 83703
kelsey@kelseyjaenunez.com

F. Diego Rivas
NW Energy Coalition
1101 8th Avenue
Helena, MT 59601
diego@nwenergy.org

Jim Swier
Micron Technology, Inc.
8000 S. Federal Way
Boise, ID 83707
jswier@micron.com

Industrial Customers of Idaho Power
c/o Peter J. Richardson
Richardson, Adams, PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
peter@richardsonadams.com

Industrial Customers of Idaho Power
Dr. Don Reading
6070 Hill Road
Boise, Idaho 83703
dreading@mindspring.com

Russell Schiermeier
29393 Davis Road
Bruneau, Idaho 83604
buyhay@gmail.com



Preston N. Carter