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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorney for the Idaho Conservation League

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE</b>	)	<b>CASE NO. IPC-E-18-15</b>
<b>APPLICATION OF IDAHO POWER</b>	)	
<b>COMPANY TO STUDY THE COSTS,</b>	)	<b>IDAHO CONSERVATION LEAGUE</b>
<b>BENEFITS, AND COMPENSATION</b>	)	<b>AND VOTE SOLAR</b>
<b>OF NET EXCESS ENERGY</b>	)	
<b>SUPPLIED BY CUSTOMER ON-</b>	)	<b>ANSWER/CROSS PETITION FOR</b>
<b>SITE GENERATION</b>	)	<b>RECONSIDERATION</b>

The Idaho Conservation League (ICL) and Vote Solar recommend the Commission deny Idaho Power’s request to adopt the settlement. The Commission should also deny Idaho Power’s alternative request to impose a significant program change – net hourly billing – and constrain future study of the benefits of distributed energy. The Commission should further decline to order parties in another docket, IPC-E-18-16, to resume negotiations over an export credit rate without a study of costs and benefits for the same reasons the Commission rejected the settlement in this case. Finally, ICL and Vote Solar recommend the Commission apply legacy rate treatment to the system as we proposed, Mr. Kluckhorn requested, and Idaho Power agreed.

IDAPA Rule 31.01.01.332 allows the Commission to process requests for reconsideration that “present only issues of law and not of fact or issues of fact not requiring hearings” through written briefs. As described below, Idaho Power’s Petition does not justify changing the Commission’s prior order, much less justify it based only on law or issues of uncontested facts. Based on the record in this docket, the Company does not carry its burden of proof to establish

the settlement, or any single portion thereof, is in the public interest, a legal question firmly in the Commission's authority to reject outright.

### **I. The Commission Should Deny Idaho Power's Request to Approve the Settlement.**

The Commission should deny Idaho Power's Petition to Reconsider. The filing rests on IPC's incorrect assertion that Order No. 34509 "overlooks evidence in the record of the collaborative, comprehensive Export Credit Rate study performed by parties at the Commission's request, as well as substantial public notice of the study and settlement process."<sup>1</sup> Contrary to the assertions made in the Petition, the Commission appropriately exercised its authority to reject the settlement as not in the public interest, based on the overwhelming public opposition, as well as the fact that the settlement lacked meaningful support in the record. Moreover, there was no "comprehensive Export Credit Rate Study" performed in this docket and Idaho Power's attempt to characterize confidential settlement negotiations-- by a limited number of parties-- as a study, or public "workshop" process, is belied by the record in the case and Idaho Power's own Petition.

#### **1. The Commission Appropriately Rejected the Settlement.**

ICL and Vote Solar agree with the Commission's conclusion that it "directed the parties to 'meet in an effort to agree on the scope of proper procedural and substantive elements of the on-site generation docket, for approval by this Commission.' [and] that submitting a Settlement Agreement, without first submitting a comprehensive study, contradicts the intent of [the Commission's] directive."<sup>2</sup>

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<sup>1</sup> *Idaho Power Petition to Reconsider* at page 10.

<sup>2</sup> *Order 34509* at 6.

At bottom, it is indisputable that there was no comprehensive study. That, alone, dictates that the Commission appropriately reject the Settlement Agreement which was submitted in lieu of, not as the result of, any such study. Idaho Power clearly does not like the fact that the Commission is unwilling to reverse its prior requirement of a comprehensive study of costs and benefits and accept a Settlement Agreement without such a study. However, because the Commission correctly requires such a study, rejecting the Settlement Agreement is the unavoidable result. That does not constitute error or oversight by the Commission justifying reconsideration.<sup>3</sup>

The Commission should not abandon it based on Idaho Power's hyperbolic assertion that a public process overseen by the Commission "will result in largely discarding thousands of hours of careful analysis and deliberation."<sup>4</sup> First, nothing forecloses stakeholders from building upon the work done before in a process that is more inclusive and respectful of public concerns. Second, even if it did, conducting an analysis, as required by the Commission, through an open and public process should not be sacrificed for expediency.

Moreover, whatever evidence Idaho Power alleges the Commission's decision "overlooks," it is indisputable that the Commission heard testimony from over 1,000 members of the public, which formed the primary basis for the Commission's decision. Based on the entire record in this case, including the significant public comments, there is nothing unreasonable, unlawful, erroneous or not in conformity with the law about the Commission's decision. The Commission is not only authorized, but entirely justified, in weighing the evidence from the

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<sup>3</sup> IDAPA 31.01.01. 275.

<sup>4</sup> *IPC Petition* at 4.

public over any other evidence Idaho Power focuses on when determining the public interest.<sup>5</sup> Thus, there is no basis to grant Idaho Power's Petition.<sup>6</sup>

Furthermore, it is telling that Idaho Power's Petition relies primarily on hundreds of pages of printed, nearly unintelligible, spreadsheets. Idaho Power's one-sided calculations, standing alone and outside a comprehensive analysis with full public participation, does nothing to address the Commission's reasons for rejecting the settlement agreement. Contrary to Idaho Power's argument that "Order No 34509 overlooks the evidence in the record" about the Commission's ordered study and public notice, Idaho Power's attempt in rehearing to back-fill the record with "the benefit of hindsight," concedes that the record before the Commission was inadequate.<sup>7</sup> The standard for whether the Settlement Agreement is in the public interest is not measured by total number of pages filed by the utility. In any event, Idaho Power filing hundreds of pages of numbers simply does not "better facilitate a comprehensive review by the Commission and interested parties on reconsideration."<sup>8</sup> The Commission should reject Idaho Power's Petition because it does not provide any new evidence that undercuts the Commission proper rejection of the Settlement.<sup>9</sup>

In fact, Idaho Power's additional attachments to its rehearing request were already in the record as Attachment 4 to the Motion to Approve Settlement ("Initial Study"), and as

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<sup>5</sup> IDAPA 31.01.01.276.

<sup>6</sup> IDAPA 31.01.01.331.

<sup>7</sup> *IPC Petition* at 10, 12 (acknowledging "that a narrative presentation and a careful roadmap describing all the elements of the study" would have benefitted the Commission and public).

<sup>8</sup> *IPC Petition* at 18.

<sup>9</sup> See *In the Matter of the investigation Into Whether Ponderosa Tenace Estates Water System, Inc. is a Public Utility Subject to Regulation by the Idaho Public Utilities Commission*, Case No. GNR-W-01-01, Order No. 29123 (September 24, 2002) (denying petition for reconsideration in part due to the petitioner's failure to include new evidence with the petition); *IPC Petition* at 22, fn 57.

Attachment 1 to Idaho Power’s Comments in Support of the Settlement (“Export Credit Rate Study”).<sup>10</sup> The Commission already considered those documents as part of the record and concluded, accurately, that “these files appear to be the starting point of negotiations between the parties and not the comprehensive study ordered by the Commission.”<sup>11</sup> After reviewing the entire record developed by the parties that carry the burden of proof, the Commission concluded, “The record does not provide the Commission with substantial and competent evidence upon which it can base its decision.”<sup>12</sup> Thus, neither the existence of that information in the prior record, nor the mischaracterizations of them in Idaho Power’s rehearing request, undermines the Commission’s basis for its initial decision to reject the settlement as failing to protect the public interest.<sup>13</sup>

The Commission “listened to thirteen hours of public testimony over two days” and found three common themes that support rejecting the proposed settlement.<sup>14</sup> The overwhelming public testimony upon which the Commission based its decision demonstrated that the public “expected this docket to result in a study”.<sup>15</sup> That expectation is reasonable, since the Commission’s express directive in Order 34046 was “to meet in an effort to agree on the scope of proper procedural and substantive elements of the on-site generation docket, for approval by this Commission.”<sup>16</sup> Contrary to Idaho Power’s claim, the record does not show that the signing parties “did in fact produce a comprehensive study” to support the Settlement.<sup>17</sup> The “record”

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<sup>10</sup> See *IPC Petition* at 20 - 21.

<sup>11</sup> *Order 34506* at 8.

<sup>12</sup> *Order 34509* at 8.

<sup>13</sup> *IDAPA 31.01.01.275*.

<sup>14</sup> *Order 34509* at 4. (The fourth common theme addressed the legacy rate treatment of existing solar customers.)

<sup>15</sup> *Id.*

<sup>16</sup> *Order 34509* at 6.

<sup>17</sup> *IPC Petition* at 12.



Idaho Power points to was the same evidence the Commission considered and determined to be only “the starting point of negotiations between the parties and not the comprehensive study ordered by the Commission” and, because of the manner it is presented and lack of context, to be insufficient to allow the Commission or public to evaluate it.<sup>18</sup>

The settlement process was unquestionably not “transparent” as the Commission required.<sup>19</sup> The settlement talks were not only limited to a handful of interest groups in a closed process in which all participants were bound by confidentiality.<sup>20</sup> That is, appropriately, the nature of settlement negotiations. But it is not a public and open process and cannot substitute for the procedures this Commission has clearly required. For example, Idaho Power participated in an open, transparent process to reformulate the Demand Response programs that lead to a settlement that has stood the test of time.<sup>21</sup> The future process for customer generation in this docket can follow a similar process going forward.

To the extent Idaho Power’s Petition actually reflects its misunderstanding of the Commission’s prior directive, the Commission should combine its denial of the Petition for Rehearing with instruction that Commission Staff will lead the public process and reiterate Order 34509’s requirement that the Commission approve each step in the process moving forward. The Commission has authority to “notify the parties of procedures to be followed to decide the issues for which settlement was rejected by the Commission.”<sup>22</sup> ICL and Vote Solar support the Commission’s clear articulation of the “criteria for a credible and fair study” on page 9 -10 of Order 34509.

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<sup>18</sup> *Order 34509* at 8-9.

<sup>19</sup> *Order 34509* at 6.

<sup>20</sup> *IDAPA 31.01.01.272*.

<sup>21</sup> *Order 32732, 32776, IPC-E-12-29*.

<sup>22</sup> *IDAPA 31.01.01.276*.

## **2. Idaho Power Did Not Perform and Did Not File a Comprehensive Study as Required by the Commission.**

Idaho Power's Petition attempts to avoid the simple truth that nothing in the record constitutes the comprehensive study ordered by the Commission."<sup>23</sup> The evidence the Petition cites was already considered and correctly determined to be an "Initial Study" performed by Idaho Power, not a neutral analysis overseen by the Commission and based on full public participation. Indeed, as Idaho Power explains, the other parties adopted a wholly different methodology which calculated a very different export credit rate.<sup>24</sup>

Idaho Power's purported "Export Rate Credit Study" included as Attachment 1 to IPC's Comments in support of the Settlement also not the study the Commission required. It is neither a study nor the result of a public process. While the Settlement negotiations began with an earnest process to outline components for a comprehensive study, as evidence by the first Staff Status Report, that study never happened. While the machinations resulting in the Settlement Agreement are confidential, the public record reflects the disagreement between parties to the assumptions about costs and benefits underlying the Agreement. As we noted in our Reply Brief, "ICL and Vote Solar do not agree that the Export Credit Rate and underlying methodology as described in the proposed Settlement Agreement provide a fair valuation of the avoided costs associated with distributed energy exports. At most this value represents a number that a portion of parties could agree to in order to reach settlement and it should not be interpreted by the Commission as establishing anything other than a compromise amenable to signing parties."<sup>25</sup> A Settlement Agreement that produces a number that a portion of parties were willing to accept is

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<sup>23</sup> *Order 34509* at 8.

<sup>24</sup> *IPC Petition* at 14 – 15.

<sup>25</sup> *ICL-Vote Solar Reply Brief on Existing Customers* at 5.

not the same as a comprehensive study through a public process. Thus, the Commission was correct to review the record in this case and conclude the purported study was inadequate to ensure the Settlement was in the public interest.

The only new thing Idaho Power provides in their Petition is to print out a paper copy of the “several large Excel files containing formula calculations” that constitute the negotiated export credit rate.<sup>26</sup> The Commission can safely reject Idaho Power’s request because it ignores the Commission’s finding: “Though this information is in the decision-making record, the manner in which it is presented and the lack of context prohibit the Commission, or the public, from evaluating it in any meaningful manner.”<sup>27</sup>

### **3. If the Commission Does Not Deny Idaho Power’s Requests Outright, Then the Commission Rules Require A Full Evidentiary Proceeding.**

Idaho Power asserts that the record is sufficient for the Commission to approve their request for reconsideration on written briefs alone, but states that the process could alternatively be conducted with an evidentiary hearing or through public comment.<sup>28</sup> To the extent the Commission does not deny Idaho Power’s request for reconsideration as recommended by ICL and Vote Solar, IDAPA 31.01.01.332 requires an evidentiary hearing to resolve the factual dispute about the record and effective public notice upon which Idaho Power’s Petition relies. However, the time and effort that would involve would be better spent, and the public interest better served, by starting the process to develop the comprehensive and public analysis of the costs and benefits of customer generation than by reploughing old ground on the merits of the Settlement Agreement.

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<sup>26</sup> *IPC Petition* at 17, fn 41.

<sup>27</sup> *Order 34509* at 8-9.

<sup>28</sup> *IPC Petition* at 21.



## **II. The Commission Should Deny Idaho Power's Attempts to Impose Net-Metering Program Design Changes and Constrain the Development of a Credible and Fair Study.**

As an alternative to reversing itself and approving the Settlement Agreement, Idaho Power asks the Commission to sever and impose a single term of the settlement—changing the net metering program to a net hourly billing program—to constrain future public input in the further study the Commission twice ordered.<sup>29</sup> Not only is severing a compromise settlement improper, but Idaho Power's basis for arguing for it relies on its old saw of making unsupported assertions of "cost shifts." The Commission has repeatedly declined to accept those allegations due to lack of evidence.<sup>30</sup> An unsupported, and incorrect, assertion does not become true because it is repeated. The Commission should, yet again, reject the unsupported and false assertion and, once again, remind Idaho Power they must "provide the Commission with substantial and competent evidence upon which it can base its decision."<sup>31</sup> Order No 34509 states "[i]t 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."<sup>32</sup> Idaho Power's Petition is the opposite of a credible and fair study and should be denied.

The Commission can reject as hyperbole Idaho Power's statements that the Commission's process "will result in largely discarding thousands of hours of careful analysis and deliberation."<sup>33</sup> Nothing forecloses stakeholders from building upon the work done before through a new process that is more inclusive and respectful of public concerns. ICL and Vote Solar take seriously the Commission's directive "the Company, Commission Staff and all other

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<sup>29</sup> *IPC Petition* at 4, 26 – 33.

<sup>30</sup> See *ICL-Vote Solar Reply Brief on Existing Customers* at 2-6.

<sup>31</sup> *Order 34509* at 8.

<sup>32</sup> *Order 34509* at 9.

<sup>33</sup> *IPC Petition* at 4, 26.

stakeholders to the case would do well to listen to and understand the public sentiment regarding the importance of distributed on-site generation to Idaho Power's customers."<sup>34</sup> We look forward to using our expertise in public engagement to achieve this reasonable outcome.

Along with seeking to constrain future study, Idaho Power asks the Commission to direct them to file a recommendation, in this docket, to implement net hourly billing.<sup>35</sup> As the public testimony in the case makes clear, the move from monthly to hourly billing would constitute a major change to the existing net metering program and is contentious and confusing. To support this request IPC claims that "it is well established that moving from net monthly billing to net hourly billing is an important step toward reducing inequitable cost shifting."<sup>36</sup> While IPC includes several citations in an attempt to support this claim, all are based on a wishful reading of the record. To begin with, it is factually incorrect that anything regarding net hourly billing is "well established." While the Commission Staff raised a conceptual proposal similar to net hourly billing in Docket No IPC-E-17-13, the Commission never evaluated such a program and did not order any such program.<sup>37</sup> Idaho Power's other citations in support of this statement are either unrelated to net hourly billing altogether<sup>38</sup> or are from the current docket, which the Commission found insufficient to establish any changes to the net metering program.

In addition to the assertion that net hourly billing is "well established" Idaho Power continues to make reference to claims of "cost shifting" when such a finding has never been made by this Commission. This issue similarly arose in Idaho Power Company's Opening Brief

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<sup>34</sup> *Order 34509* at 10.

<sup>35</sup> *IPC Petition* at 27.

<sup>36</sup> *IPC Petition* at 28.

<sup>37</sup> *Order 34046* at 17.

<sup>38</sup> See *IPC Petition* at 28, fn 71 (citation to *Order 34046* at 16 where the Commission states "we appreciate the parties' arguments about cost-shifting, but the analysis is incomplete.")

on Treatment of Existing Customers in this docket, which we responded to in detail in our Reply Brief and will not reiterate here.<sup>39</sup> It appears that Idaho Power's strategy on this issue is one of simple repetition of baseless claims with the hope that through the mere process of attrition, the Commission will someday rule in their favor without their carrying the burden of producing any credible factual analysis to support their claim.

Idaho Power's Petition to Reconsider muddies the water by misrepresenting prior Commission orders, relying on evidence already found insufficient, and putting forward a confusing, ill-conceived proposal. Instead of doubling down on a failed process and inadequate record, ICL and Vote Solar recommend the Commission deny IPC's request.

If the Commission does wish to address Idaho Power's request, which is based on factual assertions that have not been proven, the Commission must adopt a full evidentiary proceeding including access to discovery, prepared testimony, and a technical hearing.<sup>40</sup> Further, because of the enormous public interest in this issue, the Commission should also implement a full public comment process. This route will inevitably take substantial time and resources away from addressing the actual issue here, developing a credible and fair study to support the Commission's consideration of the net metering program design. Instead of continuing to litigate over a failed record, we recommend the Commission deny Idaho Power's request.

### **III. The Commission Should Deny Idaho Power's Request to Issue an Order in a Separate Docket.**

Without citing any legal authority, and disregarding the Commission's reasoning here, Idaho Power asks for an Order directing further settlement talks in a separate case, IPC-E-19-

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<sup>39</sup> *ICL-Vote Solar Reply Brief on Existing Customers* at pages 2 – 6.

<sup>40</sup> *IDAPA. 31.01.01.332.*

15.<sup>41</sup> The Commission should reject this over-reach based on due process concerns. In fact, the Commission may find that the closed-door process in IPC-E-19-15 suffers from the same flaws the Commission correctly identified here. As Idaho Power explains, the 19-15 case attempts to rely on essentially the same information and analysis to develop an Export Credit Rate.<sup>42</sup> But the Commission has already found the record here, which is more fully developed, inadequate to assess the reasonableness of this approach to net metering program redesign. Ordering parties to continue to negotiate around a failed process is an absurd request that will only cause further bifurcation and delay. Further, it was Idaho Power who chose to create the separate but inevitably related dockets. ICL and Vote Solar argued in 19-15 to combine the issues and address all customers in one proceeding.<sup>43</sup> The Commission decided differently and we respect that decision.<sup>44</sup> Idaho Power now makes a seeming collateral attack on that Order by asking the Commission to take action in this docket that will impact that docket. The Commission should reject this request.

#### **IV. The Commission Should Adopt Legacy Net Metering Program Access by the Location.**

ICL and Vote Solar recommend the Commission approve Idaho Power's request to apply legacy rate treatment "by the system location rather than the customer."<sup>45</sup> We agree with the Company that applying legacy treatment to a system is the predominate regulatory practice in other states because it is logical, simple, and protects the economic value of the system.<sup>46</sup>

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<sup>41</sup> *IPC Petition* at 5, 31.

<sup>42</sup> *IPC Petition* at 31.

<sup>43</sup> *ICL-Vote Solar Procedural Comments* at 2-3 in IPC-E-19-15.

<sup>44</sup> *Order 34335*.

<sup>45</sup> *IPC Answer/Cross Petition to Richard Kluckhorn's Petition for Reconsideration* at page 5.

<sup>46</sup> *Id* at 3-4.

Further, applying legacy treatment to the system avoids the complexity of defining a “customer” raised in Idaho Power’s Petition for Clarification.

Idaho Power proposes four criteria to further clarify this treatment.<sup>47</sup> These criteria are largely consistent with ICL and Vote Solar’s own recommendations made in our Brief on Existing Customers in this docket and are supported by ICL and Vote Solar. The first criteria would link legacy program eligibility to the premises, not the customer, consistent with ICL and Vote Solar’s recommendation in our prior brief.<sup>48</sup> The second criteria would forfeit legacy program access in the event that the system is removed, moved, or offline for more than 6 months. To this criteria, ICL and Vote Solar have no objection. The third criteria allows for immaterial increases to system size and is consistent with ICL and Vote Solar’s recommendation in our prior brief.<sup>49</sup> Finally, under the fourth criteria, Idaho Power requests the Commission establish end date of December 20, 2045 for all legacy rate treatment.<sup>50</sup> On this topic, ICL and Vote Solar support either the Commission’s original ruling providing for indefinite legacy program access, or an end date of not less than 20 years from the NEM Program Enrollment Deadline.<sup>51</sup>

ICL and Vote Solar agree these are appropriate and useful clarifications. We support the Commission adopting these along with the request in our Petition for Reconsideration to allow customers to enroll and remain in the existing net metering program until the Commission approves a successor tariff.

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<sup>47</sup> *Id at 5.*

<sup>48</sup> *ICL and Vote Solar Brief on Existing Customers* at page 10.

<sup>49</sup> *Id.*

<sup>50</sup> *IPC Answer/Cross Petition to Kluckhorn* at page 5.

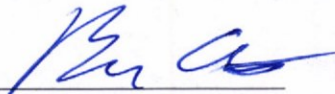
<sup>51</sup> *ICL and Vote Solar Brief on Existing Customers* at page 10.

**Conclusion**

For the reasons stated above, ICL and Vote Solar recommend the Commission:

- Deny Idaho Power’s Petition to Reconsider seeking to impose the settlement terms despite overwhelming public opposition and an inadequate record.
- Deny Idaho Power’s request to impose a major change to the net metering program design because of the lack of a factual record and mischaracterization of prior Commission orders.
- Deny Idaho Power’s attempt to constrain future study of distributed energy and instead reaffirm the open transparent process outlines in Order 34509.
- Apply legacy rate treat to the system instead of the customer because it is the predominate regulatory approach to this issue, simple, and fair to distributed energy system owners.

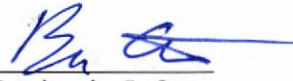
Respectfully submitted this 17<sup>th</sup> day of January 2020.

  
Benjamin J. Otto  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of January 2020 I delivered true and correct copies of the foregoing ANSWER/CROSS PETITION TO RECONSIDER to the following via the method of service noted:

  
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