

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

FORMAL COMPLAINT OF JEFF COMER) CASE NO. IPC-E-19-28
AGAINST IDAHO POWER COMPANY)
)
)
) ORDER NO. 34580

On August 6, 2019, Jeff Comer (“Mr. Comer”), a customer of Idaho Power Company (“Idaho Power” or “Company”), formally complained that the Company denied his February 2019 request to transfer 2018 excess net energy credits to a meter in Mr. Comer’s name on contiguous property owned by Jack Goodman (“Mr. Goodman”).

Following proceedings that involved input from Mr. Comer, the Company, and Commission Staff, the Commission issued a final order rejecting Mr. Comer’s complaint. *See* Order No. 34492, issued November 19, 2019. Thereafter, Mr. Comer filed a timely petition for reconsideration, which the Commission granted. Order No. 34520. The Company then filed an answer, and Commission Staff filed comments.

Having reviewed Mr. Comer’s petition for reconsideration and the Company’s and Staff’s responsive filings, all of which were timely, the Commission reconsiders Order No. 34492 and grants Mr. Comer’s formal complaint. The Commission directs the Company to approve Mr. Comer’s request to transfer excess net energy credits from the generation meter to the meter on the property of Mr. Goodman as requested.

BACKGROUND

Mr. Comer and Mr. Goodman are joint partners in a 22-kW hydroelectric project that has been interconnected to the Company’s grid since 2006. Mr. Comer and Mr. Goodman own contiguous property in Twin Falls County. When this dispute arose, each property contained multiple parcels of land. Although their properties are contiguous, the parcel on which Mr. Goodman’s residence and his electric meter are located is not contiguous to the parcel on which the hydroelectric system and the generation meter is located. However, each parcel between the hydroelectric project and Mr. Goodman’s residence is owned by Mr. Comer or Mr. Goodman, thus making their properties contiguous. The 22-kW hydroelectric project’s generation meter is on property owned by Mr. Comer, and the generation meter is in Mr. Comer’s name. The meter on

Mr. Comer's residence, which is on the same parcel as the hydroelectric project, is in Mr. Comer's name. The meter on Mr. Goodman's residence was placed in Mr. Comer's name to comply with the Company's meter aggregation rules.

In February 2019, the Company denied Mr. Comer's request to transfer excess net energy credits from the generation meter to the meter on Mr. Goodman's property. The Company had previously approved the transfer of excess net energy credits from the generation meter to the meter on Mr. Goodman's property in Mr. Comer's name. The Company based its denial on the fact that Mr. Goodman's residence is on a parcel that is not contiguous to the parcel on which the generation meter sits. Mr. Comer formally complained to the Commission that the Company had exceeded its authority by reinterpreting Commission-approved language in its Tariff, which reads "property," with a more restrictive term "parcel," that does not appear in the pertinent part of the Company's Tariff.

In Mr. Comer's formal complaint, he alleged, without elaborating or demonstrating, that he and Mr. Goodman "are partners in a net metering project in Twin Falls County." Formal Complaint at 1. The Commission denied Mr. Comer's formal complaint based on criterion 4 of the Company's meter aggregation rules, which requires the "electricity recorded by the meter is for the Customer's requirements[.]" The Commission found, "Based on the record, it is reasonable to conclude that the electricity consumed at the meter on Mr. Goodman's property was not for Mr. Comer's consumption." Order No. 34492 at 4. In his petition for reconsideration, Mr. Comer stated with more particularity that he and Mr. Goodman are bona fide partners in the hydroelectric project. *See* Order No. 34520 at 2. In granting reconsideration, the Commission stated that Mr. Comer's petition for reconsideration "more specifically alleges facts that were not fully considered in the underlying order, which justifies granting reconsideration." *Id.* at 3. The Commission granted a reconsideration period with enough time to "allow the parties to further develop the factual record and provide supporting evidence for or against claims alleged." *Id.*

COMMENTS ON RECONSIDERATION

a. Commission Staff.

On reconsideration, Commission Staff requested documentation supporting Mr. Comer's claim that he and Mr. Goodman are bona fide partners in the hydroelectric project. *See* Commission Staff Reply Comments at 2. In response, Mr. Comer sent in bank receipts, power bills, Applications, Idaho Department of Water Resources water rights documentation, and Federal

Energy Regulatory Commission documentation that indicated a bona fide partnership. Staff stated, “In Staff’s estimation, the documentation provided by Mr. Comer is more than sufficient to demonstrate a bona fide partnership between he and Mr. Goodman that has existed from the project design phase through the project application phase, the interconnection phase, and into the project operation phase.” *Id.* at 3.

b. Idaho Power.

In reply, Idaho Power acknowledged, “It is reasonable to conclude that Mr. Comer and Mr. Goodman are joint owners of the project.” Idaho Power Answer at 6. But the Company reiterated its argument that the term “property” in the Company’s meter aggregation rules should be read to mean “parcel.” “Idaho Power believes the separate and distinct legal deed of conveyance to determine the boundaries of the property is the basic legal unit of property in Idaho and should represent a ‘property’ for purposes of the tariff.” *Id.* at 7. The Company requests the Commission “affirm the Company’s interpretation of the term ‘property’ as it applies to the meter aggregation rules outlined by the Commission in Order No. 32925.” *Id.* at 8.

COMMISSION FINDINGS AND DECISION

A petition for reconsideration must specify “the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law.” IDAPA 31.01.01.331.01. If the Commission decides to reconsider the matter, the Commission must issue its final order on reconsideration within twenty-eight (28) days after matter is fully submitted for reconsideration. *Idaho Code* § 61-626(2). Any party aggrieved from a Commission decision on reconsideration may appeal the decision to the Idaho Supreme Court. *Idaho Code* § 61-627.

Mr. Comer’s petition for reconsideration argued that Commission Order No. 34492 was erroneous because the project was designed, financed, and constructed as a partnership, and continues to be operated as a partnership with rights, responsibilities, and risks assigned to each partner. As Mr. Comer stated and proved, Mr. Goodman is “not just some random neighbor who would benefit from free power.” Petition for Reconsideration at 2. Both the Company and Commission Staff submitted written arguments on the petition for reconsideration. Having reviewed Mr. Comer’s petition and the responsive filings from the Company and Staff, we find it appropriate to grant Mr. Comer’s request.


The Company's Tariff defines "Customer" as "the individual, partnership, association, organization, public or private corporation, government or governmental agency receiving or contracting for Electric Service." I.P.U.C. No. 29, Tariff No. 101 Rule B (emphasis added). Because we now find, based on the undisputed evidence, that Mr. Comer and Mr. Goodman are bona fide partners, we conclude that criterion 4 of the Company's meter aggregation rules is satisfied. We are not persuaded by the Company's attempt to redefine the term "property," as written in its Tariff, to "parcel." If the Company wants its meter aggregation rules to read "parcel" instead of "property," it can file a case requesting the change and we will evaluate the merits of the change with full public notice of a proposed policy change and the opportunity for public participation.

ORDER

IT IS HEREBY ORDERED that the Company approve the transfer of excess net energy credits requested by Mr. Comer in February 2019 and ensure Mr. Comer and Mr. Goodman get the full value of their accumulated excess net energy credits.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. IPC-E-19-28 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

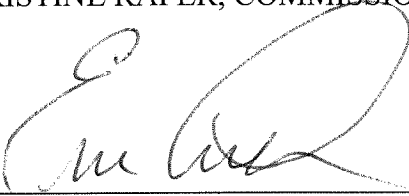
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th
day of March 2020.



PAUL KJELLANDER, PRESIDENT




KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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