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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Agripower Solar, LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE IDAHO
POWER COMPANY'S APPLICATION
FOR AUTHORITY TO MODIFY
SCHEDULE 84'S METERING
REQUIREMENT AND TO
GRANDFATHER EXISTING
CUSTOMERS WITH TWO METERS

Case No. IPC-E-20-26

AGRIPOWER SOLAR, LLC'S PETITION FOR
RECONSIDERATION

Pursuant to Commission Rule of Procedure 331, IDAPA 31.01.01.331, Agripower Solar, LLC ("Agripower Solar") respectfully requests that the Commission reconsider the portion of Order No. 34854 regarding the cutoff date for grandfathering existing Schedule 84 customers. Specifically, Agripower Solar requests that prospective Schedule 84 customers be afforded "grandfathered" status so long as applications are received 30 days from the date on which the order on reconsideration is issued.

In the alternative, and at a minimum, Agripower Solar requests that the five customers specifically discussed in this Petition be deemed as having submitted timely applications and, that these five customers therefore be afforded "grandfathered" status under Order No. 34854.

Agripower Solar did not intervene in Case No. IPC-E-20-26, in part because Idaho Power's Application (the "Application") proposed to change the dual-meter component of Schedule 84 customers. Agripower Solar did not have significant objections to that proposal, or to the proposed grandfathering related to the dual-meter systems. Unlike, for example, the application in IPC-E-19-15,¹ the Application in this case did not propose substantial programmatic changes.

Regardless, although Agripower Solar did not intervene, it is a "person interested in a final order" under Rule of Procedure 331, and is therefore eligible to file this Petition for Reconsideration. As discussed in more detail below, Agripower Solar and its customers were severely impacted by the December 1, 2020 cutoff date for grandfathering.

GENERAL BACKGROUND

Agripower Solar is an engineering and design firm that contracts to design, engineer, and install renewable energy systems that are specifically customized to meet the needs of the agricultural businesses. For example, Agripower Solar frequently designs, engineers, and installs solar systems on dual-axis trackers, which enables the agricultural producer to maximize the amount of energy produced on a given parcel of property. This meets agricultural producers' desire to self-generate to offset (or, in most cases, to partially offset) their power needs without reducing agricultural production.² Agripower Solar favors dual-axis systems because they produce the most power during the late afternoon and evening, which corresponds to the peak

¹ Agripower Solar did not independently intervene in IPC-E-19-15 because its interests were represented by the ICEA. Joe Goodman, a representative of Agripower Solar, participated in settlement discussions in IPC-E-19-15.

² Agricultural businesses often have extremely high power bills. For example, several of Agripower Solar's customers have electrical bills in excess of one or two million dollars per year. To meaningfully offset a customer's load—the purpose of the net-metering program—with the current 100kw cap, it is necessary to aggregate a large number of arrays. Under current rules, Agripower Solar is often unable to completely offset customers' loads. It has, however, been able to partially offset loads and reduce some customers' bills by several hundred thousand dollars per year.

loading hours of utilities. In theory—though the time value of this energy is not fully reflected in the net metering program—power provided at these times provides maximum value to the utility and to the entire grid.

Given the size, complexity, and degree of customization required to serve agricultural businesses, Agripower Solar often works with customers for months to design, plan, and install solar installations. The planning and design of these systems must necessarily reference the rules of the existing program—the systems must comply with existing rules, particularly where there is no basis to predict what a replacement program might look like. As noted, many of these planned systems are complex. Under current rules, specifically the 100-kilowatt cap and meter aggregation rules, Agripower Solar often must design up to several dozen solar arrays, on a dozen or more meters, to materially offset a customer's load. This, in turn, can lead to several dozen applications for a single customer.

The Commission issued Order No. 35854 on December 1, 2020, and Agripower Solar reviewed it carefully that same day. Two aspects of the Order were surprising to Agripower Solar and required immediate action. First, to be eligible for grandfathering, customers' applications and fees must have been received by December 1, 2020, the same day the Order was issued. Second, the grandfathering did not apply *only* to the change proposed in the Application—the change from dual meters to single meters—but rather to programmatic changes that had not yet been proposed. These two aspects of the Order caused considerable confusion and, ultimately, placed several customers in unreasonable and inequitable situations.³

³ Agripower Solar is petitioning on its own behalf, but Agripower Solar has reason to believe that customers of other solar installers were put in a similar position. Unfortunately, not all solar installers or distributed-generation customers have the time, resources, or regulatory sophistication to petition for reconsideration or to otherwise channel their interests into well-coordinated regulatory efforts. Agripower Solar seeks reconsideration specifically to allow its customers to be grandfathered, but also respectfully requests that the Commission consider that the proposed 30-day eligibility period is likely to provide relief to similarly situated customers of other installers.

CUSTOMERS IMPACTED BY THE DECEMBER 1, 2020 CUTOFF DATE

Order No. 34854 was served on December 1, 2020, just after 12:00 p.m.⁴ Idaho Power's offices closed at approximately 6:00 p.m. Because the Order proposed legacy treatment for existing customers, and the financial impacts of the as-yet-un-proposed programmatic changes were unknown, it was important for Agripower Solar to ensure that its customers were afforded legacy treatment. Immediately upon receiving and reviewing the Order, Agripower Solar began reviewing its records and checking with its customers to ensure that applications had been filed and checks written, such that they would be received by close of business.

It is important to note that Agripower Solar did *not* attempt to rush and find *entirely new* customers to file applications. Rather, Agripower Solar reviewed its records to ensure that its *existing* customers—many of whom Agripower Solar had been working with for months to design a system, and some having already spent hundreds of thousands of dollars on equipment—had their paperwork in order.

Unfortunately, in the compressed timeline, several customers were unable to ensure that complete applications were received by December 1. This created what Agripower Solar submits are distinctions between customers based purely on luck (or lack thereof), geographic location, innocent mistake, or other arbitrary factors. Agripower Solar submits that it would be reasonable to provide customers thirty days after the service date of the order on reconsideration to ensure that applications have been filed. In the alternative, and at the very least, Agripower Solar submits that the following customers should be deemed to have filed timely applications and be afforded legacy treatment.

⁴ As already explained, Agripower Solar did not intervene in this case. The press release was issued on December 4, after the deadline for legacy treatment had passed. Luckily, Russell Schiermeier received a copy of the Order and immediately forwarded it to Agripower Solar. If this had not occurred, Agripower Solar's customers would have *unknowingly* missed the grandfathering deadline, even though several of their systems were partially applied for, or in some cases, they had placed applications in the mail. This could have resulted in even more unjust outcomes.

1. **Darrell and Jordan Funk, Double Eagle Dairy.** Agripower Solar first met with the Funks in June of this year. Double Eagle Dairy ultimately agreed to purchase 20, 100-kilowatt solar systems. Double Eagle Dairy and Agripower Solar eventually formalized their agreement in eight separate contracts, all signed on November 13, 2020. In reliance on these contracts, Agripower Solar expended considerable funds to build out the system. On or about July 31, 2020, Agripower Solar made an initial delivery of 300 solar modules, costing approximately \$65,000.⁵ After the initial delivery, and after the contracts were signed, Agripower Solar delivered an additional 2054 modules at a cost of over \$450,000. In all, around half a million dollars' worth of components and equipment were already onsite for this customer when Order No. 34854 was announced.

Given the extensive nature of its plans, Double Eagle Dairy filed a number of applications to Idaho Power in the months preceding the Commission's Order. Unfortunately, because of miscommunication and various changes to the customer's plans, there was confusion regarding which applications had been filed months earlier and which had yet to be filed. As a result of this confusion, 7 applications were mistakenly left unsubmitted when the Commission's December 1 cutoff passed. Notably, the underlying contracts for each of these 7 applications had already been signed weeks earlier, on November 13. Again, the only reason that the applications were not submitted was because of miscommunication and confusion regarding which applications still needed to be submitted. The Funks even called Agripower Solar on December 1 to ensure that all their applications had been submitted. Upon discovering the mistake, Agripower Solar submitted those 7 applications to Idaho Power on December 2, 2020.

Applying the December 1, 2020 grandfathering date would leave Double Eagle Dairy

⁵ Agripower Solar made this initial delivery based on a hand-shake deal—common in the agricultural sector—before the contracts were signed.

with 13 grandfathered systems and 7 non-grandfathered systems.⁶ Because the replacement program for the remaining 7 systems is not known—or even proposed—Double Eagle Dairy is unable to effectively determine how this split-grandfathered system should be implemented; whether it makes sense to alter the plans for the grandfathered sites only; or whether to proceed with the generation program at all.

Double Eagle Dairy has also submitted additional applications to Idaho Power since the Commission's Order was released; all for the same project. But again, because of the uncertainty surrounding the replacement program, Double Eagle Dairy is unable to make informed decisions regarding the overall project. The Commission should grant grandfathered status to all of Double Eagle Dairy's applications. Ruling otherwise would leave Double Eagle Dairy with a system that is only part-grandfathered even though Double Eagle Dairy expended hundreds of thousands of dollars on the system—an inequitable result caused by the simple fact that Double Eagle Dairy's project was ongoing at the time of the Commission's Order.

2. Craig Giles, Giles & Meyers Farms. Giles & Meyers Farms is another customer of Agripower Solar that had prepared 19 applications to submit to Idaho Power. On the day preceding the Commission's Order, Agripower Solar advised Craig Giles to submit his applications via overnight mail.⁷ However, Mr. Giles was unable to deliver the applications to FedEx before its overnight deadline that evening. Instead, Mr. Giles placed the applications in overnight mail the morning of December 1, *before* the Commission convened to release its

⁶ Double Eagle Dairy initially planned to install 35 systems total: the 20 systems for which contracts had already been signed, and an additional 15 systems after that. Even when all 35 systems are fully installed, they will only represent roughly half of Double Eagle Dairy's energy consumption.

⁷ At the time, Agripower Solar did not know that the Commission's impending order would set the cutoff date at December 1. It recommended submitting the applications via overnight mail simply as a matter of best business practice.

Order.⁸ The applications unfortunately were not received by Idaho Power until December 2. Thus, as the Order currently stands, Mr. Giles' entire system would not be treated as grandfathered because the applications arrived late in the mail.

Another customer of Agripower Solar, the Meyers, managed to meet the FedEx deadline for overnight mail on the evening before the Commission's Order was released. The Meyers' applications arrived on December 1, 2020 while Giles & Meyers Farms' applications arrived the following day. Both customers placed their applications in the mail before the Commission's Order was announced, and neither customer, nor Agripower Solar, could have anticipated that December 1 would be the cutoff date for legacy treatment. Nevertheless, the Meyers' applications were accepted and Giles & Meyers Farms' applications were not. From the customers' perspective, it wasn't attentiveness to the Commission's Order that ultimately decided whose applications were grandfathered in, but rather, dumb luck.

Giles & Meyers Farms' situation is also a prime example of the discrimination that many rural applicants have faced as a result of the Commission's December 1 grandfathering date. If Giles & Meyers Farms was located in the Treasure Valley, it could have easily hand-delivered the applications to Idaho Power the day before the Order came out. However, because Giles & Meyers Farms is located in Hansen, Idaho, it was not able to get the applications to Idaho Power by mail until December 2.

3. Perry Van Tassell, Hidden Valley Organic. Hidden Valley was originally a customer of another contractor, Gietzen Electric, which submitted all the necessary applications. However, while the application fees had been *placed in the mail* on December 1, 2020, they were not received by Idaho Power until December 4. Idaho Power has since explained that, as a result

⁸ Enclosed as Exhibit A is the FedEx tracking information for Giles & Meyers Farms' mailed applications. Note how the applications were placed in the mail at 10:18 a.m. on the morning of December 1, 2020, before the Commission released its Order.

of the fees' late arrival, Hidden Valley's 14 applications would not be accepted or reviewed. Hidden Valley has since requested that Agripower Solar install seven, dual-axis tracker systems. However, under the current Order, Hidden Valley would not be eligible for grandfathering. Hidden Valley is another example of a customer who, but for its location outside the Treasure Valley, could have easily hand-delivered its application fees and met the December 1 cutoff date.

4. **Russell Patterson.** Upon learning of the deadline, Agripower Solar realized that to obtain grandfathered status, Idaho Power had to *physically receive* checks by 6:00 p.m. on December 1, 2020. Agripower Solar's employees (and most customers) were located several hours away from Boise and could not deliver hard copies of checks by the deadline. In near desperation, Agripower Solar reached out to Russell Schiermeier, a customer and resident of Bruneau, Idaho, and explained the situation. Mr. Schiermeier dropped everything, rushed to Idaho Power's office, and began to write physical checks. Mr. Schiermeier graciously volunteered not only to write checks for his own applications, but also for other customers of Agripower Solar.⁹ Mr. Schiermeier wrote nearly 100 checks that day, as fast as he could. Despite the valiant effort, Mr. Schiermeier failed to identify in the "memo" field that any of these checks were for Russell Patterson's personal installations. Mr. Patterson intended to submit three applications for three 100-kw systems. Many of the customers for whom the approximately 100 checks were written have since determined to withdraw their applications. However, Idaho Power *has still refused to apply any of these submitted funds, even for withdrawn applicants, toward Mr. Patterson's system.* Because Mr. Schiermeier failed to write a check with Mr. Patterson's name in the "memo" field, Idaho Power has determined that Mr. Patterson is not eligible for grandfathering.

⁹ Perhaps demonstrating the remarkable trust and dedication of many engaged in the agricultural sector, Mr. Schiermeier agreed to *personally* write checks not only for himself, but for others, with the understanding that he would be reimbursed at a later date.

5. **Greg Nickell.** Agripower Solar had been working with Greg Nickell since early in the summer of this year. Mr. Nickell intended to arrange five solar installations on property that he had leased to two farmers. Because the property upon which the installations would be installed was leased, the applications had to be signed by the lessees, not Mr. Nickell. Upon learning of the grandfathering deadline on December 1, Mr. Nickell attempted to obtain signatures from the lessees. The lessee for three of the five installations signed. However, the lessee for the other two installations could not be reached that afternoon. Under the Order, Mr. Nickell now has three systems that are grandfathered and two that are not. This result is predicated not on Mr. Nickell's failure to heed and respond promptly to the Commission's Order, but sheer misfortune.

REQUEST FOR RECONSIDERATION

In Order No. 34854, the Commission decided to provide legacy treatment (or grandfathering) for "existing Schedule 84 customer-generators." Order No. 34853 at 11. Under Order No. 34853, the legacy treatment appears to apply not only to the changes proposed in the Application—a change from a dual-meter to a single-meter configuration—but also to larger programmatic changes that weren't proposed in the Application. *See id.* at 10 (suggesting that legacy treatment approved in this case will apply to "successor program").

The Order defines "existing Schedule 84 customer-generators" as "those that have interconnected their system by the service date of this Order, or who have applied for interconnection under Schedule 84 by the service date of this Order and interconnect their system within one year." *Id.* at 12.

1. Eligibility for grandfathering status should extend to applications postmarked by thirty days after the order on reconsideration.

As discussed above, Order No. 34853 was served several hours before its legacy treatment cutoff took effect. And it granted legacy treatment not just for the change proposed in the Application—the change from two meters to one meter—but rather for as-yet-un-proposed future programmatic changes.

The compressed timeframe, coupled with the heightened importance of grandfathering, resulted in Agripower Solar's rush to confirm its customers qualified for grandfathering. This was not a rush for Agripower Solar to recruit entirely new customers; it was a rush to ensure that Agripower Solar's *existing* customers had properly filled out and submitted their applications and related fees.

Because Agripower Solar serves customers primarily located outside of the Treasure Valley, it was not simply a matter of urging customers to visit Idaho Power's headquarters, submit an application, and fill out a check. Instead, Agripower Solar had to scramble for ways to hand-deliver applications and checks. These circumstances resulted in several customers being denied legacy status based on geographical location, bad luck, innocent mistakes, or other arbitrary factors. For example, Agripower Solar believed it had submitted all applications for Double Eagle Dairy, but some, although completed, had mistakenly fallen through the cracks. As a result, the majority of Double Eagle Dairy's locations are eligible for grandfathering, while some are not. A reasonable period of time to double-check paperwork would avoid this senseless hardship.

Even more strikingly, Craig Giles and Perry Van Tassell placed applications in the mail on December 1, before the 6:00 p.m. deadline. Mr. Giles even placed his applications in the mail *before he knew of the December 1 cutoff*. Their applications were not received until after

December 1. Ironically—and unjustly—the fact that they acted earlier in the day on December 1 *precluded* legacy treatment. Had these customers lived in the Treasure Valley, they could have easily submitted their applications and fees by visiting Idaho Power’s office in person. But by the time they learned of the December 1 cutoff date, it was too late.

In addition, the narrow window of time precluded Mr. Nickell from accomplishing the minor administrative task of obtaining a signature from a second lessee, due to the lessee’s circumstantial unavailability on that date.

Agripower Solar respectfully submits that the cutoff for legacy treatment should be governed by more than bad luck, clerical errors, or geographical location. This is particularly true for rural and agricultural Schedule 84 customers, who tend to have larger and more complex net metering systems. Agripower Solar submits that it would be fair, just, and reasonable to provide Schedule 84 customers a reasonable time to ensure that their applications are properly filled out and submitted. Accordingly, Agripower Solar submits that Schedule 84 customers should be provided legacy treatment so long as their applications are post-marked by thirty days after the service date of an order on reconsideration in this case.

Agripower Solar would not object to a date of less than thirty days. Its goal is simply to provide customers and installers with a reasonable period of time to complete their applications and avoid the unfortunate circumstances illustrated above.

2. In the alternative, the customers discussed in this petition should be deemed grandfathered.

As discussed above, while Agripower Solar is petitioning for reconsideration on behalf of itself and its own customers, other customers are likely to have found themselves in similar situations. Providing a reasonable period of time to qualify for grandfathering should cure this issue across the board.

However, even if the Commission is not inclined to reconsider the cutoff date in general, Agripower Solar respectfully requests that the customers identified in this petition be afforded grandfathered status. These customers did not try to game the system; they did not “rush the door” with a net metering system planned after learning of the grandfathered date; and they missed the cutoff for legacy treatment by no fault of their own. It would be fair, just, and reasonable to afford these customers legacy treatment under the terms of Order No. 34854. This could be accomplished, for example, by deeming these customers as, constructively or in-fact, having “applied for interconnection under Schedule 84 by the service date of this Order.” Order No. 34854 at 12.

Agripower Solar is amenable to other solutions that protect customers from being denied legacy treatment due to bad luck, geographical location, or clerical errors.

CONCLUSION

For these reasons, Agripower Solar respectfully requests that the Commission 1) reconsider the cutoff date for legacy treatment under Order No. 34854; and 2) allow customers to qualify for legacy treatment so long as an application under Schedule 84 is postmarked within thirty days after the Commission serves its order on reconsideration; or 3) as an alternative, that the Commission afford the customers identified in this petition legacy treatment under Order No. 34854.

Dated: December 22, 2020.

GIVENS PURSLEY LLP



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EXHIBIT A

DELIVERED

Signed for by: B.LEWIN

GET STATUS UPDATES
OBTAIN PROOF OF DELIVERY

FROM
Hansen, ID US

TO
BOISE, ID US

Travel History

Shipment Facts

Local Scan Time 

Wednesday, 12/02/2020

10:52 am	Boise, ID	Delivered
8:34 am	MERIDIAN, ID	On FedEx vehicle for delivery
7:34 am	MERIDIAN, ID	At local FedEx facility
5:35 am	OAKLAND, CA	Departed FedEx location
5:35 am	BOISE, ID	At destination sort facility

Tuesday, 12/01/2020

11:41 pm	OAKLAND, CA	Arrived at FedEx location
11:06 pm	SALT LAKE CITY, UT	Shipment exception Delay beyond our control
6:13 pm	TWIN FALLS, ID	Left FedEx origin facility
11:18 am		Shipment information sent to FedEx
10:18 am	TWIN FALLS, ID	Picked up

CERTIFICATE OF SERVICE

I certify that on December 22, 2020, a true and correct copy of the foregoing was served upon all parties of record in this proceeding via the manner indicated below:

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