

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF IDAHO POWER |) | CASE NO. IPC-E-20-26 |
| COMPANY'S APPLICATION FOR |) | |
| AUTHORITY TO MODIFY SCHEDULE 84'S |) | |
| METERING REQUIREMENT AND TO |) | ORDER NO. 34892 |
| GRANDFATHER EXISTING CUSTOMERS |) | |
| WITH TWO METERS |) | |

On December 1, 2020, the Commission issued Order No. 34854 approving Idaho Power's request to move to a single-meter requirement for onsite generation systems under Schedule 84. The Order also granted legacy treatment to existing customers for 25 years from the service date of the Order.

The Commission subsequently received 17 public comments about the Order. Additionally, Gietzen Solar, LLC ("Gietzen Solar"), AgriPower Solar, LLC ("AgriPower Solar"), and the Idaho Chapter of the Sierra Club ("Idaho Sierra Club") petitioned the Commission to reconsider the Order. The Idaho Sierra Club's petition also asked the Commission for clarification.

Idaho Power filed answers to these petitions.

Now, the Commission denies the petitions for reconsideration and clarifies that customers with financial commitments as of December 1, 2020 are eligible for legacy treatment, including customers with postmarked applications and application fees as of that date.

ORDER NO. 34854

In Order No. 34854, the Commission found it fair, just, reasonable, and non-discriminatory to grandfather existing Schedule 84 customers as of the service date of the Order. Order No. 34854 at 10. The Commission determined that grandfathering existing customers for 25 years as of the service date of its Order was consistent with the treatment granted to residential and small general service customers with onsite generation taking service under Schedules 6 and 8, as determined in IPC-E-18-15. *Id.* The Commission also approved the Company's request to move from a dual-meter requirement for Schedule 84 customer-generators to a single-meter requirement for all new Schedule 84 customer-generators. *Id.* at 12.

PUBLIC COMMENTS AND PETITIONS FOR RECONSIDERATION

Public comments and petitions for reconsideration focused on the Commission's decision to align the cutoff date for legacy treatment with the service date of Order No. 34854. No

one objected to the single-meter requirement for new Schedule 84 customers or the Commission's decision to grant legacy treatment to existing Schedule 84 customer-generators for 25 years.

a. Public Comments.

Public comments reflected the sentiment that the December 1 cutoff date disadvantages farmers because farming operations are seasonal. Numerous farmers stated that they finish harvest in late fall and use the winter months to analyze capital investments for the upcoming year. Most farmers supported the Idaho Sierra Club's petition for reconsideration and its request to extend the cutoff date until the end of February 2021. Farmers stated that extending the cutoff date would allow due diligence that has already been started to be completed in the ordinary course of business. Numerous farmers also stated that they understand that tariffs are not contracts and are subject to change. But these farmers also claimed they cannot make investment decisions without knowing how the tariff and program may change.

b. Gietzen Solar's Petition for Reconsideration.

Gietzen Solar states it submitted more than twelve applications and application fees for committed potential Schedule 84 customers by December 1, 2020. Idaho Power informed Gietzen Solar those customer-generators would not receive grandfathered status because Idaho Power did not receive those applications and application fees by December 1, 2020. Gietzen Solar Petition for Reconsideration at 1. Gietzen Solar states the applications were submitted by email or postmarked by December 1, 2020, and the application fees were postmarked by December 1, 2020. *See id.* Gietzen Solar states that Idaho Power informed Gietzen Solar that applications were not eligible for legacy treatment if Idaho Power had not received the applications and corresponding fees by December 1, 2020. *Id.* Gietzen Solar believes this method of determining whether the application was timely received discriminates against rural customers because there is not an electronic option to submit the application fee. *Id.* at 2. Gietzen Solar also notes this docket was processed during harvest season when farmers do not have time to analyze large financial investments. *Id.* at 2. Gietzen Solar asks the Commission to order Idaho Power to accept all applications/application fees postmarked by December 1, 2020. *Id.* at 3. Gietzen Solar asserts that doing so would allow rural customers the same opportunity that was provided to customers physically located near Idaho Power. *Id.*

c. Idaho Power's Answer to Gietzen Solar's Petition for Reconsideration.

Idaho Power states, "The Commission's focus appears to be intended to protect customers who made a financial investment, and the Company does not believe the Commission intended to create a situation that incentivized installers to submit applications *after* reading the Commission Order." Idaho Power Answer to Gietzen Solar at 2. Idaho Power also points to the language of Schedule 72, which states,

1. Customers must submit a completed application form and \$100 application fee to the Company. . . . 2. Upon receipt of a completed application and \$100 fee, the Company will provide the Customer with written or electronic mail notification that the application has been received and all necessary information has been provided.

Id. at 3 *citing* Schedule 72-7. The Company states its "business practice is to consider an application fully submitted as of the date a completed application form and \$100 application fee is received; Idaho Power has consistently applied this standard to all applications received." *Id.*

The Company also details its efforts to notify customers of potential changes requested in its Application. The Company states it sent a bill insert to all Schedule 9, Schedule 19, and Schedule 24 customers between July 6 and August 4, 2020. *Id.* at 3-4. The Company states it sent an email to installers on June 25, 2020, notifying them of the case and the Company's requested effective date of December 1, 2020. *Id.* at 3-4. Idaho Power asks the Commission to deny Gietzen Solar's petition and find: 1) the Company's procedure for identifying fully submitted applications (application form and fee) is fair, just, and reasonable; 2) the fully submitted application must be physically received by the Company by December 1, 2020 to be eligible for legacy treatment, and 3) potential Schedule 84 customers and installers received reasonable notice. *Id.* at 4.

d. Idaho Sierra Club's Petition for Reconsideration and Clarification.

Idaho Sierra Club states that the Commission can clarify to potential customers that tariffs can and likely will change while also establishing a future cutoff date. Idaho Sierra Club Petition for Reconsideration and Clarification at 1-2. Idaho Sierra Club requests a 90-day extension of the cutoff date for customers to be eligible for legacy treatment, until February 28, 2021. *Id.* at 2. Idaho Sierra Club states this extension will clarify that the tariff will change while also allowing farmers to evaluate the investment in an onsite generation system, take advantage of federal funds and tax credits, and provide a small remedy for the uncertainty that will be caused by the lengthy study that the Company is yet to undertake. Idaho Sierra Club states, "The study of the costs and benefits of customer self-generation, and the potential for a general rate case to be

required to put any such costs/benefits into effect within a tariff structure, is likely to be a multi-year process, not yet even begun. Clarity that the tariff is likely to change is still accomplished if the cut-off date is extended 90 days.” *Id.* at 5. Idaho Sierra Club notes that the Company has had many chances to comprehensively study net metering, as the Commission has ordered in other dockets, but has not yet done so. *Id.* at 2-3. Idaho Sierra Club states, “It is unfair, unnecessary, and to no significant benefit on record in this docket that farmers bear the cost of the utility’s choice to delay fulfilling obligations ordered by the Commission.” *Id.* at 4.

Idaho Sierra Club argues that facts specific to the commercial, industrial, and irrigation (“C, I, & I”) classes that take service under Schedule 84 justify treating those classes differently from how residential customers were treated in IPC-E-18-15 regarding the cutoff date occurring when the Order issues. *Id.* at 4. Idaho Sierra Club notes that many commenters described how a C, I, & I system is more complex and takes longer to plan than a residential system. *Id.* Idaho Sierra Club states that farmers typically finalize major investment decisions after the harvest season; thus, a December 1 cutoff date unnecessarily impedes the evaluation process. *Id.* Idaho Sierra Club states that the time and expertise C, I, & I customers invest in evaluating an onsite generation system is a business expense that goes to waste if the customer cannot complete the process. *Id.* Idaho Sierra Club states that C, I, & I customers must make informed investment decisions about onsite generation systems relative to other efficiency-improving technologies to compete in the markets. *Id.*

Idaho Sierra Club also requests clarification about the parameters of possible program changes to reduce the uncertainty before the study is completed and changes are implemented. *Id.* at 5. Specifically, Idaho Sierra Club requests clarification that customers will be able to continue to offset their energy purchases through self-generation, export net excess energy to the utility and receive fair value for that energy, and that rates for consumption including energy, demand, and service charges, will not change outside of a general rate case. *Id.* at 6. Further, Idaho Sierra Club requests that the scope of the forthcoming comprehensive study include the scope of the study ordered for Rocky Mountain Power in PAC-E-19-08, which includes the avoided energy value, the avoided capacity value, avoided risk, avoided transmission and distribution costs, avoided line losses, and avoided environmental costs and other benefits. *Id.* at 6-7. Additionally, Idaho Sierra Club requests the Commission reconsider its statement that the project eligibility cap will be considered “during or after” the comprehensive study and instead direct the Company to include

a review of size and meter aggregation rules within the scope of the comprehensive study. *Id.* at 6.

e. AgriPower Solar's Petition for Reconsideration.

AgriPower Solar requests the Commission reconsider the cutoff date for grandfathering existing Schedule 84 customers and make it 30 days from the date on which the order on reconsideration issues. AgriPower Solar's Petition for Reconsideration at 1. AgriPower Solar states that it was surprised to discover that legacy treatment would apply to more than the meter configuration and asserts that aligning the cutoff date with the service date is unreasonable and inequitable for several customers. *Id.* at 3. AgriPower Solar states that the Commission's decision to grandfather customers as of the service date of its Order "resulted in several customers being denied legacy status based on geographical location, bad luck, innocent mistakes or other arbitrary factors." *Id.* at 10.

AgriPower Solar states that planning and designing C, I, & I systems is a lengthy process made more complex by the 100 kW cap on individual meters. *Id.* AgriPower Solar notes that the Order was issued on December 1, 2020, shortly after 12:00 p.m., and Idaho Power's offices closed at approximately 6:00 p.m. *Id.* at 4. AgriPower Solar states that immediately upon receiving and reviewing the Order, it reviewed its records and checked with customers whom it had been working with to ensure that applications and fees would be received by close of business on December 1, 2020. *Id.*

In the alternative to extending the cutoff date, AgriPower Solar argues that five specific customers should be grandfathered under Order No. 34854. *Id.* at 1. AgriPower Solar states that one customer agreed to buy 20 100 kW systems from AgriPower Solar and signed eight contracts with AgriPower Solar on November 13, 2020. *Id.* at 5. AgriPower Solar states that a significant number of components and equipment were onsite when Order No. 34854 was issued. *Id.* However, only 13 of the 20 applications had been submitted by December 1, 2020 because of "miscommunication and confusion regarding which applications still needed to be submitted." *Id.* AgriPower Solar states that another customer placed 19 applications to Idaho Power in overnight mail on the morning of December 1, 2020, before the Commission issued its Order. But Idaho Power did not receive these applications until December 2, 2020. *Id.* at 6-7. AgriPower Solar states that another customer submitted 14 applications before December 1, 2020, and placed application fees in the mail on December 1, 2020, but they were not received by Idaho Power until

December 4, 2020. *Id.* at 7. AgriPower Solar states that another customer “intended” to submit three applications for three 100 kW systems, but the Company refused to apply funds from withdrawn applications toward the customer’s systems. *Id.* at 8. AgriPower Solar states that two of another customer’s five applications were incomplete because the customer could not obtain the signature of the lessee of the property on which the systems would be installed. *Id.* at 9.

f. Idaho Power’s Answer to AgriPower Solar and Idaho Sierra Club.

Idaho Power asks the Commission to deny AgriPower Solar and Idaho Sierra Club’s petitions. Idaho Power first cites notice it provided of its Application and notice issued by the Commission to refute AgriPower Solar’s claim of surprise that grandfathering would apply to more than the meter configuration. Idaho Power points to language in its Application, bill insert notice, and installer email notice, that identify grandfathering for the “current one-for-one net metering billing construct” that new systems would be “subject to any future changes to the billing and compensation structure” and that its request would grandfather existing customers under the “current compensation structure.” Idaho Power Answer to AgriPower Solar and Idaho Sierra Club at 4. Idaho Power points to notices issued by the Commission, which state that customers who sign up for Schedule 84 after the effective date would be subject to future changes to the “billing methodology and compensation structure” and describe the Company’s proposal to “grandfather existing customers with two-meter systems under the current 1:1 monthly netting.” *Id.* at 5-6. Idaho Power identifies comments on the record from individuals that identified themselves as AgriPower Solar representatives that Idaho Power believes demonstrates an understanding that the grandfathering treatment would apply to more than the meter configuration. *Id.* at 6.

Idaho Power states it has diligently pursued a comprehensive case to holistically study the costs and benefits of onsite generation. *Id.* at 7. Idaho Power states, “Establishing grandfather cutoff dates for all customer classes is an important step; it will promote equity between customer classes and facilitate full participation in the net metering compensation and fixed cost cases that Idaho Power will initiate at the conclusion of this case and the on-site generation interconnection Case No. IPC-E-20-30.” *Id.* at 8 (emphasis in original). Idaho Power states that extending the cutoff date would change the focus of the Commission’s Order, which it views as protecting customers who have made a financial investment, would undermine the value of future notice, and result in preferential treatment for certain customers. *Id.* Idaho Power states that AgriPower Solar’s request on behalf of five specific customers is in AgriPower Solar’s self-interest and is not

solely to protect the customers' investments. *Id.* at 9. Idaho Power states that a financial commitment was only alleged on behalf of one customer. *Id.* at 10.

Idaho Power states it is unnecessary for the Commission to make any of the clarifications that Idaho Sierra Club requests. Idaho Power states that the Commission's existing orders and *Idaho Code* § 61-119(1) imply that generation for one's own use is legally permissible, and it reiterates its support for customers to self-generate. *Id.* at 11. Idaho Power asserts that the Commission has stated that the issues identified in IPC-E-18-15 would be a reasonable starting point to scope the comprehensive study. *Id.*

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-501, -502 and -503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503.

After the Commission issues an Order, any interested person has 21 days to petition for reconsideration. *Idaho Code* § 61-626(1). Petitions for reconsideration "must set forth specifically 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, and a statement of the nature and quantity of evidence or argument that the petitioner will offer if reconsideration is granted." IDAPA 31.01.01.331.01. Following a petition for reconsideration, any interested person has seven days to file a cross-petition for reconsideration in response to any issues raised in a petition for reconsideration. *Id.* The Commission has 28 days after a petition for reconsideration is filed to determine whether to grant reconsideration. *Idaho Code* § 61-626(2). Additionally, any person may petition to clarify a Commission Order. IDAPA 31.01.01.325. "A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. The Commission may clarify any order on its own motion." *Id.*

a. The Commission Denies All Petitions for Reconsideration and More Clearly Defines an Existing Customer-Generator.

The Commission declines to grant reconsideration of Order No. 34854. Our decision to grant legacy treatment to existing customers is based on the reasonable expectations of customers when they made significant financial investments in onsite generation systems. Order

No. 34854 at 10. *See also* Order Nos. 34509 at 10, 12-14, 34752 at 7 *adopted by* Order No. 34798. The reasonableness of that expectation changes following a final order in which we clearly and emphatically delineate between existing customer-generators who are eligible for legacy treatment and new customer-generators who are not eligible for legacy treatment. It is the clear and emphatic statement specific to onsite customer-generators that provides the reasonable distinction between existing and new customer-generators required for different treatment under *Idaho Code* § 61-315. Providing a cutoff date that does not align with the final order erodes the justification for the distinction between existing and new customer-generators.

The facts belie any claim of surprise that legacy treatment would apply to more than the meter configuration. The Company's proposal was clearly articulated in its Application, in communications to the public and installers, and in Notices issued by this Commission. The Company issued notice to potential and existing Schedule 84 customer-generators. Neither do the facts support the claims that farmers were unfairly disadvantaged by a December 1, 2020 cutoff date. Schedule 84 has been open to new customer-generators since it was approved by the Commission in February 2002. *See* Order No. 28951, Case No. IPC-E-01-39. *See also* Order Nos. 34315, 34488, 34534, 34600, Case No. IPC-E-19-15 (declining the Company's request to close Schedule 84 during the pendency of that case and repeatedly suspending the Company's proposed effective date so Schedule 84 remained open).

Like other schedules, Schedule 84 has always been subject to change upon a finding by the Commission that the proposed change is fair, just, reasonable, non-discriminatory, and in the public interest. Similarly, following the service date of Order No. 34854, Schedule 84 will continue to be subject to change for customers who take service after December 1, 2020. We reiterate that tariffs are not contracts and are subject to change. *E.g.*, Order Nos. 30227 at 7, 32280 at 4, 34046 at 19, 34335 at 2, 34509 at 12-13, 34752 at 9, 34584 at 11. It is our expectation that reiterating this point serves to stem future claims of reasonable expectations of program stability over the life of an investment in an onsite generation system. Relatedly, a change in tariff can mean a change to the fundamentals of a program, such as net metering, which could alter the compensation structure and payback period. *See also* Order No. 34509 at 13. No person, entity, business or organization should be representing that investment in and installation of solar panels under a particular tariff will result in payback within a time certain because the rates under the then current tariff do not become fixed at the time such an investment is made. Consequently, we are

not persuaded by the argument that subjecting new customers to as-of-yet undefined programmatic changes will create too much uncertainty in the market for new onsite generation systems and chill the market. A reputable seller of onsite generation systems would not and will not represent that the program will never change.

In Order No. 34854, we sought to align the treatment of Schedule 84 customers with the treatment granted Schedule 6 and Schedule 8 customers in IPC-E-18-15. Order No. 34854 at 10. To resolve the disputes that arose after Order No. 34854 was issued, we explicitly incorporate additional details of the definition of an existing customer who is eligible for legacy treatment stated in IPC-E-18-15 and apply them to this case. An existing customer is a person or business who either has a Schedule 84 onsite generation system interconnected with Idaho Power's system as of the service date of Order No. 34854, or who made binding financial commitments to install an onsite generation system as of the service date of Order No. 34854 and who proceeds to interconnect their system within one year of the service date of Order No. 34854. If a person or business had a financial commitment as of the service date of Order No. 34854 but had not yet submitted a Schedule 84 application to Idaho Power, that person or business must submit an application to Idaho Power within thirty days of the service date of this Order and must submit receipts with their application demonstrating that a financial commitment was made by December 1, 2020. *See* Order No. 34509 at 14. We find that a person who submitted a Schedule 84 application and application fee as of December 1, 2020 is an existing Schedule 84 customer, whether or not the Company received the application and/or fee at a later date. This includes applications and application fees postmarked as of December 1, 2020.

Finally, we find that Idaho Sierra Club's request for clarification can be resolved, to the extent possible at this time, by pointing to the records developed in IPC-E-18-15 and PAC-E-19-08. In IPC-E-18-15 we stated that the Company "must design the study in coordination with the parties and the public, and the final scope of the study will be determined by the Commission. The Commission will provide the parties and the public stakeholders the opportunity to comment during the study design phase and the study review phase." Order No. 34509 at 9, IPC-E-18-15. The items of study will be determined based on the record developed in the forthcoming case, but there are procedural requirements already established and indicators on the public record of likely topics to be included in a comprehensive study. In IPC-E-18-15, we stated, "The work done in this docket can and should be built upon in the next docket." Order No 34509 at 7. In PAC-E-19-

08, the Commission issued an order defining the comprehensive study of onsite generation to be conducted in that case. Order No. 34753. As Idaho Sierra Club itself notes, the Commission consistently tries to align the net metering programs between utilities to the extent possible. Order No. 34752 at 7.

b. The Commission Grants Intervenor Funding.

Idaho statute provides intervenor funding for eligible intervenors. “It is hereby declared the policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings.” *Idaho Code* § 61-617A(1). Determinations for intervenor funding are to be based on Commission findings that the intervenor materially contributed to the Commission’s decision, that the costs of intervention are reasonable and would be a significant hardship for the intervenor if not recovered, that the recommendations made by the intervenor differed materially from the recommendations of Staff, and the testimony and participation of the intervenor addressed issues of concern to the general body of users. *See Idaho Code* § 61-617A(2). The Commission has adopted rules implementing this statute. *See Commission Rule* 161 through 165. The Commission, by statute and rule, is limited to awarding \$40,000 total per docket. *Idaho Code* § 61-617A, Commission Rule 165.01. The payment of awards is to be made by the utility and is an allowable expense to be recovered from ratepayers in the next general rate case. Commission Rule 165.02, .03.

The Commission received one timely petition for intervenor funding from Idaho Sierra Club. We find that the Petition for Intervenor Funding submitted by Idaho Sierra Club meets the statutory standards for intervenor funding and approve the requested \$3,695.50 in full, to be chargeable to Schedule 24 customers in the Company’s next rate case.

ORDER


IT IS HEREBY ORDERED that all Petitions for Reconsideration are denied.

IT IS FURTHER ORDERED that the definition of an existing customer-generator eligible for legacy treatment under Schedule 84 is clarified, as described herein.

IT IS FURTHER ORDERED that \$3,695.50 in intervenor funding is awarded to Idaho Sierra Club and will be an allowable business expense chargeable to Schedule 24 customers in the Company’s next rate case.

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-20-26 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 14th day of January 2021.



PAUL KJELLANDER, PRESIDENT

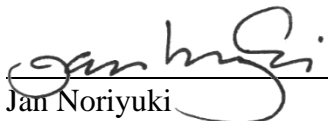


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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