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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

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

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The Staff of the Idaho Public Utilities Commission comments as follows on Idaho Power Company's Application.

**BACKGROUND**

On June 19, 2020, Idaho Power Company ("Idaho Power" or "Company") filed an Application requesting Commission authorization to: 1) replace the present two-meter requirement in Schedule 84 with a single-meter requirement as of December 1, 2020, and; 2) make customers who sign up for Schedule 84 on or after December 1, 2020 subject to any future Commission-approved changes to the Schedule 84 billing methodology and compensation structure, and; 3) grandfather customers who have applied to take service under Schedule 84 before December 1, 2020 to the present terms in Schedule 84 for 10 years.

On September 4, 2020, the Commission issued a Notice of Telephonic Public Hearing and Notice of Modified Procedure establishing comment and reply comment deadlines and setting a date for a public hearing. Order No. 34777.

## STAFF ANALYSIS

In its Application, the Company requests that it be allowed to change Schedule 84's two-meter requirement to a single-meter requirement for new customers as of December 1, 2020. The Company also proposes a 10-year grandfathering period for existing Schedule 84 customer-generators.

Staff agrees with the Company's proposal to require new customer-generators to take service through a single meter. However, Staff has not been able to identify any technical reasons to require existing Schedule 84 customers to change their current two-meter system to a single meter. Staff believes that the question of grandfathering existing customer-generators may not be ripe for determination at this time and believes it would be more appropriate to wait until a successor program is proposed. However, should the Commission wish to consider grandfathering at this time, Staff has included considerations about similarities and differences between IPC-E-18-15 and this case.

**a. Staff Supports the Company's Proposal to Require New Schedule 84 Customer-Generators to Install a Single Meter.**

Staff supports the Company's proposal to require new Schedule 84 customer-generators to be metered through a single meter system. Because this would place both the customer's generation and load behind the same meter, the customer would use the energy it produces directly and only the excess generation would be exported to the Company's system.

Under the current Schedule 84 tariff, customer-generators who do not take service under Schedules 6 and 8 (Residential and Small General Service On-Site Generation) purchase all of the power they consume from the Company through a consumption meter, and sell all of the power they produce to the Company through a generation meter. In addition to measuring the energy consumed by a customer, the consumption meter also measures demand, which is used to determine the customer's demand charges and basic load charges ("BLC"). At the end of each month, the customer's net energy consumption is calculated by subtracting energy produced from energy consumed. In the event that a customer produces more energy than they consume in a month, the customer receives a kilowatt-hour ("kWh") energy credit that can be applied to subsequent months, or transferred to other meters owned by that customer under Schedule 84's meter aggregation rules. Currently, there is no provision for offsetting either the customer's demand charge or BLC with the two-meter configuration.



The Company is not proposing a change in rate structure at this time, and the current kWh for kWh rate structure can be applied to either single-meter or two-meter systems. Under current rate structures, there would be little difference in the energy charges of customer-generators using single-meter and two-meter systems. However, because customers with a single meter offset their consumption directly, it is possible that some customer-generators could realize substantial reductions in their demand charge and BLC. This is particularly true for Schedule 9 and 19 customer-generators, whose peak demand often occurs during the daytime. On the other hand, the demand of Schedule 24 (irrigation) customers does not occur at a particular daytime period, so it is unlikely that Schedule 24 customers will benefit from a single-meter system.

In Order No. 28951, the Commission stated, "...we believe that the primary thrust of net metering is to provide customers the opportunity to offset their own load and energy requirements." By permitting customer-generators to offset both energy and demand, a single-meter system better accomplishes this goal than a two-meter system does. Staff agrees that new Schedule 84 customer-generators should be metered using a single meter system.

**b. Staff Believes the Commission Should Allow Existing Schedule 84 Customer-Generators to Retain Two-Meter Systems Indefinitely.**

Existing Schedule 84 customers would incur costs associated with converting from a two-meter system to a single-meter system. Although these costs would be small for most customers, other customers could see conversion costs as high as \$2,000. Company Response to Staff's Production Request Nos. 2 and 3. Because Staff was not able to identify any incremental costs to the Company associated with retaining two-meters for existing customers under the current rate structure, Staff does not believe requiring customers to fund a conversion to a single-meter system is currently justified. Staff believes that existing Schedule 84 customer-generators should be allowed to convert from a two-meter system to a single-meter system, if they choose, at their own expense.

Staff considered the possibility that it may become difficult to support the particular type of generation meter currently used by the Company; however, if this occurs, any two-way meter, including the Company's current AMI meters, can measure current flow in a single direction and can be used to replace either meter in a two-meter system.

Even if the Company does change the rate structure sometime in the future, Staff believes that it would be appropriate for the Commission to permit existing customers to continue using

their two-meter systems indefinitely. Staff believes it is unlikely there will be a technical reason for replacing the current two-meter infrastructure already in place including: equipment, meters, metering infrastructure, and billing systems. Retention of the existing two-meter system would not preclude a change from a kWh for kWh credit to an avoided cost credit; however, those customer-generators remaining on a two-meter system would not be able to use their consumption to offset demand and BLC.

**c. Staff Believes it may be Prudent to Defer a Decision on Grandfathering Existing Customer-Generators.**

Staff does not believe that the change from a two-meter requirement to a single-meter requirement is the kind of fundamental programmatic change that justifies differential treatment between existing customers and new customers. The Company proposes grandfathering existing Schedule 84 customers at the current kWh for kWh compensation structure for a period of 10 years. Staff believes that the Commission should defer a decision on grandfathering existing Schedule 84 customers until a successor program is proposed. On Page No. 19 of Company Witness Aschenbrenner's direct testimony, she states that "in a future docket, the Company plans to study the compensation structure and export credit rate ... the future study may result in changes to the measurement interval and compensation structure applicable to Schedule 6, 8, and 84 customers." Staff believes that it would be appropriate for the Commission to wait until the Company has submitted this study before rendering its decision on grandfathering.

Although Staff believes a decision on grandfathering existing Schedule 84 customer-generators should be deferred, Staff acknowledges the Commission's decision in IPC-E-18-15 on authority to grandfather existing customer-generators, and includes the following considerations on grandfathering for Commission consideration.

*Idaho Code* § 61-315 states,

No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.



In IPC-E-18-15, the Commission, after considering the legal briefs submitted by the parties in that case and the unique facts before it, determined it had the legal authority to grandfather existing residential and small commercial customer-generators with on-site generation based on reasonable differences between existing customer-generators and new customer-generators. In Order No. 34509, the Commission summarized the arguments of parties,

Commission Staff argued that this case presents an issue of first impression because it has unique facts that did not exist in prior cases. Namely, in this case, existing customers have incurred substantial costs to invest in on-site generation systems because they relied on the Company's longstanding net-metering program, the fundamentals of which have remained unchanged since its inception, to continue under its existing or similar terms. Commission Staff argued policy and equity considerations justify the Commission recognizing this reasonable difference between existing net-metering customers and future net-metering customers. Idaho Clean Energy Association, Idaho Conservation League and Vote Solar, and City of Boise argued that systems designed and installed to conform with the rules proposed in the Settlement Agreement would have different characteristics from, and would interact with the grid differently than, systems designed and installed to conform with the existing rules. This argument was joined in reply by Commission Staff. The Company did not address the specifics of the parties' arguments that existing net-metering customers differ from future net-metering customers, but simply argued that it could not discern any differences between new and existing customers that would support rate differentiation.

At 5. The Commission grandfathered existing customer-generators but did not approve the Settlement Agreement. The Commission stated,

Although the Commission is not changing the Company's net-metering program at this time, the Commission finds it prudent and justifiable to distinguish between existing customers and new customers based on the customers' reasonable expectations when making significant personal investments in on-site generation systems. We find that before the service date of this Order, customers reasonably assumed the net-metering program fundamentals would not change. Representations made by both solar developers and the Company, whether explicit or implied, created a reasonable basis for reliance. After the issuance of this Order, however, we believe it will no longer be reasonable for a customer to assume the net-metering program fundamentals will remain the same over the expected payback period of their

investment. We find this is a cognizable and reasonable difference between classes of customers, which justifies different treatment.

*Id.* at 10. In its petition for reconsideration and/or clarification, the Company asked whether the Commission's order put all customer classes on notice that the fundamentals of the net metering program are subject to change. The Commission declined to determine whether other customer classes were reasonably on notice of a likely programmatic change as a result of the orders in that case, stating that IPC-E-18-15 was specific to residential and small general service net-metering classes. *Id.* at 12.

The Commission has long acknowledged concerns that the current kWh for kWh rate structure may create an unfair shift of fixed costs from net metering customers to non-net metering customers, and that it may become necessary to modify the kWh for kWh rate structure in order to ameliorate this cost shift. For example, in its final order in IPC-E-06-17, the Commission wrote:

In response to the comments of some program participants, however, we must note that the net metering program price is a tariff rate. It is not a contract rate. As a tariff rate, it is subject to change. An impetus for future change is recognition that in addition to the customer charge, the Company recovers some of its fixed costs for serving customers in its energy charge. A persuasive argument could be made that net metering customers are being subsidized by other customers. Indeed, in our Order approving net metering we recognized that the full cost of the program may not be borne by participants. Order No. 28951. . . . Customers therefore should not rely on continuation of the tariff rate in cost effectiveness calculations to justify net metering equipment investment decisions.

Order No. 30227 at 7. In IPC-E-18-15, the Commission made note of similar warnings in which the Commission stated that tariffs are not contracts and are subject to change, but found that they were not sufficiently clear to indicate that the fundamental program might change. Order No. 34509 at 12-13.

The Idaho State Supreme Court has generally held that the Commission may not discriminate between customer groups based solely on priority of service, but that the determination of reasonable differences is largely within the specialized and technical expertise of the Commission to be determined by the special facts of each case. In describing previously upheld reasons for distinction, the Court stated,



This Court has previously determined that cost of service is but one criterion among many for consideration in forming a basis for rate differentiation between classes of service and between classifications of customers within a certain schedule. . . . Specifically, as between classes of customers within a schedule, the criteria included contribution to peak load, costs of service on peak demand days, costs of storage and economic incentives. (Citations omitted). We find such criteria as being valid considerations for rate differentiation as between classes of service, whether those classes be as between schedules or as between customers within a schedule. We do not find one criterion to be necessarily more essential than another. Nor do we find the criteria as listed above as being exclusive. As this Court has stated in the past: 'Each case must depend very largely upon its own special facts and every element and every circumstance which increases or depreciates the value of the property, or of the service rendered, should be given due consideration, and allowed that weight to which it is entitled. It is, after all, very much a question of sound and well-instructed judgment.'

*Grindstone Butte Mut. Canal Co. v. Idaho Public Utilities Comm'n*, 102 Idaho 175, 179-80 (1981).

The public testimony in this case demonstrates that Schedule 84 customers have been making investment decisions under many of the same assumptions that Schedule 6 and Schedule 8 customers made their decisions. The Company argues that Schedule 84 customer-generators who would be grandfathered under the Company's proposal differ from the Schedule 6 and 8 customer-generators who were considered by the Company in IPC-E-18-15. The Company argues that Schedule 84 customer-generators are commercial, industrial, and irrigation customers who have the resources to fully understand the Commission's orders, and that it is reasonable to assume that these customer-generators either were aware or should have been aware, that the net metering program structure could change. However, knowing that such customers understand regulatory principles, it is also reasonable to conclude that such customers would look at the treatment that Schedule 6 and Schedule 8 customers received, and reasonably conclude that the Commission would grant them grandfathering treatment on the same or similar terms. Furthermore, the rate design for Schedule 84 customers, which includes a demand charge and a BLC whereas residential and small general commercial rates do not, diminishes concern about a potential cost-shift from program participants to non-participants, thus making an argument for grandfathering Schedule 84 customers even more persuasive.

The Commission's decision in IPC-E-18-15 grandfathered existing customer-generators under Schedules 6 and 8 to the one to one kilowatt hour credit for which those customers signed up. The Commission did not freeze in time, lock in, or grandfather the rates for consumption. Order No. 34509 at 14-15. *Cf. Idaho Power Co. v. Thompson*, 19 F.2d 547 (1927). As in IPC-E-18-15 for Schedule 6 and Schedule 8 customers, in this case Schedule 84 customers have made significant investments in on-site generation systems based on the reasonable expectation that program fundamentals would not change.

*Reasonable expectation program fundamentals would remain*

Customers in this case have testified that they believed that the net metering program and fundamentals would not change. It would be consistent to grandfather Schedule 84 customers based on the reasonable expectation that program fundamentals would not change, which contributed to the 25-year Commission grandfathering decision made for Schedule 6 and 8 customers and could apply to Schedule 84 customers on the same grounds in this case.

*Significant investment*

The Commission stated that "customers who have made significant investments in on-site generation systems reasonably differ from customers who have not yet made significant investments in on-site generation systems, and this difference justifies separate treatment." IPC-E-18-15, Order No. 34509 at 12. Existing Schedule 84 customers have made the same, if not more substantial types of investments as Schedule 6 and 8 customers, based on many of the same principles:

- Belief that contracts signed with the Company were definitive and used as a baseline for financial calculations;
- Return on investment and payback calculations with a 25-year expected life of the asset;
- Investment mechanism to control increasing power costs;
- Contribution to sustainability;
- Business decisions to maintain viability and competitiveness;
- Offset consumption to control costs; and
- Significant investments in on-site generation systems.



Schedule 84 customers with two-meters also have the additional requirement of collaborating with Idaho Power design and engineering teams, who drive aspects of customer system design and configuration at the customers' additional expense, to meet the Company's Schedule 84 two-meter requirement. When evaluating the "significant investment" criteria of Order No. 34509, the Commission may consider Schedule 84 customers for similar grandfathering treatment.

#### *Grandfathering period*

A grandfathering period of 25-years would be consistent with public and customer appeals, common warranty and expected life of on-site assets, and align with decisions made in previous Commission orders. A grandfathering period of 25 years by system location would align with decisions made in both IPC-E-18-15, Order No. 34546, and PAC-E-19-08, Order No. 34752.

#### **PUBLIC COMMENTS**

Due to the significant public interest in the public and telephonic hearing in the IPC-E-18-15 Residential Net Metering case, Staff held a public workshop on September 28, 2020, and Commissioners held a telephonic public hearing on October 13, 2020. During the public workshop, there were four individuals that provided comments and concerns. During the public telephonic hearing, the Commissioners heard testimony from 13 individuals. The Commission continues to see public comments submitted online through the Idaho Public Utilities Commission website and through email to Commission Secretary. As of **October 26**, 2020, Commission has received 78 public comments. Staff has reviewed all comments, testimonies, and input and provides a brief summation of the top concerns:

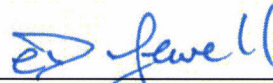
- Grandfathering for 10 years is unfair and should be granted 25 years, similar to residential net metering customers;
- Company needs to provide a study before changing or suggesting a new rate structure, which the Company is not requesting at this time;
- 100 kWh limit needs to be addressed;
- Comment period is not long enough and is during the harvest season which is the busiest time of year for current Schedule 84 irrigators; and
- Keep the two-meter set-up.

## STAFF RECOMMENDATIONS

Staff recommends that new Schedule 84 customer-generators should be metered using a single meter system. Furthermore, Staff believes that existing Schedule 84 customer-generators should be allowed to retain their current two-meter system indefinitely and allowed the option to convert to a single-meter system, if they choose, at their own expense.

Staff recommends that the decision to grandfather existing customer-generators should not be considered until the Company presents a new rate structure in a future case filing. Should the Commission decide existing Schedule 84 customers currently meet grandfathering status criteria, Staff recommends the Commission grandfather existing Schedule 84 customers with two-meter configurations by system location, for a period of 25 years.

Respectfully submitted this 27<sup>th</sup> day of October 2020.



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Edward J. Jewell  
Deputy Attorney General

Technical Staff: Travis Culbertson  
Mike Morrison  
Rachelle Farnsworth

i:umisc/comments/ipce20.26ejtncmmrf comments



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 27<sup>th</sup> DAY OF OCTOBER 2020, SERVED THE FOREGOING COMMENTS OF THE COMMISSION STAFF, IN CASE NO. IPC-E-20-26, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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