

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: JOHN R. HAMMOND JR.
DEPUTY ATTORNEY GENERAL**

DATE: NOVEMBER 15, 2021

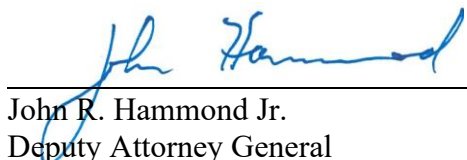
**SUBJECT: IN THE MATTER OF IDAHO POWER COMPANY'S APPLICATION TO
INITIATE A MULTI-PHASE COLLABORATIVE PROCESS FOR THE
STUDY OF COSTS, BENEFITS, AND COMPENSATION OF NET
EXCESS ENERGY ASSOCIATED WITH CUSTOMER ON-SITE
GENERATION, CASE NO. IPC-E-21-21.**

On June 28, 2021, Idaho Power Company ("Company") applied to the Commission to initiate the multi-phase process for a comprehensive study of the costs and benefits of on-site generation as directed in order No. 34046. Following the grant of intervention to the City of Boise ("City") into this case, the Commission asserted that the City's attorney, Ed Jewell, has a conflict of interest under the Idaho Rules of Professional Conduct ("IRPC") preventing him from representing the City in Case No. IPC-E-21-21 because the Commission believes it is substantially similar and directly connected to Case No. IPC-E-18-15. Mr. Jewell believes in good faith that Case No. IPC-E-21-21 is a new "matter" under IRPC 1.11(e) and no conflict exists which he also believes is consistent with Commission Rule of Procedure 48.

Attached as Attachment A is a proposed Memorandum of Understanding that would resolve the dispute between the Commission and Mr. Jewell.

COMMISSION DECISION

Does the Commission wish to approve the proposed Memorandum of Understanding and have the Commission President execute it?



John R. Hammond Jr.
Deputy Attorney General

ATTACHMENT A

Proposed Memorandum of Understanding

Memorandum of Understanding

This Memorandum of Understanding is entered into by the Idaho Public Utilities Commission (“Commission”) by and through its President Paul Kjellander in his official capacity and Ed Jewell in his capacity as a Deputy City Attorney for the City of Boise (collectively, “parties” or individually, “party”). This Memorandum of Understanding resolves a dispute between the Commission and Ed Jewell, a former Deputy Attorney General representing the Commission.

Background

- Ed Jewell was formerly employed by the Idaho Attorney General’s Office as a Deputy Attorney General (“DAG”) assigned to provide legal representation to the Commission and the Commission Staff.
- As a DAG representing the Commission, Ed Jewell represented Commission Staff and the Commission in IPC-E-18-15; a docket on net metering.
- On August 17, 2021, Ed Jewell filed a Petition to Intervene on behalf of the City of Boise who wished to intervene and participate as a party in IPC-E-21-21; a docket on net metering. The Commission granted the City of Boise’s Petition to Intervene on August 30, 2021.
- Following the grant of intervention to the City, the Commission asserted in good faith that Ed Jewell has a conflict of interest under the Idaho Rules of Professional Conduct (“IRPC”) preventing him from representing the City of Boise in IPC-E-21-21 because the Commission believes it is substantially similar to IPC-E-18-15 and the dockets are too directly connected to be considered a different matter.
- Ed Jewell believes in good faith that IPC-E-21-21 is a new “matter” under IRPC 1.11(e) and no conflict exists which he also believes is consistent with Commission Rule of Procedure 48.
- The parties wish to resolve their differences concerning the issues set forth above and reach a compromise for this dispute.

The parties agree as follows:

1. The Commission agrees to allow Ed Jewell to represent the City of Boise in IPC-E-21-21 under the following conditions set forth in Sections 2 through 5 below.
2. Consistent with IRPC 1.11(a) and IRPC 1.9(a), Ed Jewell agrees that if his client’s interests become materially adverse to the Commission’s interests, he will immediately disqualify himself from IPC-E-21-21 pursuant to IRPC 1.11(b).
 - a) The parties agree that in this circumstance “materially adverse” means that Ed Jewell is challenging any Commission order in IPC-E-18-15 based on non-public information or if the City of Boise were to decide to appeal a final decision by the Commission in IPC-E-21-21. Nothing in this agreement prohibits Ed Jewell from arguing positions on behalf of his client

based on the public record or new facts that differ from the Commission's orders in IPC-E-18-15 or that differ from the Commission Staff's position in IPC-18-15 or IPC-E-21-21.

- b) Ed Jewell agrees that if he becomes materially adverse to the Commission he shall comply with the requirements of IRPC 1.11(b) if the City of Boise desires to designate a new attorney to represent it as a party in IPC-E-21-21 or to pursue an appeal of any final order in this case.

3. Consistent with IRPC 1.11(a) and IRPC 1.9(c), Ed Jewell acknowledges that he shall not reveal or use any non-public information gained from his representation of the Commission Staff or the Commission in IPC-E-18-15 to disadvantage the Commission Staff or the Commission in IPC-E-21-21.

4. Notwithstanding any agreements made by Ed Jewell in Sections 2 and 3 above, if the Commission determines at any time in IPC-E-21-21 that Ed Jewell has become materially adverse to either the Commission's or the Commission Staff's interests in this case as described in Section 2. a). above or has revealed or used any information that he is prohibited from doing under IRPC 1.11(a) or IRPC 1.9(c) the Commission shall notify Ed Jewell and he will request that the City designate substitute counsel for the City of Boise.

5. Based on the facts known only at this time, neither party believes a conflict under the IRPC exists in any additional, pending cases before the Commission in which Ed Jewell has appeared as counsel for the City of Boise. Further, based only on the facts known at this time, the parties believe that no conflict would exist for Ed Jewell to represent the City of Boise in any future net metering dockets arising from or directly related to IPC-E-21-21.

Entered into this ____ day of November, 2021.

By:

President Paul Kjellander
Idaho Public Utilities Commission

Date:

By:

Ed Jewell
Deputy City Attorney

Date: