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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for GeoBitmine LLC

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE	)	<b>CASE NO. IPC-E-21-37</b>
APPLICATION OF IDAHO POWER	)	
COMPANY FOR AUTHORITY TO	)	<b>GEOBITMINE'S REPLY</b>
ESTABLISH A NEW SCHEDULE TO	)	<b>COMMENTS ON</b>
SERVE SPECULATIVE HIGH-DENSITY	)	<b>RECONSIDERATION</b>
LOAD CUSTOMERS	)	
	)	
	)	
	)	

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**COMES NOW**, Petitioner GeoBitmine LLC, by and through its undersigned attorney and provides this Commission with its Reply Comments to the Comments on Reconsideration filed by the Idaho Power Company ("Idaho Power" or the "Power Company") and the Staff of the Idaho Public Utilities Commission ("Staff").

**I**  
**ORDER ON RECONSIDERATION IS EXPANSIVE**

In its order granting reconsideration, the Commission did not home in on any particular issue raised by GeoBitmine in its Petition for Reconsideration, rather the Commission is apparently entertaining reconsideration of all of the issues raised by GeoBitmine. In its order granting reconsideration, the Commission declared:

GeoBitmine states that "the existing 'evidentiary record' ... as well as the applicable law requires that the Commission modify Order No. 35428 by denying [the Company's] Application for approval of Schedule 20." Petition at 19. The Commission finds that

additional consideration of these issues raised in GeoBitmine's Petition and the record is appropriate.<sup>1</sup>

The Commission's reference to "these issues raised in GeoBitmine's Petition and the record" plainly refers to all of the issues raised in GeoBitmine's Petition with an apparent focus on the adequacy of the evidentiary record. Pursuant to Commission Rule 331<sup>2</sup> and Idaho Code Section 61-626, GeoBitmine observed both evidentiary and legal flaws in the Commission's order and asserted that the Commission's order is 'unreasonable, unlawful, erroneous or not in conformity with the law'. Furthermore, as explained herein, neither the Power Company's nor the Staff's Comments on Reconsideration have effectively rebutted any of GeoBitmine's legal or evidentiary arguments.

## II

### **THE 'NO-HARM, NO-FOUL' METHOD OF RATEMAKING IS INHERENTLY UNREASONABLE AND VIOLATES THE COMMISSION'S OBLIGATION TO SET FAIR, JUST AND REASONABLE RATES**

The first broad category of legal flaws identified in GeoBitmine's Petition is entitled "Schedule 20 Practical Problems" which explains why the Company's Schedule 20 is both unreasonable and unduly discriminatory and hence not in conformity with the law. The initial practical problem deals with "Continuity of Service" which refers to the interruptability provisions of Schedule 20. GeoBitmine made the following unrebutted assertion in its Petition:

However, one of the primary provisions in Schedule 20 allows Idaho Power to, at its discretion, call "interruption Events" for up to 225 hours a year. An Interruption Event results in the Customers' facility literally going 'dark.' ... Interruption Events can occur at any time during the afternoon and evenings in the summer months for up to ten hours at any time Idaho Power, in the exercise of its discretion, chooses to trigger such an event.<sup>3</sup>

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<sup>1</sup> Order No. 35488 ("Reconsideration Order") at p. 9. Ellipses and brackets are in the original text.

<sup>2</sup> IDAPA 31.01.01.331

<sup>3</sup> GeoBitmine Petition at p. 5. Emphasis in the original text.

GeoBitmine also made the following unrebutted assertion in its Petition:

the very threat (or potential) of loss of electricity renders it impossible to secure financing or investment in GeoBitmine's proposed Aberdeen, Idaho operations. ... Reliability and continuity of service consistent with the levels of reliability and continuity of service Idaho Power offers its other customers is critically important to GeoBitmine LLC. . . .<sup>4</sup>

Neither Idaho Power nor the PUC Staff have rebutted in their Comments on Reconsideration (or even attempted to rebut) GeoBitmine's factual assertions as to the detrimental impact Idaho Power's Schedule 20 interruptability provisions will have on its proposed operations in Idaho.

In addressing the question of mandatory non-compensated interruptability in its final order, the Commission provided Idaho Power with the following instructions:

While<sup>5</sup> there are no customers currently seeking service under Schedule 20, we encourage the Company to continue to evaluate assumptions regarding the risks and need for mandatory interruptible service, the need for non-interruptible service through special contracts or other options for customers with loads below 10 MW, and the need for marginal cost-based rates. Before it develops and files its next general rate case, we direct the Company to evaluate and compare other methods for determining a marginal cost of energy in addition to the use of ACA in the IRP for setting the Schedule 20 energy rate. We further direct the Company...<sup>6</sup>

The Commission based its decision approving Schedule 20 on the mistaken belief that because "there are no customers currently seeking service under Schedule 20" that the Company could leisurely "evaluate assumptions regarding the risks and need for mandatory interruptible service." The Commission was wrong. There was a customer, GeoBitmine, seeking service under Schedule 20. Idaho Power was aware of that fact and made no attempt to correct the Commission's mistaken understanding of the erroneous fact upon which it based its decision.<sup>7</sup>

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<sup>4</sup> Id. at pp. 4 – 5.

<sup>5</sup> The word, "while" is, of course, defined as 'a period of time' or 'during the period of time.' See Webster's II New Riverside University Dictionary, Houghton Muffin publisher, 1988 at p. 1314.

<sup>6</sup> Order No. 34528 at p. 7. Emphasis provided.

<sup>7</sup> Although GeoBitmine was seeking service that would typically have been provided under Schedule 19, Idaho Power was insistent that Schedule 20 was the applicable schedule.



The Commission's declared premise for its decision allowing non-compensated and mandatory interruptions under Schedule 20 was that there were "no customers currently seeking service" under that schedule. The only rationale for such an extra-legal justification is a supposition that no harm will be suffered in the approval of an illegal and flawed tariff since there are no potentially affected customers seeking service under that tariff – sort of a 'no-harm no-foul' approach to utility ratemaking. Believing there were no customers seeking service under Schedule 20 the Commission "directed" the Company to [*"while there are no customers"*] "evaluate the risks and the need for mandatory interruptions." Of course, ordering the Company and the Staff to evaluate of "the risks and the need for mandatory interruptions" is a defacto finding that the tariff's interruption provisions have not been vetted and hence cannot be found to be fair, just or reasonable, which findings are prerequisite to the Schedule's approval. Simply put, the Commission was not convinced that Schedule 20's interruption provisions are either needed or cost justified.

Although the Commission's final order approved Schedule 20 "as filed,"<sup>8</sup> the Commission never made any findings that mandatory interruptions are reasonable or fair or just or in conformity with the law. Rather the Commission conditioned approval of Schedule 20 explicitly on a requirement that Idaho Power conduct further studies and research and come back to the Commission at a later date with evidence supporting the mandatory interpretability provisions of Schedule 20; to wit:

We further direct the Company to collaborate with Staff after the Company evaluates cost assignments based on usage characteristic and system requirements under Schedule 20 and then assign cost and benefits incorporating interruption requirement parameters.<sup>9</sup>

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<sup>8</sup> Order No. 34528 at p. 6.

<sup>9</sup> Order No. 35428 at p. 7.



The Commission made no finding as to the reasonableness of the mandatory interruption provisions in Schedule 20. It did just the opposite. The Commission ruled that the “cost and benefits” and the “risks and need” of the interruptability provisions in Schedule 20 were unknown because they needed to be “evaluated” and “assigned” after “collaboration” among the Company and the Staff. The Commission’s approval of Schedule 20 was not based on a finding that its provisions were reasonable. The opposite is true. The Commission based its approval of Schedule 20 based on the premise that “there are no customers currently seeking service” under that Schedule. Schedule 20 was approved as nothing more than a strawman or placeholder that Idaho Power and the Staff were ordered to complete and flesh out after they had an opportunity to “collaborate ... [and] evaluate ... cost assignments based on usage characteristic and system requirements under Schedule 20 and then assign cost and benefits incorporating interruption requirement parameters.”<sup>10</sup>

GeoBitmine’s experience proves the point. GeoBitmine was (and remains) amenable to some limited service interruptability provisions. However, the parameters and costs for such interruptible service must be accounted for and must be manageable by the customer. Here, Idaho Power’s Schedule 20 is imposed in an arbitrary, unilateral manner with no consideration as to the impact of such interruptions on the customer’s operations. Idaho Power’s Schedule 20 does not contemplate customer input as to timing, duration or compensation for granting the power company the privilege of terminating/interrupting continuity of service – all of which amply demonstrates the unreasonable nature of the Company’s Schedule 20. All of which also amply illustrates the reason the Commission never specifically approved the interruption

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<sup>10</sup> Id.

provisions in the tariff and instead ordered Idaho Power back to the drawingboard as to the “risks” and the “benefits” of those interruption provisions.

In sum, the Commission’s approval of Schedule 20 was not based on any finding that its central terms and conditions (interruption provisions and marginal energy pricing provisions) are fair, just or reasonable. Rather the Commission’s approval was simply based on the mistaken finding that because no customers are affected, the Company and Staff can take their time to “collaborate” in order attempt to make a showing of the schedule’s reasonableness at some unspecified date in the future.

Since no customers are affected, apparently the Commission believed that it could just skip the requirements in Idaho Code Section 61-301 which provides:

All charges made, demanded or received by any public utility . . . shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

Here, of course the Commission has ordered Idaho Power to begin its research, in collaboration with Staff as to the “risks and need” and the “costs and benefits” of the rates in Schedule 20. Of course, until the risks, need, costs and benefits of Schedule 20 are known, the Commission is unable to make any finding that is supported in the record as to whether such rates are fair, just and reasonable and hence whether they are legal.

### **III IDAHO POWER’S ARGUMENT THAT SCHEDULE 20’S INTERRUPTION PROVISIONS ARE COMMON IS WRONG**

GeoBitmine objected to the Company’s Schedule 20 interruptability provisions because they are unworkable from a practicable standpoint and thus “unreasonable” in the legal sense of the word. GeoBitmine also objected because the interruptible provisions of the tariff are discriminatory, stating that “Idaho Power’s Schedule 20 grants preferential [to wit: illegally

discriminatory] treatment to all of Idaho Power's other ratepayers (including Schedule 19 ratepayers) by . . . forcing just Schedule 20 ratepayers to suffer draconian interruptability provisions that are not also imposed on any other ratepayer class on Idaho Power's system."<sup>11</sup>

Idaho Power's response to GeoBitmine's assertion that the mandatory uncompensated interruptible provisions in Schedule 20 are discriminatory and unreasonable was to misleadingly claim that "interruptible rates are commonplace in utility regulation."<sup>12</sup> Idaho Power missed the point entirely. GeoBitmine doesn't complain of interruptible rates, because Schedule 20 does not proffer interruptible rates. Schedule 20 provides for unilateral interruptible SERVICE to be imposed without regard for the customer's needs and at the utility's whim --- all without compensation (e.g. no rates) to the Schedule 20 customer. Contrary to Idaho Power's apparent misunderstanding of its own tariff, there simply is no interruptible rate – only interruptible service with no corresponding rate or compensation. The implication asserted by Idaho Power's response is that Schedule 20-style interruptible provisions (e.g. non-compensated unilaterally imposed interruptions) are commonplace in utility regulation. They are not. In fact research reveals that, outside of the Commission's approval of Idaho Power's Application, Schedule-20 style interruptible provisions<sup>13</sup> do not exist and never have existed in the State of Idaho for any of this Commission's regulated electric utilities.<sup>14</sup> In addition, GeoBitmine's research failed to uncover any such instance for non-regulated electric utilities operating in the State of Idaho either.

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<sup>11</sup> GeoBitmine Petition at p. 12. Bracketed material provided. Parenthetical in original.

<sup>12</sup> Idaho Power's Comments on Reconsideration at p. 8.

<sup>13</sup> To wit: mandatory, non-compensated, unilateral interruptions at the complete discretion of the utility.

<sup>14</sup> GeoBitmine's counsel has been unable to identify any such tariff provision in his research of historic Idaho IPUC case law and orders. The provisions of Idaho Code 61-531, dealing with the curtailment of electric and or gas service in the event of an emergency are not applicable to this discussion and have not been included in our analysis.



In support of its assertion that interruptible service is “not uncommon,” the Company cites to a press release from a North Dakota utility and to a Wyoming utility’s “pilot” tariff.

According to Idaho Power:

Finally, beyond demand response, interruptible service is not uncommon. Several utilities offer interruptible rates, with some specifically tailored for cryptocurrency mining operations such as Black Hills Energy and Rocky Mountain Power in Wyoming.<sup>15</sup>

Idaho Power did not offer to enter either the referenced Black Hills press release or the Wyoming tariff into the record. Idaho Power’s argument leaves the Commission with the impression that the Black Hills and Wyoming interruption programs/tariffs are comparable to Schedule 20. They are not. Even a cursory examination of the two interruptible rate examples Idaho Power offered contradicts the false impression that the Black Hills and Wyoming tariffs are comparable to Idaho Power’s Schedule 20. They are not comparable because both the Black Hills and Wyoming programs are *voluntary* and both programs provide *compensation* to the customer. These are two critically significant distinctions which makes Idaho Power’s use of these professed examples of similarity inappropriate.

Furthermore, the Wyoming “pilot” tariff pays customers who choose to enroll twenty cents per kWh for each kWh of interrupted energy and one dollar for each kw of on-peak interrupted demand.<sup>16</sup> Here, on the other hand, Idaho Power apparently plans to abscond with the financial benefits it will reap for interrupting Schedule 20 customers – either for the benefit of its ratepayers or its shareholders. Regardless of how one follows the money -- Schedule 20

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<sup>15</sup> Idaho Power Answer to GeoBitmine’s Petition for Reconsideration at p. 11. Footnotes omitted.

<sup>16</sup> A copy of the Rocky Mountain Power’s Wyoming Tariff - Original Sheet No. 30-1 P.S.C. Wyoming No. 17 Interruptible Service Pilot Schedule 30 is attached hereto

customers who are interrupted will have been fleeced to benefit the power company and/or its ratepayers.

Idaho Power claims that the Wyoming “pilot” tariff was “specifically tailored for cryptocurrency mining operations.”<sup>17</sup> How that tariff has been specifically “tailored for cryptocurrency mining operations” is unclear. Its applicability section provides that it is available to any industrial customer on Rocky Mountains system in Wyoming. In addition, there is no penalty for a Wyoming Schedule 30 industrial customer’s failure to curtail when called upon to do so -- other than a mere forfeiture of the proffered credits for actual curtailment. A copy of Rocky Mountain Power’s Wyoming Tariff Schedule – *Original Sheet No. 30-1, P.S.C. Wyoming No. 17 Interruptible Service Pilot Schedule 30* is attached hereto as Exhibit No. 1. The Commission is respectfully requested to take official notice of the referenced tariff schedule pursuant to Rule of Procedure No. 263(1)(a) and enter the same into the record of this proceeding upon which findings may be made.

Idaho Power’s reference to Black Hills Energy<sup>18</sup> as another purported example of the “commonplace” nature of interruptible service for cryptomining companies is more difficult to parse. The citation to this reference at footnote 32 in its Answer is actually just a reference to a short press release with few specific details about the Black Hills tariff or schedule. Regardless, however, it is clear from reading the referenced press release that the Black Hills program is voluntary, and not mandatory as is Idaho Power’s Schedule 20. It also appears that participants in the Black Hills program are compensated for their interruptible qualities – again unlike Idaho Power’s Schedule 20. Thus, the Black Hills Energy program is, like the Wyoming tariff,

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<sup>17</sup> Idaho Power Answer to GeoBitmine’s Petition for Reconsideration at page 11.

<sup>18</sup> Idaho Power’s Comments at p. 8, fn. 11 referencing Idaho Power’s Answer at p. 11.  
GEOBITMINE LLC REPLY COMMENTS ON RECONSIDERATION  
CASE NO. IPC-E-21-37 PAGE 9

substantially and materially different from Idaho Power's Schedule 20 defeating Idaho Power's attempt at a favorable comparison of the two programs.

Finally, in support of its assertion that interruptible service and rates are "commonplace," Idaho Power cited the electric utility industry's response to recent heat wave events in Texas.

The Power Company noted that:

Due to projected strains on the power grid from a heat wave, the Electric Reliability Council of Texas requested curtailment from Bitcoin miners, "who are required to turn off their machines when the state faced energy shortages."<sup>19</sup>

Idaho Power's Answer to GeoBitmine's Petition for Reconsideration cited to just a newspaper article to support its assertion that the situation in Texas is analogous to its Schedule 20 offering.<sup>20</sup> Unfortunately, the article Idaho Power cited is protected from general viewing and is only available to subscribers of the indicated publication. Because GeoBitmine's counsel is not a subscriber to the publication cited, counsel was unable to access the article. Nevertheless, the assertion in Idaho Power's quoted passage that "Bitcoin miners, "... are required to turn off their machines when the state faced energy shortages" is just part of the story. Other, contemporaneous news articles, reporting on the Texas heat wave curtailments observed that bitcoin mining curtailments are voluntary and, equally important, that the bitcoin mining industry was compensated for their voluntary curtailments. For instance, the following is indicative of the press accounts of the bitcoin industry's response to the Texas heat wave:

The Electric Reliability Council of Texas, or ERCOT, which manages the state's power supply, urged virtually all bitcoin mining to shut down during periods of peak electricity demand in a bid to protect the grid, reports Bloomberg News. Some forms of

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<sup>19</sup> *Id.*

<sup>20</sup> Idaho Power's Answer at footnote 34.



cryptocurrency mining, done with powerful computers, rely on fossil fuel energy that worsen the climate crisis.

Most of the paused Texas crypto mining operations entered an arrangement with ERCOT that provides robust financial incentives, meaning the companies were basically paid by Texas energy ratepayers to temporarily stop operations.

According to a spokesperson for Texas Blockchain Council, the move freed up more than 1,000 megawatts of electricity that can now be used for residents and businesses.<sup>21</sup>

Again, the assertion by Idaho Power that cryptomining operations are commonly subjected to Schedule 20-like service interruptions is simply wrong. All three instances cited by the Power Company demonstrate that such interruptions are all voluntary, and the cryptomining entities that voluntarily agree to curtailment are all compensated, indeed compensated with what some have labeled as “robust financial incentives.”<sup>22</sup>

In short, Idaho Power has actually demonstrated (albeit without offering any direct evidence into the record) that voluntary interruptible rate tariffs for which compensation is paid by the utility in exchange for curtailments may be, in fact, commonplace. What Idaho Power purported, but failed, to do is to identify a single utility that imposes Schedule 20-style mandatory interruptible service for which no compensation is made. None of the examples cited in Idaho Power’s Answer or in its Reply are remotely similar to Schedule 20, which is apparently an anomaly in the utility industry.

#### IV THERE IS STILL NO EVIDENTIARY RECORD UPON WHICH THE COMMISSION MAY MAKING FINDINGS

In its Petition for Reconsideration, GeoBitmine observed that the Commission’s initial order was not supported by an evidentiary record:

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<sup>21</sup> The Environmental Working Group: <https://www.ewg.org/news-insights/news-release/2022/07/bid-protect-states-power-grid-collapse-energy-sapping-texas> Emphasis in the original text.

<sup>22</sup> Id.

The lack of a record belies the Commission's cursory "finding" that it is "fair, just and reasonable to approve the Company's Application" or that the Company's Application is a "reasonable approach." There is simply no substantial evidence (indeed, no evidence of any nature whatsoever) supporting the Commission's order, no evidence to support such findings that could be made on reconsideration, and certainly no rational connection between the available facts and the Commission's decision.<sup>23</sup>

GeoBitmine also pointed out that:

Not only is there no substantial competent evidence supporting the creation of a new class of customers, there simply is no evidence whatsoever. No party to the case (Idaho Power included) presented testimony or affidavits in support of their positions. The 'record' is composed of unverified comments that have not been subject to examination, and what materials that do exist only serve to confirm that no cost-of-service study was performed.<sup>24</sup>

The Commission, in response, made the finding that:

[R]econsidering Order No. 35428 by written comments, associated documents, and affidavits in support of the comments is reasonable.<sup>25</sup>

Comments were filed by Idaho Power and the PUC Staff. Neither entity, however, provided any associated documents or affidavits in support of their comments. Comments, unsupported by evidence are – just comments. The Commission is constrained to make its findings based on substantial competent evidence in the record. The Idaho Supreme Court makes clear that:

the findings of the commission must be based upon substantial evidence; its findings not thus supported, or which are contrary to the evidence, cannot be accepted by the court as a basis for upholding the conclusions of the commission. Const. Art. 2, § 1; Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083; Nez Perce Roller Mills of Lewiston v. Public Utilities Comm., 54 Idaho 696, 34 P.2d 972; Mountain View Rural Tel. Co. v. Interstate Tel. Co., 55 Idaho 514, 46 P.2d 723; State ex rel. Taylor v. Union Pac. R. Co., 60 Idaho 185, 89 P.2d 1005; Application of Nichols, 68 Idaho 490, 199 P.2d 255; Application of Lewiston Grain Growers, 69 Idaho 374, 207 P.2d 1028; Application of Pacific Tel. & Tel. Co., 71 Idaho 476, 233 P.2d 1024.

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<sup>23</sup> GeoBitmine Petition for Reconsideration at p. 18.

<sup>24</sup> Id.

<sup>25</sup> Order No. 35488 at p. 9.

*Applications of Intermountain Gas Co.*, 77 Idaho 188, 202, 289 P. 933, 942 (Idaho 1955). The Commission's final order fails this fundamental test because Idaho Power failed to offer any, let alone substantial, evidence in support of the adoption of Schedule 20.

Idaho Power addresses the alleged need for Schedule 20 in Sections II and III (pages 4 – 13) of its Comments on Reconsideration. The Power Company's argument is that cryptomining operations are the "primary example" of a customer-type for which Schedule 20 is designed.<sup>26</sup> Proving this assertion is central to Idaho Power's case, for unless it can show that bitcoinmining operations pose unique cost-causing or operational problems, then the need for Schedule 20 evaporates. Idaho Power spends 11 pages of its 13-page brief on this central issue. In those 11 critical pages Idaho Power cites or references to the following categories of legal and factual support:

Orders in this Docket:	1 citation
Discovery in this Docket:	1 citation (arguing the response should not be considered)
Its own Tariff	1 citation
Other Party Pleadings	2 citations
Its own Pleadings	4 citations
Newspaper <sup>27</sup> Articles	19 citations
Legal Authorities	no citations
Affidavits	no citations
Testimony	no citations
Officially Noticed Docs	no citations

The only independent 'factual' support for the Company's position is found in the 19 newspaper articles it references. Newspaper articles are "classic, inadmissible hearsay." *Roberts v. City of Shreveport*, 397 F.3d 287, 295 (5th Cir. 2005); see *The Barnes Foundation v. Township of Lower Merion*, 242 F.3d 151, 166 n.8 (3d Cir. 2001); *Miller v. Tony & Susan Alamo Found.*, 924 F.2d 143, 146 (8th Cir. 1991); *Pennington v. Vistron Corp.*, 876 F.2d 414, 427 n.15 (5th Cir.

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<sup>26</sup> Idaho Power Reply Comments at p. 4.

<sup>27</sup> Including magazines, newspapers, blogs, trade publications, television news networks, etc.



1989); *Dallas County v. Commercial Union Assur. Co.*, 286 F.2d 388, 392 (5th Cir. 1961); *Hicks v. Charles Pfizer & Co.*, 466 F. Supp. 2d 799, 804-05 (E.D. Tex. 2005). Even though Rule 261 of the Commission's rules provides for the admission of hearsay to determine "facts not reasonably susceptible of proof under the Idaho Rules of Evidence," the Idaho Supreme Court has banned the use of all hearsay 'evidence' for purposes of supporting the Commission's findings. *Application of Citizens Utils. Co.* 82 Idaho 208, 214 351 P.2d 487, 490 (Idaho 1960). In that case, the Idaho Supreme Court unequivocally declared that the Commission "cannot make a finding based upon hearsay." *Id.* In addition, the Supreme Court declared that the Idaho Commission cannot, under its rulemaking authority, "*authorize findings based on facts not in evidence. In any event, the commission cannot by rule transcend the constitutional requirement of due process.*" *Id.* at 215, 315 P.2d at 491. Therefore, the Commission is precluded from making its findings based upon the dozens of newspaper articles cited by Idaho Power. There is no other offer of proof in the record as to the impact, or lack thereof, of bitcoinmining operations on Idaho Power's system. The Commission is therefore left without a record upon which to justify its findings that Schedule 20 is fair, just and reasonable. Idaho Power simply failed to avail itself of the Commission's invitation in its order on reconsideration that it will entertain evidence such as "affidavits in support of comments."<sup>28</sup>

## V

### **IDAHO POWER'S RELIANCE ON THE PUBLIC UTILITY DISTRICT CASES FROM WASHINGTON STATE IS MISPLACED**

Idaho Power asserts that Schedule 20 is reasonable, in part because "moratoriums on new service for cryptocurrency mining customers have been "upheld in several cities and local public utility districts in Washington State... ." <sup>29</sup> In support of its argument, Idaho Power cites the

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<sup>28</sup> Order no. 35488 at p. 9.

<sup>29</sup> Idaho Power Reply Comments at pp. 2 – 3.

Commission to the *Cytline, LLC* case from Washington State. However, Washington State law, unlike the Idaho PUC law, does not protect public utility district (“PUD”) customers from unfair and discriminatory rates – which is, of course, the crux of GeoBitmine’s argument in this case. As draconian as it may seem, PUD’s in Washington State are free to set rates without regard to whether those rates are fair or discriminatory:

Moreover, the Court notes that Washington law does not constrain public utility districts’ discretion by providing an approved method of rate calculation; in other words, the contours of the alleged property interest are not defined clearly by state law. Given the Commission’s [30] broad discretion to set rates, and given the amorphous nature of a “fair” rate, Plaintiffs have not demonstrated that they have a legitimate claim of entitlement to a fair and nondiscriminatory rate under Washington Law.<sup>31</sup>

Simply put, citing to Washington State’s public utility district’s treatment of cryptomining operations is not analogous to Idaho. Unlike PUD’s in Washington State, regulated utilities in Idaho are prohibited from imposing unfair or discriminatory rates.

## VI IDAHO POWER’S CLAIM THAT SCHEDULE 20 IS NON-DISCRIMINATORY RINGS HOLLOW

Idaho Power notes the Idaho Supreme Court’s decision in the *Homebuilders* case to the effect that not all differences in a utility’s rates constitute unlawful discrimination.<sup>32</sup>

Paradoxically, the Power Company then notes all of the factors that must be considered in order for a rate to be lawful – none of which are present in this case. According to Idaho Power:

The Court [Idaho Supreme Court in *Homebuilders*] confirmed that the setting of different rates and charges for the different classes of customers may be justified by “a reasonable classification of utility customers” based on factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature, and pattern of use.<sup>33</sup>

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<sup>30</sup> PUDs in Washington State operate as municipal corporations at the direction of elected Commissioners.

<sup>31</sup> *Blocktree Props., LLC v. Public Util. Dist. No. 2 of Grant Cty. Wash.* 447 F.Supp.3d 1030, 1040 (E.D. Wash. 2020). Footnote provided.

<sup>32</sup> Idaho Power Comments at p. 3, quoting *Idaho State Homebuilders V. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984)

<sup>33</sup> *Id.*

As noted above, there is no factual record in this case. There has been no cost of service study completed and no analysis or even factual exposition as to any of the other salient factors that are required by the Idaho Supreme Court for the creation of a distinct customer class. In an attempt to connect the dots, Idaho Power asserts, in the next paragraph that its Application is consistent with “legal precedent” because it:

[H]ighlights the transitory nature of cryptocurrency mining operations worldwide. . . .

The quick influx of transitory load into, and potentially out of Idaho Power’s service area creates significant risk that costs created by the transitory load will ultimately become the burden of other customers.<sup>34</sup>

The only “factual” assertion relied upon by Idaho Power in making this assertion is a footnote referencing a magazine article,<sup>35</sup> which is unreliable hearsay and directly contradicted by the assertions made by GeoBitmine in its Petition.

## **VII**

### **PUC STAFF MERELY FOLLOWED IDAHO POWER’S LEAD AND OFFERED NO INDEPENDENT ANALYSIS OF THE NEED FOR SCHEDULE 20**

The Idaho PUC Staff is the only other party to offer substantive comments as to the alleged need for, and asserted reasonableness of, Idaho Power’s Schedule 20. However, in doing so, the Staff merely accepted Idaho Power’s “assumptions” as fact with no critical analysis of those assumptions and no independent evidence supporting (or rebutting) those assumptions.

According to the Staff:

The design of Schedule 20 is based on the assumption that Schedule 20 customers exhibit unstable and unpredictable loads and have questionable financial viability making them a high risk for stranded asset costs that core customers may be responsible to cover.<sup>36</sup>

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<sup>34</sup> Idaho Power’s Answer to GeoBitmine’s Petition for Reconsideration at pp. 7 - 8.

<sup>35</sup> Idaho Power cites to pages 3 and 13 of its Application. On page 3 is the footnote reference to a Forbes magazine article. There are no references to any supporting evidence or information on page 13.

<sup>36</sup> Staff Comments at p. 2, emphasis provided.



After noting that the Company's application is "based on" an assumption, Staff's very next sentence mysteriously leaps the chasm between assumption and fact:

Because of these customers' unpredictable and high-risk nature, it is evident that the Company has designed Schedule 20 to reside outside of the relatively stable cost structure used to provide service to the Company's core customers, customers whose rates are based on embedded average cost and then allocated by class based on cost of service. Instead, the Company has designed Schedule 20 to address the risk of servicing them,<sup>37</sup>

There is no evidence in the record as to the "unpredictable and high-risk nature" of "these customers..." It is, however, "evident" that Idaho Power has relied on unreliable hearsay to attempt to convince the Commission to deviate from standard (and mandatory) ratemaking principles that dictate class distinctions be made only on cost to serve and demonstrated usage characteristics such as volume, timing, nature and patterns of electrical usage.

Staff observed in its Comments on Reconsideration that its "perspective on the need and design of Schedule has not changed."<sup>38</sup> However, Staff failed to observe that its "perspective" is based on its acceptance of an unsubstantiated "assumption" by Idaho Power with no independent verification of the underlying asserted need for, or design of, Schedule 20. Staff apparently bought into Idaho Power's unconventional (and extra-legal) 'no-harm no-foul' theory of ratemaking when it asserted that:

Because no customers are currently eligible for Schedule 20, Staff believes the proposed rate is reasonable...<sup>39</sup>

The determination of the reasonableness (or lack thereof) of a rate by the Commission must be made on substantial and competent evidence – and not on assumptions or the 'belief' that there are no customers currently eligible for that rate.

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<sup>37</sup> Id. at pp. 2 – 3.

<sup>38</sup> Staff Comments on Reconsideration at p. 5.

<sup>39</sup> Staff Comments at p. 6.

**VIII**  
**STAFF'S DISAGGREGATION ARGUMENT IS LEGALLY IMPROPER**  
**AND BASED ON FAULTY FACTUAL ASSUMPTIONS**

Staff asserts that the a cryptomining entities have an:

unique ability . . . to disaggregate, expand and contract their electric service needs, and relocate to other service territories differentiates them from other schedule 9 and 19 customers.<sup>40</sup>

In addition to being nothing more than an assumption, staff's assertion is factually incorrect.

Many industrial customers have the ability to choose where and in which utility's service territory they operate at any given time. For example, raw material processing entities (food processors, lumber mills, cattle for slaughter, chemicals etc) often have facilities (either owned directly or third-party facilities with available capacity for hire) located in several states and in several regions within a single state. These entitles often will direct raw product shipments to be processed between and among factories depending on local costs and conditions – including electrical costs. Operators of electric vehicle fleets are able to easily choose where they will recharge. Staff's attempt to buttress Idaho Power's application thus is easily rebutted, but again without an evidentiary record it is nothing more that rhetoric in furtherance of an "assumption."

Staff sole legal support for its disaggregation argument is the federal law known as the Public Utility Regulatory Policies Act of 1984. According to Staff:

The Commission has considered the ability to disaggregate as a factor to justify different avoided cost rates for qualifying facilities under the Public Utility Regulatory Policies Act of 1978 ("PURPA").<sup>41</sup>

PURPA, of course, has nothing to do with the legal parameters within which this Commission's retail rate setting authority is restricted. It offers no precedent for retail ratemaking and does not preempt or instruct this Commission in its ability to determine customer classifications. PURPA

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<sup>40</sup> Staff Comments on Reconsideration at p. 8.

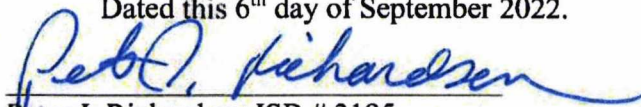
<sup>41</sup> Staff Comments on Reconsideration at p. 8.

is a federal statute that allows state commissions to set rates that utilities pay to wholesale electric generators – not rates that utility customers pay to state regulated monopoly electric service providers. Retail sales, even if the power originates out-of-state, are subject to exclusive state jurisdiction.<sup>42</sup> It would be surprising, and contrary to well-established legal precedent, were this Commission to abdicate its retail ratemaking authority to the federal government.

**IX  
PRAYER FOR RELIEF<sup>43</sup>**

GeoBitmine respectfully requests the Commission issue its order on reconsideration denying Idaho Power's application for approval of Schedule 20.

Dated this 6<sup>th</sup> day of September 2022.



Peter J. Richardson ISB # 3195  
RICHARDSON ADAMS, PLLC

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<sup>42</sup> Pac. Gas & Elec. Co. v. Lynch, CV 01-1083-RSWL (SHx), 2001 U.S. Dist. LEXIS 5500, at \*10-11 (C.D. Cal. May 2, 2001)

<sup>43</sup> As a housekeeping matter, the University of Idaho asked that GeoBitmine clarify references to it in GeoBitmine's Petition for Reconsideration to the effect that the University has to date no business, professional or other relationship with GeoBitmine (either on a formal or an informal basis) and that GeoBitmine's reference to the University was made without input or review by the University and that the University did not approve or give license to GeoBitmine to use its trademarked logos.



I HEREBY CERTIFY that on the 6<sup>th</sup> day of September 2022, a true and correct copy of the within and foregoing REPLY COMMENTS of GeoBitmine LLC in Case No. IPC-E-21-37 was served, by electronic copy only, to:

Lisa D. Nordstrom  
Regulatory Dockets  
Idaho Power Company  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)  
[dockets@idahopower.com](mailto:dockets@idahopower.com)

Commission Secretary  
Idaho Public Utilities Commission  
[secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov)

Jan Noriyuki, Secretary  
Idaho Public Utilities Commission  
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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION OF	)	<b>CASE NO. IPC-E-21-37</b>
IDAHO POWER COMPANY FOR AUTHORITY	)	
TO ESTABLISH A NEW SCHEDULE TO SERVE	)	<b>GEOBITMINE'S REPLY COMMENTS ON</b>
SPECULATIVE HIGH-DENSITY LOAD	)	<b>RECONSIDERATION</b>
CUSTOMERS	)	
	)	
	)	
	)	

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**EXHIBIT ONE**

Rocky Mountain Power's Wyoming Tariff Schedule – *Original Sheet No. 30-1, P.S.C. Wyoming  
No. 17 Interruptible Service Pilot Schedule 30*

# ROCKY MOUNTAIN POWER

Original Sheet No. 30-1

P.S.C. Wyoming No. 17

## Interruptible Service Pilot Schedule 30

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### Available

In all territory served by the Company in the State of Wyoming.

### Applicable

To non-residential Customers receiving service under Schedule 46 or Schedule 48T who are not already enrolled in Schedule 31 – Real-Time Day Ahead Pricing Pilot. Participation will be limited to the first 25 MW of load. A single Customer may not enroll in this schedule for more than 10 MW of service.

### Electric Service Charge Monthly Billing

The Monthly Billing shall be the Interruptible Demand Credit, Interruptible Energy Credit, and Administrative Fee. The Monthly Billing is in addition to all other charges contained in Schedule 46 or Schedule 48T.

### Monthly Billing

#### Interruptible Demand Credit

Per kW of On-Peak Interruptible Demand      -\$1.00

#### Interruptible Energy Credit

Per kWh of Interrupted Energy      -20.000¢

#### Administrative Fee

Per month      \$90.00

### Interruption Events

The Company may call up to 100 hours of Interruption Events each calendar year. One Interruption Event may be called each day and may not exceed 3 consecutive hours. Each Interruption Event called by the Company shall be set for a period of at least 1 hour in duration and shall have a duration that includes 15-minute interval increments. Interruption Events may be called on any day or at any time during the year. During Interruption Events, a participant's usage shall not exceed their Baseline Non-Interruptible Load.

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(continued)

Issued by

Joelle R. Steward, Vice President, Regulation

Issued: June 25, 2021

Effective: With service rendered  
on and after July 1, 2021

WY\_30-1.E

Dkt. No. 20000-578-ER-20



# ROCKY MOUNTAIN POWER

Original Sheet No. 30-2

P.S.C. Wyoming No. 17

## Interruptible Service Pilot Schedule 30

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### Interruption Notification

At least 30 minutes prior to an Interruption Event, the Company shall notify participants. If possible, the Company will make a good faith effort to notify participants on the day before it believes that an Interruption Event is likely.

### Interrupted Energy

Interruptible Energy during each Interruption Event shall be measured as the difference between the average load in kW for the 2 hours preceding the Interruption Event and the Baseline Non-Interruptible Load multiplied by the duration of the Interruption Event in hours.

### Interruptible Demand

Interruptible Demand shall be measured as the kW shown by or computed from the readings of the Company's demand meter for the highest 15-minute period during On-Peak as defined by Schedule 46 or Schedule 48T during the month, determined to the nearest kW, less the Baseline Non-Interruptible Load.

### Baseline Non-Interruptible Load

Once per calendar year, participants may nominate a Baseline Non-Interruptible Load in kW which shall not be subject to Interruption Events. Participants must nominate a Baseline Non-Interruptible Load that results in at least 1,000 kW of Interruptible Load.

### Interruptible Service Term

Unless otherwise removed from this schedule by the Company, participants shall agree to remain on Interruptible Service for a period of no less than 12 months. After terminating service under this schedule, a Customer may not re-enroll for a 12-month period.

### Non-Performance

If a participant does not interrupt its load by reducing its usage down to its Baseline Non-Interruptible Load or less during an Interruption Event, the participant shall be subject to the following penalties:

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(continued)

Issued by

Joelle R. Steward, Vice President, Regulation

Issued: June 25, 2021

Effective: With service rendered  
on and after July 1, 2021

WY\_30-2.E

Dkt. No. 20000-578-ER-20

# ROCKY MOUNTAIN POWER

Original Sheet No. 30-3

P.S.C. Wyoming No. 17

## Interruptible Service Pilot Schedule 30

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### Non-Performance (continued)

- a. For the first failure in a rolling 12-month period, the participant shall forfeit its Interruptible Demand Credit and Interruptible Energy Credit for the month in which it failed to interrupt.
- b. For the second failure in a rolling 12-month period, the participant shall forfeit its Interruptible Demand Credit and Interruptible Energy Credit for the month in which it failed to interrupt and for the prior six months.
- c. For the third failure in a rolling 12-month period, the participant shall be removed from service on this schedule.

Participants removed from the schedule may not return to Interruptible Service for a period of 12 months.

### Metering Upgrade/Update

As a condition of receiving service on this schedule, the Company may elect to upgrade and/or update the Customer's metering to record five-minute interval data and otherwise be capable of being a participating resource in the Energy Imbalance Market. Any metering upgrade and/or update shall be at the Customer's expense. The Company shall provide an estimate of the metering upgrade and/or update to the Customer prior to incurring any expense.

### First Year Enrollment

For the first year of this pilot, Customers shall have until November 1, 2021 to request enrollment in this schedule. If more interest is received than the 25 MW program cap, each participant shall be able to enroll for up to a pro-rata share of the cap. After November 1, 2021, participation in this schedule shall be available on a first-come, first-served basis.

### Program Removal

At its sole discretion, the Company may elect to not provide service under this schedule or remove from participation Customers with seasonal loads that do not correspond to the times of the year when anticipated Interruption Events may occur.

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Issued by  
Joelle R. Steward, Vice President, Regulation

Issued: June 25, 2021

Effective: With service rendered  
on and after July 1, 2021

WY\_30-3.E

Dkt. No. 20000-578-ER-20