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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-21-37
AUTHORITY TO ESTABLISH A NEW)	
SCHEDULE TO SERVE SPECULATIVE)	
HIGH-DENSITY LOAD CUSTOMERS.)	RECONSIDERATION
)	COMMENTS OF THE
)	COMMISSION STAFF

STAFF OF the Idaho Public Utilities Commission, by and through its Attorney of record, Riley Newton, Deputy Attorney General, submits the following reconsideration comments.

BACKGROUND

On November 4, 2021, Idaho Power Company (“Company” or “Idaho Power”) applied to the Commission for authority to establish a new schedule to serve what it characterized as high-density load customers operating in a speculative industry. (“HDL Customers”). Application at 2.

On December 1, 2021, the Commission issued a Notice of the Company’s Application and Notice of an Intervention Deadline. Order No. 35276. The Industrial Customers of Idaho Power (“ICIP”) and 2140 Labs, LLC (“2140 Labs”) intervened. Order No. 35276.

On February 2, 2022, the Commission issued a Notice of Modified Procedure and set public comment and Company reply deadlines. Order No. 35308

On April 12, 2022, Commission Staff (“Staff”) and 2140 Labs filed comments to which the Company replied. The Commission received one public comment expressing support for the Company’s proposed Schedule 20.

On June 15, 2022, the Commission approved the Company’s Application as filed. Order No. 35428.

On July 6, 2022, GeoBitmine, LLC (“GeoBitmine”) petitioned the Commission to reconsider Order No. 35428 and to grant it intervention into the case (“Petition”).

On July 13, 2022, the Company filed an Answer to GeoBitmine’s Petition (“Answer”).

On August 3, 2022, the Commission issued No. 35488 therein granting GeoBitmine’s Petition to Reconsider but denying it intervenor status.

GeoBitmine’s Petition

GeoBitmine stated that it was in the process of constructing a cryptocurrency “mining operation in conjunction with high-capacity indoor farming at the recently idled J. R. Simplot Company (“Simplot”) potato processing plant in Aberdeen, Idaho.” Petition at 3. GeoBitmine explained that it intended to use the waste-heat from its cryptomining operation to create a climate for food production, potato storage, and seed research.

GeoBitmine stated that it began negotiating with the Company in April. GeoBitmine represented that it sought service “for a consistent year-round electrical load of approximately 6,000 kilowatts (“kW”), which would be sufficient electrical power and energy to operate both cryptocurrency and indoor farming/university research operations.” *Id.* at 4. GeoBitmine explained that it initially sought service under Schedule 19, but that the Company required it to take service under Schedule 20 which was “problematic and unrealistic for its proposed Idaho operations.” *Id.* at 5.

GeoBitmine argued that there were practical and legal problems with Schedule 20 and the process by which the Commission approved Order No. 35248. Therefore, GeoBitmine requested the Commission deny the Company’s Application for approval of Schedule 20 and grant GeoBitmine’s status as an intervening party.

GeoBitmine was concerned with the Company's ability under Schedule 20 to implement a mandatory interruption period for up to 225 hours a year. GeoBitmine explained that interrupting service would have devastating impacts on its goal of facilitating indoor food production, potato storage, and seed research.

GeoBitmine also took issue with the marginal energy rates under Schedule 20 which it argued place it at a competitive disadvantage and was inconsistent with the Company's other similarly situated ratepayers.

In addition to mandatory service interruption and marginal energy rates, GeoBitmine argued that Schedule 20 was problematic because the Company had "unfettered" discretion to determine who took service under Schedule 20 and there were no clear guidelines dictating who must take service under Schedule 20.

GeoBitmine argued that "Schedule 20 is an illegally discriminatory classification and hence in violation of law and beyond the Commission's authority to approve." *Id.* at 11 (citing *Idaho Code* § 61-315.)

GeoBitmine cited *Idaho State Homebuilders v Washington Water Power* ("*Homebuilders*") 107 Idaho 415, 417, 690 P.2d 350, 354 (1984) for the proposition that any discrimination in rates and charges must be "justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use." *Id.* at 13. GeoBitmine argued that Schedule 20 discriminated between old and new customers without any reasonable justification and was approved by the Commission without any consideration of the factors listed in the *Homebuilders* decision. *Id.* at 14.

In sum, GeoBitmine argued that the Commission lacked a sufficient record demonstrating that Schedule 20's customers' usage characteristics distinguish them from Schedule 19 customers and, therefore, the Commission failed to make a reasoned decision supported by sufficient findings of fact and substantial evidence in its order approving Schedule 20.

The Company's Answer

The Company replied that: (1) Schedule 20 complied with *Idaho Code* § 61-315; (2) based on the information before it, the Company properly determined that Schedule 20 applied to

GeoBitmine; and (3) GeoBitmine's Petition to reconsider Order No. 35248 and to intervene should be denied.

1. Idaho Code § 61-315

The Company noted that *Idaho Code* § 61-315 precluded a public utility from establishing or maintaining “unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service.” Company Answer at 3 (emphasis in the original). The Company argued that the rates and terms of service Schedule 20 imposes on cryptomining customers was reasonable.

In addition, the Company noted that the Courts' decisions in the *Homebuilders* case, *Grindstone Butte Mutual Canal Co. v. Idaho Public Utilities Commission*, (“Grindstone”) 102 Idaho 175, 180-181, 627 P.2d 804, 809-810 (1981), and *Utah-Idaho Sugar Company v. Intermountain Gas*, 100 Idaho 368, 597 P.2d 1058 (1979), lent support for the creation of Schedule 20's distinct customer classification.

The Company pointed out that GeoBitmine's concern that marginal energy rates presented a devastating risk to its operation was exaggerated and potentially inaccurate.

To GeoBitmine's concern relating to the mandatory interruptible service provision under Schedule 20, the Company pointed to other customers in its service area who repeatedly choose to operate with interruptible service. The Company also pointed out that interruptible service with “interruptible rates tailored for cryptocurrency mining operations,” was not uncommon and existed in other jurisdictions. *Id.* at 11.

2. The Company's determination that Schedule 20 applies to GeoBitmine

After applying Schedule 20's criteria to the information it had received from GeoBitmine regarding its Idaho plans, the Company determined that GeoBitmine should be classified as a customer under Schedule 20.

3. GeoBitmine's Petition to Intervene and Reconsider

The Company explained that many of the issues raised in GeoBitmine's Petition pertained to how the Company applied Schedule 20 and are outside of the scope of the current case.

STAFF ANALYSIS

Staff believes Schedule 20 provides a reasonable structure for service to HDL Customers. Since submitting its initial comments, Staff's perspective on the need and design of Schedule 20 has not changed. In its initial comments, Staff reiterated that Schedule 20 was a necessary implementation to "[m]inimize the risk of stranded assets by treating them as non-firm and requiring interruptible service during summer On-Peak Hours to avoid the need to invest in resources to meet their capacity need." Staff Comments at 3.

The design features of Schedule 20 that reduce stranded asset risk include:

- Treating Schedule 20 customers' energy demand as non-firm and requiring interruptible service during summer On-Peak Hours to avoid the need to invest in resources to meet their capacity needs;
- Fully recovering Schedule 20 customers' share of demand-classified cost throughout the year by requiring interruptible service during summer On-Peak hours; and
- Recovering energy cost using marginal cost energy rates.

Schedule 20 allows service to HDL Customers and simultaneously mitigates the risk that customers will be burdened with stranded asset costs should HDL Customers no longer require service. The Company classifies potential customers for inclusion in Schedule 20 based on the following characteristics: (1) the ability to relocate quickly in response to short-term economic signals; (2) high energy use, density, intensity, and/or high load factor; (3) the ability to relocate and/or disaggregate; (4) volatile load size; (4) sensitivity to volatile commodity or asset prices; (5) sudden need for a large amount of capacity; and (6) a lack of credit history or ability to demonstrate financial viability.

In response to GeoBitmine's Petition, Staff highlights three main points:

1. Schedule 20 is a reasonable measure to mitigate the risks of stranded asset cost and cost shifts to customers and does not violate *Idaho Code* §§ 61-315 and 61-502;
2. HDL Customers have unique characteristics including the nature and number of inputs required for operation, and infrastructure that is easy to disaggregate; and
3. Without special contracts, Schedule 20 protections are necessary.

Schedule 20 complies with *Idaho Code* §§ 61-315 and 61-502

Staff supports the Company's assertion that the Commission has the authority to establish Schedule 20 per Order No. 35428 and that it complies with *Idaho Code* §§ 61-315¹ and 61-502.² Staff believes that HDL Customers can be classified under Schedule 20 consistent with the criteria elucidated in the *Grindstone* and *Homebuilders* cases.

Staff believes the combination of relatively large and volatile loads on the Company's system fits within "the nature of the use . . . the differences in the conditions of service . . . and the actual differences in the situation of the consumers for the furnishing of the service" criteria in the *Grindstone* case. 102 Idaho at 180, 627 P.2d at 809. When the primary input for a set of customers is electricity and there is an absence of other inputs and infrastructure needed to sustain their operations, there is little preventing these customers from relocating to other service territories with less expensive electricity. Staff believes these characteristics—a single input of electricity and little to no additional infrastructure requirements—qualify as an "actual difference.

Although GeoBitmine focuses on traditional cost of service differentiators in its arguments, as the Court in *Grindstone* explained, "cost of service is but one criterion among many considerations in forming a basis for rate differentiation between classes of service and between classifications of customers within a certain schedule." *Id.* at 181, 627 P.2d at 810. The Court further explained that "one criterion" is not "necessarily more essential than another[.]" nor exclusively determinative in creating a customer class. *Id.* at 180, 627 P.2d at 809. The *Grindstone* Court cited *Kiefer v. City of Idaho Falls*, 49 Idaho 458, 476, 289 P.81, 84 (1930) for the principal that every classification and rate differentiation between customer classes depends on the particular facts and circumstances of the case and a due consideration of a combination of factors. *Id.*

Idaho Code § 61-315 precludes a public utility from establishing or maintaining "unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service." Staff does not believe the stranded-asset cost risk posed by these customers constitutes an "unreasonable" difference under *Idaho Code* § 61-315 and the caselaw interpreting it. Staff recommends retaining Schedule 20 as a class for

¹ *Idaho Code* §§ 61-315 provides guidance regarding the proper differentiation of customer classes of service.

² *Idaho Code* §§ 61-502 provides guidance regarding the determination of rates for customer classes of service.

HDL Customers because it is reasonable, prudent, and protects other ratepayers from unreasonable costs.

Distinguishable HDL Customer Characteristics

Staff believes there are two characteristics useful in distinguishing Schedule 20 customers from Schedule 9 and 19 customers:

1. The primary input into the customer's operation is electricity; and
2. The core infrastructure of the operation can be easily disaggregated.

Electricity as the Primary Input

Unlike Schedule 9 and 19 customers, Schedule 20 customers have electricity as a primary input and lack other locational factors. As a result, Schedule 20 customers have a strong economic incentive to relocate to service territories with the lowest-cost electricity. In contrast, Schedule 9 and 19 customers require many locational factors and inputs that creates barriers to relocation.

For example, depending on the commercial operation of Schedule 9 and 19 customers, location of their site can depend on: (1) investments in infrastructure, such as land and buildings; (2) access to waste treatment; (3) other energy inputs, such as renewable energy and natural gas, (4) logistics, such as air cargo, trucking and rail; (5) a trained labor force; (6) local suppliers of goods and services; (7) access to raw materials; and (8) local customer markets as a source of revenue. For Schedule 9 and 19 customers, the cost of electricity is typically much less of a consideration when all other locational factors are required, thus making relocation undesirable and, in many cases, infeasible.

In contrast, a Schedule 20 customer will have very few locational factors that create barriers to relocation. With the primary input being electricity, the incentive to relocate is driven by the cost of electricity. Without Schedule 20 or a special contract in place, the Company would be required to procure additional resources to always serve HDL Customers. If these customers then relocated, the cost of resources the Company procured to serve these customers' loads would be borne by the remaining ratepayers.

Ability to Disaggregate

Staff believes the unique ability of HDL Customers to disaggregate, expand and contract their electric service needs, and relocate to other service territories differentiates them from other Schedule 9 and 19 customers. The ability to disaggregate is characterized by scalable infrastructure requiring little or no integration with other infrastructure elements, except for electricity and data connections. In addition, disaggregation allows HDL Customers to expand and contract through self-contained modules of capacity.

For example, traditional data centers invest in significantly more capital infrastructure to provide redundancy and backup generation to ensure data is not lost and to maintain key operating systems in case of power outages. It is reasonable that an HDL Customer would not make these additional capital investments since they are unnecessary expenses for their business model. GeoBitmine demonstrated this lack of infrastructure investment when it stated, “[t]he loss of electricity during the hottest part of the day in the hottest months of the year will be catastrophic for indoor food production, potato storage and seed research facilities.”³ While this comment was made in regard to interruptible service, the time duration of an interruptible event included in Schedule 20 is not outside the range that any Idaho Power customer could be without power in the case of a power outage. Most businesses would make the capital investments required to protect their operation if a power outage is “catastrophic” to their business.

The Commission has considered the ability to disaggregate as a factor to justify different avoided cost rates for qualifying facilities (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The Commission established an eligibility cap based on the unique characteristics of wind, solar, and energy storage resources to disaggregate.⁴ This eligibility cap was set to prevent large wind and solar QFs (Case No. GNR-E-11-03) and energy storage QFs (Case No. IPC-E-20-02) from disaggregating into smaller projects to qualify for better rates and contract terms that could harm ratepayers. Staff believes the Commission’s justifications for using disaggregation as a criterion to establish the eligibility cap can be applied to differentiate HDL Customers from Schedule 9 and 19 customers.

In addition, HDL Customers can disaggregate, similar to wind, solar, and energy storage QFs, to fit into a different schedule. For example, if a new 100 megawatt (“MW”) HDL

³ GeoBitmine LLC Petition for Reconsideration at 5.

⁴ Order No. 32697 at 13 and Order No. 34794 at 11.

Customer requested service on the Company's system, a special contract would be required. To avoid the longer lead time and terms of a special contract under Schedule 19, the 100 MW HDL Customer could seek to disaggregate into ten 10 MW customers under Schedule 19. However, Schedule 20 endeavors to prevent an HDL Customer from disaggregating to avoid a special contract.

Without Special Contracts, Schedule 20 is Necessary

The Company currently uses special contracts to serve customers with large loads in an effort to reduce risk of stranded asset costs.

Hoku is an example of a large load customer whose operation had large economies of scale requiring substantial infrastructure and startup costs. Hoku was established as a special contract customer because it required more than 20 MW of electrical service. This contract protected customers from stranded asset costs. The special contract included provisions that ensured that upgrades to the distribution line, and other parts of the Company's system, were to be paid for by Hoku. Although Hoku never took service from the Company, had there not been provisions within the special contract, current and future customers would have had to pay for upgrades to the distribution line, substations, and transmission lines that were never used.

Unlike Hoku who required significant startup and infrastructure costs, Geobitmine provides an example of a company that can ramp up or down due to its modularity and ability to relocate easily. According to the Company, GeoBitmine first requested service at the old Hoku facility in Pocatello, Idaho. Answer at 12. This request was initially for energy in an amount exceeding 20 MW which mandated it execute a special contract with the Company.⁵

After being informed about the timeframe to negotiate a special contract, the Company represented that GeoBitmine was able to find a new location in Aberdeen, Idaho. *Id.* at 13. GeoBitmine then resubmitted a new request for electric service of 6 to 7 MW. *Id.* at 12. GeoBitmine was able to redesign its inputs, i.e., land, equipment, and electricity, from 20 MW to a minimum of 6 MW. The example of GeoBitmine's ability to redefine its requirements and adapt to a new location highlighting Staff's concern that providing service to HDL Customers


⁵ Idaho Power Electric Service No. 29, Tariff No. 101, Schedule 19-1. Special contracts are negotiated between the Company and potential customer, and then submitted to the Commission for approval.

with similar characteristics could result in stranded asset costs being incurred by Idaho ratepayers.

STAFF RECOMMENDATIONS

Staff believes the criteria outlined in Schedule 20 meet the requirements in *Idaho Code* §§ 61-315 and 61-502; Staff therefore recommends that the Commission deny GeoBitmine's request to reject Idaho Power's Application for approval of Schedule 20.

Respectfully submitted this 24th day of August 2022.



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i:umisc/comments/ipce21.37rnjhkkchmetnc reconsiderationcomments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 24TH DAY OF AUGUST 2022, SERVED THE FOREGOING **RECONSIDERATION COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-21-37, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:


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