



## Clean Energy Opportunities for Idaho

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UTILITIES COMMISSION

June 1, 2022

Jan Noriyuki, Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Blvd., Building 8, Suite 201-A  
Boise, Idaho 83714

Re: Case No. IPC-E-22-12 - In The Matter Of Clean Energy Opportunities For Idaho's Petition For An Order To Modify The Schedule 84 100kW Cap & To Establish A Transition Guideline For Changes To Schedule 84 Export Credit Compensation Values

Dear Ms. Noriyuki:

Enclosed for electronic filing pursuant to Order No. 35058, is Clean Energy Opportunities for Idaho's Response to Idaho Power Company's Answer and Motion to Dismiss in the above-entitled matter. Thank you for your assistance, and please do not hesitate to contact me with any questions.

Sincerely,

Kelsey Jae  
Attorney for CEO

Enclosure

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF CLEAN</b>	)	
<b>ENERGY OPPORTUNITIES FOR</b>	)	
<b>IDAHO'S PETITION FOR AN</b>	)	<b>CASE NO. IPC-E-22-12</b>
<b>ORDER TO MODIFY THE</b>	)	
<b>SCHEDULE 84 100kW CAP &amp; TO</b>	)	<b>RESPONSE TO IDAHO POWER</b>
<b>ESTABLISH A TRANSITION</b>	)	<b>COMPANY'S ANSWER AND</b>
<b>GUIDELINE FOR CHANGES TO</b>	)	<b>MOTION TO DISMISS</b>
<b>SCHEDULE 84 EXPORT CREDIT</b>	)	
<b>COMPENSATION VALUES</b>	)	

Petitioner Clean Energy Opportunities for Idaho ("CEO"), in accordance with Rules 56 and 256 of the Rules of Procedure of the Idaho Public Utilities Commission ("Commission"), hereby submits its Response to Idaho Power Company's Answer and Motion to Dismiss ("Motion") in the above-entitled matter.

**I. INTRODUCTION**

1. On April 28, 2022, CEO filed a Petition ("Petition") respectfully requesting that the Commission issue an Order that:
  - 1.1. modifies the project eligibility cap for Schedule 84 customers to 100% of a customer's maximum demand;
  - 1.2. establishes a Transition Guideline that improves predictability and stability of rates by setting a limit to the pace at which the compensation for excess energy may change for Schedule 84 customers if and when an Export Credit Rate ("ECR") is implemented; and
  - 1.3. is issued by October 31, 2022 to allow informed, timely investment decisions.

2. Idaho Power Company (“Idaho Power” or “the Company”) filed its Answer and Motion to Dismiss CEO’s Petition and included allegations that the Petition is a collateral attack, redundant, and hasty. These are mischaracterizations: the CEO Petition is none of these. The Petition is the singular option before the Commission to resolve agribusiness requests to revise the 100kW cap and to improve predictability & stability of export compensation in 2022. It is made necessary by the Company’s:
  - 2.1. Lack of initiative over two decades to propose a revision to the cap;
  - 2.2. Year and a half delay in initiating the study ordered in 2019;
  - 2.3. Denial that the 100kW cap does not encourage cost-effective development of customer-owned generation (Motion, ¶ 37);
  - 2.4. Characterization of the Petition’s requests as a distraction (Motion, ¶ 48), which marginalizes customer concerns; and
  - 2.5. Inherent economic bias toward owning infrastructure and explicitly stated position favoring utility ownership of generation.<sup>1</sup>
3. The matters presented in the Petition are urgent and important to customers and should be considered by the Commission on the timeline requested by CEO. In the words of agribusinesses:
  - 3.1. “The matters in this petition are important to me and our operation. I would encourage the PUC to please give it your full consideration.” (IPC-E-22-12, May 17, 2022, Public Comment, Jordan Funk, Darrell Funk Farms, Double Eagle Dairy and Eagle View Dairy).
  - 3.2. “Since agriculture is an energy-use intensive AND captive customer (we cannot relocate), we need the ability to mitigate against future electricity cost increases to assure our future viability.” (IPC-E-22-12 Public comment, 5/5/2022, Duane Grant, Grant 4-D Farms).

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<sup>1</sup> IPC-E-21-41, Application at 34.



- 3.3. “We ask the Commission to ensure that farmers and ranchers receive a fair shot to help solve the power needs and generation shortfalls by considering IPC-E-22-12,”  
(IPC-E-22-12 Public Comment, 5/13/2022, Idaho Farm Bureau).
4. Two decades ago, the Commission acknowledged customer concerns with the 100kW cap and set expectation that the cap could be “modified as we gain experience”<sup>2</sup>. The Petition’s proposal to implement an alternative to the cap (which was ordered to be studied in IPC-E-21-21) in 2022, instead of at some uncertain future date, is anything but hasty. And the proposed Transition Guideline provides necessary communication to customers and is additive, informative, and builds - as the Commission instructed - on work done in past dockets.
5. The Company’s Motion to Dismiss does not speak to a fundamental premise of the Petition: the fairness of allowing Idaho businesses the timely opportunity to access technology needed to manage costs and compete in commodity markets. Further, because Idaho state policy is to encourage investment in customer-owned generation, the opportunity to address two specific matters discouraging such investment requires that the Petition not be dismissed.
6. CEO asks the Commission to deny the Company’s Motion to Dismiss the Petition. The potential benefits from granting the relief requested in the Petition are many, the potential harm is minimal, and the Petition’s premise of fairness remains compelling.

## **II. THE PETITION DOES NOT SEEK TO MODIFY PREVIOUS ORDERS.**

7. In 2019, the Commission established a process which called for both a Study Design Phase and Study Review Phase. IPC-E-21-21 represents the “Study Design Phase” and resulted in an order to, among other things, evaluate the pros and cons of two alternatives to the 100kW cap: (a) analysis at 100% of customer’s demand, and (b) analysis at 125% of customer’s demand (which is

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<sup>2</sup> In reference to the 100kW cap, including the Idaho Farm Bureau's suggestion of tying the cap to consumption, the Commission ordered: “While the suggested changes to the Company’s proposal were thoughtful, what we want at this time is to implement the program. If needed, it can be modified as we gain experience.” (IPC-E-02-04, Order 29092, 10/18/2002, at 7).



consistent with the two caps being studied by Rocky Mountain Power in PAC-E-19-08).<sup>3</sup>

Regarding this Study Design Phase, CEO affirms the Commission's decision that a separate docket is not necessary to study the cap.<sup>4</sup> The Petition asks for no change to the Commission's decisions in IPC-E-21-21 and is not a collateral attack on Order 35284.<sup>5</sup>

8. The Petition launches a proceeding in parallel with the Study Review Phase such that the Commission has the option to decide whether to implement a change to the Schedule 84 cap and to establish a Transition Guideline by Fall 2022, prior to completion of the Study Review phase. The Company has stated that it will submit its study for review by the end of June 2022, but does not anticipate requesting implementation of either of the two alternatives to the 100kW cap until after the Commission acknowledges the study.<sup>6</sup> In the absence of the Petition, a decision on whether to implement any change to the cap would not occur by the October 31, 2022 date which CEO believes is needed to allow businesses to make informed, timely investment decisions in 2022.
9. The main purpose of the study is to address compensation matters,<sup>7</sup> while the 100kW cap is a system design parameter. CEO reasonably anticipates that the study submitted for review will provide evidence that customer load and demand should determine the system's design parameters and will support changing the 100kW cap to either 100% or 125% of customer demand. The Petition does not seek to interfere with the timeline of the study or modify Order 35284's

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<sup>3</sup> Note that the analysis the Commission specifically asked for with regard to the cap was "an evaluation of concerns previously echoed in Order No. 28951 and Order No. 29094, such as safety, service quality, and grid reliability." (Order 35284 at 25).

<sup>4</sup> The Commission decided "a separate docket is not necessary to study these items. The Company has the necessary data and expertise to provide a thorough evaluation of the 25 kW and 100 kW predetermined caps through this study." (Order 35284 at 25).

<sup>5</sup> Indeed, CEO's interest in avoiding further delays and proceeding as soon as possible with the study would not have been served by asking for reconsideration of Order 35284 in IPC-E-21-21.

<sup>6</sup> Absent the Commission establishing a different process, the Company anticipates making a request to implement any potential changes to the net metering rate design, compensation structure, or ECR after the Commission acknowledges a study. (IPC-E-21-21, Application at 8).

<sup>7</sup> "As previously stated, the main purpose of the study is to value the customer-generators' exports to the system." (Order 35284 at 13).

instructions about the study. The Petition is not a collateral attack on any existing order - it is a new request to implement a change to a system design parameter, the 100kW cap, after Idaho Power files the study yet on a faster schedule than Idaho Power would otherwise propose. No previous order of the Commission prohibits a non-utility party from presenting proposals on how to implement information that results from the study. CEO is a solutions-focused organization, and the Petition presents an option for the Commission to issue an order by October 31, 2022 that approves the more conservative of the two alternative caps being studied, that being 100% of customer demand. The Petition seeks a targeted solution to a targeted issue that CI&I customers have been requesting for far too long.

10. The need for a Study Review phase was established in 2019 in a Residential and Small General Service customer class ("R&SGS") docket for the purpose of allowing customers the opportunity to comment on whether the study sufficiently addressed their concerns.<sup>8</sup> If the intent of the Study Review phase is to give weight to customer concerns, a strong record of agribusinesses asking for a sense of urgency in addressing specific concerns in time for fall 2022 investment decisions should be given weight. For agribusiness customers, revising the 100kW cap sooner rather than later is a well-documented concern. Farmers have asked the Commission "to share the sense of urgency for us to access customer-owned generation"<sup>9</sup> and to do "everything it can to enable farmers to make informed decisions on solar generation during 2021."<sup>10</sup> Because it is certain that the study to be released in June will address changing the 100kW cap to either 100% or 125% of customer demand, there is no value in making CI&I customers wait to implement this targeted change while customers comment on the other issues affecting them during the Study Review phase. The Petition asks the Commission to order a change to the cap no later than October 31, 2022.

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<sup>8</sup> "In the 'study review' phase, the public will be able to comment on whether the study sufficiently addressed their concerns, and their opinions on what the study shows." (Order 34509 at 10).

<sup>9</sup> IPC-E-21-21 Public Comment, Russell Schiermeier, Bruneau, Idaho, 11/28/2021.

<sup>10</sup> IPC-E-20-26 Public Comment, Michael N. Kochert, Roseberry Farms, Gooding, Idaho, 12/28/2020.



### **III. ON THE MERITS, THE BENEFITS OUTWEIGH ANY ALLEGED HARMS.**

#### **A. The two premises related to fair treatment are valid.**

11. As stated in the Petition at ¶12, “it is a fundamental issue of fairness and public interest to allow CI&I customers who wish to avail themselves of Schedule 84 to be a part of that solution to this imminent capacity shortfall, and to allow CI&I customers timely opportunity to invest in technologies such as solar in order to manage their own electricity costs and remain competitive in their respective markets.” Both premises remain intact despite the arguments made in the Motion.

#### **B. The public interest is served by allowing CI&I customers a fair opportunity to add resources.**

12. Current conditions increase the urgency to address generation capacity shortfalls. In recent months, circumstances have continued to change which further augment the need for and potential benefits of timely increases in CI&I self-generation, including:
  - 12.1. The North American Electric Reliability Corporation (NERC) 2022 Summer Reliability Assessment (at page 33) forecasts possible outage conditions within the Northwest Power Pool this summer if weather extremes drive above normal peak loads.
  - 12.2. As displayed in Power Cost forecasts within docket IPC-E-22-11, changes in the international market for natural gas are forecasted to produce dramatically higher market prices for power in the Northwest than were projected in the Company’s recent 2021 IRP.
  - 12.3. Idaho Power’s request for a CPCN for installing 120MWs of new battery capacity (see IPC-E-22-13) augments the value of incremental CI&I solar generation.
13. CI&I investments in self-generation resources provide multiple public benefits including:
  - 13.1. Reduction in Irrigator demand mitigates future fixed cost additions by the Company.<sup>11</sup>

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<sup>11</sup> “Staff notes that secondary level irrigation customers account for approximately 23% of summer peak demand, so any reduction in Irrigator’s demand could help defer the need for future generation and transmission plant.” (IPC-E-18-16, PUC Staff Comments, 1/21/2020 at 19).



- 13.2. Distributed generation, especially when paired with energy storage, creates a reliable energy source that is less vulnerable to natural disasters and grid failures.<sup>12</sup>
- 13.3. Irrigator load reduction reduces overall system demand and thereby limits exposure to higher gas prices for all customers.<sup>13</sup>
- 13.4. Agribusinesses and Idaho benefit by enabling Idaho CI&I customers to capture time-sensitive 2022 federal tax and incentive program funds.
14. The Company's concerns with supply chain risks, the Company's desire for certainty, and the Company's view that the magnitude of capacity that CI&I customers could add by Summer 2023 would not be "meaningful" (Motion, ¶ 50) do not provide evidence of harm to public interest and do not justify dismissing the Petition. The Petition presents opportunities to better capture the benefits and mitigate the risks listed above; these opportunities should be allowed full, substantive review by the Commission and thus warrant denial of the Motion to Dismiss.

**i. CI&I customers should be afforded a fair opportunity to manage their power costs.**

15. The Commission should not dismiss the Petition's plea for fairness to allow CI&I customers timely opportunity to invest in technologies such as solar to manage their own electricity costs and remain competitive in their respective markets. Businesses in competitive markets must adapt to changing technologies and market conditions in order to survive. As one farmer stated in comments to the Commission in IPC-E-20-26, "It is unfair that I as a farmer bear the cost of the utility's choice to delay the fulfilling of obligations ordered by the commission."<sup>14</sup> CEO urges the Commission to consider the Petition as an opportunity to remove an impediment to the ability of Idaho CI&I businesses to manage costs and survive in competitive markets.

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<sup>12</sup> Colorado law, SB21-261, [https://leg.colorado.gov/sites/default/files/documents/2021A/bills/sl/2021a\\_sl\\_280.pdf](https://leg.colorado.gov/sites/default/files/documents/2021A/bills/sl/2021a_sl_280.pdf).

<sup>13</sup> Given the Power Cost Adjustment allows the Company to pass through 95% of this exposure to customers, there appears to be little financial incentive for the Company to prioritize opportunities for mitigating this cost.

<sup>14</sup> Taylor Duncan, Circle D Farms/Golden Ridge Farms, IPC-E-20-26 Public Comment, 12/28/2020.

**ii. The 100kW cap adds unnecessary costs and is harmful and discriminatory.**

16. The Petition addresses a system design parameter: the 100kW cap specific to Schedule 84. That the 100kW cap adds unnecessary costs has been well documented in public comments from the agricultural community. The public interest is not better served when a farmer installs 5 sites at 100kW to offset load for an irrigation pump rather than 1 site at 500kW. As farmer Duane Grant describes, the “ill-advised and punitive cap” serves “to embed inefficiency and high relative cost into construction of systems”.<sup>15</sup>
17. The cap is harmful. The Petition properly poses a question to the Commission: whether it is fair and reasonable to add unnecessary costs via outdated capacity cap regulations in order to discourage CI&I customers from installing customer-owned generation.
18. According to the study in IPC-E-18-16 (a data driven analysis), Idaho Power’s residential class subsidizes CI&I classes. Assuming that there is a cross-class cost-shifting issue, the Company’s arguments do not justify dismissing an opportunity for CI&I customers to reduce consumption that is potentially being subsidized by residents.
19. In the Motion, Idaho Power presents a generalized argument that project eligibility caps are used to regulate alleged cost-shifting (Motion, ¶ 47). Harming Schedule 84 customers by imposing unnecessary costs is an improper means of regulating customer investment in self-generation equipment. CEO believes the appropriate mechanism for regulating any possible cost-shifting is via rate design, not by discouraging participation in a PUC-approved rate schedule by imposing system design parameters that “embed inefficiency and high relative cost”.
20. The cap is discriminatory. Currently, a farmer is allowed to offset consumption for irrigation pumping at a much lower percentage of demand than typical residential customers, who can offset under the 25kW cap. As described in the Petition, Idaho Power has presented data that “nearly all” CI&I installations of customer-owned generation are constrained by the cap<sup>16</sup>, a stark contrast

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<sup>15</sup> IPC-E-22-12, Public Comment, Duane Grant, May 5, 2022.

<sup>16</sup> IPC-E-19-15, Idaho Power Application at 6.



to the portion of residents constrained by the 25kW cap where average residential load is a much lower percentage of the annual generation a 25kW array can produce. The Motion alleges that addressing the 100kW cap would be inequitable (§ 53), yet residents and other stakeholders have shown support for this revision, such as the letter signed by 16 organizations in IPC-E-20-26.<sup>17</sup> The opportunity to correct a discriminatory regulation such as the 100kW project eligibility cap should not be dismissed.<sup>18</sup>

21. Changing the cap as requested by the Petition is consistent with best practices. As stated in *Best Practices in State Net Metering Policies and Interconnection Procedures*,

In certain cases, statutory or regulatory limits on the size of eligible technologies prevent electric customers from correctly sizing a DG system to meet their own demand, undermining one of the primary drivers of DG. There is no policy justification for limiting system size to an arbitrary level. Customer load and demand should determine the system's design parameters.<sup>19</sup>

**C. The Transition Guideline is additive, informative, and builds from work done in a prior docket.**

22. Idaho Power alleges that consideration of a Transition Guideline would “bypass the regulatory process established in prior Commission orders”. (Motion §40). CEO is unaware of a regulatory process established in prior Commission orders governing the determination of a Transition Guideline as proposed by CEO. The Petition does not propose a transition plan - it proposes a reasonable sideboard to the pace of change in export compensation value. The proposed Transition Guideline was developed by CEO after analyzing past dockets and builds upon customer requests to define a reasonable outer boundary on implementation of changes to export compensation rates during a future transition, whenever that transition may occur. The Transition

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<sup>17</sup> IPC-E-20-26 Public Comment, 10/27/2020: “we urge you to lift the arbitrary 100 kilowatt-per-meter cap on customer-owned solar installations that creates significant financial and logistical barriers for farmers and business owners who deserve the ability to invest in solar energy systems that are large enough to meet their energy needs.” Signed by 16 organizations. Many residents also posted comments in that docket supporting the ability of farmers to have better access to solar.

<sup>18</sup> “We farm 20,000 acres in Southern Idaho”... “Lifting the 100kw system limit and aligning it with the actual load at the pump sites would eliminate a bunch of confusion in how to offset loads that are not exactly 125 hp.” (Derek Jentzsch, IPC-E-20-26 Public Comment, 9/29/2020).

<sup>19</sup> Best Practices report by Interstate Renewable Energy Council & Vote Solar, 2014, at 15.



Guideline proposed in the Petition is additive in that it seeks to provide information to customers that will improve predictability of how fast the ECR will change.

23. Unlike a system design parameter, the process for determining export compensation is broad, complex, and extremely difficult for customers to predict. The likelihood of a forthcoming rate case further diminishes predictability and resolution of export compensation rates. For example, IPC-E-18-16 showed that the cost of service analysis from the last rate case is outdated. While the multi-phase process for addressing export compensation was ordered in 2019, on the current schedule it could be 2024 before any changes to net-metering compensation are implemented. The year and half delay in initiating the study ordered in 2019 and the unknown impacts of a general rate case, combined with rising electricity costs, create a crucial need to address agribusiness concerns with the predictability and stability of export compensation.<sup>20</sup> The Transition Guideline addresses that concern, leaves latitude for a wide range of options regarding the ultimate implementation of a transition plan, and allows the process of addressing compensation matters to continue forward as ordered.
24. Idaho's CI&I customers are accustomed to risks and have repeatedly expressed that they need the Commission's help to improve predictability.<sup>21</sup> The Transition Guideline is additive and informative to customers. Rather than characterizing it as an attempted "bypass", perhaps it is helpful to consider another highway analogy: A transition guideline doesn't change what the ultimate speed limit will be and does not bypass around a slow speed zone, but it does assure drivers the speed limit isn't going to change too abruptly.

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<sup>20</sup> "We raise ~20,000 acres of sugar beets, potatoes, corn, barley, wheat, and alfalfa. We also are owners in two large dairies . . . Our ability to make informed decisions for our family farm is harmed with such high uncertainty surrounding the new program that has yet to be announced." (Paul Duncan, IPC-E-20-26, Public Comment, 12/28/2020).

<sup>21</sup> "Agricultural businesses are inherently and intimately familiar with uncertainty and appreciate the fact that rates are not contracts and are subject to change. However, the lack of clarity for the future of net metering for irrigators provides no sideboards for operators to gauge the risk and return of such projects." (Idaho Grain Producers Association, IPC-E-20-26 Public Comment, 12/28/2020).

25. The proposed Transition Guideline is built upon analyses in previous dockets and sets a conservative and reasonable outer boundary on the pace of change in export compensation value. It does not introduce “broad and complex issues”, nor is it a “hasty” solution. Parties invested time and money to engage in IPC-E-18-15 for over a year, which resulted in a Settlement Agreement that included a transition plan. The progress achieved in IPC-E-19-15 related to Schedule 84 was unfortunately never filed and thus cannot be referenced in the Petition. When the Commission rejected the IPC-E-18-15 Settlement Agreement, the Commission stated in that docket and then referenced in IPC-E-20-26 in response to CI&I concerns, “The work done in this docket can and should be built upon in the next docket.” (Order 34509 at 7). The Transition Plan proposed in the IPC-E-18-15 Settlement Agreement reflected a decline of 12% after the first two year period and 14% after the second two year period for Residents. This Petition proposes a guideline that the export credit rate decline by no more than 15% per two-year period, which builds from prior work. This outer boundary allows latitude for the development of a detailed transition plan at the time changes to net metering compensation are proposed.

**D. Forthcoming changes to export compensation and a general rate case will address Idaho Power’s concerns related to possible cost-shifting.**

26. The presumption that CI&I-owned generation harms others is outdated and inaccurate. Unlike Investor Owned Utilities in low or no-growth areas, Idaho Power has rapidly growing system sales. The Motion alleges that capacity additions by customers would not result in a meaningful amount of incremental generation (§50), which can be extrapolated to mean Idaho Power does not foresee a meaningful reduction in required revenues. Reduced sales to self-generators does not change the upward trend in revenue to cover Idaho Power’s fixed costs. This assumption implies that a greater concern for ratepayers is the fixed costs associated with the Company’s proposed additions and any opportunity to mitigate the costs of those additions.
27. Furthermore, changes to export compensation will address Idaho Power’s concerns related to potential cost-shifting in Motion §47. Customers adding capacity under a revised cap would be



subject to future changes in net metering compensation. There will be a gap in time between when projects would be designed and constructed under a revised cap and when the Commission would implement changes to net metering compensation. Any harm alleged in Motion ¶47 would be limited to the gap in time between when projects designed under a new cap come online and when the Commission would implement changes to net metering compensation. The Company's presumption of cost shifting should be addressed in a compensation and/or a rate case, and in any event, it does not negate the need to implement a change to the cap for the reasons described in the Petition and above.

28. Revising the cap is not tethered to rate-making; the program can be "tweaked" now. As the Commission noted in Order 35284 at 13-14,

We recognize, as should the Parties, that tweaks to the on-site generator program now will likely be further impacted when the Company files its next general rate case, and the Commission can look at Idaho Power's system and customers as a whole.

29. Rates are imperfect and it is well understood that cost-shifting across classes happens. The Motion's allegation that PUC-approved rates are imperfect does not justify delaying the revision of system design parameters, particularly if a system design parameter is adding unnecessary costs and for which no benefit has been demonstrated. The Commission can and will look at Idaho Power's system and customers as a whole in the next general rate case. The Petition's proposal to implement in 2022 a change in a system design parameter is a "tweak" that need not wait for rate-making decisions.<sup>22</sup>
30. In sum, the potential harm of the Petition alleged by the Motion is minimal and is far outweighed by the public interest benefits of the removal of the two stated barriers to CI&I self-generation by Fall 2022. The primary harm identified in the Motion most directly relates to the gap in time between when projects designed under a revised cap come online and when the Commission

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<sup>22</sup> Note that the Commission granted a change to net metering in IPC-E-20-26 (another system design parameter: a single vs. dual meter) before study completion.



would implement changes to net metering compensation. Among many concerns described above, CEO disagrees with the use of system design parameters to discourage customer-owned generation. Further, this presumed harm assumes generation capacity added by CI&I would unfavorably impact revenue recovery from ratepayers during that gap. Yet the Company does not address the countervailing impact on ratepayers of increased power purchases under high gas prices or long-term impacts of fixed costs additions to meet capacity deficiencies. Regarding the Transition Guideline, the Motion does not demonstrate that it harms public interest. It is additive, informative, and provides the Commission a means of addressing customer requests for urgency and stability given the delay in launching the study and the extended timeline of a general rate case.

**IV. THE PETITION CALLS FOR PUC ACTION TO COUNTERACT THE COMPANY'S DENIAL OF CUSTOMER CONCERNS, INACTION, AND UTILITY-CENTRIC AGENDA.**

31. "It is Idaho policy to encourage investment in customer-owned generation."<sup>23</sup> The public record of farmers and organizations across multiple dockets is more than sufficient to demonstrate that the 100kW cap does not encourage "cost-effective development of customer-owned renewable generation." Idaho Power has noted that "nearly all" irrigation net metering customers were limited by the cap,<sup>24</sup> yet denies CEO's statements that the 100kW cap does not encourage the cost-effective development of customer-owned renewable generation and appears to limit CI&I customers from developing their desired and appropriate amount of self-generation (Motion at ¶37 denying Petition at ¶33).
32. Idaho is #1 in U.S. in terms of the percentage of electricity used to move water around<sup>25</sup>, yet imposes one of the lowest caps on Irrigator self-generation. A manual on Best Practices developed

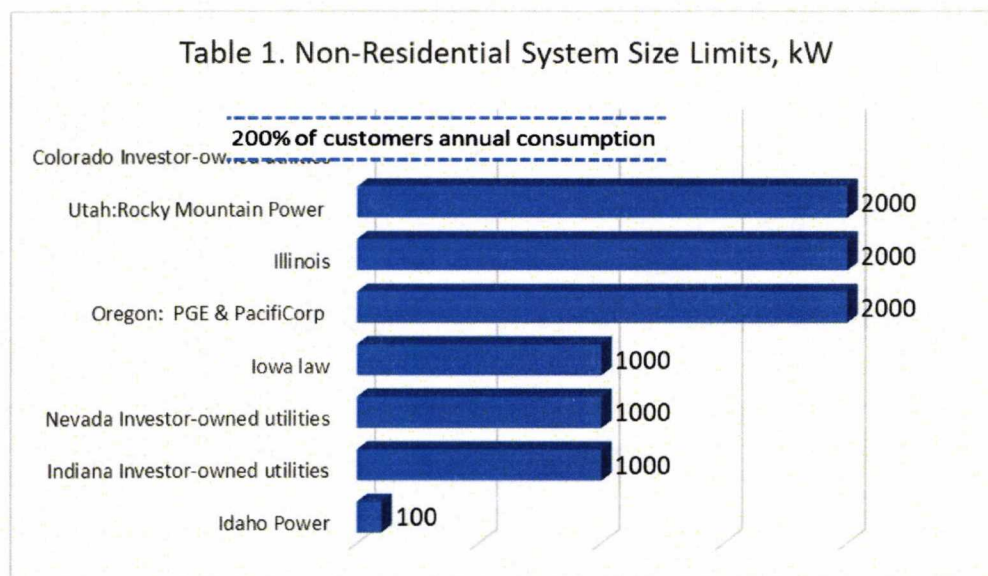
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<sup>23</sup> Idaho Energy Plan at 10. In the Motion at ¶36, "Idaho Power admits only that the most recent Idaho Energy Plan was developed in 2012 and speaks for itself".

<sup>24</sup> "Within the last two years, nearly all of the active or pending irrigation net metering customers in 2018 and 2019 have installed or requested to install, on average, 99 kW systems to comply with the 100-kW limit at an individual meter point." (IPC-E-19-15, Idaho Power Application at 6).

<sup>25</sup> Vincent Tidwell, *Environ. Sci. Technol.* 2014, 48, 15, 8897–8904.

a scoring system for grading net metering programs, including points based on the individual system size limit.<sup>26</sup> Programs in border states like Oregon and Utah receive 5 points for a 2000kW cap; Idaho Power's 100kW cap would receive 0 points. Table 1 shows how Idaho compares to a sampling of nearby states and other agricultural powerhouse states:



33. Idaho can benefit from more CI&I-owned generation even if the Company does not incur direct benefits. The Company has its own perspective of customer-owned generation, some of which is reflected in Motion ¶ 50, which raises concerns regarding the uncertainty of CI&I capacity additions, supply chain risks, and insufficient magnitude of likely CI&I capacity additions. Serving Idaho's public interests requires a broader and more forward looking perspective. For example, note the reasoning behind a Colorado law that summarizes the role of customer-owned generation in meeting energy needs. In 2021, Senate Bill 21-261 increased system size limits to 200% of the reasonably expected average annual total consumption of electricity at all properties owned or leased by the customer within the utility's service territory. The legislative declaration in this Colorado law explains:

<sup>26</sup> Best Practices report by Interstate Renewable Energy Council & Vote Solar, 2014, at 15.



(c) Although large-scale renewable energy generation resources will make up most of Colorado's overall electric energy supply in the future, distributed generation plays a significant and increasingly important role because:

(I) Distributed generation reduces the need for investment in expensive, long-term projects to develop transmission facilities, which are required to bring energy from centralized power sources to the end user;

(II) When a producer exports excess electricity from distributed generation onto the state's power grid, the electricity is quickly consumed by nearby users, reducing the losses incurred in long-distance transmission over power lines;

(III) Distributed generation and storage has the potential to be used in advanced demand-response programs to create a more efficient and resilient grid as well as reduce the need for investments in expensive, yet rarely used, peaker plants;

(IV) Distributed generation, especially when paired with energy storage, creates a reliable energy source that is less vulnerable to natural disasters and grid failures; and

(V) Consumers and local governments increasingly want to have more local control over their energy decisions for both environmental and economic reasons, making local distributed generation investments an appealing option . . .<sup>27</sup>

34. To better serve Idaho's public interest, the Petition has become necessary due to the Company's failure to listen to, understand, and address specific CI&I customer concerns with regard to net metering. In Order 34046 and again in Order 34509, the Commission noted:

The Company, Commission Staff, and all other stakeholders to the case would do well to listen to and understand the public sentiment regarding the importance of distributed on-site generation to Idaho Power's customers. In Order No. 34046 we said, "The Company must continue to listen to and understand, and address its customers' concerns in these cases." Order No. 34046 at 25. Given the quantity and tone of the public comments, it appears as if this has not yet happened.

35. Regarding CI&I customer concerns related to the 100kW cap, such understanding has not been manifested. The Commission has ample evidence that the 100kW cap and the lack of predictability of export rates do not encourage the cost-effective development of CI&I owned renewable generation as called for by Idaho Policy. It now has Idaho Power's denial of those concerns. The Motion to Dismiss should be denied on the grounds that Idaho Power has not

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<sup>27</sup> SB21-261, [https://leg.colorado.gov/sites/default/files/documents/2021A/bills/sl/2021a\\_sl\\_280.pdf](https://leg.colorado.gov/sites/default/files/documents/2021A/bills/sl/2021a_sl_280.pdf) (emphasis added).



listened to and has not understood the specific concerns raised by customers and addressed in the Petition.

36. There is no value in further delay. For twenty years the 100kW system design parameter has discouraged customer-owned generation and Idaho Power has not taken initiative to propose a solution. In contrast to Idaho policy to encourage customer-owned generation, in IPC-E-21-41, the Company references 1914 case law (Bloomquist et al., 26 Idaho 222, 141 P.1083) and requested that the Commission affirm that “customers are best served by a vertically integrated electric utility maintaining ownership of the necessary generation, transmission and distribution utility functions, with limited exceptions.”
37. The Motion characterizes requests in this new docket as a distraction (§48). Addressing the specific requests in the Petition in 2022 may be a distraction for Idaho Power and inconsistent with its interest in owning all necessary generation, but the requests are of high concern to many customers wishing to avail themselves of Schedule 84.<sup>28</sup> The Company’s denial of customer concerns (§37), characterization of the Petition’s requests as a distraction (§48), bias for utility-owned generation, lack of initiative to propose solutions to the matters in the Petition, and the need to better serve Idaho’s policy of encouraging investment in customer-owned generation all justify the need for this Petition and denial of the Motion to Dismiss.
38. The utility’s priorities are not identical to customer priorities, which is a basis of the need for the Public Utilities Commission. As stated in the Petition (at §17) and denied in the Motion (at §28):
- The Company’s control over process schedules, combined with the financial disincentive to enable customer-owned generation, can harm all customers when the regulatory process does not enable timely development of customer-owned resources which mitigate cost additions by the utility.
39. Quite simply, revising the 100kW cap and improving the predictability of export compensation rates are priorities for agribusinesses and not for the Company. The Company’s disposition as

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<sup>28</sup> For example: “The matters in this petition are important to me and our operation. I would encourage the PUC to please give it your full consideration,” (IPC-E-22-12 Public Comment, Jordan Funk, Darrell Funk Farms, Double Eagle Dairy and Eagle View Dairy).

described above (denials/inaction) created the necessity for CEO to invest in the preparation and submission of the Petition in order to have a chance at implementing solutions in 2022. The Commission should not allow the Company's priorities to outweigh the interests of the public. The Motion to Dismiss should be denied.

40. In ¶46, Idaho Power states the "Commission was unequivocal" in reference to the Order in IPC-E-18-15: "The Company shall submit a comprehensive study of the costs and benefits of net metering to the Commission before any further proposals to change the Company's net-metering program." First, note the Transition Guideline proposed in the Petition is not a change to net metering. Additionally, note that the Order was specific to the Company, it did not forbid other parties from making a proposal. Furthermore, and importantly, the net metering program contemplated in IPC-E-18-15 addressed Schedules 6 & 8 customers not CI&I - Order 34225 clarified that IPC-E-18-15 did not address the interests of CI&I customers.<sup>29</sup>
41. The Commission thoughtfully listened to public comments regarding residential net metering late into the night during IPC-E-18-15. CI&I customers did not have a similar opportunity to weigh in on the agreements reached but not filed in IPC-E-19-15. When given the opportunity to weigh in on the net metering program in IPC-E-20-26, CI&I customers raised concerns different from those raised by residents. For example, agribusinesses characterized access to solar as necessary to compete in commodity markets and called for revision of the 100kW cap. The order in IPC-E-18-15 regarding Schedules 6 & 8 does not prohibit CEO from proposing a revision to the project eligibility cap for Schedule 84 given the scope of IPC-E-18-15 did not address CI&I concerns and the matter of revising the project eligibility cap was not addressed in that docket.

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<sup>29</sup> "We find that the scope of IPC-E-18-15 should not be broadened to include the interests of CI&I customers under Schedule 84. IPC-E-18-15 stems from IPC-E-17-13, which focused on net metering for residential and small general service customers. If we were to merge IPC-E-18-15 and this case, CI&I net metering customers would be unfairly disadvantaged by not having the benefit of full participation in the IPC-E-18-15 docket." (Order 34335 at 1).

42. Regarding IPC-E-21-41, this docket augmented the importance and fairness of enabling CI&I customers to make investment decisions in 2022 given the context that Idaho Power would expeditiously add resources and the associated fixed costs and given the Company was likely to need “any generation that can be developed and brought online in time to meet these deficits.”<sup>30</sup> IPC-E-21-41 did not create a need to change the Study Design phase ordered in IPC-E-21-21, as alleged in Motion ¶45 - it upped the urgency of implementing changes to the cap, after it was studied, and the need to address agribusiness requests for better predictability of future export compensation.
43. In ¶51, the Motion suggests that opportunities that currently exist for irrigation customers to help address the projected capacity deficit are adequate. Again, that is the Company’s perspective and does not give adequate weight to customer perspectives.<sup>31</sup> The suggestion conveys that the Company is not carrying out the Commission’s guidance to listen to, understand, and address customer concerns.
44. The regulatory process for addressing net metering continues to evolve and parties continue “to learn as we go.” The process is not, and should not be, so rigid that matters of high concern to customers should be dismissed as suggested by the Motion. The Commission first ordered a study for R&SGS customer self-generation in IPC-E-17-13 via a collaborative process, then established a multi-phase process in IPC-E-18-15 after hearing public reaction to a Settlement Agreement for R&SGS customers. Idaho Power points out that the Commission was “unequivocal” that a study was needed before the Company should propose changes to net metering, yet the Commission granted a change to net metering in IPC-E-20-26 (another system design parameter: a single vs. dual meter) before study completion.

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<sup>30</sup> See Company Response to IdahoHydro Motion at 8, IPC-E-21-41.

<sup>31</sup> “We ask the Commission to ensure that farmers and ranchers receive a fair shot to help solve the power needs and generation shortfalls by considering IPCE-22-12,” (Idaho Farm Bureau, IPC-E-22-12 Public Comments, 5/13/2022).



45. Idaho Power perceives that “CEO’s Petition represents an attempt to deviate from the process” (Motion at ¶43). CEO disagrees. The Petition resulted in part from CEO’s reaction to the Company’s delay for a year and a half to initiate a comprehensive study re-ordered in 34509; such delay is itself a form of deviation from the process. CEO does not agree with Idaho Power’s suggestion that the Commission should discourage an opportunity to better serve public interest in light of changing circumstances, or to address concerns from customers under-represented in the “regulatory process established in prior Commission orders” (Motion at ¶40).
46. As described above, the Petition proposes solutions consistent with prior orders that balance the conflicting timelines: (1) to carry out a process established in an R&SGS docket to allow the public to comment on whether the study sufficiently addressed their concerns (34509 at 10); and (2) to listen to, understand, and address customers concerns regarding net metering (34046 and 34509 also at 10), which for CI&I customers call for a revised cap and better predictability in 2022. In addition, CEO’s proposal will: (3) address a utility’s obligation to provide timely information to enable customers to make informed decisions regarding customer-owned generation (34752)<sup>32</sup>; (4) provide a doable and least-disruptive means of accommodating CI&I concerns which the Commission specified were not within scope of the docket establishing the “Study Review” phase (34335); (5) create a minimal-harm opportunity to accommodate the year-and-a-half delay in launching the study ordered in 2019 (34509); and (6) align with “Idaho policy to encourage investment in customer-owned generation” in light of agribusiness comments on the need for urgency and to address specific matters in 2022.

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<sup>32</sup> “The utility is a trusted entity imbued with a public purpose. It has the opportunity and the obligation to provide its customers with timely, trustworthy, and accurate information regarding the utility’s service offerings to allow its customers to make informed decisions about whether to pursue the potential benefits of being a customer-generator while also incurring the associated risks.” (Order 34752 at 9).

## **V. SUMMARY AND CONCLUSION**

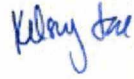
47. CEO has presented sufficient arguments to overcome Idaho Power's Motion to Dismiss.
48. The benefits of the Petition far outweigh any alleged harm. The two premises for the Petition related to fair treatment fairness remain valid. The public interest is served by allowing CI&I customers a fair opportunity to add resources. The potential benefits of CI&I investments in self-generation are numerous and augmented by current circumstances. CI&I customers should be afforded a fair opportunity to manage their power costs. An opportunity to revise a regulation that impedes the ability of Idaho businesses to manage costs and survive in competitive markets should not be prematurely dismissed. The 100kW cap adds unnecessary costs and is harmful and discriminatory. Imposing unnecessary costs is an improper means of regulating access to self-generation programs. The appropriate mechanism for regulating cost-shifting is via rates and rate design, not via discriminatory system design parameters. The proposal to implement in 2022 one of the two caps ordered to be studied in IPC-E-21-21 merits consideration and is consistent with Best Practices.
49. The Transition Guideline is additive, informative, and builds from work in a prior docket. Agribusinesses find it extremely difficult to predict the range of export values. A general rate case further clouds that predictability. The Transition Guideline addresses customer requests for better predictability and stability of export rates, leaves latitude for a wide range of options regarding the ultimate implementation of a transition plan, and allows the process of addressing compensation matters to continue forward as ordered.
50. Forthcoming changes to export compensation and a general rate case will address Idaho Power's rate-related concerns. The presumption that CI&I-owned generation harms others is outdated and inaccurate. Changes to export compensation will resolve Idaho Power's allegations of cost-shifting. Revising system design parameters is not tethered to rate-making. Further delay harms businesses in competitive markets.

51. The Petition calls for Commission action to counteract the Company's denial of customer concerns, inaction, and utility-centric agenda in addressing matters raised in the Petition. It is Idaho policy to encourage investment in customer-owned generation. Idaho is #1 in the U.S. in terms of the percentage of electricity used to move water around, yet imposes one of lowest caps on Irrigator self-generation. Idaho can benefit from CI&I-owned generation even if the Company does not incur benefits. Colorado law exemplifies the perspective that distributed generation should be considered a resource that mitigates costs, reduces reliance on gas, and adds reliability. Denial of customer concerns, marginalizing the Petition requests as a distraction, a bias for utility-owned generation, and the lack of initiative to propose solutions to the matters in this petition in alignment with Idaho's policy of encouraging customer-owned all justify the need for this petition and denial of the Motion to Dismiss.
52. The Petition does not impact Study Design Phase. It carries out the intent of R&SGS Order that a multi-phase process respects customer concerns. Regarding the Study Design Phase: CEO affirms the Commission's decision that a separate docket is not necessary to study the cap (IPC-E-21-21). The Petition creates the option to implement in 2022 one of two alternatives which will have been studied and submitted by the end of June.
53. Regarding the Study Review Phase: an Order in an R&SGS docket to consider customer concerns is poor reason to dismiss a proposal to address CI&I concerns not represented in that docket. This Petition adds an option to the Study Review phase consistent with the purpose of the multi-phase process - to address customer concerns. CI&I interests should not be marginalized.
54. The regulatory process for addressing net metering continues to evolve as parties learn as we go; it is not so rigid that matters of high concern to Idaho businesses should be dismissed as suggested by the Motion.
55. The Motion should be denied.



**DATED THIS 1<sup>ST</sup> DAY OF JUNE, 2022.**

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kelsey Jae".

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Kelsey Jae, Attorney for CEO

## CERTIFICATE OF SERVICE

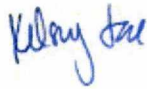
I hereby certify that on this 1st day of June, 2022. I delivered true and correct copies of the foregoing RESPONSE to the following persons via the method of service noted:

### Electronic Mail Delivery

*Idaho Public Utilities Commission*  
Jan Noriyuki  
Commission Secretary  
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Kelsey Jae  
Attorney for CEO