

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>LYDIA FERGUISON,</b>	)	<b>CASE NO. IPC-E-24-13</b>
	)	
<b>COMPLAINANT,</b>	)	<b>ORDER NO. 36222</b>
	)	
<b>vs.</b>	)	
	)	
<b>IDAHO POWER COMPANY,</b>	)	
	)	
<b>RESPONDENT.</b>	)	
	)	

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On March 18, 2024, Lydia Ferguson filed a formal complaint with the Idaho Public Utilities Commission (“Commission”) against Idaho Power Company (“Company”). Ms. Ferguson did not expressly state the relief she seeks from the Commission. However, she apparently seeks reinstatement of the grandfather status of her solar system, which was lost after Ada County took her home via eminent domain.

At its March 26, 2024, Decision Meeting, the Commission accepted the Complaint, issued a Summons to the Company, and gave the Company 21 days from April 5, 2024, to answer or otherwise respond.

On April 26, 2024, the Company filed an answer (“Answer”) to the Complaint, asserting that, while sympathetic to Ms. Ferguson’s situation, it lacked authority to unilaterally reinstate the grandfather status of her solar system. However, the Company indicated that it would defer to the Commission’s determination of whether the facts justify granting Ferguson relief.

Having reviewed the record, we now issue this Final Order conditionally denying the relief sought in the Complaint.

**THE FORMAL COMPLAINT**

Ms. Ferguson alleged that, on February 28, 2024, the Ada County Highway District (“ACHD”) purchased her residence to facilitate construction of an overpass on Linder Road in Meridian, Idaho. Relevant to the Commission’s jurisdiction, Ms. Ferguson further alleged that by moving her solar system, she would not be grandfathered into net metering rates established for

solar systems installed before the relevant cutoff date for grandfathering<sup>1</sup>. Ms. Ferguson explained that she “was told to contact the Public Utilities Commission to see if [she] could be ‘grandfathered’ due to the fact that” ACHD forced her to move from her home where the system was grandfathered. Complaint at 1.

### THE COMPANY’S ANSWER

The Company filed its answer explaining that, although the key facts of this case are undisputed, it did not believe that it could unilaterally grant Ms. Ferguson’s solar system continued grandfather status under the current Commission-approved tariff. The Company sympathized with Ms. Ferguson’s circumstances but contended that it complied with Order Nos. 34509 and 34546 in relation to Ms. Ferguson’s move. However, despite identifying some public policy considerations that it believed militate against reinstating the grandfather status of her solar system, the Company indicated that it would defer to the Commission’s determination of whether she should receive relief in the form of a hardship exception.

The Company noted that the Commission issued rules on grandfathering legacy status to solar systems in Order No. 34546. One of those rules established that a solar system forfeits its grandfathered status if it is offline for more than six months or moved to another site. The Company asserted it has followed Order No. 34546, the Company’s Schedule No. 6, and *Idaho Code* § 61-313, which prohibits the Company from making a contract or agreement contrary to Commission-approved tariffs. In addition, the Company noted that *Idaho Code* § 61-315 prohibits a utility from giving preferential treatment to any customer or customer class. Accordingly, the Company contended that treating Ms. Ferguson preferentially by unilaterally reinstating the grandfather status of her solar system would violate *Idaho Code* § 61-315.

The Company recognized that it was understandable a person in Ms. Ferguson’s circumstances might seek an exception to the general grandfathering restrictions. However, the Company was concerned that granting exceptions for specific customers may negatively impact other customers whose systems lost grandfather status through circumstances beyond their control.

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<sup>1</sup> In Order No. 34509, we determined that, prior to the issuance of the order on December 20, 2019, customers could have decided to invest in a private solar power system based upon the reasonable belief that the fundamentals of the net-metering process would remain unchanged during the expected recovery period of their investment. However, after issuance of that order, continuing to maintain that belief would be unreasonable. Accordingly, we determined that customers who had installed a solar system prior issuance of Order No. 34509 were “grandfathered” into the 1:1 monthly kilowatt-hour retail rate compensation structure in place as of the service date of Order No. 34509 and would continue to receive service at that rate until December 20, 2045.

Additionally, the Company lacked data on how many solar systems have lost grandfather status. As such, it asserted that it could not administer a process for retroactively granting exceptions to such customers, undermining the notion of non-discriminatory service. The Company acknowledged that the Commission has previously granted hardship exceptions on a case-by-case basis. However, considering the grandfather period extends to 2045, the Company suggested that creating a formal process for evaluating whether to grant exceptions to the established grandfathering requirements may be appropriate.

### **COMMISSION DISCUSSION AND FINDINGS**

The Commission has jurisdiction over this matter under Idaho Code Title 61 and IDAPA 31.01.01. The Commission is charged with determining all rules and regulations of a public utility are just and reasonable. *Idaho Code* § 61-303. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of all public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provisions of law, and to fix the same by order. *Idaho Code* §§ 61-501 through 503. In determining just and reasonable rates, “[e]ach case must depend very largely upon its own special facts, and every element and every circumstance which increases or depreciates the value of the property . . . should be given due consideration . . . .” *Kiefer v. City of Idaho Falls*, 49 Idaho 458, 289 P. 81, 84 (1930) (citation omitted).

In Order No. 34509, we determined that existing net metering customers should be allowed grandfathered status and continue to receive service under Schedule 6. We further clarified the parameters of grandfathering in Order No. 34546. Because strict adherence to these prior orders may not invariably lead to fair, just, and reasonable results, we have also considered customer requests for an exception on a case-by-case basis. However, we have not granted an exception to the general grandfathering requirements outside of cases involving unique, compelling circumstances. For example, we granted customers an exception to the grandfathering rules when they could not rebuild their residence and reinstall a grandfathered solar system that had been destroyed in a fire within six months as Order No. 34546 required. *See* Order No. 35651.

Based on the current record, we cannot find that this is one of those unique and compelling cases. As the complainant in this matter, Ms. Ferguson has the burden of establishing facts that would entitle her to the relief she seeks. Although some undisputed facts suggest Ms. Ferguson may be entitled to an exception, several significant factual issues remain uncertain. We are

particularly concerned about the lack of evidence showing that Ms. Ferguson has not already recovered some of the value of her solar system in the purchase price paid for her residence by ACHD or Ada County. For example, the record does not contain evidence (*e.g.*, a real estate purchase agreement) establishing precisely who purchased Ms. Ferguson's house, for how much, and on what terms. In the same vein, there is no evidence in the record (*e.g.*, an affidavit or other written statement) indicating whether Ms. Ferguson raised the issue of the grandfather status of her solar system when selling her residence and to what extent, if any, the value of her grandfathered solar system was incorporated into the purchase price for her residence. Unfortunately, without such information, we cannot determine that granting Ms. Ferguson an exception to the general grandfathering requirements will not result in a financial windfall for her.

Accordingly, we find it fair, just, and reasonable to conditionally deny Ms. Ferguson's complaint. In doing so, we provide Ms. Ferguson with 60 days from the date this order is issued to submit additional evidence to support her request for an exception to the grandfathering rules applicable to private solar systems. Following the deadline for Ms. Ferguson to submit additional evidence, the Company shall have 14 days to respond to any evidence submitted. After considering any supplementary evidence Ms. Ferguson submits and the Company's response, we will issue an order resolving the Complaint. If no additional evidence is submitted, we will issue a final order denying the Complaint.

### **ORDER**

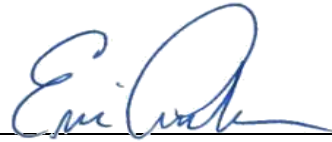
IT IS HEREBY ORDERED that the formal complaint filed by Lydia Ferguson against Idaho Power Company is conditionally denied for the reasons set forth above.

IT IS FURTHER ORDERED that Ms. Ferguson may submit additional evidence to support her request for an exception to the grandfathering rules that would allow her solar system to retain its grandfather status for a period of 60 days following the service date of this order.

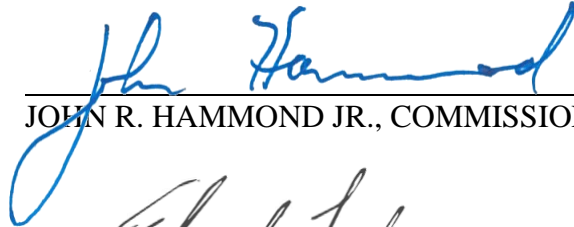
IT IS FURTHER ORDERED that the Company may file a response to any evidence Ms. Ferguson submits for a period of 14 days following the deadline for Ms. Ferguson to submit additional evidence.

IT IS FURTHER ORDERED that if no additional evidence is received, the Commission will issue a final order denying the formal complaint.

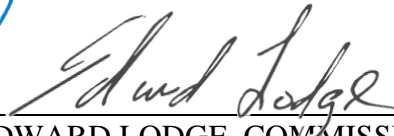
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14<sup>th</sup> day of June 2024.



ERIC ANDERSON, PRESIDENT



JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Monica Barnes-Sanchez  
Commission Secretary

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