

DEC 20 2019

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF) CASE NO. IPC-E-18-15
IDAHO POWER COMPANY TO STUDY THE)
COSTS, BENEFITS, AND COMPENSATION)
OF NET EXCESS ENERGY SUPPLIED BY) ORDER NO. 34509
CUSTOMER ON-SITE GENERATION)

In this Order, the Commission rejects the proposed Settlement Agreement, orders Idaho Power to submit a comprehensive net-metering cost/benefit study informed by public workshops and public input, grandfathers existing net-metering customers into Schedule 6 or Schedule 8 as those schedules exist on the service date of this Order, and responds to allegations the Commission violated the Idaho Open Meetings Law. Intervenor funding for this docket will be determined in a separate order.

PROCEDURAL BACKGROUND

On May 9, 2018, in Docket No. IPC-E-17-13, the Commission ordered Idaho Power Company (“Idaho Power” or “Company”) to “initiate a docket to comprehensively study the costs and benefits of on-site generation on Idaho Power’s system, as well as proper rates and rate design, transitional rates, and related issues of compensation for net excess energy provided as a resource to the Company.” Order No. 34046 at 31. The Commission encouraged the parties to work through these issues together in compromise. *Id.* at 22.

On October 19, 2018, Idaho Power petitioned the Commission to open this docket to effectuate the Commission’s directive in Order No. 34046.

On November 9, 2018, the Commission issued a Notice of Petition and Notice of Intervention Deadline. Order No. 34189.

Late intervention was granted to parties on March 27, 2019, May 28, 2019, June 14, 2019, and June 26, 2019. Order Nos. 34283, 34344, 34355, 34359.

One pre-hearing conference and eight settlement conferences were held by the parties. Staff filed Staff Reports on February 28, 2019, May 28, 2019, and August 28, 2019.

On October 11, 2019, Idaho Power and Commission Staff jointly submitted a Motion to Approve Settlement Agreement. The proposed Settlement Agreement was signed by the Company, Commission Staff, Idaho Clean Energy Association, Idaho Irrigation Pumpers

Association, Inc., Idahohydro, City of Boise, Idaho Sierra Club, Industrial Customers of Idaho Power, and Russell Schiermeier. The parties did not resolve whether existing customers with on-site generation would be subject to the Agreement, and submitted this issue to the Commission for separate determination.

On October 17, 2019, the Commission issued a Notice of Motion to Approve Settlement Agreement, Notice of Briefing, and Notice of Schedule. Order No. 34460.

On December 2, 2019, the Commission held a telephonic public hearing from 10:00 a.m. until 4:00 p.m. More than 70 customers commented on the record. On December 3, 2019, the Commission held an in-person public hearing that started at 7:00 p.m. and lasted until 2:15 a.m., after all attendees had the opportunity to speak on the record. More than 50 customers provided in-person comments on the record. Over 1,000 written public comments were submitted and placed in the record.

SETTLEMENT AGREEMENT

The proposed Settlement Agreement, if approved, would have changed a number of fundamental aspects to the Company's net-metering program. Under the proposed Settlement Agreement, energy production and consumption would have been netted hourly, whereas under the Company's current program, production and consumption are netted on a monthly basis. The proposed Settlement Agreement would have paid customers an export credit rate for net energy exported to the grid, whereas under the Company's current program, net excess energy is compensated at a 1:1 kilowatt hour ("kWh") credit, meaning the value of the net energy exports is equal to the value of the energy consumed.

The export credit rate was to be determined by a demand side management avoided-cost methodology for energy and capacity, with a 10% reduction for the non-firm nature of the energy, with value acknowledged for avoided transmission and distribution line losses. The parties included placeholders for avoided transmission and distribution capacity, integration costs, and environmental benefits, but did not determine the methodology or values for these inputs in the Settlement Agreement. Updates to the export credit rate were to occur biennially in conjunction with Commission acknowledgment of the Company's Integrated Resource Plan ("IRP"). The Settlement Agreement called for an eight year transition to the export credit rate.

Based on inputs from the 2017 IRP, the export credit rate for Schedule 6 was approximately 4.4 cents per kWh, and 5 cents per kWh for Schedule 8. Current first tier rates for

energy consumption in Schedule 6 are approximately 8.5 cents per kWh during the summer, and 7.9 cents per kWh during non-summer. These rates go as high as 12.2 cents per kWh during the summer for tier three consumption (above 2,000 kWh per month). Current first tier rates for consumption in Schedule 8 are approximately 9.7 cents per kWh during the summer and non-summer, and go as high as 11.6 cents per kWh during the summer. Based on current rates and 2017 inputs to the export credit rate methodology, net exports would have been compensated at roughly half of the rate to consume energy, once fully transitioned to the export credit rate.

PUBLIC COMMENTS

The public, almost unanimously, opposed the proposed Settlement Agreement and supported existing customers being grandfathered into the rules in place when the customers designed and installed their on-site generation systems. Numerous members of the public testified that after a great deal of consideration, they decided to make an investment in their homes by installing on-site generation. Numerous members of the public recognized the payback period under the Company's net-metering program was not great, but they expected a return on their investment within their lifetimes; and under the proposed Settlement Agreement, they would not likely see a return on their investment within a meaningful timeframe. Numerous members of the public testified that they decided to invest in on-site generation not just for the economic return, but to provide value to Idaho Power's grid, and to help mitigate global warming.

Customers stated their panels produce significant energy at or near the Company's system peak, which lowers demand on the Company's system and provides carbon-free energy to their neighbors. Customers also noted the money they invested in on-site generation is money that the Company need not invest in future generation sources to meet demand. When the Company invests in energy generation sources, those costs go into the Company's rate base and are spread to other customers. When individual customers invest that money, those costs are not put in the Company's rate base and are not spread to other customers.

Those who invested in on-site generation stated, in no uncertain terms, that they thought they had an agreement with the Company that would allow them to continue to net meter under the terms they signed up for. Commenters based this view on factors including conversations with Idaho Power representatives, the longstanding net-metering program upheld by the Commission, Idaho Power's recent commitment to 100% clean energy by 2045, tax incentives to invest in solar, and an overall expectation of fairness. Customers noted the Company's monopoly to serve all

customers in its service territory precludes customers from shopping around for a more favorable rate of return, a more stable program design, or from choosing a preferred counterparty to their agreement. Numerous customers testified they viewed on-site generation as the only meaningful way to significantly reduce their electric bills. At least one commenter compared paying their electric bill to paying rent, saying that when it's gone it's gone, whereas owning solar panels is similar to a long-term investment in real property that allows equity to accrue. Other commenters stated that Idaho Power's attempt to address the relatively small cost shift between net-metering customers and customers without net metering was a disproportionate response to the problem.

The Commission listened to thirteen hours of public testimony over two days. Four core themes emerged. In summary, the public: 1) expected this docket to result in a study, not a Settlement Agreement; 2) thought the Settlement Agreement process was not transparent; 3) believed the Settlement Agreement does not accurately balance the costs and benefits of net metering on the Company's system and should be rejected; and 4) expected, in the interest of fairness, existing customers with on-site generation be allowed to continue on the same program they signed up for. The Commission has duly considered the public comments and has weighed them against the Settlement Agreement, the parties' comments in support of the Settlement Agreement, and the parties' briefs regarding treatment of existing customers.

PARTY COMMENTS

The parties submitted comments in support of the Settlement Agreement before the public submitted comments. Party comments largely reflected the view that the Settlement Agreement was a compromise, rather than the position the party would advocate for in a contested proceeding. Because the Settlement Agreement resulted from confidential settlement negotiations, the parties were necessarily cautious in discussing the give-and-take that produced the Settlement Agreement, though some parties did provide rationale supporting the Settlement Agreement's different components and explained why they thought those components were fair, and why they thought the overall compromise was fair.

In addition to submitting comments in support of the Settlement Agreement, parties submitted briefs making legal and policy arguments about whether the Commission could and should treat existing customers differently than new customers. The legal aspect of the briefs centered on *Idaho Code* §61-315, which prohibits the Commission from establishing or maintaining any "unreasonable difference" between classes of service that results in preferential

or prejudicial rates for one class of customers compared to another. Idaho Supreme Court cases interpreting the statute discuss factors the Commission can consider when deciding whether customer classes have reasonably different characteristics that justify a utility treating those classes differently from each other. Party briefs generally coalesced around the statement that the Commission cannot differentiate between classes of customers based solely on whether customers are new or old.¹

Commission Staff argued that this case presents an issue of first impression because it has unique facts that did not exist in prior cases. Namely, in this case, existing customers have incurred substantial costs to invest in on-site generation systems because they relied on the Company's longstanding net-metering program, the fundamentals of which have remained unchanged since its inception, to continue under its existing or similar terms. Commission Staff argued policy and equity considerations justify the Commission recognizing this reasonable difference between existing net-metering customers and future net-metering customers. Idaho Clean Energy Association, Idaho Conservation League and Vote Solar, and City of Boise argued that systems designed and installed to conform with the rules proposed in the Settlement Agreement would have different characteristics from, and would interact with the grid differently than, systems designed and installed to conform with the existing rules. This argument was joined in reply by Commission Staff. The Company did not address the specifics of the parties' arguments that existing net-metering customers differ from future net-metering customers, but simply argued that it could not discern any differences between new and existing customers that would support rate differentiation.

COMMISSION FINDINGS

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-501, 61-502, and 61-503. The Commission is vested with the power to “supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the [Public Utilities Law].” *Idaho Code* § 61-501. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine

¹ See Idaho Power Opening Brief at 2, 9, Brief of the Commission Staff Regarding Existing Customers at 5, Reply Brief of the Commission Staff Regarding Existing Customers With On-Site Generation at 2, Reply Brief of the Idaho Conservation League and Vote Solar on Treatment of Existing Customers at 8, Idaho Clean Energy Association, Inc.'s Brief Regarding Treatment of Existing Customers at 8, Idaho Clean Energy Association, Inc.'s Response Brief Regarding Treatment of Existing Customers at 1.

whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503.

Under Commission Rules, the Commission must independently review proposed settlements. “The Commission is not bound by settlements. It will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.” IDAPA 31.01.01.276. If the Commission rejects a settlement, the Commission can prescribe procedures to be used to address the concerns that led to the Commission’s rejection of the settlement. “If the Commission rejects the settlement . . . the Commission will notify the parties of procedures to be followed to decide the issues for which settlement was rejected by the Commission.” IDAPA 31.01.01.276.

I. The Commission Rejects the Proposed Settlement Agreement.

Having reviewed the record, we find the record is inadequately developed to make a determination as to whether the Settlement Agreement is fair, just, reasonable, and in the public interest. We thus find it appropriate to reject the Settlement Agreement and prescribe procedures to be followed to develop an adequate record and address our ongoing concerns. More specifically, we find the public was not adequately notified this docket might result in a significant change to the Company’s net-metering program structure. Further, filing the Settlement Agreement in the absence of a comprehensive study does not comply with our directive to parties in Order No. 34046.

a) The Public Was Not on Adequate Notice That This Docket Might Result In Fundamental Changes to the Net-Metering Program.

The public was not on adequate notice that this docket would result in anything more than a study. The title of the docket is “In the Matter of the Petition of Idaho Power Company to Study the Costs, Benefits, and Compensation of Net Excess Energy Supplied by Customer On-Site Generation” (emphasis added). While the name of the docket may reflect the original intent of the docket, it does not reflect the product of the docket. In Order No. 34046, we directed the parties to “meet in an effort to agree on the scope of proper procedural and substantive elements of the on-site generation docket, for approval by this Commission.” Although we encouraged the parties to collaborate and determine the scope of this docket, we find that submitting a Settlement Agreement, without first submitting a comprehensive study, contradicts the intent of our directive.

The parties acted in good faith and pursuant to Commission Rules of Procedure. Information in the record indicates parties were attempting to reach settlement. Commission Staff informed the Commission and all other parties to the case that it was beginning settlement negotiations under Commission Rule 272. That rule states, in part, “The Commission Staff must give all other parties an opportunity to participate in or be apprised of the course of the settlement negotiations before a final settlement agreement is reached. Settlement negotiations are confidential, unless all participants to the negotiation agree to the contrary.” IDAPA 31.01.01.272. On February 28, 2019, Commission Staff submitted the first Staff Report and stated, “Staff is optimistic that the collaborative approach thus far expressed in the first four meetings will continue to lend toward the construction of a reasonable and proper scope of study and methodologies, while also more likely leading to settlement.” Staff Report at 2. Staff also noted that “the parties have worked congenially and in good faith toward settlement. . . .” *Id.*

On March 19, 2019, the Commission issued a Notice of Schedule stating, “We appreciate the parties’ congeniality and progress toward settlement in relation to studying and better understanding the costs and benefits of on-site generation as it relates to Idaho Power’s system. We encourage Staff, the Company and parties to continue to pursue an outcome that would allow settlement.” Order No. 34274 at 2. Somewhere along the way, accomplishing a study was overlooked and only settlement was pursued. While information on the record indicates parties were progressing toward settlement, given the intense public interest in this case and its ramification for distributed on-site generation, these references toward possible settlement did not sufficiently notify the public that fundamental program changes would be proposed, especially when considering the case caption and our statements in Order No. 34046. Without a comprehensive study, the Commission is unable to weigh the reasonableness of the Settlement.

To be clear, we do not wish to discourage future opportunities for settlement in any case before us, and continue to encourage parties to work through issues collaboratively, when possible. In this Order, based on the underlying record in this case, we find that the settlement process was not adequate for reasons described more fully herein.

b) The Record in this Case Does Not Support Approval of the Settlement Agreement.

Based on the record, the Settlement Agreement proponents have not carried their burden of showing that the Settlement Agreement should be approved. “Proponents of a proposed

settlement carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.” IDAPA 31.01.01.275. The record does not provide the Commission with substantial and competent evidence upon which it can base its decision.

Unless affirmatively introduced, the data exchanged by parties during settlement negotiations is not in the decision-making record. The hearing record and the Commissioners’ record comprise the decision-making record. *See* IDAPA 31.01.01.281. “The hearing record in a proceeding consists of all transcripts of hearings, conferences, arguments and other proceedings on the record and of all exhibits identified, offered, admitted or denied admission at hearing or prehearing conference.” IDAPA 31.01.01.283. The Commissioners’ record “automatically includes all pleadings, orders, notices, briefs, proposed orders and position papers. The Commission may add documents officially noticed to the Commissioners’ record.” IDAPA 31.01.01.284.01. Critically, “Workpapers, requests for discovery, answers to discovery and other documents filed with the Commission Secretary and served on the parties, whether or not discussed at hearing, are not part of the hearing records unless introduced as exhibits at hearing.” IDAPA 31.01.01.283. Thus, the data relied upon by parties to substantiate their settlement positions is not in the decision-making record. Without access to the underlying data upon which the parties’ opinions were formed, it is not possible for the Commission, or the public, to evaluate whether the Settlement Agreement is reasonable.

The Motion to Approve Settlement Agreement does contain Attachment 4, which the submitting parties characterize as “workpapers showing data” submitted “[i]n conformance with RP 121, to the extent that it applies.” Motion to Approve Settlement Agreement at 3. RP 121 refers to Commission Rule of Procedure 121, which prescribes the form and content of an application to change rates and specifies data that must be submitted with such an application. Attachment 4 contains 10 attachments of its own, labeled: “Development of 2017 Result of Operations,” “Class Cost-of-Service Study,” “Normalized Energy,” “Normalized Demand and Energy Derivation,” “Net Hourly Billing Determinant Derivation,” “Normalized Retail Revenue Derivation,” “Schedules 6 and 8 Cost-of-Service Study Results,” “Compensation for Net Excess Energy – VODER,” “Schedules 6 and 8 Net Hourly Revenue Impact,” and “Residential Net Metering Cost Shift in 2015 and 2016.” These files appear to be the starting point of negotiations between the parties and not the comprehensive study ordered by the Commission. Though this

information is in the decision-making record, the manner in which it is presented and the lack of context prohibit the Commission, or the public, from evaluating it in any meaningful manner.

II. *The Company Must Prepare and File a Credible and Fair Study on the Costs and Benefits of Distributed On-Site Generation to the Company's System.*

It is critical for the Commission to have a credible and fair study in front of it before it can make a well-reasoned decision on the Company's net-metering program design. The Commission identifies the following criteria for a credible and fair study.

1) The study must use the most current data possible and the data must be readily available to the public, and in the Commission's decision-making record. One advantage of waiting to decide whether to change the Company's net-metering program design is with approximately 5,000 net-metering customers on the Company's system, there will be a more robust data set upon which to base the study. With more experience integrating distributed on-site generation on the Company's system, what once were hypothetical fears can be analyzed against actual experience to determine whether the fears were well-founded or were off the mark.

2) The Company must design the study in coordination with the parties and the public, and the final scope of the study will be determined by the Commission. The Commission will provide the parties and the public stakeholders the opportunity to comment during the study design phase and the study review phase.

3) The study must be written so it is understandable to an average customer, but its analysis must be able to withstand expert scrutiny. Before the Company files a case to change its net-metering program structure, the Commission must approve the study as credible and fair. If the Company files a case to change its net-metering program structure, the Commission-approved study will be the basis of that filing.

In the preparation of the comprehensive cost/benefit study that will be submitted to the Commission, Commission Staff and the Company will both host public workshops to share information and perspectives on net-metering program design with the public and to listen to customer concerns and input. The timing of these workshops will be such as to allow stakeholders the opportunity to incorporate public input into their positions on the study's design. Following the public workshops, the Commission will provide an opportunity for public comment. In the "study design" phase, the public will be able to comment on what questions they would like the

study to address. 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.

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. We expect that a well-developed underlying record will provide a basis for any future changes. A comprehensive and transparent analysis should allay many of the concerns expressed by customers.

III. Existing Customers Are Grandfathered Under the Rules in Place as of the Service Date of this Order.

Although the Commission is not changing the Company’s net-metering program at this time, the Commission finds it prudent and justifiable to distinguish between existing customers and new customers based on the customers’ reasonable expectations when making significant personal investments in on-site generation systems. We find that before the service date of this Order, customers reasonably assumed the net-metering program fundamentals would not change. Representations made by both solar developers and the Company, whether explicit or implied, created a reasonable basis for reliance. After the issuance of this Order, however, we believe it will no longer be reasonable for a customer to assume the net-metering program fundamentals will remain the same over the expected payback period of their investment. We find this is a cognizable and reasonable difference between classes of customers, which justifies different treatment. We find it is within our authority to acknowledge the reasonable differences of these customer classes under *Idaho Code* § 61-315, and doing so is consistent with our duty to ensure rates are fair, just, reasonable, and in the public interest under *Idaho Code* §§ 61-501, -502, and -503.

a) The Commission Has Authority to Grandfather Existing Customers.

Idaho Code § 61-315 prohibits different treatment of customer classes based solely on whether the customer is a new customer or an existing customer. *Idaho Code* § 61-315 states,

No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.

Case law interpreting this statute has identified factors that the Commission can consider when determining whether a difference in treatment is reasonable or unreasonable. In *Grindstone Butte Mutual Canal Company v. Idaho Pub. Util. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981) [hereinafter *Grindstone Butte II*], the Court stated,

This Court has previously determined that cost of service is but one criterion among many for consideration in forming a basis for rate differentiation between classes of service and between classifications of customers within a certain schedule. In *Utah-Idaho Sugar v. Intermountain Gas Co.* . . . as between classes of service, i.e., one schedule as opposed to another, the relevant criteria included the quantity of the utility used, the nature of the use, the time of use, the pattern of use, the differences in the conditions of service, the costs of service, the reasonable efficiency and economy of operation and the actual differences in the situation of the consumers for the furnishing of the service. Specifically, as between classes of customers within a schedule, the criteria included contribution to peak load, costs of service on peak demand days, costs of storage and economic incentives (citations omitted). We find such criteria as being valid considerations for rate differentiation as between classes of service, whether those classes be as between schedules or as between customers within a schedule. We do not find one criterion to be necessarily more essential than another. Nor do we find the criteria as listed above as being exclusive.

Grindstone Butte II, 627 P.2d at 808-09. First, we recognize this is an illustrative statement of factors and is not an exhaustive list. Additionally, the Court went on to say,

Each 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, or of the service rendered, should be given due consideration, and allowed that weight to which it is entitled. It is, after all, very much a question of sound and well-instructed judgment.

Id. at 809 (citations omitted). In our judgment, it is clear there is a reasonable difference between existing and new customers when evaluating “every element and every circumstance which increases or depreciates the value of the property, or of the service rendered.” The public testimony demonstrated that the reasonableness of the payback period for on-site generation is extremely sensitive to program changes. The public testimony also demonstrated that the public believed the fundamentals of the program structure would not change. Previous cases interpreting *Idaho Code* § 61-315 have examined costs to be imposed on customers prospectively, and have not addressed whether sunk costs incurred by one customer class reasonably differentiate those customers from customers without sunk costs. *E.g. Idaho State Homebuilders v. Idaho Pub. Util. Comm’n*, 107 Idaho 415, 690 P.2d 350 (1984), *Boise Water Corp. v. Idaho Pub. Util. Comm’n*, 128 Idaho 534, 916 P.2d 1259 (1996). We believe customers who have made significant investments in on-site generation systems reasonably differ from customers who have not yet made significant investments in on-site generation systems, and this difference justifies separate treatment.

b) *The Reasonable Expectation of Customers Prior to the Service Date of this Order Compared to the Reasonable Expectation of Customers After the Service Date of this Order.*

This Order sets clear expectations the Company must meet before we will evaluate future proposed changes to the Company’s net-metering program. We anticipate the Company will undertake this effort. While we do not pre-judge the outcome of these proceedings, we note programmatic changes are at least being strongly contemplated, as evidenced by the proposed Settlement Agreement. We think a reasonable customer would consider the uncertainty of the program design when deciding whether to invest in on-site generation going forward.

In prior orders we notified customers that tariffs are not contracts, and that prices and terms of service are subject to change. *E.g.*, Order Nos. 30227 at 7 (stating, “[W]e must note that the net metering program price is a tariff rate. It is not a contract rate. As a tariff rate, it is subject to change.”); 32280 at 4 (stating, “[T]he Commission reminds customers that net metering is a tariff rate. There is no contract associated with the service and rates are subject to change depending on future Commission decisions.”); 34046 at 19 (stating, “Rates change, and rate design evolves, and no utility rate can be locked or considered to exist ad infinitum. As we have consistently held, tariff rates are not contracts.”); 34335 at 2 (stating, “We reiterate: Rates and rate structures are always subject to change. Although this Commission must approve any rate changes

as just, reasonable, and non-discriminatory before they take effect, there is no guarantee that rates will stay the same indefinitely[.]”)

In this Order, we continue our efforts to warn potential customers that tariffs are subject to change, and critically, add detail to convey that a change to a tariff can mean a change to the fundamentals of a program, which can substantially affect the repayment period for a customer’s investment. We also advise all stakeholders in the on-site generation industry to be completely transparent with potential investors that a utility’s rate schedule, including program fundamentals, is subject to change and there is no guaranteed return on investment.

We also note the Company’s efforts to notify customers that rates are subject to change. Idaho Power Company’s Opening Brief at 17-20. We encourage the Company to continue conveying to potential on-site generation customers that rates and program structure are subject to change, either of which can profoundly affect the projected repayment period of the customer’s investment. As of October 1, 2019, the Residential Solar Energy System Disclosure Act, *Idaho Code* §§ 48-1801 - §48-1809, requires a written statement be provided to potential customers that states, in capital letters, among many other warnings, that “LEGISLATIVE OR REGULATORY ACTION MAY AFFECT OR ELIMINATE YOUR ABILITY TO SELL OR GET CREDIT FOR ANY EXCESS POWER GENERATED BY THE SYSTEM AND MAY AFFECT THE PRICE OR VALUE OF THAT POWER.” *Idaho Code* §48-1804(c)(ii). This clear warning to potential customers, combined with the statements made in this Order regarding the likelihood of future program changes, is enough to differentiate existing customers with on-site generation from new customers with on-site generation because existing customers reasonably expected program stability whereas new customers will not.

Based on the public testimony, we find it clear that prior Commission and Company efforts were not heard by customers, or were not understood as intended. The most poignant example of these warnings not being fully understood came from the testimony of numerous commenters who stated they invested their retirement savings in on-site generation systems because they viewed it as a mechanism to keep their costs from increasing as their incomes remained fixed. These customers clearly understood that rates for consumption could change, and were likely to change. These customers invested in on-site generation on the understanding that if electricity rates continue to climb, the value of their 1:1 kWh credit offset would climb in tandem, making their investment more valuable. Under the proposed Settlement Agreement, the

export credit would be divorced from the cost of consumption, thereby undermining a critical component of their investment. Thus, these customers understood that tariffs can change, insomuch as that referred to rates for consumption. But it appears these customers did not understand that the net-metering program's fundamental structure could change.

Given the more clearly worded disclosure in the recently-enacted Residential Solar Energy System Disclosure Act, and our more complete description in this Order of what "a tariff can change" means, we perceive a reasonable difference between existing customers and new customers. Based on these differences, and harmonizing *Idaho Code* § 61-315 with *Idaho Code* §§ 61-501, -502, and -503, we find there are reasonable differences between existing and new net-metering customers that justify treating these types of customers differently from each other.

c) *Specifics of Grandfathering.*

We would like to be clear regarding what we mean by our decision to grandfather existing customers. First, an existing customer is a person or business who either has an on-site generation system interconnected with Idaho Power's system as of the service date of this Order, or who has made binding financial commitments to install an on-site generation system as of the service date of this Order and who proceeds to interconnect their system within one year of the service date of this Order. The financial commitment can be an obligation to a third party installer or supplier. If a person or business has a financial commitment as of the service date of this Order but has not yet submitted an application to Idaho Power, that person or business must submit an application to Idaho Power within thirty days of the service date of this Order and must submit receipts with their application demonstrating that a financial commitment was made on or before the service date of this Order.

Second, we are grandfathering existing customers into Schedule 6 or Schedule 8 as those Schedules exist on the service date of this Order. Regarding rates for consumption, we note that Schedules 6 and 8 state, "The following rate structure and charges are subject to change upon Commission approval:" and list the monthly service charge and the monthly energy charges. These rates and rate structure are still subject to change. We make this distinction based on our finding that customers who installed on-site generation understood that rates for consumption could change, and recognized that the value of the 1:1 monthly kWh offset would change in value along with the rates for consumption. We expect proposals for changes to consumption rates and

rate structures to be made only in a general rate case in which rates and rate structure for all customer classes are under review. *See also* Order No. 32846 at 12-13. We recognize that an increase to the monthly service charge could impact the financial payback period on a customer's on-site generation system, but rates for consumption are not frozen in time, and we find that such a change has always been within the realm of customer expectations.

Third, we are grandfathering the customer at the meter site at the originally installed nameplate capacity of the system. We are not grandfathering the system. If a customer with on-site generation sells their house, the new owners of the house will be able to net meter under the then-existing terms. The Company's future net-metering programs will be based on a credible and fair study, developed with public input, and will reasonably balance the interests of customers with net metering, and customers without net metering. Therefore, we find it fair to transition existing customers to new customers as they sell their real property with on-site generation.

IV. *The Commission Did Not Violate the Idaho Open Meetings Law.*

A few commenters claimed the Commission violated the Open Meetings Law, *Idaho Code* §§ 74-201 – 74-208. These claims are unfounded. The Idaho Open Meetings Law mandates “all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act.” *Idaho Code* § 74-203. The law defines a “meeting” as the “convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.” *Idaho Code* § 74-202(6). A “governing body” is defined as “the members of any public agency that consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.” *Idaho Code* § 74-202(5). The “governing body” of the Commission is the three Commissioners. Thus, in order for a meeting to occur that would have been subject to the Open Meetings Law, at least two of the three Commissioners—i.e., a quorum needed to transact Commission business—would have had to attend. *See Idaho Code* § 61-211 (defining a quorum as a majority of the Commissioners); *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 548 P.2d 45, 71 (1976) (stating the law only applies when a quorum of the governing body is present). Here, none of the Commissioners, let alone a quorum, attended the parties' confidential settlement negotiations.

The Open Meetings Law is not implicated by Commission Staff's participation in the parties' confidential settlement negotiations. Commission Staff participated in this case with the rights and authority of a party. See IDAPA 31.01.01.037, IDAPA 31.01.01.038. Further, Commission Staff members are employees of the Commission, not members who are part of its governing body. See *Safe Air For Everyone v. Idaho State Dep't of Ag.*, 145 Idaho 164, 177 P.3d 378, 381 (2008) ("the governing body is defined as *members* of a public agency, not *employees* of a public agency") (emphasis in original). As non-member employees, Staff was free to participate in the settlement negotiations and to make recommendations to the Commission. *Id.* at 382 (explaining the difference between making recommendations to the public agency and having the authority to make recommendations to the public agency).

Simply put, Commission Staff must, and does, have the authority to meet and discuss matters in private. As the Idaho Supreme Court has noted:

When considering the Open Meetings Act in its entirety, it is obvious that the legislature did not intend that any group of two or more agency employees who had been delegated authority by their supervisor to make decisions while performing their jobs would constitute a governing body required to comply with the Act. That construction would be absurd.

Id. at 381. Because only Commission Staff participated in the confidential settlement negotiations, not a quorum of Commissioners, the Commission did not violate the Idaho Open Meetings Law.

ORDER

IT IS HEREBY ORDERED that the proposed Settlement Agreement is rejected.

IT IS FURTHER ORDERED that 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. This study shall incorporate public feedback and concerns in the design and review of the study, including public workshops and public comments on the record.

IT IS FURTHER ORDERED that existing customers with on-site generation may continue to net meter on the terms in place on the service date of this Order, as more fully described herein.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

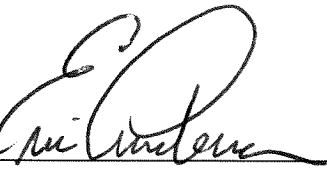
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 20th day of December 2019.



PAUL KJELLANDER, PRESIDENT

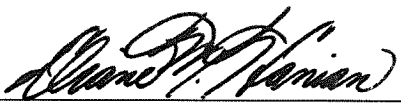


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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