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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR ACCEPTANCE OF ITS 2011 RETIREMENT BENEFITS PACKAGE.	CASE NO. IPC-E-10-25 IDAHO POWER COMPANY'S RESPONSE TO SUR-REPLY COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER

COMES NOW, Idaho Power Company ("Idaho Power" or "Company") and submits the following Response to the Sur-Reply Comments of the Industrial Customers of Idaho Power ("ICIP") filed in this docket on December 30, 2010.

I. PROPOSED DEFINED CONTRIBUTION PLANS

The Commission Staff's ("Staff") and ICIP's initial Comments dated December 14, 2010, first raised the idea that defined contribution plans could be structured to reward employees unequally for their employment with the Company. They recommended defined contribution plans that would provide greater contributions for longevity, older employees, and employees in critical operations. Staff Comments, p.

10; ICIP Comments, p. 8. In its Reply Comments filed on December 28, 2010, Idaho Power indicated that it believed the defined contribution alternatives identified by Staff and the ICIP could be discriminatory and therefore unlawful under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, and associated Treasury Regulations, including Treas. Reg. Section 1.401(a)-4 (which was intended to be cited as 26 C.F.R. Section 1.401(a)(4)-4 and is one of many regulations defining the discriminatory parameters of qualified retirement plans). Idaho Power Reply Comments, p. 11.

In response, the ICIP's Sur-Reply Comments describe Idaho Power's interpretation of Treas. Reg. Section 1.401(a)(4)-4 as "weakly asserted," "speculative and inconclusive," and a "hypothetical problem it appears to have not even yet fully considered." ICIP Sur-Reply Comments, pp. 2-3. Tellingly, the ICIP did not provide any legal arguments of its own to rebut Idaho Power's interpretation of the federal regulations with which such plans must comply.

Idaho Power's reference to Treas. Reg. Section 1.401(a)-4 was intended to highlight the potential complications associated with Staff and ICIP's seemingly "off the cuff" suggestions relative to modifying the defined contribution plan's design. Changes to any qualified plan design require careful consideration, taking into account the particular plan's ability to pass applicable discrimination tests, including, but not limited to, those under Code Sections 401(a)(4), 410(b), and 414(s). Certain plan design changes would cause discrimination issues and thus threaten the plan's qualified status, which of course is a paramount consideration. It is inappropriate to imply that implementation of a cross-tested plan or tiered matching contribution rates would in fact be workable from a legal standpoint and/or would replace the value provided by the defined benefit plan.

These legal constraints limit the ability to structure defined contribution plans to obtain both cost and operational objectives previously stated. A shift from a defined benefit plan to a defined contribution plan will not save money and actually increases the unfunded liability as new employees are shifted to a new plan. This conclusion is consistent with Idaho Power's analysis as previously set forth in the testimony of Sharon Gerschultz (p. 11) and the Company's Reply Comments (p. 10), as well as reported statements regarding potential changes to the Public Employee Retirement System of Idaho ("PERSI"). *See*, *Idaho Statesman*, December 23, 2010 (reporting statement that shifting new employees to a new pension plan would increase the unfunded liability).

II. EMPLOYEE RETENTION VERSUS ATTRACTION

The Comments of the Staff and the ICIP criticized Idaho Power for not providing evidence "that portability of retirement benefits will lead to increased turnover." Staff Comments, page 9. The Company first became aware on December 16, 2010, of a pertinent Towers Watson report when it was referenced in a trade publication. This December 2010 report did not exist during the discovery period in this docket and Idaho Power only learned of its existence after Staff and the ICIP had submitted their Comments. Due to its applicability to the issues presented in this docket and the timeliness of the report, Idaho Power retrieved the publicly available report from www.towerswatson.com and included it as Attachment No. 3 to its Reply Comments.

The ICIP's Sur-Reply Comments focus on attracting prospective employees. While this is certainly of concern to the Company, especially as skilled employees retire, the ICIP misses the point. Defined benefit plans promote retention of experienced employees in a way that more portable defined contribution plans cannot. All other things being equal, mid- to late-career employees are less willing to switch jobs when the size of the retirement benefit is so closely linked to continued employment.

According to the Towers Watson *Retirement Attitudes: Attraction and Retention* survey of more than 3,000 employees conducted in May and June of 2010, almost three in five (59 percent) employees at organizations that sponsor a defined benefit plan cite their retirement program as an important reason they decided to stay with their current employer, compared to only 32 percent of those that sponsor a defined contribution plan. Idaho Power Reply Comments Attachment No. 3, p. 2. Because defined benefit plans reward and incent longevity, which in turn facilitates the development and retention of knowledge and expertise, the Company continues to place additional weight on the defined benefit plan. As a result, the Company maintains a skilled workforce with less time and expense incurred for training and developing new employees.

III. RECOVERY OF PRUDENT EXPENDITURES

The Commission's Order No. 31091 directed Idaho Power to "consider changes to its retirement plan and address shareholder and employee liabilities in the assignment of pension plan investment risk." As explained in its Application, testimony, and Reply Comments, Idaho Power has done this analysis and has made changes that increase employee liabilities for investment risk. Idaho Power Reply Comments, pp. 2 and 8. The ICIP appears to dismiss outright all variations of defined benefit plans as being imprudent without any substantive analysis, and despite the fact that its defined contribution plan design may be unable to achieve vital operational objectives or may increase customer costs to fund retirement benefits.

Idaho Power views this docket as the Commission's invitation for the Company to explain the retirement benefits package it believes best suits the overall needs of the employer, the employees, and its customers. The Company believes its 2011 Retirement Benefits Package as presented in this docket achieves this end. As explained in its Reply Comments, Idaho Power wants to offer a retirement benefits package valued at a level the Commission believes is reasonable to be recovered from customers as a prudent labor expense. Idaho Power Reply Comments, p. 3. Moreover, the Company will continue making adjustments to keep costs to a reasonable level as the Commission may determine over time.

The ICIP's discussion of the U.S. Constitution's Fifth Amendment Takings Clause makes Idaho Power's point, albeit from a different approach. If reasonable labor expenses are recovered in customer rates, the rates are not confiscatory. A Takings Clause violation only occurs if a reasonable level of labor expenses are NOT recovered in customer rates and confiscatory rates result.

As previously stated in its Reply Comments, the Company believes that it is not the desire of the Commission to replace the Company's operational decision-making process, including decisions regarding retirement benefits, but rather to monitor the Company's decision-making process to ensure that the costs associated with those decisions are prudently incurred and in the best interests of customers. Ultimately, the Commission's duty is to determine a reasonable level of retirement benefits for recovery in customer rates that will allow Idaho Power to employ a workforce that can provide safe, reliable service to customers. Once a reasonable cost level (inclusive of investment risk and reward) has been established, it should not matter whether retirement benefits take the form of a defined benefit plan or a defined contribution plan or both, as long as the expenses stay within that reasonable cost level. As demonstrated in the Company's testimony and pleadings, the Company took a comprehensive look at how changes to its entire retirement benefits package would impact other factors such as overall cost, market competitiveness of its benefits, employee satisfaction, and employee retention – as well as compliance with laws and regulations governing employee compensation. The Company's 2011 Retirement Benefits Package reduces the level of market risk ultimately borne by customers while appropriately balancing the overall costs, benefits, and risks associated with the plan. Retirement benefits are a reasonable and prudent labor expense required and utilized to provide safe and reliable service to customers. A denial of a reasonable and prudent labor expense required and utilized to provide service to the public amounts to an unlawful taking.

IV. CONCLUSION

Defined benefit plans have in no way become obsolete as seems to be ICIP's suggestion on page 5 of its Sur-Reply Comments. Defined contribution plans and defined benefit plans are not "either or" propositions; in fact, these plans work well in tandem and need not work to the mutual exclusion of one another. There has undoubtedly been an overall decline in the use of defined benefit plans in recent years for several reasons, including the market performance impact on plan assumptions (which vary widely from plan to plan), the complexity of administration, and the perceived popularity of Code Section 401(k) plans. However, this decline does not lead to the conclusion that the maintenance of a defined benefit plan by Idaho Power or any other entity is inappropriate, nor that the cost of maintaining such is unreasonable. There is no evidence to suggest that elimination of Idaho Power's defined benefit plan could be adequately replaced by a defined contribution plan in terms of cost, employee satisfaction, and effectiveness in retention.

As evidenced by Idaho Power's pleadings and testimony, the Company has set its 2011 Retirement Benefits Package at a competitive cost level that is less than the median offerings of similarly situated utility peers. Idaho Power has carefully considered not only the allocation of costs and investment risks between customers and employees but also the operational imperative to maintain safe, reliable service with an engaged, qualified, experienced, and flexible workforce. Therefore, Idaho Power respectfully requests that the Commission issue its Order accepting the Company's 2011 Retirement Benefits Package as a reasonable approach to providing employee benefits.

DATED at Boise, Idaho, this 6th day of January 2011.

Lisa D. Nordstrom

LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of January 2011 I served a true and correct copy of IDAHO POWER COMPANY'S RESPONSE TO SUR-REPLY COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff Weldon B. Stutzman Deputy Attorney General Idaho Public Utilities Commission 472 West Washington P.O. Box 83720 Boise, Idaho 83720-0074	_X_ Hand Delivered ____U.S. Mail ____Overnight Mail ____FAX _X_ Email Weldon.Stutzman@puc.idaho.gov
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