Peter J. Richardson (ISB # 3195)
Gregory M. Adams (ISB # 7454)
Richardson & O'Leary, PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com
greg@richardsonandoleary.com

RECEIVED
2010 DEC 14 PM 4:29
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for the Industrial Customers of Idaho Power

BEFORE THE IDAHO

PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER COMPANY'S REQUEST FOR ACCEPTANCE OF ITS 2011 RETIREMENT BENEFITS PACKAGE	))))))	CASE NO. IPC-E-10-25 COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER

COMES NOW, the Industrial Customers of Idaho Power ("ICIP"), and pursuant to the Idaho Public Utilities Commission's ("Commission's") Notice of Modified Procedure and Order No. 32092, hereby files these comments in the above-captioned matter. For the reasons set forth below, ICIP respectfully requests that the Commission reject Idaho Power Company's ("Idaho Power's" or the "Company's") request for acceptance of its 2011 Retirement Benefits Package. ICIP does not advocate with these comments that the Company should abrogate existing retirement benefits it already owes its existing employees or retirees. But ICIP objects to the Company's proposal to continue offering a defined benefits program to new employees, and the Company's failure to even consider shareowner responsibility with regard to contributions necessary to keep its underfunded pension account solvent.

BACKGROUND

Earlier this year, the Company requested authorization to recover in customer rates its 2010 cash contributions to its defined benefits plan. *See* Case No. IPC-E-10-08. The amount allocated to the Idaho jurisdiction, minus a small reimbursement from a separate IDACORP subsidiary, was $5,416,796, which constituted a 0.77% rate increase for each class of customers. *See* Order No. 31091, at p. 1. The Commission approved the request, but expressed concern regarding the obvious need for substantial future rate increases that will be necessary to keep the pension fund adequately funded. *Id.* at p. 3. The Commission Staff noted that the Company would need to make additional payments to its employee pension plan of approximately $68 million for the plan years 2009-2011. *Comments of the Commission Staff,* Case No. IPC-E-10-08, at p. 4 (May 13, 2010). And the Company in fact made a $60 million cash contribution to the program in 2010, which it will presumably recover from ratepayers at some point. *See Idaho Power's Response to Commission Staff Production Request No. 23.* This $60 million cash contribution is over ten times as large as any single contribution made by the Company since 1990. *See id.* According to the Commission Staff, "[t]he higher funding levels are attributable to poor market returns over the past several years, and to the aging workforce of Idaho Power and the increasing benefit payments made to retired employees." *Comments of the Commission Staff,* Case No. IPC-E-10-08, at p. 4.

Thus, the Commission stated that "it is unreasonable for Idaho Power's customers to be solely responsible for large contributions to the Company's defined benefit pension plan." Order No. 31091, at p. 3. "Many employers in recent years have replaced their defined benefit plans with pension programs that place greater responsibility and investment risks on employees. Idaho Power must similarly consider changes to its retirement plan and ***address shareholder and*** *employee* *liabilities* in assignment of pension plan investment risk." *Id.* (emphasis added). Finally, the Commission stated that it "will not approve recovery of additional pension plan contributions from customers without evidence that Idaho Power has carefully reviewed alternatives to reduce the burden placed on customers." *Id.*

The Company now states that the Application and evidence submitted in this case demonstrates the Company has complied with the Commission's directive in Order No. 31091. The Application states that the Company's board of directors voted to reduce the cost of the retirement benefits package for new employees hired after January 1, 2011, from approximately 9.1% of a new salaried employee's base pay to approximately 7.9%. The Company submits that 38% of new costs will be associated with the defined contribution 401(k) benefit plan, approximately 59% will be associated with the defined benefit plan, and the remaining 3% will be associated with the retiree medical benefit plan. *Application*, at p. 5. This constitutes a reduction of only 6% of the proportion of retirement benefit costs associated with the defined benefit plan because the current defined benefit plan makes up 65% of the overall costs. *Id.* at p. 3. And because the changes to the retirement benefits package apply only to new employees, the cost savings will "potentially" be only $1.97 million annually, and that minimal savings may be realized only several years from now once the Company's workforce is fully transitioned to the modified benefit plan. *Id.* at p. 6.

In short, the Company asserts that only relatively minor adjustments to its defined benefit plan are warranted. The Company's Application therefore requests "acceptance" of its 2011 retirement plan in the abstract without an accompanying request for approval of rate recovery for its pension fund contributions. *Id.* at p. 9.

COMMENTS

A. The Commission's instructions that Idaho Power consider alternative retirement benefits plans was proper because defined benefit plans have caused many large companies to go bankrupt and are consequently no longer the norm in this Country.

Idaho Power's underperforming pension fund is not an uncommon problem for companies with such traditional pension plans, and the Commission properly instructed Idaho Power to act as any other rational Company would have to when it ordered Idaho Power to reevaluate its retirement benefits plan. Retirement plans that guarantee a predetermined retirement payment for retirees require the employer to assume the risk of underperformance of the plan fund, and when the fund underperforms the employer must make major contributions to the fund or reduce the benefit payments to retirees.[1]

Regulated utilities are in a unique position among private companies in their ability to support defined benefit pension programs for their employees. With the support of regulatory commissions these utilities are insulated from the risk of underfunded pension balances by passing on to ratepayers, dollar for dollar, any underfunding. Compare this, for example, to automakers that faced, and may face again, bankruptcy because of underfunded pension obligations. If it were not for Troubled Asset Recovery Program stimulus funds and government guarantees through the Pension Benefit Guaranty Corporation both General Motors and Chrysler probably would have failed. As part of the reorganization for these companies, their pension plans underwent serious revisions, even for existing employees. Some were closed to new hires,

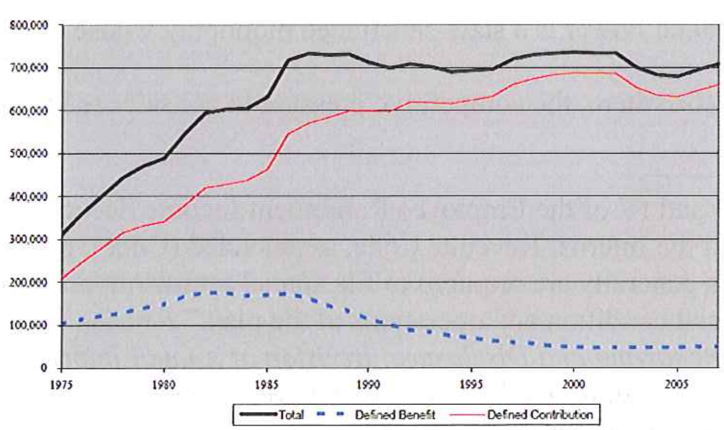
---

[1] ICIP refers to a defined benefit plans generally as plans that offer a fixed level of monthly retirement income based upon a participant's salary, years of service, and age at retirement, regardless of how the plan's investments perform. In contrast, benefit levels for those with defined contribution plans depend on the contributions made to individual accounts (such as 401(k) plans) and the performance of the investments in those accounts, which may fluctuate in value.

some were "frozen" so that existing employees no longer actively accrue benefits, and some remained open but were modified. *See* United States Government Accountability Office, *Report to Congressional Committees: Troubled Asset Relief Program - Automaker Pension Funding and Multiple Federal Roles Pose Challenges for the Future*, at pp. 7-9, and Table 1 (April 2010), available at http://www.gao.gov/new.items/d10492.pdf.

Facing these possible outcomes required by an underfunded pension fund, most companies in this Country have moved away from defined benefit pension plans. This simple fact is supported by substantial data. According to U.S. Department of Labor data, the percentage of defined benefit plans have fallen from approximately 33% of all plans in 1975 to approximately 7% in 2007. *See* U. S. Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Historical Tables and Graphs*, at pp. 1-2 (June 2010), available http://www. dol.gov/ebsa/pdf/ 1975-2007historicaltables.pdf.[2] The graph of this data strikingly demonstrates that defined contribution plans have grown in number while defined benefit plans have declined:

Graph E1g. Number of Pension Plans
by type of plan, 1975-2007



---

2 ICIP calculated these percentages from figures in the Department of Labor study, which states that in 1975 there were 103,346 defined benefit plans of 311,094 total plans, and in 2007 there were 48,982 defined benefit plans of 707,787 total plans.

In the case of regulated utilities, it is the ratepayer that bears the burden of underfunded pension programs, and the utility employer may have less incentive to abandon a defined benefit plan. Yet this trend away from defined benefit plans exists even for utility companies, who like Idaho Power, should also have a need for retention of specialized employees. According to the U.S. Department of Labor, of the 2,448 total utility company retirement benefit plans reporting with the Department's Form 5500 in 2007, only 342 of those plans were defined benefit plans, which is approximately 14%. *See* U. S. Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin: Abstract of 2007 Form 5500 Annual Reports*, at p. 13 (June 2010), available at http://www.dol.gov/ebsa/PDF/2007pension planbulletin.PDF.[3] Indeed, the opening statement of the pension plan bulletin states, "Over the past three decades, as the private pension system has shifted from defined benefit (DB) plans toward 401(k) type defined contribution (DC) plans, the financing of benefits has shifted from employers to participants." *Id.* at p. 1.

Thus, as the Commission noted in Order No. 31091, most employers in recent years have replaced their defined benefit plans with retirement programs that place investment risks on employees. Because Idaho Power is a state-sanctioned monopoly whose customers cannot simply buy electricity elsewhere, the competitive pressure to consider reducing the risk inherent

3 "Under Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code, as amended (Code), pension and other employee benefit plans generally are required to file annual returns/reports concerning, among other things, the financial condition and operations of the plan." *Pension Benefit Guaranty Corporation: Annual Reporting and Disclosure; Revision of Annual Information Return/Reports; Final Rule and Notice*, 72 Fed. Reg. 64710, at 64710 (November 16, 2007). "The Form 5500 Annual Return/Report is the primary source of information concerning the operation, funding, assets, and investments of pension and other employee benefit plans." *Id.* Thus, unlike the data regarding 92 energy service companies in Idaho Power's consultant Towers Watson's database, *see Application* at p. 5, the Department of Labor data regarding 2,448 utility companies should encompass all utilities with a retirement plan covered by ERISA.

in a defined benefit program does not exist for Idaho Power to the extent that it would for companies in a competitive industry. The Commission must fill that void to ensure that Idaho Power's retirement benefits plan is prudent and fair to its customers. The Commission's instruction that Idaho Power consider alternative retirement benefit plans similar to those of the most companies which have replaced their defined benefit pension plans was entirely proper. Simply put, the Company needs to seriously consider replacing its defined benefit pension plan to protect its ratepayers from future rate increases.

B. Idaho Power ignored the Commission's instructions because it did not conduct a thorough and unbiased analysis of the alternatives to its defined benefit plan which would reduce the risk to its ratepayers by shifting responsibility to shareholders or employees.

In response to the Commission's instructions, Idaho Power utterly failed to conduct any sort or special analysis to consider alternatives that would "*address shareholder and employee liabilities* in assignment of pension plan investment risk." Order No. 31091, at p. 3 (emphasis added). Indeed, Idaho Power even admits that "the benchmarking analyses performed this year did not differ materially from years past." *Idaho Power's Response to Commission Staff Production Request No. 10.*

This failure to consider the Commission's direction flowed from the instructions of the Company's Chief Financial Officer, Darrel Anderson, to the Company's Director of Compensation and Benefits, Sharon Gerschultz. Mr. Anderson did not instruct Ms. Gerschultz to consider a retirement benefits program that would "*address shareholder and employee liabilities* in assignment of pension plan investment risk" or to otherwise consider "alternatives to reduce the burden placed on customers." Order No. 31091, at p. 3 (emphasis added). Rather, Mr. Anderson requested Ms. Gerschultz "make recommendations for changes to the Company's retirement benefits package based upon the Company's desire to remain competitive to the representative employment market, but with an eye toward perpetuating a package which encourages employee retention." Direct Testimony of Sharon Gerschultz, at p. 3 (Oct. 1, 2010). Mr. Anderson further instructed "that retirement benefit portability is not in alignment with the Company's employee retention goals and may not be in the best interests of its customers." *Id.*

With Mr. Anderson's instructions, the Company's Compensation and Benefits division considered three types of plans: (1) a traditional defined benefit plan, (2) a defined contribution plan, and (3) a cash balance plan. Ms. Gerschultz considered eliminating the defined benefit plan and replacing it with a 401(k) benefit plan, which would shift 100% of the investment risk to employees. *See id.* at pp. 9-13. The 401(k) plan she analyzed, however, "provided more benefit to less experienced employees," *id.* at p. 12, and did "not support the Company's desire and Mr. Anderson's guidance to emphasize longevity in the Company's workforce," *id.* at p. 11. Rather than consider another 401(k) plan designed to reward longevity – for example, by increasing the Company's matching contributions for employees with more years of service – Ms. Gerschultz simply abandoned the possibility of replacing the traditional defined benefit plan with any type of 401(k) plan and did not present that possibility to the Office of the CEO. *Id.* at pp. 12-13. Indeed, the Office of CEO only considered the cash balance and the modified defined benefit plans, both of which "assign all investment risk to the Company" and its ratepayers. *Id.* at p. 15. Without considering any form of defined contribution plan shifting investment responsibility to employees, the Office of the CEO selected the slightly modified, traditional defined benefit plan.

Nothing in Idaho Power's filing demonstrates that it is impossible to reward longevity without a retirement benefits program that places all retirement investment risk on the

Company's ratepayers. The Company failed to fully analyze all alternatives, and therefore simply ignored the Commission's instructions.

C. Idaho Power's proposal to retain its traditional defined benefit pension plan for new employees places it in the minority even among its own utility peer group.

Idaho Power's own evidence demonstrates that it will be one of a limited number of Companies remaining with a traditional defined benefit plan. Idaho Power contracted with a consultant named Towers Watson to determine industry comparison data on retirement programs. Although Idaho Power states much of this data is confidential and unavailable even to those who have signed the protective agreement, Idaho Power indicated, "Of the 92 energy services companies in the Towers Watson database, 66 companies, or 72 percent, have defined benefit pension programs available to new salaried employees. Thirty-six percent of these are traditional defined benefit plans similar to Idaho Power's." *Idaho Power's Response to Industrial Customers of Idaho Power Production Request No. 1 (c) & (d).* One can determine that only 26%[4] of the 92 energy services companies in Idaho Power's consultant's database have a traditional defined benefit plan. The percentage is similarly low for the 12 peer companies selected for custom analysis, of which only 34%[5] have a traditional defined benefit plan similar to Idaho Power's. *See id, Request No. 2 c & d.* Although this data from the database of Idaho Power's consultant is significantly higher than the 14% figure from the utility-industry-wide data compiled by the U.S. Department of Labor, it demonstrates that Idaho Power is in the small minority of utility companies that still offer a traditional defined benefit program to new employees.

---

4 36% of 72% = 26%.

5 50% of 67% = 34%.

D. Under Idaho Power's proposed retirement benefit program, the shareholders will take on no risk, and ratepayers will be entirely liable for future contributions needed to keep the pension fund solvent.

Idaho Power's modifications to its defined benefit program will not result in significant retirement program savings, and will not "reduce the burden placed on customers" by future underperformances of the pension fund. Order No. 31091, at p. 3. The "potential" savings from the proposed modifications of only $1.97 million per year, which ratepayers will not realize until many years from now when the Company's workforce is fully transitioned, are a miniscule savings in comparison to the continued risk to which the Company is exposing its ratepayers. The Commission instructed the Company to "*address shareholder and employee liabilities* in assignment of pension plan investment risk." *Id.* (emphasis added). Thus, the Company's focus on the overall cost of its retirement programs in comparison to other forms of employee compensation entirely missed the point because this analysis did not consider shifting investment risk to shareowners or employees. *See Application*, at pp. 5-6.

"The modified retirement plan presented by Idaho Power is not intended to shift the risk for pension fund underperformance from the 'ratepayers' or customers to the shareholders." *Idaho Power's Response to Industrial Customers of Idaho Power Production Request No. 9(f). As* a result, "the market risk associated with the defined benefit portion of the package is ultimately bourne by customers." *Idaho Power's Response to Commission Staff's Production Request No. 5.* Rather than consider shifting that risk elsewhere, the Company merely devised a plan whereby the "reduction of the defined benefit payout formula from the current 1.5 percent to 1.2 percent [per year of employee service] . . . [o]ver time . . . will reduce the level of market risk bourne by customers." *Idaho Power's Response to Industrial Customers of Idaho Power Production Request No. 9(e).* The Company therefore reduced its ratepayers' investment risk by

0.3% per year of employee service. "The Company believes that shareowners should not bear any market risk associated with its retirement benefits package." *Idaho Power's Response to Commission Staff's Production Request No. 31.* The Company's position on risk allocation is quite simple – all risk should be on the ratepayers, not the Company's shareowners or employees.

The Company's analysis included spreadsheets that compared the Net Present Value of a defined benefit plan versus a defined contribution plan and concluded "the costs of the defined benefit plan and 401(k) benefit plan would be essentially the same between plans over the long run." Direct Testimony of Sharon Gerschultz, at p. 10. But the conclusion in this analysis holds true only if the assumed return on investment in the pension fund of 8.0% proves to be accurate. Different actual returns on investment impact the results, and whenever the return drops below 8.0% ratepayers may need to foot the bill for contributions to keep the pension fund solvent. Over the past 20 years, the geometric mean for the return on investment was 9.2%, but over the past 10 years the return was 6.6%. The market obviously goes up and down, and under Idaho Power's proposed policy ratepayers are ironically likely to see a rate increase associated with the pension fund underperformance at times when the market is down.

Before approving of this approach, it is important for the Commission to recognize the import of its decision in this case. Idaho Power is wisely asking for acknowledgement of its 2011 retirement benefits plan in the abstract without also asking for approval of recovery of pension fund contributions in rates. It is clear that Idaho Power will need to recover substantial pension fund contributions from ratepayers in the near future. The recent cash contribution of $60 million must come from ratepayers if shareowners will not contribute. And the Commission should consider that recent cash contribution when it decides whether it is prudent for Idaho

Power to continue offering new employees a defined benefit program in 2011. As Idaho Power stated, it believes "that 'acceptance' of the Company's 2011 Retirement Benefits package indicates that the Commission views the package structure to be reasonable and in the customers' best interests." *Idaho Power's Response to Commission Staff's Production Request No. 9.* ICIP respectfully disagrees that this package is reasonable and in customers' best interests.

CONCLUSION

Idaho Power failed to adequately comply with Commission Order No. 31091 because its evaluation was based on flawed instruction from Mr. Anderson and the flawed premise and predetermined result that the Company must retain a defined benefit plan for new employees. The evaluation was incomplete. ICIP respectfully requests that the Commission not approve the 2011 Retirement Benefits Package because to do so would imply the pension costs incurred under that plan for new employees would be prudently incurred costs. Idaho Power has utterly failed to demonstrate why it –unlike the vast majority of companies in this Country, including similarly situated utilities – must retain a traditional defined benefit program. The Commission should therefore reject Idaho Power's 2011 Retirement Benefits Package, and require the Company to devise a plan that shifts responsibility and risk to its employees or shareowners.

DATED this 14th day of December, 2010.

RICHARDSON AND O'LEARY, PLLC

By: ______________________
Peter J. Richardson
Gregory M. Adams
Attorneys for the Industrial
Customers of Idaho Power

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 2010, I caused a true and correct copy of the foregoing COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER **to be served by the method indicated below, and addressed to the following:**

Jean Jewell Idaho Public Utilities Commission 472 West Washington Street (83702) Post Office Box 83720 Boise, Idaho 83720-0074	( ) U.S. Mail, Postage Prepaid (x) Hand Delivered ( ) Overnight Mail ( ) Facsimile ( ) Electronic Mail
Lisa Nordstrom Donovan Walker Idaho Power Company PO Box 70 Boise, Idaho 83707	(x) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (x) Electronic Mail
Gregory W. Said Tim Tatum Idaho Power Company PO Box 70 Boise, ID 83707	(x) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (x) Electronic Mail

Signed Nina M. Curtis
Nina M. Curtis