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IDAHO PUBLIC
UTILITIES COMMISSION

April 8, 2011

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

RE: **IPC-E-10-25**

Dear Ms. Jewell:

We are enclosing for filing in the above-referenced docket an original and seven (7) copies of the Industrial Customers of Idaho Power's **COMMENTS REGARDING IDAHO POWER'S SUPPLEMENTAL REPORT**.

An additional copy is enclosed for you to stamp for our records.

Sincerely,

Gregory M. Adams
Richardson & O'Leary PLLC

encl.

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Attorneys for the Industrial Customers of Idaho Power

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**BEFORE THE IDAHO**

**PUBLIC UTILITIES COMMISSION**

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|---|---|
| IN THE MATTER OF IDAHO POWER COMPANY'S REQUEST FOR ACCEPTANCE OF ITS 2011 RETIREMENT BENEFITS PACKAGE | CASE NO. IPC-E-10-25<br><br>COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER REGARDING IDAHO POWER'S SUPPLEMENTAL REPORT |

**COMES NOW**, the Industrial Customers of Idaho Power ("ICIP"), and pursuant to the Idaho Public Utilities Commission's ("Commission's") Procedural Order No. 32207, hereby files these Comments in the above-captioned matter. For the reasons stated in prior filings and for the reasons set forth below, Idaho Power Company's ("Idaho Power's" or the "Company's") additional analysis, contained in its "Supplemental Report: Retirement Benefits Risk Analysis" (or the "Supplemental Report") and additional discovery related thereto, has not changed ICIP's position in this matter. ICIP therefore again respectfully requests that the Commission reject Idaho Power's request for acceptance of its 2011 Retirement Benefits Package.

## BACKGROUND

The Commission has the authority to disallow from inclusion in customer rates any expenses deemed to be imprudently incurred. *See* I.C. §§ 61-502 61-503. "The statutes reflect the legislative grant of authority to the Commission to deal broadly with existing and future rates, rate schedules and contracts affecting rates." *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 880, 591 P.2d 122, 127 (1979). "Hence, the Commission has the authority to determine the inclusion as an operating expense in a utility's rate base either in part or in whole 'costs' incurred by the utility." *Id.* This "is only another way of stating the question – should the ratepayers bear the expense of certain of the activities of the utility." *Id.*

The reason for the Company's filing in this case was explained the following statement by the Commission:

> It is unreasonable for Idaho Power's customers to be solely responsible for large contributions to the Company's defined benefit pension plan. 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 <u>address shareholder and employee liabilities</u> in assignment of pension plan investment risk. The Commission 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.
>
> Order No. 31091, p. 3 (emphasis added).

The Commission was well within its authority in issuing this order and would be well within its authority to reject any retirement benefits plan filed by the Company which places an unreasonable burden upon its ratepayers in light of the current employment market.

The Company's initial filings in this case failed to conduct any analysis that could lead the Commission to conclude the Company had seriously considered reducing its customers' exposure to the investment risk of its pension plan. Subsequently, the Company offered, at the Workshop on January 12, 2011, to provide additional information and analysis regarding the investment risk to which its customers are exposed. *See* Order No. 32169, at p. 2. The Company has now completed its Supplement Report, wherein the Company states it has provided "an assessment of the risk resulting from market fluctuations and also an assessment of the potential future funding obligations which become revenue requirements that impact customers." *Redacted Supplemental Report*, at p.1.

## COMMENTS

The Company's Supplemental Report provides only estimated costs to ratepayers of the defined benefit pension plan compared to estimated costs of a hypothetical defined contribution plan which would provide an identical benefit stream to retirees. ICIP concurs in the critiques of the Company's analysis in Commission Staff's Comments filed today. Additionally, ICIP submits that the Company's additional analysis does not support approval of the 2011 Retirement Benefits Package for the following reasons.

**A. The Supplemental Report does not support the Company's proposal because the Company's 2011 Retirement Benefits Program will allow individual employees to participate in both the defined benefit pension plan and the defined contribution plan.**

Based on the Company's filing, the Company's employees have the option of participating in both the defined benefit pension plan (with no additional payment by them or reduction in salary) and also participating in the defined contribution 401(k) plan.[1] In other words, the Company's defined benefit pension plan entitles all eligible employees to defined payments at retirement, and the Company's employees may also elect to participate in the defined contribution plan wherein Idaho Power will make a matching contribution up to 4% of base pay. Continuing to provide a defined benefit pension plan while also providing matching contributions under the defined contribution program seems out of line with today's employment market, and demonstrates an underlying flaw in the additional analysis in the Supplemental Report.

Because the Company is already offering a defined contribution plan that provides up to 4% of the base pay in Company contribution, elimination of the defined benefits plan altogether would not leave the void assumed to exist in the Company's Supplemental Report. The Company has proceeded in its Supplemental Report under the assumption that the defined contribution program that would theoretically replace the defined benefit program must provide an equivalent benefit to the defined benefit program. The Company appears to assert that in order to achieve that goal such a defined contribution plan would need to include a Company contribution of 6.06% or 7.07% of base pay, which for new employees would amount to a \$3.6 or \$4.2 million annual revenue requirement impact paid for by ratepayers (depending on whether the 401(k) plan achieves a 7% or an 8% return). *See Redacted Supplemental Report*, at pp. 11-

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1 The Company produced a document describing its defined benefit program which states that eligible employees are automatically added as participants. *See Idaho Power's Response to Commission Staff's Production Request No. 11, Attachment 1*, p. 29. A similar document describes the exclusions from eligibility to participate in the defined contribution plan, but it does not exclude those who will receive pension benefits. *Id., Attachment 3*, pp. 8-9.

12; *Idaho Power's Response to Commission Staff's Production Request No. 42.* But this overlooks that the Company is already contributing up to 4% in the existing defined contribution plan for employees who participate in the defined benefit plan.

Even under its own assumptions and analysis, therefore, the Company could provide a retirement benefit equivalent to that in its existing defined benefit pension program by simply increasing the matching contribution in its existing defined contribution plan from the current maximum of 4% to 7%. If the Company were to adopt the hypothetical defined contribution plan in its Supplemental Report without making any other changes, each employee could obtain a 6.06% or 7.07% Company contribution in one 401(k) plan on top of the 4% Company contribution in the existing 401(k) plan. From the information provided, the hypothetical in the Supplemental Report seems unrealistic, and it is therefore misleading to state that the Company will need to ask ratepayers for $3.6 or $4.2 million per year to provide a defined contribution plan to new employees with similar retirement benefits to the defined benefits plan.

**B. There is no reason to assume that the benefit provided in a replacement defined contribution plan must be equivalent.**

The data presented in the Supplemental Report looked at the costs of "a hypothetical defined contribution plan that would provide the same level of benefits at retirement as the current pension plan . . . ." *Idaho Redacted Supplemental Report*, p. 10. Using this approach the Company concludes, "The analysis presented in this report demonstrate that the level of risk borne by Idaho Power's customers related to the defined benefit plan is reasonable and is likely to result in lower costs over time as compared to other alternatives." *Id.* at p. 11. However, the method used and resulting conclusions fail to address the critical issue in this case – the allocation of investment risk between customers, shareholders and ratepayers under a defined benefit plan and a defined contribution plan. There is no allegation by Idaho Power that its wages are so low compared to its competitors that its employees would be unable to make their own contributions to a defined contribution plan, or some other form of retirement savings account. Without a complete analysis of the Company's compensation levels compared to its competitors, it is unreasonable to assume that the Company's matching contributions must keep its employees in the same position as they would be under the defined benefit program.

**C. The Company's Supplement Report only further confirms that the defined benefit plan will continue to expose ratepayers to investment risk and will certainly result in very significant, future rate increases.**

Idaho Power's data confirms the Commission's concern about the risk to ratepayers from maintaining a defined benefit plan for all employees. ICIP generated the following table from the data included in Attachment No. 1 to Idaho Power's Reply Comments.

| YEAR | PLAN ASSETS AT MARKET VALUE (At year end) | Change | Percent Change |
|---|---|---|---|
| 1996 | 230,478,673 | | |
| 1997 | 258,283,872 | $27,805,199 | 12.1% |
| 1998 | 291,171,303 | $32,887,431 | 12.7% |
| 1999 | 341,417,019 | $50,245,716 | 17.3% |
| 2000 | 340,677,268 | ($739,751) | -0.2% |
| 2001 | 326,266,526 | ($14,410,742) | -4.2% |
| 2002 | 282,420,076 | ($43,846,450) | -13.4% |
| 2003 | 335,483,495 | $53,063,419 | 18.8% |
| 2004 | 356,215,435 | $20,731,940 | 6.2% |
| 2005 | 369,662,579 | $13,447,144 | 3.8% |
| 2006 | 400,316,441 | $30,653,862 | 8.3% |
| 2007 | 409,577,546 | $9,261,105 | 2.3% |
| 2008 | 291,077,937 | ($118,499,609) | -28.9% |
| 2009 | 313,149,743 | $22,071,806 | 7.6% |
| | | | |
| source: Attachment 1, Idaho Power Reply Comments | | | |

The large annual swings in the market value of the Company's pension fund assets demonstrate the volatility of the pension fund. The Company's pension fund portfolio has lost as much as 28% of its value in a single year. The Company has repeatedly stated that its shareholders will accept none of this risk, and therefore that is the risk to which ratepayers are exposed with the Company's approach.

Further, the confidential figures in Chart 6 of the Supplemental Report provide estimates of the contributions the Company must make to its pension fund between now and 2019. Although the exact figures have been designated as confidential, they are very significant numbers.[2] The cumulative effect of those future contributions make the recent $60 million contribution to the pension fund appear small in comparison. The rate impact will be very significant. *See Application*, Case No. IPC-E-11-04, ¶ 11 (March 15, 2011) (stating that recovery from ratepayers of the $11.7 million requested in 2011 will increase rates 1.39 percent). The Commission should not authorize the Company to perpetuate this system into the future with new employees without the Company's shareholders accepting some of the responsibility to keep the fund solvent.

**D. The Supplemental Report fails to even analyze the risk beyond 2019.**

The Company states it is unable provide the economic impact of its retirement programs beyond 2019. *See Idaho Power's Response to Commission Staff's Production Request No. 38.* But the implications for the Company's ability to maintain an adequate level in its retirement portfolio will impact ratepayers well beyond the next 9 years because Idaho Power expects 56 percent of its current employees will be eligible for retirement by 2020. *See* Direct Testimony of Sharon Gerschultz, p. 8. Idaho Power provided a confidential table demonstrating that the number of employees who will be retired and receiving pension benefits will be much larger in

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[2] ICIP submits that all of the Company's customers should be made aware of how large the Company's estimated contributions to its pension fund will be in the next 9 years, and how much customers will be asked to contribute. To ICIP's knowledge, the Company has only released publicly available data regarding the expected $157 million payments to retirees from 2014-2018, and not the amount of actual contributions to the plan it will request from ratepayers. *See Staff's Opening Comments*, p. 5, n.1. Such information should not be limited to those who have signed the protective agreement in this case. There is surely some way to present estimated customer contributions in a manner in which it is not a "trade secret." *See* I.C. §§ 9-340D, 48-801(5).

2019 than it is today.[3] *See Idaho Power's Response to ICIP's Production Request No. 16.* The retirees will continue to collect benefits under the pension plan after 2019, and the risk to customers will only increase. New employees at issue in the Company's proposed revisions to its retirement benefits plan will not be vested in the plan and retired in any meaningful number within 9 years. Under these circumstances, an analysis going only 9 years into the future provides a fatally incomplete picture of the risk to customers.

**CONCLUSION**

ICIP respectfully requests that the Commission reject Idaho Power's 2011 Retirement Benefits Package on the ground that it is unreasonable and imprudent. ICIP respectfully requests that the Commission require the Company to devise a plan that shifts responsibility and risk to its employees and/or shareholders, or alternatively advise the Company that pension contributions made under the 2011 Retirement Benefits Package may be deemed imprudent expenses in the future.

DATED this 8th day of April, 2011.

RICHARDSON AND O'LEARY, PLLC

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

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[3] Again, it is unfortunate that those who have not signed the protective agreement cannot view this information that Idaho Power designated as trade secrets.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April, 2011, 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<br>Idaho Public Utilities Commission<br>472 West Washington Street (83702)<br>Post Office Box 83720<br>Boise, Idaho 83720-0074 | ( ) U.S. Mail, Postage Prepaid<br>(x ) Hand Delivered<br>( ) Overnight Mail<br>( ) Facsimile<br>( ) Electronic Mail |
| Lisa Nordstrom<br>Donovan Walker<br>Idaho Power Company<br>PO Box 70<br>Boise, Idaho 83707 | ( ) U.S. Mail, Postage Prepaid<br>(x) Hand Delivered<br>( ) Overnight Mail<br>( ) Facsimile<br>(x) Electronic Mail |
| Gregory W. Said<br>Tim Tatum<br>Idaho Power Company<br>PO Box 70<br>Boise, ID 83707 | ( ) U.S. Mail, Postage Prepaid<br>(x) Hand Delivered<br>( ) Overnight Mail<br>( ) Facsimile<br>(x) Electronic Mail |

Signed________________

Gregory M. Adams