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IDAHO PUBLIC  
UTILITIES COMMISSION

14 August 2006

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
P O Box 83720  
Boise ID 83720-0074

RE: **Case No. IPC-E-06-06**

Dear Ms. Jewell:

Enclosed please find the original and seven (7) copies of the **COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER TO IDAHO POWER COMPANY** in the above case.

Also enclosed is an additional copy to be date stamped for our office.

Sincerely,

Nina Curtis  
Administrative Assistant for Peter Richardson

encl.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE )  
APPLICATION OF IDAHO POWER )  
COMPANY FOR AN ACCOUNTING )  
ORDER ADDRESSING THE DEFERRAL )  
OF COSTS RELATED TO THE )  
DEVELOPMENT OF GRID WEST )  
\_\_\_\_\_ )

CASE NO. IPC-E-06-06 )  
IDAHO PUBLIC )  
UTILITIES COMMISSION )  
COMMENTS OF THE )  
INDUSTRIAL CUSTOMERS )  
OF IDAHO POWER )

**I. Introduction**

In accordance with the Commission’s Order No. 30082 in the above-captioned case, the Industrial Customers of Idaho Power (ICIP) respectfully submit these comments on Idaho Power Company’s application to the Commission for an order allowing the deferral of costs related to the development of Grid West.

**II. Costs Which Idaho Power Seeks to Defer**

According to Idaho Power’s application, the Company seeks to defer two different types of costs related to Grid West: 1) costs incurred in the form of loans to Grid West under a series of Funding Agreements, which now appear unrecoverable due to Grid West’s dissolution, and 2) internal costs incurred by Idaho Power in efforts to develop Grid West.<sup>1</sup>

*A. Costs of Unrecoverable Loans*

ICIP does not oppose the deferral of the first type of costs—the costs incurred in the form of unrecoverable loans to Grid West under specific agreements. However, if the Commission decides to allow deferral of these costs, the Commission should impose a

<sup>1</sup> Idaho Power Application For Accounting Order Addressing Deferral of Costs Related to Development of Grid West, Case No. IPC-E-06-06, at p. 2-3 (April 4, 2006) (“Idaho Power Application”).

few conditions on such an authorization. First, the Commission should make explicit in its order that there will be no automatic recovery of those costs in Idaho Power's rates. This is acknowledged in both the Commission's orders in this case,<sup>2</sup> as well as Idaho Power's application.<sup>3</sup> Nevertheless, it is prudent to include such a statement in the order in this case. Future parties in subsequent proceedings will benefit by such a declaration in that they will have a clear understanding of the consequence of an accounting order in this proceeding.

Second, if the Commission allows the Company to earn interest on the deferred amounts, the rate of interest should not exceed the interest rate provided for customer deposits. This would reasonably preserve the Company's ability to collect appropriate amounts in the future while preventing customers from being unduly burdened by a build-up of these costs pending a proceeding through which they are sought to be recouped in rates. ICIP points out that in similar proceedings in other jurisdictions, some state commissions have disallowed *any* interest on deferred costs of utility loans to Grid West.<sup>4</sup>

Third, any authorization for Idaho Power to defer Grid West loan costs should be conditioned upon the Company beginning amortization of the costs immediately, over a three-year period. This period seems reasonable given the short time period between when the loans were made and when Grid West became insolvent. Immediate

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<sup>2</sup> See, e.g. Order No. 30082, Case No. IPC-E-06-06, at p. 1 (June 29, 2006) ("An accounting order authorizing deferral of costs does not establish reasonableness or the amount of the costs to be recovered in rates.").

<sup>3</sup> See Idaho Power Application at p. 2 (requesting accounting order allowing deferral so that costs can be considered "in a future ratemaking proceeding").

<sup>4</sup> See Washington Utilities and Transportation Commission, *Order Approving Accounting Petition, As Modified By This Order*, Docket UE-060703 (July 26, 2006) (Ordering authorization to PacifiCorp "conditioned upon amortization beginning July 1, 2006, without interest, over a five-year period").

amortization of these costs by participating utilities has also been ordered by other state commissions.<sup>5</sup>

Finally, any Commission authorization to defer Grid West loan costs should require Idaho Power to net any proceeds received from Grid West against those amounts. Although receiving any funds from Grid West is probably unlikely at this point, if any such funds are reasonably available to Idaho Power, it should apply those funds toward the costs of the Grid West loans the Company seeks to defer and recover from customers.

*B. Internal Idaho Power Costs Spent on Grid West-Related Efforts*

In addition to the costs of unrecoverable loans to Grid West, Idaho Power seeks to defer costs that it categorizes as “internal incremental costs incurred directly by Idaho Power in the development of Grid West.”<sup>6</sup> Idaho Power explains these costs as including things such as “incremental travel related expenses,” “legal fees,” and “carrying costs” of those expenses. Idaho Power’s request to defer internal costs related to Grid West is an extraordinary request in the industry. None of the other utilities that participated in Grid West have sought similar ratemaking treatment for “internal costs” from their respective commission.<sup>7</sup> ICIP opposes Idaho Power’s unprecedented request. Unlike the loans provided by Idaho Power to Grid West under the Funding Agreements, Idaho Power has

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<sup>5</sup> *Id.*

<sup>6</sup> Idaho Power Application at p. 3.

<sup>7</sup> See, e.g., Application of PacifiCorp to the Oregon Public Utility Commission, *In the Matter of Application of Pacific Power & Light (d/b/a PacifiCorp) for an Accounting Order*, Docket No. UM 1257 (March 23, 2006) (seeking deferral of loans to Grid West, and noting that PacifiCorp is already recovering other RTO expenses through its current rates); Application of Portland General Electric to the Oregon Public Utility Commission, *In the Matter of the Application of Portland General Electric Company for an Order Approving the Deferral of Certain Costs and Revenues Associated With Grid West*, Docket No. UM 1256 (June 16, 2006) (seeking deferral of loans to Grid West); Application of PacifiCorp to the Washington Utilities and Transportation Commission, *In the Matter of the Application of PacifiCorp for Approval of a Deferred Accounting Order to Defer the Costs of Loans Made to the Regional Transmission Organization, Grid West, and to Defer Consideration of Amortization and Cost Recovery in a Future General Rate Case*, Docket No. UE-060703 (May 1, 2006) (seeking deferral of loans to Grid West, and noting that utility is already recovering other RTO expenses through its current rates).

not provided any evidence in its application that it had any reasonable expectation of recouping its incremental internal costs from Grid West if Grid West had become operational. In other words, Idaho Power has not demonstrated that Grid West had any obligation to repay Idaho Power for these costs. Thus, to ICIP, these costs simply look like additional expenses the Company incurred during the current rate period. Under these circumstances, Idaho Power should not be allowed at this point to defer these costs for inclusion in a subsequent rate period.

The fundamental prohibition on retroactive ratemaking prevents utilities from adjusting current rates to make up for past errors in cost projections.<sup>8</sup> In other words, a utility cannot adjust future rates to recoup losses that were incurred due to a utility's failure to accurately estimate its costs in a prior rate proceeding. The Commission should therefore not allow Idaho Power to defer these costs for consideration in the next rate proceeding. Doing so would allow Idaho Power to avoid the traditional ratemaking principles that do not allow recovery of past costs incurred after a rate case.

Moreover, ICIP fears that allowing Idaho Power to defer its internal Grid West costs into the next rate period could result in a double-recovery of certain expenses from customers. ICIP cannot ascertain from Idaho Power's application whether customers are, in fact, already paying through their current rates for what Idaho Power characterizes as its incremental internal Grid West costs.

In its application, Idaho Power seeks to transfer all of its Grid West development costs to Account 182.3 (Other Regulatory Assets), and defer them into the next rate

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<sup>8</sup> See, generally, e.g., *City of Piqua v. FERC*, 610 F.2d 950, 954 (D.C. Cir. 1979) (“[A] utility may not set rates to recoup past losses, nor may the Commission prescribe rates on that principle.”) (quoting *Nader v. FCC*, 520 F.2d 182, 202 (D.C. Cir. 1975)); See also *Utah Power & Light v. Idaho Public Utilities Commission*, 107 Idaho 47, 53 (1984) (holding that PUC does not have authority to grant utilities surcharges to make up past deficits).

period. The Uniform System of Accounts, however, provides that it is only appropriate for Idaho Power to include these costs in Account 182.3 if they would have been included in the current period, but for it being probable that such items will be included in a different period for purposes of developing rates.<sup>9</sup> With regard to Idaho Power's internal Grid West costs, ICIP does not believe it is probable that such items will be included in future rates given that these costs appear to simply be past expenses that the Company incurred, without expectation of reimbursement, and that there will be no future benefit to customers from Grid West to which Idaho Power can match the costs.

As support for its application, Idaho Power presents the Commission with a Letter Order it received from the Federal Energy Regulatory Commission, advising Idaho Power that it may include Regional Transmission Organization (RTO) development costs in Account 186 (Miscellaneous Deferred Debits) and transfer to Account 182.3 amounts not reimbursed by an RTO. However, in FERC's Letter Order, FERC merely restates the conditions on putting expenses into Account 182.3, and specifically clarifies that inclusion of these costs in Account 182.3 is appropriate only "if these criteria are met."<sup>10</sup> It goes on to state that "[h]owever, if rate recovery of all or part of the deferred costs is later disallowed, the disallowed costs should be charged to Account 426.5 in the year of the disallowance."<sup>11</sup> FERC's Letter Order, therefore, is not precedent on which the Commission should base a decision to allow Idaho Power to defer these internal costs, and is at best, a simple recognition that these costs may be disallowed for recovery in

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<sup>9</sup> Uniform System of Accounts, 18 C.F.R. § 101, Account 182.3.

<sup>10</sup> Letter Order, FERC Docket No. AC03-78-000, at p. 3 (Feb. 3, 2004); The Letter Order states that "[r]ecognition of these costs as a regulatory asset in the event that they are not reimbursed by the RTO would only be appropriate if the amounts would otherwise be chargeable to expense at that time and Idaho Power has concluded based upon all relevant information, that recovery in rates in a different period is probable." *Id.* at p. 1.

<sup>11</sup> *Id.*

rates, and that Account 182.3 may in the meantime be an appropriate place to put them depending on if the applicable criteria are met. As stated above, it is the ICIP's position that the criteria have not been met, since it is not probable that recovery of the costs in a future rate period would be allowed.

### **III. Conclusion**

ICIP will not oppose Idaho Power's application to defer the costs of unrecoverable loans made to Grid West for consideration in a future rate proceeding. However, if the Commission grants Idaho Power's request, it should 1) expressly state in the order that future cost recovery is not automatic and depends on a demonstration of prudence, 2) not allow a rate of interest greater than the rate provided for customer deposits, 3) condition its approval upon the Company beginning amortization of the costs immediately, over a three-year period, and 4) require Idaho Power to net any proceeds received from Grid West against those amounts.

ICIP opposes Idaho Power's request to defer its internal costs related to Grid West. Allowing Idaho Power to defer these costs would be inappropriate because any future recovery would be prevented by the prohibition on retroactive ratemaking, would be unlikely in any event, and could result in a double-recovery by the Company of those expenses.

Respectfully submitted this 14<sup>th</sup> day of August, 2006,



Peter Richardson  
Attorney for Industrial Customers of Idaho Power

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of August, 2006, 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:

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Signed: \_\_\_\_\_



Nina M. Curtis