

**RICHARDSON & O'LEARY, PLLC**

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December 30, 2010

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2010 DEC 30 PM 4:11  
IDAHO PUBLIC UTILITIES COMMISSION

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

RE: **Case No. IPC-E-10-25**

Dear Ms. Jewell:

We are enclosing for filing in the above-referenced case an original and three (7) copies of the Industrial Customers of Idaho Power's MOTION FOR LEAVE TO FILE SUR-REPLY COMMENTS, and attached SUR-REPLY COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER. An additional copy is enclosed for you to stamp for our records.

Sincerely,

Greg Adams

Richardson & O'Leary PLLC

encl.

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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 ) CASE NO. IPC-E-10-25  
ACCEPTANCE OF ITS 2011 RETIREMENT )  
BENEFITS PACKAGE ) MOTION FOR LEAVE TO FILE SUR-  
) REPLY COMMENTS OF THE  
) INDUSTRIAL CUSTOMERS OF  
) IDAHO POWER  
)

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COMES NOW, the Industrial Customers of Idaho Power ("ICIP"), and pursuant to this Commission's Rules of Procedure, Rule 56, IDAPA 31.01.01.56, hereby moves the Commission for leave to file Sur-Reply Comments in this matter. In support of this motion, ICIP states as follows:

1. Idaho Power filed its Application in this docket on October 1, 2010, and requested the Commission "issue its order accepting Idaho Power's 2011 Retirement Benefits Package on or before February 28, 2011, to allow sufficient time to prepare and process a pension funding

docket prior to June 1, 2011.” *Application*, at ¶ 15.

2. The Commission’s Notice of Application and Notice of Modified Procedure (Order No. 32092) set a deadline of December 14, 2010, for the filing of Comments by any person desiring to state a position on the Application, and a deadline of December 28, 2010, for Idaho Power and other interested parties to file Reply Comments.

3. The Commission’s Order No. 32092 did not provide an opportunity, or provide a deadline for, the filing of Sur-Reply Comments by interested parties.

4. On December 14, 2010, the Commission Staff and ICIP filed Comments in opposition to the relief requested in Idaho Power’s Application.

5. On December 28, 2010, Idaho Power filed Reply Comments.

6. The Company’s Reply Comments raised legal arguments not raised in its Application or testimony, and not addressed in the Commission Staff’s or ICIP’s Comments. *See Idaho Power’s Comments*, at p. 3 (arguing that “an order requiring Company shareholders to become financially liable for benefit expenses without a corresponding return on investment may result in confiscatory rates that violate the U.S. Constitution’s Fifth Amendment Takings Clause”); *id.* at p. 11 (arguing Staff’s and ICIP’s proposal to reward longevity with a 401(k) plan would “most certainly violate the terms set forth in Title 26 C.F.R. 1.401(a)-4”).

7. The Company’s Reply Comments also included as Attachment No. 3, a report by its consultant, Towers Watson, which the Company did not provide in discovery to Commission Staff or ICIP.

8. Therefore, ICIP respectfully requests leave to address these new arguments and materials because ICIP did not anticipate these arguments or materials from Idaho Power’s prior

filings in this case.

9. Accordingly, ICIP respectfully requests that the Commission accept for filing, and consider, the attached Sur-Reply Comments, which address only these new issues and materials. Counsel for ICIP has conferred with Counsel for Commission Staff regarding this Motion, and Commission Staff supports this Motion.

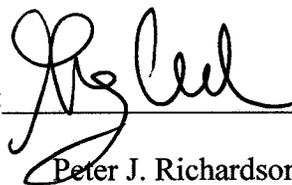
10. Permitting the filing of the attached Sur-Reply Comments will not prejudice the rights of any party or cause undue delay to this proceeding because Idaho Power has addressed the issues therein and this filing is made far in advance of the date by which Idaho Power requested a Commission decision – February 28, 2011.

**WHEREFORE**, the Industrial Customers of Idaho Power respectfully requests that this Commission grant its Motion for Leave to File Sur-Reply Comments in these proceedings, and requests that the Commission accept and consider the attached Sur-Reply Comments.

DATED this 30<sup>th</sup> 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 ~~30th~~ day of December, 2010, I caused a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE SUR-REPLY COMMENTS OF THE INDUSTRIAL CUSTOMERS OF 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

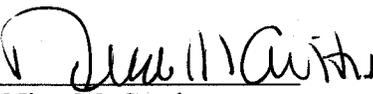
- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Lisa Nordstrom  
Donovan Walker  
Idaho Power Company  
PO Box 70  
Boise, Idaho 83707

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Gregory W. Said  
Tim Tatum  
Idaho Power Company  
PO Box 70  
Boise, ID 83707

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Signed   
Nina M. Curtis