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IDAHO PUBLIC
UTILITIES COMMISSION

April 29, 2011

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

RE: **IPC-E-10-27**

Dear Ms. Jewell:

We are enclosing for filing in the above-referenced docket an original and seven (7) copies the **INDUSTRIAL CUSTOMERS OF IDAHO POWER'S ANSWER TO IDAHO POWER COMPANY'S PETITION FOR CLARIFICATION.**

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

Sincerely,

Gregory M. Adams
Richardson & O'Leary PLLC

encl.

Efficiency Rider (“EE Rider”) account. *See* Order No. 32217, at p. 1. The EE Rider currently allows the Company to collect 4.75% of base rates for use on its DSM programs, which amounts to \$38 million per year. This amount will increase as billed revenue increases. The Company, however, has been spending in excess of the amounts collected and, without an adjustment to cost recovery, it projected in its filing that the negative balance in its EE Rider account will be \$17 million at the end of 2011 and \$29 million by the end of 2012. *Id.*

The Company proposed to collect approximately \$14 million per year for three demand response programs through the power cost adjustment (“PCA”) mechanism and eventually base rates as normalized power supply expenses after the next general rate case. *Id.* at pp. 1-2. The Company also proposed to change the method for recovering approximately \$5 million annually in incentive payments for the Custom Efficiency program from collection through the EE Rider to collection as a rate-based investment with an accelerated amortization period. *Id.* at p. 2. The Company proposed that these incentive payments would be accounted for in a regulatory asset account from January 1, 2011 until the next general rate case, when the Company would place the payments in rate base and earn a return on them. *Id.* The Company also proposed to continue collecting 4.75% of base rates through the EE Rider. Thus, the Company’s proposal to overcome its negative balance was to increase DSM funding from \$38 million annually to approximately \$58 million annually.¹ Several parties entered into a stipulation which slightly extended the amortization period for the incentive payments made under the Custom Efficiency program from 4 to 7 years, and mitigated the disproportionate cost-allocation impact of moving

¹ The Company also proposed that the Commission allow it to earn its authorized rate of return (8.18%) on the negative balance in the EE Rider account, but that request does not appear to be at issue in the Company’s Petition for Clarification.

\$14 million into the PCA for only one year. *Id.* at pp. 3-4.

ICIP opposed the stipulation because, relevant to this pleading, ICIP believes that 4.75% of base rates, constituting \$38 million annually, should be adequate to fund the Company's DSM programs. *Id.* at pp. 3-4; Oral Argument Transcript ("Tr."), pp. 22-25 (March 30, 2011). ICIP also believes that adoption of the stipulation would have had far-reaching cost allocation impacts that the stipulation failed to address. Order No. 32217, at p. 4; Tr. pp. 28-30. ICIP proposed that determination regarding Idaho Power's filing be deferred until the Company's next general rate case, where all relevant issues can be vetted before the Commission decides whether to authorize the major policy shift proposed by the Company. Tr. at p. 32.

In Order No. 32217, the Commission rejected the stipulation. The Commission stated, "The gain in energy conservation programs has not come without cost." Order No. 32217, at p. 5. The Commission noted, "In recent years expenditures have outpaced Rider funds." *Id.* The Commission stated that the "funding adjustments" requested may be appropriate to adequately fund DSM programs. *Id.* "The specific proposals, however, raise issues and concerns that are more properly vetted in a rate case." *Id.* The Commission stated that "including costs for recovery in the PCA affects cost allocations among customer classes. These *and other issues* are best considered in a general rate proceeding." *Id.* (emphasis added). The Commission authorized Idaho Power to recover through the 2011 PCA rates only the amount of existing negative balance in the EE Rider account associated with DSM expenditures which the Commission has already determined to be prudent in prior cases – approximately \$10 million. *Id.* at pp. 5-6. The Commission also required that the Company allocate that recovery "to each customer class based on the amount that would have been recovered from each class through the

Rider.” *Id.* at p. 6.

Idaho Power filed a Petition for Clarification, requesting that the Commission “clarify” three different aspects of its order. First, Idaho Power sought clarification on whether the Commission intended that Idaho Power stop spending in excess of 4.75% of base rates, or \$38 million annually, on DSM programs. *Idaho Power’s Petition for Clarification*, at pp. 1-3. Second, Idaho Power states that it seeks clarification on whether the Commission is philosophically opposed to the recovery of Idaho Power’s demand response incentive payments through rates related to its power supply expense recovery mechanisms. *Id.* at p. 3. Third, Idaho Power requests that the Commission “clarify Order No. 32217 to allow Idaho Power to account for incentives paid through the Custom Efficiency program as a regulatory asset beginning January 1, 2011, with an amortization period to be determined by the Commission, based upon the information submitted by the parties in this case.” *Id.* at p. 5. Idaho Power also now states – in direct contradiction to its prior position at the scheduling meeting in this case² – that it has no objection to an evidentiary hearing being held on the testimony already filed in this case. *Id.* at p. 6.

ARGUMENT

ICIP opposes Idaho Power’s Petition for Clarification – which is in fact a Petition for Reconsideration – and requests that if the Commission is inclined to grant any of Idaho Power’s

² ICIP notes for the record that it argued at the scheduling meeting in this case, on January 12, 2011, that the issues in this case merited an evidentiary hearing. All other parties present, including Idaho Power, took the position that an evidentiary hearing was unnecessary. At the settlement meeting on February 7, 2011, ICIP agreed to oral argument instead at the insistence of the other parties. *See* Order No. 32178. It is ironic that Idaho Power argues an evidentiary hearing is now necessary after the Commission did not grant the relief Idaho Power requested.

requests that the Commission first hold an evidentiary hearing where all of the relevant issues can be fully vetted.

I

The Commission does not need to clarify the amount of spending authorized for Idaho Power because Order No. 32217 clearly stated that the Company may recover 4.75% of base rates plus the additional \$10 million for Rider funds already deemed to have been prudently incurred.

The stipulating parties have proceeded under the assumption that the Commission has mandated that Idaho Power pursue all cost-effective DSM, without any spending limit, or even any spending goal. The stipulating parties have only cited a single Commission order in support of that proposition. *See* Direct Testimony of Commission Staff Witness Randy Lobb, p. 8 (March 4, 2011) (citing Order No. 30201). That order granted Idaho Power's Certificate of Public Convenience and Necessity ("CPCN") for the Evander Andrews gas peaking plant. Although the Commission stated in that order that the Company should pursue all cost-effective DSM, the EE Rider was set at 1.5% of base rates at that time. Order No. 30201, at pp. 10-12.³ Now, Idaho Power and the other stipulating parties appear to argue that the order approving the gas plant authorized spending on DSM expenditures above the \$38 million per year amount the

³ Notably, in finding that the Company should pursue all cost-effective DSM in that order, the Commission stated it was "particularly interested in the 'virtual peaking plant' program being conducted by Portland General Electric" and it directed the Company to investigate that program. *Id.* at p. 12. To date, the Company has still not implemented that distributed generation program, and appears in its current Integrated Resource Plan process to favor another peaking gas plant rather than implementation of the virtual peaking program using existing backup generators. The Company also appears to be placing limits on its projected DSM savings in its planning processes where it evaluates the need for future gas peaking plants. *See* Direct Testimony of ICIP Witness Don Reading, pp. 15-17. If those limits used in the planning process are real, they should be used in evaluating the cost-effectiveness of the individual DSM programs in dockets like this one, which may help identify programs that should be scaled back to keep the budget within \$38 million annually.

Company is currently authorized to collect as 4.75% of base rates on the EE Rider. ICIP submits that Order No. 30201 should not be read in that manner. There should be some reasonable limit, or least a goal, within which the Company should operate its DSM programs.

In the case approving the increase in the rider to 4.75% in May 2009, one party requested that the Commission increase rider funding above 4.75%, in part, to “allow for additional funding for NEEA.” *See* Order No. 30814, at p. 3. But the Commission did not approve a rider rate above 4.75%, or otherwise provide a mechanism to recover costs above that level. *Id.* The Commission has subsequently stated that the amounts it will authorize for DSM spending “are not unlimited.” *See* Order No. 31080, p. 6. Idaho Power has placed itself and the Commission in a difficult position by spending far in excess the amount that it is authorized to recover through the EE Rider. The Commission, in Order No. 32217, authorized the Company to recover amounts already deemed to be prudently incurred expenses in past cases, and in the upcoming year, that authorization will allow for combined recovery of \$38 million through the EE Rider and \$10 million through the 2011 PCA. Order No. 32217, at p. 6. That is approximately \$10 million less than the \$58 million the Company would have eventually recovered for DSM expenditures under its filing. To the extent that the Company continues to spend in excess of 4.75% it is currently allowed to collect, the Company should recognize that it still has no authorized recovery mechanism for that spending. The Company is free to propose another cost recovery mechanism in its general rate case if it wishes to continue spending in excess of 4.75% of base rates without raising the EE Rider. Or the Company could begin reducing its spending to a level that is within \$38 million per year amount. No further clarification is needed at this time.

II

The Commission should reject Idaho Power's request for clarification of the Commission's philosophical position with regard to recovering DSM expenses as power supply expenses.

The Commission, in Order No. 32217, clearly stated that the Company's proposal to treat the DSM programs as power supply expenses would have cost-allocation effects more appropriately determined in a general rate case. Idaho Power itself "agrees that the allocation of costs between classes is a complicated matter best suited for a general rate case." *Idaho Power's Petition for Reconsideration*, at p. 3; *see also* Reply Testimony of Idaho Power Witness John R. Gale, p. 14 (March 21, 2011). The Commission refused to provide pre-approval of Idaho Power's approach without addressing the cost-allocation issues, *see* Order No. 32217, at p. 5, and it should not now provide a "philosophical" approval of the Company's approach. If the cost-allocation issues cannot be adequately addressed, then the Company's proposal to treat demand side resources the same as supply side resources may well prove unworkable. By granting the clarification sought by the Company, the Commission may handcuff itself from being able to undo this far-reaching impact in a future case. This is but another attempt by the Company to approach DSM issues in a piecemeal fashion where all relevant issues are not adequately addressed, and ICIP continues to oppose that approach. *See* Tr. at p. 32.

III

The Commission should reject the Company's request for clarification regarding treatment of the Custom Efficiency incentive payments.

The Commission clearly rejected Idaho Power's attempt to capitalize the Custom Efficiency incentive payments, and instead required that the Company make that request in a general rate case where all relevant issues may be adequately addressed. Order No. 32217, at p.

5. Now, the Company seeks clarification that the Commission actually meant that it would allow the Company to do precisely what the Company requested in its application, and in support of that request the Company asserts that the “sole disagreement between the parties was with regard to the length of the amortization period.” *Idaho Power’s Petition for Reconsideration*, at p. 5. Idaho Power is incorrect. ICIP also asserted – and continues to believe – that if these \$5 million in annual incentive payments are rate-based they must be treated as a system resource in a cost-of-service study. *See Direct Testimony of ICIP Witness Don Reading*, at p. 22; Tr. at pp. 28-30. To treat them otherwise would be to treat them inconsistently with other supply side resources, and to grant the Company’s requested relief without addressing the issue would be a failure to address all of the relevant issues regarding whether the Company’s proposal can be workable. As noted above, the other parties refused to address the cost-allocation issues, and ICIP refused to sign the stipulation without those issues being addressed.

Tellingly, the Commission addressed a nearly identical issue in Rocky Mountain Power’s latest *general rate case* and required that the DSM resource moved from that Company’s EE Rider to base rates be treated as a system-wide resource. *See Order No. 32196*, at p. 26. In a prior stand-alone EE Rider docket, the Commission decided not to increase Rocky Mountain Power’s EE Rider funding to the 5.85% level that would be necessary to pay for the same DSM program and an accrued negative balance, and stated that it would address the funding and its cost-allocation implications in the general rate case. *Order No. 32023*, at p. 5.

Idaho Power’s request for clarification is in fact a deceptive request for reconsideration of its prior filings, and should be rejected. The Commission’s determination in *Order No. 32217* that this issue would be better addressed in a general rate case was reasonable, and indeed was

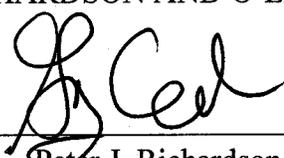
consistent with the Commission's recent orders in the Rocky Mountain Power cases. If the Commission is inclined to grant Idaho Power's request, ICIP again respectfully requests that the Commission not break from its existing precedent and use a 12-year amortization period, *see* Order No. 27660, p. 4, Tr. pp. 28-29, Direct Testimony of ICIP Witness Don Reading at p. 21, and that it state that these payments will be treated as a system-wide resource in a cost of service study, *see* Order No. 32196, at p. 26. To do otherwise without holding a full evidentiary hearing would be unfair.

CONCLUSION

For the reasons set forth above, ICIP respectfully requests that the Commission deny Idaho Power's Petition for Clarification. In the alternative, if the Commission is inclined to grant any of the relief requested in Idaho Power's petition, ICIP respectfully requests that the Commission hold an evidentiary hearing on the matter.

DATED this 29th day of April, 2011.

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 29th day of April, 2011, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

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Signed 
Gregory M. Adams