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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 THE APPLICATION OF ) CASE NO. IPC-E-12-15  
IDAHO POWER COMPANY FOR A )  
DETERMINATION OF 2011 DEMAND-SIDE ) INDUSTRIAL CUSTOMERS OF IDAHO  
MANAGEMENT ("DSM") EXPENDITURES ) POWER'S ANSWER TO IDAHO  
AS PRUDENTLY INCURRED. ) POWER'S PETITION FOR  
RECONSIDERATION OF ORDER 32667

COMES NOW, the Industrial Customers of Idaho Power ("ICIP"), and pursuant to the Idaho Public Utilities Commission's ("Commission's") Rule of Procedure 331.05 hereby files its Answer to Idaho Power Company's ("Idaho Power" or the "Company") Petition for Reconsideration of Order No. 32667. This Answer is directed to Idaho Power's request for a single-issue rate case on Idaho Power's decision to increase its labor related expenses for demand-side management ("DSM"). ICIP opposes approval of increased labor expenses outside the context of a general rate case, and therefore ICIP respectfully requests that the Commission deny reconsideration of this issue.<sup>1</sup>

<sup>1</sup> ICIP has not fully investigated the other issue regarding an alleged accounting error raised by Idaho Power's Petition for Reconsideration. ICIP therefore takes no position on that issue.

## BACKGROUND

In this case, Idaho Power sought the Commission's determination that Idaho Power had prudently incurred \$35,623,321 in Idaho Energy Efficiency Rider expenses and \$7,018,385 in Custom Efficiency incentive expenses. In its Comments, Commission Staff noted, "Wage and salary increases for DSM rider-funded employees continue to be automatically passed on to customers without the level of scrutiny and evaluation that occurs during the course of a general rate case." *Staff's Comments* at 7. Staff recommended that the Company not fund any additional wage increases through the Rider until the increases can be properly vetted through a general rate proceeding. *Id.* In Order No. 32667, the Commission stated, "the Company has the burden of proving that the increase in labor related expenses is reasonable. Based upon our review of the record, we find that the Company has not yet carried its burden." Order No. 32667 at 9. "The Company may, but need not, wait until a general rate case to provide such supporting information." *Id.*

In its Petition for Reconsideration (as modified by an Errata), Idaho Power argues that the Commission erred in deferring a prudence determination of the \$89,601 increased labor expense. Idaho Power appears to assert that because its DSM programs have passed the three cost-effectiveness tests set forth in the Memorandum of Understanding ("MOU") filed in Case No. IPC-E-09-09, the Commission is now "altering the standard or review of such labor expense increases and potentially applying a new standard in a retroactive manner." *Idaho Power's Petition for Reconsideration* at 4.

## ARGUMENT

The Commission properly concluded that Idaho Power did not meet its burden to prove that its increased labor expenses were prudent. Idaho law requires the Commission to ensure that Idaho Power's rates are just and reasonable. *See* I.C. § 61-301; § 61-502. Idaho Power bears the burden of proof. Because Idaho Power failed to meet its burden, the Commission had no choice but to deny a prudency determination for the wage increase.

The MOU between Idaho Power and Staff filed in Case No. IPC-E-09-09 does not support Idaho Power's Petition. Notably, ICIP opposed the MOU out of concern that, if approved by the Commission, the MOU would relieve the utility of the need to prove the prudence of its DSM expenditures. The Commission stated:

The Industrial Customers recognize that "even if a utility implements Staff's prudency guidelines and evaluation framework in the Memorandum of Understanding, *the utility will still need Commission approval of the expenditures in a formal filing, such as a general rate case.*" Industrial Customers Comments, p. 7. The Industrial Customers and other interested parties will have an opportunity in those proceedings to analyze and challenge the DSM evaluation at issue, regardless whether the utility has evaluated and reported its programs consistent with the terms of the MOU. Accordingly, we decline to discuss the terms of the MOU, other than to recognize that the MOU has potential in evaluating and reporting Idaho Power's DSM programs. *The Commission's future review of particular DSM programs should be assisted, but will not be replaced by, Idaho Power's compliance with the terms of the MOU.*

Order No. 31039 at 3 (emphasis added).

Idaho Power is incorrect to assert that the MOU binds the Commission to *any* "standard of review." The standard of review is the same as any other rate proceeding.

There is also no merit to Idaho Power's assertion that the Commission has engaged in retroactive ratemaking to Idaho Power's detriment. "Whenever the commission . . . shall find that the rates . . . are unjust, unreasonable, discriminatory or

preferential, . . . , the commission shall determine the just, reasonable or sufficient rates . . . to be *thereafter observed* . . . .” I.C. § 61-502 (emphasis added). “[R]ates set by order are final unless stayed and are determinative of all rights of the parties as long as they remain in effect without regard to whether they are later altered or amended on rehearing or altered or amended after being set aside on appeal.” *Utah Power & Light Co. v. Idaho Pub. Util. Commn.*, 107 Idaho 47, 53, 685 P.2d 276, 282 (1984). No prior order deemed Idaho Power’s wage increases for 2011 to be reasonable and recoverable in rates. If anything, the Commission’s Order engaged in retroactive ratemaking to Idaho Power’s favor. The Commission determined that Idaho Power had failed to meet its burden to demonstrate that the 2011 wage increases were reasonable. Yet the Commission nevertheless provided Idaho Power an opportunity in some unspecified future proceeding, or even something short of a formal proceeding, to demonstrate the prudence of this *past* expenditure. ICIP and other parties will be prejudiced if Idaho Power can re-litigate the reasonableness of expenses in its rates after failing to demonstrate prudence.


Finally, although the dollar amount at issue here is relatively small, ICIP objects to single-issue rate cases, which appear to be occurring with some frequency. *See* Case No. IPC-E-12-14 (placing Langley Gulch in rates); Case No. IPC-E-12-24 (requesting capitalization of Customer Efficiency expenditures). Idaho Power could have sought approval of wage increases in the general rate case that it filed in IPC-E-11-08. ICIP agrees with Staff’s Comments that Idaho Power should not side-step the scrutiny of a general rate case through the limited review available in dockets such as the annual DSM filing. The Commission should endorse this view.

## CONCLUSION

For the reasons stated above, ICIP respectfully requests that the Commission deny reconsideration of the Commission's determination related to Idaho Power's labor expense increase.

DATED this 20<sup>th</sup> day of November, 2012.

RICHARDSON AND O'LEARY, PLLC

By: 

Peter J. Richardson  
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Customers of Idaho Power

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20<sup>th</sup> day of November, 2012, a true and correct copy of the within and foregoing ANSWER TO IDAHO POWER'S PETITION FOR RECONSIDERATION OF ORDER 32667 BY THE INDUSTRIAL CUSTOMERS OF IDAHO POWER IN CASE NO. IPC-E-12-15 was served in the manner shown to:

Jean Jewell  
Commission Secretary  
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