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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)	CASE NOS. IPC-E-14-41
APPLICATION OF PACIFICORP DBA)	PAC-E-14-11
ROCKY MOUNTAIN POWER AND)	
IDAHO POWER COMPANY FOR AN)	
ORDER AUTHORIZING THE)	COMMENTS OF THE INDUSTRIAL
EXCHANGE OF CERTAIN)	CUSTOMERS OF IDAHO POWER
<u>TRANSMISSION ASSETS</u>		

I. INTRODUCTION AND SUMMARY

Pursuant to the Idaho Public Utilities Commission's ("IPUC" or "Commission") Order No. 33231, the Industrial Customers of Idaho Power ("ICIP") hereby submit these comments on the Joint Application of PacifiCorp and Idaho Power Company ("Idaho Power") in this docket. Idaho law requires the Commission to reject the Joint Application if the Commission cannot find that the transaction will leave Idaho Power's ratepayers unharmed. Given the complexity of the transaction, the ICIP has concerns with the transaction's potential to result in increased retail rates for Idaho Power's ratepayers without providing any countervailing benefit that Idaho Power and its shareholders are willing to acknowledge and/or share with ratepayers.

Based upon the state of the record at this time, the ICIP makes two alternative recommendations. First, the ICIP recommends that the Commission defer ruling on the Joint Application until after the Federal Energy Regulatory Commission ("FERC") issues its order on

the transmission asset exchange. Because there is significant opposition to the transaction in the parallel FERC proceeding, any determination by the IPUC prior to the issuance of FERC's order would be an advisory determination on a hypothetical transaction that has a high likelihood of being altered by the outcome of the FERC proceeding. Alternatively, if the Commission determines to address the transaction at this time, the ICIP submits that the Commission should require Idaho Power to share the economic benefits of the transaction with ratepayers at this time. In view of the downside risks to retail ratepayers posed by the transaction, the Commission should condition approval of the transaction on an immediate reduction to Idaho Power's retail rates to account for the near-term benefits of Idaho Power's increased transmission revenues associated with the transaction.

II. COMMENTS

A. **The Commission May Only Approve the Joint Application If It Finds that the Joint Applicants Have Proven that the Transaction Will Not Increase Retail Rates.**

Idaho law requires the Joint Applicants to prove that the proposed asset exchange will not increase retail rates. Specifically, Idaho Code section 61-328 provides:

Before authorizing the transaction, the public utilities commission shall find:

- (a) That the transaction is consistent with the public interest;
- (b) *That the cost of and rates for supplying service will not be increased by reason of such transaction;* and
- (c) That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service.

The applicant shall bear the burden of showing that standards listed above have been satisfied.

I.C. § 61-328(3) (emphasis added). Additionally, "The commission may attach to its authorization and order such other terms and conditions as in its judgment the public convenience and necessity may require." I.C. § 61-328(4). In this case, where both parties to

the transaction are under the Commission's jurisdiction, the Commission must determine that the transaction at issue will not increase either utility's retail rates.

While the Joint Application suggests that such a finding can easily be made because the net book value of the exchanged assets will be equal, or equalized through a cash payment at closing, the actual impact on retail ratepayers will be far more complex. The net book value is not necessarily the most significant aspect of the transaction to the utility's native load retail ratepayers. Other aspects of the transaction could also have far-reaching impacts on Idaho Power's ratepayers. The transaction will result in different transmission revenues paid by PacifiCorp and other transmission customers, and if the overall transmission revenues increase that should result in a reduction to native load retail rates. However, the transaction will also result in increased costs of transmission upgrades associated with Idaho Power's newly owned assets, which could result in increased rates for native load customers. Additionally, if structured properly, the transaction could work to decrease Idaho Power's retail rates by deferring the need for future transmission expenditures through acquisition of new transmission rights. Thus, focusing on net book value of the assets exchanged completely misses the mark and fails to satisfy the Joint Applicants' burden to demonstrate the transaction will not increase retail rates.

The Commission and its Staff have the unenviable task of attempting to work through the likely end result of this complex transaction. But two points are clear – (1) the Commission should defer action until after the FERC proceeding is complete, and (2) if the Commission approves the transaction it should condition such approval on Idaho Power's sharing the near-term benefits of the transaction with ratepayers at this time.

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B. The Commission Should Defer Action Until After Resolution of the FERC Proceeding Is Known.

In parallel proceedings before FERC, the Joint Applicants must prove that the transaction will meet FERC's rules barring discrimination and preferential treatment in the provision of interstate transmission services. *See* FERC Docket Nos. EC15-54, ER15-680, ER15-681, ER15-682, and ER15-683. Yet transmission customers and other interested parties have voiced significant opposition to the proposed transaction and argued that FERC should reject or significantly modify the transaction. The concerns voiced at FERC include, among other issues, that the transaction will significantly increase Idaho Power's transmission formula rates without a transmission rate case and that the transaction provides the utilities with preferential transmission access rights. *See, e.g., Motion to Intervene Out-of-Time and Comments of Seattle City Light*, FERC Docket Nos. EC15-54, ER15-680, ER15-681, ER15-682, and ER15-683, at pp. 4-7 (filed Feb. 24, 2015). Any change to the transaction – especially those aspects that affect Idaho Power's transmission formula rate increase and the resulting economic benefits accruing to native load retail customers – will necessarily impact this Commission's analysis of whether the overall transaction will meet the statutory requirements in Idaho Code section 61-328.

Thus, a ruling on the transaction prior to issuance of FERC's determination on the protests and objections to it will necessarily be an advisory opinion on a hypothetical transaction. The Commission should preserve its scarce resources until after FERC has imposed any conditions or restrictions on the transaction. Should FERC impose any conditions, the Commission should allow the parties to this proceeding to update their comments after a reasonable period of time to evaluate the impact of the FERC proceeding.

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C. The Commission Should Require Idaho Power to Share the Near-Term Benefits of the Transaction At the Present Time.

If the Commission is inclined to issue an advisory opinion on the proposed transaction prior to the time that FERC determines whether and in what form the transaction may move forward, the Commission should unequivocally condition approval on immediate inclusion of the near-term benefits of the transaction in Idaho Power's retail rates. Idaho Power acknowledges that the increase in its transmission formula rates will result in immediate increases to its transmission revenues. These benefits must be shared with customers immediately to ensure that the transaction does not work to increase retail rates over the long term.

Specifically, Idaho Power asserts that by entering into the Legacy Replacement, the Company's Idaho jurisdictional retail revenue requirement would be reduced on a present value basis by approximately \$55.9 million over a 10-year period from 2015 through 2024. *See* L. Grow, Idaho Power Direct Test. at 18. Idaho Power steadfastly maintained in discovery responses that it did not structure the transaction in a manner that would allow it to defer construction of the Boardman to Hemingway line. Thus, the \$55.9 million reduction to Idaho Power's revenue requirement is the only significant economic benefit of the transaction identified by Idaho Power.

The reduction in retail rates associated with the increased formula rate could cause the Commission to overlook other aspects of the transaction that are likely to *increase* Idaho Power's retail rates. Idaho Power and PacifiCorp have acknowledged that the transaction will alter the utilities' respective cost responsibilities for transmission upgrades on the lines in question. Yet Idaho Power admitted in discovery that the "costs associated with future upgrades were not included in the revenue requirement analysis provided as Exhibit No. 1 to Lisa Grow's

testimony.” Idaho Power’s Response to the ICIP Prod. Req. No. 19(d).¹ In other words, Idaho Power ignored a major financial impact of the transaction in the revenue requirement analysis that Idaho Power relies upon to meet its statutory burden of proving the transaction will not increase rates. Additionally, PacifiCorp asserts in discovery that its transmission payments to Idaho Power associated with the Jim Bridger system will decrease after closing of the transaction, notwithstanding the increase to Idaho Power’s transmission formula rates. *See* PacifiCorp’s Response to IPUC Staff Prod. Req. No. 31.

Thus, without the near-term benefits of the increased revenues from transmission formula rates, the record does not demonstrate that the transaction will leave Idaho Power’s native load retail ratepayers harmless. Astonishingly, however, Idaho Power proposes not to pass the near-term benefits of the increased transmission revenues onto its retail ratepayers. Instead, Idaho Power proposes to keep the increased transmission revenues solely for its shareholders to boost earnings until Idaho Power proposes to update its revenue requirement in the next general rate case. Idaho Power does not explain when the next general rate case will occur. But it is possible that, given the current ADITC sharing mechanism that ensures Idaho Power’s earnings level, the Company will not file another general rate case for five years or more. During that time, Idaho Power’s shareholders alone will obtain the near-term benefits of Idaho Power’s increased transmission revenues identified in the Joint Application.

Moreover, unlike the longer-term transmission upgrade costs that are planned to be incurred in future years (and presumably passed onto retail ratepayers at that time), Idaho Power will immediately recognize increased revenues from its increased formula rates if FERC

¹ The confidential cost estimates for the upgrades provided by Idaho Power’s Response to ICIP Req. No. 19 and PacifiCorp’s Response to ICIP’s Req. No. 6 demonstrate the significance of the upgrade costs that were completely ignored in Idaho Power’s revenue requirement analysis.

approves the transaction. The purpose of FERC's formula rates is to allow for such immediate rate changes to account for annually updated data in the FERC Form 1, without a transmission rate case. The record provides no basis to believe that the costs and benefits will even out for native load customers in the long run if the near-term economic benefits of the increased transmission revenues are withheld from retail ratepayers.

If the Commission approves the transaction at this time, it should therefore require that the revenue requirement associated with Idaho Power's transmission rate revenues be updated to immediately pass the savings onto Idaho Power's retail ratepayers. There is ample precedent for updating revenue requirement components outside of a general rate case. Idaho Power has obtained the IPUC's authority to do so on the following occasions since the last general rate case in 2011:

- Case No. IPC-E-12-06: \$2 million rate increase to recover transmission costs associated with the FERC's transmission rate case, FERC Docket No. ER06-787;
- Case No. IPC-E-12-09: \$1.5 million rate increase to implement the Boardman end of life recovery adjustment;
- Case No. IPC-E-12-14: \$58.1 million rate increase to include Langley Gulch in rate base;
- Case No. IPC-E-13-20: \$99.3 million rate increase to update net power supply expenses.²

² These data are available in Idaho Power's financial presentation, available online at http://www.idacorpinc.com/pdfs/presentations/IR_Outreach_Minneapolis_2014.pdf. The ICIP acknowledges that there have also been revenue requirement reductions made outside of a general rate case, but these reductions have not offset the significant rate increases since the last general rate case. *See id.*

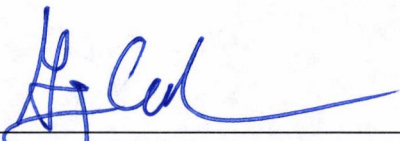
Notably, in the directly analogous circumstance in Case No. IPC-E-12-06, a change in transmission rates associated with FERC's treatment of the Legacy Agreements in the transmission formula rate increased Idaho Power's native load retail revenue requirement. The Commission allowed Idaho Power to defer and then fully recover that increased revenue requirement without the necessity of waiting for the next general rate case. *See* IPUC Order No. 32540. The same treatment must be applied here if the proposed transaction is approved and results in a decrease to the retail revenue requirement associated with a change in Idaho Power's transmission rates.

III. CONCLUSION

For the reasons set forth above, the Commission should defer ruling on the Joint Application until after FERC issues its order on the transmission asset exchange. If the Commission determines to address the transaction at this time, the Commission should require Idaho Power to share the near-term economic benefits of the transaction with ratepayers at this time.

DATED this 22nd day of April, 2015.

RICHARDSON ADAMS, PLLC

By: 

Gregory M. Adams
Of Attorneys for the Industrial
Customers of Idaho Power

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 22nd day of April, 2015, a true and correct copy of the within and foregoing COMMENTS OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER was served as follows:

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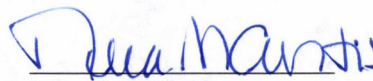
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