

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 213

In the Matter of)	
)	
IDAHO POWER COMPANY,)	BRIEF OF THE CITIZENS' UTILITY
)	BOARD OF OREGON
Request for a general rate revision.)	
)	
)	
)	
)	

I. Docket History

On July 31, 2009, Idaho Power Company filed a general rate case with the Public Utility Commission of Oregon pursuant to ORS 757.205 and 757.220 seeking to revise its schedule of rates and charges for electric service in the State of Oregon.¹ The Commission created docket UE 213 to address the proposed rate increases. The parties to this docket are Idaho Power Company (Idaho Power or the Company), Portland General Electric (PGE), Commission Staff (Staff), Oregon Industrial Customers of Idaho Power (OICIP), EP Minerals, LLC, and the Citizens' Utility Board of Oregon (CUB). The proposed rates would result in a base price increase of approximately \$7.3 million, or 22.6 percent on an Oregon jurisdictional basis. The new rates were to be effective on August 31, 2009. Idaho Power's filing was based on a 2009 calendar year test period.

¹ Application of Idaho Power Company for Authority to Increase its Rates and Charges for Electric Service in the State of Oregon, filed July 31, 2009.

At the public meeting on August 25, 2009 the Commission suspended the Company's revised tariff sheets for a period of nine months. Pursuant to Administrative Law Judge Lisa Hardie's Prehearing Conference Memorandum of August 25, 2009, CUB, on September 15, 2009, filed requests for supplemental testimony on three issues:

- i. An elaboration of the Company's rationale in adopting a seasonal rate structure for residential customers.
- ii. An elaboration and justification of the disparity between summer rate level increases for residential and irrigation customers; and
- iii. An elaboration and justification of the relationship between the new seasonal residential rate structure and residential equal-pay plans.²

Idaho Power acknowledged that the testimony requested by CUB was relevant to the issues raised in its initial filing and agreed to provide additional information.³ ALJ Hardie's ruling on the matter noted that the "additional testimony on the issue is within the scope of the Company's burden of proof. Moreover, supplemental testimony would assist the Commission in deciding the issue. CUB's request for information is therefore granted."^{4,5,6} The Company responded. A settlement conference was convened on November 4-5, 2009. The settlement conference was noticed and all parties attended. As a result of the settlement conference, the Parties reached a settlement and entered into a

² CUB's Proposed Information Requests, September 15, 2009 at 2.

³ Idaho Power Company's Response to CUB's and OICIP'S Proposed Information Requests for Supplemental Testimony at 3-4.

⁴ RULING issued September 18, 2009 at 2

⁵ RULING issued September 18, 2009 at 2

⁶ CUB highlights this exchange for later reference in regard to the Company and Staff's arguments that CUB raised, in its Response Testimony Objecting to the Stipulation, issues outside the scope of this docket and the Stipulation. Those issues are addressed infra.

Stipulation resolving all issues in the docket, except for the issues of residential rate design and service quality. The Stipulation states that:

The Parties, with the exception of CUB, agree that Idaho Power's proposed rate design should be adopted as modified below:

- a. The residential service charge should be increased to \$8.00 a month as opposed to the \$10.00 a month originally proposed by the Company;
- b. The upper end of the first residential usage block should be increased from 800 kWh to 1000 kWh, with the rate charge for the first block remaining the same throughout the year.
- c. The Small General Service (Schedule 7) energy rate inversion point should be elevated from 300 kWh to 500 kWh.

CUB intends to file testimony in opposition to the residential portion of this Rate Design.⁷

CUB does not agree to the Parties' resolution of the residential rate design issue.

CUB submitted its Response Testimony Objecting to the Stipulation on January 19, 2010. On January 26, 2009, Staff submitted Surrebuttal Testimony and the Company submitted Reply Testimony, both of which alleged in part that CUB's testimony exceeded the scope of the issue reserved by CUB in the Stipulation. CUB's brief, submitted pursuant to ALJ Hardie's Administrative Law Judge Conference Report of December 9, 2010, therefore commences with a discussion of the appropriate scope for testimony.

II. CUB's testimony was all given within the terms of the Stipulation and the scope of the docket; it all relates to rate design.

A. The scope of CUB's testimony.

Both Staff and the Company contend that CUB went beyond the terms of the Stipulation and raised issues that were outside the scope of the discussions on rate

⁷ UE 213 Stipulation at 6-7.

design. CUB respectfully disagrees. CUB's testimony and recommendations in this docket are entirely consistent with the Company's original filing, CUB's Supplemental Request for Information (and the ALJ's Order thereon), in addition to being within the scope of the Stipulation.⁸ The Stipulation accurately states CUB's position:

20. CUB's Position: CUB agrees with and supports all aspects of this Stipulation except that CUB does not agree with the stipulated Residential Rate Design. CUB intends to challenge this aspect of the Stipulation.⁹

CUB supports the Stipulation. Nothing in CUB's testimony contradicted the Stipulation. The Stipulation settled all issues for CUB except the issue of rate design. The recommendations that CUB makes in CUB/200 are all consistent with the Stipulation and have no effect on the revenue requirement or rate spread identified in the Stipulation.

B. Staff's testimony related to the scope of CUB's testimony.

Staff contends that CUB went outside the scope of the Stipulation and addressed other issues:

DID CUB'S RESPONSE FILINGS ADDRESS OTHER MATTERS BEYOND NARROWLY DEFINED RESIDENTIAL RATE DESIGN?

A. They did. I would propose that we address the other matters first.¹⁰

Staff then raises three issues that Staff identifies as being beyond its narrow definition of rate design: irrigation subsidies; energy efficiency; and smart meters and time-of-use rates.

Irrigation subsidies: CUB supports the Stipulation which limits the increase to irrigation customers to prevent rate shock. CUB simply wishes that Staff and the Company had a similar concern about the effects of rate shock upon residential customers. CUB's recommendation for the irrigation subsidy was that the Commission

⁸ See, Section I Docket History at 2.

⁹ UE 213 Stipulation at 8.

¹⁰ Staff/300/Compton/2.

consider reducing the subsidy in later dockets where the rates are subject to change, such as APCUs and PCAMs. Dr. Compton, although complaining that discussions of this matter are outside the scope of this docket, seems to agree:

Staff agrees that we should look at opportunities, as they arise, to reduce the level of support provided to the irrigation class.¹¹

In a docket where the primary rate design concern is sending accurate price signals, it makes little sense to avoid discussing irrigation subsidies. Subsidies obviously inhibit price signals and affect rate design. Clearly the Stipulation permits CUB to discuss rate design issues. And, there is nothing in CUB's testimony that contradicts the settlement of the issue of irrigation subsidies in this docket. In fact, CUB's testimony states that CUB supports the irrigation subsidies that were agreed to in the Stipulation. CUB simply recommends that the Commission take action in future dockets to reduce these subsidies – a position which Staff supports.

Inclusion of CUB's discussion of energy efficiency programs: CUB is not recommending that any changes be made to the Company's energy efficiency programs in the course of this docket. And, Staff does not state that CUB's proposal on energy efficiency is inconsistent with the Stipulation. What Staff does state is that CUB is trying to use discussions of energy efficiency to impede the implementation of seasonal rates.¹² But it was Staff who has stated that its proposed rate design is designed to encourage conservation. If that is true, CUB is entitled to examine this connection between the proposed rate design and energy conservation - many residential customers will need to

¹¹ Staff/300/Compton/2.

¹² [w]ith virtually everything but rate design having been settled, it would not seem appropriate to introduce an entirely new dimension to the general rate case and use it to impede due consideration of the proposed rate design reform in its own right (Staff/300/Compton/3).

access energy efficiency programs in order to take advantage of the proposed price signals.

CUB's is concerned that participation rates for Oregon-focused residential energy efficiency programs lag well behind participation rates for the Company's Idaho-focused residential energy efficiency programs.¹³ If Staff wants to use price signals to motivate customers to move away from refrigerated air conditioning, then Staff should not be surprised if CUB asks what energy efficiency programs are in place to help implement these pricing signals and how well they are advertized to residential customers. And, if CUB is opposing such rate design, CUB is doing so because, among other reasons outlined herein, there is an absence of good, well advertized, energy efficiency programs that would allow customers to react to the proposed price signals.

Given that the purpose of the proposed price signal is clearly related to energy conservation, CUB's recommendation on energy efficiency – that the Commission open a formal or informal investigation into Idaho Power's energy efficiency programs in Oregon – is not inconsistent with the settlement. This is particularly so because CUB has not proposed that this docket be delayed during the completion of the investigation. On the contrary, in regard to this docket, CUB simply and respectfully requests the Commission to reject the rate design portion of the Stipulation.

Staff's contention that CUB strayed outside the bounds of residential rate design by introducing a paper authored by Barbara Alexander: The paper in question addressed smart meters and time-of-use ratemaking. Staff complains that the paper "hardly" touches on seasonal rates. Staff is correct. Ms. Alexander's paper does not specifically address seasonal rates, but it does extensively address general principles of rate design.

¹³ CUB/200/Feighner/10.

CUB believes that Idaho Power Company’s request for seasonal rates should be put in the context of the necessary larger discussion of rate design. The Commission itself asked parties to address the issue of smart meters and rate design in UM 1415, and while that docket has avoided that discussion, CUB agrees with the Commission that we should be thinking about rate design in this general context.

C. Idaho Power’s testimony in relation to the scope of CUB’s testimony.

In its testimony, Idaho Power also contends that CUB’s testimony went beyond the scope of the Stipulation:

Q. Before addressing the specific issues, do you have any general observations about the CUB testimony?

A. Yes. It appears to me that much of the testimony submitted by Messrs. Jenks and Feighner is outside the scope of the issues identified by CUB to be addressed separately from the Stipulation and supporting testimony. On page 1 of the Stipulation, lines 17 through 19, “CUB objects only to the Residential Rate Design portions of this Stipulation and will file, on January 19, 2010, testimony only in opposition to the Residential Rate Design portion of the Stipulation.” However, much of Mr. Jenks’ response testimony goes far beyond this issue, to include long discussions on CUB’s historic opposition to various time and season-related pricing programs and advanced metering infrastructure (“AMI”), CUB’s dissatisfaction with the scope and direction of the UM 1415 proceeding and workshops, and CUB’s disappointment that it has no intervenor funding for its hoped-for expert witness, Ms. Alexander. Indeed, a significant portion of Mr. Jenks’ testimony appears to have been tailored to position CUB in *future* dockets, rather than to respond to the narrow issues presented by the residential rate design issue presented in *this* docket. In addition, both Mr. Jenks and Mr. Feighner devote a significant amount of testimony arguing about portions of the Stipulation to which they agreed—such as revenue allocation and certain rule changes.¹⁴

Idaho Power expresses concern that CUB has discussed historical dockets in order to make points for future dockets. CUB was discussing rate design. CUB did discuss how its position has evolved through a series of PUC cases over the years, and it did

¹⁴ Idaho Power/1400/Youngblood/2.

express its desire to bring a nationally-recognized witness to Oregon to discuss the implications of time-differentiated rates. In doing so, CUB used its best judgment to determine what would be relevant to the Commission in its review of seasonal rates in this docket. The Company may not agree with CUB’s view of rate design in general or its view of rate design in this docket. It is absurd, however, to claim that this docket presents only “narrow issues” of residential rate design. The scope of this docket includes all aspects of rate design. Rate design is not a narrow issue. The Commission recognized this when it opened UM 1415 to resolve the seasonal rate dispute that emerged in PGE’s last general rate case. CUB’s dispute with the Stipulation revolved around rate design, and all of the broader issues that Idaho Power complained about being included in CUB’s testimony are clearly related to rate design.

Finally, we note that Idaho Power claims that CUB devotes a significant portion of its testimony to arguing about portions of the Stipulation to which it agreed, such as revenue allocation and certain rule changes.¹⁵ With regard to revenue allocation, CUB does not argue against subsidizing irrigation customers in this docket. CUB supports protecting customers (of all classes, including residential) from rate shock. With regard to certain rule changes, CUB believes that the rule change related to the number of days within a billing cycle that is allowed without prorating rates is a rate design issue. CUB did not settle this issue and the Stipulation does not mention it, while the Stipulation does mention other rule change issues that were settled.¹⁶ Staff also discusses this issue. It is not one of the issues that Staff identifies as being outside of the scope this docket and the

¹⁵ *Ibid.*

¹⁶ Idaho Power Stipulation: UE 213 at 7.

discussions of rate design. Whether usage is prorated when a billing cycle is longer than 30 days is clearly a rate design issue.

III. Standard of Review: Who Bears the Burden of Proof?

In a rate case, the Commission has two responsibilities: first, determine how much revenue the utility is entitled to receive; and second, approve a rate spread and rate design that allocates the revenue requirement among the utility's customers. *See, In the Matter of NW Natural*, UG 132 Order No. 99-697 at 3 (citing *American Can v. Lobdell*, 55 Or App 451, 454-55 (1982)).

During the first phase, the revenue requirement phase, we examine (a) the utility's rate base, or value of the utility's property used and useful in the rendition of service; (b) its annual gross operating revenues; (c) its annual operating expenses and costs; and (d) an appropriate rate of return. *See Pacific NW Bell v. Sabin*, 21 Or App 200, 205 (1975).

In the second phase, the rate spread and rate design phase, we rely on these determinations made in the revenue requirement phase and allocate the revenue requirement among the utility's customer classes and design rates within classes. *See Order No. 01-787 at 5.*

The applicant utility bears the burden of proof on all issues in its rate case: "the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable." ORS 757.210. The utility must first submit evidence to prove its case, then the burden of production shifts to parties that oppose the utility's proposal. *See Order No. 99-697 at 3.* The Commission considers the evidence on the whole to determine whether the utility has proven that its proposed revenue requirement and rates are reasonable.¹⁷

Idaho Power bears the burden of proof to show that its rates are just and reasonable – this includes rate design.

[U]nder ORS 757.210, the burden of showing that the proposed rate is just and reasonable is borne by the utility throughout the proceeding. Thus, if PGE makes a proposed change that is disputed by another party, PGE still has the burden to show, by a preponderance of the evidence, that the change is just and reasonable. If it fails to meet that burden, either because the opposing party presented compelling evidence in opposition to the

¹⁷ UE 167 Order No. 05-871 at 2.

proposal, or because PGE failed to present compelling information in the first place, then PGE does not prevail.¹⁸

It is not CUB's role to prove that the proposed rate design is unreasonable or imprudent; it is Idaho Power's role to show that the proposed rate design is reasonable and prudent. Ultimately, the Commission must be convinced that Idaho Power has carried the burden of proving why its proposal is reasonable and prudent. The Commission is responsible for ensuring that Idaho Power's customers are charged just and reasonable rates.¹⁹ As the PUC has noted previously:

the validity of the determined rates rests on the reasonableness of the overall rates, not the theories or methodologies used or individual decisions made. As the United States Supreme Court explained in *Hope*, if the total effect of the rate order is not unjust and unreasonable, “[t]he fact that the method employed to reach that result may contain infirmities is not then important.”²⁰

In short, as the courts have previously noted, ratemaking is, and should be, a holistic process, focused on the reasonableness of overall rates.²¹ Part of the Commission's evaluation of the reasonableness of rates is where the overall rate level creates rate shock and harms customers. This is the very reason that Idaho Power, Staff, and CUB support the subsidy to irrigation customers, which holds their overall class rate increase below 30 percent. It is also the reason that CUB supports a rate design that holds the overall class increase to residential customers below percent.

¹⁸ UE 115. Order No. 01-777 at 6 (Aug. 31, 2001).

¹⁹ ORS 756.040(1); Pacific Northwest Bell Tel. Co., 21 Or. App. At 213.

²⁰ DR 10. UE 88 & UM 989 at p. 7-8 citing to *Hope*, 320 US at 602. See also Morgan Stanley Capital Group, Inc. v. Public Util. Dst. No. 1 of Snohomish County, 554 US ___, 128 S Ct 2733, 2738, 171 L.Ed 2d 607 (2008)(“We have repeatedly emphasized that the Commission is not bound to any one ratemaking formula.”).

²¹ DR 10. UE 88 & 989 at p. 64.

IV. Argument – Disputed Issues Rate Design.

A. Introduction.

Idaho Power provides electric service to approximately 18,251 customers in the State of Oregon and approximately 483,195 total customers in its service territory.²² The Company's last Oregon general rate case was filed on September 21, 2004, with rates effective on August 8, 2005.²³ The current rate case filing was made on July 31, 2009. The current application requested a rate increase that would have provided for a base price increase of approximately \$7.3 million, or 22.6 percent on an Oregon jurisdictional basis.²⁴ CUB, Staff and OICIP reviewed the requested increase, engaged in discovery, held a settlement conference and subsequently entered into a Stipulation. The Stipulation, filed on December 17, 2009, reduced the requested increase to \$5 million, or an approximately 15.4 percent increase.²⁵ The Stipulation provided the Company with an ROE of 10.175 percent and an overall ROR of 8.061 percent.²⁶

In the Stipulation, CUB agreed that an increase in rates of this lesser amount was fair, just and reasonable in all respects other than those related to residential rate design.²⁷ CUB's agreement to settle the revenue requirement portion of the docket was based in part upon the long interval since the Company's last rate case filing and the significant capital investment in new resources made during the intervening time period.²⁸

Notwithstanding the large base rate increase set forth above, Staff and the Company have stated their preference for seasonal rates that further increase to as much as 35 percent for

²² Idaho Power Company's Pretrial Brief 1 lines 23-26.

²³ UE 167 Order No. 05-871; Advice No. 05-07 Supplemental Filing dated August 3, 2005.

²⁴ Stipulation at 2 lines 2-6.

²⁵ Stipulation at 2 lines 17-19.

²⁶ Stipulation at 3 lines 20-23.

²⁷ Stipulation at 3 lines 1-10.

²⁸ Joint Parties/100 at 2.

residential customers with air conditioning or other high summer usage. The seasonal rate structure would consist of two seasons, summer and non-summer, with summer rates being in effect from June 1 to August 31 each year. Rates will be charged in two tiers, with the first block covering the first 1,000 kWh of energy used per month, and the second block covering all energy used above 1,000 kWh each month. Rates for the non-summer period will be 6.0832 c/kWh in the first block and 6.99551 c/kWh in the second block, while rates for the summer period will be 6.0832c/kWh in the first block and 8.3123 c/kWh in the second block.²⁹

CUB's disagreement with the rate design portion of the Stipulation is based upon the fact that, notwithstanding the large 26 percent base rate increase set forth above, Staff and the Company want to add a seasonal rate increase of up to 35 percent for residential customers with refrigerated air conditioning or other high summer usage.³⁰ CUB's position is that the current rate design plus a 26 percent base increase is enough of a message to customers to encourage them to take whatever efficiency measures they can afford.

The proposal by Staff and Idaho Power Company (The Company) to implement a summer seasonal rate applicable to the summer tailblock (for the sole purpose of discouraging residential air conditioning usage) is a proposal that CUB cannot support.(citation omitted) Such a proposal is patently unfair to residential customers. The proposal would result in the Company sending price signals to winter-peaking residential customers during the summer peak, when at the same time the Company is protecting summer-peaking irrigation customers from receiving accurate price signals through imposition of a heavy subsidy levy on other customer classes for support of irrigation customers. The contrast between the price signals being sent to these two groups of customers is stunning and it undercuts the stated logic of the Staff and Idaho Power Company's proposal. Staff has stated that irrigators would suffer rate shock at increases above 27.96%, so what about this proposal's inequities and the

²⁹ CUB/200/Feighner/3; Staff/103/Compton/1.

³⁰ CUB/100/Jenks/8 lines 1 to 3.

rate shock that will be faced by winter-peaking residential customers if this proposal is implemented?

The proposal to require winter-peaking residential customers to pay higher summer rates is problematic for other reason too. Idaho Power Company is unable to isolate and bill for the summer season. Second, Idaho Power Company is asking to extend billing cycles to as long as 36 days. Third, it will be difficult for senior and low income customers to manage these higher rates – notwithstanding the current economic down turn – without the development of better energy efficiency programs. Fourth, the rate increase is not in fact related to actual costs incurred by Idaho Power Company during the months when bills would be affected. Fifth, there is a lack of evidence to show that imposing the proposed price signals on winter-peaking residential customers will be effective in reducing peak energy consumption. The question that needs to be addressed, therefore, is whether this seasonal rate proposal fits with the OPUC’s overall policy that balances the desire to send price signals with the need to protect vulnerable citizens.³¹

In summary, CUB’s position is: if Staff and the Company want to send price signals to residential customers to discourage the use of refrigerated air conditioning, isn’t the 26 percent basic rate increase all customers will receive sufficiently shocking to make this happen? Wouldn’t the additional increase associated with the implementation of seasonal rates (35 percent for a customer using 1,500 kWh in the summer) be considered rate shock, and thus not consistent with the OPUC’s policy that balances the desire to send price signals with the need to protect vulnerable citizens?³²

³¹ Response Testimony Objecting to the Stipulation of the Citizens’ Utility Board of Oregon - CUB/100 Jenks/1-2.

³² At Staff/300/Compton/8, Dr. Compton states that CUB has inaccurately portrayed his testimony by stating that he wants to curb refrigerated air condition use but he then goes on to state that “[w]hile I did focus on air conditioning (which is the primary contributor to the residential and commercial summer load peaks), the tail block would apply to all usage in excess of 1000 kWhs per month for residential customers.” He then added that “I went so far as to say that for “social equity” reasons, “cost-based prices” (as embodied in the residential summer tail block) should prevail “even if no one were to respond to them by altering behaviors.” See also page 31 of Dr. Compton’s Surrebuttal testimony at lines 3-15 Staff /300 Compton 31. CUB also notes that the phrase “refrigerated air conditioning” is used nine times in Dr. Compton’s rebuttal testimony. It seems clear to CUB that there was no mis-representation of Dr. Compton’s position.

B. Testimony filed in support of the Stipulation.

As noted above, in the Stipulation, the Parties, with the exception of CUB, agreed that the Company's proposed rate design should be adopted as modified therein. The specifics of the modified rate design proposal are as follows:

- a. The residential service charge should be increased to \$8.00 a month as opposed to the \$10.00 a month originally proposed by the Company;
- b. The upper end of the first residential usage block should be increased from 800 kWh to 1000 kWh, with the rate charged for the first block remaining the same throughout the year.
- c. The Small General Service (Schedule 7) energy rate inversion point should be elevated from 300 kWh to 500 kWh.

Joint testimony was filed in support of all issues in the Stipulation other than rate design and service quality. The Company chose not to file any additional testimony in support of its rate design position at that time. Staff, however, filed additional testimony in support of the proposed modified Residential Rate Design.

Staff opined that there were two primary purposes to rate design as it was applied to the residential customer class: one, the "recover[y of] the portion of the overall revenue requirement allocated to that class"; and two, "to provide a signal to customers regarding the costs they are imposing on the system as they consume the utility's output."³³ It is CUB's position that the rates imposed under the seasonal rate design portion of the Stipulation are unfair, unjust and unreasonable.

C. CUB's Response Testimony objecting to the Stipulation.

CUB filed Response Testimony Objecting to the Stipulation on January 19, 2010. CUB's Response testimony was divided into two sections, CUB/100 Jenks and CUB/200

³³ Staff/100 Compton at 7 - 8.

Feighner. Both sets of testimony are summarized below. We will begin with the testimony of Bob Jenks. Where the testimonies overlap significantly they will be combined in one argument.

TESTIMONY OF BOB JENKS

i. Poor economic conditions don't necessarily translate into logical energy efficiency capital investments.

CUB takes the position that “[e]lectric service is an essential service that is provided by a monopoly. . . . Customers have no choice as to the provider that sells them the electricity. If a customer does not like the cost, the pricing plans offered, or the perceived value, the customer cannot shop elsewhere due to the monopoly.”³⁴ Staff’s testimony, on the other hand, reflects the views of economists and not of average Oregon ratepayers. What Staff’s testimony does not reflect is any evidence to support its contention that budget-busting, belt-tightening, poor economic conditions cause residential home owners to make energy efficiency capital investments in response to price signals. It seems to CUB that in economic times like ours, customers likely cannot afford to make otherwise logical energy-saving (and thus bill-saving) efficiency improvements. Indeed, evidence from time-varying pricing pilots suggests that low-income customers do not respond to price signals, and that all customers respond better when they are provided enabling technology.³⁵

ii. The OPUC must consider rate design pursuant to its Consumer Protection Mission.

Both CUB and the OPUC have a consumer protection mission which requires them to carefully review rate design proposals to determine the impact they may have on

³⁴ CUB/100/Jenks/2 lines 3-15.

³⁵ CUB Exhibit 103, page 32-33.

individual customers – “the educated, the uneducated, the vulnerable and the oblivious – all of whom purchase this product out of necessity.”³⁶ Staff talks a great deal about the effect of this proposal on “average” customers, or on “most” customers, but CUB and the OPUC must be concerned about the effect on “all” customers, particularly vulnerable ones.

iii. Idaho Power’s Oregon energy efficiency programs are not robust enough to support tiered rates. In the right circumstances, energy efficiency programs should be a stronger focus than price signals.

“It is important . . . for . . . tiered rates to be linked with good energy efficiency programs and good energy audits. CUB’s examination of Idaho Power’s energy efficiency programs suggests that the residential energy efficiency programs available to customers may not be robust enough to support tiered rates in Oregon.”³⁷ Energy Efficiency Programs are discussed in greater detail in the section pertaining to Gordon Feighner’s testimony.

iv. College education makes a huge difference in customers’ ability to respond to price signals, with the bulk of savings coming from higher-income customers.

It is important to consider the impact of tiered rate programs on participants who do not alter their usage patterns. As Mr. Jenks asked in his testimony, “What are the bill impacts? Are people pushed into arrearage?”³⁸ Even if the programs are moving costs from one part of a year to another, as is done with seasonal rates, volatility in bills is a real problem for low-income households and others who live from paycheck to paycheck and have trouble handling unexpected bills. Since low-income customers are often the least able to understand and respond to price signals, and are the persons with the least

³⁶ CUB/100/Jenks/5-6.

³⁷ CUB/100/Jenks/12 lines 7-10.

³⁸ CUB/100/Jenks/14.

financial ability to make capital investments, price signals sent to them may only serve to further reduce their standards of living, and may fail to encourage changes in usage.³⁹

v. *The OPUC needs to fully review the matter of seasonal rates in a docket with provision for testimony and hearings so that it can make informed decisions on seasonal rates.*

CUB continues to believe that there is a need for a testimony-laden docket to explore the implications of time-varying rates before the State of Oregon embarks on a new adventure in pricing experiments.⁴⁰ There simply is insufficient evidence in this docket to support the application of seasonal rates to Idaho Power's Oregon residential customers. Idaho Power carries the burden to prove that the imposition of seasonal rates to residential customers will result in fair, just and reasonable rates, and it has failed to fulfill its obligation. CUB respectfully requests that the Commission order Staff to inform all interested Parties in future dockets as to Staff's intent to raise the issue of seasonal rates in those rate cases prior to the time scheduled for the prehearing conference.⁴¹ This prior warning will permit CUB to apply for intervenor funding to hire a national expert on these issues in the hope of providing the Commission with the record it needs to make informed decisions on rate design.⁴²

vi. *Oregon's regulatory policy regarding rate design – SB 1149.*

No energy utility regulated by the OPUC currently offers mandatory seasonal or time-of-use rates for residential customers.⁴³ This conforms to the OPUC policy of minimizing rate changes. Seasonal rates militate against this policy because they

³⁹ CUB/100/Jenks/16.

⁴⁰ CUB/100/Jenks/24 lines 5-7.

⁴¹ CUB/100/Jenks/25 lines 8-14.

⁴² CUB Exhibit 103, Smart Meters Real Time Pricing and Demand Response Programs: Implications for Low Income Electric Customers, Barbara Alexander, May 30, 2007, sets forth an article by the expert that CUB would hope to bring to testify in regard to seasonal rates.

⁴³ CUB/100/Jenks/26.

guarantee at least two rate changes per year.⁴⁴ CUB believes that SB 1149, which established Oregon's current electric energy policy, created choices such as a market option (time of use), but also mandated that customers continue to receive cost-of-service rates as opposed to market rates. A goal of aligning rates with marginal costs is a move away from the policy that SB 1149 established.⁴⁵

Also noted in Bob Jenks' testimony, Oregon utilities are required to offer equal pay plans that allow residential customers to spread their high winter heating bills or high summer cooling bills across the year to ease the difficulty of paying those bills.⁴⁶ The Commission has been a strong supporter of equal pay programs and regularly promotes them when there is a large increase in rates that may cause customers difficulty with their high heating and cooling bills. This case, with a residential rate increase of more than 26 percent, is exactly the kind of case that has led the Commission to promote equal pay.

But, as Bob Jenks states:

combining seasonal rates, which are designed to increase the price signals of seasonal heating and cooling, with equal pay which will by design reduce that price signal by spreading the impact of higher seasonal rates across the entire billing year, makes little sense. Seasonal rates and equal pay programs work at cross purposes.

So what should the commission do? It seems to CUB that in a situation where customers are already being hit with a 26 percent rate increase, it is more important to promote equal pay plans than it is to strive for stronger price signals which will take some consumers rates above a 35 percent increase.

⁴⁴ CUB/100/Jenks/26 lines 23-24.

⁴⁵ CUB/100/Jenks/28 lines 1-10.

⁴⁶ OAR 860-021-0414, Equal Payment Plans for residential Electric and gas service.

TESTIMONY OF GORDON FEIGNER

i. The irrigation subsidy.

The subsidization of irrigation customers stands in stark contrast to the need to send better price signals to residential customers. It is unfair to protect the set of customers who are making the largest contribution to summer peaks while pursuing other classes of customers who have a lower contribution to summer peaks.

Staff's first description of the irrigators' rate increase states that the "Irrigation Service (Schedule 24) . . . w[as] limited to an increase that would put them at 75% (rather than 100%) of their cost-of-service levels."⁴⁷ What this fails to spell out is that other customer classes must be subsidizing the irrigators so that they do not have to pay their fair share of the cost. In CUB Data Request Nos. 1 and 2, CUB asked questions in this regard and Staff responded as follows:

1. Staff/100/Compton/10 states that "If summer prices do not reflect that season's incremental cost allocation, customers in the other seasons will end up bearing some of the burden of the costs incurred to meet summer loads." Does Staff agree that since summer rates for irrigation customers do not reflect the incremental cost of service, customers in other classes and customers whose heavy-use periods do not occur during the summer are bearing some of the burden of the costs of irrigation service?

Response:

Yes, customers in all other schedules "are bearing some of the burden" of the costs of providing service to irrigation customers.⁴⁸

2. Staff/100/Compton/11 states that "It would be unfair in the current instance for the heavy winter users to have to subsidize heavy summer users." Does Staff believe that it is fair for other users to subsidize irrigation customers?

Response:

⁴⁷ Staff/100 Compton/5 lines 17-20.

⁴⁸ The Company disagrees with this statement, but it provides no evidence to support its position. Idaho Power/1500 Waites/5.

In this circumstance, yes, due to the offsetting consideration that basing the rate spread strictly on costs would have resulted in an “untenably high rate increase to the irrigation schedule.”⁴⁹

Now, if, as Staff describes, a social equity in ratemaking should refer to avoiding having some customer classes being subsidized by other customer classes, why are residential rate payers being forced to subsidize irrigation customers? Why are the customers who are “using electricity relatively more intensely in the low-cost winter season . . . subsidizing customers whose relatively greater concentration of use falls in the high-cost summer season”?⁵⁰

If, as Staff describes, “it would be unfair in the current instance for the heavy winter users to have to subsidize heavy summer users, whether or not the latter in fact reduced their demands appreciably in the face of higher, unsubsidized electric prices,”⁵¹ then why are winter-peaking residential customers now subsidizing summer-peaking irrigators?⁵² Under the new proposed rate structure, the residential customer class will be billed at 103 percent of the class’s cost of service. Irrigators are only paying 75 percent of the irrigation class’s cost of service. Thus, irrigators are being subsidized and their rate increase is capped at 27.96 percent,⁵³ whereas residential customers – who are themselves suffering an almost identical rate hike (26.3 percent) – are also subsidizing the irrigators. The Company’s Reply Testimony attempts to state that Oregon residential customers drive the summer-peak by arguing that they and the industrial customers contribute more

⁴⁹ CUB/Exhibit 102 Jenks 1-2.

⁵⁰ Staff/100/Compton/8-9; CUB Exhibit 102, page 14.

⁵¹ Staff/100/Compton/11 at 17-20.

⁵² See Figure 1. Monthly systemwide energy usage (kWh) by customer class, 2004-2008 CUB Confidential Exhibit 205.

⁵³ CUB/200 Feighner/2 lines 14-20.

to peak loads than the irrigators.⁵⁴ Gordon Feighner’s testimony shows that the additional load that residential users place on the system during the summer months is actually comparatively lower than at other times of the year.⁵⁵ CUB raises these issues in this case not to demand an increase in the irrigators’ rates, but to point out: a) that the stated logic for Staff and the Company’s treatment of residential customers is flawed, b) that a 26 percent increase in residential customer rates will produce rate shock which will be exacerbated by the addition of seasonal rates, and c) that subsidies should be reduced in other proceedings where rate shock is not implicated, such as the PCAM and the APCU.⁵⁶

Dr. Compton argues that without seasonal rates, winter-peaking residential customers will nevertheless be subsidizing some summer- peaking residential customers.⁵⁷ This may be true, but it is vastly different whether the winter-peaking residential class is subsidizing a few summer-peaking members of the same class or whether the winter-peaking residential class is being mandated to subsidize the entire summer-peaking irrigator class.

CUB also notes that due to the infrequency of Idaho Power rate cases, it is difficult to make progress towards subsidy reduction and actual cost-of-service pricing without causing rate shock. CUB is not interested in causing rate shock to other customer classes, and this is why CUB respectfully requests that the Commission direct Idaho Power to use

⁵⁴ Idaho Power/1500 Waites/3-4.

⁵⁵ CUB/200 Feighner/5.

⁵⁶ CUB/200 Feighner/3 at lines 9-16.

⁵⁷ “Yes, as a whole, the residential class is winter-peaking. And yes, according to the Stipulation in which CUB participated, the winter-peaking residential class, as a whole, will participate in the subsidizing of the summer-peaking agricultural class.” Staff/300 Compton 9-10.

rate increases and decreases associated with the APCU and PCAM as a way to unwind the irrigation subsidy.

ii. The new rates will not correspond to the marginal costs in the May/June period.

A further argument against Idaho Power's seasonal rate structure proposal, and the one that holds the most weight from a financial perspective, is the lack of a direct correlation between the tailblock price assessed and the marginal cost of service.⁵⁸ The energy cost figures for the residential customer class provided in Idaho Power/802/Tatum/6 (which Staff used to develop its marginal costs for rate design purposes) show that the Company's marginal energy costs for residential customers are higher in July (13.9 cents/kWh) and August (9.8 cent/kWh) than in other months. The Company's costs in June (4.3 cents/kWh) are actually below the annual average (6.69 cents/kWh) and below the marginal cost of energy in November (6.83 cents/kWh), December (7.31 cents/kWh) and January (7.21 cents/kWh).⁵⁹ This suggests that Idaho Power's position that seasonal rates are meant to reflect the Company's higher energy costs in the summer months is unsupportable. If June marginal energy costs are below the annual average and below several other months, then how can seasonal rates reflect the Company's higher energy costs in the summer months? Given that the stated goal of seasonal rates is to send price signals, the May and June tailblock should be below the annual average, not significantly above, and the winter tailblock should be higher.

⁵⁸ CUB/200 Feighner 7 lines 21-24.

⁵⁹ CUB/200/Feighner/8 lines 1-13. Even if the Company is correct about June, as stated in the testimony of Courtney Waites (Idaho Power/1500 Waites/4), the fact remains that November, December and January are all more expensive than June, and it is therefore inappropriate to apply seasonal rates to June.

It must also be noted that, for all the focus on setting the tailblock at the marginal cost of service, this does not reflect the actual rates that customers pay. As Idaho Power pointed out, in addition to these seasonal rates:

[t]he June 1 rate change to summer rates would coincide with Idaho Power’s Annual Power Cost Update (“APCU”) and Power Cost Adjustment Mechanism (“PCAM”) – both of which will change customers’ rates.⁶⁰

Customers do not pay the base rates that are determined in a general rate case.

Customers pay net rates that reflect base rates plus a series of adjustments. Idaho Power lists these adjustments:⁶¹

Schedule 55 -- Annual Power Cost Update

Schedule 56 – Power Cost Adjustment

Schedule 91 – Energy Efficiency Rider

Schedule 95 – Adjustment for Municipal Exactions

Schedule 98 – Residential and Small Farm Credit

Whether the tail block rate that customers actually pay after these adjustments in June, July or August is above or below marginal cost is unknown.

Given the above, if reducing peak energy usage is key to reining in marginal energy costs, it seems that some sort of time-sensitive demand-side management would be a much better fit than a structure that will affect nearly half of all residential ratepayers during the months of June, July and August, when they are already stressed from the base rate increase and power cost surcharge – *see section ix. below*. Instead, both the Company and Staff argue in favor of implementing seasonal rates on a schedule that fits with a nominal definition of the “summer” months, even though there is little empirical basis for

⁶⁰ Idaho Power/1500/Waites/14.

⁶¹ Idaho Power/1213/Youngblood/44.

such a major change in the Company's Oregon rate structure.⁶² CUB maintains that rates should remain consistent throughout the year, and that Idaho Power should increase its efforts to reduce peak demand through energy efficiency measures.⁶³

iii. Regional economics.

Eastern Oregon is one of the poorest regions of the state. Median household income in Ontario is \$35,661, well below the state median household income of \$50,166.⁶⁴ If anything, people there are likely more energy-conscious due to their lower budgets, but equally less likely to be able to take advantage of home improvement and energy efficiency programs. This makes Staff's already internally inconsistent statement even more astounding:

Because of the relatively low historic price of Idaho Power's electricity and its commensurately small portion of many households' budgets, it is true many electric customers seem to ignore the rates charged for that service. But that inattention is far from universal. As budgets tighten, households look for ways to cut their utility bills – by substituting more efficient appliances (including light bulbs), by making energy efficiency – promoting capital investments in their domiciles, etc. That kind of economizing behavior needs to be recognized and rewarded – in particular by not having electricity rates that are too low for the high-cost season.^{65,66}

So customers who, like many of the rest of us, are scraping by and trying to make any and all economies that they can make, should be rewarded by raising their rates exponentially?

⁶² “But yes, there is not perfect congruence between the highest cost months and the highest priced months . . .” Staff/300 Compton 12-13.

⁶³ CUB/200 Feighner/8 lines 14-22.

⁶⁴ CUB/200 Feighner/2; <http://www.city-data.com/city/Ontario-Oregon.html>.

⁶⁵ Staff/100/Compton/11.

⁶⁶ Staff's claim that the electricity bills of Idaho Power's are a “commensurately small portion of many households' budgets” is unfounded. Combining the median household income statistics CUB cited herein with the average annual revenue per customer from the OPUC's 2009 Oregon Utility Statistics Book shows that the average Ontario, Oregon household paid 2.4% of its income to Idaho Power, whereas the average households in PGE and Pacific Power service territory each paid 2.1% of their income towards electricity bills.

There is no evidence to support Staff's depiction of newer homes with gas heat and older homes with electric heat.⁶⁷ In Oregon, electricity is considered an essential service and is universally available, whereas natural gas is not considered essential and many rural communities do not have gas service. In Idaho Power's Oregon service territory, location has as much to do with whether a home has gas heat as the customer's income level and the build date of the house.

In Staff's Surrebuttal testimony at page 34, Staff makes the argument that Idaho Power customers should be happy because their rates are lower than those of PGE and PacifiCorp customers. This ignores the fact pointed out above that household income in Eastern Oregon is lower than in the rest of the state. Knowing your rates are less than those of other people in the state does not help you if your income is also less than their income. More importantly, a 26 percent rate hike is huge, regardless of the base rates before the increase.

In its Reply Testimony the Company discusses the efforts it makes to work with low-income customers and customers who may have other special needs.⁶⁸ CUB appreciates the Company's efforts in this regard. However, CUB's concern goes beyond the current efforts. CUB's point is that it is highly unlikely that either the Company's programs, the social service agency programs, or the charity programs with whom these low-income and special needs customers must deal with when they are unable to pay their electric and gas bills, will receive annual funding increases commensurate with the 26 percent rate hike that all these customers will face, let alone the 35 percent

⁶⁷ Staff/100 Compton 10.

⁶⁸ Idaho Power/1400/Youngblood/4-6.

summertime rate hike that some of these customers may face. With a burgeoning population requiring services, will there be enough resources to go around?

In its Reply Testimony the Company also attempts to bolster its arguments that equal-pay plans are not in conflict with its desire for the sending of accurate price signals. Recognizing that customers pay bills, not rates, means that equal pay plans reduce the price signals received by customers from seasonal rates. CUB's position remains that most customers look at the total sum and respond to the total sum, not to other figures, no matter how clearly these may be displayed in their bills.

iv. The dearth of evidence to support Staff's conclusion that seasonal rates reduce demand.

CUB's concern is that time-differentiated rates disproportionately affect disadvantaged customers. The PUC needs a broader docket to consider its policies with regard to this important issue. Docket UM 1415 was not successful in this regard.

Neither Idaho Power nor Staff has provided any empirical evidence that seasonal rates actually reduce average or peak energy consumption among residential customers.⁶⁹ A comparison of customers in Idaho who have seasonal rates and customers in Oregon who, at this time, do not have seasonal rates, shows only that Oregon customers use more energy in the winter and that seasonal rates do not have a significant impact on summer usage among Idaho customers.⁷⁰

⁶⁹ The Company in its Reply Testimony, Idaho Power/1500/Waites/10 states that the Company has “data supporting the fact that price increase will result in reduced usage.” But the Company does not then go on to supply the evidence choosing instead to quote Mr. Jenks. While Mr. Jenks appreciates the Company's faith in his accuracy the standard of review for this docket requires the Company to carry the burden of proof and to provide empirical evidence to support its positions. Again the Company has not met the burden of proof.

⁷⁰ CUB/200/Feighner/6 lines 1-15.

v. Idaho Power's energy efficiency programs in Oregon do not have participation rates equal to those in Idaho.

As Mr. Feighner testified, energy efficiency is a proven, cost-effective method for reducing both peak loads and overall demand. It is unfortunate, therefore, that while Idaho Power appears to have had a decent amount of success in implementing energy efficiency programs in its Idaho service territory, it has, achieved more limited results in its Oregon service territory. This is borne out by the roughly flat energy usage for Idaho Power's Oregon residential customers, whereas PGE and Idaho Power's Idaho residential customers have both managed to significantly reduce average consumption during the same period. Closer review shows that these results may indicate a lack of Company effort and expenditure on residential energy efficiency programs for Oregon, as the focus of the Company's energy efficiency programs is reducing the demand of the subsidized irrigator class.⁷¹

Mr. Feighner further testifies in CUB Exhibits 202 and 203 as to the amount of customer contributions made for energy efficiency programs, and then as to the amount spent on such programs by the Company. These exhibits show that in each of the past five years, Oregon residential customers have contributed roughly 35 percent of the total funds to Idaho Power's Oregon Energy Efficiency Rider (Rate Schedule 91). Of this contribution, only 16 percent has been spent by the Company on energy efficiency programs aimed at residential customers. This is a paltry return on investment for residential customers, and contrasts greatly with the return seen by irrigation customers. Irrigation customers have contributed only 7 percent of total funds over the life of the

⁷¹ CUB/200/Feighner/9 lines 1-16.

program, yet have received over 41 percent of the expenditures. Clearly this is another case of irrigation customers being the favored class.

Mr. Feighner next reviews the Company's energy efficiency programs that are underutilized in Oregon.⁷² As Mr. Feighner notes, CUB does not necessarily expect to see equal percentages of customers participating in all programs in the two jurisdictions, but the disparity in many programs far exceeds the ratio of Idaho to Oregon customers and suggests that the Company is not making the same effort to promote residential energy efficiency programs in Oregon as it does in Idaho.

In its Reply Testimony the Company attempts to refute Mr. Feighner's assessment of the participation rates and effort being put into administering its programs. The Company states that when estimating program participation, it assumes 5 percent of total program participants to be from Oregon.⁷³ This figure is an assumption, not proof. In fact, fewer than 5 percent of the Company's residential customers are Oregon customers. With only one in every thirty of the Company's residential customers located in Oregon, this means that less than 3.3 percent of Idaho Power customers are Oregon customers.⁷⁴ It is clear, therefore, that the Company is not achieving 5 percent participation from Oregon. The AC Cool Credit program is a case in point. Until 2008, no Oregon customers participated in this program. Today, the AC Cool Credit program has a participation rate of just over one percent among Oregon customers.⁷⁵

While tiered rates can make sense when combined with robust energy efficiency programs, the evidence in this docket suggests that residential energy efficiency programs

⁷² CUB/200 Feighner/11-12; CUB/Exhibit 204/1-3.

⁷³ Idaho Power/1500/Waites/10.

⁷⁴ CUB Exhibit 206, page 1.

⁷⁵ CUB Exhibit 204, page 1.

for Idaho Power’s Oregon customers lag behind those for Idaho Power’s Idaho customers. This would explain why Oregon residential usage remains flat, while Idaho’s is declining.⁷⁶

Staff may believe that summer tailblock rates will incent customers to make capital investments in energy efficiency as budgets tighten, but CUB does not. When customers are already in financial pain it is hard to see how causing customers even more financial pain will incent them to make capital investments in energy efficiency – those suffering the financial pain will, for that very reason, not have any money to invest in home energy efficiency upgrades.⁷⁷ It therefore makes more sense to improve Idaho Power’s residential energy efficiency programs and to provide customers the opportunity to reduce their usage. In this regard, CUB encourages the Commission to investigate Idaho Power’s residential energy efficiency programs in Oregon and to consider turning them over to the Energy Trust of Oregon (ETO), which already runs similar programs for Cascade Natural Gas in some of the same territory. CUB notes that the ETO is required to provide quarterly reports to the Commission, and is thus held accountable for the program results. At a minimum, if the Commission is not inclined to turn the programs over to the ETO, CUB respectfully requests that Idaho Power be subjected to an identical accountability structure for its programs as that of the ETO.⁷⁸

vi. Billing cycles for most customers do not correspond directly to the summer season dates.

“Even [c]ustomers who make the effort to try to understand the higher tailblock [rates] may believe that the high tailblock only applies to the

⁷⁶ CUB/200 Feighner/11 lines 13-16.

⁷⁷ CUB/200 Feighner/11.

⁷⁸ CUB/200 Feighner/12.

June through August usage . . . when in fact it also affects usage in May and September.”⁷⁹

Another consideration when implementing a seasonal rate structure is the timing of the billing cycle. Very few customers will have their billing cycles perfectly coincide with the June 1 through August 31 period that constitutes the summer seasonal rate period. In fact, the vast majority of customers will have the seasonal rate period spread across four billing cycles – May-June, June-July, July-August, and August-September. According to the current seasonal rate proposal, the May-June and August-September bills would be pro-rated to reflect the portion of the cycle that falls under the summer rate structure. Although this pro-rating formula is ostensibly fair, it does not include a weather adjustment and, therefore assumes that consumer behavior is, on average, the same across each day in the billing cycle.⁸⁰

CUB argues that a number of issues may arise due to these overlapping billing periods. For example, a customer may have a billing cycle that runs from May 25 to June 24. In the event of a heat wave that runs from May 28-31, this customer may be using energy at a rate considerably higher than normal to cool their home. Even though these customers will be told by Idaho Power that the summer billing cycle does not begin until June 1, the vast majority of customer billing cycles will include these four days in the “June” cycle. This is, as Mr. Feighner argues, inequitable to customers for two reasons: 1) customers are likely under the impression that May usage is strictly billed at non-summer rates, and 2) the Company will be collecting a premium on rates assessed outside of the summer period in which it is attempting to send price signals to reduce its peak loads.

⁷⁹ CUB/100/Jenks/5 lines 10-13.

⁸⁰ CUB/200 Feighner/13.

vii. Extending the length of the billing cycle will result in the overcharging some residential customers.

The situation described above may also be exacerbated by Idaho Power’s request to change the definition of a “Billing Period” in Rule B. Contrary to the Company’s Reply Testimony, CUB is not confused about the change in Rule B. The proposed change would mean that a normal billing period can range from 27 to 36 days. The change also includes a request that the Company not be made to prorate bills that are within this range.^{81,82}

Rule B currently defines a normal billing period as 30 days, but provides the Company with the flexibility to consider any period between 27 and 33 days to be a normal billing period. Idaho Power is seeking to extend this flexibility to make the normal billing period up to 36 days long without prorating any associated charges.⁸³ Extending the length of the billing cycle to allow up to 36 days without proration may cause some customers to be billed at the higher tailblock rate because of the billing cycle, and not because of the demand they have placed on the system. Staff acknowledges this issue, but still states that the solution to the problem is to allow the Company to prorate bills of this length. This statement ignores the fact that the Company is requesting that it not be required to prorate any bills that are up to 36 days in length. The potential then is for a customer to have what should normally be a 30-day billing cycle extended by an additional six days, increasing the length of the billing cycle by up to 20 percent.⁸⁴

⁸¹ Idaho Power/1500 Waites/11.

⁸² Idaho Power states that currently if the billing period exceeds 33 days the Service Charge, Basic Charge and Demand Charge are prorated to recognize the longer billing cycle. According to Idaho Power Company extending the normal billing period to 36 days will minimize the number of prorated bills, reduce customer dissatisfaction and reduce the number of phone call to the call center. Idaho Power/1200 Youngblood/6.

⁸³ CUB/200/Feighner/14 lines 1 to 7.

⁸⁴ CUB/200/Feighner/14 lines 7-10.

Staff acknowledges that the length of the billing cycle has an impact on seasonal rates, saying it “would obviously be unfair” to bill customers for usage above 1000 Kwh/month when that extra usage is caused by a billing cycle that is longer than one month.⁸⁵ Staff suggests that the solution is a “prorating protocol.” However, the purpose of the proposed rule change is to allow the Company not to prorate usage when a billing period is between 33 and 36 days long. The Company currently does prorate bills when the billing cycle exceeds 33 days. The simplest way to implement Staff’s suggestion is to reject the rule change and maintain the status quo. If, however, the Commission adopts the Company’s view, that when and how bills are prorated for billing cycles that are longer than one month is not a rate design issue, and has therefore already been settled in this docket, then it is impossible to adopt Staff’s suggestion regarding prorating.

CUB believes that the length of the billing cycle that is allowed without prorating is part of rate design, particularly when using inverted rates. The rates in this docket are designed to collect the specific revenue requirement that is allocated to the residential class, based on the agreed rate spread. To design rates that collect the spread of costs allocated to a customer class requires that the number of days in a billing cycle be considered. When using inverted rates, the class revenue collection changes depending on whether the billing cycle used is 30 days, 36 days or 45 days. If rate design means designing rates to collect the class revenue requirement, then the issue of prorating inverted rates when the billing cycle is longer than 30 days is clearly a rate design issue.

Indeed, the issue of the length of a billing cycle is not new. In UE 170, a PacifiCorp General Rate Case, CUB raised the issue of the length of the billing cycle, how this interacted with inverted rates, and the need to prorate bills which are longer than

⁸⁵ Staff/300/Compton/17 footnote 22.

a typical month. The issue in that docket was ultimately settled by stipulation. In its UE 170 Order, the Commission classified this part of the stipulation as “*Rate Spread/Rate Design*”, and since the issue is clearly not rate spread, it must therefore be rate design:

The signatories agreed to adopt CUB’s proposed bill proration method, which prorates residential bills based on the number of billing days in the meter read cycle. The proration provides a more equitable treatment of kWh allocation, so that customers with a longer billing cycle, particularly in the winter months, will not be penalized.⁸⁶

In the meantime, CUB respectfully requests that Rule B remain unchanged with regard to the definition of the length of the normal billing cycle. CUB further requests that if the Commission decides to grant Idaho Power’s request to lengthen the billing cycle, that the Commission also require the Company to prorate the tiered rates into daily rates that are then multiplied by the number of days in the billing cycle.

viii. The power cost surcharge.

As if the previously discussed 26 percent rate hike and even higher summer rate increase was not enough, there will also be an additional summer price spike in the form of the Annual Power Cost Update (power cost surcharge) that is added to bills each June.⁸⁷ The increase related to the June power cost surcharge is unknown at this time, but is anticipated to be in the region of 1.6490 cents per kWh for all customer classes.⁸⁸

ix. Simplicity and rate design.

In the Company’s Reply Testimony, Courtney Waites states agreement with the concept that “many customers prefer simplicity in pricing,” but then disagrees that the

⁸⁶ OPUC Order No. 05-1050, page 10.

⁸⁷ CUB respectfully requests the Commission to take Judicial Notice of the fact that there is already an Annual Power Cost update docket in progress – UE 214 and that a power cost surcharge is anticipated to result from that docket.

⁸⁸ First Revised Sheet No. 55-3; UE 214 Idaho Power Company Direct Testimony of Scott L. Wright October 19, 2009.

proposed Stipulated rate design is hard to understand.⁸⁹ Likewise, Dr. Compton, at pages 25 to 27 of his Surrebuttal Testimony, notes that the Oregon Commission has approved complex rate designs in the past. He is correct. The single person Commission that existed in 1985 did institute a very complex rate design for PGE customers.⁹⁰ This is the same Commissioner who introduced the unpopular scheme of local measured service for telephone customers.⁹¹ The following November, Oregonians voted overwhelmingly for a three person Commission.⁹²

CUB continues to advocate for simplicity of rate design.

V. The reasoning in the Commission's Order in UE 167 remains valid today.

This is not the first time that the Company has proposed the introduction of seasonal rates for its Oregon customers. In its 2004 application for a general rate increase, Idaho Power also proposed the implementation of seasonal rates.⁹³ CUB argued against such an imposition, and the Commission stated as follows:

Schedule 1: Seasonal Pricing

CUB challenges the company's proposed seasonal rate design for Schedule 1 residential customers. *See* CUB/100, Jenks-Brown/5-6. CUB asserts that residential customers' use peaks in the winter, not the summer, and those higher winter bills provide an incentive for conservation. *See id.* at 5-6. As a consequence, CUB is concerned that a higher rate for usage in the summer will seem to level out the customers' bill and will not provide an incentive to conserve energy. *See id.* at 6. Particularly in light of Idaho Power's argument that it needs to encourage conservation during summer months, CUB asserts that the proposed seasonal rates will not provide an incentive to residential customers to conserve energy in the summer. *See* CUB/200, Jenks-Brown/3.

⁸⁹ Idaho Power/1500 Waites/6.

⁹⁰ Staff/300/Compton/25

⁹¹ CUB/100/Jenks/17.

⁹² <http://www.puc.state.or.us/PUC/consumer/history.shtml>

⁹³ OPUC Order No. 05-871.

Idaho Power argues that generally higher prices will encourage conservation in the winter, and that the greater rate increase for electricity over 300 kWh will also discourage excessive energy use in summer. *See* IP/400, Pengilly/2. The company asserts that it “has seen no evidence to suggest that customers focus exclusively on the size of their bill and ignore changes in rates, or that higher summer rates will lessen the impact of winter bills. Rather, the Company’s experience is that customers respond to both bills *and* rates.” IP brief, 17 (June 13, 2005) (emphasis in original). Idaho Power further argues that conservation is not the only reason to implement seasonal rates; rate design should also link rates and expenses, reducing subsidies of one customer group by another. *See id.* at 18.

Staff agrees with CUB that a variable seasonal rate could be confusing to customers, and that a single rate will be more understandable. Generally, Staff supports rates that reflect the cost of service. *See* Staff brief, 18 (June 13, 2005). However, Staff asserts that a simpler, single rate “is of greater value than the potential benefits associated with lower use during the peak period.” *See id.* at 19. ORDER NO. 05-871 12

Conclusions regarding Schedule 1 Seasonal Pricing

Idaho Power is correct that CUB produces no evidence to prove customers will be less likely to respond to higher summer bills through block prices designed to provide conservation incentives. However, Idaho Power also presents no evidence to support its assertion to the contrary.⁹ In addition to mixed price signals and their effect on encouraging conservation, we are particularly concerned about the effect of new weighted summer rates on customers. At oral argument, the company was asked about the impact this rate design may have on different groups of residential customers. The company had no response or supporting data. Without more evidence in the record regarding the impact of higher summer rates on Oregon customers, we conclude that the proposed block rate design for residential customers is not just and reasonable and should not be approved.⁹⁴

Of particular note here is that Staff agreed with CUB in 2004-5 about the confusing effect of the imposition of seasonal rates. Also of note is that the Commission stated then that there was insufficient evidence regarding the impact on customers of the proposed rate design. CUB believes that there is no more evidence in the record today to support the requested rate design than there was in 2005. CUB respectfully requests that

⁹⁴ UE 167 Order No. 05-871 at 11-12.

the Commission find that the current proposed rate block rate design for residential customers is not fair, just, and reasonable, and that it should not be approved.

VI. CUB's Recommendations.

A. The Reasons For CUB's Recommendations.

In this Idaho Power rate case, residential customer bills will, on average, go up more than 26%, which is one of the largest price signals that this Commission has ever sent residential customers. This large increase in rates will cause a similarly large increase in bills. Customers who pay the bills will feel the impact⁹⁵

Notwithstanding the large base rate increase set forth above, Staff and the Company have stated their belief that customers with air conditioning receive an even greater increase.⁹⁶ Since “the microeconomic theory that supports seasonal rates would suggest that time-of-use rates are superior to seasonal rates”, and since docket UM 1415 has failed to identify an Oregon policy with regard to time-varying rates, CUB has significant fears that Staff and the Company’s proposal for seasonal rates in this docket is in fact the first step towards rates with greater volatility and unreasonable price signals.⁹⁷ CUB opposes the Staff and Company proposal and offers its own recommendation for a rate design with the goal of minimizing rate shock for customers.

B. CUB's Recommendations.

CUB makes the following recommendations, and respectfully requests that they be considered and adopted in resolution of this docket. CUB believes that all of these recommendations need to be addressed, because rate design in this docket is explicitly

⁹⁵ CUB/100/Jenks/7 lines 2-5.

⁹⁶ CUB/100/Jenks/8 lines 1 to 3.

⁹⁷ CUB/100 Jenks/6 lines 6 – 15.

interlinked with the desire to promote conservation, and rate design is also directly impacted by billing cycles.

i. The Commission should reject the staff rate design and instead maintain one rate structure for the entire year.

There is little evidence on the record to show that charging higher rates in the summer and lower rates during the rest of the year will yield significant benefits for Idaho Power customers. There is evidence, however, that the proposed rate design will increase the rate shock that is already inherent in a case with a 26.3 percent increase in residential rates. Additionally, there is evidence that this rate design will increase rate volatility, will guarantee that rates will go up at least once per year, will create confusion for customers whose billing periods do not line up with the high rate season, will potentially create hardship for customers who struggle with their bills, and will likely lead to overcharging customers who have billing periods that are longer than 31 days. For all of these reasons, CUB respectfully requests that the Commission reject the Staff and Company proposed rate design and instead maintain one rate structure for the entire year.

ii. The Commission should reject Idaho Power's proposal to raise the monthly residential base charge from \$5.25 to \$8.00. Instead, it should allow Idaho Power to increase the customer charge by \$1.25.⁹⁸

One of the mysteries in this case has been the purpose of raising the base charge for residential customers. If the Company and the Staff have an explicit goal of increasing price signals to residential customers, then increasing the base charge for residential customers runs counter to that goal. Instead, moving millions of dollars from variable rates to fixed monthly charges will actually reduce the price signals received by

⁹⁸ CUB/200/Feighner/16 mistakenly identified the current customer charge as \$4.50. The current residential customer charge is \$5.25.

customers. Increasing the base charge for residential customers will have a disproportionately high impact on customers with low monthly usage, who will receive rate increases that are significantly greater than the average customer. Because of the huge rate hike associated with this case, CUB believes that the best goal is to spread the increase out as equally as possible, so that few customers will receive increases that are much above 26.3 percent. To accomplish this objective, CUB respectfully requests that the Commission consider whether the increase to the base charge should be limited to \$1.25, which is a 24 percent increase.

iii. The Commission should adopt the following rate design for residential customers.

CUB recommends that Idaho Power maintain its current structure in rate design, with the first 300 kWh priced at one rate and the additional priced at a higher rate. CUB recommends that after raising the customer charge by \$1.25, the remaining revenue requirement should be spread so that both rate blocks receive the same percentage increase. CUB is not suggesting that it believes that this is an ideal structure, or that 300 kWh per month is the best place to tier the rates. CUB would generally support Staff's proposal to increase the separation point between tiers to 1000 kWh per month. However, because of the size of this increase, CUB believes it is more reasonable to spread the increase out in an equal manner to all customers. Changing the rate design from the current structure guarantees that some residential customers will see increases that are greater than 26.3 percent. CUB strongly recommends against this change and the consequent result.

CUB notes that on pages 20-22 of his Surrebuttal Testimony, Dr. Compton makes a long and involved argument mixing "averages," "majorities" and "means" to try to

show that fewer people will suffer rate shock under his proposed rate design than under CUB's proposed rate design. This misses the point of CUB's argument. CUB is concerned about the impact to all customers – those above average, those below average, and those at the mean. CUB's proposal is for a rate design where rates will go up by the same percentage for all customers (high and low use) for all seasons. This rate design will give each customer the same average increase, minimizing rate shock for all. Following CUB's proposal would mean that instead of some customers getting a 20 percent increase and others getting a 40 percent increase, everyone would get an approximately 26 percent increase.

CUB respectfully requests that a redesign of Idaho Power's rate structure be postponed until a time when it can be commenced and completed without significant rate shock.

iv. The Commission should open an investigation into Idaho Power's residential energy efficiency programs.

Idaho Power's per-capita residential load has remained essentially flat in its Oregon service territory over the past 25 years, whereas Idaho Power's Idaho service territory and PGE's service territory have seen significant reductions in per-capita usage. Idaho Power's participation rates for its residential energy efficiency programs in Oregon are below that of its programs in Idaho. Energy efficiency programs are critical to helping customers deal with costs that are increasing by 26.3 percent. These programs can also go a long way towards helping Idaho Power deal with its summer peaking costs.

CUB respectfully requests that the Commission launch an investigation, formal or informal, into Idaho Power's energy efficiency programs to determine if more can be done to help residential customers reduce their energy usage. Specifically, such an investigation should

look at the reasons for the disparity between Idaho customers' and Oregon customers' participation rates, should compare the results of Idaho Power's programs with the programs operated by the Energy Trust of Oregon (ETO) of other utilities, and should consider whether the current accountability structure is sufficient. If the ETO programs are found to produce superior results, then CUB respectfully requests that the Commission consider requiring Idaho Power to turn its programs over to the ETO, which is already operating Cascade Natural Gas Corporation's programs in this service territory.

v. The Commission should order Idaho Power to promote the option of Equal Pay to residential customers.

Typically, when rates are going up by more than 25 percent, the Commission and the utility will work together to ensure that customers are well-informed of their option to convert to equal pay plans, where the high cost of winter heating or summer cooling is spread throughout the year. Because such a program runs counter to Idaho Power's desire to send strong price signals in the summer, we are concerned that Idaho Power may not want to promote these programs.

CUB respectfully requests that the Commission's Order in this docket make clear that Idaho Power has a responsibility to help customers to manage the rate shock associated with these increases by promoting equal pay as an option for customers.

vi. The Commission should order that the APCU and PCAM be used to bring irrigation customers closer to their cost of service.

Irrigation customers are the primary source of Idaho Power's summer peak loads. One of the most troubling aspects of this case is, therefore, the different treatment that Idaho Power metes out to residential customers as compared to irrigation customers. If the Company seriously believes that price signals are an appropriate way to reduce

summer demand, then it is necessary for it to reduce the heavy subsidy provided to irrigation customers and to send stronger price signals to irrigation users.

Unfortunately, Idaho Power does not file rate cases in Oregon very often. In a docket like this one, where the overall rate increase is high, the Commission policy that protects customers against rate shock prevents the kind of rate hike that is necessary to bring irrigators up to their actual cost-of-service. The Company ignores this problem when, in its Reply Testimony, it advocates for discussion of these issues only in general rate cases.⁹⁹ CUB notes the opposition of the Company in this docket to the use of other types of rate proceedings to promote reduction of the irrigation subsidy (APCU, PCAM etc.). For all practical purposes, if the reductions cannot happen in a general rate case because of the Company's infrequent filings, then the Commission has no choice but to consider these other rate proceedings as opportunities to make this necessary change.

Throughout most of the 1990s, residential customers regularly received an increase of two or three times greater than the system average in order to bring them closer to their actual cost-of-service. In this case, the Company and Staff have stated that such a practice is not possible without creating rate shock for irrigators. CUB is not arguing here that irrigators should receive a larger increase. CUB agrees with the Commission policy that works to avoid rate shock to any class of customers. However, the infrequency of Idaho Power's rate cases, coupled with the large size of the consequent rate hikes, results in a policy that continually locks in the status quo subsidies to irrigators and prevents significant policy changes during rate cases.

Based upon the above, CUB respectfully requests that the Commission order that the PCAM and APCU be used to move towards a fairer allocation of costs between

⁹⁹ Idaho Power/1400 Youngblood/6-7.

classes of customers. CUB requests that the Commission order that when these power cost mechanisms produce a decrease in rates, that decrease should only go to customers who are paying more than 90% of their class cost of service. Conversely, when these mechanisms produce a rate increase, if the increase is less than 10%, customers whose rates are paying less than 90% of their class cost of service would get two times the overall increase. The Commission could then take the excess amount created by increasing the rate hike or avoiding the refund and spread it to other classes in proportion to the subsidy that they previously paid to irrigators.

VII. Conclusion.

CUB believes that the seasonal rate structure proposed in this case will result in confusion and additional rate shock for residential customers, and may not function to reduce peak loads as much as the Company is likely anticipating. CUB instead argues for making energy efficiency programs a much more integral part of Idaho Power's load management strategy in Oregon.

CUB does not understand the Staff desire to institute seasonal rates for residential customers on top of the huge increase in rates that residential customers will already receive. CUB's confusion emanates from prior statements by Staff to the effect that the threshold for rate shock for irrigation customers is 27.96 %. If Staff believes that rate shock for irrigation customers begins at 27.96% then how can Staff design a seasonal rate structure for residential customers that will cause rate shock to residential customers who use more than 1000 kWh/month in the summer? Customers' bills, not their rates, are the primary price signal. With a 26.3% price increase, residential customers are already receiving one heck of a price signal without the institution of seasonal rates.¹⁰⁰

The Company argues in its Reply Testimony that CUB "is promoting short-term goals at the expense of long-term thinking."¹⁰¹ CUB does not dispute that its focus in this docket has a short-term component. CUB is very concerned that in the short term all customers are receiving a 26 percent rate increase and that some customers' increases may amount to 35 percent. But

¹⁰⁰ CUB/200/Feighner/4 at lines 1-15.

¹⁰¹ Idaho Power/1400/Youngblood/3 -4.

CUB's short term thinking is not made at the expense of long-term thinking; CUB believes that preventing harm to customers in the short term is good policy for the long term. The problem is that Staff and the Company want to impose an immediate seasonal rate increase today without first laying the ground work to provide evidence that such a seasonal change is both necessary and beneficial. The Company has the burden of proof – CUB's brief demonstrates that the Company has failed to carry its burden.

A rate hike of more than 26 percent for residential customers will create considerable rate shock and hardship. CUB finds the contradiction between the treatment of irrigation customers and residential customers in this case to be unfair. In addition, CUB is concerned about whether this proposal is the best way to promote energy efficiency.¹⁰² CUB respectfully requests that the Commission deny the Company's proposal for rate design and instead implement the recommendations submitted by CUB.

Respectfully Submitted,



February 3, 2010
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¹⁰² CUB/200/Feighner/2 lines 3-12.

UE 213 – CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of February, 2010, I served the foregoing **BRIEF OF THE OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UE 213 upon each party listed in the UE 213 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending an original and 5 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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