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VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
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Re: **UE 233 – Idaho Power Company's Application for Authority to Increase its Rates and Charges for Electric Service to its Customers in the State of Oregon**

Attention Filing Center:

Enclosed for filing in Docket UE 233 is an original five copies of Idaho Power Company's Opening Brief.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached Certificate of Service.

Please contact me with any questions.

Very truly yours,

Wendy McIndoo

Wendy McIndoo
Office Manager

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cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 233

In the Matter of IDAHO POWER COMPANY Request for General Rate Revision.	**IDAHO POWER COMPANY'S OPENING BRIEF**

I. INTRODUCTION

Pursuant to the Prehearing Conference Memorandum and Ruling of Chief Administrative Law Judge ("ALJ") Michael Grant, issued on May 21, 2013, Idaho Power Company ("Idaho Power" or "Company") submits this Opening Brief to the Public Utility Commission of Oregon ("Commission").

The Commission reopened UE 233 to address a single issue—Idaho Power's earnings and the proper ratemaking treatment of the tax benefits that were the subject of Dockets UM 1562 and 1582.[1] As demonstrated by the Stipulated Facts and the record from UM 1562 and UM 1582,[2] the Company's earnings during the relevant time periods were unreasonably low, even if the Company includes in its earnings the tax benefits at issue here. Therefore, the Commission should deny the application for amortization filed

[1] *Re Idaho Power Company*, Dockets UM 1562, UM 1582, Order No. 13-160 at 9 (Apr. 30, 2013).

[2] The Commission has taken official notice of the record from Dockets UM 1562 and 1582. *Re Idaho Power Company*, Docket UE 233, Prehearing Conference Memorandum at 2 (May 21, 2013). All of the testimonial citations in this brief are to testimony that was filed in UM 1562 and UM 1582.

by the Citizens' Utility Board of Oregon ("CUB") and the Oregon Industrial Customers of Idaho Power ("OICIP") on February 23, 2012, in UM 1582.[3]

II. BACKGROUND

This case arises due to two different income tax accounting method changes made by Idaho Power in its 2009 federal tax return that resulted in Idaho Power receiving certain one-time benefits. These two tax method changes concern the capitalization of overhead costs to utility property produced ("UNICAP"), and the deduction of repair costs that have been capitalized to utility assets ("Repairs"). The tax benefits represent the cumulative recalculation of the Company's taxes going back to 1987 for UNICAP and 1999 for Repairs and were calculated as if the Company had been employing the new methods all along.[4] The changes are unrelated to one another, except that they both occurred relatively close in time.

A. The UNICAP Tax Method Change.

The UNICAP tax method change relates to the capitalization of overhead costs to utility property. After reaching agreement with the Internal Revenue Service ("IRS"), Idaho Power was first allowed to use the new UNICAP method in its 2009 federal income tax return, which was filed in September 2010.[5] The one-time UNICAP tax benefit was created by the cumulative net "catch-up" adjustment produced by applying the new UNICAP method to prior tax years 1987-2008 and 2009, the year of change.[6]

The purpose of the UNICAP adjustment is to compute the net cumulative result to taxable income as if the new method had been available to the taxpayer in prior years,

[3] The application was referred to as an Application for Deferral of Tax Benefits Recognized by Idaho Power Company. However, in Order No. 13-160 the Commission concluded that the application is in fact one to designate amounts subject to amortization.

[4] Idaho Power/200, Marchioro/4, ll. 14-15 and 7, ll. 23-24.

[5] Idaho Power/200, Marchioro/3, ll. 23-25.

[6] Idaho Power/200, Marchioro/4, ll. 14-16.

which is referred to as the "look-back" period.[7] The adjustment is an administratively practical way to determine the income tax effects without requiring Idaho Power to go back and amend each of the tax returns from the look-back period.[8] In other words, the adjustment represents the cumulative deduction amounts that the Company would have claimed in each of the specific tax years had Idaho Power been using the new UNICAP method in the first instance. Accordingly, it is possible to determine what portion of the one-time income tax benefit recorded in 2010 was properly attributable to each of the recalculated tax years.[9] Attachment 1 to the Stipulated Facts details the allocation of the one-time tax benefits to each of the prior years in the look-back period.[10]

The on-going tax benefits associated with the UNICAP method change is reflected in current customer rates and will be included in the Company's forecast tax expenses in future rates cases and will provide greater tax benefits to Idaho Power's customers and shareholders than did its prior method.[11]

B. The Repairs Tax Method Change.

The Repairs tax method change relates to capitalized repairs, which are expenditures related to utility assets that are capitalized for financial accounting purposes that are currently deductible for income tax purposes.[12] Idaho Power included the Repairs method change application (Form 3115) in its 2009 federal income tax return, which was filed in September 2010.[13]

[7] Idaho Power/200, Marchioro/4, ll. 20-22.

[8] Idaho Power/200, Marchioro/4, ll. 22-25.

[9] Idaho Power/200, Marchioro/5, ll. 3-9.

[10] *See also,* Idaho Power/201.

[11] Idaho Power/200, Marchioro/12, ll. 22-23.

[12] Idaho Power/200, Marchioro/6, ll. 12-14.

[13] Idaho Power/200, Marchioro/7, ll. 4-13.

Like the UNICAP method change, the one-time Repairs method change tax benefit was created by applying the new Repairs method to prior years in order to produce the cumulative net "catch up" adjustment.[14] The Repairs method change applied only to prior years 1999-2008 and 2009, the year of change.[15] The purpose behind the Repairs adjustment followed the same principles previously described for the UNICAP method change. Attachment 1 to the Stipulated Facts also shows the allocation of the one-time Repairs method change tax benefit to prior years during the look-back period.[16]

Similar to the UNICAP method change, the Repairs method change is reflected in current customer rates and will provide ongoing customers benefits in the form of reduced tax expenses in future rate cases.[17]

C. Earnings Impact of the UNICAP and Repairs Method Changes.

The UNICAP and Repairs are flow-through differences.[18] Thus, because both method changes resulted in a tax deduction, a flow-through tax benefit was created for each method.[19] These benefits reduced Idaho Power's financial accounting income tax

[14] Idaho Power/200, Marchioro/7, ll. 23-24.

[15] Idaho Power/200, Marchioro/7, ll. 23-24.

[16] *See also,* Idaho Power/201.

[17] Stipulated Facts ¶ 8.

[18] Idaho Power/200, Marchioro/9, ll. 18-22. As described in Mr. Marchioro's testimony: "For regulatory accounting purposes, Idaho Power is authorized to use the "flow-through" method of accounting for income taxes. Flow-through accounting allows the current tax benefit or expense of a temporary book-to-tax difference to impact income tax expense. Under Generally Accepted Accounting Principles ("GAAP"), a deferred tax is created for temporary differences thereby offsetting any current tax impacts; this is known as the "normalization" method. Thus, the flow-through method can increase or decrease financial accounting income tax expense, whereas the normalized method has no impact to income tax expense. Idaho Power applies the flow-through method to utility plant-related tax adjustments unless normalization is required by federal income tax law, such as with accelerated tax depreciation and Contributions in Aid of Construction ("CIAC"). UNICAP and Repairs are considered flow-through differences. Being that both method change adjustments resulted in current tax deductions, a flow-through income tax benefit for each method was created. These benefits thus reduced Idaho Power's financial accounting income tax expense in 2010 and 2011, albeit related to the 2009 tax year." Idaho Power/200, Marchioro/9, ll. 8-22.

[19] Idaho Power/200, Marchioro/9, ll. 18-22.

expense in 2010 and 2011, albeit related to the 2009 tax year.[20] With respect to the UNICAP tax method change, the Company recorded the benefit associated with the cumulative method change adjustment for financial accounting in 2010; however, the benefit was not fully recognized until 2011 when the U.S. Congress Joint Committee on Taxation approved the Company's 2009 tax return.[21] For the Repairs method change, the Company recorded the estimated tax benefit for the cumulative method change adjustment in the second quarter 2010.[22] The actual benefit amount was finalized upon the filing of the Company's 2009 tax return, which occurred in September 2010.[23]

III. ARGUMENT

A. The ORS 757.259(5) Earnings Review Supports Denial of the Requested Amortization.

Before amounts can be amortized under ORS 757.259(1)(a)(A), the Commission must conduct an earnings review. ORS 757.259(5) states that "amounts described in this section [ORS 757.259] shall be allowed in rates . . . upon review of the utility's earnings at the time of application to amortize the deferral." The earnings review is intended "to determine whether the utility could have absorbed some or all of the deferred amounts" and still have earned a reasonable rate of return.[24] The Commission will review the utility's earnings during the deferral period and its return on equity ("ROE") to decide whether the utility could have absorbed some or all of the deferral.[25] If the utility cannot absorb the deferral and maintain a reasonable ROE, then the Commission will allow

[20] Idaho Power/200, Marchioro/9, ll. 18-22.

[21] Idaho Power/200, Marchioro/5, ll. 22-26 and 6, ll. 1-8.

[22] Idaho Power/200, Marchioro/8, ll. 13-16.

[23] Idaho Power/200, Marchioro/8, ll. 16-26 and 9, ll. 1-5.

[24] *Re PacifiCorp*, Dockets UE 121/UM 995, Order No. 02-410, 2002 WL 1773021 at * 6 (June 20, 2002).

[25] *Id.*

amortization of the deferral.[26] Notably, the earnings review is designed to protect both customers and the Company. As explained by the Commission, "[a]n earnings test serves to protect customers from paying higher-than-expected . . . costs when the utility's earnings are reasonable, while it protects the Company from refunding . . . cost savings when it is under-earning."[27]

1. The Tax Years in the Look-Back Period (1987-2009) are the Appropriate Years for the Earnings Review.

When performing the earnings review, the Commission "reviews the utility's earnings during the deferral period, or a period reasonably representative of the deferral period."[28] In this case, the Commission found that there was no deferral period.[29] However, the benefits received by Idaho Power due to the changing tax methods are related to the years 1987 through 2009. The tax benefits are the result of the Company recalculating its past taxes as if it had been using the new tax methods in the first instance.[30] Recalculating these taxes allows the Company to capture the benefits in an administratively efficient manner without having to go back and amend all its prior tax returns.[31] Therefore, both Idaho Power and Staff agree that this is the relevant time period for the earnings review.[32] The Commission's rationale used to determine the appropriate earnings review period for deferrals under ORS 757.259(2) supports the use of 1987

[26] *Id.*

[27] *Re Portland General Electric Co.*, Dockets UE 180/UE 181/UE 184, Order No. 07-015 at 26 (Jan. 12, 2007).

[28] *Re PacifiCorp's Request for Approval to Continue Amortizing Deferred Power Costs Under Schedule 94*, Dockets UE 121 and UM 995, Order No. 02-272 (Apr. 18, 2002).

[29] In Order No. 13-160 the Commission concluded that there was no need to defer amounts under ORS 757.259(1)(a)(A) because that provision allows amortization without deferral.

[30] Idaho Power/200, Marchioro/4, ll. 14-25, 7, ll. 23-24.

[31] Idaho Power/200, Marchioro/4, ll. 23-25.

[32] Idaho Power/100, Said/7, ll. 2-15; Staff/100, Garcia/5, l. 15 – 6, l 1.

through 2009 because that inquiry will inform the Commission whether Idaho Power's earnings would have been reasonable if the Company had employed the new tax methods in the first instance.[33]

In a docket involving the appropriate treatment of a tax refund related to prior periods the Commission explicitly removed the refund from the earnings in the year it was received because it related to prior periods.[34] At issue in Docket UM 903 was the appropriate treatment in an earnings review of a tax refund that NW Natural received in 2010 but that related to tax overpayments made from 2002 to 2009. Staff, CUB, and the Northwest Industrial Gas Users argued that because the refund was received in 2010 and the benefit of the refund was recognized in NW Natural's 2010 IRS and Securities and Exchange Commission filings, the refund must be included for purposes of the earnings review required by OAR 860-022-0070(4). The Commission rejected this analysis because the tax refund was an entry related to prior period activity.[35] The Commission noted that it "considered the matter closely, and [found] no rationale supporting the case that the refund is not an entry related to activity from prior years."[36] Likewise, in this case, the tax benefits relate to prior periods and therefore the earnings review should properly examine those prior periods to determine if the Company was able to earn a reasonable ROE with the tax benefits it would have recorded had it used the current methods.

[33] Order No. 02-410, 2002 WL 1773021 at *3 (earnings review intended to determine whether the utility could absorb the deferred amounts (or refund the deferred amounts) during the deferral period while still maintaining a reasonable return on equity).

[34] *Re Northwest Natural Gas Company*, Docket UM 903, Order No. 11-365 (Sept. 22, 2011).

[35] Order No. 11-365 at 4.

[36] *Id.*

CUB argues that the appropriate period for the earnings review is 2011[37] because that is when the Company's 2009 tax return was approved and the uncertain tax positions on the Company's books were reversed.[38] However, this argument is inconsistent with Commission precedent because the tax benefits related to prior tax years, even though it was recorded to Idaho Power's earnings in 2010 and 2011, consistent with Generally Accepted Accounting Principles. Indeed, none of the one-time tax benefits recorded related to the Company's 2010 or 2011 tax years. Therefore, consistency with Commission precedent requires that the earnings review examine 1987 to 2009.[39]

2. The Company's Earnings during the Relevant Periods Were Significantly Lower that its Authorized ROE.

To conduct the earnings review the Commission examines the adjusted actual earnings of the utility during the deferral period to determine if the actual ROE is reasonable.[40] The record in this case makes clear that during the look-back period, the Company's earnings, *even considered with the inclusion of the tax benefits,* were unreasonably low. Indeed, the Company failed to earn its authorized ROE by an average margin of 412 basis points during the 1987-2009 look-back period.[41] In fact, there is only

[37] Idaho Power has already prepared a Type 1 ROE for 2011 that was approved for earnings review purposes by the Commission in the annual Power Cost Adjustment Mechanism ("PCAM") in UE 247, Idaho Power, Staff and CUB agreed that the application of the earnings review was correctly applied, *i.e.*, the Company's 2011 Type-1 earnings were within 100 basis points of its authorized ROE for that year, so $0.00 would be added to the True-Up balancing account. This stipulated agreement was approved by the Commission in Order No. 12-191.

[38] CUB/200, Jenks-Feighner/16, ll. 8-12.

[39] Order No. 11-365 at 4.

[40] Order No. 02-410, 2002 WL 1773021 at *3; *Re Portland Gen. Elec. Co. Application for an Order Approving Deferral of Costs*, Dockets UM 445 and UE 82, Order No. 93-257 at 7 (Feb. 22, 1993); *Re Portland Gen. Elec. Co. Application to Amortize the Boardman Deferral*, Docket UE 196, Order No. 10-051 at 6 (Feb. 2, 2011).

[41] Stipulated Facts, Attachment 1.

one year when the Company's earnings exceeded its authorized ROE and the tax benefits attributable to that one year are only 4.96 percent of the total tax benefit.[42]

Moreover, for the tax years to which the majority of the refund is associated, the Company's earnings were the worst.[43] Ninety-two percent of the tax benefit is attributed to 1999 to 2009 and during that time period the Company's average ROE, including the tax benefit, was 590 basis points below its authorized ROE.[44]

This level of under-earning is well below levels the Commission has previously concluded are unreasonable for purposes of an earnings review.[45] Thus, both Idaho Power and Staff agree that Idaho Power's earning were unreasonably low during this period and "requiring it to pass refunds for the period onto customers would be unfair to the utility."[46]

Importantly, the fact that the Company under-earned and the level of under-earning during these years is not disputed.[47]

OICIP argues that under-earning by up to 255 basis points is reasonable because "a range of reasonableness for return on equity presented to the Commission for their deliberations [in UE 233 was] 255 basis points."[48] To reach this conclusion Dr. Reading noted that the witnesses in UE 233 proposed a reasonable range of ROEs from 9.0 to 11.55 percent. This argument is unpersuasive for several reasons.

[42] Stipulated Facts, Attachment 1.

[43] Stipulated Facts, Attachment 1.

[44] Stipulated Facts, Attachment 1.

[45] *See e.g.*, Order No. 07-015 at 26 (earnings are unreasonable when 100 basis points less than authorized ROE); *Re Idaho Power Co.*, Docket UE 195, Order No. 08-238 at 3 (Apr. 28, 2008) (earnings are unreasonable when 100 basis points less than authorized ROE); *Re Avista Corp.*, Docket UG 176/UM 1279, Order No. 06-610 (Oct. 30, 2006) (earnings are unreasonable when 200 basis points less than authorized ROE).

[46] Staff/100, Garcia/8, ll. 6-8; Idaho Power/100, Said/10, ll. 4-10.

[47] Stipulated Facts, Attachment 1; CUB/200, Jenks-Feighner/9, ll. 18-19.

[48] OICIP/100, Reading/9, ll. 6-11.

First, this argument is rests solely on the fact that 255 basis points represents the spread of recommendations for return on equity made in Idaho Power's most recent rate case—and the intended implication that *any* return on equity recommended by a party in a rate proceeding is *per se* reasonable.[49] This position is completely without merit. The Commission has *never* assumed that the range of proposals for return on equity recommended by parties to a rate proceeding represents some kind of a "range of reasonableness."[50] And it has certainly never suggested that these proposals should be relied upon in conducting earnings reviews under ORS 757.259(5). Moreover, it is worth noting that in UE 233, both CUB and OICIP argued that the Company's recommended return on equity was unreasonable and should be rejected.[51] So, it is curious that these parties should now suggest that any party's recommended return on equity should be relied upon in this case to establish the range of reasonableness.[52] Even more importantly, as discussed above, this position is decidedly out of step with the Commission's established precedents, wherein the Commission has consistently found that earnings are unreasonable when they are less than 255 basis points below the

[49] *Re Idaho Power Company*, Docket UE 233, Order No. 12-055 (Feb. 23, 2012) (case resolved by stipulation so Commission never determine range of reasonable ROE).

[50] *See e.g., Re PacifiCorp*, Docket UE 116, Order No. 01-787 at 34 (Sept. 7, 2001) (range of reasonable ROE is 10.5 to 11 percent even though parties' recommendations ranged from 6.6 to 11.5 percent); *Re Portland General Electric Co.*, Docket UE 115, Order No. 01-777 at 36 (Aug. 31, 2001)(range of reasonable ROE is 10.53 to 10.95 percent even though parties' recommendations ranged from 6.6 to 12.8 percent).

[51] *See, Re Idaho Power Company*, Docket UE 233, CUB/100, Feighner-Jenks/14 (Dec. 7, 2011); *Re Idaho Power Company*, Docket UE 233, OICIP/100, Reading/7-8 (Dec. 7, 2011).

[52] OICIP's analysis is also flawed because it fails to consider the actual stipulated ROE from UE 233. In UE 233 the stipulation approved by the Commission included an ROE of 9.9 percent. *Re Idaho Power Company*, Docket UE 233, Order No. 12-055 (Feb. 23, 2012). Using Dr. Reading's analysis, the lower end of the range of reasonable ROEs was 9.0 percent. Therefore, if the Company were under-earning by more than 90 basis points, by Dr. Reading's analysis, it would be outside the range of reasonableness. Here, the Company was under-earning by 412 basis points.

authorized rate of return.[53] Indeed, OICIP identifies not a single case where the Commission determined that earnings were reasonable when they were 255 basis points below the authorized ROE.

Second, the Company's earnings here were on average 412 basis points less than the Company's authorized ROE, which exceeds Dr. Reading's proposed 255 basis point range. So even if the Commission agrees that under-earning by 255 basis points is reasonable, the Company still did not earn a reasonable return.

Third, even if Dr. Reading's method for determining the range of reasonable ROEs is accepted, his analysis actually demonstrates that if the Company is under-earning by more than 127.5 basis points, then the Company's authorized ROE is unreasonable. Dr. Reading's conclusion fails to account for the fact that his range of reasonableness is symmetrical about the actual approved ROE—one-half of this reasonable range is greater than the approved ROE and one-half of this reasonable range is less than the approved ROE. So, even if Dr. Reading's 255 basis points range is reasonable for purposes of an earnings review (which it is not), that amount must be divided by two to reflect the symmetrical nature of an earnings review. For example, if the Commission had concluded that the range presented by the witnesses in UE 233 was reasonable (which the Commission did not), and had adopted the midpoint of that range as the approved ROE (which the Commission did not), then the earnings review dead band using Dr. Reading's analysis would be plus or minus 127.5 basis points. Here, the Company under-earned by 412 basis points, so even if one accepts Dr. Reading's range, it still demonstrates that the Company under-earned.

[53] *See e.g.*, Order No. 07-015 at 26; Order No. 08-238 at 3; Order No. 06-610.

3. CUB's and OICIP's Criticisms of the Earnings Review are Without Merit.

In addition to applying the earning review to the wrong period, CUB and OICIP are also critical of the earning review itself. OICIP argues that Idaho Power is being "unfair" for asking the "Commission to issue a 'make-up' call for what the Company apparently believes to be rates that were set too low to earn its authorized rate of return in the applicable tax years associated with the one-time benefits at issue here."[54] CUB argues that the Company chose to not file more frequent rate cases when it was under-earning and the "Commission does not have the responsibility to save the Company from voluntary, ill-advised business decisions."[55] CUB also claims that the application of the earnings review results in "special treatment" for Idaho Power.[56] These arguments ignore the clear language in the statute, which *requires* the Commission review the utility's earnings prior to allowing amortization. The earnings review is not optional, nor is it some improper attempt on the part of Idaho Power to try to make up for its past under-earning. If CUB and OICIP believe that the earnings review should be disregarded, that is an argument that should be made to the legislature. As the statute is written the Commission must examine Idaho Power's earnings prior to amortization and if the Company was under-earning during the applicable period the tax benefits should not be refunded.

Both CUB and OICIP also offer their own theories as to why the Company was under-earning, suggesting that "[i]f these earnings were acceptable to Idaho Power then, there is no need to take an action to retroactively increase them now."[57] Both CUB and OICIP also point out that an authorized rate of return is not a guaranteed rate of return.[58]

[54] OICIP/100, Reading/8, ll. 10-13.

[55] CUB/200, Jenks-Feighner/3, ll. 4-9.

[56] CUB/200, Jenks-Feighner/2, l. 17 – 3, l. 1.

[57] CUB/200, Jenks-Feighner/4, l. 5 – 6, l. 6; OICIP/100, Reading/6, ll. 5-18.

[58] OICIP/100, Reading/5-6.

These arguments are immaterial to the only question that is relevant to the earning review—whether Idaho Power under-earned during the relevant periods. For the earnings review "the *sole issue* is whether a utility's earnings for the test period enable it to absorb a cost that has been approved for deferral."[59] In many cases where a utility is under-earning, the utility could have come in for more frequent rate cases. That point is irrelevant for the purposes of an earnings review, which examines only whether the utility could have absorbed the deferred amounts during the deferral period. As the Commission has observed: "If past ratepayers paid an appropriate amount of rates for service received, it is inappropriate to burden or enrich future ratepayers based upon retroactive events."[60]

B. CUB's reliance on Senate Bills ("SBs") 408 and 967 is misplaced.

CUB's testimony claims that the "tax benefits must be shared with customers because the rates charged by IPCO can only be adjudged fair, just, and reasonable if customers are reimbursed for taxes fronted by customers when such taxes are refunded to IPCO by the IRS."[61] To support this contention, CUB relies on SBs 408 and 967.[62]

CUB implies that because the subject of this request is taxes, they should receive different treatment. There is nothing in the language of SB 967, codified as ORS 757.269, that would suggest the legislature intended this statute to impact the treatment of applications under ORS 757.259(1)(a)(A). In particular, nothing in the text of ORS 757.269 implies that the earnings review required by ORS 757.259(5) does not apply or should be applied in a different manner simply because the subject matter is taxes.

[59] *Re Portland General Electric Co.*, Dockets UE 82/UM 445, Order No. 93-257, 1993 WL 221236 at *5 (Feb. 22, 1993) (emphasis added).

[60] *Re Utility Reform Project and Ken Lewis*, Docket UM 1224, Order No. 09-316 at 13-14 (Aug. 18, 2009).

[61] CUB/100, Jenks-Feighner/5, l. 19 – 6, l. 2.

[62] CUB/100, Jenks-Feighner/6, n. 8; CUB/200, Jenks-Feighner/7, l 19, l. 19 – 6, l. 2.

In addition, the Commission's decision in Order No. 09-316 that Portland General Electric Company was not required to refund to customers over-collected taxes was rendered in the context of the more stringent requirements of SB 408.[63] If the Commission did not depart from its traditional ORS 757.259(5) earnings review in that case, there is no basis for it to do so here.

Moreover, even if CUB were correct and ORS 757.269 is somehow relevant to this case, the record does not demonstrate that Idaho Power's customers "fronted" the taxes that were subsequently refunded.[64] Indeed, the fact that the Company was consistently under-earning suggests that Oregon customers were not, in fact, fronting anything and proper matching of the taxes paid with the amounts reflected in rates requires that the Commission deny the amortization request.

IV. CONCLUSION

The Commission should deny the amortization of the tax benefits resulting from the UNICAP and Repairs tax method changes. The evidence in the record demonstrates that Idaho Power's earnings during the years to which the tax benefits are attributed (1987-2009) were unreasonably low and therefore the Commission should conclude that the tax benefits should not be amortized.

[63] Order No. 09-316 at 13-14.

[64] CUB/100, Jenks-Feighner/5, l. 19- 6, l. 2.

Respectfully submitted this 16th day of July, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UE 233 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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