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July 16, 2013

Attention: Filing Center
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Re: *In the Matter of IDAHO POWER COMPANY Request for General Rate Revision*
PUC Docket No.: UE 233
DOJ File No.: 860115-GB0563-11

Enclosed for filing are an original and five copies of Staff Opening Brief in the above-captioned docket for filing with the PUC today.

Sincerely,

Mike ... for
Stephanie S. Andrus
Senior Assistant Attorney General
Business Activities Section

Stephanie Andrus

Enclosures
SSA:jrs/#4432333
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 233

In the Matter of IDAHO POWER COMPANY Request for General Rate Revision	STAFF OPENING BRIEF

I. Introduction.

At issue is whether the Commission should amortize into Idaho Power Company's ("Idaho Power") retail rates the Oregon-allocated share of tax refunds received by Idaho Power in 2010 and 2011. The Commission has previously concluded the tax refunds are amounts lawfully imposed retroactively by order of another governmental agency and thus, eligible for amortization under ORS 757.259(1)(a)(A).[1]

In sum, Staff concludes that an earnings review is not required by ORS 757.259(5) for ORS 757.259(1)(a)(A) amounts, but is otherwise required in order for the Commission to determine whether amortization of the amounts results in just and reasonable rates. Second, Staff recommends that the Commission review Idaho Power's earnings from the period in which it paid the refunded taxes to the government, as opposed to Idaho Power's earnings in the years it recognized the tax refunds. Third, Staff recommends that the Commission apply a "restrictive" earnings test to determine whether the refunds should be amortized into Idaho Power's rates. Under a restrictive test, no refunds are warranted.

A. Background.

The tax refunds stem from two income tax accounting method changes reflected in Idaho Power's 2009 federal income tax return. The two accounting changes concern the capitalization of overhead costs to utility property produced (UNICAP) and the deduction of repair costs that

[1] The Commission reopened this docket "[t]o provide a forum to address Idaho Power's earnings and the proper ratemaking treatment of certain tax refunds in 2010 and 2011." Order No. 13-160 at 9.

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have been capitalized to utility assets (Repairs).[2] Idaho Power and the Internal Revenue Service (IRS) reached agreement on the UNICAP method change in 2010. Under the agreement, Idaho Power was allowed to use the new method on its 2009 federal income tax return and recalculate the company's 1987-2008 taxes based on the new method. The Company received a cash refund in November 2010 relating to its 2009 tax return. The United States Congress' Joint Committee on Taxation approved the agreement in September 2011.[3]

The Repairs adjustment results from Idaho Power's Application for Change in Accounting Method filed with the IRS in December 2009. The change applied to tax years 1999 to 2008, as well as 2009. The actual tax benefit amount was determined when Idaho Power filed its 2009 tax return in 2010. However, Idaho Power and the IRS did not reach agreement regarding application of the Repairs method until April 2011.[4]

The Stipulated Facts filed by Staff of the Public Utility Commission ("Staff"), the Citizens' Utility Board of Oregon ("CUB"), the Oregon Irrigation Customers of Idaho Power ("OICIP"), and Idaho Power show the estimated net tax benefit (Oregon allocated) for each of the tax years between 1987 and 2009 for the UNICAP and Repairs changes.[5] The Stipulated Facts also show, for each of the tax years 1989-2009, Idaho Power's authorized ROE in Oregon, Idaho Power's actual ROE with Type I adjustments, and Idaho Power's actual ROE with Type I adjustments and assuming Idaho Power had received the tax benefit in that year.[6] Finally, the Stipulated Facts show Idaho Power's actual ROE with Type I adjustments for 2010 and 2011.[7]

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[2] *See* Order No. 13-160; *In the Matter of Idaho Power Company Deferral of Recognized Tax Benefits* (UM 1562) and *Citizens' Utility Board of Oregon and Oregon Industrial Customers of Idaho Power Application for Deferral of Tax Benefits Recognized by Idaho Power Company* (UM 1582).

[3] *See* Order No. 13-160 at 3.

[4] *See* Order No. 13-160 at 4.

[5] Stipulated Facts.

[6] Stipulated Facts.

[7] Stipulated Facts.

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B. Argument.

a. ORS 757.259(5) does not require an earnings test, but the Commission should conduct an earnings test to determine whether amortization of the tax refunds results in just and reasonable rates.

In testimony and briefs in Docket No. UM 1582, Staff asserted that ORS 757.259(5) required a review of Idaho Power's earnings before the Commission could amortize the tax refunds into Idaho Power's rates. In fact, it does not appear that ORS 757.259(5) expressly requires an earnings test before deciding whether to amortize amounts retroactively imposed by a lawful order of a government agency. Instead, it appears that this express requirement applies only when deciding whether to amortize amounts deferred under ORS 757.259(1)(a)(B).

ORS 757.259(1) provides:

> (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in this section, under amortization schedules set by the Commission, a rate or rate schedule:
>
> (a) May reflect:
>
> (A) Amounts lawfully imposed retroactively by order of another governmental agency; or
>
> (B) Amounts deferred under subsection (2) of this section.

ORS 757.259(5) includes some of the pertinent "limitations" referred to in ORS 757.259(1):

> (5) Unless subject to an automatic adjustment clause under ORS 757.210(1), amounts described in [ORS 757.259], shall be allowed in rates only to the extent authorized by the commission in a proceeding under ORS 757.210 to change rates, and upon review of the utility's earnings at the time of application to amortize deferral.

As found by the Commission in Order No. 13-160, amounts that meet the criteria of ORS 757.259(1)(a)(A) need not be deferred before they are eligible for amortization.[8] Presumably therefore, the language in ORS 757.259(5) specifying that the Commission can only amortize amounts described in the statute "upon review of the utility's earnings at the time *of the*

[8] Order No. 13-160 at 8.

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application to amortize deferral" does not apply to ORS 757.259(1)(a)(A) amounts. Accordingly, it is logical to read the statute to provide that amounts imposed retroactively by a government agency and amounts that are deferred are only amortizable in a rate proceeding under ORS 757.210 and that a deferred amount can only be amortized after an earnings test.

In other words, the conjunctive "and" before "upon review of the utility's earnings at the time of the application to amortize deferral" is intended to join the requirement for a ORS 757.210 rate proceeding that is applicable to both ORS 757.259(1)(a)(A) and ORS 757.259(1)(a)(B) amounts with the requirement regarding an earnings review that applies only to amounts deferred under ORS 757.259(1)(a)(B). The "and" in the sentence is not intended to join the two statutory requirements (ORS 757.210 rate proceeding and earnings review) so that they apply to amortization of both types of amounts (those under ORS 757.259(1)(a)(A) and those deferred under ORS 757.210(1)(a)(B)).

Notwithstanding, Staff believes it is appropriate, or even necessary under another pertinent statute, to examine Idaho Power's earnings when deciding whether to amortize the tax refund amounts. This is because the Commission should only amortize the refund amounts if doing so is consistent with ORS 756.040. In order to make this determination, Staff believes it is necessary for the Commission to consider the Company's earnings during the period the refunded taxes were paid to the government.

b. The Commission should review Idaho Power's earnings during the tax periods at issue, rather than Idaho Power's earnings at the time Idaho Power recognized the refunds

A preliminary question for the Commission is what earnings to review. Because the amounts at issue were not deferred, the Commission's opinions regarding the appropriate earnings to review before amortizing deferrals do not necessarily control the outcome of the question in this docket. However, Staff recommends that the Commission apply the principles

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and precedent that apply to the amortization of deferred amounts to decide whether to amortize the tax refunds.

In Docket No. UM 1224, the Commission confirmed that it would review a utility's earnings from the deferral period, as opposed to the utility's earnings at the time the utility asks for amortization, to perform the earnings review required under ORS 757.259(5).[9] The Commission also confirmed that it would do so even when there is a significant gap between the deferral period and the request for amortization: "[I]n the extraordinary situation of deferred accounting, it is appropriate to review the utility earnings during the deferral period in order to determine whether retroactive ratemaking is appropriate to address the exceptional revenues or expenses that were deferred."[10]

To the extent that CUB and OICIP assert that this precedent should not apply because amounts imposed under ORS 757.259(1)(a)(A) are distinguishable from amounts deferred under ORS 757.259(1)(a)(B), the argument is not consistent with the rationale underlying the Commission's decision in UM 1224. In UM 1224, the Commission noted that the purpose of an earnings review is to determine whether the utility actually operated within its fixed rates despite the fact it asked to defer certain funds. The Commission concluded that "if a utility operated within its fixed rates, then the need to amortize the deferred funds is obviated."[11] The converse of this rationale – a utility that did not earn sufficient revenues to cover its costs over a certain period should be allowed to keep any deferred revenue that is attributable to that period – should apply here. The fact that the tax benefits were not deferred is not a distinguishing characteristic that warrants application of a different policy.

Further, reviewing what effect the tax refunds would have had on Idaho Power's Oregon earnings during the period the taxes were collected is consistent with a 2011 Commission order in which the Commission concluded a tax refund is "related to prior period activity," as opposed

[9] *Id.* at 10.
[10] *Id.*, at 14.
[11] OPUC Order No. 09-316 at 14.

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to an amount that is appropriately added to the utility's earnings in the year it was received.[12] In the 2011 Northwest Natural Gas Company purchased gas adjustment ("PGA") proceeding, Staff, CUB, and Northwest Industrial Gas Users ("NWIGU") asserted that a $5.1 million property tax refund for taxes paid during 2002-2009 and received in 2010 was appropriately considered in NW Natural's 2010 earnings for the purpose of determining the appropriate sharing under NW Natural's PGA. [13] The Commission concluded that the tax refund was associated with "prior period activity," and under the rules of the PGA, excluded it.[14]

The rule governing PGAs that requires exclusion of amounts associated with prior period activity in the PGA earnings test is not applicable here. However, the Commission's rationale underlying its conclusion that NW Natural's property tax refund was related to prior period activity supports the conclusion that the Commission should review Idaho Power's earnings at the time it paid the refunded taxes from 1987-2009.

C. The Commission should use a restrictive" standard for the earnings review.

Although the Commission has conducted the ORS 757.259(5) earnings review on many occasions, it has not established strict standards to determine when amortization of deferred amounts will be authorized. In a 1993 order, the Commission noted that it intended to tailor earnings tests to fit the type of deferral in order to further the public policy goals underlying ORS 757.259:

> In the future, the Commission intends to tailor earnings tests to fit the type of deferral. For example, if the Commission authorized deferral of an emergency increase in cost, the earnings test applied might allow a utility to amortize the deferral to the extent that it brings the utility's earnings for the period up to the bottom of a reasonable range. This type of earnings test could also apply to gas tracking cases. In this way, the Commission could encourage the utility to control its costs.
>
> If the deferral was designed to create a fund for the benefit of customers, the earnings test might require the utility to refund the deferral except for

[12] OPUC Order No. 11-365; *In Re Northwest Natural Gas Company, dba NW Natural (*Docket No. UM 903).

[13] *Id.*

[14] *Id.*

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> the portion necessary to bring the utility's earnings up to the bottom of the range of reasonable rates of return. The earnings test policy in this situation would return to the ratepayers amounts deferred for their benefit to the maximum extent possible consistent with fair treatment of the utility.
>
> If the deferral was of a cost that was intended to be borne by customers, but was delayed for the purpose of more appropriately matching the cost with related benefits to customers, the earnings test applied might allow the utility to amortize the deferral except to the extent that recovery would cause rates to exceed the top of a reasonable range of return for the deferral period. This approach would allow the Commission to better match costs and benefits without unduly limiting the utility's ability to take advantage of favorable economic conditions. [15]

In Order 93-257, the Commission provided examples of how it could apply the earnings test, noting that of these examples, the least restrictive method would allow amortization of deferred costs in rates unless recovery would cause earnings to rise above a maximum reasonable level (i.e., *surcharge up to* the top of the reasonable range).[16] And conversely, would allow amortization of deferred income unless the refund would cause earnings to fall below a minimum reasonable level (i.e., *refund down to* the bottom of the reasonable range).

The most restrictive method that the Commission discussed in the order, assuming the method was applied symmetrically, would allow amortization of deferred costs in rates unless recovery would cause earnings to rise above a minimum reasonable level (i.e., *surcharge up to* the bottom of the reasonable range), and would allow amortization of deferred income unless the refund will cause earnings to fall below a maximum reasonable level (i.e., *refund down to* the top of the reasonable range). [17], [18]

Currently, the Commission often applies the more restrictive method. For example, PacifiCorp, Portland General Electric, Co., and Idaho Power have annual power

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[15] *Re Portland General Electric Company*, Docket No. UE 82/UM 445, Order No. 93-257 at 9-10.

[16] Order No. 93-257, App A, pp. 4-6.

[17] *Id.*

[18] The word, "restrictive" in this case, means less likely to result in credits or charges to customers, and reduces the total amount of credits or surcharges.

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cost mechanisms that include deferral of actual costs and revenues. The Commission reviews the utilities' earnings each year to determine how much of the deferred balances should be shared with customers. The Commission requires electric utilities to refund power cost savings down to an earnings level equal to 100 basis points above their authorized ROEs, and allows electric utilities to recover excess power costs from customers up to an earnings level equal to100 basis points below their authorized ROE.[19]

Staff believes the more restrictive method of conducting earnings reviews is the appropriate method of review for the amortization of the tax refunds received by Idaho Power. As a general matter, Staff believes that the potential range of reasonable utility earnings the Commission could select is from a maximum of 200 basis points above authorized ROE to a minimum of 200 basis points below authorized ROE. Furthermore, Staff would only recommend refunds that result in utility earnings below authorized ROE, or surcharges that result in earnings above authorized ROE, in extraordinary situations. Therefore, Staff believes that for refunds the most restrictive earnings test is to refund down to authorized ROE plus 200 basis points and the least restrictive earnings test is to refund down to authorized ROE.[20] Staff recommends that the Commission use the mid-point of the reasonable range for refunds (authorized ROE plus 100 basis points) for purposes of this earnings review.

D. Application of a restrictive earnings review standard demonstrates that amortization of the refunds is not appropriate.

Idaho Power's Oregon earnings are so far below its Oregon-authorized ROE in many of the years in which Idaho Power paid the taxes at issue that the results of earnings review would be very similar whether the Commission applies the more restrictive refund

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[19] *See* Order No. 12-493 at 14 (PacifiCorp), Order No. 08-238 at 3 (Idaho Power), and Order No. 07-015 at 26 (PGE).

[20] Conversely, Staff believes that for surcharges the most restrictive earnings test is to surcharge up to authorized ROE minus 200 basis points and the least restrictive earnings test is to surcharge up to authorized ROE.

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standard (authorized ROE plus 100 basis points) recommended by Staff or a less restrictive standard.

The following table shows a summary of the results of annual earnings tests with a range of thresholds applied to Idaho Power's Oregon earnings from 1989 to 2009 after Type I adjustments and inclusive of the Oregon-allocated share of tax refunds (hereinafter referred to as "Adjusted Actual Earnings").

Table 1. Refund Amounts by Alternative Earnings Test Thresholds

Alternative	Earnings Threshold	Year(s) Above Threshold	Total Tax Benefit	Total Refund Amount
1	Authorized ROE + 200 bps	0	$0	$0
2	Authorized ROE + 100 bps	0	$0	$0
3	Authorized ROE	2000	$245,043	$223,735
4	Authorized ROE - 100 bps	2000, 1995, 1992, 1989	$300,895	$300,895
5	Authorized ROE - 200 bps	2000, 1995, 1992, 1989, 1990	$309,170	$309,170

Alternative 1 and Alternative 2 are the most restrictive earnings tests. Under both of these tests Idaho Power Adjusted Actual Earnings are below the earnings threshold in every year of the tax period and accordingly, no refunds are warranted.

Alternative 3 uses authorized ROE as the threshold for the earnings test. In 2000, Idaho Power's Adjusted Actual Earnings are 63 basis points above authorized ROE. Refunding down to authorized ROE results in a refund amount of $223,735. The total tax benefit allocated to Oregon in 2000 was $245,043. Accordingly, the earnings threshold limits the size of the refund in this alternative.

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Under alternative 4, Idaho Power would refund down to authorized ROE minus 100 basis points. This alternative results in refunds for 2000, 1995, 1992, and 1989. The total refund amount would be $300,895. All of the Oregon-allocated tax benefit in each of these years would be refunded to customers.

Under alternative 5, Idaho Power would refund down to authorized ROE minus 200 basis points. This alternative results in refunds for 2000, 1995, 1992, 1989, and 1990. The total refund amount would be $309,170. All of the Oregon-allocated tax benefit in each of these years would be refunded to customers.

Staff recommends the Commission use Alternative 2 which tests earnings using an earnings threshold of 100 basis points above authorized ROE. No refund is warranted under this alternative. If the Commission chooses to require Idaho Power to refund tax benefits so that Idaho Power does not earn more than its Oregon-Authorized ROE in any of the years between 1989 and 2009, Idaho Power would have to refund $233,735.

Staff does not recommend Alternative 4 or Alternative 5 because they result in refunds that drive Idaho Power's earnings to levels below its authorized ROE. Conversely, if Idaho Power was requesting to surcharge customers for additional taxes incurred, Staff would not recommend surcharges that drive Idaho Power's earnings to levels above its authorized ROE. Staff can think of no policy reason that supports use of such tests.

Staff also believes it is appropriate to review Idaho Power's earnings over the entire Tax Period to check the overall reasonableness of the results of applying a year-by-year earnings test. Idaho Power's cumulative under-earning, compared to its authorized ROE, over the entire tax period equals $39,196,753. Over-earning occurred in one year of the tax period and equals $223,735, which pales in comparison to the under-earning result. Therefore Staff's recommendation of Alternative 2, which tests earnings using an

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earnings threshold of 100 basis points above authorized ROE and results in no refunds to customers, is reasonable from this perspective.

II. Conclusion.

Staff recommends that the Commission not require Idaho Power to amortize any part of the tax refunds Idaho Power received in 2010 and 2011 into retail rates. If the Commission chooses to require refunds, Staff recommends the Commission authorize no more than $233,735 in refunds, which is the amount necessary to bring Idaho Power's earnings down to its authorized ROE in 2000.

DATED this 16th day of July, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hearby certify that on July 16, 2013, I served the foregoing STAFF OPENING BRIEF upon the persons named on the service list below who have waived such service by mail, by serving a full, true and correct copy thereof at their e-mail address as follows:

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