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August 12, 2013

Attention: Filing Center
Public Utility Commission of Oregon
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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 Reply Brief in the above-captioned docket for filing with the PUC today.

Sincerely,

Stephanie S. Andrus
Senior Assistant Attorney General
Business Activities Section

Enclosures
SSA:jrs/#4500573
(Electronic copy only)
c: UE 233 Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UE 233**

4 In the Matter of

5 IDAHO POWER COMPANY

6 Request for General Rate Revision

 | **STAFF REPLY BRIEF**

7 The Commission has previously decided that two tax refunds recognized by Idaho Power
8 Company (“Idaho Power”) in 2010 and 2011 are amounts imposed retroactively by order of a
9 government agency and thus, eligible for amortization into rates under ORS 757.259(1)(a)(A).
10 At issue in this proceeding is whether the Commission should require Idaho Power to amortize
11 all or a portion of Oregon allocated share of those tax refunds into Idaho Power’s Oregon retail
12 rates.

13 A preliminary, but not dispositive, question is whether ORS 757.259(5) requires that the
14 Commission conduct an earnings review before amortizing ORS 757.259(1)(a)(A) amounts into
15 rates. The question is not dispositive because Staff recommends that the Commission review
16 Idaho Power’s earnings in order to determine whether amortizing the refund results in fair and
17 reasonable rates under ORS 756.040, notwithstanding whether such a review is required by ORS
18 757.259(5).¹ Staff briefed this preliminary issue in its opening brief and will not do so again
19 here.

20 A second preliminary question is what period of earnings to review to determine the
21 ratemaking treatment of the tax benefits. Staff and Idaho Power assert that the relevant earnings
22 are Idaho Power’s earnings during the period in which it paid the refunded taxes, which is 1987-
23 2009. The Citizens’ Utility Board of Oregon (“CUB”) and the Oregon Industrial Customers of
24 Idaho Power (“OICIP”) (hereinafter the “Joint Parties”) assert that the appropriate period is
25 2011.

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¹ ORS 756.040(1).

1 The third question is whether Idaho Power earned within a reasonable range during the
2 relevant period and therefore should be required to amortize into rates a portion or all of the
3 refunds allocable to Oregon. Staff recommends that the Commission conclude that no refunds
4 should be amortized.

5
6 **A. The Commission should review Idaho Power’s earnings during 1989-2009 and**
7 **not its earnings in 2011 to determine whether to require Idaho Power to**
8 **amortize the tax benefits.**

8 The Joint Parties acknowledge that because amounts retroactively imposed by other
9 governmental agencies do not require an application for deferral “there is no ‘deferral period’ for
10 consideration or inclusion in an earnings review for applications filed pursuant to ORS
11 757.259(1)(a)(A).”² Nonetheless, the Joint Parties argue that relevant earnings for the
12 Commission’s review are Idaho Power’s 2011 earnings because if there was a deferral period, it
13 would be 2011 under the Commission’s rules and precedent. The Joint Parties argue:

14 The purpose of the deferral period is to identify a point in time, or “triggering
15 event,” from which the Commission can begin to determine the appropriate
16 earnings review required by ORS 757.259(5). Pursuant to OAR 860-027-
17 0300(9), the Commission’s earnings review must include all or a part of the
18 deferral period or be reasonably representative of the deferral period. In this
19 proceeding, the only period of time that fits the legal requirement of identifying
20 the equivalent of a deferral period for the earnings review is 2011.³

18 The Joint Parties’ argument is not persuasive. The Commission’s determination of what
19 earnings to review should not turn on what earnings it would review had the refunds been
20 deferred. As noted by Staff, the Commission has previously concluded that a tax refund is
21 “related to prior period activity,” and should not be included in a utility’s earnings in the year it
22 was received for purposes of an earnings review for a Purchased Gas Adjustment proceeding.⁴

23 Under this characterization of a tax refund, the appropriate inquiry is whether Idaho Power’s

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25 ² Joint OCIP-CUB Opening Brief 9.

26 ³ Joint OICIP-CUB Opening Brief 9.

⁴ OPUC Order No. 11-365; *In Re Northwest Natural Gas Company, dba NW Natural* (Docket No. UM 903).

1 earnings would have been reasonable if Idaho Power had employed the new tax methods in the
2 first instance (or, put another way, whether Idaho Power's earnings for those years are
3 reasonable taking into account the tax benefit that is attributable to those years).

4 The Joint Parties take issue with Idaho Power's statement that it is appropriate to review
5 Idaho Power's earnings during the years it paid the refunded taxes because the "inquiry will
6 inform the Commission whether Idaho Power's earnings would have been reasonable if the
7 Company had employed the new tax methods in the first instance."⁵ The Joint Parties assert that
8 it is not fair to allow Idaho Power to keep the tax benefits now because "[h]ad the Company
9 made the tax method change in an earlier year, its customers would have certainly enjoyed the
10 benefits associated with each tax method change, as the benefits would have been reflected in
11 rates much earlier than 2012." The Joint Parties also assert that allowing Idaho Power to keep
12 the tax benefits because of its poor earnings during the period in which the taxes were paid
13 would incent utilities to delay making beneficial tax changes.

14 This Joint Party argument is also not persuasive. A comparable argument would be that
15 Idaho Power should keep the tax benefits because there would be no tax benefits were it not for
16 Idaho Power's efforts. However, the motives for Idaho Power's actions or the timing of Idaho
17 Power's actions are not particularly material to the question before the Commission in this
18 proceeding.

19 **B. Idaho Power's earnings in each year from 1989 to 2009 do not exceed an amount**
20 **equal to its authorized return on equity plus 100 basis points (the restrictive**
21 **standard), and thus amortization of tax benefits that relate to that period should**
22 **not be amortized into rates.**

23 As discussed in Staff's Opening Brief, Staff recommends that the Commission apply
24 what the Commission has described as a "restrictive method" to the review of Idaho Power's
25 earnings for each of the years between 1989 and 2009 to determine whether amortization of the
26 tax benefits is warranted. Under the restrictive method, a utility would refund down to an

26 ⁵ Joint OICIP-CUB Opening Brief 17, *quoting* Idaho Power Company's Opening Brief, OPUC Docket
Nos. UM 1562 and UM 1582 at 17.

1 earnings level equal to 100 basis points above its authorized ROE and would surcharge up to an
2 earnings level equal to 100 basis points below their authorized ROE.⁶ Because Idaho Power's
3 earnings do not exceed an amount equal to its authorized ROE plus 100 basis points in any of the
4 years between 1989 and 2009, Staff recommends that none of the tax benefits attributable to this
5 period be amortized.

6 If the Commission agrees with Staff and Idaho Power regarding the appropriate earnings
7 to review, the Joint Parties urge the Commission to require Idaho Power to refund benefits down
8 to the bottom of what the Joint Parties believe to be the zone of reasonableness around Idaho
9 Power's authorized ROE for each of the years between 1989 and 2009, except those years for
10 which SB 408 was in effect. For those years, the Joint Parties urge the Commission to require
11 Idaho Power to refund any tax benefits down to a level that is just short of unconstitutionally
12 confiscatory.

13 As discussed by Staff, the converse of amortizing benefits below authorized ROE is
14 amortizing surcharges to an amount above authorized ROE. In other words, if the converse of
15 the Joint Parties' recommended method is applied to a request by Idaho Power to surcharge
16 customers for a charge imposed retroactively by a government agency, Idaho Power could be
17 allowed to surcharge customers up to an amount that significantly exceeds its authorized ROE.
18 As noted in its opening brief, Staff would only support such a proposal in an extraordinary
19 situation and does not do so here.⁷

20 Even if the Commission decided to require amortization of tax benefits to a level *below*
21 Idaho Power's authorized ROE, Staff disagrees with the Joint Parties' characterization of a
22 reasonable range for this purpose. The Joint Parties reliance on the Commission's order in
23 Docket No. UM 995 to support their position that earnings equal to 400 basis points below
24 authorized ROE is within a reasonable range is misplaced. In Order No. 01-420, the
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26 ⁶ Staff Opening Brief at 7-8.

⁷ Staff Opening Brief 8.

1 Commission limited the amount of excess net variable power costs that PacifiCorp could defer
2 during the Western Power Crisis by imposing a deadband and sharing band mechanism on the
3 amounts at issue in PacifiCorp's application to defer. The purpose of the deadband/sharing
4 mechanism was to appropriately allocate risk for costs that exceed those in rates between rate
5 cases, not to measure whether PacifiCorp's earnings were such that it could absorb the excess
6 costs.⁸ That earnings review (the one the Commission applies under ORS 757.259(5)) occurred
7 in a different docket.⁹

8 Staff's Opening Brief included a table showing what refunds would be amortized if the
9 Commission required Idaho Power to refund amounts to the extent that such amounts, when
10 coupled with Idaho Power's adjusted earnings, exceeded an amount equal to Idaho Power's (1)
11 authorized ROE, (2) authorized ROE plus 100 basis points, (3) authorized ROE plus 200 basis
12 points, (4) authorized ROE minus 100 basis points, and (5) authorized ROE minus 200 basis
13 points.¹⁰ That table reflects that if the Commission required Idaho Power to refund tax benefits
14 to bring Idaho Power's earnings down to 200 basis points below authorized ROE in every year
15 between 1989 and 2009, the total refund would equal \$309,170.¹¹

16 Finally, if the Commission concludes that it is appropriate to review Idaho Power's
17 earnings when Idaho Power received the refunds rather than the 1989-2009 period the
18 Commission should review Idaho Power's earnings in both 2010 and 2011 because Idaho Power
19 recognized tax benefits in both years.

20 The Joint Parties argue that the Commission should review only Idaho Power's earnings
21 in 2011 because this is the year that "the Joint Committee on Taxation approved Idaho Power's

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23 ⁸ Order No. 01-420 at 3-8,29-29; *In the Matter of the Application of PACIFICORP for an Accounting*
24 *Order Regarding Excess Net Power Costs* (UM 995) (Commission adopting Staff's proposed sharing
25 mechanism that Staff asserted would achieve a fairly apportioned sharing of costs).

26 ⁹ See Order No. 02-410, Appendix A; *In the Matter of PACIFICORP's Request for Approval to*
Continue Amortizing Deferred Power Costs Under Schedule 94 (UE 121).

27 ¹⁰ Staff Opening Brief 9.

¹¹ Staff Opening Brief 9.

1 one-time tax benefit, the year that Idaho Power “reversed the uncertain tax position *liability to its*
2 *2011 earnings*.”¹² The Joint Parties are correct that the Joint Committee on Taxation approved
3 Idaho Power’s one-time tax benefit related to the UNICAP tax method change in 2011 and that
4 Idaho Power recognized this tax benefit in 2011. The Joint Parties are not correct, however,
5 regarding when Idaho Power recognized the tax benefit related to the Repairs tax method
6 change.

7 In Docket No. UM 1582 Idaho Power testified that in 2010, it recorded a benefit of \$44.5
8 million for the Repairs tax method change.¹³ Idaho Power also recorded an \$11.9 million dollar
9 uncertain tax position liability that reflected Idaho Power’s estimate of potential tax income risks
10 associated with technical matters in the Repairs method.¹⁴ The combined benefit and liability
11 brought the net income tax benefit in the Company’s 2010 earnings to \$32.6 million.¹⁵

12 The IRS audited the Repairs method as part of its IDACORP’s 2009 tax year
13 examination. In April 2011, Idaho Power and the IRS reached an agreement on the Repairs
14 method that resulted in \$11.3 million income tax costs.¹⁶ Accordingly, in the second quarter of
15 2011, Idaho Power reversed \$0.6 million of its previously-recorded \$11.9 million tax position
16 liability, and recognized an additional \$0.6 million of tax benefit for the Repairs method change
17 in 2011.¹⁷

18 If the Commission reviews Idaho Power’s earnings during the years that Idaho Power
19 recognized the tax benefits, it must review earnings in both 2010 and 2011. And, if the
20 Commission limits its review to 2010 and 2011 earnings, Staff recommends that the Commission
21 apply a restrictive earnings threshold similar to the one described in Staff’s Opening Brief.

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23 ¹² Joint Parties Opening Brief at 5 (underlining, italics, and bold in original).

24 ¹³ Idaho Power/200, Marchioro/8, lines 13-19.

25 ¹⁴ UM 1582 Idaho Power/200, Marchioro/8, lines 19-21.

26 ¹⁵ UM 1582 Idaho Power/200, Marchioro/8, lines 21-22.

¹⁶ UM 1582 Idaho Power/200, Marchioro/8, lines 24-26.

¹⁷ UM 1582 Idaho Power/200, Marchioro/9, lines 3-4.

1 Idaho Power did not earn its authorized ROE in Oregon in 2010, even when the Oregon-
2 allocated share of the Repairs method change tax benefit is included in its earnings (and after
3 Type I adjustments).¹⁸ Only under the least restrictive methods discussed above, would Idaho
4 Power be required to amortize any portion of the 2010 benefit from the Repairs tax method
5 change.

6 Idaho Power did earn above its ROE in 2011 when the tax benefit attributable to the
7 Repairs and UNICAP tax method changes are included in its adjusted earnings.¹⁹ Even under the
8 most restrictive methods discussed above, Idaho Power would have to refund a portion of the tax
9 benefits received in 2011.²⁰

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12 DATED this 12th day of August, 2013.

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14 Respectfully submitted,

15 ELLEN F. ROSENBLUM
16 Attorney General

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18 Stephanie S. Andrus, #92512
19 Senior Assistant Attorney General
20 Of Attorneys for Staff of the Public Utility
21 Commission of Oregon

22 ¹⁸ Joint Parties' Stipulated Facts.

23 ¹⁹ Joint Parties' Stipulated Facts.

24 ²⁰ The Oregon-allocated tax benefit in Idaho Power's 2011 results of operations increases ROE
25 by 500 basis points (i.e., ((16.157% - 11.157%) = 5.00%). The adjusted earnings exceed a
26 restrictive threshold of authorized ROE plus 200 basis points by 398 basis points (i.e., ((16.157%
- 12.175%) = 3.98%). An earnings test using this restrictive threshold would result in a refund of
79.6% of the Oregon-allocated tax benefit (i.e., (398 basis points / 500 basis points) = 79.6%).
An earnings test using a restrictive threshold of authorized ROE plus 100 basis points would
result in a refund of 99.6% of the Oregon-allocated tax benefit.

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2013, I served the foregoing STAFF REPLY 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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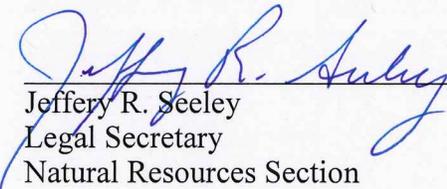
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