

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**CRAIG MUCHOW,****COMPLAINANT,****v.****IDAHO POWER COMPANY,****RESPONDENT.**

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CASE NO. IPC-E-11-07**ORDER NO. 32264**

On March 15, 2011, Craig Muchow filed a “formal” complaint against Idaho Power Company regarding a disputed irrigation deposit under tariff Schedule 24. More specifically, Mr. Muchow objects to the Company’s demand for a “Tier 2” deposit before the utility restores service to one of his irrigation accounts (No. XXX754).¹ Attempts to resolve the complaint informally were unsuccessful. Having exhausted his informal complaint remedies, Mr. Muchow filed a “formal” complaint pursuant to the Commission’s Procedural Rules 24 and 54. IDAPA 31.01.01.024 and .054.

On April 19, 2011, the Commission issued a Summons to Idaho Power. *Idaho Code* §§ 61-612, 61-615. The Company filed its answer on April 28 and Mr. Muchow filed a reply on May 17, 2011. After reviewing the complaint, the answer, the reply, and Schedule 24, the Commission issues this Order.

BACKGROUND***A. The Tier 1/Tier 2 Deposits***

In 2004, the Commission authorized Idaho Power to implement the Tier 1/Tier 2 deposit structure after the Company experienced a significant increase in unpaid irrigation bills. In November 2004, the Commission issued Order No. 29639 authorizing Idaho Power to collect Tier 1 and Tier 2 deposits from irrigators with past due accounts that met certain criteria. As approved in the Commission’s Order, an irrigation customer

who owes an outstanding balance of over \$1,000 on December 31 [of each year] will be required to pay a “Tier 2” deposit based upon a formula that in

¹ Idaho Power maintains that Mr. Muchow has three irrigation accounts including the one that is the subject of this complaint. However, Idaho Power states in its answer that Mr. Muchow transferred one of the three accounts (No. XXX611) in May 2010 to another customer. Answer at 1-2.

essence collects the customer's bill for the next irrigation season in advance. A customer who has been discharged from bankruptcy or who has had receivership proceedings terminated will also be required to pay a Tier 2 deposit. . . . The Tier 2 deposit will be applied to each monthly bill as it becomes due throughout the season.

A customer who owes less than \$1,000 on December 31 but who has received two or more reminder notices of [unpaid balances] of more than \$100 during a 12-month period, or customers whose service is disconnected during the out-of-season due to non-payment . . . , will be required to pay a "Tier 1" deposit. The deposit criteria and formula currently in use for calculating deposit amounts would be applied to calculate Tier 1 deposits. A customer required to pay a Tier 2 deposit one year will be required to pay a Tier 1 deposit the following year.

Order No. 29639 at 1-2. A Tier 2 deposit is equal to four times the expected average monthly irrigation bill and a Tier 1 deposit is equal to one and a half times the average monthly in-season irrigation bill. Answer at 5-6.

Tariff Schedule 24 ("Agricultural Irrigation Service") sets out the criteria for collecting Tier 1 or Tier 2 irrigation deposits. According to the tariff, Tier 1 and Tier 2 deposits are required under the following conditions:

a. Tier 1 Deposit. Customers who have two or more reminder notices for nonpayment of Electric Service during a 12-month period, or who have had service terminated for non-payment, or were required to pay a Tier 2 Deposit for the previous Irrigation Season, will be required to pay a Tier 1 Deposit, or provide a guarantee of payment from a bank or financial institution acceptable to the Company. A Tier 1 Deposit does not apply to Customers who have an outstanding balance on December 31 of over \$1,000.00 (See Tier 2 Deposit). A reminder notice is issued approximately 45 days after the bill issue date if the balance owing for Electric Service totals \$100 or more. . . .

b. Tier 2 Deposit. Customers who have an outstanding balance greater than \$1,000.00 on December 31 will be required to pay a Tier 2 Deposit. A Tier 2 Deposit will also be required from Customers who have an unpaid past due balance greater than \$1,000 on December 31 during any of the previous 4 years and who have not subsequently had active service. A Tier 2 Deposit may be satisfied by a guarantee of payment from a bank or financial institution acceptable to the Company.

Schedule 24, pp. 4-5 (emphasis added). The schedule also provides that a customer "who has been discharged from bankruptcy or whose receivership proceeding has been terminated will be

required to pay a Tier 2 Deposit at the start of the following [irrigation] season to the extent required by the payment provisions listed under [Tier 2 Deposit] above.” *Id.* at 5.²

B. Factual Background

The following facts appear not to be in dispute. On or about September 10, 2010, the Company sent Mr. Muchow an “**Initial Reminder Notice**” that his account No. X754 was past due in the amount of \$142.35. This Initial Reminder Notice also included a provision that in pertinent part says:

Important: . . . If you receive two or more initial reminder notices on this account during a 12-month period, or if service is terminated, a deposit may be required on all irrigation accounts.

Answer, Atch. No. 2 at 1 (emphasis added). The back of the Initial Reminder Notice also recites the deposit criteria for Tier 1 and Tier 2.

DEPOSIT REQUIREMENTS

Tier 1 Deposit: Customers who receive two or more Initial Reminder Notices on an agricultural irrigation service account during a 12-month period, or who have had service terminated for non-payment, will be required to pay a Tier 1 Deposit prior to the following irrigation season. Customers required to pay a Tier 1 Deposit will be subject to a deposit amount equal to approximately 1.5 times the average in-season bill amount for each service for which they are financially responsible.

Tier 2 Deposit: Customers who have an outstanding unpaid balance greater than \$1,000 on December 31 during any of the previous four years may be required to pay a Tier 2 Deposit for all agricultural irrigation service accounts for which they are financially responsible. A Tier 2 Deposit will be equal to approximately four times the average in-season bill amount for each service.

Id. at 2 (emphasis added).

On or about September 15, 2010, the Company sent Mr. Muchow a “**Past Due Notice**” for his accounts X008 and X754. The Past Due Notices also contained the statement of “DEPOSIT REQUIREMENTS” that is identical to the back of the Initial Reminder Notice set out above. Answer, Atch. 3.

² A distinguishing feature between irrigation Schedule 24 and other customer class schedules is that the Company will not terminate service for Schedule 24 customers during the irrigation season or while crops are still in the ground. Order No. 29639 at 3; Sch. 24 at p. 1. Other customer classes may have their service disconnected after only two months of unpaid bills. Order No. 29639 at 3.

On or about October 15, 2010, Idaho Power sent Mr. Muchow a “**Final Termination Notice**” pertaining to his Account Nos. X008 and X754 stating that his accounts were past due in the amount of \$1,131 and \$162.54, respectively. *Id.* at Atch. 4 at 1 and 3. As was the case with the Initial Reminder Notice and the Past Due Notice, the Final Termination Notices contained the “DEPOSIT REQUIREMENTS” statement set out above. On November 8, 2010, the Company disconnected service at the pumps for the two accounts due to non-payment. Answer at 1-2.

On December 3, 2010, the Company sent Mr. Muchow a single “Courtesy Letter” regarding his “Irrigation Service account balance(s). . . .” Answer, Atch. 5 at 1. The Courtesy Letter states that

as of December 1, our records indicate that the past due balance on your account(s) is greater than \$1,000. You may avoid the requirement to pay a Tier 2 Deposit by paying your past due balance prior to December 31. For your convenience, enclosed with this letter is a list of each service location that has a past due balance.

Id. (emphasis added). On page 3 of the Courtesy Letter, the Company listed three accounts and showed the current account balances. The three account balances were as follows:

<u>Account</u>	<u>Account Balance</u>
X611 [(the transferred account)]	\$992.86
X008	\$1,389.77
X754	\$162.54

Answer, Atch. 5 at 3. The Courtesy Letter also indicates on page 2 that “if you are required to pay a Tier 1 or Tier 2 deposit, the deposit plus all outstanding past due balances must be paid in full in order [to] receive electrical service for the 2011 irrigation year.” *Id.*, Atch. 5 at 2 (emphasis added). The Company maintains in its answer that no payments from Mr. Muchow were received on his accounts between December 15 and December 31. Answer at 4.

On or about January 13, 2011, the Company sent Mr. Muchow three “REQUEST FOR DEPOSIT” letters – one for each of the three accounts noted above. Each letter states that the Company’s records indicate “your account met one or more of the following criteria that requires a TIER 2 deposit be paid on this account:

- Outstanding balance due greater than \$1,000 as of December 31
- In bankruptcy or receivership proceedings.”

Complaint; Answer, Atch. 6. Idaho Power requested a deposit of \$653 for Account No. X754; a deposit of \$3,929 for Account No. X611; and a deposit of \$2,388 for Account No. X008. Atch. 6. Mr. Muchow indicates and the Company does not dispute that he has paid the Tier 2 deposit for Account No. X008. Reply at 1.

After receiving the three “Request for Deposit” letters, Mr. Muchow contacted Idaho Power on January 19, 2011, questioning the required deposit for his X754 account. The Company maintains that it advised Mr. Muchow at that point that a Tier 2 “deposit is requested of an account holder when the balance is \$1,000 or greater on any of the customer’s irrigation accounts.” Answer at 5 (emphasis added).

THE COMPLAINT

Mr. Muchow does not contest that his irrigation accounts were past due. Instead, his argument is with the Company’s December 3, 2010, “Courtesy Letter” and the January 13, 2011, “Request for Deposit” letter for account X754. He asserts that he does not owe a Tier 2 deposit on Account No. X754 because the past due amount on this single account was not in excess of \$1,000. Referring to the December 3 Courtesy Letter, he argues that neither of the two conditions required for the Tier 2 deposit (bankruptcy or outstanding balance due greater than \$1,000 as of December 31) are applicable to this one specific account. He maintains that Account No. X754 was “not in bankruptcy nor was the amount in excess of \$1,000. Therefore, I am formally asking [the Commission] to have Idaho Power reinstate the service to this pump to avoid any delay in irrigation to crops and avoiding any damage to the crops.” Complaint at 1. In essence, he argues that the criteria for imposing a Tier 2 deposit is applicable to each account – not to the past due accumulation of all accounts.

IDAHO POWER ANSWER

In its answer, Idaho Power asserts that any irrigation account with a balance greater than \$1,000 on December 31 requires a Tier 2 deposit on all of a customer’s irrigation accounts. Answer at 3. The Company states that the December 3, 2010, Courtesy Letter properly notified Mr. Muchow that a Tier 2 deposit would be required on all of his accounts if the balance of his accounts exceeded \$1,000. The Company specifically cites to the last sentence in the first paragraph of the Courtesy Letter that advised Mr. Muchow that “A larger deposit is required if

the past due balance on your account(s) is greater than \$1,000 as of December 31.” Answer at 4.³ The Company insists that during 2010 “Mr. Muchow received 36 separate statements or notices informing him that deposits would be required on all of his irrigation accounts if any account received two or more Initial Reminder Notices or if he owed an unpaid balance greater than \$1,000 on December 31.” Answer at 3. Elsewhere, the Company maintains in its answer that “the total past-due balance for all their [irrigation] accounts needed to be less than \$1,000 by December 31 in order to avoid a Tier 2 Deposit....” *Id.* at 4 (emphasis added).

Idaho Power submits it has properly determined that Mr. Muchow must make a Tier 2 deposit on his X754 account as required by Schedule 24. However, “the Company acknowledges that the language in Schedule 24 could be clarified” to specify that the Tier 2 deposit is based upon the collective past due balances of all of the customer’s irrigation accounts, not just the unpaid balance for each individual account. Answer at 7.

REPLY COMMENTS

On May 17, 2011, Mr. Muchow submitted a reply to the Company’s answer. He acknowledges paying a Tier 2 deposit for account X008 but disputes the Company’s request for a Tier 2 deposit for account X754. In particular, he argues that if Idaho Power

holds true to their belief that one account falls behind, all accounts shall be prepaid if they fall within the parameters of the aforementioned letter, why did they turn on the power to my other pump [(account X008)?]. For the account in question [(X754)] has not been prepaid.

By their own admission, they have stated that they have to reword the [deposit] guidelines for tier 2. From my perspective, this tells me that they know fair and well I do not fall under tier 2 for the above account number [X754]. The demands they have levied on this account number are excessive and without contractual backing.

Reply at 1.

DISCUSSION AND FINDINGS

After reviewing the record, the Commission finds there is sufficient evidence in the record for us to decide this matter without further process. The Commission has jurisdiction to hear this dispute pursuant to *Idaho Code* §§ 61-503 and 61-612.

³ In discussing the Courtesy Letter, the Company observed in its answer that the total past due balance for Mr. Muchow’s three agricultural irrigation accounts as of December 31, 2010, was \$2,545.17. (Emphasis added.)

As noted above, the Commission authorized the Company to implement the Tier 1 and Tier 2 deposits in response to a significant increase in accounts receivable from irrigation customers. While the Commission recognizes that the great majority of irrigation customers pay their electric bills in a timely manner, the Commission found the Tier 1 and Tier 2 proposal to be a reasonable method for allocating credit risks posed by irrigation customers with past due accounts. Order No. 29639 at 3-5. Moreover, unlike other customers that may have their service terminated for unpaid balances, the Company does not disconnect service to irrigation customers during the irrigation season.

Idaho Power asserts that the monthly statements, account notices, and the Courtesy Letter clearly advised Mr. Muchow that he would be required to pay a Tier 2 deposit on each of his irrigation accounts.⁴ However, it is not the letters or notices that are controlling in this case but the language of tariff Schedule 24 itself. *Idaho Code* § 61-313 provides in pertinent part that no public utility shall charge or collect a different amount for a service than the rates and charges for such service as specified in its schedules on file and in effect. *See also* Order No. 30753.

In reviewing the language for Tier 1 and Tier 2 deposits in Schedule 24, we find that the phrase “an outstanding balance” is ambiguous and subject to two interpretations. Does Schedule 24 refer to the cumulative balance of all accounts as explained in the Company’s answer (“the total past-due balance for all of [the] accounts need[s] to be less than \$1,000 by December 31”)? Or, is a Tier 2 deposit required on all accounts if any single account is in arrears by more than \$1,000 (a Tier 2 deposit is required when the unpaid “balance is \$1,000 or greater on any of the customer’s irrigation accounts.”)? *Cf.* Answer at 3-4 and 5. The Tier 1 and Tier 2 language in the schedule refers to “an outstanding balance” – singular balance not plural balances. The Company also notes that deposits are “evaluated at the customer level, not at the account level.” *Id.* at 6 (emphasis added).

We recognize that the monthly statements and the text on the first page of the Initial Reminder Notices advise the irrigation customer that “a deposit may be required on all irrigation accounts.” (Emphasis added.) However, the letters and notices are not controlling. Moreover, the language describing Tier 2 deposits in the “DEPOSIT REQUIREMENTS” sections of the Initial Reminder Notice, the Past Due Notice, and Final Termination Notice does not clarify the

⁴ We do not address the issue of imposing a Tier 2 deposit on the “transferred” account X611.

issue whether “an unpaid balance” refers to the cumulative balance of all accounts or the balance of each individual account.⁵ We accept the Company’s observation that the language in Schedule 24 “could be clarified.”

Consequently, based upon the current language of Schedule 24, we find Mr. Muchow is not required to pay a Tier 2 deposit for his Account No. X754. In addition, we find that Schedule 24 does not specifically require that all past due balances on all accounts be paid before service is restored as stated in the Courtesy Letter and in the REQUEST FOR DEPOSIT letter.

However, it is clear that Mr. Muchow is required to make a Tier 1 deposit for the account in question because service to that account was terminated for non-payment. We find there is no dispute that service to this account was disconnected in November 2010 for non-payment. Thus, we find that Mr. Muchow must pay a Tier 1 deposit before service is restored to his account X754.

In summary, the Commission has no objection to the application of the deposit requirement as expressed in the Notices. However, we find it is appropriate for the Company to clarify the requirement for Tier 1 and Tier 2 deposits in Schedule 24. In addition, the Company shall review and clarify its notices and letters to ensure that they are in compliance with the amended Schedule 24.

ORDER

IT IS HEREBY ORDERED that Mr. Muchow’s formal complaint against Idaho Power is granted in part and dismissed in part. Idaho Power shall require a Tier 1 deposit for Account No. X754 before service is restored.

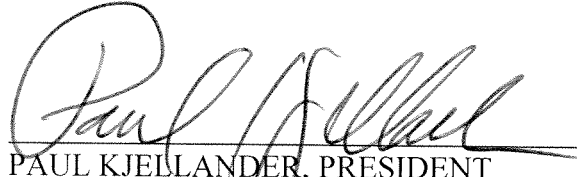
IT IS FURTHER ORDERED that the Company amend tariff Schedule 24 to clarify the criteria for imposing a Tier 2 deposit. In addition, the Company shall review and clarify its irrigation letters and notices to conform to the clarifying changes to Schedule 24.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-11-07 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in

⁵ Possibly adding to the confusion is the fact that each past due account receives an individual notice for that specific account stating “Customers who have an outstanding unpaid balance greater than \$1,000 on December 31. . . .” (Emphasis added). For customers that have multiple past due accounts, they may perceive that each account is treated separately when calculating whether a Tier 1 or Tier 2 deposit is required.

this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17th day of June 2011.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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