

139 FERC ¶ 61,026  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Idaho Power Company  
IDACORP Energy L.P.,  
IDACORP, Inc.

Docket No. IN03-9-000

ORDER GRANTING PETITION

(Issued April 9, 2012)

1. On September 9, 2011, IDACORP, Inc. (IDACORP), Idaho Power Company (Idaho Power), and IDACORP Energy, L.P. (IDACORP Energy) (collectively, IDACORP Entities) filed a petition to terminate Appendix B, Appendix C and Appendix E of the Stipulation and Consent Agreement (Settlement) dated April 25, 2003 between the IDACORP Entities and the Commission's Office of Enforcement (OE).<sup>1</sup> As explained more fully below, we grant the IDACORP Entities' petition.

**I. Background**

**A. IDACORP Entities**

2. IDACORP is a holding company whose principal operating subsidiary is Idaho Power. IDACORP's other subsidiaries are IDACORP Financial Services, Inc.,<sup>2</sup> Ida-West Energy Company,<sup>3</sup> and IDACORP Energy.<sup>4</sup>

---

<sup>1</sup> IDACORP Entities September 9, 2011 Petition to Terminate Appendices B, C, and E to the Stipulation and Consent Agreement (Petition).

<sup>2</sup> IDACORP Financial Services, Inc. is a real estate investment company.

<sup>3</sup> Ida-West Energy Company operates small hydroelectric generation projects.

<sup>4</sup> As will be discussed more fully below, IDACORP Energy was a marketer of energy commodities which wound down its operations in 2003.

3. Idaho Power is a vertically integrated public utility engaged in the business of generating, purchasing, transmitting and distributing electric energy. Idaho Power provides transmission service under its Commission-approved Open Access Transmission Tariff (OATT). Idaho Power provides retail electric service and natural gas service in southern Idaho and eastern Oregon. Idaho Power's Power Supply group (Power Supply) is responsible for serving Idaho Power's native load.<sup>5</sup> According to the IDACORP Entities, because Idaho Power's reliance on hydroelectric resources can result in a wide variation of energy availability between seasons and months, Power Supply is required to make energy purchases for native load and sells its excess energy.<sup>6</sup>

4. IDACORP Energy operated between 2001 and 2003 as a trader and marketer of natural gas and electric power to wholesale customers throughout the western United States and Canada. It did not own any transmission or generating facilities but purchased electric and natural gas supply from third parties (including Idaho Power) to arrange sales to other marketers, investor-owned utilities (including Idaho Power), and other parties located in regions that allowed customer choice. IDACORP Energy's practices, along with those of Idaho Power, were the subject of a non-public investigation by the OE, which led to the wind down of its operations. Thus, IDACORP Energy is not an operating entity and exists only as a party to various regulatory and legal proceedings.

#### **B. Stipulation and Consent Agreement**

5. OE conducted a preliminary, non-public investigation into IDACORP Energy's and Idaho Power's business activities conducted between January 1, 2000 and April 17, 2002. OE found several violations which are set forth in detail in the Settlement. OE and Idaho Power agreed to a variety of remedies which were approved by the Commission on May 16, 2003.<sup>7</sup>

6. Specifically, the Commission approved the Settlement in which Idaho Power admitted that it violated its OATT when it accorded native load priority to IDACORP Energy's requests for non-firm transmission service to effect off-system sales. Idaho Power and IDACORP Energy agreed to refund the profits garnered through this violation and to implement a native load priority monitoring program.<sup>8</sup> This monitoring program,

---

<sup>5</sup> According to the IDACORP Entities, Idaho Power has no other energy or marketing affiliate.

<sup>6</sup> Power Supply also purchases natural gas for its natural gas fired generation plants and for its retail natural gas customers.

<sup>7</sup> *Idaho Power Co.*, 103 FERC ¶ 61,182 (2003) (Settlement Order).

<sup>8</sup> *Id.* PP 4-6.

set forth in Appendix B of the Settlement, required: (1) Idaho Power to appoint a compliance officer to monitor observance of Appendix B procedures and recommend corrective actions; (2) the merchant group to determine that the requisite conditions were met prior to authorizing native load priority for non-firm transmission from non-network resources to serve native load customers; and (3) Idaho Power to retain the supporting documentation for the market group's calculations for three years to enable Idaho Power's internal audit personnel to verify compliance on an annual basis.<sup>9</sup>

7. Idaho Power and Idaho Energy also agreed with OE's findings that Idaho Power failed to file: (1) 12 agreements for the sale of spinning reserves and load following to IDACORP Energy; (2) a load following service agreement; and (3) 1,182 contracts for off-system sale of power for resale in interstate commerce. Idaho Power also failed to obtain Commission approval to transfer contracts to IDACORP Energy. To remedy these violations, IDACORP Energy agreed to transfer the net revenues derived from the ancillary service agreements to Idaho Power and Idaho Power agreed to refund to counterparties its profits on the 1,182 off-system sale agreements. Idaho Power also agreed to implement the protocols set forth in Appendix C of the Settlement to enhance its prospective compliance with the filing requirements of sections 203 and 205 of the Federal Power Act (FPA).<sup>10</sup>

8. Specifically, under Appendix C, Idaho Power was required to appoint a compliance officer to monitor compliance with the Appendix C Protocols.<sup>11</sup> Appendix C also required Idaho Power employees to provide to the compliance officer all contracts for the transmission or wholesale sale of electric energy; all proposed agreements for the sale, lease or other disposition of transmission facilities; and all assignments of contract so that the officer can determine whether the contract or agreement falls within the Commission's jurisdiction.<sup>12</sup>

9. Idaho Power further agreed that it violated several standards of conduct by allowing: (1) employees involved in wholesale merchant activities to have unescorted access after business hours to Idaho Power's transmission control area, as well as computer access to transmission-specific information; (2) wholesale merchant and transmission function employees to discuss transmission information on a preferential basis; and (3) transmission function employees to convey in telephone conversations,

---

<sup>9</sup> See Settlement Appendix B at PP 3-4.

<sup>10</sup> Settlement Order, 103 FERC ¶ 61,182 at PP 8-10.

<sup>11</sup> See Settlement Appendix C at P 2.

<sup>12</sup> *Id.* PP 4-5.

prompted by wholesale merchant traders, decisions regarding transmission requests. Idaho Power also failed to post on its open-access same-time information system (OASIS) all transfers of personnel between the transmission and wholesale merchant functions. To remedy these violations, Idaho Power agreed to the compliance plan set forth in Appendix E of the Settlement. Pursuant thereto, Idaho Power was directed to audit its compliance with the standards of conduct and file a report regarding this compliance within six months of the issuance of the Settlement Order.<sup>13</sup>

10. Appendix E imposed several ongoing obligations on Idaho Power. Idaho Power was required to make a commitment to compliance with the standards of conduct at the management level and to impress upon all employees the importance of full compliance with the standards of conduct.<sup>14</sup> Idaho Power also was required to designate a compliance officer who would be responsible for implementing training programs, addressing compliance issues, overseeing OASIS compliance postings, maintaining a compliance log, and making recommendations regarding disciplinary actions for willful compliance violations.<sup>15</sup> Finally, the compliance officer was required to arrange for periodic additional training programs for new and existing employees and keep and retain attendance logs for such programs.<sup>16</sup>

11. Finally, pursuant to the Settlement, Idaho Power agreed that it violated its code of conduct on file with the Commission by failing to: (1) invoice IDACORP Energy for services provided for ten months under an ancillary services contract; and (2) charge IDACORP Energy for transmission service on Idaho Power's system. IDACORP Energy was directed to transfer its net revenues to Idaho Power.<sup>17</sup>

12. On June 16, 2003, Idaho Power certified to the Commission that all the requirements of the Settlement regarding refunds, transfers and contract administration were satisfied.<sup>18</sup> On December 16, 2003, Idaho Power filed the native load audit report required by the Settlement.<sup>19</sup> In 2003, Idaho Power also wound down IDACORP

---

<sup>13</sup> Settlement Order, 103 FERC ¶ 61,182 at PP 11-12.

<sup>14</sup> See Settlement Appendix E, Section II.A.

<sup>15</sup> *Id.* at Section II.B.

<sup>16</sup> *Id.* at Section II.C.

<sup>17</sup> Settlement Order, 103 FERC ¶ 61,182 at P 13.

<sup>18</sup> Idaho Power and IDACORP Energy June 16, 2003 Certification.

<sup>19</sup> Idaho Power December 16, 2003 Audit Report.

Energy's operations.<sup>20</sup> According to the IDACORP entities, Idaho Power continues to fully implement the Appendix B procedures, Appendix C protocols, and the Appendix E program.<sup>21</sup>

## II. IDACORP Entities Petition

13. The IDACORP entities contend that good cause exists to terminate Appendix B, Appendix C and Appendix E (collectively, Appendices).<sup>22</sup> According to the IDACORP Entities, each appendix was designed to help assure prospective compliance by Idaho Power. The IDACORP Entities contend that the Appendices served as a catalyst for Idaho Power to create a comprehensive compliance program that is superior to the "narrow" compliance requirements of the Appendices.<sup>23</sup>

14. The IDACORP Entities contend that avoiding the penalties the Commission can impose for violations of Part II of the FPA adequately incents Idaho Power's compliance with all the obligations under Part II of the FPA, not just those requirements under the Appendices. The IDACORP Entities note that even if the Appendices are terminated, Idaho Power will still have to comply with all the requirements of the FPA. The IDACORP Entities contend that the Appendices have the unintended consequence of perpetually prioritizing those issues at or near the top of the compliance program regardless of the prioritization it would otherwise require, a consequence that could unintentionally undermine the effectiveness of Idaho Power's comprehensive compliance program. Thus, according to the IDACORP Entities, terminating the Appendices will allow the comprehensive compliance program to focus on all of Idaho Power's obligations, as well as allow Idaho Power to shift priorities as necessary to address or avoid problems.<sup>24</sup>

---

<sup>20</sup> Petition at 9. In the Settlement Order, the Commission expressly relied on IDACORP Energy's representation that it was winding down operations and directed IDACORP Energy to inform the Commission in writing if it ever intended to take any action inconsistent with this representation. Settlement Order, 103 FERC ¶ 61,182 at P 6.

<sup>21</sup> Petition at 9.

<sup>22</sup> *Id.* at 10. The Commission can modify or terminate the procedures set forth in Appendix B, Appendix C and Appendix E for good cause shown. *See* Settlement Appendix B at P 6, Appendix C at P 6, and Appendix E at Section III.A.

<sup>23</sup> Petition at 10. The comprehensive compliance program has been in effect since June 16, 2008. *Id.* at 11.

<sup>24</sup> *Id.*

15. According to the IDACORP Entities, the Settlement helped change the compliance culture within IDACORP and Idaho Power.<sup>25</sup> Idaho Power's compliance program is based on the "STARS model" that includes the five elements of systems, training, assessment/audit, response and self-monitoring. The compliance program is implemented through a committee structure designed to ensure that compliance topics, issues and needs are reported to all levels of management, and to ensure comprehensive inclusion in company execution and strategy. The committees are charged with providing oversight, allocating resources to ensure that the compliance program is effective, ensuring effective "tone at the top," and holding management accountable for timely resolution of deficiencies through the implementation of corrective-action response plans.<sup>26</sup>

16. The IDACORP Entities contend that the STARS model provides several benefits, including empowering business units to assume responsibility, providing constant feedback to the business units, clearly identifying compliance risks and practices to the oversight committees, strategically focusing expertise by moving compliance personnel into guidance and oversight role, focusing resources on the correct areas and better preparing Idaho Power for external audits and reviews.<sup>27</sup> According to the IDACORP Entities, since adoption of the compliance program, compliance with the OATT, reliability standards, standards of conduct and market behavior has been a priority.<sup>28</sup> According to IDACORP Entities, it consistently reviews the systems used by the power supply division and delivery division, provides regular training on the Commission's regulations, conducts regular assessments and audits, responds to violations and potential violations and encourages self-monitoring.<sup>29</sup> The IDACORP Entities contend that the STARS model has a proven track record of identifying and mitigating violations and that, since its adoption in 2008, incidents of potential non-compliance have been reduced across the board.<sup>30</sup>

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 12.

<sup>27</sup> *Id.* at 12-13.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> *Id.* at 13.

<sup>30</sup> *Id.* Since the implementation of the compliance program, Idaho Power has submitted 33 self reports to OE. According to the IDACORP Entities, all 33 self reports were resolved without further action or penalty. *Id.* at 14.

17. The IDACORP Entities contend that the comprehensive compliance program is superior to the programs established in the Appendices. For example, the IDACORP Entities claim that the Appendix B procedures established a template for compliance with the Commission's native load priority rules but, since the Settlement, Idaho Power has dedicated resources and demonstrated leadership in compliance with the native load priority rules.<sup>31</sup> Furthermore, Idaho Power's comprehensive compliance program includes the core principles of assessment and evaluation set forth in Appendix B. The IDACORP Entities aver that the comprehensive nature of the compliance program has resulted in that program being more successful than the Appendix B procedures.<sup>32</sup>

18. Similarly, the IDACORP Entities contend that the comprehensive compliance program is superior to the Appendix C protocols. As part of the compliance program, Idaho Power performed an assessment of its compliance with the filing requirements of sections 203 and 205 of the FPA in November 2010. The internal assessment concluded that Idaho Power meets its obligations under sections 203 and 205 of the FPA. The IDACORP Entities claim that the internal assessment confirms that the comprehensive compliance program is effective in reducing the risk of future violations and ensuring that potential violations are caught and self reported. According to the IDACORP Entities, the comprehensive compliance program includes verification and self-report mechanisms, while the Appendix C protocols do not. Thus, these additional protections result in the comprehensive compliance program being superior to the Appendix C protocols.<sup>33</sup>

19. Finally, the IDACORP Entities contend that the comprehensive compliance program is superior to the Appendix E program. While the Appendix E program designated a single compliance officer to oversee compliance with the standards of conduct, the comprehensive compliance program created a compliance office which oversees compliance activities in conjunction with the Vice President of Audit and Compliance, the Director of Regulatory Compliance, the FERC Compliance Officer, various compliance committees, the Audit Committee of the Board of Directors and, ultimately the CEO. The IDACORP Entities claim that the comprehensive compliance program demonstrates that the culture of compliance that Appendix E sought to cultivate "has come to fruition."<sup>34</sup>

---

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 14-15.

<sup>33</sup> *Id.* at 15.

<sup>34</sup> *Id.* at 15-16.

20. The IDACORP Entities claim that the compliance program Idaho Power currently is implementing is effective, comprehensive and global and, unlike the Appendices, it is adaptive and evolving. According to the IDACORP Entities, Idaho Power's culture of compliance has evolved significantly beyond the limited requirements of the Appendices and includes implementation of a comprehensive company-wide plan. Furthermore, the IDACORP Entities argue that because Idaho Power currently is required to ensure compliance with the comprehensive compliance program as well as the Appendices, Idaho Power must duplicate its efforts in tracking and reporting compliance.<sup>35</sup>

### **III. Notice of Filing and Responsive Pleadings**

21. Notice of the IDACORP Entities' Petition was published in the *Federal Register*, 76 Fed. Reg. 71,013 (2011), with interventions and protests due on or before November 30, 2011. No interventions or protests were filed with the Commission.

### **IV. Commission Determination**

22. Based on the IDACORP Entities' representation, we find that the protections contained in Appendices B, C and E are no longer necessary in light of Idaho Power's comprehensive compliance plan. In reaching this conclusion, we note that Idaho Power's aggressive self-reporting protocols demonstrate that they recognize the serious nature of their past violations as well as a willingness to implement measures necessary to avoid violations in the future. Idaho Power's compliance program, including its implementation of the STARS model, appears to be more comprehensive than the requirements contained in the Appendices. Finally, we find that, in recognition of Idaho Power's different business model, enforcement priorities have changed and Idaho Power's focus has correctly shifted to a focus on overall compliance.

23. For the reasons set forth above, we find that the IDACORP Entities have shown good cause and, therefore, we terminate Appendix B, Appendix C, and Appendix E of the Settlement.<sup>36</sup>

---

<sup>35</sup> *Id.* at 16 -17.

<sup>36</sup> We note that no other aspects of the Settlement are affected by this order.

The Commission orders:

Appendices B, C and E to the Stipulation and Consent Agreement are terminated, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.