

120 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Idaho Power Company

Docket No. OA07-70-000

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued September 10, 2007)

1. On July 13, 2007, pursuant to section 205 of the Federal Power Act (FPA), Idaho Power Company (Idaho Power) submitted its compliance filing as required by Order No. 890.¹ In this order, we will accept Idaho Power's filing, subject to certain conditions, as in compliance with Order No. 890, as discussed below.

Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISOs), or regional transmission organizations (RTOs), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890).

Order No. 890.² In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM)³ set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.⁴

4. As required by Order No. 890, Idaho Power proposes to modify Schedules 7, 8 and 9 of its OATT to ensure that point-to-point customers do not pay a transmission charge that includes the cost of the CBM set-aside. However, Idaho Power notes that while the Commission directed transmission providers to remove the cost of the CBM set-aside from their point-to-point rate schedules, the Commission did not also order transmission providers to make a corresponding rate change to their network transmission rate.⁵

5. Idaho Power contends that the Commission acknowledged this problem in a subsequent order that stated, “[n]othing in Order No. 890 precludes transmission providers from proposing modifications of rates for other services (such as network service) as necessary to recover CBM-related costs previously paid by point-to-point customers”⁶

6. Idaho Power contends that in order to recover its total transmission revenue requirement, a corresponding change to its network transmission service rate is required. Under the rate design changes in the proposed Schedules 7, 8, and 9, Idaho Power states

² The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

³ CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider’s system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

⁴ *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

⁵ Idaho Power July 13, 2007 Compliance Filing at 3.

⁶ *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 at n. 12.

that there is a shift in CBM cost responsibility from point-to-point customers to network service customers. With these modifications, Idaho Power states that it will continue to have the opportunity to recover its transmission revenue requirement.

7. In addition to CBM-related schedule modifications, Idaho Power proposes to add Schedule 11 to its OATT under which it will assess unreserved use penalties in any circumstance where a transmission customer has used transmission service that it has not reserved. Under these circumstances, Idaho Power will assess a penalty that is equal to twice the applicable point-to-point transmission rate for the applicable penalty period.⁷ Additionally, Idaho Power states that the unreserved use penalty will include appropriate ancillary services charges.

8. Finally, Idaho Power requests a waiver of the Commission's notice requirements and an effective date of July 13, 2007. Idaho Power states that this effective date will allow it to implement Order No. 890 requirements with minimal disruption and cost to its customers.

Notice of Filing and Responsive Pleadings

9. Notice of Idaho Power's filing was published in the *Federal Register*, 72 Fed. Reg. 41,728 (2007), with interventions and protests due on or before August 3, 2007. Powerex Corp. (Powerex) filed a Motion to Intervene and Comments. Idaho Power filed a Motion for Leave to File Answer and Answer on August 30, 2007.

10. Powerex argues as a general matter that it is unclear whether Idaho Power has specified the charges and penalties for every instance for which its tariff permits it to level charges or penalties. Powerex contends that the Commission has consistently declined to permit the levying of charges or penalties unless those charges are specifically stated in the transmission provider's tariff and that the Commission reaffirmed this requirement in Order No. 890.⁸

11. Powerex requests that Idaho Power be (a) required to modify its OATT to specify the applicable charges and penalties along with any pertinent terms and conditions for

⁷ In Order No. 890, the Commission established a "rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point rate for the penalty period defined are just and reasonable." *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 848.

⁸ *Id.*

their application for every OATT provision that permits Idaho Power to assess any charges or penalties, and (b) prohibited from levying such charges or penalties under its tariff until these modifications have been made.⁹

Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Idaho Power's answer and will, therefore, reject it in this docket.¹⁰

13. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the CBM set-aside to ensure that customers not benefiting from the CBM set-aside do not pay for CBM.¹¹ We conclude that Idaho Power's submittal complies with Order No. 890 and, accordingly, we will accept it.

14. With regard to unreserved use penalties, we find that Idaho Power's proposed Schedule 11 identifies the penalty rate and when such penalties will be assessed. However, we find that Idaho Power has failed to explain what ancillary service charges will be assessed to transmission customers that fail to reserve sufficient transmission. Accordingly, we accept Idaho Power's proposed Schedule 11 subject to Idaho Power's making a compliance filing within 30 days of the date of this order that identifies the ancillary services charges that will be assessed and the circumstances under which they may be assessed. We also note that the issue of how the penalties collected for unreserved use will be distributed is a matter that will be considered in Idaho Power's section 206 filing in Docket No. OA07-60-000.

15. Finally, we will grant waiver of Commission notice requirements and accept Idaho Power's compliance filing, to become effective July 13, 2007, subject to the compliance filing directed above.

⁹ Powerex's motion to intervene and comments also include a number of other observations and concerns than those summarized here. Those comments will be considered in Idaho Power's section 206 compliance filing in Docket No. OA07-60-000.

¹⁰ Idaho Power's answer also contains comments to matters that we will consider in Idaho Power's section 206 compliance filing in Docket No. OA07-60-000. Accordingly, we will decide whether or not to accept those comments in that proceeding.

¹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

The Commission orders:

(A) Idaho Power's compliance filing is hereby conditionally accepted effective July 13, 2007, as discussed in the body of this order.

(B) Idaho Power is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.