

148 FERC ¶ 61,182  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Idaho Power Company

Docket Nos. ER13-1857-000  
EL14-3-000

ORDER ON MARKET-BASED RATES AND TERMINATING SECTION 206  
PROCEEDING

(Issued September 10, 2014)

1. On November 13, 2013, the Commission issued an order addressing an updated market power analysis filed by Idaho Power Company (Idaho Power).<sup>1</sup> In that order, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>2</sup> in Docket No. EL14-3-000 to investigate horizontal market power issues in the Idaho Power balancing authority area. In this order, the Commission finds that Idaho Power has rebutted the presumption of market power in the Idaho Power balancing authority area and satisfies the Commission's horizontal market power standard for the grant of market-based rate authority. Accordingly, this order terminates the section 206 proceeding instituted in Docket No. EL14-3-000. This order also accepts proposed revisions to Idaho Power's market-based rate tariff, effective August 5, 2010, as proposed.

**I. Background**

On June 28, 2013, as amended on August 2, 2013, October 3, 2013, and November 7, 2013, Idaho Power submitted an updated market power analysis for the Northwest region in compliance with the regional reporting schedule adopted in Order No. 697<sup>3</sup> and

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<sup>1</sup> *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013) (November 13 Order).

<sup>2</sup> 16 U.S.C. § 824e (2012).

<sup>3</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 882-893, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A,

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pursuant to the Commission's order granting Idaho Power authority to sell electric energy, capacity and ancillary services at market-based rates.<sup>4</sup> Idaho Power's June 28 filing included a late-filed notice of change in status informing the Commission that Idaho Power's 300 megawatt (MW) Langley Gulch power plant began commercial operations on June 29, 2012, and a revised market-based rate tariff to incorporate the required provisions adopted by the Commission in Order Nos. 697<sup>5</sup> and 697-A.<sup>6</sup>

2. In its June 28 filing, Idaho Power represented that it owns 1,709 MW of hydroelectric generation capacity and 731 MW of thermal generation capacity within the Idaho Power balancing authority area. Idaho Power stated that it also owns interests in remote coal-fired generators located in the balancing authority areas operated by Bonneville Power Administration (BPA), PacifiCorp, and Sierra Pacific Power Company (Sierra Pacific). Idaho Power further represented that its affiliate, Ida-West Energy (Ida-West), owns approximately 33 MW of Qualifying Facility (QF) projects in the Idaho Power balancing authority area and 12 MW of QF projects in the California Independent System Operator Corp. (CAISO) market, the entire output of which is sold on a long-term basis to Idaho Power and Pacific Gas and Electric Company, respectively. Finally, Idaho Power represented that it owns a transmission system, and that open access to its facilities is provided pursuant to the terms of Idaho Power's Commission-approved Open Access Transmission Tariff (OATT).<sup>7</sup>

3. Idaho Power stated that for its triennial updated market power analysis, it performed the pivotal supplier and market share indicative screens for the Idaho Power balancing authority area and for the markets first-tier to that balancing authority area, i.e., the Avista, BPA, NorthWestern Energy, PacifiCorp-East, PacifiCorp-West, and Sierra

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FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012). Idaho Power must file an updated market power analysis for each region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.

<sup>4</sup> *Idaho Power Co.*, 78 FERC ¶ 61,343 (1997).

<sup>5</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 914-918.

<sup>6</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at PP 384, 391.

<sup>7</sup> Idaho Power Company, Open Access Transmission Tariff (0.0.0).

Pacific balancing authority areas and the CAISO market. Idaho Power represented that under its base case analysis it passes the pivotal supplier and market share screens for all eight markets studied.<sup>8</sup>

4. Idaho Power noted that using a simplified approach to include its Langley Gulch power plant causes screen failures. Specifically, Idaho Power exceeds the 20 percent threshold of the market share screen in three out of four seasons in the Idaho Power balancing authority area. Idaho Power stated that it passes the pivotal supplier screen in the Idaho Power balancing authority area and continues to pass all of the screens in the other relevant markets.<sup>9</sup> Idaho Power stated that it did not have time to prepare a delivered price test (DPT) analysis or provide a fully updated market power analysis that included the Langley Gulch power plant prior to the June 30, 2013 due date for its updated market power analysis filing.

5. On November 7, 2013, Idaho Power supplemented its filing with a DPT analysis that reflects the inclusion of the Langley Gulch facility and that contained two studies: one uses data from December 2010 - November 2011, and the second uses data from December 2010 - November 2012.

In the November 13 Order, the Commission found that Idaho Power's failure of the wholesale market share screen establishes a rebuttable presumption of horizontal market power, and noted that sellers submitting a DPT should not expect that the Commission will postpone initiating a section 206 investigation to protect customers while it examines the supplemental information. Accordingly, the Commission instituted a section 206 proceeding concerning the justness and reasonableness of Idaho Power's market-based rates in the Idaho Power balancing authority area. The Commission also found that Idaho Power had violated its filed tariff by submitting a notice of change in status out of time.<sup>10</sup>

6. In addition, the Commission found that, based on Idaho Power's representations, Idaho Power satisfied the Commission's requirements for market-based rate authority

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<sup>8</sup> Idaho Power June 28, 2013 Filing at 6-7. Idaho Power noted that its hydroelectric capacity sensitivity analyses show that Idaho Power passes both screens in each of the balancing authorities studied except for the non-Summer seasons under the high hydro sensitivity market share screen for the Idaho Power balancing authority area.

<sup>9</sup> *Id.* at 7-8.

<sup>10</sup> November 13 Order, 145 FERC ¶ 61,122 at P 1. The Commission set a refund effective date of July 30, 2012, the date on which Idaho Power first violated its tariff by failing to timely file its change in status report.

regarding vertical market power.<sup>11</sup> Further, the Commission found that Idaho Power remains a Category 2 seller in the Northwest region and designated Idaho Power as a Category 1 seller in the Central, Northeast, Southwest, Southwest Power Pool, and Southeast regions.<sup>12</sup>

7. In its April 3, 2014 filing, as supplemented on April 29, 2014, Idaho Power submitted additional workpapers and narrative responses to questions posed by the Commission staff in a February 6, 2014 data request with regard to Idaho Power's DPT.

8. On April 7, 2014, the Commission issued an order approving Simultaneous Transmission Import Limit (SIL) values based upon its review of the SIL values submitted by the Northwest region transmission owners. The Commission-accepted SIL values are to be used in assessing transmission import capability for purposes of measuring market power within the Northwest region.<sup>13</sup>

## **II. Notices and Responsive Pleadings**

9. Notice of Idaho Power's April 3, 2014 supplemental filing was published in the *Federal Register*, 79 Fed. Reg. 20,193 (2014), with interventions or protests due on or before April 24, 2014. None was filed. Notice of Idaho Power's April 29, 2014 supplemental filing was published in the *Federal Register*, 79 Fed. Reg. 26,423 (2014), with interventions or protests due on or before May 20, 2014. None was filed.

## **III. Discussion**

### **A. Idaho Power's Delivered Price Test**

10. As the Commission has previously explained, the DPT identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity<sup>14</sup> for each

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<sup>11</sup> *Id.* P 25.

<sup>12</sup> *Id.* PP 1-2.

<sup>13</sup> *Puget Sound Energy, Inc.*, 147 FERC ¶ 61,021, at P 6 (2014) (listing Idaho Power's accepted SIL values for Winter 2010 through Fall 2011).

<sup>14</sup> "Economic capacity" is the total generation capacity of a potential supplier that can compete in the destination market, given its costs and transmission availability. "Available economic capacity" is derived by subtracting each potential supplier's native

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season/load period.<sup>15</sup> Under the DPT, applicants must also calculate market concentration using the Hirschman-Herfindahl Index (HHI).<sup>16</sup> A HHI of less than 2,500 in the relevant market for all season/load periods, in combination with a demonstration that the applicants are not pivotal and do not possess more than a 20 percent market share in any of the season/load periods, would constitute a showing of a lack of horizontal market power, absent compelling contrary evidence from intervenors. A detailed description of the mechanics of the DPT is provided in Order No. 697.<sup>17</sup>

11. As with the indicative screens, applicants and intervenors may present evidence such as historical wholesale sales data, which may be used to calculate market shares and market concentration and to refute or support the results of the DPT. In Order No. 697, the Commission encouraged applicants to present the most complete analysis of competitive conditions in the market as the data allows.<sup>18</sup> Idaho Power's DPT for the Idaho Power balancing authority area provided a number of results based on different price data.<sup>19</sup> For the DPT results based on the electric quarterly report (EQR) data in the Idaho Power balancing authority area, Idaho Power provided two studies: the first used EQR data from December 2010- November 2011, and the second used EQR data from December 2010 -November 2012.<sup>20</sup> Because the first study included an insufficient

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load obligation from its total capacity and adjusting transmission availability accordingly. See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 96 n.78.

<sup>15</sup> Super-peak, peak, and off-peak, for winter, shoulder, and summer periods and an additional highest super-peak for the summer.

<sup>16</sup> The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market,  $HHI = (20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$ .

<sup>17</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 104-117.

<sup>18</sup> *Id.* P 111.

<sup>19</sup> The Commission stated that it prefers the use of actual market prices, such as EQRs, when available, rather than price proxies such as system lambda. See *Duke Energy Corp.*, 136 FERC ¶ 61,245, at PP 121, 128 (2011); see also *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); see also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007).

<sup>20</sup> See Idaho Power November 7, 2013 Filing, Aff. PP 24-25.

number of hourly transactions to reliably calculate seasonal market prices, Idaho Power provided a second study with a larger sample size of two years of EQR data, from December 2010 – November 2012, to calculate seasonal market prices. As discussed below, our discussion is based on the second study's methodology that uses two years of EQR data.

12. For the Idaho Power balancing authority area, Idaho Power's DPT analysis using the available economic capacity measure indicates that Idaho Power is not pivotal in any season/load period, passes the market share analysis in all seasons/load periods with market shares ranging from 0 to 15.9 percent, and passes the market concentration analysis in all seasons/load periods with HHIs ranging from 859 to 1,493.<sup>21</sup> When the economic capacity measure is used, Idaho Power fails the pivotal supplier and market share screens in all seasons/load periods and fails the market concentration analysis in 8 out of 10 seasons/load periods. Idaho Power asserts, however, that the available economic capacity measure is the more relevant of the two generation capacity measures for areas of the country, such as the Idaho Power balancing authority area and most of the Northwest region generally, that have not undergone the type of industry restructuring that severs the link between traditional suppliers' generation ownership and their obligation to serve their native load customers.<sup>22</sup>

13. For Idaho Power's sensitivity price studies that increase EQR prices by 10 percent, when the available economic capacity measure is used, Idaho Power passes the market share analysis in all seasons/load periods with market shares ranging from 0 to 12.1 percent and also passes the market concentration analysis in all seasons/load periods with HHIs ranging from 873 to 1,326. Idaho Power is not pivotal in any season/load period using the available economic capacity measure.

14. For Idaho Power's sensitivity price studies that decrease EQR prices by 10 percent, when the available economic capacity measure is used, Idaho Power passes the market share analysis in all seasons/load periods with market shares ranging from 0 to 8.3 percent and also passes the market concentration analysis in all seasons/load periods with HHIs ranging from 799 to 1,365. Idaho Power is not pivotal in any season/load period using the available economic capacity measure.

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<sup>21</sup> Idaho Power April 3, 2014 Filing, Ex. 6.

<sup>22</sup> Idaho Power November 7, 2013 Filing, Aff. P 7.

## **B. Commission Determination**

15. As an initial matter, we will rely upon Idaho Power's second study submitted in its DPT analysis that uses two years of EQR data based on the facts and circumstances at issue here. Because Idaho Power's first study included an insufficient number of hourly transactions to reliably calculate seasonal market prices, we will rely upon the second study with a larger sample size of two years of EQR data, from December 2010 – November 2012, to calculate seasonal market prices. The fact that the Langley Gulch facility came online during 2012, which is the second year of the EQR data used, further influenced our decision to rely upon the second study.

16. After weighing all of the relevant factors, we find that, on balance, based on Idaho Power's DPT analysis in the Idaho Power balancing authority area, Idaho Power has rebutted the presumption of horizontal market power and satisfies the Commission's horizontal market power standard for the grant of market-based rate authority in the Idaho Power balancing authority area.

17. The Commission has previously noted that the DPT does not function like the initial screens – i.e., failure of either the economic capacity or available economic capacity analyses does not result in an automatic failure of the test as a whole. Neither measure is definitive; the Commission weighs the results of both the economic capacity and available economic capacity analyses and considers the arguments of the parties.<sup>23</sup>

18. The Commission has recognized that not all generation capacity is available all of the time to compete in wholesale markets and that some accounting for native load requirements is warranted.<sup>24</sup> In the DPT analysis, available economic capacity accounts for native load requirements. As the Commission explained in Order No. 697:

[I]n markets where utilities retain significant native load obligations, an analysis of available economic capacity may more accurately assess an individual seller's competitiveness, as well as the overall competitiveness of a market, because available economic capacity recognizes the native load obligations of the sellers. On the other hand, in markets where the sellers have been predominantly relieved of their

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<sup>23</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 13, 112 (stating that the Commission will weigh both available economic capacity and economic capacity).

<sup>24</sup> See, e.g., *Dogwood Energy LLC*, 132 FERC ¶ 61,120, at P 21 (2010); *Sierra Pac. Power Co.*, 126 FERC ¶ 61,283, at P 21 (2009).

native load obligations, an analysis of economic capacity may more accurately reflect market conditions and a seller's relative size in the market.[<sup>25</sup>]

19. Because Idaho Power has significant native load obligations in the Idaho Power balancing authority area, we find that the available economic capacity measure of the DPT more accurately captures conditions in the relevant market. As noted above, using the available economic capacity measure, Idaho Power has shown that it is not pivotal, has less than a 20 percent market share in all 10 seasons/load periods, and does not exceed the 2,500 HHI threshold in any of the 10 seasons/load periods.

20. In addition to submitting the DPT analysis to the Commission, Idaho Power also provided six sensitivity analyses which separately analyze what effect, if any, an increase of 10 percent or a decrease in 10 percent of the market price would have on the results of its DPT analysis. In all six sensitivities, market concentration as measured by the HHI remains far below the 2,500 threshold in all 10 DPT periods using the available economic capacity measure. In addition, Idaho Power is not pivotal in any of the six sensitivities when using the available economic capacity measure. Idaho Power's sensitivity analyses indicate that the overall results from the six sensitivity DPT analyses are little different than those reported for the base case DPT analyses.<sup>26</sup>

21. After weighing all of the relevant evidence, including the fact that Idaho Power's DPT shows that it passes the pivotal supplier, wholesale market share, and market concentration analyses in all seasons/load period using the available economic capacity measure, even when the market price is increased or decreased by 10 percent, we conclude that Idaho Power does not have the ability to exercise market power in the Idaho Power balancing authority area.

22. As noted above, in the November 13 Order, the Commission designated Idaho Power as a Category 1 seller in the Central, Northeast, Southwest, Southwest Power Pool,

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<sup>25</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 112.

<sup>26</sup> Idaho Power November 7, 2013 Filing, Aff. P 36 & n.29; *see also Pinnacle West Capital Corp.*, 120 FERC ¶ 61,153, at P 35 (2007) ("Pinnacle also provided sensitivity analyses which separately analyze what effect, if any, an increase of 10 percent or a decrease in 10 percent of the market price would have on the results of its DPT analysis.").

and Southeast regions.<sup>27</sup> Therefore, we accept Idaho Power's tariff revisions effective August 5, 2010, as proposed.<sup>28</sup>

23. Finally, we will terminate Docket No. EL14-3-000. That proceeding was established to determine the justness and reasonableness of Idaho Power's market-based rates given its failure of the market share indicative screen and resulting presumption of horizontal market power in the Idaho Power balancing authority area. Based on the above findings that Idaho Power has rebutted the presumption of horizontal market power and satisfies the Commission's horizontal market power standard for the grant of market-based rate authority in the Idaho Power balancing authority area, there is no further need for the proceeding in Docket No. EL14-3-000.

The Commission orders:

(A) Idaho Power's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Idaho Power's tariff revisions are hereby accepted for filing, effective August 5, 2010, as proposed, as discussed in the body of this order.

(C) The section 206 proceeding in Docket No. EL14-3-000 is hereby terminated, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>27</sup> November 13 Order, 145 FERC ¶ 61,122 at PP 1-2.

<sup>28</sup> See *Idaho Power Co.*, Docket No. ER10-2126-000, at 1 (Jan. 11, 2011) (delegated letter order); see also *Idaho Power Co.*, Updated Market Power Analysis, Docket No. ER97-1481-013, at 4 (filed June 30, 2010) (stating that Idaho Power is a Category 2 seller in the Northwest region).