

120 FERC 61,144  
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. ER06-787-004

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued August 8, 2007)

1. On June 15, 2007, Idaho Power Company (Idaho Power) filed a Partial Settlement Agreement (Settlement Agreement) executed by Idaho Power, Bonneville Power Administration, Pacific Northwest Generating Cooperative, Raft River Rural Electric Cooperative, Public Power Council, A&B Irrigation District, Burley Irrigation District, Falls Irrigation District, Black Canyon Irrigation District, Owyhee Irrigation District, and Idaho Energy Authority. Except for the issue of the proper ratemaking treatment of certain “Legacy Agreements,”<sup>1</sup> the Settlement Agreement resolves all issues set for hearing by the Commission in this proceeding, which involves a dispute over Idaho Power’s proposed rate increase implementing new formula rates for its point-to-point and

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<sup>1</sup> The Legacy Agreements include: the Transmission Facilities Agreement Between Idaho Power, Pacific Power & Light Company, and Utah Power & Light Company, dated June 1, 1974; the Restated Transmission Services Agreement Between PacifiCorp and Idaho Power Company, dated June 6, 1992; and the Agreement for Interconnection and Transmission Service Between Idaho Power and Utah Power & Light Company, dated March 19, 1982. A hearing on the merits of the issue of the proper ratemaking treatment of these Legacy Agreements was held on June 20, 2007, through June 26, 2007. An initial decision by the Presiding Administrative Law Judge addressing this remaining issue and a subsequent Commission order are expected.

network integration transmission services provided to jurisdictional customers under its open access transmission tariff (OATT).<sup>2</sup>

2. On June 29, 2007, Commission Trial Staff filed initial comments in support of the Settlement Agreement. No other comments were filed. On July 11, 2007, the Presiding Administrative Law Judge certified the Settlement Agreement to the Commission as uncontested, stating that the Settlement Agreement presents no genuine issues of material fact, and that with a suggested modification, the Settlement Agreement is fair and reasonable and in the public interest. Specifically, the Presiding Administrative Law Judge stated that section 6.3 of the Settlement Agreement<sup>3</sup> should be revised to limit the circumstances under which the filing and notice requirements of section 205 of the Federal Power Act (FPA)<sup>4</sup> are waived. He recommends that the Commission impose a procedural limitation on automatic formula rate increases, such that, in any service year in which the automatic rate increase resulting from the annual formula recalculation exceeds a certain level (e.g., the increase in an appropriate price index), Idaho Power should be required to make a section 205 filing for that rate increase and bear the burden of proving its justness and reasonableness.

3. The Commission finds that issues concerning filing and notice requirements were raised earlier in this proceeding<sup>5</sup> and that the parties have negotiated on and agreed to the terms and conditions of the Settlement Agreement, including annual informational filing

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<sup>2</sup> The Settlement Agreement identifies the issue of the proper ratemaking treatment of the Legacy Agreements as the only issue remaining unresolved in this proceeding; however, the Presiding Administrative Law Judge's certification identifies an issue associated with filing and notice requirements as an unresolved issue. As discussed below, the Commission finds that the filing and notice requirements issues have been addressed and negotiated by the parties and do not remain unresolved.

<sup>3</sup> Section 6.3 provides as follows: "In approving this Settlement Agreement, the Commission is granting the necessary waivers of the notice and filing requirements of Section 205 associated with the operation of the OATT formula rate as filed and modified by this Settlement Agreement."

<sup>4</sup> 16 U.S.C. § 824d (2000).

<sup>5</sup> See *Idaho Power Co.*, 115 FERC ¶ 61,281 at P 29 (2006); See *Idaho Power Co.*, 118 FERC ¶ 61,156 at PP 9-15, 19 (2007).

procedures for formula rate updates.<sup>6</sup> Additionally, interested parties and the Commission retain the right to challenge any annual formula recalculation. Accordingly, we find it unnecessary to modify section 6.3 of the Settlement Agreement.

4. The Settlement Agreement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

5. The Settlement Agreement provides that the standard of review for any proposed changes to the Settlement Agreement will be the just and reasonable standard, with the exception of changes to the rate of return on equity, which will be subject to the *Mobile-Sierra*<sup>7</sup> public interest standard.<sup>8</sup> With that exception, the Commission retains the right to investigate the rates, terms, and conditions of the Settlement Agreement under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the FPA.

6. The rate schedule sheets submitted as part of the Settlement Agreement are in compliance with Order 614. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stat. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000). The rate schedules are hereby accepted for filing and made effective as specified in the Settlement Agreement.

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<sup>6</sup> *See Idaho Power Co. FERC Electric Tariff, First Revised Volume No. 5, Substitute Original Sheets Nos. 140-140G* (providing that, among other things, Idaho Power will post an informational filing on its OASIS with certain cost data and other information, Idaho Power will hold an annual open meeting to discuss the informational filing with interested parties, and recognizing that any party may challenge the informational filing by filing a protest with the Commission).

<sup>7</sup> *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

<sup>8</sup> As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case, we find that the public interest standard should apply to the return on equity issue.

7. Within thirty days after the Settlement Agreement becomes effective, Idaho Power will recalculate the charges produced under the formula rate based on the changes to the OATT agreed to in the Settlement Agreement. Refunds will be made pursuant to the Settlement Agreement.

8. This order terminates Docket No. ER06-787-004.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Power Company

Docket No. ER06-787-004

(Issued August 8, 2006)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply with respect to certain future changes to the rate of return on equity used in Idaho Power Company’s OATT formula rate, whether proposed by a party, a non-party or the Commission acting *sua sponte*.

As I explained in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of approving such a provision. In addition, as I have previously noted,<sup>2</sup> this is particularly the case where, as here, the settlement agreement will impact the generally applicable tariff rates for all customers, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I dissent in part from this order.

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Suedeem G. Kelly

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<sup>1</sup> 117 FERC ¶ 61,232 (2006).

<sup>2</sup> *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers certain future changes to the return on equity provisions of the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,<sup>1</sup> I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,<sup>2</sup> I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> 117 FERC ¶ 61,055 (2006).

<sup>2</sup> 117 FERC ¶ 61,149 (2006).