

123 FERC ¶ 61,104  
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. ER08-629-000

ORDER ACCEPTING REVISED TARIFF SHEETS

(Issued April 30, 2008)

1. On February 29, 2008, Idaho Power Company (Idaho Power) filed revised tariff sheets under its Open Access Transmission Tariff (OATT) amending its formula rate calculation to reflect the proposed recovery of certain deferred Regional Transmission Organization (RTO) formation costs. The Commission accepts Idaho Power's revised tariff sheets, to be effective May 1, 2008, as discussed below.

**Background**

2. Idaho Power proposes to recover \$4.6 million in costs it incurred in efforts to develop an RTO in the Pacific Northwest. Idaho Power states that on October 16, 2000, in response to Order No. 2000,<sup>1</sup> the RTO West Transmission Owners<sup>2</sup> filed a Stage 1 filing to form RTO West. RTO West was proposed as a nonprofit organization with an independent board that would act as the independent system operator for the aggregated transmission systems of

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<sup>1</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>2</sup> The RTO West Transmission Owners included Avista Corporation, Bonneville Power Administration, Idaho Power, Nevada Power Company, NorthWestern Corporation, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company.

participating transmission owners. In an order issued on April 26, 2001,<sup>3</sup> the Commission accepted the RTO West Transmission Owners' application, subject to conditions, and directed the RTO West Transmission Owners to submit additional information as part of their Stage 2 filing. On March 29, 2002, the RTO West Transmission Owners submitted a Stage 2 filing and on September 18, 2002, the Commission issued an order granting in part a petition for declaratory order establishing the RTO West. Among other things, the order also directed the RTO West Transmission Owners to codify the Memorandum of Understanding and Cooperation between the parties and file an RTO West Tariff.<sup>4</sup>

3. Additionally, on September 29, 2003, Idaho Power requested approval from the Commission's Chief Accountant to defer RTO formation-related costs (including carrying charges) associated with establishing RTO West. Specifically, Idaho Power requested to defer for future recovery RTO development costs in Account 186 (Miscellaneous Deferred Debits) and to transfer to Account 182.3 (Other Regulatory Assets) amounts not reimbursed by an RTO. On February 3, 2004, Idaho Power's request was approved for accounting purposes, subject to Idaho Power recording loans made to RTO West in Account 124 (Other Investments).<sup>5</sup>

4. Despite the efforts of the parties to reach final agreement, the development of RTO West was unsuccessful. Idaho Power states that, although they did not succeed in developing RTO West, a subset of RTO West transmission owners recognized the benefits of a regional organization and set forth efforts to develop Grid West, as a successor regional organization. In September 2006, after several parties withdrew from the organization, Grid West dissolved. Subsequently, Idaho Power states that it, along with PacifiCorp, NorthWestern Corporation, Deseret Generation & Transmission Cooperative, Inc., and Utah Associated Municipal Power Systems, have joined together to form the Northern Tier Transmission Group (NTTG). Idaho Power states that, among other regional functions, the

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<sup>3</sup> *Avista Corp.*, 95 FERC ¶ 61,114, *order on reh'g*, 96 FERC ¶ 61,058, *clarified*, 96 FERC ¶ 61,265 (2001).

<sup>4</sup> *Avista Corp.*, 100 FERC ¶ 61,274, *order on reh'g*, 101 FERC ¶ 61,346 (2002).

<sup>5</sup> *Idaho Power Co.*, Docket No. AC03-78-000 (Feb. 3, 2004) (unpublished letter order) (Deferred Accounting Order). The determinations in the Deferred Accounting Order addressed accounting issues only and did not constitute a finding that the deferred costs were just and reasonable, or otherwise approved for ratemaking treatment. *See* Deferred Accounting Order at 3.

NTTG performs regional transmission planning and is improving the transparency of Available Transmission Capability determinations to satisfy the requirements of Order No. 890.<sup>6</sup>

### **Notice of Filing**

5. Notice of Idaho Power's filing was published in the *Federal Register*, 73 Fed. Reg. 13,878 (2008) with interventions and protests due on or before March 21, 2008. The filing is unopposed. No interventions have been received.

### **Discussion**

#### **Idaho Power's Filing**

6. Idaho Power states that since 2000 it has incurred approximately \$4.6 million in costs, including carrying charges, associated with its participation in efforts to establish RTO West and Grid West. It seeks recovery of loans made to RTO West and Grid West and incremental internal costs. First, Idaho Power states that the RTO West Transmission Owners provided a loan to RTO West pursuant to funding agreements executed among the RTO West Transmission Owners. The loan provided RTO West with necessary funds for contracting with consultants and experts, purchasing equipment and supplies, renting office space and public meeting space, and other incidental and administrative costs. After the RTO West negotiations failed, the loan was carried forward to Grid West but remains essentially unpaid, except for a \$7,580 cash distribution from Grid West. Idaho Power's portion of the loan for which rate recovery is sought is \$1,466,854, including interest/carrying charges equal to \$390,686.<sup>7</sup>

7. Second, Idaho Power seeks to recover \$2,250,965 in incremental internal costs it incurred in the RTO West and Grid West development efforts plus carrying costs totaling \$896,510. These costs fall into two categories: (1) employee travel expenses (including air travel/car rental, meals, lodging, telephone and other miscellaneous out of pocket costs), and (2) outside legal

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<sup>6</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

<sup>7</sup> Idaho Power states that unpaid interest through March 31, 2006 is \$197,037 and the carrying charges and unpaid interest on the loan from April 1, 2006 through December 31, 2007 is \$193,649.

costs.<sup>8</sup> Idaho states that its outside counsel was central to developing the governance structures for the proposed RTOs, executing the legal formation of the corporations, preparing the funding agreements for RTO West and Grid West, and advising Idaho Power personnel on the requirements of Order No. 2000.

8. Idaho Power seeks Commission approval to recover its deferred RTO development costs from its transmission customers under its OATT. Idaho Power proposes to amortize the collection of these costs over a five-year period beginning May 1, 2008. Idaho Power proposes to include \$922,866, or one-fifth of the December 31, 2007 balance, in Idaho Power's annual transmission operations and maintenance expense each year for the five-year period beginning May 1, 2008. Additionally, Idaho Power proposes to include the end-of-year unamortized balance of RTO Development costs in its rate base. According to Idaho Power, these costs will be allocated to OATT customers in the same manner as the costs in the formula rate (i.e., network customers would pay their load ratio share of the costs and point-to-point customers would pay their share based on their reserved capacity).

9. In further support of its proposal, Idaho Power states that the Commission's policy allowing utilities to recover RTO development costs is well-established.<sup>9</sup> According to Idaho Power, the Commission has allowed RTO formation costs to be recovered in several instances including where the costs sought to be recovered were associated with an RTO that was not formed.<sup>10</sup> Additionally, Idaho Power states that the Commission has allowed transmission providers to recover RTO formation costs because the costs were incurred in an attempt to comply with the policy directives of the Commission to encourage RTO formation.<sup>11</sup> Idaho Power asserts that the recovery of RTO development costs in this case is consistent with Commission policy and will promote RTO development.

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<sup>8</sup> Employee travel expenses total \$147,758 and outside legal services total \$2,103,207.

<sup>9</sup> Idaho Power Filing at 8 (*citing* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,196).

<sup>10</sup> *Id.* at 8 (*citing* *Entergy Services Inc.*, 117 FERC ¶ 61,320, at P 21 (2006)).

<sup>11</sup> *Id.* at 9 (*citing* *Northeast Utilities Service Co.*, 121 FERC ¶ 61,308 (2007); *Central Maine Power Co.*, 116 FERC ¶ 61,129 (2006); *American Electric Power Service Corp.*, 104 FERC ¶ 61,013 (2003); *Alliance Cos.*, 99 FERC ¶ 61,105 (2002)).

### Commission Determination

10. We accept Idaho Power's proposal to recover its RTO development costs through its formula rates. With respect to Idaho Power's proposed rate recovery of the deferred RTO formation costs, Idaho Power is correct in asserting that the Commission has allowed full rate recovery, including carrying costs for RTO development, including costs associated with efforts that have not led to RTO formation.<sup>12</sup>

11. In Order No. 2000, recognizing the benefits that RTOs can offer toward the goal of fully competitive electricity markets, the Commission established a collaborative process for utilities to facilitate the creation of RTOs.<sup>13</sup> Pursuant to Order No. 2000, stakeholders in the Pacific Northwest, including Idaho Power, put forth efforts to create the RTO West and subsequently Grid West. While those efforts were ultimately not successful, they were made in furtherance of the Commission's policies in support of RTO formation. We recognize the complexity of those efforts and the hard work of the stakeholders, including Idaho Power, in seeking to further the policies of, and comply with the directives of, this Commission.<sup>14</sup> As such, we find it reasonable for Idaho Power to recover the costs associated with its participation in the efforts to create the RTO West and Grid West.

12. Moreover, we find that Idaho Power's filing complies with the requirements of section 35.13 of the Commission's regulations.<sup>15</sup> The record makes clear that the efforts to form the RTO West and then Grid West were complex and resource-intensive and lasted for more than four years. Idaho Power has provided several hundred pages of support including workpapers and an affidavit for the costs it seeks to recover and the revenue impacts of its proposal.<sup>16</sup> The record shows that the amount and type of costs Idaho Power seeks to recover

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<sup>12</sup> See, e.g., *Entergy Services, Inc.*, 117 FERC ¶ 61,320 (2006); *Illinois Power Co.*, 108 FERC ¶ 61,258 (2004); *Alliance Cos.*, 99 FERC ¶ 61,105 (2002).

<sup>13</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 30,993.

<sup>14</sup> E.g., *Avista Corp.*, 100 FERC ¶ 61,274 at P 2 (recognizing that the RTO West proposal involved "lengthy and intensive discussions and negotiation among all stakeholders in the Northwest" and "the hard work of all parties").

<sup>15</sup> 18 C.F.R. § 35.13 (2007).

<sup>16</sup> See Idaho Power Filing at Att. G through S.

for these efforts are not unreasonable given the task at hand and the complexity of the matter. For example, Idaho Power provides workpapers itemizing each cost incurred for the entire four-year effort. For each cost other than for legal services, Idaho Power identified the date the cost was incurred, the amount, the identity of the employee that incurred the cost, and a brief description of the cost. Idaho Power shows the cost for the outside legal services for each month as well. The affidavit of Mr. Ronald D. Schellberg, an Idaho Power employee directly involved in the RTO formation effort, explains how these costs were incurred in furtherance of forming the RTO.<sup>17</sup>

13. The affidavit also makes clear the complexity and scope of the legal work required to form the RTO. For example, Mr. Schellberg testifies in his affidavit, which no entity challenges or questions, that “[o]utside legal counsel provided support to Idaho Power in virtually every aspect of developing these organizations so that they satisfied the requirements of the Commission’s Order 2000 and the Commission’s many other requirements for offering transmission and ancillary services.”<sup>18</sup> Mr. Schellberg explains that the outside legal services provided support in developing the governance structures of the multi-utility RTO.<sup>19</sup> Outside counsel assisted Idaho Power in completing the funding documents for the proposed RTO. Mr. Schellberg explains that, to satisfy the requirements of Order 2000, the appropriate markets for the RTO and the rules and pricing structures for those markets had to be developed and that outside counsel supported those activities as well.<sup>20</sup> In addition, Mr. Schellberg explains that outside counsel supported the development and negotiations of the numerous contracts, tariffs and regulatory filings necessary to form and develop the RTO.<sup>21</sup> Further, Mr. Schellberg indicates that, during the formation process, a number of the states within the footprint of the proposed RTO were “on both sides of the retail access debate,” and that the formation efforts required lengthy discussions among legal counsel of the transmission providers and stakeholders to ensure reliable operation of the grid as well as a high quality of service given the matrix of local regulation.<sup>22</sup> Finally, Mr. Schellberg notes that the complexity of forming an RTO

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<sup>17</sup> *Id.* at Att. F, ¶ 5-12.

<sup>18</sup> *Id.* ¶ 13.

<sup>19</sup> *Id.* ¶ 14.

<sup>20</sup> *Id.* ¶ 16.

<sup>21</sup> *Id.* ¶ 17.

<sup>22</sup> *Id.* ¶ 18.

increased dramatically due to the fact that some of the transmission providers working to form the RTO as well as numerous stakeholders were not public utilities. He states that extra work was necessary to ensure that formation of the RTO did not impinge on those entities' non-jurisdictional status.<sup>23</sup> Given the complexity of the process of forming an RTO, that it involved several jurisdictional and non-jurisdictional utilities over a vast geographic region, and that the parties pursued the effort for more than four years, we find these costs are consistent with the types of costs that could be expected to be incurred in the development of an RTO and that the data provided support the recovery of these costs.

14. In addition, we note that Idaho Power's filing is unopposed and there are no allegations of imprudence with respect to the costs Idaho Power seeks to recover. Commission precedent provides for a presumption of prudence absent a showing of inefficiency or improvidence.<sup>24</sup> Our review shows no evidence of inefficiency or improvidence and, therefore, no basis for challenging Idaho Power's recovery of those costs.

15. The Commission finds it is reasonable for Idaho Power to recover the costs it proposes in its filing. For the reasons stated above, the Commission accepts Idaho Power's revised tariff sheets to be effective May 1, 2008, as requested.

The Commission orders:

Idaho Power's proposed OATT tariff sheet revisions are hereby accepted for filing to become effective on May 1, 2008, as requested.

By the Commission. Commissioner Wellinghoff dissenting with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>23</sup> *Id.* ¶ 19.

<sup>24</sup> *See New England Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047, at 61,082 (1985), *reh'g denied*, Opinion No. 231-A, 32 FERC ¶ 61,113 (1985) (*citing West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U.S. 63, 72 (1935)).

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Idaho Power Company

Docket No. ER08-629-000

(Issued April 30, 2008)

WELLINGHOFF, Commissioner, dissenting:

Idaho Power participated in the process to create RTO West and subsequently Grid West. Pursuant to section 35.13 of the Commission's regulations, Idaho Power now seeks approval to recover \$4,614,329 of deferred RTO start-up costs through its formula rate mechanism. Of this amount, \$1,466,854 is the principle and associated interest/carrying charges of a loan to RTO West/Grid West, and \$3,147,475 is incremental internal costs plus associated carrying charges. Idaho Power proposes to amortize these costs over a five year period.

While ultimately unsuccessful, Idaho Power's efforts to create RTO West and Grid West were made in good faith. I agree with the majority that companies that participate in efforts to form RTOs may recover reasonable costs, and that such companies should not be penalized if those efforts do not succeed.

However, the threshold issue before us is whether Idaho Power has met its initial burden of proof to support the expenses that it seeks to recover in this proceeding. Section 35.13 (e) (1) of the Commission's regulations requires a utility to file detailed cost support for an increase in customers' rates. After reviewing the record in this proceeding, I must conclude that Idaho Power has not met this standard.

The most glaring example of the inadequacy of Idaho Power's support is the schedule filed to justify expenditures for outside legal services.<sup>1</sup> This is the largest category of expense in this case, constituting \$2,103,207 in charges, or approximately 94 percent of the incremental internal costs at issue here. Idaho Power states that line item details for outside legal services are included in its Attachment I: Detailed Support for Internal Costs.<sup>2</sup> Attachment I includes 30 line items for outside legal services, with only a dollar amount and date on each line and the description "Outside Legal Services". But

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<sup>1</sup> Other expenses in Idaho Power's filing, including certain individual airfares in excess of \$1,400, also are inadequately supported.

<sup>2</sup> Idaho Power Filing at 14.

for a summary description of the general nature of the outside legal services in a filed affidavit, no other information to support these expenditures is provided either on Attachment I or anywhere else in Idaho Power's filing. There is no listing of the law firm billed. There is no summary description of the work performed. Even the majority acknowledges that Idaho Power provided significantly less detail in support of its claimed outside legal service costs than for other cost items.

The majority finds this level of support to be sufficient. I am concerned that such a result denies consumers an important protection by undermining the Commission's ability to ensure that rates are just and reasonable. Therefore, I would have asked Idaho Power to provide additional information on the above-noted matters.

For this reason, I respectfully dissent from today's order.

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Jon Wellinohff  
Commissioner