

128 FERC ¶ 61,164
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Idaho Power Company

Docket No. ER09-1335-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued August 18, 2009)

1. On June 19, 2009, Idaho Power filed revisions to the Agreement for Interconnection and Transmission Services Between Idaho Power Company and Utah Power & Light Company (Interconnection Agreement) primarily proposing new rates to be charged to PacifiCorp¹ under the Interconnection Agreement. In this order, we accept for filing the proposed revisions to the Interconnection Agreement, suspend them for a nominal period to become effective August 19, 2009, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. On March 19, 1982, Idaho Power and Utah Power & Light Company entered into the Interconnection Agreement. The Interconnection Agreement is a long-term bundled interconnection and transmission services agreement that expires June 1, 2025. The Interconnection Agreement provides for the construction, operation and maintenance of a specified 134-mile, 345 kV transmission line from Ogden, Utah to Borah, Idaho, on Idaho Power's system.

3. Under the Interconnection Agreement, PacifiCorp pays for the construction, operation, and maintenance costs through an amortized use of facilities charge.

¹ Utah Power & Light Company has merged into PacifiCorp.

Sections 5.1 and 6.1 of the Interconnection Agreement give PacifiCorp certain rights to use specified Idaho Power interconnection facilities and the right to transmit 250 MW of power from the Borah point of receipt to the Kinport, Idaho point of delivery.

4. In 2006, Idaho Power submitted in Docket No. ER06-787-000, revisions to its open access transmission tariff (OATT) proposing to implement formula rates in place of the rates stated in its OATT. Parties to the proceeding subsequently engaged in settlement discussions, and reached agreement on all issues except how certain pre-Order No. 888² agreements, including the Interconnection Agreement, should be accounted for in Idaho Power's formula rates for point-to-point transmission service and network integration transmission service. On January 15, 2009, after a hearing on the issue and an initial decision by a Commission administrative law judge, the Commission issued an order affirming in part and rejecting in part the administrative law judge's determinations on the appropriate treatment of the pre-Order No. 888 agreements in Idaho Power's formula rates.³ In the January 15 Order, the Commission found that the load associated with the subject agreements should be included as part of the total firm load (i.e., cost allocated in the denominator of the formula rate) of Idaho Power's formula rate. In addition, the Commission found that the contract demand under the agreements should be used as the appropriate measure of the load generated by the agreements and that OATT short-term firm point-to-point service must be revenue-credited.

II. Idaho Power's Filing

5. Idaho Power states that in the January 15 Order the Commission found that Idaho Power should allocate the same costs to the Interconnection Agreement as it would allocate to an OATT customer.⁴ Idaho Power states that as a result of the

² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248, *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ *See Idaho Power Co.*, 126 FERC ¶ 61,044 (2009) (January 15 Order).

⁴ Idaho Power Filing at 3. Idaho Power has sought rehearing of the January 15 Order's determination on this issue.

January 15 Order it is now in a revenue shortfall position. Thus, Idaho Power proposes to replace the current billing provisions in the Interconnection Agreement with the provisions of Schedule 7 of the Idaho Power OATT to make the Interconnection Agreement rates consistent with the rates set forth in Idaho Power's OATT. Idaho Power also proposes a 10.7 percent return on equity (ROE).

III. Notice of Filing and Responsive Pleadings

6. Notice of Idaho Power's filing was published in the *Federal Register*, 74 Fed. Reg. 32147 (2009), with interventions or protests due on or before July 10, 2009. Bonneville Power Administration (Bonneville) and Pacific Northwest Generating Cooperative (Pacific Northwest) filed motions to intervene out of time. PacifiCorp filed a timely motion to intervene, protest and request for suspension, hearing, and settlement procedures. On July 27, 2009, Idaho Power filed an answer to PacifiCorp's protest.

7. PacifiCorp contends that Idaho Power has failed to show that the proposed increase in rates under the Interconnection Agreement from \$186,924 per year to \$3,477,725 per year is just and reasonable. PacifiCorp argues that this increase and other changes to the Interconnection Agreement rates are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful in contravention of section 205 of the Federal Power Act (FPA).⁵ PacifiCorp argues that, consistent with *West Texas Utilities Company*,⁶ the Commission is justified in suspending Idaho Power's proposed 1,760 percent rate increase for the maximum allowable five-month period and setting the matter for hearing.⁷

8. PacifiCorp asserts that the Interconnection Agreement's existing rates were established to compensate Idaho Power for the construction, operation, and maintenance of specific transmission assets, and were calculated on an amortized basis, including a net present value calculation. According to PacifiCorp, if the parties continue with the current terms of the Interconnection Agreement through its end in 2025, Idaho Power will fully recover its costs related to the transmission line and related facilities.

⁵ 16 U.S.C. § 824d (2006).

⁶ 18 FERC ¶ 61,189 (1982) (*West Texas*).

⁷ See PacifiCorp Protest at 4.

9. Additionally, PacifiCorp argues that Idaho Power has not proposed any capital or other improvements to the facilities covered by the Interconnection Agreement that would increase costs or any change in relative use of facilities by Idaho Power and PacifiCorp to warrant a rate increase.⁸ PacifiCorp also argues that while Idaho Power claims it now has a revenue shortfall, it is not just and reasonable that Idaho Power's entire revenue shortfall be paid by PacifiCorp through the proposed rate increase. PacifiCorp states that Idaho Power's proposed rate increase deprives PacifiCorp of its benefits under the Interconnection Agreement.

10. Moreover, PacifiCorp contends that service provided under the Interconnection Agreement is inferior to OATT service; therefore, it is unjust and unreasonable to charge the OATT point-to-point transmission rate for Interconnection Agreement service. PacifiCorp notes three distinctions between Interconnection Agreement service and OATT point-to-point service, which make the former inferior: (1) the Interconnection Agreement does not include reassignment rights; (2) the Interconnection Agreement does not include the right to redirect the point of receipt or point of delivery; and (3) the Interconnection Agreement restricts PacifiCorp's use of its transmission rights to energy delivered by PacifiCorp from the Utah system to Borah on the Ben Lomond – Borah 345 kV line.

11. In its answer, Idaho Power states that the revisions to the Interconnection Agreement make the Interconnection Agreement rates consistent with the cost allocation directed in the January 15 Order. Idaho Power states that PacifiCorp's arguments should be rejected and that the instant proposed revisions should not be suspended for five months. Idaho Power also states that it does not object to the Commission's acceptance of its filing subject to a one-day suspension if such suspension will provide flexibility for the Commission to take any action that may be necessary in light of its action on rehearing of the January 15 Order.

12. Idaho Power argues that it has satisfied its statutory burden under section 205 and that, contrary to PacifiCorp's assertions, Idaho Power is not required to show that its current rate is unjust and unreasonable. Idaho Power also argues that the proposed rate increase is within the zone of reasonableness and is not excessive under *West Texas*. Idaho Power notes that under the Commission's suspension policies a proposed rate increase may be suspended for five months if the rate increase is deemed to be substantially excessive. Idaho Power states that an increase is substantially excessive if ten percent of the proposed increase is outside of the zone of reasonableness. According to Idaho Power, the amount of

⁸ See *id.* at 5-6.

the increase is irrelevant; the relevant figure is the percentage of the increase requested that is excessive—i.e., if the proposed increase is well within the zone of reasonableness and comports with Commission ratemaking methods, the increase is not excessive under *West Texas*.⁹ Idaho Power adds that in *Northeast Utilities Service Company*¹⁰ the Commission suspended the transmission provider's proposed formula rate for one day, although the formula was projected to result in a rate increase in excess of 100 percent, because the proposed increase itself was not substantially excessive.¹¹

13. Idaho Power also argues the rate is not excessive and conforms with the Commission's holdings in the January 15 Order. Idaho Power states that based on the January 15 Order's allocation of Interconnection Agreement costs, PacifiCorp has been paying less than the Commission deems reasonable. According to Idaho Power, the proposed revisions eliminate the discount PacifiCorp has been receiving. Idaho Power adds that in testimony included in its filing, its witness testified that the 10.7 percent base ROE Idaho Power requests "falls well within the zone of reasonableness produced by applying the Commission's [Discounted Cash Flow] approach."¹² Idaho Power states the PacifiCorp does not challenge the proposed ROE or any other element of the formula rate, and because all of the other elements of the formula rate simply recover Idaho Power's recorded costs, in order for the Commission to find that Idaho Power's rate increase is excessive by more than ten percent, the Commission would have to find that a just and reasonable ROE should not exceed eight percent.¹³

⁹ See Idaho Power Answer at 4.

¹⁰ 105 FERC ¶ 61,089 (2003).

¹¹ Idaho Power Answer at 5 (citing *Northeast Utilities Servs. Co.*, 105 FERC ¶ 61,089 at P 10).

¹² *Id.*

¹³ Idaho Power states that it calculated this percentage by analyzing the ROE that would equate to a rate increase equal to the proposed rate increase divided by 110 percent. Using Period I data, the proposed rate increase is \$3,477,725 - \$186,924, or \$3,290,801; that amount (\$3,290,801) divided by 110 percent equals \$2,991,637. Using the currently effective OATT spreadsheet and solving for a rate increase of \$2,991,637 results in an ROE of about 8 percent. See *id.* at 6.

14. Idaho Power also argues that PacifiCorp is incorrect that the use of facilities charge rate structure under the existing Interconnection Agreement prevents Idaho Power from revising the rates under the Interconnection Agreement absent a change in the costs of the facilities or a change in respective relative use. Idaho Power states that it has an unlimited right to change the charges under the Interconnection Agreement upon a showing that the new rate is just and reasonable.¹⁴

15. In addition, Idaho Power argues that its proposed revisions seek to recover a small percentage of the revenue shortfall it is facing. Idaho Power states that unlike some of the other transmission service agreements between Idaho Power and PacifiCorp, the Interconnection Agreement provides Idaho Power with unlimited rights to propose rate changes under section 205 of the FPA. Idaho Power also states that PacifiCorp is the only customer under the Interconnection Agreement, so it is difficult to imagine where else PacifiCorp would have the cost of service under the Interconnection Agreement borne. With regard to PacifiCorp's argument that the service under the Interconnection Agreement is inferior to OATT service, Idaho Power states in the Docket No. ER06-787-000 proceeding—in which PacifiCorp was a participant—the Commission rejected the same argument made by Idaho Power.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant Bonneville's and Pacific Northwest's late-filed motions to intervene given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Idaho Power's answer because it has provided information that has assisted us in our decision-making process.

¹⁴ See *id.* at 3, 8.

B. Hearing and Settlement Judge Procedures

18. Idaho Power's filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

19. Our preliminary analysis indicates that Idaho Power's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable and unduly discriminatory or preferential, or otherwise unlawful. In *West Texas*, the Commission explained that when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, the Commission generally would impose a nominal suspension. In the instant proceeding, our preliminary analysis indicates that Idaho Power's proposed rates may not yield substantially excessive revenues. Therefore, we will accept Idaho Power's proposed revisions to the Interconnection Agreement for filing, suspend them for a nominal period, make them effective August 19, 2009, subject to refund, and set them for hearing and settlement judge procedures, as ordered below.

20. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁶ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue

¹⁵ 18 C.F.R. § 385.603 (2009).

¹⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

their settlement discussions or provide for commencement of a hearing by assigning the case a presiding judge.

The Commission orders:

- (A) Idaho Power's filing is hereby accepted for filing and suspended for a nominal period, to become effective August 19, 2009, subject to refund, as discussed in the body of this order.
- (B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Idaho Power's filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.
- (C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.
- (D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement decisions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.
- (E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in a hearing room of the Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of

establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.