

UNITED STATES OF AMERICA 115 EFRC ¶ 61, 281
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Idaho Power Company

Docket No. ER06-787-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND CONDITIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 31, 2006)

1. On March 24, 2006, Idaho Power Company (Idaho Power) submitted revisions to its Open Access Transmission Tariff (OATT), proposing a rate increase, under section 205 of the Federal Power Act (FPA),¹ which includes implementing new formula rates for its point-to-point transmission services and network integration transmission service provided to jurisdictional customers under its OATT, in lieu of traditional cost of service rates. Idaho Power requests that the proposed rates be accepted effective on June 1, 2006.
2. The Commission accepts and suspends the proposed rates for a nominal suspension period, permitting them to be effective on June 1, 2006, subject to refund and conditions, and establishes hearing and settlement judge procedures. The Commission also will summarily dispose of certain issues in this order. The Commission rejects Idaho Power's proposed treatment of certain deferred tax balances in the development of its transmission revenue requirement as being inconsistent with Commission policy. The Commission will also require the inclusion of informational filing requirements related to the formula rates in Idaho Power's OATT.

Background

3. Idaho Power states that it is a wholly-owned subsidiary of IDACORP, Inc. and is principally engaged in providing integrated retail electric utility service in a 24,000

¹ 16 U.S.C. § 824d (2000).

square mile area in southern Idaho and eastern Oregon. Idaho Power indicates that its currently effective rates – resulting from the Commission-approved settlement of its 1996 rate proceeding in Docket No. ER96-350-000 – are not recovering Idaho Power’s actual costs of providing transmission service. Idaho Power claims that changing to formula rates will more accurately reflect the costs that it incurs in providing point-to-point and network integration transmission services.

4. Idaho Power proposes changing from stated tariff rates to new formula rates under its OATT for point-to-point transmission services in Schedules 7 and 8 and formula rates for new Schedule 9 network integration transmission service. Idaho Power states that its proposed formula calculates its prior year’s costs to own, operate and maintain its transmission facilities using actual Form 1 data and records and produces a transmission revenue requirement that includes return and income taxes based on a year-end rate base, operation and maintenance expense (including an allocation of administrative and general expense), depreciation and amortization expense, amortization of other expenses, and taxes other than income taxes expense. Idaho Power requests waiver of the requirement in section 35.13 of the Commission’s regulations to submit a full Period II cost of service study since it is proposing formula rates which will be based on actual costs rather than on cost of service schedules.

5. Idaho Power proposes that the formula rates would change each June 1, based on the prior year’s costs, similar to the methodology used by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and New England ISO transmission providers. Idaho Power states the formula rate includes a rate of return on equity (ROE) of 11.25 percent and that the range of reasonableness is between 11 and 12 percent based on Idaho Power’s Discounted Cash Flow (DCF) analysis. Idaho Power states that its proposed rates will produce a revenue increase of approximately \$21,000,000.

6. Idaho Power requests that the proposed rates be made effective June 1, 2006, and if there is any suspension of rates, it should be for a nominal period. Idaho Power states that the proposed formula rate largely mirrors formula rates that the Commission has previously approved and accepted, and that it is using the same ROE that it has sought in retail rates. Idaho Power further claims that it is not seeking any additional charges under Schedules 1 and 2 of its OATT. Therefore, Idaho Power states that its proposed rates are fully justified and are not substantially excessive under the standard set in *West Texas Utilities Company (West Texas)*² and that it would be inappropriate to impose a five-month suspension in the instant proceedings. In addition, Idaho Power explains that it has made substantial improvements to its backbone transmission investment system since

² 18 FERC ¶ 61,189 (1982).

1996, and that it is implementing improvements and upgrades in 2007 and 2008 (*Citing Direct Testimony of Ronald D. Schellburg*). Idaho Power asserts that a five month suspension would serve as a disincentive to engage in new construction because of delays in cost recovery for such new investment.

Notice of Filings and Responsive Pleadings

7. Notice of Idaho Power's filing was issued on March 31, 2006 and published in the *Federal Register*, 71 Fed. Reg. 69 (2006), with comments, interventions, and protests due on or before April 19, 2006. The Bonneville Power Administration (BPA), Pacific Northwest Generating Cooperative (PNGC) and Raft River Rural Electric Cooperative (Raft River), and the Public Power Council (PPC) filed motions to intervene and protest. A&B Irrigation District, Burley Irrigation District, Falls Irrigation District, and Flack Canyon Irrigation District (collectively, the Districts) filed a motion to intervene and a protest. The Districts also filed a supplemental protest on April 25, 2006. The Owyhee Irrigation District filed a motion to intervene out-of-time on April 25, 2006, stating it intends to be part of the Districts group. The Idaho Energy Authority, Inc. (IDEA) filed a motion to intervene out-of-time and protest on April 27, 2006. On May 4, 2006, Idaho Power filed an answer to the protests and comments.

A. Requests for Suspension and Hearing

8. PNGC and Raft River, BPA, and the Districts argue that Idaho Power's proposed rate increase is unjust and unreasonable because the increase is an unprecedented increase over current rates and that Idaho Power has not provided sufficient support justifying the extraordinary rate increase. BPA also argues that the filing fails to show that revenues collected under the proposed transmission rates will not be substantially excessive under the Commission's long-standing *West Texas* policy. BPA and IDEA protest the magnitude of the rate increase arguing that an over 125 percent rate increase would constitute a rate shock to customers.

9. The Districts request that the Commission suspend the formula rate proposal for the maximum five-month period. PNGC and Raft River request that the Commission suspend the proposed rate increase and establish a refund effective date pursuant to FPA section 205, a hearing pursuant to Part 385, Subpart E of the Commission's regulations, and settlement procedures for the instant filing. Due to the magnitude of the rate increase, BPA requests that the Commission phase-in the rate increase over time. In addition, BPA requests that the Commission set the proceeding for hearing. PPC supports BPA's request for a hearing in this proceeding. Finally, IDEA requests that the Commission deny Idaho Power's request for relief without a hearing.

B. Formula Rates

10. BPA states that basing a formula rate on prior year's costs presumably would include transmission upgrades completed during the previous year along with associated operation and maintenance expenses and other expenses. BPA opposes the formula rate approach because there is no mechanism to allow for an independent review of Idaho Power's additional transmission expenditures, and BPA may not have the opportunity to verify or challenge any of these additions. BPA claims that although the Commission has approved similar formula rates for many other transmission providers, some of these transmission providers have been members of regional transmission organizations. Further, in most instances when formula rates have been approved, BPA asserts that customers and state commissions are given the ability to review the inputs to the formula rate. BPA also questions the use of the FERC Form 1 data as input to the formula rate because the Form 1 and its underlying documents must be open to audit and review and be subject to challenge.

11. PNGC and Raft River do not object per se to the formula rate for transmission services, but question the proposed structure of the formula rate, and how the formula will be implemented in the current year and annually thereafter to ensure the proper automatic flow through of costs under the proposed formula rate. PNGC and Raft River argue that although Idaho Power states that the formula is based on other Commission approved formulas, it does not indicate that the proposed formula is identical to any other transmission formula that has been found to be just and reasonable. PNGC and Raft River also claim that Idaho Power's formula rate proposal does not contain protocols detailing information exchange requirements and customer protections comparable to other transmission formula rates accepted by the Commission. PNGC and Raft River contend that other components of the formula deserve additional scrutiny, such as the cash working capital allowance.

12. The Districts argue that the formula rate deviates from the model that Idaho Power points to as a precedent, *i.e.*, the formula used by the Midwest ISO. The Districts argue that Idaho Power's proposed formula is presented in a narrative form and is not easily compared to the Midwest ISO formula, which is expressed in a spreadsheet format, and it is difficult even to determine the actual rates Idaho Power will charge pursuant to its proposed formula rate.³ Further, the Districts claim that Idaho Power does not appear to have proposed any actual tariff changes to reflect how the rates will be updated annually

³ The Districts state that it appears from Statement BG (page 4 of 7) that the monthly point-to-point rate would be \$2.06/kW, up from the current \$0.97/kW rate, an increase of more than 100 percent.

using the formula, and that there are no proposed procedures that spell out how customers will be notified of the new rates and allow them to obtain information to determine whether the rate changes have been properly implemented and to review their comments with Idaho Power.

13. In its supplemental protest, the Districts argue that Idaho Power should be required to make annual informational filings with the Commission, submitting the new rates produced by the formula together with supporting workpapers, and to respond to requests for information regarding the rate formula before the rates go into effect. Additionally, the Districts state that the proposed annual June 1 effective date for the rate changes under the formula rate imposes a serious hardship on the Districts because they recover all their cost through annual assessments based on budgets prepared between August and November of the preceding year. The Districts assert that they have no authorization by law to levy supplemental assessments during the year for extraordinary expenses, such as unbudgeted increases in transmission rates. The Districts request the proposed June 1 date for annual updates of transmission rates be set for hearing.

14. Districts state that the Commission must ensure that the proposed formula excludes all costs of generator set-up transformers (GSU) and other facilities that are costs not properly included in transmission rates.⁴ The Districts state that Idaho Power appears to have properly excluded GSU costs from some components of its proposed formula rate but has not expressly excluded these costs from other components. The Districts argue that Idaho Power should either modify the tariff to keep out GSU costs or demonstrate that it has appropriately excluded GSU costs and that the Commission should set for hearing the question of whether Idaho Power's costs to be recovered through the formula rate are properly limited to costs of integrated transmission facilities used to provide service under the OATT.

15. The Districts argue that the proposed costs provided by Idaho Power must be subject to being challenged and verified that transmission projects or costs that have not been subject to a reasonable prudence review or that may have been mischaracterized as transmission costs are not included in the proposed formula rates.

⁴ The Districts state that the Commission's current policy is to treat GSU costs as production-related, not transmission-related. *Citing Kentucky Utilities Co.*, 85 FERC ¶ 61,274, at 62,111 (1998); *Maine Pub. Service Co.*, 85 FERC ¶ 61,412 (1998); *Niagara Mohawk Power Corp.*, 92 FERC ¶ 61,168 (2000).

C. Rate of Return on Equity

16. The Districts protest the proposed ROE as being excessive. The Districts state that although Idaho Power sought the same ROE for its retail rates, that retail case has since settled and is pending approval, but contains a ROE under 11 percent. The Districts also argue the ROE is premised on a DCF analysis that uses an unrepresentative proxy group that dramatically overstates Idaho Power's risk profile. Moreover, the Districts assert Idaho Power improperly manipulates the results from that proxy group. Districts claim that the use of the midpoint skews the results when coupled with Idaho Power excluding the four low-end results from the proxy group. The Districts also dispute Idaho Power's arguments that its transmission risks place its ROE at the upper end of the range of reasonableness.

17. PNGC and Raft River request the Commission to scrutinize Idaho Power's proposed ROE. IDEA and Districts argue that the proposed ROE is excessive and above the settlement ROE in recent retail proceedings. PPC argues that Idaho Power has not presented its total cost of capital to the Commission, and without the information neither the Commission nor the other parties are able to evaluate whether the requested ROE is excessive. PPC asserts Idaho Power has not justified its requested ROE.

18. BPA argues that the risks asserted by Idaho Power in this proceeding are exaggerated because the wholesale power markets in the West are now more stable than they were in the years of the California debacle. Further, BPA contends the proposition supported by Idaho Power that investors are reluctant to invest is based on outdated studies prepared three to six years ago.

Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will accept the Districts supplementary protest filed on April 25, 2006, as it aids the Commission's consideration of the issues raised by the filing. The Commission also grants the late intervention of the Owyhee Irrigation District filed on April 25, 2006 and IDEA's late intervention and protest filed on April 27, 2006, since the interventions and protest will not result in disruption of the proceedings or prejudice to any party at this early stage of the proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), 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.

B. Waivers

20. Section 35.13 of the Commission's regulations, 18 C.F.R. § 35.13 (2005), provides that most rate increases must be supported by Period I and II cost statements, Statements AA-BM. Idaho Power has provided all of the Period I statements using actuals for 2004, but for the Period II estimates for 2006, Idaho Power has provided only Statements BG, BH and BL which contain revenue data and the rate design (*Citing* Direct Testimony of Patricia S. Nichols). Because the proposed rates are formula rates and the Period I statements are adequate to show how the formula will operate with actual data, we agree that Period II estimated data for a future test year is not necessary in our evaluation of the rates at this stage of the proceeding. Idaho Power's requested waiver of section 35.13 of the Commission's regulations with respect to the Statements not provided is granted.

C. Analysis

21. With the exceptions noted below, Idaho Power's proposed filing revisions raise a number of 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 we will order in this proceeding. Our preliminary analysis indicates that Idaho Power's proposed revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept them for filing, suspend them for a nominal period, as discussed below, to become effective on June 1, 2006, subject to refund and conditions, and further set them for hearing and settlement judge procedures. The Commission will condition its acceptance of the filing upon Idaho Power making a compliance filing to revise its cost of service and rates to reflect the proper treatment of costs in accordance Commission policy and tariff sheet revisions for the issues which are summarily disposed of below.

1. Summary Disposition

22. If the Commission determines that there is no genuine issue of fact material to the decision of a proceeding or part of the proceeding, it may, as the decisional authority, summarily dispose of all or part of the proceeding.⁵ In *Northern Border Pipeline Company*, 60 FERC ¶ 61,176 at 61,644 (1992), the Commission stated that its summary rejection power is limited to circumstances in which facts are not in dispute and where

⁵ 18 C.F.R. § 385.217 (2005) (Rule 217).

the filing is in patent violation of an applicable statute, regulation or Commission policy. The Commission finds that Idaho Power's proposed rate base treatment of certain deferred income tax balances in the development of its transmission revenue requirement raises no disputed issue of material fact and is patently inconsistent with Commission policy. Therefore, we are rejecting Idaho Power's proposed treatment of this issue in its cost of service and rates on the basis that it contravenes Commission policy.

a. SFAS 109

23. In 1992, the Financial Accounting Standards Board (FASB) issued the Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes (SFAS 109) revising the accounting standard for the measurement and recognition of current and deferred income taxes reported in general purpose financial statements. Under SFAS 109, a current or deferred tax liability or asset is recognized for the current or deferred tax consequences of all events that have been recognized in the financial statements or tax returns, measured on the basis of enacted tax law. SFAS 109 requires that tax related regulatory assets and liabilities are accounted for and reported separately from deferred tax assets and liabilities.

24. Our review indicates that Idaho Power includes SFAS 109 amounts in Account No. 190 (Accumulated Deferred Income Taxes) of its Period I Statements – which reflect the actual data from the 2004 FERC Form 1 Annual Report (2004 Form 1) – that it used to develop the rate base and transmission revenue requirement for its proposed formula rates in Statement BK. It did not, however, make the other equal adjustments to its rate base and transmission revenue requirement for Account No. 254 (Other Regulatory Liabilities) that it reported in its 2004 Form 1 in accordance with Commission policy as discussed below.⁶ Without the offsetting Account No. 254 adjustment, Idaho Power will improperly earn a return allowance on the SFAS 109 amounts included in its rate base.⁷

⁶ See *Accounting for Income Taxes Under SFAS 109* [In re: Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.], Docket No. AI93-5-001, 64 FERC ¶ 61,352 (1993); *Accounting for Income Taxes*, Docket No. AI93-5-000 (Letter of the Chief Accountant discussing accounting practices issued for income taxes, April 23, 1993, at 9).

⁷ See, e.g., *Wyoming Interstate Company, Ltd.*, 69 FERC ¶ 61,975 at p. 61,981 (1994) (“The deferred tax amounts are deducted from rate base for the purpose of determining equity return under the normalization method to recognize that there is no financing cost to recover from ratepayers on rate base financed with cost-free deferred tax capital.”)

25. Referring to page 1 of Statement AR of its filing, Idaho Power reflects in Account No. 190 federal income tax adjustments amounting to \$72 million (rounded) for transmission expense-related "Other Regulatory Liabilities." The same approximate \$72 million total amount for Account No. 190 is shown on page 234 of the 2004 Form 1. On page 234 of Idaho Power's 2004 Form 1, Account No. 190 shows that \$40,447,291 of the \$72,712,115 end of year balance relates to "FASB 109 Accounting", and on page 278, Idaho Power shows an offsetting \$40,447,292 end of year balance for "Unfunded Accumulated Deferred Income Tax Liability" for Account No. 254.

26. Therefore, Idaho Power erroneously did not reflect offsetting amounts that are reported in Account No. 254 of its 2004 Form 1 consistent with Commission policy. Without capturing these equal (and offsetting) adjustments recorded on Idaho Power's books to zero out the effect of SFAS 109 on rate base, SFAS 109 amounts remain in Idaho Power's rate base calculation of its proposed transmission revenue requirement.

27. Implementation of SFAS 109 standards for regulatory purposes should be revenue neutral because the regulatory assets and regulatory liabilities are offsetting book keeping entries that are shown on the financial statements. Thus, these SFAS 109 required entries should generally result in equal and offsetting changes to total assets and total liabilities reported on a cost-based, rate regulated utility's balance sheet. Moreover, these SFAS 109 regulatory assets and liabilities relate only to future cash flows and should not affect the rate setting process, *i.e.*, have an economic effect on the base transmission revenue requirements. The failure of Idaho Power to reflect the Account No. 254 offsets in rate base will lead to it earning an improper return allowance. As such, Idaho Power's approach is patently deficient; and as a consequence, the Commission will summarily dispose of Idaho Power's treatment of SFAS 109 deferred tax balances included in its rate base used in the calculation of transmission revenue requirements.

28. The Commission will direct Idaho Power to file revised Period I Statements and revised tariff sheets in accordance with the section 35.13 regulations that reflect the adjustments required by the Commission's practices and policy (including the filing of a redline/strikeout version showing any changes from the Statements and revised tariff sheets included in its March 24, 2006 filing). Idaho Power must make its compliance filing to revise its cost of service and rates for transmission services to reflect the adjustments discussed above within 30 days of the date of this order. We will readily waive the prior notice requirements of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2005), to permit the revised rates filed in compliance with our directives to go into effect on June 1, 2006, as discussed herein.

b. Informational Filing Requirements

29. Idaho Power's formula rate methodology does not include procedures for an informational filing that would provide supporting documentation for the charges resulting from its formula rate. The Commission finds that customer safeguards should be specified in the form of an informational filing by Idaho Power in its OATT. This requirement should detail protocols for information exchange and provide Idaho Power's customers with the ability to review and challenge the inputs to the formula. We summarily dispose of this issue and require that Idaho Power file revised tariff sheets, within 30 days of the date of this order, providing tariff requirements for an informational filing with the Commission detailing protocols for information exchange and the inputs to the formula, along with supporting workpapers.

2. Suspension, Hearing and Settlement Judge Procedures

30. In *West Texas*, the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission would generally impose a maximum suspension. In the instant proceeding, our preliminary analysis indicates that Idaho Power's proposed rates, as modified herein, do not yield substantially excessive revenues. Therefore, we will suspend the proposed rate revisions for a nominal period.

31. 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.⁸ 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.⁹

32. The Settlement Judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based

⁸ 18 C.F.R. § 385.603 (2005).

⁹ 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).

on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Idaho Power's filing is hereby accepted for filing, suspended for a nominal period, to be effective on June 1, 2006, subject to refund and conditions, as discussed in the body of this order.

(B) Idaho Power's requested waiver of section 35.13 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(C) Idaho Power's proposed treatment of certain deferred tax balances in its rate base and transmission revenue requirement is summarily rejected, as discussed in the order above. The Commission directs Idaho Power to file a revised cost of service and rates within thirty days (30) days of the date of this order to reflect the proper treatment of these costs. The compliance filing will also include revised Statements and revised tariff sheets in the form provided for in section 35.13 of the Commission's regulations (including a redline and strikeout version) to reflect the Commission's policy.

(D) The Commission directs Idaho Power to file revised tariff sheets within thirty days (30) days of the date of this order providing tariff procedures for an informational filing with the Commission as discussed in the text above.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (F) – (H) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), 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 the 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,

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they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(G) Within thirty (30) days of the date of this order, the Settlement Judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. 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.

(H) 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 this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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)

Magalie R. Salas,
Secretary.