

121 FERC ¶ 61,181
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 Nos. ER07-1172-000
ER07-1172-001

ORDER ON PROPOSED TARIFF REVISIONS

(Issued November 16, 2007)

1. On July 13, 2007, as amended on September 17, 2007, Idaho Power Company (Idaho Power) submitted a filing under section 205 of the Federal Power Act (FPA)¹ proposing deviations from certain provisions of the *pro forma* Open Access Transmission Tariff (OATT) as set forth in Order No. 890.² In this order, we accept in part and reject in part Idaho Power's proposed OATT tariff revisions to become effective July 13, 2007.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and

¹ 16 U.S.C. § 824d (2000).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890).

whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), FPA section 206³ compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.⁴

4. In addition, after submission of their FPA section 206 compliance filings, non-ISO/RTO transmission providers may submit FPA section 205 filings proposing rates for the services provided for in their tariffs, as well as non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are “consistent with or superior to” the *pro forma* OATT.⁵

II. Notices and Responsive Pleadings

5. Notice of Idaho Power’s filing in Docket No. ER07-1172-000 was published in the *Federal Register*, 72 Fed. Reg. 41,725 (2007), with interventions and protests due on or before August 3, 2007. Powerex Corp. (Powerex) filed a timely motion to intervene and comments. Powerex opposes certain of Idaho Power’s proposed tariff revisions and requests that the Commission direct Idaho Power to modify certain provisions. Accordingly, we will treat Powerex’s comments as a protest. On August 30, 2007, Idaho Power filed an answer in Docket Nos. OA07-60-000, OA07-70-000 and the instant Docket No. ER07-1172-000 proceeding.

6. On August 30, 2007, Commission staff sent Idaho Power a deficiency letter requesting Idaho Power to demonstrate that its proposal to charge for imbalance service based on the IntercontinentalExchange[®] (ICE) Mid-Columbia (Mid-C) Price Index meets the Commission’s requirements for the use of a new price index as set forth in the November 19, 2004 Order.⁶ Idaho Power did not make a showing in its filing that the proposed ICE price index provides the volume and number of transactions upon which the index value is based or that the proposed ICE index location (i.e., Mid-C) meets or

³ 16 U.S.C. § 824e (2000).

⁴ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

⁶ *Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs and Closing Certain Tariff Dockets*, 109 FERC ¶ 61,184 (2004) (November 19 Order).

exceeds one or more of the minimum average criteria for liquidity noted in the Commission's November 19 Order. Idaho Power was directed to submit an analysis, including supporting data, to show that the proposed index and location meets the criteria to comply with Ordering Paragraph E of the November 19 Order. On September 17, 2007, Idaho Power filed a response to the August 30, 2007 deficiency letter.

7. Notice of Idaho Power's response in Docket No. ER07-1172-001 was published in the *Federal Register*, 72 Fed. Reg. 55,761 (2007), with interventions and protests due on or before October 9, 2007. None was filed.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Idaho Power's answer and will, therefore, reject it.

B. Substantive Matters

10. As discussed below, we accept and reject certain tariff revisions proposed in Idaho Power's filing and direct Idaho Power to submit a compliance filing within 30 days of the date of issuance of this order.

1. Requests to Study Planning Redispatch and Conditional Firm Service

a. Idaho Power's Proposal

11. Idaho Power proposes to modify sections 15.4 and 19.3 of its *pro forma* OATT to clarify that requests to study planning redispatch and conditional firm service apply only in relation to requests for long-term firm point-to-point transmission service. Idaho Power states that the Commission made clear in Order No. 890 that "the planning redispatch and conditional firm options need only be made available to customers who request firm point-to-point service of more than a year in duration."⁷ Idaho Power argues

⁷ Idaho Power's July 13, 2007 Filing at 3 (*quoting* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 978).

that this OATT modification will provide additional clarity to customers and is therefore consistent with or superior to the *pro forma* OATT sections 15.4 and 19.3.

b. Commission Determination

12. We accept Idaho Power's modifications to sections 15.4 and 19.3 of its OATT because Order No. 890 stated that requests to study planning redispatch and conditional firm service need only apply to requests for long-term firm point-to-point transmission service.⁸ Therefore, we find these non-conforming provisions to be consistent with or superior to the *pro forma* OATT, and will accept them.

2. Removal of Transmission Provider's Discretion to Accept Late-Filed Transmission Service Requests and Schedules

a. Idaho Power's Proposal

13. Idaho Power proposes to modify sections 13.8, 14.6, 17.1.1, 17.1.2, and 18.3 of its OATT to remove language allowing it to exercise discretion to accept late-filed transmission service requests and schedules "when practicable" or "if feasible."

14. Idaho Power states that generally its practice is to decline late-filed service requests and schedules because it is burdensome to develop and maintain auditable documentation supporting its reasons for accepting certain late-filed requests and schedules, while denying others. Idaho Power states that it could be subject to significant penalties if it were found to have used its discretion on an unduly discriminatory basis and that the proposed modifications will avoid the risk of any perceived misuse of its discretion.

15. With the exception of section 17.1.1, which removes the "when practicable/if feasible" language,⁹ Idaho Power proposes to replace the "when practicable/if feasible" language with language allowing it to accept late-filed service requests and schedules under declared emergency conditions. It argues that the proposed modifications provide clarity for its customers while allowing Idaho Power flexibility during emergency conditions. Idaho Power concludes that these non-conforming provisions are consistent with or superior to the *pro forma* OATT sections 13.8, 14.6, 17.1.1, 17.1.2, and 18.3.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 978.

⁹ Idaho Power concludes that it would not make sense to include an emergency exception to long-term firm point-to-point transmission service requests.

b. Commission Determination

16. We find that the proposed changes to the language in sections 13.8, 14.6, 17.1.1, 17.1.2, and 18.3 of the OATT are unnecessary modifications to the *pro forma* OATT. The *pro forma* OATT provides transmission providers with the discretion to accommodate late filed transmission service requests. Therefore, the *pro forma* OATT already provides Idaho Power with the flexibility to decline late service requests if it chooses to do so. It also provides Idaho Power with the flexibility to accommodate late service requests in emergency situations. Accordingly, we find that Idaho Power's proposed modifications are unnecessary and that the *pro forma* OATT already provides Idaho Power with flexibility to operate its system consistent with its current operating practices.

3. Removal of Price Provisions Affecting Reservation Priority

a. Idaho Power's Proposal

17. Idaho Power proposes to modify sections 13.2, 14.2, and 14.7 of the OATT to remove price provisions from any reservation priority determination. Idaho Power states that because its system is constrained, Idaho Power does not currently, and will not for the foreseeable future, offer discounts or accept any discount requests from customers. Idaho Power argues that these changes will conform Idaho Power's OATT to its current practices, thereby, providing additional clarity to customers. As a result, Idaho Power maintains that these modifications are consistent with or superior to the *pro forma* OATT sections 13.2, 14.2, and 14.7.

b. Protest

18. Powerex states that the proposed modifications are inconsistent with the *pro forma* OATT and are unnecessary. It disagrees with Idaho Power's assertion that removing the price provisions is warranted because Idaho Power does not currently and does not plan to offer discounts. It argues that the *pro forma* OATT's price allocation provision is applicable only when price differentials occur and that the availability of discounts is at the transmission provider's discretion without the need for a tariff change. Thus, Powerex argues, the inclusion of the *pro forma* OATT's price allocation provision is appropriate in a transmission tariff regardless of whether a discounted rate is available at a particular time. Powerex states that Idaho Power should conform its language to the *pro forma* OATT or demonstrate why the elimination of the standard allocation methodology is consistent with or superior to the *pro forma* OATT.

19. In addition, Powerex points out that Idaho Power's proposed modification to section 13.2 eliminates the *pro forma* OATT's reference to "the date and time of the request" and inserts "first-come first-served" as the initial basis for establishing reservation priority. Powerex argues that "first-come first-served" is not specific because

it does not identify the point at which the determination of “first come” is made (e.g., at the time a request is queued as specified in the *pro forma* OATT, at the time the application is “completed,” or at the time of some other event). Powerex requests that the Commission require Idaho Power to revise section 13.2 to specify that priority will be determined on a first-come, first-served basis “as determined by OASIS queue date and time.”

c. Commission Determination

20. We find that Idaho Power has failed to justify its proposed modifications to OATT sections 13.2, 14.2, and 14.7. While Idaho Power states the removal of price provisions are justified because its system is constrained and Idaho Power does not currently offer discounts, we agree with Powerex that removal of these provisions is unnecessary. Accordingly, we reject Idaho Power’s proposal as unnecessary modifications to sections 13.2, 14.2 and 14.7 of the *pro forma* OATT. In addition, because we are rejecting Idaho Power’s proposed modification to section 13.2, we find Powerex’s request for Idaho Power to revise section 13.2 to be moot.

4. Imbalance Charges and Penalty Calculations

a. Idaho Power’s Proposal

21. Idaho Power proposes several modifications to the Energy Imbalance Service and Generator Imbalance Service Schedules (Schedules 4 and 10, respectively) of Idaho Power’s OATT. First, it proposes to use the ICE Mid-C trading hub price index to calculate imbalance charges. Idaho Power asserts that the ICE Mid-C Price Index is now considered within the Pacific Northwest region to be more accurate and widely relied upon than the Dow Jones Mid-C Price Index. Idaho Power states that in its pre-Order No. 890 Schedule 4 it used the Dow Jones Mid-C Price Index as its incremental/decremental cost proxy. It states that the proposed charge is similar to its pre-Order No. 890 imbalance charge in that the incremental/decremental cost proxy is an indexed price for power at the Mid-C trading hub plus or minus 2 mills per kWh to capture the cost of transmission between Idaho Power and the Mid-C hub. Idaho Power notes that the Commission approved its imbalance charge methodology in 2003.¹⁰

22. In its response to the deficiency letter, Idaho Power provided its analysis and supporting data, reflecting ninety days of trading ending on August 29, 2007, to demonstrate that the ICE Price Index and Mid-C location meet the criteria to comply with the November 19, 2004 Order. In addition, Idaho Power states it will calculate imbalance charges using the published ICE Mid-C Price Index for the hour in which the deviation

¹⁰ Idaho Power Filing at 5-6 (citing *Idaho Power Co.*, 102 FERC ¶ 61,351 at P 23 (2003)).

occurred, *i.e.*, whether the ICE Mid-C Price Index for peak or off-peak periods will apply to a given imbalance depends on the hour at issue. Idaho Power states that ICE publishes a Mid-C Peak Index as well as a Mid-C Off-Peak Index and that its imbalance proposal involves use of each of these indices.

23. Idaho Power also proposes to add a provision to Schedule 4 and Schedule 10 regarding spill conditions. Idaho Power explains that, under this provision, for any day on which Idaho Power is operating under non-discretionary spill conditions at its Oxbow, Hells Canyon, or Brownlee hydroelectric facilities, no penalties will be assessed for negative imbalance deviations during that day. In other words, when there is no market for the energy, Idaho Power will not assess penalties when customers deliver less energy than scheduled. Idaho Power maintains that this concept is based on the Bonneville Power Administration's imbalance provisions and that this provision is logical in a hydroelectric system.

24. In addition, Idaho Power proposes not to assess penalties under Schedule 4 or Schedule 10 when it is in a curtailment situation and determines that scheduling practices would not allow a customer to avoid an imbalance. In those circumstances, Idaho Power will only charge the customer the ICE Mid-C Price Index imbalance charge. It argues that this provision is appropriate because there are times when prevailing scheduling practices lead to unavoidable imbalances during curtailment situations. At such times, Idaho Power states, it is unjust to penalize customers for unavoidable imbalances.

25. Idaho Power concludes that its proposed modifications to Schedule 4 and Schedule 10 are consistent with or superior to the applicable *pro forma* provisions.

b. Commission Determination

26. The Schedules 4 and 10 tariff revisions will allow Idaho Power to avoid penalizing its customers during operating conditions which may result in unavoidable imbalances, therefore, we find that Idaho Power's proposed modifications regarding spill conditions and charges during curtailment situations to be consistent with or superior to the *pro forma* OATT provisions and will accept them.

27. The Commission finds that the ICE Mid-C Peak and Off-Peak Indices comply with the requirements for the use of a new price index that are set forth in the November 19, 2004 Order.¹¹ As a result, we conditionally accept Idaho Power's proposal to use what it describes as the ICE "Mid-C Price Index" to calculate imbalance charges for Energy Imbalance Service and Generator Imbalance Service in Schedules 4 and 10, respectively. However, we note that the ICE Mid-C Price Indices are not hourly price indices and that the charges for certain deviations from scheduled transactions in

¹¹ November 19, 2004 Order at P 39.

Schedules 4 and 10 are applied hourly to energy and generator imbalances. Therefore, we find that Idaho Power failed to adequately reference the ICE indices used in its tariff. Accordingly, we will accept Idaho Power's proposed use of the ICE Mid-C Price Indices, subject to Idaho Power filing revised tariff sheets further specifying that the ICE Mid-C Peak and Off-Peak Indices are being used in Schedules 4 and 10 of its OATT. Further, if ICE begins publishing an hourly Mid-C Price Index that complies with the requirements for the use of a new price index, Idaho Power is encouraged to consider the appropriateness of adopting such an index.

28. Further, while we conditionally accept the use of the ICE Mid-C Price Index, we disagree with Idaho Power that the 2 mills per kWh adjustment to the market index price is a more accurate representation of the cost that Idaho Power will incur for providing imbalance services than the index itself. Idaho Power proposes to adjust the ICE Mid-C Price Index by 2 mills per kWh for both peak and off-peak periods, but does not provide any evidence that it will actually purchase transmission service in order to provide imbalance services. In instances when transmission service is not purchased, we find that it would be inappropriate for Idaho Power to charge for transmission costs that it did not incur through providing imbalance services. Moreover, Idaho Power states that the Commission has previously approved its imbalance charge methodology; however, Idaho Power did not submit an FPA section 205 filing seeking a determination that its pre-Order No. 890 imbalance charge methodology continues to be consistent with or superior to the revised *pro forma* OATT as required by Order No. 890.¹² Accordingly, we direct Idaho Power to remove the 2 mills per kWh adjustment from Schedules 4 and 10 of its OATT.

The Commission orders:

(A) Idaho Power's proposed tariff revisions are hereby accepted in part and rejected in part, effective July 13, 2007, as discussed in the body of this order.

(B) Idaho Power is hereby directed to submit a filing, within 30 days of the date of issuance of this order, to comply with the directives in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 139.