

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Idaho Power Company

Docket Nos. ER97-1481-003
ER97-1481-004
ER97-1481-007

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued March 3, 2005)

1. In this order we accept an updated market power analysis filed by Idaho Power Company (Idaho Power). As discussed below, the Commission concludes that Idaho Power satisfies the Commission's standards for market-based rate authority.¹ This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. Idaho Power's next updated market power analysis is due three years from the date of this order.

Background

2. On October 9, 2003 Idaho Power filed an updated market power analysis pursuant to the Commission's order granting Idaho Power authority to sell electric energy and capacity at market-based rates.² On September 27, 2004, as supplemented on September 28, 2004 and October 8, 2004, Idaho Power submitted for filing a revised

¹Idaho Power's market behavior rules were previously accepted by the Commission. See *Idaho Power Company*, Docket No. ER97-1481-006 (December 20, 2004) (unpublished letter order).

²*Idaho Power Co.*, 78 FERC ¶ 61,343 (1997).

updated market analysis pursuant to the Commission's order issued on May 13, 2004.³ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.⁴

3. On December 20, 2004, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a deficiency letter seeking additional information relating to Idaho Power's submittal. On January 19, 2005, as supplemented on February 17, 2005, Idaho Power filed its response to the deficiency letter.

4. Idaho Power states that it is a public utility corporation with its principal place of business in Boise, Idaho. It is authorized to do business in Idaho, Oregon, and Nevada. Idaho Power provides bundled retail electric service to 400,000 customers in a franchised electric service territory of 20,000 square miles. Idaho Power also provides wholesale requirements and coordination services.

5. Idaho Power states that it owns and operates transmission and distribution facilities in Idaho and Oregon, seventeen hydroelectric generating facilities on the Snake river and its tributaries in Idaho, and one combustion turbine generator located in Idaho, and has an ownership interest in three coal-fired generating facilities operated by others. Idaho Power has been a member of the Western Systems Power Pool (WSPP) since June 1989 and is a signatory to the WSPP Agreement.

Notice of Filings

6. Notice of Idaho Power's October 9, 2003, filing was published in the *Federal Register*, 68 Fed. Reg. 65,261 (2003), with interventions or protests due on or before October 30, 2003. None was filed. Notice of the September 27, 2004 and January 19, 2005, filings was published in the *Federal Register*, 70 Fed. Reg. 5,639 (2005), with interventions or protests due on or before February 9, 2005. Notice of the February 17 filing was published in the *Federal Register*, 70 Fed. Reg. 9,635 (2005), with interventions or protests due on or before February 25, 2005. None was filed.

³ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

⁴ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

Discussion

Market-Based Rate Authorization

7. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁵

8. As discussed below, the Commission concludes that Idaho Power satisfies the Commission's standards for market-based rate authority.

Generation Market Power

9. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Idaho Power performed a generation market power analysis using the Idaho Power control area and its first-tier adjacent control areas as the relevant geographic market.⁶ Idaho Power states that it passes the pivotal supplier screen and the wholesale market share screen in these markets with a market share of less than 14.1 percent in each of the four seasons considered.

10. The Commission has reviewed Idaho Power's generation market power analysis and has determined that Idaho Power passes the wholesale market share screen in both its home control area and its directly interconnected first-tier control areas. The Commission also finds that Idaho Power passes the pivotal supplier screen for its home control area and its directly interconnected first-tier control areas. Accordingly, the Commission finds that Idaho Power satisfies the Commission's generation market power standard for the grant of market-based rate authority.

⁵ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁶ The first-tier adjacent control areas are Avista, Bonneville Power Administration, North Western-Montana, PacifiCorp-East, PacifiCorp-West, and Sierra Pacific. Idaho Power states that its affiliate Ida-West owns generation in the California Independent System Operator control area, so a generation market power analysis was done for that control area as well.

Transmission Market Power

11. Idaho Power states that it has a Commission-approved open access transmission tariff (OATT) on file.⁷ Further, no intervenors have raised transmission market power concerns. Based on Idaho Power's representations, the Commission finds that Idaho Power satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

12. Idaho Power states that it does not have sufficient control over fuel supplies, fuel transport facilities, or potential sites for new power plants to thwart competition from new generators. Idaho Power does control a one-third interest in Bridger Coal Company (BCC). However all of the output of BCC is used to fuel the Bridger power plant which is one-third owned by Idaho Power. Further, Idaho Power states that together with the other owners in jointly-owned, coal-fired plants, Idaho Power owns and leases rail cars to transport coal. Idaho Power states that these cars on occasion have been leased to others for the transport of coal. However, Idaho Power argues that there are many other companies from which rail cars may be leased, and the total number of cars that Idaho Power could be considered to control (less than 200) is insignificant relative to the total number of such cars. In addition, Idaho Power states that it does not own any interests in natural gas pipelines, and that numerous potential sites for power plants are available near pipelines owned by unaffiliated entities. Further, no intervenors have raised concerns regarding barriers to entry. Based on these representations, the Commission is satisfied that Idaho Power cannot erect barriers to entry. However, should Idaho Power deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of Idaho Power's authority to sell power at market-based rates.⁸

Affiliate Abuse

13. Idaho Power states that there have been no changes to the factual circumstances described in its most recent market power analysis regarding the potential for affiliate abuse, except that IDACORP Energy, L.P. (IE), Idaho Power's only affiliate with market-based pricing authority, has now fully "wound down" its electricity marketing

⁷ Idaho Power's OATT was accepted in Docket No. OA97-575-000.

⁸ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

operations. It states that IE currently has no contracts, no employees and exists only as a defendant in various stages of litigation and as a guarantor on some of the contracts it has sold. Idaho Power states that it is bound with IE by the Commission's code of conduct designed to prevent affiliate abuse concerns from arising.⁹ Further, no intervenors have raised concerns regarding affiliate abuse. Based on Idaho Power's representations, Idaho Power satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

14. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹⁰ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹¹

15. Idaho Power must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹² A change in status includes, but is not limited to, each of

⁹ *Idaho Power Co.*, Docket No. ER01-1329-001 (February 24, 1994) (unpublished letter order).

¹⁰ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹¹ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹² *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652).

the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

16. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Idaho Power is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in Order No. 652.

17. Idaho Power is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Idaho Power's updated market power analysis is hereby accepted for filing as discussed in the body of this order.

(B) Idaho Power's next updated market power analysis is due within three years of the date of this order as discussed in the body of this order.

(C) Idaho Power is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariffs to include the change in status reporting requirement.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.