

168 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Idaho Power Company

Docket Nos. ER10-2126-005
EL19-87-000

ORDER ON UPDATED MARKET POWER ANALYSIS, INSTITUTING SECTION
206 PROCEEDING, AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued September 19, 2019)

1. On June 21, 2019, as amended August 6, 2019, Idaho Power Company (Idaho Power) submitted an updated market power analysis for the Northwest region in accordance with the regional reporting schedule.¹ Idaho Power represents that it passes the pivotal supplier and wholesale market share indicative screens in the Avista Corporation, Bonneville Power Administration, Nevada Power Company, NorthWestern Corporation, PacifiCorp-East, and PacifiCorp-West balancing authority areas, as well as the Energy Imbalance Market operated by the California Independent System Operator Corporation.
2. However, with respect to the Idaho Power balancing authority area, Idaho Power represents that it passes the pivotal supplier indicative screen but fails the wholesale market share indicative screen in one season. The indicative screen failure establishes a

¹ See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065, at P 353 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, at P 882, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

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rebuttable presumption of horizontal market power and the basis for instituting a proceeding pursuant to section 206 of the Federal Power Act (FPA)² to determine whether Idaho Power's market-based rate authority in the Idaho Power balancing authority area remains just and reasonable and to establish a refund effective date.³

3. Although Idaho Power submitted a delivered price test analysis to rebut the presumption of horizontal market power in the Idaho Power balancing authority area, we conclude that Idaho Power's failure of the wholesale market share indicative screen provides the basis for the Commission to institute the instant section 206 proceeding in Docket No. EL19-87-000. The instant section 206 proceeding is to determine whether Idaho Power may continue to charge market-based rates in the Idaho Power balancing authority area and to establish a refund effective date for the protection of customers while the Commission evaluates the filed delivered price test analysis.

4. As the Commission has previously stated, sellers submitting evidence, such as a delivered price test, in support of a contention that they do not possess market power, should not expect that the Commission will postpone instituting a section 206 investigation while it examines the supplemental information.⁴ Consistent with Order No. 697, the Commission may institute section 206 proceedings in instances where there are pivotal supplier or wholesale market share indicative screen failures prior to completing its review of any supplemental information, such as a delivered price test, in order to establish refund protection while the Commission analyzes such supplemental information.⁵

5. Under the section 206 proceeding established herein, Idaho Power must show cause, within 60 days of the date of issuance of this order, as to why the Commission should not revoke Idaho Power's market-based rate authority in the Idaho Power balancing authority area. In addition to the previously-filed delivered price test, Idaho Power may present alternative evidence, such as historical sales and transmission data, to rebut the presumption that it has the ability to exercise horizontal market power in the

² 16 U.S.C. § 824e (2012).

³ The section 206 investigation extends to any affiliate of Idaho Power with market-based rate authorization.

⁴ Order No. 697, 119 FERC ¶ 61,295 at P 75 & n.59 (citing *LG&E Energy Mktg. Inc.*, 111 FERC ¶ 61,153, at PP 21, 22 (2005); *Tampa Electric Co.*, 110 FERC ¶ 61,206, at PP 24, 25 (2005); *Entergy Servs., Inc.*, 109 FERC ¶ 61,282, at P 36 (2004)).

⁵ Order No. 697, 119 FERC ¶ 61,295 at P 75. *See, e.g., Nevada Power Co.*, 149 FERC ¶ 61,219 (2014).

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Idaho Power balancing authority area.⁶ In the alternative, Idaho Power may: (1) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (2) inform the Commission that Idaho Power will adopt the Commission's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

6. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is statutorily-limited to "no earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date."⁷ In such cases, in order to give maximum protection to customers, and consistent with precedent, the Commission has historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206, and we will do so here as well.⁸ That date is the date of publication of notice of initiation of this proceeding in the *Federal Register*.

7. In addition, section 206 requires that, if no final decision has been rendered by the 180-day period commencing upon institution of a proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. We expect that we should be able to render a decision by March 31, 2020.

The Commission orders:

(A) 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 section 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), the Commission hereby institutes a proceeding in Docket No. EL19-87-000, concerning the justness and reasonableness of Idaho Power's market-based rates in the Idaho Power balancing authority area, as discussed in the body of this order.

(B) For the Idaho Power balancing authority area, Idaho Power is directed, within 60 days from the date of issuance of this order to: (1) show cause as to why the Commission should not revoke Idaho Power's market-based rate authority; (2) file a

⁶ Order No. 697, 119 FERC ¶ 61,295 at P 117.

⁷ 16 U.S.C. § 824e(b).

⁸ See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

mitigation proposal tailored to Idaho Power's particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that Idaho Power will adopt the Commission's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

(C) Any interested persons desiring to be heard in Docket No. EL19-87-000 should file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2019)) within 21 days of the date of this order.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL19-87-000.

(E) The refund effective date in Docket No. EL19-87-000 established pursuant to section 206 of the FPA shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.