

130 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Xcel Energy Services Inc.
Public Service Company of Colorado

Docket Nos. ER10-305-000
EL10-5-000
ER95-1207-000

Western Systems Power Pool Inc.

ER09-980-001

ORDER ACCEPTING TARIFF REVISIONS AND COMPLIANCE FILING

(Issued January 21, 2010)

1. On November 23, 2009, in Docket No. EL10-5-000, Xcel Energy Services Inc. (Xcel), on behalf of its utility operating affiliate Public Service Company of Colorado (PSCo), submitted a filing in response to the Commission's October 22, 2009 initiation of an investigation under section 206 of the Federal Power Act¹ (FPA).² The investigation concerned whether the maximum demand charge calculated using the units most likely to participate methodology in the PSCo Electric Coordination Service Tariff (Coordination Service Tariff), upon which the PSCo rates in the WSPP Agreement were in part based, continues to be just and reasonable. Concurrently, in Docket No. ER10-305-000, Xcel filed, on behalf of PSCo, revised rate sheets to modify the maximum demand charges under the Coordination Service Tariff, under section 205 of the FPA³ and section 35.13 of the Commission's regulations.⁴ Also on November 23, 2009, and also in compliance with the October 22 Order, WSPP Inc. (WSPP) submitted in Docket No. ER09-980-001 a revised rate sheet amending Schedule Q of the WSPP Agreement. In this order, the

¹ 16 U.S.C. § 824e (2006).

² *Western Systems Power Pool Inc.*, 129 FERC ¶ 61,055 (2009) (October 22 Order).

³ 16 U.S.C. § 824d (2006).

⁴ 18 C.F.R. § 35.13 (2009).

Commission accepts PSCo's revisions to modify the maximum demand charges, to become effective November 2, 2009 (units most likely to participate methodology), and January 23, 2010 (unit revenue constraint methodology). This order also accepts WSPP's revised rate sheet under Schedule Q of the WSPP Agreement, effective February 1, 2009.

Background

2. The WSPP Agreement was initially accepted by the Commission in 1991,⁵ and established a rate ceiling for coordination sales and transmission services. Following a proceeding to determine whether the WSPP ceiling rate continued to be just and reasonable for a public utility seller in markets in which such seller was found to have or was presumed to have market power,⁶ the Commission determined that WSPP members could incorporate their previously approved company-specific rate schedules into the WSPP Agreement, and that this would retain the efficiencies and convenience of the WSPP Agreement.⁷ As a result, in Docket No. ER09-980-000, WSPP, at the request of Xcel (on behalf of PSCo), submitted a proposal to incorporate PSCo's demand charges from its Coordination Service Tariff into Schedule Q of the WSPP Agreement. However, because PSCo's rates had not been cost-justified since 1995, the Commission requested WSPP to support PSCo's proposed demand charges based on the most current cost data available.⁸

3. In the October 22 Order, the Commission accepted a rate sheet incorporating PSCo's maximum demand charge of \$19.66/kW/month under the unit revenue constraint methodology into Schedule Q of the WSPP Agreement, to be effective February 1, 2009. However, with respect to PSCo's proposed maximum demand charge of \$15.16/kW/month under the units most likely to participate methodology, the Commission found that this charge was not supported by cost data in the record. The Commission found that the cost data supported a rate of \$10.62/kW/month under the

⁵ *Western Sys. Power Pool*, 55 FERC ¶ 61,099 (Initial Order), *order on reh'g*, 55 FERC ¶ 61,495 (1991), *aff'd in relevant part and remanded in part sub nom. Environmental Action and Consumer Federation of America v. FERC*, 996 F.2d 401 (D.C. Cir. 1992), *order on remand*, 66 FERC ¶ 61,201 (1994). Prior to 1991, the WSPP Agreement was used for three years on an experimental basis. *See Western Sys. Power Pool*, 50 FERC ¶ 61,339 (1990) (extending the initial two-year period for an additional year).

⁶ *Western Sys. Power Pool*, 119 FERC ¶ 61,302, at P 9 (2007).

⁷ *Western Sys. Power Pool*, 124 FERC ¶ 61,300, at P 10 (2008).

⁸ *WSPP Inc.*, Docket No. ER09-980-000 (May 26, 2009).

units most likely to participate methodology. Accordingly, the Commission found that \$10.62/kW/month is the maximum demand charge that PSCo could charge under Schedule Q of the WSPP Agreement. Therefore, the Commission directed WSPP to submit a compliance filing to amend its Schedule Q for PSCo to reflect this finding. Further, since evidence in the record indicated that PSCo's \$15.16/kW/month demand charge under the units most likely to participate methodology in the Coordination Service Tariff, FERC Electric Tariff, Original Volume No. 2 may not be just and reasonable, the Commission instituted, in Docket No. EL10-5-000, a section 206 proceeding to investigate whether PSCo's \$15.16/kW/month demand charge is just and reasonable.⁹

4. In its response in Docket No. EL10-5-000, Xcel explains that it is concurrently submitting revised rate sheets in Docket No. ER10-305-000, under section 205, that modify the applicable maximum demand charges in the Coordination Service Tariff. In its filing in Docket No. ER10-305-000, Xcel requests that the Commission accept PSCo's revised rate sheets that lower the maximum demand charge in its tariff that is based on the units most likely to participate methodology from \$15.16/kW/month to \$10.62/kW/month, effective November 2, 2009, the refund effective date established in Docket No. EL10-5-000. Xcel also includes revised rate sheets that increase the maximum demand charge under the unit revenue constraint methodology from \$19.66/kW/month to \$22.14/kW/month, and requests that this rate become effective January 23, 2010. In support, Xcel states that this revised rate reflects the cost of PSCo's newest coal generating unit, Comanche 3, which is expected to begin producing energy by the end of 2009.

5. In addition, Xcel also explains that, because the Coordination Service Tariff has never been submitted to the Commission in Order No. 614¹⁰ format, it is submitting PSCo's entire tariff in such format showing the newly proposed rates. However, it requests that the Commission waive the requirements of sections 35.10(b) and (c) of the Commission's regulations¹¹ with regard to the headers and footers in the Coordination Service Tariff.

6. WSPP submitted, in Docket No. ER09-980-001, a revised rate sheet amending Schedule Q of the WSPP Agreement to reflect that the maximum demand charge that

⁹ *Public Service Company of Colorado*, 74 Fed. Reg. 56609 (2009). The refund effective date for the section 206 proceeding instituted in Docket No. EL10-5-000 is November 2, 2009.

¹⁰ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

¹¹ 18 C.F.R. §§ 35.10(b); 35.10(c) (2009).

PSCo may charge under the units most likely to participate methodology is \$10.62/kW/month. WSPP requests that the Commission accept this modification with an effective date of February 1, 2009, the same effective date established for the charges the Commission accepted without revision in the October 22 Order.

Notice and Comments

7. In response to the Commission's Notice of Institution of Proceeding and Refund Effective Date issued in Docket No. EL10-5-000,¹² Black Hills/Colorado Electric Utility Company, LP (Black Hills) submitted a timely motion to intervene on November 13, 2009.

8. Notice of Xcel's filing in Docket No. EL10-5-000 was published in the *Federal Register*, 75 Fed. Reg. 857 (2010), with interventions and comments due on or before January 5, 2010. None was filed. Notice of Xcel's filing in Docket No. ER10-305-000 and WSPP's compliance filing in Docket No. ER09-980-001 was published in the *Federal Register*, 74 Fed. Reg. 65112 (2009), with interventions and comments due on or before December 14, 2009. None was filed.

Discussion

9. 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 of Black Hills serves to make it a party to this proceeding.

10. Consistent with the Commission's determination in the October 22 Order that PSCo's updated data support a rate of \$10.62/kW/month under the units most likely to participate methodology, we will accept PSCo's rate sheets incorporating the maximum demand charge of \$10.62/kW/month, effective November 2, 2009. With respect to PSCo's proposed demand charge of \$22.14/kW/month under the unit revenue constraint methodology, we find that PSCo's updated data support this rate. Therefore, we will accept PSCo's rate sheets incorporating the demand charge of \$22.14/kW/month, to become effective January 23, 2010, as proposed. Further, we will accept the revisions to the Coordination Service Tariff that conform the tariff to the requirements of Order No. 614, and we will grant Xcel's request for waiver of the requirements of section 35.10(b) and (c) of the Commission's regulations with regard to the headers and footers on PSCo's tariff sheets. However, PSCo's rate sheets for the units most likely to participate methodology, as well as the other tariff sheets conforming to the requirements of Order No. 614 incorrectly reflect an effective date of November 9, 2009 instead of November 2, 2009, the refund effective date established in Docket No. EL10-5-000, and

¹² 74 Fed. Reg. 56,609 (2009).

the effective date requested by Xcel. Therefore, we will direct Xcel to submit a compliance filing to modify the PSCo Coordination Service Tariff to reflect that the effective date for those tariff sheets is November 2, 2009, within 30 days of the date of this order.

11. Finally, we find that WSPP's revised sheet for Schedule Q of the WSPP Agreement reflecting that the maximum demand change that PSCo may charge under the units most likely to participate methodology is \$10.62/kW/month complies with the Commission's directive in the October 22 Order. Accordingly, we will accept WSPP's revised sheet for Schedule Q, effective February, 1, 2009.

The Commission orders:

(A) PSCo's proposed tariff sheets under its Coordination Service Tariff are hereby accepted for filing, to become effective November 2, 2009 and January 23, 2010, respectively, as discussed in the body of this order.

(B) Xcel is hereby directed, within 30 days of the date of this order, to submit a compliance filing to modify the PSCo Coordination Service Tariff to reflect the correct effective date, as discussed in the body of this order.

(C) WSPP's revised sheet under Schedule Q of the WSPP Agreement is hereby accepted for filing, effective February 1, 2009, as discussed in the body of this order.

(D) Xcel's request for waiver of the requirements of section 35.10(b) and (c) of the Commission's regulations is hereby granted, as discussed in the body of this order.

(E) The section 206 proceeding in Docket No. EL10-5 is hereby terminated.

By the Commission. Commissioner Norris voting present.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.