

129 FERC ¶ 61,055  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Suedeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Western Systems Power Pool Inc.

Docket No. ER09-980-000

Western Systems Power Pool Agreement

Public Service Company of Colorado

ER95-1207-000  
EL10-5-000

ORDER ACCEPTING TARIFF REVISIONS AS MODIFIED AND INSTITUTING  
SECTION 206 PROCEEDING

(Issued October 22, 2009)

1. On April 10, 2009, as amended on August 26, 2009, WSPP, Inc. (WSPP) submitted for filing a proposal to incorporate cost-based rate schedules into Schedule Q of the WSPP Agreement at the request of Xcel Energy Services, Inc. (Xcel) (on behalf of Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS)). In this order, we accept the associated rate sheets incorporating the proposed SPS rate into Schedule Q of the WSPP Agreement. In addition, we accept the rate sheets incorporating the proposed PSCo rates into Schedule Q as modified, and institute in Docket No. EL10-5-000 a proceeding under section 206 of the Federal Power Act (FPA) regarding whether PSCo's \$15.16/kW/month demand charge under its Coordination Sales Tariff<sup>1</sup> continues to be just and reasonable.

**Background**

2. The WSPP Agreement was initially accepted by the Commission on a non-experimental basis in 1991,<sup>2</sup> and provided for flexible pricing for coordination sales and

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<sup>1</sup> PSCo Coordination Sales Tariff FERC Electric Tariff, Original Volume No. 2.

<sup>2</sup> *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

(continued...)

transmission services. In accepting the WSPP Agreement, the Commission rejected WSPP's proposed system of price caps based on the costs of its highest cost participants, and instead developed energy and transmission rate ceilings based on the costs of a subset (18 sellers) of the original parties to the WSPP Agreement.<sup>3</sup> Specifically, the Commission justified the WSPP rate by determining the weighted production cost of the original 18 jurisdictional members' units that were most likely to participate in the transactions.

3. On June 21, 2007, the Commission instituted a proceeding under section 206 of the FPA to investigate whether the WSPP Agreement 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.<sup>4</sup>

4. On February 21, 2008, the Commission found that it is not just and reasonable to allow such a seller to continue to use the WSPP-wide "up to" demand charge as a ceiling rate, unless the seller could cost-justify the use of the "up to" demand charge based on its own fixed costs.<sup>5</sup> Accordingly, the Commission directed all sellers under the WSPP Agreement that lack market-based rate authorization, or that have lost or relinquished their market-based rate authority (including those sellers currently using the WSPP Agreement as mitigation), who wished to continue transacting under the WSPP Agreement, to make a filing within 60 days of the date of issuance of that order<sup>6</sup> providing cost justification to demonstrate that use of the WSPP Agreement "up to" demand charge is just and reasonable for that particular seller. The seller could also file a separate stand-alone rate schedule, to be effective as of the date of the compliance filing, that is cost-justified based on the individual seller's own costs. In the latter case, such seller could propose to use the non-rate terms and conditions of the WSPP Agreement, but would have to include those provisions as part of its stand-alone rate schedule.

5. As a result of the section 206 proceeding, the Commission determined that the proposal to allow company-specific rate schedules to be incorporated into the WSPP Agreement would retain the efficiencies and convenience of the WSPP Agreement, and

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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).

<sup>3</sup> *See* Initial Order, 55 FERC ¶ 61,099 at 61,321-25.

<sup>4</sup> *Western Sys. Power Pool*, 119 FERC ¶ 61,302, at P 9 (2007).

<sup>5</sup> *Western Sys. Power Pool*, 122 FERC ¶ 61,139 (2008).

<sup>6</sup> The Commission stated that such changes should be filed pursuant to section 35.13 of the Commission's regulations. 18 C.F.R. § 35.13 (2009).

noted that WSPP supported the proposal.<sup>7</sup> Accordingly, the Commission directed WSPP to make a compliance filing, within 60 days of the date of that order, with proposed revisions to the WSPP Agreement to allow for the incorporation in the WSPP Agreement of company-specific rate schedules for mitigated members.

6. On November 25, 2008, WSPP submitted proposed revisions to the WSPP Agreement to state that the WSPP-wide rate caps: (1) are subject to the submission of cost justification by the applicable seller, and acceptance by the Commission; or (2) are inapplicable if the seller has filed, and the Commission has accepted, a company-specific cost-based rate schedule applicable only to that seller. WSPP proposed that a new Schedule Q be added to the WSPP Agreement and that any Commission-approved, company-specific rate schedule for mitigated WSPP members would be incorporated into Schedule Q. WSPP stated that, once the rate schedule is accepted by the Commission, WSPP would submit a filing to incorporate that rate schedule into Schedule Q of the WSPP Agreement. WSPP stated that such filings would be ministerial only, and that WSPP would bear no responsibility for substantive justification of any company-specific rates. The Commission accepted WSPP proposed tariff revisions adding Schedule Q to the WSPP agreement on March 3, 2009, finding that they ensure just and reasonable rates for customers of mitigated members, while still enabling mitigated members to retain the efficiencies and convenience of the WSPP Agreement.<sup>8</sup>

### **WSPP's April 10 Filing**

7. On April 10, 2009, on behalf of PSCo and SPS, WSPP filed its proposal to incorporate existing cost-based rate schedules into Schedule Q of the WSPP Agreement (April 10 Filing).<sup>9</sup> WSPP stated that incorporating these cost-based rate schedules would allow sales of energy by PSCo and SPS at rates “up to” the levels specified in the rate schedules, and is consistent with the March 2009 Order. Additionally, WSPP stated that, because the PSCo and SPS rate schedules were previously accepted by the Commission, no additional cost support was necessary. Specifically, WSPP proposed to incorporate PSCo's monthly demand charges of \$15.16/kW/month using the units most likely to

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<sup>7</sup> *Western Sys. Power Pool*, 124 FERC ¶ 61,300, at P10 (2008).

<sup>8</sup> *Western Sys. Power Pool*, 126 FERC ¶ 61,193 (2009) (March 2009 Order).

<sup>9</sup> The PSCo rate schedule was filed in Docket No. ER95-1207-000 and accepted by the Commission on October 26, 1995. *Public Service Company of Colorado*, Docket No. ER95-1207-00 (Oct. 26, 1995) (unpublished letter order). The SPS rate schedule was filed in Docket No. ER08-857-000 and was accepted by the Commission on August 28, 2008. *Southwestern Public Service Company*, Docket No. ER08-857-000 (Aug. 28, 2008) (unpublished letter order).

participate methodology,<sup>10</sup> and \$19.66/kW/month using the unit revenue constraint methodology.<sup>11</sup> WSPP also proposed to incorporate SPS' monthly demand charge of \$7.56 kW/month using the unit revenue constraint methodology.

8. On May 19, 2009, the Director, Division of Tariffs and Market Development – West, issued a letter requesting that WSPP provide detailed workpapers, based on the most current cost data available, that support the level of the proposed demand charges for PSCo and SPS included in the instant rate sheets.<sup>12</sup>

9. In its August 26, 2009 response to the deficiency letter, WSPP states that the incorporation of cost-based rates into Schedule Q was never intended to result in WSPP having to justify any of its members' rates. Nonetheless, in response to the deficiency letter, WSPP, on behalf of PSCo, provides updated data that currently supports a \$10.62/kW/month rate under the units most likely to participate methodology, and a \$22.14/kW/month rate under the unit revenue constraint methodology. However, WSPP reiterates that it should be permitted to incorporate the currently effective cost-based rate schedules for PSCo that were previously accepted,<sup>13</sup> and states that it therefore has not amended the rates originally filed, which are \$15.16/kW/month and \$19.66/kW/month. WSPP also provides the cost support SPS previously used to justify its \$7.56/kW/month

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<sup>10</sup> Under the units most likely to participate methodology, the production component of rates for sales where energy is priced on the basis of incremental cost should be analyzed based on the fixed costs of those generating units most likely to provide the service. *Indiana & Michigan Electric Company*, 10 FERC ¶ 61,295, at 61,591 (1980).

<sup>11</sup> Under the unit revenue constraint methodology, rates may be based on: (1) the costs associated with a specific unit; (2) average system costs; or (3) the cost of the incremental unit on the system. However, whatever method is adopted, demand and energy charges must reflect the cost of the same generating resources, and the cost-based price may be based upon some or all of the costs of the last unit added to the system. *Illinois Power Co.*, 57 FERC ¶ 61,213 (1991).

<sup>12</sup> *WSPP Inc.*, Docket No. ER09-980-000 (May 26, 2009). On June 18, 2009 and on July 24, 2009, WSPP submitted motions for an extension of time to respond to the deficiency letter. The Commission granted both of WSPP's requests for extensions of time. Notice of Extension of Time, Docket No. ER09-980-000 (June 19, 2009); Notice of Extension of Time, Docket No. ER09-980-000 (July 27, 2009).

<sup>13</sup> *Public Service Company of Colorado*, Docket No. ER95-1207-00 (Oct. 26, 1995) (unpublished letter order).

charge, which was accepted by the Commission.<sup>14</sup> In its response, WSPP also requests that the Commission either: (1) determine that the deficiency letter's request for workpapers supporting the PSCo and SPS cost-based rate schedules in this proceeding was improper; or (2) direct revisions to the proposed Schedule Q rates for PSCo and SPS to match the cost-justification submitted, or provide guidance regarding the appropriate maximum demand charges for PSCo and SPS that may be included in WSPP's Schedule Q.

10. Notice of WSPP's April 10 Filing was published in the *Federal Register*, 74 Fed. Reg. 18,220 (2009), with interventions and comments due on or before May 1, 2009. On June 5, 2009, Xcel filed a motion to intervene out-of-time. Notice of WSPP's response to the deficiency letter was published in the *Federal Register*, 74 Fed. Reg. 46,192 (2009), with protests or interventions due on or before September 16, 2009. None was filed.

### **Discussion**

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2009), the Commission will grant Xcel's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

12. As discussed below, we will accept the rate sheets incorporating SPS' monthly demand charge of \$7.56 kW/month into Schedule Q of the WSPP Agreement. We also will accept the rate sheets incorporating PSCo's demand charge of \$19.66/kW/month into Schedule Q of the WSPP Agreement. However, because we find that PSCo's proposed demand charge of \$15.16/kW/month under the units most likely to participate method is not supported by cost data in the record of this proceeding, which only supports a rate of \$10.62/kW/month under this method, we will set \$10.62/kW/month as the maximum demand charge that PSCo may charge under this method under the WSPP Agreement. This is consistent with WSPP's in-the-alternative request that the Commission "direct revisions to the proposed Attachment Q rates for PSCo and SPS to match the cost-justification submitted with the instant filing." We therefore will direct WSPP to submit a compliance filing to amend its Schedule Q for PSCo so that the maximum demand charge that PSCo may charge under the units most likely to participate method is \$10.62/kW/month.

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<sup>14</sup> *Southwestern Public Service Company*, Docket No. ER08-857-000 (Aug. 28, 2008) (unpublished letter order).

13. We have reviewed the updated cost support provided by WSPP on behalf of PSCo and SPS.<sup>15</sup> With respect to the cost support submitted for SPS, we will accept the associated rate sheets incorporating the proposed SPS demand charge of \$7.56 kW/month into Schedule Q of the WSPP Agreement. However, with respect to the cost justification submitted for PSCo, we find that, given that PSCo's updated data only support a rate of \$10.62/kW/month under the units most likely to participate methodology, PSCo has not justified the \$15.16/kW/month demand charge, and therefore, that rate may not be just and reasonable. Accordingly, we will direct WSPP to submit a compliance filing to amend its Schedule Q for PSCo to remove the \$15.16/kW/month demand charge. However, because the updated data supports the \$19.66/kW/month demand charge under the unit revenue constraint methodology for PSCo, we will accept that section of the proposed Schedule Q. Thus, no revision to PSCo's rate schedule regarding the \$19.66/kW/month demand charge is required.

14. As explained above, the cost support submitted for PSCo in the instant proceeding no longer justifies the \$15.16/kW/month demand charge under the units most likely to participate methodology. Accordingly, because there is evidence in the record indicating that PSCo's \$15.16/kW/month demand charge under the units most likely to participate methodology in PSCo's Coordination Sales Tariff, FERC Electric Tariff, Original Volume No. 2 may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, we will institute in Docket No. EL10-5-000 a proceeding under section 206 of the FPA to investigate whether PSCo's \$15.16/kW/month demand charge under its Coordination Sales Tariff, FERC Electric Tariff, Original Volume No. 2, is just and reasonable. Given that PSCo can still justify its current demand charge under the unit revenue constraint methodology, the section 206 investigation is limited to only the \$15.16/kW/month demand charge under the units most likely to participate methodology.

15. We conclude that a trial-type hearing is not necessary to resolve the matter that is the subject of this proceeding. Rather, we believe a paper hearing will allow us to determine whether PSCo's \$15.16/kW/month demand charge, which was originally filed and accepted by the Commission in Docket No. ER95-1207-000, continues to be just and reasonable. Specifically, the Commission will require PSCo to submit a filing in Docket No. EL10-5-000 to demonstrate whether its \$15.16/kW/month demand charge under its

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<sup>15</sup> With respect to WSPP's request that the Commission determine that the deficiency letter's request for workpapers supporting the PSCo and SPS cost-based rate was improper, we note that the Commission may request additional cost support for any filing made pursuant to section 205 of the FPA. Specifically, in this proceeding, it was necessary to ask for updated cost support given that PSCo's rates were last accepted in 1995.

Coordination Sales Tariff, FERC Electric Tariff, Original Volume No. 2 is just and reasonable, within 30 days of the date of this order. Comments from interested parties may be filed within 30 days of the end of the comment period. After receipt and consideration of the filing and any comments, the Commission will address in a subsequent order whether PSCo's \$15.16/kW/month demand charge continues to be just and reasonable.

16. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. In order to give maximum protection to customers, and consistent with our precedent,<sup>16</sup> we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of our investigation in this proceeding is published in the *Federal Register*. The Commission is also required by section 206 to indicate when it expects to issue a final order. The Commission expects to issue a final order in this section 206 investigation within 180 days of the date of this order.

The Commission orders:

(A) WSPP's filing incorporating the rate schedule of SPS into Schedule Q of the WSPP Agreement is hereby accepted for filing, to be effective February 1, 2009, as discussed in the body of this order.

(B) WSPP's filing incorporating the section of the PSCo rate schedule that sets forth the \$19.66/kW/month demand charge into Schedule Q of the WSPP Agreement is hereby accepted for filing, to be effective February 1, 2009, as discussed in the body of this order.

(C) WSPP is hereby directed to amend its Schedule Q for PSCo to replace the \$15.16/kW/month demand charge for PSCo with the cost-justified \$10.62/kW/month demand charge, within 30 days of the date of issuance of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred by the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure

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<sup>16</sup> See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

and the regulations under the Federal Power Act (18 C.F.R. Chapter I), an investigation is hereby instituted, in Docket No. EL10-5-000, concerning the justness and reasonableness of PSCo's \$15.16/kW/month demand charge under its Coordination Sales Tariff FERC Electric Tariff, Original Volume No. 2.

(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (D) above, under section 206 of the Federal Power Act, in Docket No. EL10-5-000.

(F) The refund effective date in Docket No. EL10-5-000, established pursuant to section 206(b) of the Federal Power Act, shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (E) above.

(G) PSCo is hereby directed to submit a filing in Docket No. EL10-5-000 to demonstrate whether its \$15.16/kW/month demand charge under its Coordination Sales Tariff, FERC Electric Tariff, Original Volume No. 2 continues to be just and reasonable, within 30 days of the issuance of this order. Any interested person desiring to be heard in this proceeding should file a notice of intervention or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Interested parties may file comments on PSCo's filing within 30 days of that filing.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.