

131 FERC ¶ 61,014
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 12, 2010

In Reply Refer To:
Public Service Company of Colorado
Docket Nos. ER10-192-000
ER10-192-001

Holcim (US), Inc.
c/o Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
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Attention: Wendy B. Warren, Counsel for Holcim (US), Inc.

Reference: Request for Expedited Approval of Motion to Intervene

Ladies and Gentlemen:

1. On January 25, 2010, Holcim (US), Inc. (Holcim) filed a motion to intervene in this proceeding, which involves Public Service of Colorado's (PSCo's) proposal to change the base rates applicable to seven wholesale customers.¹ Holcim argues that it has a direct interest in this proceeding because it is the largest retail/industrial customer of Black Hills/Colorado Electric Utility Company, LP (Black Hills) and that any increase the wholesale rate for Black Hills would directly affect Black Hills' retail rate for sales to Holcim.²

2. On February 12, 2010, PSCo filed an answer opposing Holcim's motion to intervene and alleging that, because Holcim is not a direct wholesale customer of PSCo but instead purchases electricity at retail from Black Hills, Holcim has no direct interest

¹ PSCo's October 30, 2009, filing included PSCo revised tariff sheets affecting wholesale rates applicable to: Black Hills/Colorado Electric Utility Company, LP (Black Hills); City of Burlington, Colorado; Town of Center, Colorado; Grand Valley Rural Power Lines, Inc.; Holy Cross Electric Association, Inc.; Intermountain Rural Electric Association; and Yampa Valley Electric Association, Inc.

² Holcim January 25, 2010 Motion to Intervene at 3.

in this proceeding.³ PSCo also alleges that permitting Holcim to intervene at this juncture “will disrupt the ongoing settlement efforts and unfairly prejudice PSCo and the wholesale customers.”⁴ Finally, PSCo contends that the motion to intervene is untimely and lacks an explanation for why Holcim failed to intervene in a timely manner.⁵

3. Subsequently, on March 1, 2010, Holcim filed a motion for leave to submit a response to PSCo’s answer, repeating its direct interest in the proceeding as a customer of Black Hills and asserting that its motion to intervene was timely filed.⁶ Finally, on March 31, 2010, Holcim filed a motion requesting expedited action and approval of its motion to intervene in this proceeding. Holcim asserts that in the absence of a Commission determination granting the motion to intervene, Holcim is being denied access to ongoing settlement discussions due to their lack of party status.⁷

4. The Commission does not generally respond to individual motions to intervene because, absent an answer opposing intervenor status, such motions are deemed granted fifteen days after they are filed.⁸ However, because PSCo filed an answer opposing Holcim’s motion to intervene, and because of the exigent circumstances in this proceeding, the Commission will act on Holcim’s motion and grant it intervenor status.

5. The Commission has previously concluded that retail customers can file as intervening parties to protect their interests.⁹ When considering whether to allow intervention, the Commission’s focus is on the interest of the potential intervenor, rather than its status.¹⁰ Holcim has demonstrated that it has sufficient interest in the outcome of this proceeding to be granted intervenor status.

³ PSCo Answer February 12, 2010 at 2.

⁴ *Id.* at 4.

⁵ *See id.* at 5.

⁶ *See* Holcim March 1, 2010 Answer at 2-6.

⁷ *See* Holcim March 31, 2010 Motion for Expedited Action at 1.

⁸ 18 C.F.R. § 385.214(c)(1) (2009).

⁹ *See, e.g., Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Company*, 119 FERC ¶ 61,262, at P 34-38 (2007).

¹⁰ *See, e.g., Consumers Power Co.*, 100 FERC ¶ 61,354, at P 7 (2002) (The Commission's regulation regarding intervention does not require that a movant show that it falls into one of the four categories in the rule (i.e., consumer, customer, competitor, or
(continued...))

6. Finally, the Commission also finds that Holcim's intervention, which was filed on January 25, 2010, was timely filed,¹¹ as the deadline for submission of motions to intervene and comments in this proceeding has been extended to May 1, 2010.¹²

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: Public File
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security holder of a party), “but rather that it show that its interest may be affected by the proceeding. The categories are examples of the types of interests that a proceeding may affect, not an exclusive listing of the types of interests that a movant must show.”).

¹¹ Disruption of a proceeding, as PSCo has alleged would occur if the Commission grants Holcim's motion, is a factor that is only considered with motions to intervene out of time. Thus, it is not relevant here, because Holcim's motion to intervene was timely filed. *See* 18 C.F.R. § 385.214(d)(ii) (2009).

¹² *See* Notice of Extension of Time *Public Service Co. of Colorado*, Docket Nos. ER10-192-000 and ER10-192-001 (issued March 31, 2010).