

141 FERC ¶ 61,019  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Grand Valley Rural Power Lines, Inc., Yampa Valley  
Electric Association, Inc.,  
Intermountain Rural Electric Association, and Tri-State  
Generation and Transmission Association, Inc.

v.

Docket No. EL12-77-000

Public Service Company of Colorado

Public Service Company of Colorado

Docket No. ER12-1589-000

(Consolidated)

ORDER ON COMPLAINT, ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued October 5, 2012)

1. On June 21, 2012, Grand Valley Rural Power Lines, Inc. (Grand Valley), Yampa Valley Electric Association, Inc. (Yampa Valley), Intermountain Rural Electric Association and Tri-State Generation and Transmission Association, Inc. (collectively, Complainants) filed a complaint pursuant to sections 201, 206 and 306 of the Federal Power Act (FPA) and Rules 206 and 212 of the Commission's Rules of Practice and Procedure.<sup>1</sup> The complaint asserts that Public Service Company of Colorado's (PSCo) rate of return on equity (ROE) is unjust and unreasonable, and requesting that the Commission consolidate the complaint proceeding with hearing and settlement judge procedures established in Docket No. ER12-1589-000. In this order, we set the

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<sup>1</sup> 16 U.S.C. §§ 824, 824e and 825e (2006); 18 C.F.R. §§ 385.206 and 385.212 (2012).

complaint for hearing and settlement judge procedures, and consolidate the complaint with the ongoing hearing and settlement judge proceedings established in Docket No. ER12-1589-000. We also establish a refund effective date of July 1, 2012.

## **I. Background**

2. Complainants are full requirements customers of PSCo. In an earlier settlement involving PSCo's production formula rates in Docket No. ER11-2853-000, PSCo agreed to reduce its transmission ROE from 10.5 percent to 10.25 percent, effective July 1, 2011, and the full requirements customers agreed not to seek a further reduction in the transmission ROE prior to July 1, 2012.<sup>2</sup>

## **II. PSCo's Rate Filing (Docket No. ER12-1589-000)**

3. On April 20, 2012, PSCo filed certain revisions to its transmission and ancillary service rates under its open access transmission tariff (OATT) to, among other things, modify several cost elements, including an ROE of 10.25 percent.<sup>3</sup> PSCo asserted that its proposed ROE fell within the 7.4 percent to 15.4 percent zone of reasonableness produced by applying the Discounted Cash Flow (DCF) methodology to a national proxy group of 15 risk comparable electric utilities.<sup>4</sup> Moreover, PSCo stated that the proposed ROE fell between the midpoint and the median and was supported by reference to alternative ROE benchmarks, which consistently resulted in cost of equity estimates considerably above the median.<sup>5</sup>

4. Grand Valley and Yampa Valley protested PSCo's Filing, arguing that PSCo's proposed 10.25 percent ROE was excessive.<sup>6</sup> The entities offered an independent DCF

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<sup>2</sup> The settlement in that proceeding was approved by the Commission on June 25, 2012. *Pub. Serv. Co. of Colo.*, 139 FERC ¶ 61,250 (2012).

<sup>3</sup> *See Pub. Serv. Co. of Colo.*, 139 FERC ¶ 61,223, at P 8 (2012) (citing PSCo's assertion that the proposed ROE was determined by the outcome of a recent pending settlement in the PSCo production formula rate proceeding in Docket No. ER11-2853-000, and that PSCo will separately make a section 205 filing to lower the transmission formula ROE to 10.25 percent effective as of July 1, 2011, upon the Commission's approval of its settlement, and will issue refunds for the period from July 1, 2011 to the effective date of the rates proposed Docket No. ER12-1589-000) (June 19 Order).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *See id.* PP 13-15.

analysis supporting a 9.15 percent ROE for PSCo.<sup>7</sup> They also moved for summary judgment with respect to PSCo's proposed ROE of 10.25 percent.<sup>8</sup>

5. The Commission found that PSCo's proposed rates raised issues of material fact, including those raised in the motions for summary disposition that could not be resolved based on the record.<sup>9</sup> The Commission therefore conditionally accepted PSCo's revised tariff sheets, suspended them for five months, subject to refund, to become effective November 17, 2012, and established hearing and settlement judge procedures. The Commission also denied protesters' request to treat their protest as a complaint in the June 19 Order.<sup>10</sup>

### **III. Complaint (Docket No. EL12-77-000)**

6. Complainants seek an investigation of PSCo's proposed ROE of 10.25 percent for the period between July 1, 2012 and November 17, 2012, arguing that the ROE is excessive, not calculated pursuant to Commission precedent, and is unjust and unreasonable. Among other things, Complainants argue that the Commission has repeatedly determined that the median ROE is the best measure of central tendency of an array of results for a proxy group where the ROE is being set for a single electric utility of average risk. Complainants also assert that PSCo does not exclude high-end outliers.<sup>11</sup> Complainants further argue that PSCo's ROE is based on empirical analyses such as the capital asset pricing model analysis, a risk premium analysis, a comparable earnings analysis, and a DCF analysis of a group of non-regulated non-utility industrial companies that are inconsistent with Commission policy.<sup>12</sup> Complainants conclude that an independent electric utility proxy group DCF analysis supports a 9.15 percent ROE for PSCo.<sup>13</sup> Accordingly, Complainants request that the Commission initiate an

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<sup>7</sup> *Id.* P 13.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* P 21.

<sup>10</sup> *Id.* P 25 & n.36 (citing *e.g.*, *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062-63 & n.3 (1990); *Entergy Services, Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) (holding that complaints must be filed separately from motions to intervene and protests)).

<sup>11</sup> Complaint at 10-11.

<sup>12</sup> *Id.* at 14-18.

<sup>13</sup> *Id.* at 18.

investigation pursuant to section 206 of the FPA as to the justness and reasonableness of the stated ROE in PSCo's OATT.<sup>14</sup> Complainants seek a refund effective date of July 1, 2012, given the Commission's recent approval of the settlement in Docket No. ER11-2853-000.<sup>15</sup> Complainants also move to consolidate the complaint with Docket No. ER12-1589-000 for the purposes of hearing and settlement procedures.<sup>16</sup>

#### **IV. Notice of Filing and Responsive Pleadings**

7. Notice of the complaint was published in the *Federal Register*, 77 Fed. Reg. 38,793 (2012), with intervention and answers due on or before July 11, 2012. On July 11, 2012, PSCo filed an answer to the complaint. On July 23, 2012, Complainants filed a motion for leave to answer and answer.

8. In its answer, PSCo requests that the Commission dismiss the complaint without prejudice, concluding that the complaint is an attempt to re-litigate issues addressed by the June 19 Order.<sup>17</sup> PSCo also asserts that its proposed ROE is just and reasonable, arguing that the proposed ROE falls "well within the . . . zone of reasonableness produced by applying the Commission-approved DCF approach."<sup>18</sup> PSCo additionally argues that the Complainants' proposed ROE is unreasonable, fails to meet established regulatory standards and contains significant errors.<sup>19</sup> PSCo argues that its analysis is timely and reflects current market conditions.<sup>20</sup> PSCo further argues that the complaint presents an incomplete and distorted picture of capital market conditions, and that the Commission should reject the Complainants' assertion that the DCF median is the only acceptable measure of central tendency.<sup>21</sup> If the Commission does not grant PSCo's motion to dismiss the complaint, PSCo also requests that the Commission consolidate the

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<sup>14</sup> *Id.* at 21.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 22.

<sup>17</sup> PSCo Answer at 5.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 12-15.

<sup>20</sup> *Id.* at 23.

<sup>21</sup> *Id.* at 18.

complaint with the ongoing hearing and settlement procedures established in Docket No. ER12-1589-000.<sup>22</sup>

9. In their answer, Complainants argue that their prior protests challenging PSCo's proposed ROE in Docket No. ER12-1589-000 do not preclude them from challenging PSCo's existing rates.<sup>23</sup> Complainants clarify that they are challenging the ROE in the currently effective rates, which took effect July 1, 2012. Complainants note that absent action by the customers to seek a reduction in the currently effective ROE, it will remain in effect until the PSCo filed rate change becomes effective on November 17, 2012. Accordingly, Complainants conclude that the matters in controversy in the pending section 205 proceeding established in Docket No. ER12-1589-000 are not the same matters at issue in the complaint filed pursuant to FPA section 206.<sup>24</sup>

## V. Discussion

### A. Procedural Matters

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Complainants' answer because it has provided information that assisted us in our decision-making process.

### B. Substantive Matters

11. We find that the complaint raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

12. Complainants request a Commission investigation under section 206 of the FPA based largely on the same set of facts, policy and precedent that are the basis for the protests filed in Docket No. ER12-1589-000. Complainants also seek to preserve their rights and their ability to obtain a refund for the period between July 1, 2012 and November 17, 2012, which goes beyond scope of the relief at issue in the hearing and settlement proceedings established in Docket No. ER12-1589-000. Because of the common nexus of issues in this complaint and the hearing and settlement procedures established in Docket No. ER12-1589-000, and for administrative efficiency, we hereby

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<sup>22</sup> *Id.* at 24.

<sup>23</sup> Complainants Answer at 3.

<sup>24</sup> *Id.* at 4.

consolidate the ongoing proceedings in Docket No. EL12-77-000 with the proceedings in Docket No. ER12-1589-000.<sup>25</sup> We further conclude that this complaint does not lend itself to summary disposition, because of the disputed issues of material fact.

13. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance. The settlement judge or presiding judge, as appropriate, designated in Docket No. ER12-1589-000, shall determine the procedures best suited to accommodate the consolidation ordered herein. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

14. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b), as amended by section 1285 of the Energy Policy Act of 2005, requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,<sup>26</sup> and consistent with Complainants' requested relief, we will set the refund effective date at July 1, 2012.

15. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by July 5, 2013. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions, or by January 6, 2014.

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<sup>25</sup> The Commission's policy is to consolidate proceedings where the issues are closely intertwined with each other. See *Missouri River Energy Services*, 124 FERC ¶ 61,309, at P 39 (2008).

<sup>26</sup> See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) The complaint is set for hearing and settlement judge procedures, as discussed in the body of this order and the ordering paragraph below.

(B) The motions to consolidate are hereby granted and this proceeding is consolidated with the hearing and settlement judge proceedings in Docket No. ER12-1589-000.

(C) The refund effective date established in Docket No. EL12-77-000 pursuant to section 206(b) of the Federal Power Act is July 1, 2012.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the consolidated proceedings, as discussed in the body of this order.

(E) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER12-1589-000 shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.