

146 FERC ¶ 61,137  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of Colorado

Docket No. ER14-861-000

ORDER ACCEPTING TARIFF AMENDMENTS, UPDATED MARKET POWER  
ANALYSIS, AND NOTICE OF CHANGE IN STATUS

(Issued February 27, 2014)

1. In this order, the Commission accepts proposed revisions to the market-based rate tariff of Public Service Company of Colorado (PSCo), effective March 1, 2014, as requested. As discussed below, the Commission concludes that the currently effective restrictions on PSCo's market-based rate authority in the Southwestern Public Service Company (SPS) balancing authority area may be removed upon Southwest Power Pool, Inc.'s (SPP) implementation of its proposed Integrated Marketplace, when the SPS balancing authority area will no longer exist and SPP will operate regional transmission organization (RTO)-wide day-ahead and real-time energy and operating reserve markets. Also in this order, we accept Simultaneous Transmission Import Limit (SIL) values for the December 2011 to November 2012 study period for the SPP market.

**I. Background**

2. On December 27, 2013, as amended on January 27, 2014 and February 12, 2014, Xcel Energy Services Inc. (XES) on behalf of PSCo filed revisions to PSCo's market-based rate tariff pursuant to section 205 of the Federal Power Act (FPA).<sup>1</sup> This filing includes an updated market power analysis and a notice of change in status. XES is the service company subsidiary of Xcel Energy Inc., the holding company parent of PSCo and the other Xcel Energy Operating Companies, namely, Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation (the NSP Companies) and SPS.

3. PSCo states that it is a vertically-integrated electric utility that provides generation, transmission, and distribution services. According to PSCo, it provides electric service to retail customers in Colorado and to a number of wholesale

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<sup>1</sup> 16 U.S.C. § 824d (2012).

requirements customers within Colorado, both inside and outside of the PSCo balancing authority area. PSCo also provides retail gas service. PSCo states that it provides transmission service over its transmission facilities under the Xcel Energy Operating Companies Joint Open Access Transmission Tariff (Joint OATT).<sup>2</sup>

4. PSCo notes that its currently effective market-based rate tariff provides that it may not make sales of capacity and/or energy within the PSCo and SPS balancing authority areas, where PSCo, SPS, and the NSP Companies have been deemed to have market power. PSCo's filing concerns the SPS balancing authority area. PSCo states that PSCo, SPS and the NSP Companies are mitigated sellers within the SPS balancing authority area, except for sales within the current SPP Energy Imbalance Service (EIS) Market.<sup>3</sup>

5. PSCo explains that on February 29, 2012, as amended on May 15, 2012, SPP filed revisions to the SPP Tariff to transition from the current EIS Market to the proposed Integrated Marketplace. PSCo notes that on October 18, 2012, the Commission conditionally accepted SPP's Integrated Marketplace proposal, subject to certain modifications and compliance filings.<sup>4</sup> PSCo states that, as proposed, the Integrated Marketplace will include day-ahead and real-time energy and operating reserve markets. PSCo notes that in order to implement the Integrated Marketplace, SPP proposes to assume the responsibilities of the 16 separate balancing authority areas – including the SPS balancing authority area – currently within the SPP footprint.<sup>5</sup> PSCo further notes that the SPP market will have a Commission-approved internal market monitor for market power monitoring and mitigation.

6. PSCo states that while it presently has the authority to make sales at market-based rates in all of SPP other than the SPS balancing authority area, PSCo is making this filing in order to obtain assurance that it may make market-based rate sales throughout the SPP market upon implementation of the Integrated Marketplace. PSCo states that

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<sup>2</sup> PSCo also provides transmission services pursuant to certain grandfathered arrangements.

<sup>3</sup> SPS is seeking to have the restriction on its market-based rate authority in the SPP market removed in Docket No. ER14-865-000, which is currently pending before the Commission.

<sup>4</sup> PSCo December 27, 2013 Application at 4 (citing *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048, at PP 1, 10, 499 (2012) (Integrated Marketplace Order), *order on reh'g*, 142 FERC ¶ 61,205, at P 6 (2013) (Integrated Marketplace Rehearing Order)).

<sup>5</sup> PSCo December 27, 2013 Application at 4 (citing Integrated Marketplace Order, 141 FERC ¶ 61,048 at PP 16, 368-375; Integrated Marketplace Rehearing Order, 142 FERC ¶ 61,205 at PP 7, 72).

commencing on March 1, 2014, the SPS balancing authority area will no longer exist and the SPP market will become a relevant geographic market for purposes of market power analyses.

7. PSCo represents that it does not have market power in the new SPP market and includes a market power analysis showing that it and its affiliates pass the Commission's pivotal supplier screen and the wholesale market share screen in the SPP market. Therefore, PSCo contends that it should be permitted to sell wholesale electric capacity, energy, and ancillary services at market-based rates within the SPP market.

8. PSCo's filing also includes a change in status report reflecting a net decrease in the generation capacity owned or controlled by PSCo and SPS as a result of generator retirements and expiration of a purchase power agreement.

## **II. Notice of Filings**

9. Notice of PSCo's filings was published in the *Federal Register*,<sup>6</sup> with interventions and comments due on or before February 19, 2014. None was filed.

## **III. Discussion**

### **A. Market-Based Rate Authorization**

10. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>7</sup> As discussed below, the Commission concludes that PSCo satisfies the Commission's standards for market-based rate authority.

#### **1. Horizontal Market Power**

11. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>8</sup> The

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<sup>6</sup> 79 Fed. Reg. 653; 79 Fed. Reg. 10,138 (2014).

<sup>7</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 62, 399, 408, 440, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

<sup>8</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>9</sup> Additionally, the Commission has adopted a rebuttable presumption that existing Commission-approved regional transmission organization/independent system operator market monitoring and mitigation is sufficient to address any market power concerns that may arise with respect to an applicant for market-based rate authority.<sup>10</sup>

12. We note that the Commission recently accepted SPP's compliance filing containing the certification of readiness to implement the Integrated Marketplace and approved the start-up and operation of the Integrated Marketplace effective March 1, 2014.<sup>11</sup> PSCo's horizontal market power analysis for the SPP market relies on information submitted by SPP in Docket No. AD10-2-003.<sup>12</sup> SPP's submissions in Docket No. AD10-2-003 include a Report on Market Data for Market-Based Rates for Wholesale Power Sales (Report on Market Data) as part of its SIL Study for the SPP market.<sup>13</sup> PSCo relied on information from the SPP Report on Market Data in preparing its horizontal market power analysis. PSCo states that it and its affiliates will own or control approximately 1,870 megawatts (MW) of uncommitted capacity in the SPP market. PSCo claims that its market share screen indicates that its market shares in the SPP market range from 8.7 to 10 percent. PSCo further claims that it passes the pivotal supplier screen. PSCo states that on the basis of the Commission's indicative screens, it does not have horizontal market power in the SPP market.

13. The Commission has reviewed the pivotal supplier screen and wholesale market share screen for the SPP market and has determined that PSCo passes the pivotal supplier screen and the wholesale market share screen in the SPP market. Accordingly, we find that PSCo satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the SPP market. Therefore, we will accept the tariff revisions removing the restrictions on market-based rate sales in the SPS balancing authority area so that PSCo may make market-based rate sales of energy, capacity, and ancillary services throughout the SPP market. We will also accept PSCo's notice of

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<sup>9</sup> *Id.* PP 33, 62-63.

<sup>10</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 111.

<sup>11</sup> *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,130 (2014).

<sup>12</sup> *See* PSCo December 27, 2013 Aff. at 7; PSCo January 27, 2014 Filing at 1; PSCo February 12, 2014 Filing at 1-2.

<sup>13</sup> *Southwest Power Pool, Inc.*, Informational Filing, Docket No. AD10-2-003 (filed December 24, 2013, amended on January 24, 2014 and February 10, 2014).

change in status, which reflects a net decrease in the generation capacity owned or controlled by PSCo and SPS.

14. As noted above, SPP's filings in Docket No. AD10-2-003 include a SIL study of the SPP market for the December 2011 to November 2012 study period to assist SPP members and other entities that prepare market power analyses of the SPP market. This study modeled the single, integrated SPP market and each first-tier balancing authority area to replicate the ability of SPP to simultaneously import power from surrounding areas.

15. We find that the SPP SIL study described above meets the Commission's requirements for a SIL study as described in Appendix E of the April 14 Order<sup>14</sup> and Order No. 697. Therefore, we will accept these SIL values for the SPP market for this study period. Specifically, the seasonal SIL values for the SPP market accepted herein are: Winter 0 MW; Spring 554 MW; Summer 0 MW; and Fall 208 MW.

16. Future filers submitting screens for the SPP market for the December 2011 to November 2012 study period are encouraged to use the Commission-accepted SIL values for this period. In the alternative, a filer may propose different SIL values provided that its accompanying SIL studies comply with Commission directives and that the filer fully supports the values used and explains why the Commission should consider a different SIL value for the SPP market other than the Commission-accepted SIL values approved herein.

## **2. Vertical Market Power**

17. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.<sup>15</sup>

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>16</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with, an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or

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<sup>14</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>16</sup> *Id.* P 440.

control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>17</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>18</sup> The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow interveners to demonstrate otherwise.<sup>19</sup>

19. PSCo states that service is provided over the transmission system of each of the Xcel Energy Operating Companies pursuant to a Commission-approved OATT: for PSCo, the Xcel Energy Operating Companies' Joint OATT; for the NSP Companies, the Midcontinent Independent System Operator, Inc. Open Access Transmission, Energy and Operating Reserve Markets Tariff; and for SPS, SPP's regional OATT.

20. With regard to other barriers to entry, PSCo states that its gas system is an integrated statewide pipeline system that includes high pressure pipelines, compressor stations, storage facilities, gathering fields, intermediate pressure pipelines and distribution facilities. PSCo states that it does not own coal supplies or barges used for transportation of coal supplies; however PSCo does own some rail cars and contracts with a third party to acquire and transport coal, primarily to deliver fuel for its coal-fired generating facilities. PSCo represents that it may own or control sites for generation capacity development at the sites of its existing generation plants and other locations in its service areas.

21. PSCo affirmatively states that XES, PSCo, and the other Xcel Energy Operating Companies have not erected barriers into the relevant markets and that XES, PSCo, and the other Xcel Energy Operating Companies will not erect barriers to entry into the relevant markets.

22. Based on PSCo's representations, the Commission finds that PSCo satisfies the Commission's requirements for market-based rate authorization regarding vertical market power.

#### **B. Reporting Requirements**

23. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly

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<sup>17</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>19</sup> *Id.* P 446.

Report (EQR) with the Commission containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.<sup>20</sup> Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>21</sup>

24. PSCo must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>22</sup>

25. Additionally, PSCo must file updated market power analyses for any region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697. The Commission also reserves the right to require an updated market power analysis at any time for any region.

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<sup>20</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>21</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2013). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, may result in forfeiture of market-based rate authority requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>22</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2013).

The Commission orders:

(A) PSCo's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) PSCo's notice of change in status is hereby accepted for filing, as discussed in the body of this order.

(C) PSCo's tariff revisions are hereby accepted for filing, effective March 1, 2014, as discussed in the body of this order.

(D) The specific Commission-accepted SIL values identified in this order are hereby accepted for purposes of analyzing updated market power analyses for the SPP market, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.