151 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Public Service Company of Colorado — Docket No. ER15-266-000, ER15-266-001

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 10, 2015)

1. On October 31, 2014, Public Service Company of Colorado (PSCo) filed proposed revisions to the Xcel Energy Operating Company Open Access Transmission Tariff (Tariff) to update the transmission loss factors applicable to PSCo's transmission formula rates under the Tariff based on a transmission and distribution loss study. In this order, the Commission accepts the proposed Tariff revisions, suspends them for a nominal period, to be effective January 1, 2014, as requested, subject to refund, and sets them for hearing and settlement judge procedures.

I. Background

2. PSCo states that it is making the instant filing pursuant to a partial settlement (Partial Settlement) reached with certain of its customers, which was approved by the Commission on December 23, 2013.[1] PSCo asserts that the Partial Settlement provides that it will perform a transmission and distribution loss study and will submit a limited filing to implement updated loss factors to be effective January 1, 2014. PSCo states that the instant filing implements that provision of the Partial Settlement.

3. PSCo explains that it owns and operates an integrated transmission system consisting of approximately 4,500 miles of transmission lines at 44 kV and above and 55 transmission substations, all in the State of Colorado. PSCo states that, pursuant to the Tariff, PSCo is not obligated to provide real power losses and that transmission service customers are responsible for replacing losses associated with transmission service.

[1] *Pub. Serv. Co. of Colorado*, 145 FERC ¶ 61,266 (2013).

PSCo states that this is accomplished with stated loss factors in the Tariff, currently 2.56 percent for wholesale point-to-point and network integration transmission services, 2.35 percent for its distribution system, and 2.56 percent for balancing authority service.[2]

4. PSCo states that the proposed revisions to the loss factors in its Tariff reflect an analysis by Siemens Power Technologies International (Siemens),[3] which was completed in May of 2014. PSCo states that the study calculated losses utilizing a 2012 test year and that, for 2012, total system losses were 1,592,864 MWh, approximately 4.55 percent of energy delivered to total system load. PSCo states that the Siemens study analyzed a range of data to determine transmission and distribution system losses, allocated these electric system losses to system voltage and service levels, and reconciled this analysis with the losses reported in PSCo's FERC Form 1. PSCo states that Siemens used this data to develop loss factors that are calculated individually for coincident demand and energy and for transmission, primary distribution, and secondary distribution. PSCo states that these factors allocate losses to customers as a function of service level.[4] Thus, PSCo notes that transmission service customers will be charged for losses associated with the use of the transmission system, while substation customers will be charged losses reflecting their utilization of the transmission system and substation system.

5. PSCo states that the proposed Tariff changes revise the current loss factors in two respects. First, the current single loss factor (2.56 percent) will be replaced with separate loss factors for demand and energy. PSCo explains that a demand loss factor is applied to the monthly coincident transmission peak demands and peak power demands on the PSCo system while the energy loss factor is applied to the hourly transmission of power on the PSCo system and energy purchases by PSCo's wholesale customers.

6. Second, PSCo proposes to update the specific demand and energy factors to reflect the results of the Siemens study. PSCo states that, for transmission services, the revised demand loss factor is 2.52 percent and the revised energy loss factor is 1.87 percent.[5] For distribution service, PSCo states that the revised demand loss factor is 2.28 percent and

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[2] Balancing authority service loss factors provide for PSCo to recover the costs of certain services provided to ancillary service customers with transmission facilities or loads within the PSCo Balancing Authority Area that are not otherwise PSCo transmission service customers. These include Reactive Supply and Voltage Control, Regulation and Frequency Response, and Energy Imbalance Services.

[3] PSCo Transmittal at 8.

[4] *Id.* at 7.

[5] *Id.*

the revised energy loss factor is 1.81 percent. For balancing authority services, the revised demand loss factor is 2.52 percent and the revised energy loss factor is 1.87 percent.

II. Notice of Filing and Responsive Pleadings

7. Notice of PSCo's October 31, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 66,709 (2014), with interventions and protests due on or before November 21, 2014. On November 20, 2014, Holy Cross Electric Association, Inc., Intermountain Rural Electric Association, Tri-State Generation and Transmission Association, Inc. (collectively, Cooperatives), and Yampa Valley Electric Association, Inc. filed a motion for leave to intervene, motion for enlargement of time to file additional requests for substantive relief, and motion for expedited action and waiver of answers. On November 21, 2014, PSCo filed an answer supporting the request for extension of time and requesting that the Commission defer action on its filing. The period for interventions and protests was subsequently extended to January 2, 2015.[6]

8. Cooperatives timely filed a protest, request for summary disposition, and request for evidentiary hearing. On January 20, 2015, PSCo filed a motion for leave to answer and answer to the Cooperatives protest.

9. On January 15, 2015, the Commission issued a letter notifying PSCo that its filing was deficient. On February 10, 2015, PSCo submitted a filing in response to the January 15, 2015 deficiency letter. Notice of PSCo's February 10, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 8634 (2015), with interventions and protests due on or before March 3, 2015. On March 3, 2015, Cooperatives filed a supplemental protest, as corrected on March 4, 2015. On March 19, 2015, PSCo submitted a motion for leave to answer and answer to the supplemental protest. On April 1, 2015, Cooperatives filed a motion for leave to answer and answer to PSCo's March 19 answer.

A. Protest

10. Cooperatives argue that they have good cause to conclude that PSCo's proposed loss factors are overstated and request that the loss factors be set for hearing and settlement judge procedures.[7] Cooperatives note that PSCo did not include two

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[6] *See* Notice of Extension of Time, Docket No. ER15-266-000 (issued Dec. 5, 2014); Errata Notice of Extension of Time, Docket No. ER15-266-000 (issued Dec. 8, 2014).

[7] Cooperatives Protest at 1.

appendices of the Siemens loss study and argue that this violates the requirement of the Partial Settlement to file a full loss study. Cooperatives also assert that PSCo is required by the Partial Settlement to file changes to both its production and transmission formula rates at the same time, which PSCo has not done. Cooperatives further argue that good cause exists to examine the loss study and changes to the production and transmission formula rates at the same time because it is not possible to simply import transmission formula rate loss values to the production formula rate. Finally, Cooperatives state that the Partial Settlement requires that PSCo use its actual system transmission peak for the annual true-up rather than using the generation peak.

11. Cooperatives also argue that a single coincident peak demand loss factor is inappropriate for rates based on 12 coincident peaks. Cooperatives state that the appropriate demand loss value is closer to 1.72 percent than PSCo's proposed 2.52 percent for transmission services. Cooperatives argue that the Commission should direct PSCo to file demand loss factors based on the average demand losses during the coincident peak hour of each month of the 12 months of the year. Cooperatives further argue that the appropriate denominator in calculating transmission losses should be transmission level energy, to reflect the fact that the modeling took into account all aspects of transmission level activity.[8]

12. Cooperatives also state that there is no rationale for allocating the 110,556,193 kWh difference between calculated losses and PSCo 2012 Form 1 reported losses entirely as a reduction in calculated distribution losses.[9] Cooperatives assert that, when Siemens summed the calculated losses on the transmission system and the calculated losses on the distribution system, the total was 110,556,193 kWh higher than the total 2012 Form 1 reported losses. Cooperatives argue that, to resolve this discrepancy, Siemens assumed that its distribution level calculations, which were based on actual 2012 data, were inaccurate and assumed that its transmission level loss calculations, which were not based on actual 2012 data, were completely accurate.

13. Cooperatives also state that PSCo must show that generator step-up losses were excluded from transmission losses because Commission precedent requires that they be excluded.[10] Cooperatives explain that the Siemens study states that such losses were included if they are metered on the low side of the transformer, but that PSCo has asserted that all PSCo meters are on the high side of the transformer. Cooperatives assert

[8] *Id.* at 11.

[9] *Id.* at 12.

[10] *Id.* at 14.

that PSCo's response leaves unresolved the issue of whether non-PSCo generators are metered on the low side, and hence whether their generator step-up losses are included.

14. Cooperatives raise a number of additional concerns with the Siemens loss study. Cooperatives argue that the loss study should take into account the recent significant improvements in the transmission system since the 2012 test year.[11] Cooperatives also state that PSCo must explain the reduction in transformer no-load losses from PSCo's previous loss study in 2006. Cooperatives note that PSCo's system has expanded since 2006, including the addition of secondary system transformers, so they maintain that the reduction in no-load losses from the 2006 study to the 2014 study requires an explanation. Cooperatives further state that Siemens' selective sampling of the distribution system has not been adequately justified.

15. Cooperatives argue that the following issues are ripe for summary determination by the Commission. First, that PSCo must file a complete version of the Siemens loss study. Second, that PSCo must refile revised transmission demand and energy losses that are determined with transmission level flows in the denominator and that reflect an average of the 12 coincident peak losses, and not single coincident peak losses. Finally, that PSCo must file the changes to its production formula rates that are needed to give effect to the revised demand and energy loss factors.[12]

B. PSCo Answer

16. In its answer, PSCo states that it complied with the Partial Settlement by filing a loss study.[13] In response to Cooperatives' concerns about it not including two appendices to the study, PSCo provides the missing appendices in its answer, along with a request for confidential treatment. PSCo also argues that it was not required to include changes to both its production and transmission formula rates in a single filing. PSCo contends that it was required by the Partial Settlement to make a filing only on the single issue of transmission losses for use in its transmission formula rates.[14] PSCo also asserts that Cooperatives' request to substitute actual system transmission peak for generation peak

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[11] *Id.* at 15.

[12] *Id.* at 19.

[13] PSCo Answer at 6.

[14] *Id.* at 6.

in this proceeding is barred by the Partial Settlement as it expands the scope of the proceeding.[15]

17. In addition, PSCo defends the Siemens loss study. In response to Cooperatives' arguments that a 12 coincident peak methodology is more appropriate than a single coincident peak methodology, PSCo argues that Cooperatives confuse engineering principles with ratemaking principles.[16] PSCo states that the study was focused on determining energy losses for the entire study period and the demand losses that would occur at the time of the system peak, and is not based on its eventual application in Tariff rates. Similarly, PSCo states that its estimation of transmission level demand, the denominator for transmission level losses, was based on its engineering calculation during the time periods studied by the loss study and should not necessarily line up with transmission level demands in any ratemaking proceeding.

18. PSCo also defends Siemens' adjustment of distribution level losses to resolve the discrepancy between calculated losses and FERC Form 1 data. PSCo states that the distribution level losses are more difficult to calculate, whereas transmission level losses are based on precise modeling.[17] PSCo asserts that this methodology is consistent with industry practice and other loss studies that have been performed by Siemens.[18]

19. PSCo notes that the Siemens study excluded generation step-up losses. PSCo states that, in the review process for the power flow cases before starting the loss study, adjustments were made so that generation step-up losses would be assigned to the generators.[19]

20. PSCo argues that Cooperatives' remaining concerns are without merit. PSCo asserts that it was logical to exclude the new transmission facilities from the loss study because 2012 data was the most recent data available in 2013 when the study was undertaken.[20] PSCo states that Siemens included the impact of the new facilities when they were in operation during the 2012 study period and excluded them when they were

[15] *Id.* at 8.

[16] *Id.* at 9-10.

[17] *Id.* at 13-14.

[18] *Id.* at 15.

[19] *Id.* at 16.

[20] *Id.*

not. PSCo states that this was appropriate because the study was focused on the 2012 test year. PSCo further explains that the higher level of no-load losses in the 2006 loss study is attributable to differences in the data available to support the 2006 and 2014 studies, and does not undermine or impeach the 2014 study.[21]

C. Deficiency and Subsequent Pleadings

21. On January 15, 2015, the Commission issued a letter notifying PSCo that its filing was deficient. In particular, the Commission notified PSCo that its electronic filing included additional tariff provisions that were not explained by its filing and had the effect of changing the effective date of already effective tariff provisions. In addition, the Commission asked PSCo to file any missing portions of its loss study.

22. On February 10, 2015, PSCo responded to the Commission's deficiency letter. PSCo stated that its inclusion of the additional tariff provisions was inadvertent and explained that it had submitted the remaining appendices to the loss study in its answer.

23. Cooperatives filed a supplemental protest in response to PSCo's deficiency response. Cooperatives cite language in the Partial Settlement which they argue indicates that PSCo must concurrently update production and transmission formula rates with changes to the loss factors. Cooperatives insist they are not attempting to expand the scope of the proceeding beyond what was set out by the Partial Settlement.[22] Cooperatives also argue that PSCo's failure to base transmission peak demand loss factors on transmission peak demands is unreasonable. Cooperatives concede that this was not an explicit requirement of the Partial Settlement, but argue that this would be the proper formulation of a loss study.[23]

24. Cooperatives reiterate that loss factors should be based on 12 coincident peaks. Cooperatives note that their issue with 12 coincident peaks is a ratemaking concern since PSCo seeks to apply loss factors based on a single peak to each monthly peak.[24]

25. Cooperatives argue that the Siemens loss study is questionable because it relies on varied methodologies to calculate losses for transmission and distribution levels, and does not correspond with FERC Form 1 reporting periods. Cooperatives also continue to

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[21] *Id.* at 17-18.

[22] Cooperatives Supplemental Protest at 3.

[23] *Id.* at 4.

[24] *Id.* at 5.

question the Siemens loss study's methodologies for bringing its calculations in line with Form 1 data.[25] Cooperatives note that, while PSCo states that the loss study is similar to loss studies from certain named companies, it does not cite those loss studies. Cooperatives also assert that there seems to be no way that the methodologies used in those other loss studies could be the same as the methodologies used in the study here because none of those loss studies was performed for utilities located in the Western Electricity Coordinating Council. Cooperatives point to a past loss study filed by a PSCo affiliate, Southwestern Public Service Company (SPS), and argue that the methodologies and data utilized in the Siemens study here differ significantly from the approach taken in that SPS study.[26] Cooperatives argue that this is an additional reason why the study in this case warrants close examination.

26. Cooperatives further argue that it is not clear from PSCo's filings that generator step-up losses were excluded from loss calculations. Finally, Cooperatives note that, based on PSCo's responses regarding the decrease in no-load losses in the current loss study, the Siemens loss study appears to be based on less precise transformer data than the previous PSCo loss study.[27]

27. In its March 19 Answer, PSCo reiterates that the language of the Partial Settlement does not require PSCo to file changes to both PSCo's production formula rates and transmission formula rates at the same time in a single filing. PSCo states that it has acknowledged its intention to update the production formula rates to reflect the loss factors ultimately determined to be just and reasonable in the single-issue proceeding concerning PSCo's transmission formula rates.[28] PSCo asserts that this two-step process is not new, and was used to update the loss factors for a PSCo affiliate.[29] PSCo further states that Cooperatives do not allege or explain how they are harmed by following this process.

28. PSCo acknowledges that there are differences between the past SPS study that Cooperatives cited in their supplemental protest and the Siemens study, but argues that these differences do not support a conclusion that the Siemens study is flawed.[30] PSCo

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[25] *Id.* at 5-6.

[26] *Id.* at 7-8.

[27] *Id.* at 10.

[28] PSCo March 19 Answer at 5.

[29] *Id.* at 5-6.

[30] *Id.* at 8.

asserts that the PSCo and SPS systems are different, the studies were prepared at different times using different data, and that Cooperatives do not allege or prove that all loss study methodologies must be the same.

29. In their April 1 Answer, Cooperatives argue that the Partial Settlement clearly obligates PSCo to update the production formula rate loss factors concurrently with the transmission formula rate loss factors. In response to PSCo's assertion that the Cooperatives have made no showing that they would suffer harm from PSCo's proposed two-step procedure to update the production formula rate loss factors and transmission formula rate loss factors, Cooperatives contend that they will experience a very significant economic burden if PSCo's proposed procedure allows the changed production formula rate loss factors to become effective after January 1, 2014. Cooperatives also note that they would experience the economic burden of dealing with a second proceeding.

III. Discussion

A. Procedural Issues

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make Cooperatives parties to this proceeding.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers in this case because they provided information that assisted us in our decision-making process.

B. Substantive Issues

32. We find that PSCo's proposed Tariff revisions raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures we order below.

33. Our preliminary analysis indicates that the proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. For example, the Commission cannot determine, based on the record before us, whether the loss factors produced by the Siemens study are appropriate and should be applied to PSCo's transmission formula rates. In addition, the Commission cannot determine whether PSCo's adjustments to distribution level losses are appropriate. We find that hearing and settlement judge procedures will provide parties with a forum for addressing such issues. Accordingly, we will accept the proposed Tariff revisions for filing, suspend them for a nominal period, to become

effective on January 1, 2014, as requested, subject to refund, and set them for hearing and settlement judge procedures.

34. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[31] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[32] The settlement judge shall report to the Chief Judge and the Commission, within 30 days of the date of the appointment of the settlement judge, concerning the status of the 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, as appropriate.

35. The Commission may grant summary disposition only where "there is no genuine issue of fact material to the decision of a proceeding."[33] Where there are significant material facts in dispute, "summary disposition is not appropriate."[34] As discussed above, genuine issues of material fact exist regarding the issues raised by PSCo's proposed Tariff revisions that cannot be resolved based upon the record before us. Accordingly, we find that summary disposition is not warranted.

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[31] 18 C.F.R. § 385.603 (2014).

[32] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

[33] *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs., et al.*, 135 FERC ¶ 61,177, at P 53 (2011) (citing 18 C.F.R. § 385.217(b); *Iroquois Gas Transmission Sys., L.P.*, 68 FERC ¶ 61,048, at 61,164 (1994) ("under Rule 217 of the Commission's Rules of Practice and Procedure summary disposition may be appropriate only if there are no genuine issues of material fact in dispute")).

[34] *Id*. (citing *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,047, at P 44 (2009); *Richard Blumenthal v. NRG Power Mktg., Inc.*, 103 FERC ¶ 61,344, at P 69 (2003) ("if an issue of material fact is in dispute, then summary disposition is not appropriate")).

The Commission orders:

(A) PSCo's proposed Tariff revisions are hereby accepted for filing, suspended for a nominal period, to be made effective on January 1, 2014, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the proposed Tariff revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Cooperatives' request for summary disposition is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.