

155 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of Colorado

Docket Nos. ER16-236-000
ER16-236-001
ER16-239-000
ER16-239-001

ORDER ACCEPTING REVISIONS TO FORMULA RATES, SUBJECT TO
CONDITION

(Issued April 12, 2016)

1. On November 2, 2015, pursuant to section 205 of the Federal Power Act (FPA),¹ Public Service Company of Colorado (PSCo), on behalf of itself and its affiliate Southwestern Public Service Company (SPS), submitted proposed revisions to the transmission formula rates for PSCo and SPS included in the Xcel Energy Operating Companies' FERC Electric Tariff (Xcel Energy Tariff). Also on November 2, 2015, PSCo submitted proposed revisions to its production formula rate included in its Assured Power and Energy Requirements Service Tariff (Production Tariff). PSCo proposes these revisions in order to comply with section 1.167(l)-1(h)(6)(ii) of the United States Internal Revenue Service (IRS) regulations.² In this order, we accept the proposed revisions, effective January 1, 2016, as requested, subject to condition, and direct a compliance filing.

¹ 16 U.S.C. § 824d (2012).

² Treas. Reg. § 1.167(l)-1(h)(6)(ii) (as amended in 1974).

I. Background

2. Under Commission ratemaking policies, income taxes included in rates are determined based on the return on net rate base calculated using straight-line depreciation.³ However, in calculating the actual amount of income taxes due to the IRS, companies generally are able to take advantage of accelerated depreciation. Accelerated depreciation will usually lower income taxes payable during the early years of an asset's life followed by corresponding increases in income taxes payable during the later years of an asset's life. This means that a company's income taxes payable to the IRS during a period will differ from its income tax expenses for ratemaking purposes during the same period. The difference between the income taxes based on straight-line-depreciation and the actual income taxes paid by the company are reflected in an account called Accumulated Deferred Income Taxes (ADIT).⁴ Because the resulting ADIT effectively provides the company with cost-free capital, the Commission subtracts the ADIT from the company's rate base, thereby reducing customer charges. This method of passing the benefits from accelerated depreciation on to ratepayers throughout the asset's life is referred to as tax normalization.

3. The depreciation normalization rules of the Internal Revenue Code (Normalization Rules) mandate the use of a very specific proration procedure in measuring the amount of future test period ADIT that can reduce rate base. Section 1.167(l)-1(h)(6)(ii) of the IRS regulations requires that, if a utility uses solely a future period (projected test year) to determine depreciation, "the amount of the reserve account for the period is the amount of the reserve at the beginning of the period and a pro rata portion of the amount of any projected increase to be credited or decrease to be charged to the account during such period." The pro rata amount of any increase during the future portion of the period is determined by multiplying the increase by a fraction, the numerator of which is the number of days remaining in the period at the time the increase is to accrue, and the denominator of which is the total number of days in the future portion of the period.⁵ The purpose of the proration requirement is to prevent the immediate flow-through of the benefits of

³ See, e.g., *PJM Interconnection, L.L.C. and Va. Elec. and Power Co.*, 147 FERC ¶ 61,254, order on compliance, 154 FERC ¶ 61,126, at P 2 (2016) (*Virginia Electric*).

⁴ There are four categories of ADIT recognized in the Uniform System of Accounts in four separate accounts; however, only three of these categories of ADIT are related to accelerated depreciation, including bonus depreciation: Accounts 190, Accumulated Deferred Income Taxes; 281, Accumulated Deferred Income Taxes-Accelerated Amortization Property; and 282, Accumulated Deferred Income Taxes-Other Property.

⁵ Treas. Reg. § 1.167(l)-1(h)(6)(ii) (as amended in 1974).

accelerated depreciation to ratepayers, allowing funds provided by accelerated depreciation to be used for investments.

4. The IRS requires utilities to follow its regulations in order to take advantage of accelerated depreciation. Certain electric utilities have requested revenue rulings from the IRS regarding the calculation of ADIT for formula rates, which include a projection of expected investments for the coming year. These formula rates also include a true-up mechanism through which the utility calculates adjustments to its formula, for example, for the differences from investments that did not occur when projected.

II. PSCo's Filings

5. In Docket No. ER16-236-000, PSCo states that it is filing revisions to the Xcel Energy Tariff to modify the manner by which PSCo and SPS will calculate average ADIT balances within their transmission formula rates in order to comply with section 1.167(l)-1(h)(6)(ii) of the IRS regulations.⁶ PSCo also filed proposed revisions to its Production Tariff in Docket No. ER16-239-000 to effectuate similar changes to the ADIT provisions within its production formula rate.⁷ PSCo notes that SPS is not proposing to modify its production formula rates at this time.⁸

6. PSCo states that, in a series of private letter rulings (PLR), the IRS has found that, for a utility that uses a projected test year to claim accelerated depreciation for utility plant in its income tax filings, the utility must use the formula provided in section 1.167(l)-1(h)(6)(ii) of the IRS regulations to calculate the amount of deferred income taxes subject to exclusion from the rate base.⁹ PSCo notes that the IRS has indicated that utilities subject to this requirement that do not seek to comply are subject to

the sanction of denial of accelerated depreciation,¹⁰ which would cause a significant increase in rate base and rates.¹¹

⁶ PSCo, Docket No. ER16-236-000, Transmittal at 1.

⁷ PSCo, Docket No. ER16-239-000, Transmittal at 1.

⁸ PSCo, Docket No. ER16-236-000, Transmittal at 4 n.13.

⁹ *Id.* at 3; PSCo, Docket No. ER16-239-000, Transmittal at 3 (citing Exh. III, I.R.S. Priv. Ltr. Rul. 143241-14 (Jul. 6, 2015); I.R.S. Priv. Ltr. Rul. 140120-14 (Apr. 14, 2015)).

¹⁰ PSCo, Docket No. ER16-236-000, Transmittal at 3-4; PSCo, Docket

7. PSCo states that PSCo and SPS calculate their annual transmission revenue requirements pursuant to the formulae set forth in Attachment O-PSCo and Attachment O-SPS of the Xcel Energy Tariff, respectively.¹² According to PSCo, both companies employ a forward-looking Attachment O, and each submits an annual informational filing with the Commission that consists of the true-up for the prior period actuals and the estimated rates for the upcoming rate year. PSCo states that it proposes to revise the Attachment O of each company to provide that the calculation of ADIT for both the annual projection and true-up will be performed in accordance with section 1.167(l)-1(h)(6) of the IRS regulations. Therefore, PSCo states that it proposes to include a new work paper (WP ADIT Prorate) in each Attachment O in the Xcel Energy Tariff, which calculates the proration factor according to the IRS regulations, and additional revisions and additions to existing work papers that describe how PSCo and SPS will calculate ADIT balances for both the projected test year revenue requirement and the annual true-up using the proration methodology required by the IRS.¹³ PSCo further notes that the revisions included in the work papers maintain PSCo's and SPS's use of beginning of year and end of year ADIT balances, which is consistent with Commission requirements.¹⁴

8. PSCo states that it calculates its production rates pursuant to the forward-looking formulae set forth in Attachment A of its Production Tariff, and that it uses projected or estimated data to set its production rates, in conjunction with a process that trues up the rate based on actual data.¹⁵ Therefore, similar to the proposed revisions in PSCo's and SPS's transmission formula rates, PSCo proposes to revise ADIT-related work papers in Attachment A by adding a new work paper (WP ADIT Prorate) to provide that the calculation of ADIT for both the annual projected revenue requirement and the true-up for its production formula rate will be performed in accordance with section 1.167(l)-1(h)(6)

No. ER16-239-000, Transmittal at 3.

¹¹ PSCo, Docket No. ER16-236-000, Transmittal at 6; PSCo, Docket No. ER16-239-000, Transmittal at 5.

¹² PSCo, Docket No. ER16-236-000, Transmittal at 2.

¹³ *Id.* at 4.

¹⁴ *Id.* at 4-5 (citing 18 C.F.R. § 35.13(h)(6) (2015)).

¹⁵ PSCo, Docket No. ER16-239-000, Transmittal at 2.

of the IRS regulations.¹⁶ PSCo also notes that its revisions maintain the use of beginning of year and end of year ADIT balances.¹⁷

9. According to PSCo, using the proration formula increases PSCo's estimated 2016 annual transmission revenue requirement by \$579,000, which represents a 0.2 percent increase over its \$244 million revenue requirement. Similarly, PSCo states that the use of the proration formula increases SPS's estimated 2016 annual transmission revenue requirement by \$416,000, which represents a 0.3 percent increase over its \$129 million revenue requirement. With regard to PSCo's production formula rate, PSCo notes that use of the proration formula increases PSCo's estimated 2016 production revenue requirement by \$102,000, which is a 0.1 percent increase above the total production revenue requirement of \$81.7 million. PSCo states that, due to the timing of when it became aware of the need to revise the formula rates, PSCo's and SPS's 2016 estimates did not reflect the new ADIT proration formula. However, PSCo notes that it and SPS have notified customers of the need to modify the formula rates and that, before the end of 2015, it and SPS will provide customers with updated transmission and production formulas and associated work papers that reflect the incorporation of the proration formula.¹⁸

10. In addition to the ADIT-related revisions requested in Docket No. ER16-236-000, PSCo also proposes tariff revisions in SPS's Attachment O Tables 6 and 11 to reflect revisions agreed to as part of a recent settlement agreement in Docket No. EL05-19-000.¹⁹ PSCo notes that SPS will be submitting compliance filings to implement the revisions agreed upon in the settlement proceeding, to be effective on January 1, 2015, but that, in order to avoid a circumstance where the eTariff records related to the instant proceeding (effective January 1, 2016) do not include the settlement agreement revisions to Table 6 and 11, SPS is including such revisions as part of the tariff changes proposed in the instant proceeding.²⁰

¹⁶ *Id.* at 4.

¹⁷ *Id.* (citing 18 C.F.R. § 35.13(h)(6) (2015)).

¹⁸ PSCo, Docket No. ER16-236-000, Transmittal at 6-7; PSCo, Docket No. ER16-239-000, Transmittal at 5-6.

¹⁹ *See Golden Spread Elec. Coop. Inc. v. Sw. Pub. Serv. Co.*, 153 FERC ¶ 61,103 (2015) (*Golden Spread*).

²⁰ PSCo, Docket No. ER16-236-000, Transmittal at 5-6.

III. Notice and Responsive Pleadings

11. Notice of PSCo's filing in Docket No. ER16-236-000 was published in the *Federal Register*, 80 Fed. Reg. 69,212 (2015), with interventions and protests due on or before November 23, 2015. On November 23, 2015, Golden Spread Electric Cooperative (Golden Spread) filed a timely motion to intervene and an unopposed request for limited extension of comment date, which the Commission granted. On November 30, 2015, Golden Spread filed a limited protest and request for hearing and settlement judge procedures. On December 11, 2015, Tri-State Generation and Transmission Association (Tri-State), Intermountain Rural Electric Association (IREA), and Holy Cross Electric Association (Holy Cross) filed a joint motion to intervene out-of-time. On December 15, 2015, Xcel Energy Services Inc. (Xcel Energy) filed an answer to Golden Spread's protest.

12. Notice of PSCo's filing in Docket No. ER16-239-000 was published in the *Federal Register*, 80 Fed. Reg. 69,212 (2015), with interventions and protests due on or before November 23, 2015. On December 11, 2015, Tri-State, IREA, and Holy Cross filed a joint motion to intervene out-of-time.

13. On December 23, 2015, Commission staff advised PSCo that its filings were deficient and additional information would be necessary to evaluate its submissions.²¹ On January 21, 2016, Xcel Energy, on behalf of PSCo, requested an extension of time for the filing of its response, which the Commission granted. On February 12, 2016, PSCo filed its response.

14. Notice of PSCo's Deficiency Response was published in the *Federal Register*, 81 Fed. Reg. 8954 (2016), with interventions and comments due on or before March 4, 2016. On March 4, 2016, Golden Spread filed a protest to the Deficiency Response and renewed request for hearing and settlement judge procedures. On March 21, 2016, Xcel Energy filed an answer to Golden Spread's protest.

A. Golden Spread Protest

15. Golden Spread notes that it is not a transmission customer of PSCo, and therefore, protests the proposed changes in Docket No. ER16-236 solely as they relate to the transmission rates of SPS.²² Golden Spread asserts that it has identified four errors with

²¹ *Pub. Serv. Co. of Colo.*, Deficiency Letter, Docket No. ER16-236-000, *et al.*, at 1 (issued Dec. 23, 2015) (Deficiency Letter).

²² Golden Spread Limited Protest at 2 & n.4.

PSCo's proposal for SPS.²³ First, Golden Spread claims that, after SPS performs its proration calculation, it takes the extra step of averaging the beginning and ending balance, which has the undesired consequence of cutting the calculated proration in half, from 53.78 percent to 26.89 percent. Second, and related to the first error, Golden Spread argues that, when SPS carries the calculated proration amount in column (f) to the next column of Worksheet D, it performs an extra calculation that once again skews the appropriate IRS-compliant prorated balance that SPS should use as an average rate base balance in projected formula rates.²⁴ Using Account 281 from Worksheet D of the 2016 SPS Projection as an example, Golden Spread states that the effect of these first two errors results in a calculated projected average balance with an ADIT proration of -\$1,635,436.²⁵ Golden Spread contends that the correct projected average balance with an ADIT proration that complies with the IRS regulations should be -\$1,723,515.²⁶

16. Third, Golden Spread states that it appears that SPS intends to create an ADIT proration for the true-up component of the formula rate as well.²⁷ According to Golden Spread, while PSCo and SPS have not sought their own PLRs from the IRS, guidance found in a PLR attached as Exhibit III to the PSCo and SPS filing directly contradicts the proposed tariff changes, and, therefore, columns (k), (l), (m), and (n) of Worksheet D of SPS's transmission formula rate should be removed and replaced with a column representing the existing practice of calculating an average beginning of year and end of year balance for the purposes of the true-up calculation.²⁸

17. Finally, Golden Spread notes that SPS's proposed tariff changes lack sufficient detail to differentiate between those account balances to which it must apply a proration to comply with IRS regulations and those for which it should continue to use a simple average of beginning and year end projected balances in Worksheet D average rate base

²³ *Id.* at 4 (citing Attachment 1 (Worksheet D)).

²⁴ *Id.* (citing Attachment 1 (Worksheet D, column (g))).

²⁵ *Id.* at 5.

²⁶ *Id.*

²⁷ *Id.* at 6 (citing Attachment 1 (Worksheet D, columns (k), (l), (m), (n))).

²⁸ *Id.* at 7 (citing PSCo and SPS Filing, Docket No. ER16-236-000, *et al.*, Exh. III (I.R.S. Priv. Ltr. Rul. 143241-14 at 12) and noting that the private letter ruling offered by PSCo and SPS is not binding precedent).

calculations of the SPS formula.²⁹ Golden Spread argues that SPS should be directed to clarify on Worksheet D of its transmission formula rate that only items that are subject to IRS regulations addressing accelerated depreciation should be subject to any application of a proration in the projected rate columns.

18. Golden Spread believes that a nominal suspension is appropriate, such that SPS's rates may become effective subject to refund on January 1, 2016.³⁰ To the extent that the Commission does not summarily require correction of the formula rate in its order, Golden Spread requests that the Commission set the issues associated with SPS's proration process for hearing and hold the hearing in abeyance, pending the outcome of the *Virginia Electric*³¹ proceeding and/or the issuance of industry-wide guidance by the Chief Accountant on this topic.³²

B. Xcel Energy Answer

19. Xcel Energy contends that the use of the proration formula in conjunction with beginning of year and end of year averaging is necessary to meet the IRS's normalization requirements.³³ Xcel Energy asserts that a purpose of the calculations in Worksheet D and D.2 is to continue compliance with Commission policy to create an average balance for ADIT, and that, as a result of that policy, the calculations in question are therefore necessary to maintain compliance with the IRS's consistency rule. Xcel Energy notes that the IRS concluded that "[f]ailure to average the deferred tax reserve, as prorated, before excluding the reserve from the average rate base will violate the consistency requirement of section 168(i)(9)(B)."³⁴ Xcel Energy argues that Golden Spread relies on an unsupported and unexplained presumption that proration serves the same function as the

²⁹ *Id.* at 7-8.

³⁰ *Id.* at 10.

³¹ See *Virginia Electric*, 154 FERC ¶ 61,126.

³² Golden Spread Limited Protest at 3 (citing *Virginia Electric*, 147 FERC ¶ 61,254 at P 18), 10-11.

³³ Xcel Energy December 15 Answer at 8.

³⁴ *Id.* at 9 (citing I.R.S. Priv. Ltr. Rul. 9202029 (Oct. 15, 1991)).

beginning of year and end of year averaging, which has been contradicted by the IRS in multiple PLRs.³⁵

20. Xcel Energy states that the true-up process cannot be used to unwind the proration calculation of ADIT. According to Xcel Energy, the IRS's view is that forward-looking formula rates with true-up procedures employ a future test period subject to normalization requirements, and such formula rates must use the proration formula in estimating ADIT amounts, including carrying forward the amounts of ADIT calculated using the proration formula into the true-up. Xcel Energy asserts that the IRS has stated that, "[i]n calculating the true-up, proration applies to the original projection amount,"³⁶ and notes that the originally projected amount is thus carried forward into the true-up, and therefore is not "unwound" by reversing the proration calculation.³⁷ Xcel Energy explains that the true-up component is determined by reference to a purely historical period and that there is no need to use the proration formula to calculate the differences between projected and actual balances. Xcel Energy contends that Golden Spread's argument would result in a true-up process that reverses the original proration calculation.

21. Xcel Energy asserts that the proration calculation must be applied to appropriate amounts in Account 190 estimated for the projected year. Xcel Energy maintains that deferred tax asset related to the net operating loss in Account 190 is inextricably related to accelerated depreciation, including bonus depreciation,³⁸ and that the only proposed change related to Account 190 balances in the instant filings is to incorporate the proration calculation into the projections of these ADIT balances, which is done annually under the SPS transmission formula rate. Xcel Energy states that SPS believes it is reasonable to include all plant-related deferred tax balances used in the determination of rate base when it applies the proration due to the overall lower rates for customers that result. In response to Golden Spread's argument concerning lack of clarity in which Account 190 balances will be subject to proration, Xcel Energy notes that SPS is willing to submit further revisions to its Attachment O to include a footnote stating that "[p]roration is applied to

³⁵ *Id.* at 9-10 (citing I.R.S. Priv. Ltr. Rul. 9202029; I.R.S. Priv. Ltr. Rul. 9224040 (June 12, 1992); I.R.S. Priv. Ltr. Rul. 9313008 (December 17, 1992)).

³⁶ *Id.* at 11 (citing I.R.S. Priv. Ltr. Rul. 143241-14 at 8).

³⁷ *Id.* at 12.

³⁸ *Id.* at 13.

plant related items impacted by Internal Revenue Service rules governing tax normalization.”³⁹

22. Xcel Energy also notes that the Commission’s policy is to set a filing for hearing and settlement judge procedures where the filing raises an issue of material fact that cannot be resolved based on pleadings before the Commission, and, even where there are disputed issues, the Commission need not conduct such a hearing if the issues may be adequately resolved based on the written record.⁴⁰ Xcel Energy asserts that the issues raised by Golden Spread concern the proper legal interpretation of IRS regulations, not a material fact that is in dispute between the parties, and therefore neither a hearing nor settlement judge procedures is appropriate. Xcel Energy states that the differences in Xcel Energy’s and Golden Spread’s positions turn on interpretations of the IRS’s requirements, and at stake is the continued eligibility of SPS to use accelerated depreciation.

IV. Deficiency Letter, Response, and Related Pleadings

23. In the Deficiency Letter, Commission staff requested information to aid the Commission in evaluating PSCo’s proposed revisions to comply with the IRS regulations by modifying how ADIT is calculated in its transmission and production formula rates. Commission staff requested that PSCo demonstrate the calculation of ADIT using the proration formula for both the estimated amounts of the annual projection and the actual amounts, explain how revising the calculations to conform to IRS regulations is also consistent with the formulas’ existing use of average ADIT balances, explain why calculating an ADIT proration factor based on monthly balances is more appropriate than calculating an ADIT proration factor based on daily balances, and explain why the tariff revisions contemplated within PSCo’s settlement agreement should be accepted within the context of this proceeding.⁴¹

24. In its Deficiency Response, PSCo submitted hypothetical, illustrative calculations with additional revisions, including changes to the descriptive titles of columns (k), (l), (m), and (n) of the true-up section of Table 8, Workpaper B-2,⁴² and revisions to Footnotes 5

³⁹ *Id.* at 14-15.

⁴⁰ *Id.* at 16.

⁴¹ *Pub. Serv. Co. of Colo.*, Deficiency Letter, Docket No. ER16-236-000, *et al.*, at 1 (issued Dec. 23, 2015) (Deficiency Letter).

⁴² Deficiency Response at 2.

and 6 of this section to clarify that PSCo is not proposing to apply the proration calculation to the difference between forecasted and actual amounts.⁴³ PSCo states that the revisions do not change the intent of the originally-proposed method of calculating the true-up, and that the revised tariff records submitted with the response make corresponding changes to the SPS transmission formula template (Attachment O-SPS) and the PSCo production template. In addition, PSCo also submitted revisions to address Golden Spread's assertions regarding the perceived lack of clarity in which Account 190 balances will be subject to the proration calculation by incorporating an additional footnote into SPS's transmission formula rate template, as discussed in Xcel Energy's Answer.⁴⁴

25. In response to staff's question regarding averaging, PSCo references section 1.167(1)-1(h)(6) of the IRS regulations that requires usage of a proration formula in determining projected ADIT amounts for rate calculation purposes in future test periods, and the "consistency requirement" in Internal Revenue Code section 168(i)(9)(B) that requires application of averaging to the ADIT amounts calculated through proration if the ratemaking methodology employs averaging.⁴⁵ PSCo states that the IRS has explained that the proration calculation serves a different purpose than the averaging used in the rate design methodology, and therefore, they are not duplicative calculations. PSCo asserts that the IRS's view on this matter is unambiguous, and has been confirmed on multiple occasions.⁴⁶

26. PSCo notes that Commission policy requires the use of an average rate base in the calculation of rates, and the Commission's regulations state that ADIT should be calculated as the average of the beginning and end of test year balances.⁴⁷ PSCo states that its and SPS's formula rates already reflect the use of beginning and end of test year balances. According to PSCo, in order to comply with both the consistency and proration requirements, PSCo and SPS must apply the beginning-of-year and end-of-year averaging.

27. In response to staff's question on the appropriateness of calculating the proration factor based on monthly balances versus daily balances, PSCo notes that the proration factor for its plant and SPS's plant is calculated based on monthly balances, as required by

⁴³ *Id.* at 3.

⁴⁴ *Id.*

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 5 & n.6.

⁴⁷ 18 C.F.R. § 35.13(h)(6) (2015).

the Commission's regulations. PSCo asserts that the IRS consistency rules require the calculation of associated ADIT to be consistent, and, therefore, the ADIT proration factor must be based on monthly balances. PSCo states that, since its and SPS's plant is not calculated based on daily balances, calculating the ADIT proration factor based on daily balance would not meet the consistency requirement, and thus PSCo and SPS would not be in compliance with the IRS normalization rules.⁴⁸

28. In response to Commission staff's question on SPS's settlement agreement, PSCo clarifies that revisions to Tables 6 and 11 of Attachment O-SPS contemplated in the settlement agreement in Docket No. EL05-19-000 are not related to ADIT. PSCo explains that the settlement agreement revisions to Note K on Tables 6 and 11 relate to Postretirement Benefits Other Than Pensions expense. PSCo notes that the settlement agreement contained pro forma tariff sheets that included revisions to Tables 6 and 11 of Attachment O-SPS, with an effective date of January 1, 2015, thus predating the revisions proposed in this proceeding.⁴⁹

29. In response, Golden Spread states that it can accept SPS's preferred proration methodology in the projection as an alternative methodology that satisfies the goals of the IRS regulations, but only if SPS calculates the true-up correctly.⁵⁰ Golden Spread observes that it and the Commission raised concerns with SPS's proposal to apply a proration in the true-up, notwithstanding the fact that the true-up is performed in a subsequent rate year and based on historical, audited data.⁵¹ Golden Spread argues that SPS has not changed this aspect of its rate change proposal and that the continued misapplication of the IRS regulations and PLR guidance results in SPS's proffered formula rate true-up mechanism substantially understating the true-up in a manner that harms customers.⁵² Golden Spread states that, under SPS's hypothetical example, the projection in both scenarios would yield a value of \$311,555,100.⁵³ Thus, Golden Spread further points out, SPS would calculate the true-up to yield a value of \$349,055,100, or a variance

⁴⁸ Deficiency Response at 8.

⁴⁹ *Id.* at 9.

⁵⁰ Golden Spread Protest to Deficiency Response at 3 (citing PSCo and SPS Filing, Docket No. ER16-236-000, *et al.*, Exh. III (I.R.S. Priv. Ltr. Rul. 143241-14 at 4, 8, 11)).

⁵¹ *Id.* at 4 (citing Deficiency Letter, Question 1).

⁵² *Id.* (citing SPS Worksheet D, Table 19).

⁵³ *Id.* at 5-8.

of \$37,055,100 from the projection. Under Golden Spread's proposed corrections, the true-up would now yield a value of \$362,500,000, or a variance of \$50,944,900.⁵⁴ Therefore, Golden Spread contends that, if SPS is permitted to prorate the true-up, customers would receive \$13.4 million less in credit to rate base. Golden Spread asserts that SPS's proposed Worksheet D amendments are not just and reasonable and are unduly discriminatory and preferential.

30. In its March 21 Answer, Xcel Energy contends that Golden Spread's suggestion in its Limited Protest that the Commission could consider holding this proceeding in abeyance pending the outcome of *Virginia Electric* has been effectively met. Xcel Energy states that, in *Virginia Electric*, the Commission accepted the proposed true-up methodology, which is the same as the methodology proposed in PSCo's filings, and rejected customers' arguments, which were the same arguments raised by Golden Spread.⁵⁵ Xcel Energy, however, notes two points in *Virginia Electric* not illustrated in PSCo's and SPS's true-up calculations: (1) when actual ADIT activity is less than projected ADIT activity, but still represents an overall increase in ADIT, the projected ADIT amount would be decreased in the formula rate by the difference between the projected and actual ADIT amounts; and (2) when actual ADIT activity is less than projected ADIT activity, and represents an overall decrease in ADIT, the formula would use the actual decrease in the ADIT value instead of the originally-projected ADIT amount.⁵⁶ Xcel Energy states that PSCo and SPS commit to revise their formula rate templates to incorporate these additional steps upon direction of the Commission.

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motion to intervene of Golden Spread in Docket No. ER16-236 serves to it a party to that proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we grant Tri-State's, IREA's, and Holy Cross's joint motions to intervene out-of-time in Docket Nos. ER16-236 and ER16-239 given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁵⁴ *Id.*

⁵⁵ Xcel Energy March 21 Answer at 3-4.

⁵⁶ *Id.* at 4-5.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Xcel Energy's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

33. We find that PSCo's proposed tariff revisions represent a method of compliance with IRS regulations given their current rulings, and we will accept PSCo's filings, subject to the condition that PSCo submit revisions to PSCo's and SPS's formula rate templates, as discussed below.⁵⁷ In recent orders, the Commission has clarified that, when a section 205 filing is strictly limited to tax matters, the Commission will base its evaluation on whether "the proposed revisions are reasonable to comply with IRS regulations,"⁵⁸ and has expressly rejected the "objection that Private Letter Rulings issued by the IRS cannot be a basis for [] proposed rate revisions."⁵⁹

34. Despite Golden Spread's protests that certain proposed calculations in SPS's Worksheet D unnecessarily average the prorated account balance, and that the initial proration factor creates the average that should be used to comply with IRS regulations, we find that PSCo's methodology is reasonable. PSCo's proposal determines the average rate base by taking the average net plant and subtracting an average of ADIT values. As the IRS indicated in a PLR, "[w]hile there are minor differences in the convention used to average all elements of rate base including depreciation expense on the one hand, and [ADIT] on the other . . . it is sufficient that both are determined by averaging and both are determined over the same period of time."⁶⁰ We find that this interpretation also is

⁵⁷ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

⁵⁸ *See, e.g., Midcontinent Indep. Transmission Operator, Inc.*, 153 FERC ¶ 61,371, at P 36 (2015) (*MISO*).

⁵⁹ *Id.* P 40.

⁶⁰ PSCo, Docket No. ER16-236-000, Transmittal at 3 (citing I.R.S. Priv. Ltr. Rul. 143241-14 at 10).

consistent with the interpretation of other utilities applying the IRS regulations regarding proration.⁶¹

35. In addition, we dismiss Golden Spread's related protest that SPS performs extra calculations in Worksheet D that skew the appropriate IRS-compliant prorated balance.⁶² While Golden Spread makes clear the distinction between how it interprets the method for calculating the average prorated balance and how such a calculation would be made under the proposed tariff revisions for SPS, Golden Spread has not demonstrated that the method proposed by SPS is inconsistent with IRS regulations. In addition, PSCo demonstrates through a hypothetical population that calculating an average prorated balance through an alternative, monthly approach results in the same answer as calculating the average prorated balance through the template method proposed in its tariff revisions.⁶³ Therefore, we find that PSCo's proposed method for calculating the average ADIT balance is reasonable to comply with the IRS regulations.

36. While Golden Spread objects to PSCo's proposal to apply the IRS's proration methodology for the originally-projected ADIT amount within the true-up calculation, we also find that this treatment is reasonable to comply with IRS regulations. As the IRS indicated in the PLR included with PSCo's filing, "in calculating the true-up, proration applies to the original projection amount but the actual amount added to the [ADIT] over the test year is not modified by application of the proration formula."⁶⁴ Golden Spread's contention that the proposed tariff amendments to the SPS transmission formula rate contradict IRS guidance and harm customers is grounded in an alternative interpretation of language in the cited PLR. However, the fact that the relevant language in the PLR might be susceptible to an alternative interpretation alone does not discount the reasonableness of the interpretation offered by PSCo. Based on the record in this proceeding, we find PSCo's proposed methodology for applying the proration formula to the true-up calculation to be consistent with the methodology approved in *Virginia Electric*, and a reasonable

⁶¹ See, e.g., *Virginia Electric*, 154 FERC ¶ 61,126; *MISO*, 153 FERC ¶ 61,371.

⁶² See Golden Spread Limited Protest at 4-6.

⁶³ Deficiency Response at 6-7.

⁶⁴ PSCo, Docket No. ER16-236-000, Transmittal at 3 (citing I.R.S. Priv. Ltr. Rul. 143241-14 at 8).

interpretation of the PLR.⁶⁵ If the IRS issues further clarifying guidance, it may be considered in future Commission decisions.

37. Further, while we find that PSCo's proposal to revise how ADIT is calculated in the PSCo and SPS formula rates generally conforms to the ADIT-related formula rate revisions accepted by the Commission in *Virginia Electric*, Xcel Energy has acknowledged in its March 21 Answer that certain steps are omitted from PSCo's and SPS's formula rate templates that are necessary to demonstrate how PSCo and SPS will implement the IRS's regulations concerning treatment of ADIT, consistent with *Virginia Electric*.⁶⁶ Therefore, we will direct PSCo to submit these additional calculations in a compliance filing to be submitted within 30 days of the date of this order.

38. We further find no merit to Golden Spread's assertions related to whether specific account balances will be subject to the proration requirement. Golden Spread admits that this issue is not readily apparent in proposed changes to the template included in PSCo's filing, and relies on evidence from the "SPS Projection."⁶⁷ Here, PSCo proposes to implement revisions to conform its formula rate to a methodology prescribed by the IRS in its regulations, and the issue of how application of these formula revisions applies to SPS's projected charges for 2016 is outside the scope of the issues raised in this proceeding. For such objections related to the inputs into the formula rate, Golden Spread may challenge the actual inputs when the annual update of the formula rate is filed. However, in response to Golden Spread's request that SPS be directed to clarify its Worksheet D regarding lack of clarity regarding which account balances will be subject to proration, we note that PSCo voluntarily submitted in its Deficiency Response revisions to SPS's Worksheet D clarifying in a new footnote that "proration is applied to plant related items impacted by Internal Revenue Service rules governing tax normalization."⁶⁸ Golden Spread has not protested this revision, and we find this clarification to be a reasonable method to comply with the relevant IRS regulations.

The Commission orders:

(A) PSCo's filings are hereby accepted, subject to condition, effective January 1, 2016, as requested, as discussed in the body of this order.

⁶⁵ *Virginia Electric*, 154 FERC ¶ 61,126.

⁶⁶ *Id.*

⁶⁷ See Golden Spread Limited Protest at 8-9.

⁶⁸ Deficiency Response at 2.

(B) PSCo is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.