

157 FERC ¶ 61,157  
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 No. ER16-2514-000

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO CONDITION

(Issued November 30, 2016)

1. On August 31, 2016, Public Service Company of Colorado (PSCo) filed proposed revisions to the Xcel Energy Operating Companies Open Access Transmission Tariff (Tariff) pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> to modify the manner by which PSCo calculates penalty charges under Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service). In this order, we accept PSCo's proposed Tariff revisions effective January 1, 2017, subject to condition, and direct PSCo to submit a compliance filing within 30 days of the date of this order, as discussed below.

**I. Background**

**A. Order No. 890**

2. In Order No. 890, the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.<sup>2</sup> Among other things, the Commission adopted *pro forma* OATT imbalance provisions—Schedule 4 for the treatment of energy imbalances and Schedule 9 for the treatment of generator imbalances—in order to increase consistency among transmission providers in

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

the application of imbalance charges and ensure that the level of charges provide appropriate incentives to keep schedules accurate without being excessive. The Commission concluded that the provisions of the *pro forma* OATT adhere to the following three principles: (1) the charges must be based on incremental cost or some multiple thereof; (2) the charges must provide an incentive for accurate scheduling, such as by increasing the percentage of the adder above (and below) incremental cost as the deviations become larger; and (3) the provisions must account for the special circumstances presented by intermittent generators and their limited ability to precisely forecast or control generation levels, such as waiving the more punitive adders associated with higher deviations.<sup>3</sup>

3. Specifically, the Commission required that imbalances of less than or equal to 1.5 percent of the scheduled energy (or two MW, whichever is larger) will be netted on a monthly basis and settled financially at 100 percent of incremental or decremental cost at the end of each month. Imbalances between 1.5 and 7.5 percent of the scheduled amounts (or two to ten MW, whichever is larger) will be settled financially at 90 percent of the transmission provider's system decremental cost for overscheduling imbalances that require the transmission provider to decrease generation or 110 percent of the incremental cost for underscheduling imbalances that require increased generation in the control area. Imbalances greater than 7.5 percent of the scheduled amounts (or ten MW, whichever is larger) will be settled at 75 percent of the system decremental cost for overscheduling imbalances or 125 percent of the incremental cost for underscheduling imbalances.<sup>4</sup>

4. The Commission stated that to the extent a transmission provider wishes to deviate from the *pro forma* OATT provisions revised in Order No. 890, it may demonstrate in an FPA section 205 proceeding that the proposed changes are consistent with or superior to the *pro forma* OATT. The Commission noted that the proposed alternative provisions must comply with the three imbalance charge principles and be consistent with or superior to the specific imbalance charges set forth in the *pro forma* OATT.<sup>5</sup>

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<sup>3</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663.

<sup>4</sup> *Id.* P 664. The Commission exempted intermittent resources from the third-tier deviation band and stated that they would pay second-tier deviation band charges for all deviations greater than the larger of 1.5 percent or two MW. *Id.* P 665.

<sup>5</sup> *Id.* P 668.

**B. PSCo's Filing**

5. PSCo states that, consistent with the *pro forma* OATT and as required under Order No. 890, it currently calculates energy imbalance under Schedule 4 and generation imbalance under Schedule 9 using incremental and decremental cost, with the imbalance penalty increasing for larger deviations. PSCo states that, consistent with Commission policy, this structure is intended to encourage transmission service customers and generators to closely match load and actual generation to schedules to help maintain reliability and promote accurate scheduling. PSCo states that this structure prevents customers from potentially “gaming” the imbalance charge by arbitraging the difference between their energy costs and PSCo’s system energy costs.<sup>6</sup> In addition, PSCo states that, consistent with Order No. 890, it distributes the Schedule 4 and Schedule 9 imbalance penalty collections to non-offending customers.<sup>7</sup>

6. PSCo states that its filing addresses an issue that has arisen as additional wind generation resources have been added to its transmission system and Balancing Authority Area (BAA). PSCo states that it has approximately 2,250 megawatts (MW) of wind generation within its BAA and had a peak transmission load of approximately 7,300 MW in 2015. PSCo states that wind power supplied more than half of its load averaged over an entire 24-hour period and supplied more than 66 percent of its load on an hourly basis. Also, PSCo states that there is an additional 1,700 MW of wind generation interconnection requests in the PSCo generation interconnection queue, which is expected to increase the level of wind generation penetration over time.<sup>8</sup> PSCo states that as a higher percentage of wind energy serves load on the PSCo system, wind energy may set the incremental or decremental cost in some hours.

7. PSCo states that, because of various tax incentives, such as the federal production tax credit, the incremental price for energy may be negative in some hours. According to PSCo, negatively priced hours may occur, for instance, when wind energy generated by facilities qualifying for federal production tax credits is the last 10 MW at the top of the dispatch stack and when all conventional, dispatchable generation is at minimum load or offline. PSCo states that if the wind generation must be curtailed due to the low load conditions, these wind generators may be eligible for reimbursement for amounts that otherwise would have been generated, including forfeited federal production tax credits. PSCo states that, due to these occurrences, there are instances where the incremental or decremental cost calculated for the purposes of energy or generation imbalance service

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<sup>6</sup> PSCo Transmittal at 2-3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 2.

result in a negative number. PSCo states that during 2015, it observed eight hours with negative incremental and decremental costs, and expects the number of hours with negative incremental and decremental costs to increase as additional wind generation interconnects to its system.<sup>9</sup>

8. PSCo states that when the incremental or decremental cost is negative, the application of Schedule 4 and Schedule 9 consistent with the *pro forma* OATT results in the penalty no longer having the effect of promoting accurate scheduling. PSCo explains that during these times, PSCo is selling incremental energy or purchasing decremental energy at a negative cost. PSCo states that when it sells energy at a negative incremental cost, it pays the customer to take the energy. Similarly, PSCo states that when it purchases energy at a negative decremental cost, the customer pays PSCo to take the energy. Thus, according to PSCo, instead of penalizing the offending customer for deviating from its schedule, the Schedule 4 and Schedule 9 pricing methodology benefits the offending customer and encourages deviations in hours when the incremental or decremental cost is negative. PSCo states that during these times, a customer can benefit by a large deviation from the scheduled quantity and therefore has an incentive to schedule inaccurately. PSCo states that, for example, if injections of wind generation into its BAA cause the incremental or decremental cost to be negative in an hour, a dispatchable generator would have an incentive to generate less than its scheduled quantity because the customer would receive revenue rather than pay a penalty.<sup>10</sup>

9. Additionally, PSCo states that, because the imbalance penalty revenues are distributed to non-offending transmission customers, the “negative” penalty both benefits the offending customer and harms non-offending customers. PSCo states that penalty structures that benefit offending customers and harm non-offending customers are incongruent with the Commission’s policy expressed in Order Nos. 888<sup>11</sup> and 890.<sup>12</sup>

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> *Id.* at 5 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,232-30,233, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

<sup>12</sup> *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663).

Thus, PSCo states that it submits the instant filing to modify its calculation of imbalance penalties to address the issue of negative incremental and decremental energy costs.

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

10. Notice of PSCo's filing was published in the *Federal Register*, 81 Fed. Reg. 61,676 (2016), with interventions and protests due on or before September 21, 2016. On September 21, 2016, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a motion to intervene and protest, and Black Hills Colorado Electric Utility Company, LP filed a motion to intervene. On October 6, 2016, PSCo filed an answer to Tri-State's protest. On October 14, 2016, Tri-State filed an answer to PSCo's answer.

## **III. Discussion**

### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept PSCo's and Tri-State's answers because they have provided information that assisted us in our decision-making process.

### **B. Imbalance Penalty Calculations**

#### **1. PSCo's Proposal**

13. PSCo proposes to address the issue of negative incremental or decremental costs by replacing the language in Schedule 4 and Schedule 9 with a formula that splits the imbalance charge into its two components—an energy charge plus a penalty charge. PSCo states that the energy charge would equal the imbalance quantity times the incremental or decremental cost, where an energy charge greater than zero represents amounts due to PSCo and an energy charge less than zero represents amounts due to the customer. PSCo states that it would calculate the penalty charge as a percentage of the absolute value of the energy charge (i.e., so that it is always a positive value due to PSCo), where that percentage is determined consistent with the deviation bands and percentage penalty structure in the *pro forma* OATT. PSCo states that this formula would penalize deviations whether the incremental or decremental cost is positive or

negative and regardless of the direction of the deviation.<sup>13</sup> PSCo states that it is not proposing a change to the calculation of incremental or decremental cost, but instead a change to the way the penalty is applied to deviations in order to maintain the purpose of the Schedule 4 and Schedule 9 imbalance charges to encourage accurate scheduling. PSCo continues that the calculation of the incremental or decremental cost would continue to be based on its actual system costs.<sup>14</sup>

14. PSCo provides a simplified example to demonstrate how its proposal provides appropriate penalties when its incremental cost is negative.<sup>15</sup> Under its existing penalty calculation, PSCo states that if a customer's actual load was 150 MW when only 100 MW was scheduled for an hour and if the incremental cost of energy was -\$25 per MWh, then the load customer would receive \$1,250 if no penalty were applied (50 MW x (-\$25 x 1.00)) or \$1,562.50 if a 25 percent penalty rate were applied to the entire deviation (50 MW x (-\$25 x 1.25)). In this example, PSCo indicates that the customer receives \$312.50 in additional revenue due to its 50 MW deviation under PSCo's current penalty calculation. Under its proposal, PSCo states that, in this example, the load customer would receive \$937.50 if a 25 percent penalty rate were applied to the entire deviation (50 MW x (-\$25 x 0.75)). In this example, PSCo indicates that the customer would pay a \$312.50 penalty due to its 50 MW deviation under PSCo's proposal.<sup>16</sup>

15. PSCo states that its proposed formula would apply a single penalty percentage to the entire deviation, rather than applying separate penalties to portions of a single deviation.<sup>17</sup> PSCo explains that it currently applies the Schedule 4 or Schedule 9 imbalance penalty associated with each deviation band tier to the portion of a deviation that falls within that band (i.e., an apportionment approach). For example, PSCo explains that for a 15 MW deviation on a 100 MW schedule, it currently applies no penalty to the first 2 MW, a 10 percent penalty to the next 8 MW, and a 25 percent penalty to the last 5 MW. PSCo states that the proposed formula would change this calculation such that, instead of applying a different penalty to the portion of a single deviation within each band, the proposed formula would apply a single penalty percentage to the entire

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<sup>13</sup> PSCo Exh. I (Affidavit of Bryan R. Davis) at PP 7-8.

<sup>14</sup> *Id.* PP 5-7.

<sup>15</sup> PSCo's example does not reflect that it currently applies different penalties to the portion of the deviation in each deviation band tier. *Id.* n.2.

<sup>16</sup> *Id.* PP 12-15.

<sup>17</sup> *Id.* P 9.

deviation (i.e., a non-apportionment approach).<sup>18</sup> For example, PSCo states that, for a 15 MW deviation on a 100 MW schedule, it would apply a 25 percent penalty to the entire 15 MW under its proposal. PSCo states that its proposed non-apportionment approach is more straightforward for customers to understand, facilitates reliability by creating a greater incentive to avoid large deviations, and is administratively efficient. PSCo also states that the Commission has found that this approach is a permissible interpretation of the imbalance penalties under Order No. 890, and it is thus consistent with the *pro forma* OATT.<sup>19</sup>

16. PSCo states that the proposed revisions satisfy the “consistent with or superior to” standard for revisions to the *pro forma* OATT. PSCo states that the proposed Tariff revisions address the issue of negative energy prices, which was not contemplated at the time the *pro forma* OATT and Order No. 890 were adopted. PSCo states that in an organized market, the locational marginal price and five-minute real time market calculated by the market operator provides financial incentives for generators to operate efficiently. PSCo states that it does not operate in such a market, and the proposed revisions to Schedule 4 and Schedule 9 comply with the policies in Order Nos. 888 and 890 to encourage accurate scheduling, while also ensuring that the original intent of the Commission is not thwarted by inadvertently incenting customers to deviate from their scheduled quantities. PSCo further states that the proposed Tariff revisions retain the three-tiered structure for imbalances contemplated by the *pro forma* OATT, and the Commission has found that the non-apportionment approach of applying a single percentage to the entire deviation to be a permissible implementation of the imbalance penalties under Order No. 890, and thus consistent with the *pro forma* OATT.<sup>20</sup>

## 2. Protest

17. Tri-State states that PSCo has not provided sufficient information to support that its proposed revisions are just and reasonable, and accordingly, the Commission should reject the filing.<sup>21</sup> Tri-State contends that PSCo’s proposal to use the non-apportionment approach will allow PSCo to increase the collection of penalty revenues by charging

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<sup>18</sup> PSCo states that its proposal retains its existing exemption for intermittent resources from the 25 percent penalty percentage and continues to limit penalties for such generators to a maximum of 10 percent, consistent with the *pro forma* OATT. PSCo Transmittal at 7.

<sup>19</sup> *Id.* at 7-8.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> Tri-State Protest at 1.

penalties in excess of the charges that would have been collected under PSCo's current approach and in excess of the cost of providing the energy imbalance service, especially during times of high market price. Tri-State contends that PSCo has not provided sufficient justification to support its proposed non-apportionment approach, including, for example, evidence that its current approach is confusing for customers, threatens reliability, or is administratively burdensome.<sup>22</sup> Tri-State states that if the Commission accepts PSCo's proposed non-apportionment approach, it should condition its acceptance on treating all imbalances of a single customer on a net basis.<sup>23</sup>

18. Tri-State contends that PSCo's proposal to use the absolute value of the energy cost in calculating the imbalance penalty charge serves to decrease the payments PSCo would make to customers whose imbalances help address oversupply conditions with negative energy pricing. Tri-State contends that PSCo appears to assume energy imbalance customers would know when there will be oversupply and negative pricing, which assumes a level of knowledge that is not supported by evidence in this proceeding. Tri-State notes that PSCo observed negative incremental or decremental pricing in eight out of 8,760 hours during 2015, and contends that PSCo's expectation of increased occurrences is inherently speculative. Tri-State also argues that when load increases during or when approaching real-time as compared to scheduled values, or when wind or solar supply drops quickly, prices can jump from strongly negative to strongly positive, which would render under-scheduling load a poor economic proposition.<sup>24</sup>

19. Tri-State contends that during periods with negative energy prices, an under-delivery scenario by a load customer helps mitigate further reduction in PSCo's incremental or decremental cost. Tri-State explains that during this scenario, PSCo resources would be more fully utilized and PSCo would move up the dispatch stack to higher cost resources, thereby approaching zero and positive energy prices. Tri-State contends that the higher prices, whether negative or positive, would tend to result in a lower curtailment of wind and other intermittent resources. Thus, Tri-State contends that PSCo's proposed formula shifts additional penalties to its customers during negative pricing hours for energy imbalance settlement when those customers are actually providing benefits to the PSCo BAA by reducing wind resource curtailment.<sup>25</sup>

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<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> *Id.* at 6-7.

<sup>24</sup> *Id.* at 7-8.

<sup>25</sup> *Id.* at 9.

20. Tri-State also contends that PSCo's proposed non-apportionment approach combined with using the absolute value of PSCo's incremental or decremental cost would be inconsistent with cost causation and would appear to create a windfall for PSCo. According to Tri-State, approximately 96 percent of the imbalance penalty revenues have gone to PSCo historically. Tri-State proposes that the Commission reject PSCo's proposal and provide it with an alternative to remove the penalty factors when PSCo's hourly energy imbalance incremental or decremental prices are negative for its customers that incur an under-delivery condition (load) for the hour.<sup>26</sup>

### 3. Answers

21. In response to Tri-State's protest of PSCo's proposed non-apportionment approach to determining imbalance penalties, PSCo states that it effectively withdraws this aspect of its filing. PSCo states that it will continue its current practice of assessing imbalances using the apportionment approach and commits to revising its proposed tariff revisions to eliminate its proposed non-apportionment approach and clearly reflect an apportionment approach in a compliance filing.<sup>27</sup> PSCo also argues that because it is withdrawing this aspect of its filing, Tri-State's request that PSCo treat all imbalances on a single customer on a net basis is moot. But if the Commission considers the substance of Tri-State's request, PSCo argues that the Commission should find that the argument is outside the scope of this proceeding, a collateral attack on Order No. 890, and contrary to the terms of PSCo's service agreements with Tri-State.<sup>28</sup>

22. PSCo argues that its proposal to use the absolute value of the energy charge adheres to the three imbalance charge principles of Order No. 890.<sup>29</sup> PSCo states that its proposed formula calculates the charge based on incremental cost, where the incentive increases as the deviation becomes larger. PSCo argues that its proposal is just and reasonable because it is based on incremental cost, while retaining the incentive to accurately schedule.<sup>30</sup>

23. PSCo argues that the use of the absolute value of the energy charge eliminates confusion in interpreting when to use incremental or decremental cost when incremental

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<sup>26</sup> *Id.* at 9-10.

<sup>27</sup> PSCo Answer at 4.

<sup>28</sup> *Id.* at 9-10.

<sup>29</sup> *Id.* at 5-6.

<sup>30</sup> *Id.* at 6.

cost is negative; it makes clear that the imbalance charge is based upon the incremental cost of energy. PSCo reiterates that when incremental or decremental cost is negative, the application of its current Schedule 4 and Schedule 9 does not promote accurate scheduling, but instead provides an incentive for customers to deviate from their scheduled quantities. PSCo argues that more accurate scheduling will aid PSCo in balancing its system, especially as more variable energy resources are connected to the transmission and distribution systems.<sup>31</sup>

24. PSCo argues that Tri-State incorrectly asserts that prices jump from strongly positive to strongly negative around negatively priced events. PSCo argues that during such an event, there may be consecutive hours where it would be advantageous for the customer to purposefully under-schedule, but such action would harm reliability. PSCo asserts that its prices do not strongly jump from one extreme to the other as they might in organized electric markets. PSCo also argues that Tri-State's proposal to eliminate any imbalance penalties when the incremental or decremental cost is negative violates Commission policy described in Order No. 890.<sup>32</sup>

25. Tri-State states that the Commission should accept PSCo's voluntary withdrawal of the provisions regarding the non-apportionment approach to determining imbalance penalties. Tri-State continues that if the Commission accepts PSCo's voluntary withdrawal, then there is no need to address Tri-State's request for netting.<sup>33</sup>

26. Tri-State argues that PSCo has not shown that its absolute value proposal is just and reasonable. Tri-State argues that using a zero penalty yields a settlement amount that avoids an unjust windfall that PSCo would derive under its absolute value proposal. Tri-State argues that using the absolute value of the energy charge introduces a reduction in payment to customers during periods when the resultant energy price for energy imbalance settlement is negative when those customers are providing benefits to the PSCo BAA by reducing the amount of wind power curtailment. Tri-State also argues that PSCo's claim that negatively priced hours may occur in the future is speculation, and if true, would result in greater windfalls for PSCo.<sup>34</sup>

27. Tri-State argues that imbalance customers do not know when there will be oversupply situations that could lead to negative pricing for the purposes of hourly

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<sup>31</sup> *Id.* at 6-7.

<sup>32</sup> *Id.* at 8-9.

<sup>33</sup> Tri-State Answer at 2, 6.

<sup>34</sup> *Id.* at 3-5.

energy imbalance settlement and trying to predict such a situation would be an economically dubious proposition. Tri-State contends that PSCo does not provide hourly imbalance settlement prices to its customers until the month following the imbalances and that there is currently no data source PSCo provides to its customers taking energy imbalance service regarding its hourly incremental or decremental cost for energy imbalance on a forecasted or real-time basis. Tri-State continues that hourly energy imbalance prices PSCo determines for use in settling energy imbalance with its customers are not a decision-making factor in the day-ahead and scheduling timeframe because energy imbalance prices are unknown until after the energy imbalance service has already been provided by PSCo to its customers.<sup>35</sup>

#### **4. Commission Determination**

28. We accept PSCo's proposed Tariff revisions subject to condition.<sup>36</sup> As discussed below, we find that PSCo's proposed formula complies with the three imbalance charge principles set forth in Order No. 890<sup>37</sup> and is consistent with or superior to the *pro forma* OATT.<sup>38</sup> We also accept PSCo's voluntary commitment to remove its proposed non-apportionment provisions, and consistent with its commitment, direct PSCo to submit a compliance filing within 30 days of the date of this order removing such provisions and reflecting an apportionment approach.

29. In Order No. 890, the Commission adopted *pro forma* OATT energy and generator imbalance provisions to, among other things, ensure that the level of the charges provides appropriate incentives to keep schedules accurate without being excessive.<sup>39</sup> Under PSCo's Tariff, transmission customers have an incentive to schedule accurately to minimize penalties for imbalance deviations when incremental or decremental energy costs are positive. PSCo's proposal will ensure that its imbalance charges provide an incentive for transmission customers to schedule accurately when incremental or decremental energy costs are negative.

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<sup>35</sup> *Id.* at 5-6.

<sup>36</sup> The Commission can revise a proposal filed under section 205 of the Federal Power Act 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.

<sup>37</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663.

<sup>38</sup> *Id.* P 668.

<sup>39</sup> *Id.* P 663.

30. In particular, PSCo proposes to apply a formula that calculates imbalance penalty charges based on the absolute value of a separately-calculated energy charge, to ensure that appropriate penalties apply during hours of negative incremental or decremental energy costs. PSCo's proposed formula retains the *pro forma* OATT deviations bands of 0, 10 and 25 percent, and applies the *pro forma* OATT percentage penalty structure to the deviation bands. PSCo's proposed formula also calculates imbalance penalty charges based on incremental costs and waives the more punitive penalties for variable resources, which are consistent with the three imbalance charge principles set forth in Order No. 890.<sup>40</sup> PSCo's proposed formula provides an incentive for accurate scheduling by reversing the penalty charge amount when incremental or decremental costs are negative so that transmission customers incur costs for scheduling deviations rather than receiving revenue. PSCo's proposal complies with Order No. 890's goal of providing for imbalance penalties that encourage transmission customers and generators to match load and generation to schedules.

31. We are not persuaded by Tri-State's arguments that PSCo has failed to show that its proposal is just and reasonable.<sup>41</sup> Tri-State argues that PSCo should eliminate imbalance penalties when incremental or decremental energy costs are negative. However, PSCo's proposal provides an incentive to accurately schedule. Tri-State argues that negative incremental or decremental energy costs occur infrequently, but PSCo indicates that such events have already occurred on its system and that the incidence of such events may increase in the future as more and more wind generation connects to its system.<sup>42</sup> Moreover, the potential for negative pricing events to occur infrequently does not obviate the need to provide an incentive for accurate scheduling when such events do occur.

32. Tri-State argues that customers do not know when costs will be negative and have no reason to game the system. Tri-State also argues that an under-delivery by a load customer may provide a benefit to the PSCo BAA by reducing the amount of wind power curtailment when high wind production and lower load demand conditions exist. As recognized by the Commission in Order No. 890, all imbalances have the same net effect on the transmission system in that they require other generation to be ramped up or down to compensate for the imbalance and, thus, the Commission sought appropriate incentives

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<sup>40</sup> *Id.*

<sup>41</sup> Tri-State states that the Commission need not address its protest on PSCo's proposed non-apportionment provision if the Commission accepts PSCo's voluntary withdrawal. Tri-State Answer at 2.

<sup>42</sup> PSCo Transmittal at 2.

to keep schedules accurate.<sup>43</sup> Furthermore, because PSCo does not operate in an organized market that uses locational marginal prices as a means of settling imbalances,<sup>44</sup> more accurate scheduling will aid PSCo in operating its transmission system in a reliable manner.<sup>45</sup>

33. Finally, Tri-State argues that PSCo's proposal creates a windfall for PSCo, but this argument was premised on PSCo's original two-part proposal of using a non-apportionment approach and the absolute value of a separately calculated energy charge. PSCo voluntarily withdrew its proposed non-apportionment approach, and as discussed above, has shown that its absolute value proposal is consistent with or superior to the *pro forma* OATT.

### **C. Waivers and Effective Date**

#### **1. PSCo's Proposal**

34. PSCo states that it requests waiver of the requirements of 18 C.F.R. § 35.13 to the extent the requirements would require the submission of cost of service statements or explicit rate impacts in support of PSCo's proposed Tariff revisions.<sup>46</sup> PSCo states that good cause exists to grant waiver because the proposed revisions implement the approved *pro forma* OATT rate design for times when the incremental or decremental cost of energy is negative. PSCo continues that the proposed revisions are not intended to modify rates or the level of imbalance penalties authorized by the Commission, but instead only to modify the manner that they are applied in order to maintain consistency with the purpose of the penalties. PSCo states that, because PSCo credits all Schedule 4 and Schedule 9 revenues to non-offending customers, the proposed revisions will not result in incremental margins being collected by PSCo.<sup>47</sup>

35. PSCo requests that the Commission accept its proposal by October 30, 2016, and allow an effective date of December 1, 2016. PSCo states that it would then implement the changes in its billing system effective for bills on and after December 2016. If the Commission does not issue an order by October 30, 2016, PSCo requests that the

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<sup>43</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 668.

<sup>44</sup> PSCo Transmittal at 8.

<sup>45</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 670.

<sup>46</sup> 18 C.F.R. § 35.13 (2016).

<sup>47</sup> PSCo Transmittal at 8.

Commission grant an effective date of the first date of the month following the first full calendar month after the Commission issues an order approving its proposal. PSCo requests waiver of any other requirements of 18 C.F.R. § 35.13 as necessary to allow its requested effective date. PSCo states that if necessary, it will submit a compliance filing to update the effective date in eTariff.<sup>48</sup>

## 2. Commission Determination

36. We grant PSCo's request for waiver of the filing requirements under section 35.13 of the Commission's regulations. We also accept PSCo's filing subject to condition, effective January 1, 2017. We direct PSCo to submit in its compliance filing due within 30 days of the date of this order tariff records to reflect this effective date.

### The Commission orders:

(A) PSCo's proposed Tariff revisions are accepted subject to condition, effective January 1, 2017, as discussed in the body of this order.

(B) PSCo is 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.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>48</sup> *Id.* at 9.