

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Public Service Company of Colorado

Docket Nos. ER03-971-000
ER03-971-001
ER03-971-002

ORDER CONDITIONALLY ACCEPTING REVISED POWER PURCHASE
AGREEMENTS

(Issued February 27, 2004)

1. In this order, we conditionally accept revised power purchase agreements (Agreements) between Public Service Company of Colorado (PSC of Colorado) and eight wholesale customers.¹ The Commission conditionally accepts the revised Agreements effective January 1, 2004, as requested, subject to the filing of modifications to the transmission rate provisions of the revised Agreements. This order benefits the customers by allowing the implementation of just and reasonable rates.

Original Filing

2. On June 19, 2003, PSC of Colorado filed in Docket No. ER03-971-000 an application pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824(d) (2000), and Section 35.13 of the Commission's regulations, 18 CFR § 35.13 (2003), to change its rates for power and transmission services to the eight wholesale customers referenced above. These rates would, among other things, track the costs of Xcel Energy Operating Companies' open access transmission tariff (OATT) for network transmission service.²

¹ The eight customers are Grand Valley Rural Power Lines, Inc. (Grand Valley), Holy Cross Electric Association, Inc. (Holy Cross), Intermountain Rural Electric Association (Intermountain), Yampa Valley Electric Association, Inc. (Yampa Valley), the Town of Julesburg, Colorado (Julesburg), the City of Burlington, Colorado (Burlington), the Town of Center, Colorado (Center) and Cheyenne Light, Fuel, and Power Company (Cheyenne). Cheyenne is an affiliate of PSC of Colorado under the Xcel Energy corporate umbrella.

² Xcel Energy is the parent company of PSC of Colorado.

PSC of Colorado stated that the rate changes were necessary to account for increases in costs since 1996, changes in its power portfolio, the requirements of the Colorado Public Utilities Commission to account for installation of pollution control facilities, purchase power costs due to early retirement of certain generating facilities in the Denver area, and energy purchases from the Lamar wind energy farm. PSC of Colorado also filed to amend its fuel adjustment clause (FAC). The proposed changes in the base and capacity charges would result in an average 6.11 percent increase in rates over present revenues.

Amendment

3. On August 1, 2003, PSC of Colorado made a supplemental filing in Docket No. ER03-971-001, revising its proposed rates. PSC of Colorado also stated that it no longer sought to increase its rates to Intermountain. PSC of Colorado stated that it did not object to the Commission suspending the revised rates for five months, to be effective no later than January 18, 2004, to facilitate settlement discussions, except for Cheyenne, for which a January 1, 2004 effective date was requested.

4. On August 22, 2003, PSC of Colorado requested that the Commission delay issuing an order because PSC of Colorado had reached a settlement in principle with four customers and expected to shortly settle with the other customers.

Revised Power Purchase Agreements

5. On December 30, 2003, as supplemented on January 5, 2004, PSC of Colorado filed in Docket No. ER03-971-002 agreements that it characterized as settlements between itself and the eight customers,³ which it explained would resolve all issues in these proceedings, revised Agreements and letters of concurrence from the customers. (As part of this settlement, the parties also agreed to settle two complaint cases pending before the Commission in Intermountain Rural Electric Association, Inc. et al. v. Public

³ See Cajun Electric Power Cooperative v. Louisiana Power & Light Co., 55 FERC ¶ 61,272 at 61,869 (1991) (finding that filing was not a settlement under Rule 602); accord Long Island Lighting Co., 82 FERC ¶ 61,124 at 61,447 n.6 (1998) (same), order on reh'g, 83 FERC ¶ 61,076 (1998).

Service Company of Colorado, Docket Nos. EL02-25-000, et al. (consolidated)).⁴ PSC of Colorado sought an effective date of January 1, 2004.

Notice, Interventions and Protests

6. Notice of the original filing was published in the Federal Register, 68 Fed. Reg. 39,535 (2003), with interventions or protests due on or before July 10, 2003. The Colorado Public Utilities Commission filed a notice of intervention. Timely motions to intervene and protests were filed by Grand Valley, Holy Cross, Intermountain, and Yampa Valley. The City of Julesburg, Colorado (Julesburg) and the City of Burlington, Colorado (Burlington) filed a motion to intervene on July 14, 2003. On July 25, 2003, PSC of Colorado filed an answer to the protests.

7. Notice of the August 1, 2003 Amendment was published in the Federal Register, 68 Fed. Reg. 48,898 (2003), with comments, interventions or protests due on or before August 22, 2003. No comments, interventions or protests were filed.

8. Notice of the supplement to the revised filing was published in the Federal Register, 69 Fed. Reg. 4298 (2004), with comments, interventions or protests due on or before February 2, 2004. No comments, interventions or protests were filed.

Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2003), the notice of intervention and the timely, unopposed motions to intervene serve to make entities that filed them parties to this proceeding. Given their interests in the proceeding, the early stage of the proceeding, and absence of undue prejudice or delay, we will grant Julesburg's and Burlington's late-filed motion to intervene. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits answers to protests unless otherwise allowed by the decisional authority. We are persuaded to allow the answer as it provides

⁴ See Intermountain Rural Electric Association, Inc., et al. v. Public Service Company of Colorado, 99 FERC ¶ 61,279 (2003). A related complaint, involving Aquila, Inc., see Aquila, Inc. v. Public Service Company of Colorado, 102 FERC ¶ 61,111 (2003), is the subject of a separate agreement in Docket No. EL03-33-000. In a February 2, 2004 status report by the presiding judge in the three complaint cases, he states that the complainants have committed to withdraw their complaints upon Commission action in Docket No ER03-971-000, et al. and the Colorado Public Utilities Commission's action with respect to Aquila.

information that aids us in the decision-making process, and accordingly we will accept it.

10. Our preliminary analysis of the revised Agreements, as modified as ordered below, indicates that they appear to be just and reasonable, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful, as modified as ordered below. Accordingly, we will conditionally accept the revised Agreements for filing, as modified as ordered below.

11. Consistent with our precedent, we will waive our notice requirement to permit a January 1, 2004 effective date.⁵

12. The Agreements will be accepted as designated, with an exception for the revised Agreement with Cheyenne. The Agreement with Cheyenne was proposed to be designated as Electric Rate Schedule No. 94. By delegated letter order dated October 11, 2002, a power purchase agreement between PSC of Colorado and Grand Valley was accepted and designated as Electric Rate Schedule No. 94. Accordingly, the Agreement with Cheyenne will be designated as Electric Rate Schedule No. 95.

13. The transmission rates in the revised Agreements are intended to reflect a direct pass-through of the transmission costs incurred by PSC of Colorado's merchant function as the transmission customer under the Xcel Energy Operating Companies' OATT. In order to prevent any over or under-recovery of its transmission costs, PSC of Colorado needs to modify the rates in the revised Agreements anytime the rates in the Xcel Energy Operating Companies' OATT change, to become effective on the same date the new OATT rates go into effect.⁶ Accordingly, we will require that the language of the revised Agreements be modified to reflect that PSC of Colorado must file to modify the rates and charges in those Agreements at any such time that the Xcel Energy Operating Companies file with the Commission to modify transmission rates under their OATT, with rate changes to become effective on the same date.

The Commission orders:

(A) The revised Agreements are hereby accepted for filing, to be effective January 1, 2004, subject to the compliance filing described in the body of this order. PSC

⁵ See Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106 at 61,339 n.10, order on reh'g, 61 FERC ¶ 61,089 (1992).

⁶ See, e.g., Payment for Network Transmission Service, Annex II to Rate Schedule No. 51.

of Colorado shall file such modifications within 20 days of the date of issuance of this order.

(B) Waiver of the notice requirement is hereby granted to permit the revised Agreements to become effective January 1, 2004, as requested

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.