

139 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Public Service Company of Colorado

Docket No. ER12-1589-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED RATES
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 19, 2012)

1. This order addresses certain modifications proposed by the Public Service Company of Colorado (PSCo) to its transmission and ancillary service rates under the Xcel Energy Operating Companies Open Access Transmission Tariff (Joint OATT). In this order, we conditionally accept PSCo's revised tariff sheets, suspend them for five months, subject to refund, to become effective November 17, 2012, and establish hearing and settlement judge procedures, as discussed herein.

Background

2. On April 20, 2012, PSCo filed revised tariff sheets to modify the formula rate template found in Attachment O-PSCo under the Joint OATT and related OATT revisions for transmission services over the PSCo transmission system. Specifically, PSCo proposes to: (1) revise Attachment O-PSCo to the Joint OATT to replace the current formula rates structure for transmission services, which is based on actual, historical data and runs from June 1 to May 31 of the subsequent year, to calendar-year formula rates that rely on forecasted data, subject to a true-up; (2) revise Transmission Formula Rate Implementation Procedures for Attachment O-PSCo; (3) revise Joint OATT sheets reintroducing the use of penalties for Unreserved Use of transmission capacity and incorporating various administrative changes; and (4) convert existing stated rates for ancillary services to cost-of-service rate formulas, using a levelized gross plant fixed charge rate and the "net plant method" in the recovery of fixed costs, for the annual determination of Schedules 1, 2, 3, 5 and 6. PSCo states that the formula rates applicable to generation-related ancillary services Schedules 2-6 will reflect actual cost data from the most recent PSCo FERC Form 1.

3. According to PSCo, other Xcel Energy Operating Companies offer transmission services pursuant to very similar transmission formula rates, i.e., formula rates reflecting forecasted data, subject to a true-up, and therefore the proposed change in rates would align with rates for commensurate services of other parties to the Joint OATT. Accordingly, PSCo requests that the Commission accept its proposed revised Attachment O-PSCo, including the ancillary services provisions, and the associated revised Formula Rate Implementation Procedures, effective June 20, 2012, subject to refund, after a nominal suspension.

Description of Filing

4. PSCo asserts two primary reasons for modifying its tariff. First, PSCo maintains that it is attempting to collect revenues upfront on a more current basis for the transmission services it provides by eliminating the regulatory lag embedded in its current transmission formula rate template.¹ PSCo also asserts that it is attempting to convert rates collected for ancillary services provided under the Joint OATT from stale cost-based rates to rates calculated annually for such ancillary services.²

5. Specifically, PSCo proposes a decrease of \$898,420 of the annual transmission revenue requirement (ATRR) underlying its network and point-to-point transmission service rates.³ Although PSCo proposes an overall decrease in ATRR, its proposed rates for network and point-to-point transmission services will increase under its proposal from \$2.409/kW/month to \$2.529/kW/month. PSCo explains that this increase is attributable to the loss of 308 MW of transmission load from Black Hills Power, Inc.⁴

6. PSCo filed an unpopulated formula rate template, but states that it will populate the template with fully forecasted data to derive transmission rates, or with actual costs and load data as reported annually to the Commission.⁵ Under the proposed forecasted formula rate, however, any budget or transmission load deviations reflected in the

¹ PSCo Transmittal at 4.

² *Id.* at 4.

³ *Id.* at 14 (stating that PSCo's proposed decrease in ATRR reflects an increase (\$663 million) in capital investment of new transmission facilities placed into service since 2005, PSCo's last rate case).

⁴ *Id.*

⁵ *Id.* at 8.

forecasted ATRR or the estimated transmission load will be subsequently trued-up, with interest calculated at the Commission-approved interest rate. Additionally, PSCo will collect only the costs that it actually incurs to provide transmission service during the Formula Rate Year.

7. With respect to proposed modifications to ancillary service provisions, PSCo states that its current ancillary services rates were established in 2005. Therefore, compared to revenues that would be collected under the currently-effective stated ancillary service rates, PSCo is proposing an approximately \$3.2 million or 38 percent increase through its proposal.⁶ PSCo acknowledges that this annual increase equates to a 5.43 percent increase over the seven years since these rates were last changed. Lastly, PSCo claims that no true-up adjustment will apply to Ancillary Service Schedules 2, 3, 5 and 6, since formula rates under these schedules will be calculated using actual historical cost data from PSCo's most recently filed FERC Form 1.⁷

8. PSCo proffers that it has not proposed a rate case since 2005. Thus, in this proceeding, PSCo proposes to modify several cost elements. Among other things, PSCo proposes a return on equity (ROE) of 10.25 percent.⁸ Based on testimony filed by PSCo Witness Dr. Avera, the proposed ROE falls within the 7.4 percent to 15.4 percent zone of reasonableness produced by applying the Discounted Cash Flow (DCF) methodology to a national proxy group of 15 risk comparable electric utilities.⁹ Moreover, PSCo states that the proposed ROE falls between the midpoint and the median and is supported by reference to alternative ROE benchmarks, which consistently result in cost of equity estimates considerably above the DCF median.¹⁰

⁶ *Id.* at 14.

⁷ *Id.* at 8.

⁸ PSCo Transmittal at 10 (asserting that the proposed ROE was determined by the outcome of a recent pending settlement in the PSCo production formula rate proceeding in Docket No. ER11-2853-000, and that PSCo will separately make a section 205 filing to lower the transmission formula ROE to 10.25 percent retroactive July 1, 2011, upon the Commission's approval of its settlement, and will issue refunds for the period from July 1, 2011, to the effective date of the rates proposed in the instant proceeding).

⁹ *Id.*

¹⁰ *Id.*

9. Other rate design modifications include the amortization of \$1.3 million in abandonment costs relating to PSCo's San Luis Calumet-Comanche Transmission Project and PSCo's recovery of deferred costs previously authorized by the Commission associated with the Mountain Pine Beetle vegetation management project.¹¹

10. PSCo also states that it omitted the Unreserved Use language from the Joint OATT in 2007, as provided by Order No. 890,¹² but intends to reinsert this language into its tariff to encourage certain customers to stay within their reservation quantity, and to incorporate other administrative changes.¹³

11. PSCo seeks an effective date of June 20, 2012 for the tariff sheets submitted with its filing. PSCo requests a nominal suspension under the *West Texas Utilities Company*¹⁴ standard. PSCo argues that its rates are not excessive and are instead formulaic and subject to true-up to actual costs, effectively enabling PSCo to collect only its actual costs in its rates.¹⁵

Notice of Filing and Responsive Pleadings

12. Notice of PSCo's filing was published in the *Federal Register*, 77 Fed. Reg. 25,714 (2012), with interventions and protests due on or before June 1, 2012. Grand Valley Rural Power Lines, Inc. (Grand Valley) and Yampa Valley Electric Association, Inc. (Yampa Valley) jointly filed a timely motion to intervene and protest. Intermountain

¹¹ *Id.* at 12.

¹² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *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 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890).

¹³ PSCo Transmittal at 13.

¹⁴ 18 FERC ¶ 61,189, at 61,375 (1982) (asserting that "a utility's increased rates will be suspended for only one day instead of the five month maximum in those cases where our preliminary analysis indicates that no more than ten percent of the increase appears to be excessive") (*West Texas*).

¹⁵ PSCo Transmittal at 16.

Rural Electric Association (IREA) and Tri-State Generation and Transmission Association, Inc. (Tri-State) also jointly filed a timely motion to intervene and protest.

13. Grand Valley and Yampa Valley protest PSCo's filing, arguing that PSCo's proposed 10.25 percent ROE is excessive.¹⁶ They offer an independent DCF analysis supporting a 9.15 percent ROE for PSCo.¹⁷ They also move for summary judgment with respect to PSCo's proposed ROE of 10.25 percent.¹⁸

14. Grand Valley and Yampa Valley also protest PSCo's formula rate because the rate "fails to include a rate base offset for unfunded reserves." Additionally, they object to PSCo's allocation of property insurance expenses and find fault with the proposed A&G expenses.¹⁹ Grand Valley and Yampa Valley also challenge PSCo's calculation of transmission costs, arguing that the costs are inflated by virtue of PSCo's failure to account for distribution under-build facilities on transmission poles and towers.²⁰

15. Additionally, they assert that PSCo's allocation of accumulated deferred income taxes lacks transparency and that PSCo's pre-payments allocated to transmission should not include prepaid transmission expenses. Grand Valley and Yampa Valley further argue that PSCo's development of the load divisor and the proposed composition of transmission revenue credits lack transparency. Additionally, they argue that PSCo must submit a more detailed evaluation of its common plant and expenses to the Commission.²¹ They also encourage the Commission to review PSCo's proposed recovery of deferred costs in transmission O&M expenses.²²

16. Grand Valley and Yampa Valley also argue that PSCo's proposed two-year amortization of the rate case expense is too short and contend that PSCo's proposed

¹⁶ Grand Valley and Yampa Valley Joint Protest at 2.

¹⁷ *Id.* at 10-13. *See also* Exh. Nos. JRP-1 and JRP-2.

¹⁸ Grand Valley and Yampa Valley Joint Protest at 33-34.

¹⁹ *Id.* at 14-17.

²⁰ *Id.* at 16.

²¹ *Id.* at 19.

²² *Id.* at 20.

formula-based ancillary service rates are excessive and not just and reasonable.²³ They similarly argue that PSCo's proposed formula rate implementation procedures contain several unjust and unreasonable provisions, including the proposed ancillary service tariff modifications.²⁴

17. Further, Grand Valley and Yampa Valley request that the Commission require PSCo to separately state the formula pricing for ancillary services and transmission and that the Commission conduct an independent suspension analysis for the two types of service. Finally, they request that the Commission act pursuant to its powers under section 206 of the Federal Power Act and treat the joint protest as a complaint against the PSCo formula rate ROE setting a refund effective date of July 1, 2012 with respect to PSCo's proposed ROE.²⁵

18. IREA and TriState also argue that PSCo's proposed ROE is excessive,²⁶ asserting that PSCo's DCF analysis does not comply with Commission policy of using the median ROE of the proxy group.²⁷ IREA and TriState encourage the Commission to investigate whether PSCo's proposed changes to its cost allocation methodology are just and reasonable. These protesters also challenge PSCo's proposed methodology for developing its ancillary service rates. Specifically, they argue that PSCo failed to justify the amortization period for various costs included in its formula rate.²⁸ In addition, they seek modification of the formula rate implementation procedures.²⁹ Finally, they include a motion for summary disposition of PSCo's proposed ROE of 10.25 percent.³⁰

²³ *Id.* at 21-22.

²⁴ *Id.* at 31.

²⁵ *Id.* at 35-37.

²⁶ IREA and TriState Joint Protest at 2.

²⁷ *Id.* at 3 (citing *Southern California Edison Company*, 131 FERC ¶ 61,020, at P 92 (2010); *Virginia Electric and Power Company*, 123 FERC ¶ 61,098, at P 58 (2008); *Golden Spread Electric Cooperative, Inc. et al.*, 123 FERC ¶ 61,047, at PP 62, 64 (2008)).

²⁸ *Id.* at 4-6.

²⁹ *Id.* at 7-8.

³⁰ *Id.* at 9.

19. On June 12, 2012, PSCo filed an answer to the motions to intervene and protests in this proceeding. In its answer, PSCo addresses a number of substantive issues from the protests. Additionally, PSCo states that it and the intervening parties in this proceeding are in agreement as to certain procedural steps they ask the Commission to take in this proceeding, namely that the Commission accept the proposed transmission formula rates for Network Integration Transmission Service and point-to-point transmission service and the associated Implementation Procedures for filing, subject to refund, effective June 20, 2012, after a nominal suspension for PSCo's proposed ROE, pursuant to the parties' transmission ROE commitments established in a separate proceeding, and that the Commission set the matter for hearing but hold the hearing in abeyance and direct settlement judge proceedings.³¹

Discussion

Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), Grand Valley, Yampa Valley, IREA and Tri-State's timely, unopposed motions to intervene serve to make them parties to this proceeding.³² Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PSCo's answer because it provides information that assists us in our decision making process.

Hearing and Settlement Judge Procedures

21. PSCo's proposed rates raise issues of material fact, including those raised in the motions for summary disposition, that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

22. Our preliminary analysis indicates that PSCo's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory

³¹ PSCo Answer at 2.

³² The Commission granted the parties an extension to file a protest until June 1, 2012. Grand Valley, Yampa, IREA and Tri-State filed protests on June 1, 2012.

or preferential, or otherwise unlawful. In *West Texas*,³³ the Commission explained that, when the Commission's preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a maximum five-month suspension. In the instant proceeding, we find that the proposed rates or parts of them may be substantially excessive. We will, therefore, accept PSCo's proposed rates and changes to its ancillary services for filing, suspend them for five months, make them effective November 17, 2012, subject to refund, and set them for hearing and settlement judge procedures.

23. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.³⁴ 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.³⁵ 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 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.

Other Issues

24. PSCo also requests waiver of the Commission's requirement to submit cost of service statements under sections 35.13(d) (1)-(2), section 35.13(d)(5) and section 35.13(h), explaining that detailed statements are not needed where the proposed rates are formulaic. We agree with PSCo, and find that good cause exists to grant such a waiver.

³³ *West Texas*, 18 FERC ¶ 61,189.

³⁴ 18 C.F.R. § 385.603 (2011).

³⁵ 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 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>).

25. With respect to Grand Valley and Yampa Valley's request that the Commission treat their protest as a complaint, the Commission has clearly articulated that complaints need to be made in separate pleadings, and not included in interventions/protests or requests for rehearing.³⁶ Accordingly, we reject Grand Valley and Yampa Valley's request.

The Commission orders:

(A) PSCo's proposed formula rates are hereby accepted for filing and suspended for a five-month period, to become effective November 17, 2012, 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 Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning PSCo's proposed formula rates. 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 (2011), 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.

³⁶ See *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062-63 & n.3 (1990); *Entergy Services, Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) (holding that complaints must be filed separately from motions to intervene and protests); *Consol. Edison Co. of N.Y.*, 97 FERC ¶ 61,241, at 62,092 & n.14 (2001) (explaining that the Commission has consistently rejected efforts to treat various filings as section 206 complaints); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,248, at P 5 (2004) (noting that the Commission has consistently rejected efforts to combine complaints with other types of filings); *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,116, at P 16 & n.22 (2009) (holding that it is impermissible to bring a section 206 complaint in the form of a protest).

(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, N.E., 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.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.