

123 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Public Service Company of Colorado

Docket Nos. ER08-527-000
ER08-527-001
ER08-527-002
ER08-527-003
ER08-527-004

ORDER APPROVING SETTLEMENTS AND ACCEPTING REVISED TARIFF
SHEETS

(Issued June 19, 2008)

1. On February 1, 2008, the Public Service Company of Colorado (PSCo) filed revised tariff sheets, reflecting changes to the base rates applicable to the following six wholesale electric customers (collectively, Wholesale Customers): Aquila, Inc. (Aquila); City of Burlington, Colorado (Burlington); Town of Center, Colorado (Center); Grand Valley Rural Power Lines, Inc. (Grand Valley); Holy Cross Electric Association, Inc. (Holy Cross); and Yampa Valley Electric Association, Inc. (Yampa Valley). Subsequently, PSCo settled with each of the above-named parties, and filed new revised tariff sheets with the Commission, to be effective May 1, 2008. In this order, we approve PSCo's three settlements and accept the revised tariff sheets filed with those settlements, to be effective May 1, 2008, as requested.

I. Background

2. In its initial filing in Docket No. ER08-527-000 (February 1, 2008 Filing), PSCo proposes to change the base rates it charges Wholesale Customers utilizing a return on common equity (ROE) of 11.5 percent. PSCo notes that its base rate costs have increased due to added purchased capacity costs, and the costs recoverable in its Wholesale Fuel Cost and Economic Purchased Power Adjustment Clause (FCA) have increased due in large part to increased fuel costs. PSCo also includes in its proposed rates Construction Work in Progress (CWIP) for the expansion of two company owned generation facilities—the Fort St. Vrain gas facility and the Comanche Unit 3 coal facility—and for

environmental controls on Comanche Units 1 and 2.¹ PSCo also notes that its production operations and maintenance (O&M) costs have increased substantially since its last rate case, most significantly with respect to the Comanche projects. PSCo also has revised its transmission and distribution loss factors to reflect its most recent line loss study.

3. PSCo also proposes changes to its FCA to ensure that the Wholesale Customers pay an appropriate energy charge for PSCo's renewable purchased power. PSCo states that it has expanded the range of renewable resources beyond wind to include solar and biomass. Therefore, PSCo proposes to replace its existing provision, which allows for FCA recovery of wind energy costs, with a provision that allows for FCA recovery of all renewable energy costs and provides additional details regarding the mechanics for determining what portion of a renewable energy purchase is recoverable through the FCA.

4. On February 14, 2008 in Docket No. ER08-527-001 (February 14, 2008 Errata), PSCo filed an errata to its initial filing. PSCo states that certain proposed tariff sheets submitted in its initial filing did not accurately reflect its proposed changes.

II. Notice and Responsive Filings

5. Notice of PSCo's initial filing was published in the *Federal Register*, 73 Fed. Reg. 8,305 (2008), with interventions and protests due on or before February 6, 2008. Aquila, Intermountain Rural Electric Association (IREA), Grand Valley, Holy Cross, and Yampa Valley filed timely motions to intervene. Additionally, the Colorado PUC filed a motion to intervene out-of-time. Notice of PSCo's errata filing was published in the *Federal Register*, 73 Fed. Reg. 10,240 (2008), with interventions and protests due on or before March 6, 2008. IREA, Grand Valley, Holy Cross, and Yampa Valley filed timely motions to intervene. Additionally, the Colorado PUC filed a motion to intervene out-of-time.

6. During this time, PSCo and its Wholesale Customers engaged in ongoing settlement negotiations. PSCo filed a series of motions to defer the comment date, ultimately requesting that the Commission delay the comment date to April 28, 2008. The Commission granted these requests. Because such delays would prevent the Commission from issuing an order within 60 days from the date of filing, as required by

¹ PSCo notes that the Colorado Public Utilities Commission (Colorado PUC) granted a Certificate of Public Convenience and Necessity (Certificate) for the Comanche project, and it anticipates that the PUC will grant a Certificate for the Fort St. Vrain facility in March 2008. We note that on March 19, 2008, the PUC did issue a Certificate for the Fort St. Vrain facility. PSCo Fort St. Vrain Certificate Proceeding, Docket No. 07A-469E (Colorado PUC Mar. 19, 2008).

section 205 of the Federal Power Act, PSCo also filed a request that the Commission defer issuing an order to allow the parties additional time to reach settlement agreements.

7. On April 17, 2008, PSCo filed in Docket No. ER08-527-002 a fully-executed offer of settlement and settlement agreement that resolves all of the issues between PSCo and Holy Cross, Grand Valley, and Yampa Valley. On April 25, 2008, PSCo filed in Docket No. ER08-527-003, an offer of settlement that resolves all of the issues between PSCo and Burlington and Center. Also on April 25, 2008, PSCo filed in Docket No. ER08-527-004, a fully-executed offer of settlement and settlement agreement that resolves all of the issues between PSCo and Aquila. Each of these settlements contained the revised tariff sheets that we will address below.

8. Notice of these filings was published in the *Federal Register*, 73 Fed. Reg. 28,448 (2008), with interventions and protests due on or before May 16, 2008. On May 6, 2008 Aquila filed comments stating that it had no objection to the settlement agreement between PSCo and Holy Cross, Grand Valley, and Yampa Valley. On May 14, 2008 Aquila filed comments in support of the settlement agreement between itself and PSCo.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant Colorado PUC's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

10. In settlements with Aquila; Burlington and Center; and Holy Cross, Grand Valley, and Yampa Valley, PSCo agreed to separate basic settlement rates effective May 1, 2008. Apart from the basic rates, the parties also agreed to a number of terms that were similar in all three settlements.

11. In each of the settlements, PSCo agreed to a moratorium on wholesale rate increases with respect to each of the counterparties until the earlier of the commercial operations date of the Comanche 3 generating facility or January 1, 2010. Additionally, PSCo agreed that in the event it sought to recover capital costs of certain additional Comanche and Fort St. Vrain facilities in a future wholesale rate filing (Additional Plant Costs), it would separately quantify and identify the rate impact of the recovery of those Additional Plant Costs for each of its counterparties. The parties agree that the

Additional Plant Costs-related portion of each rate component would become effective, subject to refund, on the first day of the month following the commercial operations date of Comanche 3, notwithstanding action by the Commission to impose a longer suspension with respect to those components of the rate filing not related to the Additional Plant Costs.²

12. The settlement parties also agreed to terms regarding amendments to the FCA. In section 1 of the FCA, PSCo and its counterparties agreed to a revised base cost of fuel and to revised loss factors consistent with the February 1, 2008 Filing. In section 2, the settlement parties agreed to the revised provisions that allow the recovery of economic renewable energy in the February 1, 2008 Filing. In Schedule 1 of the FCA, the settlement parties agreed to the version included in the February 14, 2008 Errata filing, provided that PSCo move certain energy costs³ from the non-fuel base cost to the FCA base cost. In Schedule 2, the settlement parties agreed to the version included in the February 14, 2008 Errata with a correction of the “FCA Waiver” column on the Schedule. With regard to Schedule 3, the parties agreed that the FCA will be amended and replaced with a new version that identifies no contracts. PSCo requests any waivers of the Commission’s FCA regulations to the extent necessary to give full effect to the treatment of costs set forth in the settlements.

13. The settlement parties also agreed to several other miscellaneous terms. They agreed that the rates set forth in the settlement agreements include no CWIP for pollution control or other construction projects, and that the rates are premised on the depreciation rates filed in this proceeding. The settlement parties also agreed that the appropriate standard of review for any modifications to the settlement not agreed to by the parties should be the “just and reasonable” standard.

14. Finally, all of the settlements contained clauses giving customers the option to receive comparable treatment. Burlington and Center and Holy Cross, Grand Valley, and Yampa Valley both have the option to receive comparable treatment to Aquila, while Aquila has the option to receive comparable treatment to Holy Cross, Grand Valley, and Yampa Valley.

² In the event that the facility enters operation on the first day of the month, the rate components will become effective that day.

³ The costs to be moved are: tolling start up costs and tolling fees, PacifiCorp all-in energy charges, Foot Creek Wind all-in energy charges, Waste Management Land Fill all-in energy charges, Purchased hydro (all-in energy charges), Basin Tri-State, and Platte River Power Authority Non-Fuel Base energy costs, and all start costs.

IV. Commission Determination

15. For good cause shown, we grant PSCo waiver of the fuel cost and purchased economic power adjustment clause regulations.⁴ We also approve the settlements and accept, effective May 1, 2008, the accompanying revised tariff sheets, as they appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act.⁵

The Commission orders:

(A) The waiver requested by PSCo is hereby granted, as discussed in the body of this order.

(B) The revised tariff sheets and corresponding settlements filed in Docket Nos. ER08-527-002, ER08-527-003, and ER08-527-004 are hereby accepted, effective May 1, 2008, and approved, respectively.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴ 18 C.F.R. § 35.14 (2007).

⁵ 16 U.S.C. § 824e (2000 & Supp. V 2005). Modifications to the settlements proposed by parties will also be reviewed under the just and reasonable standard.