

133 FERC ¶ 61,064
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of Colorado

Docket Nos. ER10-192-000
ER10-192-001
ER10-192-002
ER10-192-003
ER10-192-004
ER10-192-005

ORDER APPROVING SETTLEMENTS AND ACCEPTING REVISED TARIFF
SHEETS

(Issued October 21, 2010)

1. On October 30, 2009, the Public Service Company of Colorado (PSCo) filed revised tariff sheets, reflecting a proposed rate increase to the base rates applicable to the following seven wholesale electric customers (collectively, Wholesale Customers): Black Hills/Colorado Electric Utility Company, LP (Black Hills); 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); Intermountain Rural Electric Association (Intermountain); 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 July 7, 2010. In this order, we approve PSCo's settlements filed in the above captioned dockets and accept the revised tariff sheets filed with those settlements, to be effective July 7, 2010, as requested.

I. Background

2. In its initial filing in Docket No. ER10-192-000, PSCo proposes to change the base rates it charges Wholesale Customers utilizing a return on common equity (ROE) of 12.5 percent. PSCo notes that its revised rates reflect increased revenue requirements of approximately \$36.9 million. PSCo states that the increase in rates is primarily due to additional plant costs associated with the commercial operation of the Comanche 3

generation unit, pollution control facilities for the Comanche Units 1 and 2, and the placing in-service of two additional combustion turbine peaking units at Fort St. Vrain. PSCo also notes that its test period includes production operations and maintenance costs related to Comanche 3 and additional Fort St. Vrain facilities, as well as revised depreciation costs.

3. PSCo also proposes changes to its Wholesale Fuel Cost and Economic Purchased Power Adjustment Clause (FCA). Specifically, PSCo proposes changes to allow for time of use differentiated rates; to reflect changes to the company's Windsource Energy Program, a premium renewable energy retail pricing program; and to account for the potential for Congressional approval of climate change legislation.

4. On November 6, 2009, in Docket No. ER10-192-001, PSCo filed an errata to its initial filing. PSCo states that certain proposed tariff sheets submitted in its initial filing contained minor typographical errors that the errata corrects.

II. Notice and Responsive Filings

5. Notice of PSCo's initial filing was published in the *Federal Register*, 74 Fed. Reg. 59,154 (2009), with interventions and protests due on or before November 20, 2009. Notice of PSCo's errata filing was published in the *Federal Register*, 74 Fed. Reg. 61,342 (2009), with interventions and protests due on or before November 27, 2009.

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 May 3, 2010. 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 section 205 of the Federal Power Act, PSCo also filed a series of requests that the Commission defer issuing an order to allow the parties additional time to reach settlement agreements.

7. On June 18, 2010, PSCo filed in Docket No. ER10-192-004 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 July 13, 2010, PSCo filed in Docket No. ER10-192-002, an offer of settlement that resolves all of the issues between PSCo and Black Hills. On July 14, 2010, PSCo filed in Docket No. ER10-192-003, an offer of settlement that resolves all of the issues between PSCo and Burlington and Center. Finally, on August 26, 2010, PSCo filed in Docket No. ER10-192-005, a fully-executed offer of settlement and settlement agreement that resolves all of the issues between PSCo and Intermountain. Each of these settlements contained the revised tariff sheets addressed below.

8. Notice of the settlements between PSCo and Black Hills; Holy Cross, Yampa Valley, and Grand Valley; and Burlington and Center was published in the *Federal*

Register, 75 Fed. Reg. 43,967 (2010), with interventions and protests due on or before August 4, 2010. Notice of the settlement between PSCo and Intermountain was published in the *Federal Register*, 75 Fed. Reg. 61,726 (2010), with interventions and protests due on or before September 29, 2010.

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 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

10. In settlements with Black Hills; Burlington and Center; Holy Cross, Grand Valley, and Yampa Valley; and Intermountain, PSCo agreed to separate basic settlement rates effective on July 7, 2010.¹ The settlement parties also agreed to new rates effective January 1, 2011² to incorporate property taxes associated with the Comanche 3 Unit. Apart from the basic rates, the parties also agreed to a number of terms that were similar in all four settlements.

11. The settlement parties 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 of \$0.03053 for all customers. PSCo also amended section 1 of FCA to provide for the recovery of demand costs under PSCo's contracts with PacifiCorp and Thermo Greely (Monfort) to be shifted to the FCA from its base rates, and for the recovery of fuel cost additives under the FCA. 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.

12. The settlement parties also agreed that demand charges for the customers shall include the \$16.9 million of pollution control construction work in progress projects listed in Period II, Statement AG, in its rate application. PSCo also agreed to cease accruing Allowance for Funds Used During Construction (AFUDC) for such completed projects as of the effective date of the rates.

¹ In the settlement agreements, PSCo requests that the Commission reject as moot the tariff sheets filed on October 30, 2009. PSCo states that the tariff sheets filed with the settlement agreements replace those tariff sheets.

² The new rates effective January 1, 2011 are embodied in tariff sheets effective July 7, 2010.

13. The settlement parties also agreed to several other miscellaneous terms. The settling parties agreed that the rates are premised on the depreciation rates accepted by the CPUC in Decision No. C09-1446. The parties, except for Black Hills, agreed to the creation and/or adjustment of a regulatory asset to allow for actual removal costs of Cameo 1 and 2, Arapahoe 1 and 2, and Zuni 1 and 2. The settlement parties also agreed that PSCo would cease capitalizing AFUDC for the Comanche 3 project as of the in-service date of the retail rates.³ The settlement parties further agreed to remove proposed language associated with cost recovery from carbon legislation from customer schedules, and to withdraw the time-of-use rates initially proposed by PSCo. The settlement parties also agreed that the appropriate standard of review for any modifications to the settlement not agreed to by the parties, including modifications resulting from the Commission acting *sua sponte*, shall be the “just and reasonable” standard.

14. Finally, all of the settlements contained clauses giving the Wholesale Customers the option to receive comparable treatment. Under the settlements, each Wholesale Customer has the option to receive comparable pricing terms as the other Wholesale Customers. For example, Black Hills has the option to receive comparable rate treatment as Intermountain; Burlington and Center; and Holy Cross, Grand Valley, and Yampa Valley.

IV. Commission Determination

15. We approve the settlements and accept, for filing, effective July 7, 2010, 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.⁴ PSCo should file these tariff provisions as a compliance filing within 30 days of the date of the issuance of this order with the applicable effective dates through the eTariff portal for inclusion in its electronic tariff.⁵ 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.⁶

³ We note that PSCo and Intermountain agreed to a protocol regarding how scheduling and dispatching priorities for the Comanche 3 generating unit will affect energy and billings.

⁴ As a part of our approval of the uncontested settlements, we grant waiver of the fuel cost and purchased economic power adjustment clause regulations in 18 C.F.R. § 35.14 (2010).

⁵ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).

⁶ 16 U.S.C. § 824e (2006).

The Commission orders:

(A) The revised tariff sheets and corresponding settlements filed in Docket Nos. ER10-192-002, ER10-192-003, ER10-192-004, and ER10-192-005 are hereby accepted for filing, effective July 7, 2010, and approved, respectively.

(B) The PSCo is hereby directed to make a compliance filing to incorporate these tariff provisions under the eTariff portal, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.