

154 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Public Service Company of Colorado	Docket Nos. ER16-178-000 ER16-180-000 ER16-180-001
Black Hills/Colorado Electric Utility Company, LP	ER16-212-000 ER16-212-001 ER16-217-000 ER16-217-001

ORDER ACCEPTING JOINT DISPATCH AGREEMENT AND TARIFF REVISIONS

(Issued February 18, 2016)

1. In this order, we accept Public Service Company of Colorado's (PSCo) tariff revisions implementing Joint Dispatch Transmission Service and a Joint Dispatch Agreement to facilitate the centralized intra-hour dispatch of resources within PSCo's balancing authority area, to be effective January 1, 2016, as requested. PSCo, Black Hills/Colorado Electric Utility Company, LP (Black Hills), and Platte River Power Authority (Platte River) (collectively, the Parties) are the three parties to the Joint Dispatch Agreement. We also accept Black Hills' tariff revisions implementing the Joint Dispatch Transmission Service and Joint Dispatch Concurrence Filing, to be effective January 1, 2016, as requested. We also direct PSCo to submit an informational report following the conclusion of each of the first two years of Joint Dispatch Agreement operations, as discussed below.

I. Background

2. On June 23, 2015, the Commission rejected a prior version of PSCo's proposed tariff revisions to implement Joint Dispatch Transmission Service and a Joint Dispatch Agreement to facilitate the centralized intra-hour dispatch of resources within PSCo's

balancing authority area, as well as Black Hills' tariff revisions implementing the Joint Dispatch Transmission Service and a Joint Dispatch Concurrence Filing.¹ In the June 23 Order, the Commission found that PSCo had not shown that its proposed payment structure for resources dispatched under the Joint Dispatch Agreement would result in rates that are just and reasonable. The Commission stated that, unlike other joint dispatch agreements that have been accepted by the Commission, PSCo proposed to pay resources dispatched as Joint Dispatch Energy at a system-wide price derived from a system-wide marginal cost. The Commission found that, as a result, PSCo's generation would not be compensated at cost-based rates; rather it would be compensated at a ceiling rate derived from the cost of the most expensive MW required to serve aggregate loads under the Joint Dispatch Agreement.² The Commission concluded that, although the Joint Dispatch Agreement only dispatched and priced Joint Dispatch Energy based on system-wide marginal cost, there were insufficient protections to mitigate against the potential market power in the relevant balancing authority area, given that PSCo has the ability to exercise market power through the costs of the units it commits to serve load.³

3. The Commission also found that, as proposed, participation in the Joint Dispatch Agreement required "the Parties to grant PSCo's merchant function access to non-public information that, under the Standards of Conduct, should be restricted to PSCo's transmission function."⁴ The Commission found that, because the Joint Dispatch Agreement was administered by PSCo's merchant function, it is not possible to prevent PSCo's merchant function from using the commercially sensitive, non-public information to its own competitive advantage. The Commission also stated that "many of the Commission's concerns regarding possible Standards of Conduct violations and oversight of the administration of the Joint Dispatch Agreement could be remedied if the dispatch service under the Joint Dispatch Agreement was provided by PSCo's transmission function or another division of PSCo that would be prohibited from being a conduit for sharing non-public transmission information with PSCo's merchant function."⁵

4. On July 23, 2015, PSCo submitted a request for rehearing of the June 23 Order. PSCo argues that, although the revised Joint Dispatch Agreement will no longer raise the

¹ *Pub. Serv. Co. of Colorado*, 151 FERC ¶ 61,248 (2015) (June 23 Order).

² *Id.* P 99.

³ *Id.*

⁴ *Id.* P 100.

⁵ *Id.* P 101.

concerns expressed in the June 23 Order, it believes that the policy issues discussed in its request for rehearing remain important and are not rendered moot by the revised Joint Dispatch Agreement.⁶ We deny PSCo's rehearing request and grant clarification in a separate order issued concurrently with this order.⁷

II. Instant Filings

5. On October 30, 2015, PSCo filed tariff revisions implementing Joint Dispatch Transmission Service and a revised Joint Dispatch Agreement. Also on October 30, 2015, Black Hills filed tariff revisions implementing Joint Dispatch Transmission Service⁸ and a Joint Dispatch Concurrence Filing.⁹ PSCo explains that, in light of the issues identified in the June 23 Order, the Parties have renegotiated the Joint Dispatch Agreement to address the Commission's concerns that resulted in the rejection of the filings in the June 23 Order.¹⁰

A. Joint Dispatch Agreement

6. PSCo states that the Joint Dispatch Agreement is representative of a long standing interest in development and participation in a broader energy market, and that, for some time, it has sought the efficiency benefits of integrated regional market operations.¹¹ PSCo also explains that several revisions to the Joint Dispatch Agreement have been made to address the concerns raised in the June 23 Order, and that these revisions include revisions to implement a portal and information-sharing restrictions to address Standards of Conduct issues, a cost-based ceiling on the prices that PSCo may be paid under the

⁶ Joint Dispatch Agreement Transmittal at 5.

⁷ *Pub. Serv. Co. of Colorado*, 154 FERC ¶ 61,108 (2016).

⁸ Black Hills' tariff revisions to implement Joint Dispatch Transmission Service mirror those filed by PSCo. Ex. BHCE-1 Testimony of Eric Egge at 10 (Egge Test.).

⁹ Black Hills' Concurrence Filing contains a Certificate of Concurrence with the Joint Dispatch Agreement and a Concurrence Tariff Record.

¹⁰ Joint Dispatch Agreement Transmittal at 2.

¹¹ *Id.* at 4.

Joint Dispatch Agreement to address market-power issues, a reporting requirement, and clarifications regarding tagging of certain Joint Dispatch Agreement transactions.¹²

7. PSCo states that the Joint Dispatch Agreement is not a commitment agreement, and will not involve the Parties offering their resources for joint resource planning or commitment. Rather, each Party will continue to commit sufficient generation resources to meet its own native load requirements, plus operating reserves, in addition to any system – or unit-power sales and purchases, as it currently does. PSCo reiterates that the purpose of the Joint Dispatch Agreement is to implement a more efficient mechanism for the provision of imbalance energy among the parties.¹³

8. According to PSCo, the Parties will determine how much or how little of their resources to make available for dispatch under the Joint Dispatch Agreement, and each Party must designate its resources as one of two types: Dispatchable Units or Non-Dispatchable Units. PSCo also states that each Party also provides an Economic Dispatch Maximum Capacity for each of its Dispatchable Units, which provides a range of dispatch levels for each resource.¹⁴

9. PSCo explains that only Dispatchable Units will be dispatched under the Joint Dispatch Agreement, and that no control is conferred over a Party's Non-Dispatchable Units. PSCo further explains that all Parties except PSCo have discretion in determining which of their resources to designate as Dispatchable Units and which to designate as Non-Dispatchable Units.¹⁵

10. PSCo states that energy prices under the Joint Dispatch Agreement are determined on an *ex post* basis, such that pricing is determined after it is delivered within the PSCo balancing authority area, and that there are three basic types of energy products under the Joint Dispatch Agreement: (1) Joint Dispatch Energy; (2) Deficit Energy; and (3) Surplus Energy. PSCo explains that the majority of energy dispatched under the Joint Dispatch Agreement will be Joint Dispatch Energy to be priced on a per MWh basis at the System Marginal Price, which is the incremental cost of the next most economic megawatt of electricity capable of being generated by a Party's dispatchable unit. PSCo points out that pricing for this type of energy will never be less than \$0/MWh, and

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.* (citing Joint Dispatch Agreement § 3.6).

¹⁵ *Id.* (citing Joint Dispatch Agreement § 3.2).

explains that the pricing calculation is determined on an hourly basis and is based on the incremental fuel cost as observed at the unit's hourly integrated generation, plus any non-fuel variable operations and maintenance costs.¹⁶

11. PSCo states that, under the revised Joint Dispatch Agreement, there is a cap on payments for Joint Dispatch Energy to PSCo such that PSCo cannot receive a price for Joint Dispatch Energy that exceeds the applicable ceiling rates under the PSCo Electric Coordination Service Tariff. According to PSCo, the prices at which PSCo can make sales under the Electric Coordination Service Tariff are capped by two alternate maximum demand charge levels: one derived using the units' "most likely to participate" methodology, and the other derived using the unit revenue constraint methodology, based on the costs for PSCo's Comanche 3 coal-fired generating unit. PSCo states that the purpose of the cap on Joint Dispatch Energy payments to PSCo is to address the Commission's concern that the prior version of the Joint Dispatch Agreement would enable PSCo to receive a price for energy under the Joint Dispatch Agreement that is not cost-based, in light of the fact that PSCo does not have market-based rate authority in the PSCo balancing authority area. PSCo notes that the Commission has accepted PSCo's use of the Electric Coordination Service Tariff as a form of mitigation to make sales in the PSCo balancing authority area.¹⁷

12. PSCo also explains that, if a Party's resources are insufficient to meet its hourly energy requirements within a tolerance band of 1.5 percent, the Party will purchase Deficit Energy from PSCo, and the Deficit Energy charges will be based on the energy costs PSCo incurs to provide and supply the energy, plus the greater of \$10/MWh or 10 percent of PSCo's costs for providing the Deficit Energy. PSCo states that, to address market power concerns, there is also a cap on Deficit Energy, and that, under the revised Joint Dispatch Agreement, PSCo cannot receive a price for Deficit Energy that exceeds the applicable ceiling rates under the PSCo Coordination Service Tariff. In addition, PSCo explains that the charge for Deficit Energy is intended to operate as a penalty, and is not a cost-based rate. PSCo points out that the Commission has previously explained that penalties are not cost-based and therefore cost-based support is not required.¹⁸ PSCo also explains that the Deficit Energy charges are consistent with existing, Commission-

¹⁶ *Id.* at 7-8. PSCo states that the incremental fuel cost is calculated based on the applicable fuel price and a Party-provided, second order polynomial curve.

¹⁷ *Id.* at 8 (citing *Xcel Energy Services Inc.*, 117 FERC ¶ 61,180, at P 38 (2006)).

¹⁸ *Id.* at 9 (citing *Carolina Power & Light Co.*, 95 FERC ¶ 61,429, at 62,597 (2001); *Algonquin Gas Transmission, LLC*, 115 FERC ¶ 61,067 (2006)).

accepted penalty provisions of PSCo's imbalance services under Schedule 9 of the Xcel Energy Services Inc. (Xcel) Open Access Transmission Tariff (OATT).

13. PSCo states that Surplus Energy is sold to PSCo when a Party has generation resources in excess of its requirements, outside of the tolerance band. According to PSCo, the other Parties do not sell Surplus Energy to each other. PSCo states that the other Parties are not mitigated in their ability to make market-based rate sales within the PSCo Balancing Authority Area. PSCo also explains that there is a penalty aspect to the price for Surplus Energy in order to provide the correct incentives, and that the price for Surplus Energy is the system marginal price minus \$1/MWh in order to discourage excessive over-production of energy.¹⁹

14. PSCo further explains that the Joint Dispatch Agreement includes a management fee of \$0.50/MWh to be paid by Joint Dispatch Agreement participants to PSCo for the costs of facilitating the Joint Dispatch Agreement. According to PSCo, the fee has been agreed to by the Parties and is intended to compensate PSCo for the costs of the infrastructure to support the Joint Dispatch Agreement and the costs of administering it. PSCo states that it will bear the cost to set up the systems that will price and settle the energy exchanged under the Joint Dispatch Agreement, which PSCo anticipates to be approximately \$450,000. PSCo states that it is difficult to quantify with precision the ongoing costs to support the coordinated dispatch of the pool of resources.²⁰ PSCo explains that the activities associated with management of the Joint Dispatch Agreement will be incurred by PSCo's Commercial Operations and PSCo's Business System organization. PSCo states that part of PSCo's Commercial Operations staff is part of the PSCo marketing function, and that PSCo's Business Systems organization is a support organization that is not part of PSCo's marketing or transmission function. PSCo also states that the Commercial Operations group and Business Systems organization will incur costs associated with administration of the Joint Dispatch Agreement.²¹

15. PSCo explains that the management fee is in the nature of a "hard-to-quantify" adder. According to PSCo, the Commission has historically allowed the use of adders for

¹⁹ *Id.* at 9-10.

²⁰ PSCo states that revenues associated with the management fee will be recorded in Account 456, and that in PSCo's formula rates, these revenues will be revenue-credited to PSCo's production formula customers to offset the Joint Dispatch Agreement-related costs incurred by retail and wholesale production customers. Joint Dispatch Agreement Transmittal at 15.

²¹ *Id.* at 10.

the recovery of transmission costs related to purchase and resale service.²² PSCo states that the Commission has limited percentage adders to revenues of \$1/MWh and required submittal of cost justification for any limits beyond that amount, and states that the management fee falls below such limitation.²³ PSCo also states that the Commission has allowed percentage adders for generating entities to recover incremental energy costs.²⁴

16. PSCo also states that the Joint Dispatch Agreement Parties will pay each other for the energy transactions based on a settlement process organized by PSCo. PSCo will issue a daily report to the Parties on the next business day after the close of the operating day, and will also issue to each Party dispatch logs relating to the dispatch of the Party's dispatchable units under the Joint Dispatch Agreement. Then, PSCo will issue monthly settlement statements including the energy quantities delivered among the Parties and the applicable prices for those sales to determine the proper billing amounts. According to PSCo, these reports are inputs into the settlement procedure conducted by PSCo, which unfolds in two steps. PSCo states that in the initial settlement phase, statements are issued by PSCo seven days after the close of the operating month, and the initial settlement reflects all daily reports issued that operating month and the amounts due or owed by each Party. PSCo states that in the final settlement phase two months after the end of the operating month, PSCo makes any necessary adjustments to the initial settlement and issues to each Party a summary of the final amounts owed.²⁵

17. PSCo states that tagging of Joint Dispatch Agreement transactions will be unnecessary, with one exception. PSCo explains that unscheduled flows on qualified paths within the Western Interconnect are monitored through the Western Electricity Coordinating Council's (WECC) unscheduled flow mitigation procedure and curtailments may be issued to relieve impact loop flows on such paths. While no WECC qualified paths are located in the PSCo balancing authority area, PSCo states that it must tag transactions where the sale of Joint Dispatch Energy is from certain generators that

²² *Id.* (citing *Commonwealth Edison Co.*, 35 FERC ¶ 61,352 (1986)).

²³ *Id.* at 10-11 (citing *Limits for Percentage Adders in Electric Rates for Transmission Services*, Order No. 84, FERC Stats. & Regs. ¶ 30,153, *reh'g denied*, Order No. 84-A, 12 FERC ¶ 61,017, *clarified*, Order No. 84-B, 12 FERC ¶ 61,157 (1980)).

²⁴ *Id.* at 11 (citing *Terra Comfort Corp.*, 52 FERC ¶ 61,241, at 61,840 (1990); *Ind. & Mich. Elec. Co.*, 12 FERC ¶ 61,167 (1980); *Niagara Mohawk Power Corp.*, 86 FERC ¶ 61,009, at 61,028 (1999)).

²⁵ *Id.* at 11-12.

have been identified as having a transmission distribution factor equal to or greater than 10 percent of the WECC qualified paths.²⁶

18. PSCo also states that the Parties have structured the Joint Dispatch Agreement to minimize obstacles to other participants with resources in the PSCo balancing authority area joining the arrangement. According to PSCo, the Joint Dispatch Agreement provides that any other load-serving entity in the PSCo balancing authority area that commits to contributing generating resources to the Joint Dispatch Agreement pool and whose transmission provider agrees to provide Joint Dispatch Transmission Service may also become a party to the Joint Dispatch Agreement.

19. With respect to audit rights and transparency, PSCo explains that, under Article 20.1 of the Joint Dispatch Agreement, any party may audit the records of any other party “to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation.”²⁷ This audit authority includes the right to audit unit input parameters or fuel prices, including PSCo’s unit parameters or fuel prices. PSCo states that authorized personnel from each Party will have access to the cost data of each other to ensure that they are performing consistent with their obligations under the Joint Dispatch Agreement. To promote transparency, PSCo commits to file annual reports with the Commission for the first two years that the Joint Dispatch Agreement is in effect. PSCo states that the reports will identify the benefits derived from the Joint Dispatch Agreement and the non-firm transmission revenues.²⁸

20. In addition, PSCo states that the Parties have agreed to create a web-based portal through which the Joint Dispatch Agreement participants will individually enter the unit cost information for their resources. PSCo explains that the purpose of the portal is to prevent each Party’s merchant function personnel from accessing the confidential dispatch data that the Commission has indicated is subject to the Standards of Conduct. PSCo states that information from the portal will be transferred directly to Xcel’s Energy Management System (EMS), and PSCo’s merchant function personnel will only be able to observe the resulting unit incremental and decremental pricing and the economic dispatch order of participating units.²⁹ PSCo also states that the Parties have preserved an option for marketing function employees to see more detailed cost information, but all the

²⁶ *Id.* at 12-13.

²⁷ *Id.* at 13 (citing Joint Dispatch Agreement Article 20.1).

²⁸ *Id.* at 15.

²⁹ *Id.* at 13-14.

current Parties must first agree to such sharing. PSCo states that the “consent option” for sharing the unit cost information is based on the exception within the Commission’s Standards of Conduct that allows the public utility transmission provider to share a customer’s marketing function information with the transmission provider’s merchant function, if the customer voluntarily consents to such sharing.³⁰ PSCo states, however, that no current Party or potential Party will be required to share its data with marketing function employees as a condition of participating in the Joint Dispatch Agreement or receiving the associated Joint Dispatch Transmission Service.

B. Joint Dispatch Transmission Service

21. PSCo explains that the transmission service necessary for the Joint Dispatch Agreement dispatch over the PSCo system is Joint Dispatch Transmission Service, which is a non-firm transmission product provided only on an “as-available” basis for the sole purpose of facilitating energy transfers under the Joint Dispatch Agreement. PSCo states that the joint economic dispatch of the pooled generation resources will occur intra-hour.³¹ According to PSCo, Joint Dispatch Transmission Service is the lowest priority transmission service, with a lower priority than other non-firm transmission service under the Xcel OATT. PSCo states that Joint Dispatch Transmission Service will use only non-firm Available Transfer Capability (ATC) within the operating hour that is otherwise unused, and that is not being compensated currently. PSCo further states that, if there is no posted non-firm ATC after all other procurement and scheduling deadlines for other services have passed, no Joint Dispatch Agreement transactions will occur because Joint Dispatch Transmission Service will not be available.³²

22. PSCo states that the revisions to implement Joint Dispatch Transmission Service under the Xcel OATT include a new Article V setting forth the terms and conditions and a new Schedule 15 which specifies the zero dollar rate for Joint Dispatch Transmission Service, and a new form of Service Agreement located in Attachment V.³³ Further, PSCo states that, in order to be an eligible customer to take Joint Dispatch Transmission Service, an entity must: (1) be a load serving entity within the PSCo balancing authority area; (2) execute the Joint Dispatch Agreement with each participating transmission

³⁰ *Id.* at 14 (citing 18 C.F.R. § 358.7 (2015); *Atlantic City Electric Co.*, 82 FERC ¶ 61,028, at 61,087 (1998)).

³¹ Tariff Revisions Transmittal at 4.

³² *Id.* at 6; Joint Dispatch Agreement Transmittal at 12.

³³ Tariff Revisions Transmittal at 6.

provider; (3) offer generating resources that meet dispatch criteria into the Joint Dispatch Agreement pool; and (4) secure an agreement with its host transmission provider to provide corresponding non-firm zero-rate transmission service for use by other Parties to the Joint Dispatch Agreement.³⁴ PSCo explains that Joint Dispatch Transmission Service is only to be used by load serving entities to serve their native loads within the PSCo balancing authority area, and is not to be used as a substitute for point-to-point transmission service or Network Integration Transmission Service, and it cannot be used for off-system sales of capacity or energy for providing direct or indirect transmission service to a third party.³⁵ PSCo states that charges for losses will continue to be the responsibility of the Joint Dispatch Transmission Service customer, and will be paid for each transmission system across which the Joint Dispatch Agreement energy is transferred.³⁶

23. PSCo also states that Joint Dispatch Transmission Service is offered at a zero dollar rate to eligible customers and that no additional transmission charges will be assessed for the receipt or delivery of energy dispatched under the Joint Dispatch Agreement. According to PSCo, although there is no nominal rate for the services, Joint Dispatch Agreement Parties must engage in a reciprocal transmission exchange of Joint Dispatch Transmission Service on the systems where they are located with other Joint Dispatch Agreement Parties to provide the necessary Joint Dispatch Transmission Service. PSCo states that the Commission has recognized that transmission exchanges are a form of in-kind compensation for transmission service.³⁷ PSCo states that, if the prospective customer is not a transmission service provider, it must arrange with its transmission service provider to make Joint Dispatch Transmission Service available on the transmission service provider's system in order to accommodate Joint Dispatch Agreement transactions.³⁸ According to PSCo, imposing express transmission fees for Joint Dispatch Transmission Service would eliminate the benefits offered under the Joint Dispatch Agreement to the native loads of the Parties.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 8.

³⁷ *Id.* (citing *Central Iowa Power Cooperative, Inc. v. FERC*, 606 F.2d 1156, 1172 (D.C. Cir. 1979)).

³⁸ *Id.* at 6-7; Joint Dispatch Agreement Transmittal at 12.

24. PSCo also states that its existing customers will not be impacted by the implementation of Joint Dispatch Transmission Service, which will use only non-firm ATC within the operating hour that is otherwise unused by other transmission customers.³⁹ PSCo states that there is no reason to conclude that Joint Dispatch Transmission Service will result in a reduction of revenue credits to firm transmission customers. In this regard, PSCo states that Parties are required to have available sufficient resources to serve load plus reserves for every hour under the Joint Dispatch Agreement. PSCo explains that, even if all of the non-firm revenues PSCo receives from Platte River and Black Hills were to disappear due to the Joint Dispatch Agreement, the resulting loss of revenue credits for PSCo's firm transmission service customers would have a *de minimis* impact on their rates.⁴⁰

25. PSCo argues that the zero dollar rate is consistent with the low priority nature of the service, and the fact that each Party already must maintain adequate firm network point-to-point service on the transmission system where it is located in the amount of its entire wholesale and retail native load. PSCo states that, with a zero dollar rate, Joint Dispatch Transmission Service will function as a zonal or license-plate service, in which the customer will not be responsible for additional charges beyond those it is already bearing for transmission facilities located within its zone.⁴¹ PSCo maintains that, as a license-plate service for energy imbalance, Joint Dispatch Transmission Service is supported by the Commission's decisions on the Energy Imbalance Market (EIM) in the West.⁴²

C. Proposed Effective Date and Request for Waivers

26. PSCo requests that the Commission waive its 60-day prior notice requirements to permit the revised Joint Dispatch Agreement to be effective January 1, 2016.⁴³ PSCo states that good cause exists here to grant waiver to permit the requested effective date because the Joint Dispatch Agreement proposes charges for energy that are capped at the cost-based rates included in PSCo's Electric Coordination Service Tariff, which is

³⁹ Tariff Revisions Transmittal at 8.

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 7.

⁴² *Id.* (citing *PacifiCorp*, 147 FERC ¶ 61,227, at P 146 (2014)).

⁴³ Joint Dispatch Agreement Transmittal at 15 (citing 18 C.F.R. § 35.3(a)).

already on file with the Commission, and that in advance of its filing PSCo posted a copy of components of the filing for its transmission customers' review.⁴⁴

III. Notice of Filings and Responsive Pleadings

27. Notice of PSCo's filing of tariff revisions to implement Joint Dispatch Transmission Service in Docket No. ER16-178-000 was published in the *Federal Register*, 80 Fed. Reg. 68,524 (2015), with interventions and protests due on or before November 20, 2015. Notice of PSCo's filing of the Joint Dispatch Agreement in Docket No. ER16-180-000 was published in the *Federal Register*, 80 Fed. Reg. 68,525 (2015), with interventions and protests due on or before November 20, 2015.

28. Notice of Black Hills' filing of tariff revisions to implement Joint Dispatch Transmission Service in Docket No. ER16-212-000 and notice of Black Hills' Joint Dispatch Concurrence Filing in Docket No. ER16-217-000 was published in the *Federal Register*, 80 Fed. Reg. 69,216 (2015), with interventions and protests due on or before November 20, 2015.

29. Intermountain Rural Electric Association submitted a timely motion to intervene in all dockets. Tri-State Generation and Transmission Association, Inc. (Tri-State) submitted a timely motion to intervene and protest in all dockets. Western Area Power Administration (Western) submitted a timely motion to intervene in Docket No. ER16-178-000, and motions to intervene out-of-time in Docket Nos. ER16-180-000, ER16-212-000, and ER16-217-000. On December 7, 2015, Xcel⁴⁵ on behalf of its utility operating affiliate PSCo submitted an answer to Tri-State. On December 9, 2015, Platte River submitted a motion to intervene out-of-time and limited comments in support in all dockets.

30. On December 9, 2015, Commission staff issued a letter indicating that the filings submitted by PSCo and Black Hills were deficient and requesting further information.⁴⁶ Also, on December 9, 2015, a notice of conference was issued stating that Commission staff would meet with PSCo and interested parties on December 15, 2015 (December Conference) to discuss matters related to the filings submitted by PSCo and

⁴⁴ *Id.* (citing 18 C.F.R. § 35.11; *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992)).

⁴⁵ We will refer to Xcel as PSCo.

⁴⁶ The deficiency letter was issued in Docket Nos. ER16-180-000, ER16-178-000, ER16-212-000, and ER16-217-000.

Black Hills, including matters related to: (1) the cost-based rate cap for energy provided pursuant to the Joint Dispatch Agreement; (2) Standards of Conduct issues; and (3) the proposed joint dispatch web portal.⁴⁷

31. On December 29, 2015, PSCo submitted a response to the deficiency letter and comments in response to the December Conference, including revisions to the Joint Dispatch Agreement filed in eTariff format to reflect its response to the deficiency letter.⁴⁸ Also on December 29, 2015, Black Hills submitted a response to the deficiency letter and post-conference comments in support of PSCo's comments.⁴⁹

32. Notice of PSCo's December 29, 2015 response to the deficiency letter in Docket No. ER16-180-001 was published in the *Federal Register*, 81 Fed. Reg. 234 (2016), with interventions and protests due on or before January 19, 2016. Notice of Black Hills' response to the deficiency letter in Docket Nos. ER16-212-001 and ER16-217-001 was published in the *Federal Register*, 81 Fed. Reg. 477 (2016), with interventions and protests due on or before January 19, 2016.

33. On December 31, 2015, Platte River filed an answer in support of PSCo's response to the deficiency letter, tariff revisions, and request for waiver to permit the revised Joint Dispatch Agreement and tariff revisions to become effective on January 1, 2016.⁵⁰ On January 19, 2016, Tri-State submitted a timely supplemental protest. On February 3, 2016, PSCo, Black Hills, and Platte River filed a motion for rejection of Tri-State's supplemental protest, or in the alternative, an answer to Tri-State's supplemental protest. On February 12, 2016, Tri-State filed an answer in response to the answer of PSCo, Black Hills, and Platte River.

⁴⁷ The notice was issued Docket Nos. ER15-237-004, ER15-326-001, ER16-178-000, ER16-180-000, ER15-295-003, ER15-348-003, ER16-212-000, and ER16-217-000.

⁴⁸ PSCo's revisions to the Joint Dispatch Agreement filed in eTariff format were filed in Docket No. ER16-180-001.

⁴⁹ Black Hills' filed its response to the deficiency letter in eTariff format in Docket Nos. ER16-212-001 and ER16-217-001.

⁵⁰ Platte River filed its December 31, 2015 Answer in Docket Nos. ER16-180-001 and ER16-178-000.

A. Comments and Protests

34. Platte River supports Commission acceptance of the revised Joint Dispatch Agreement and related tariff revisions, stating that the revised proposal is a valuable mechanism to realize cost savings and to enhance grid efficiencies. In addition, Platte River states that the Joint Dispatch Agreement will create opportunities for PSCo, Black Hills, and Platte River to purchase energy at a lower rate than would be possible if any single participant produced that energy independently.⁵¹ According to Platte River, these cost savings will in turn be passed on to the wholesale and retail customers within the PSCo balancing authority area, including to Platte River's municipal wholesale electric customers.

35. Platte River argues that the re-negotiated Joint Dispatch Agreement fully responds to the two concerns raised by the Commission in the June 23 Order.⁵² Specifically, Platte River states that the Joint Dispatch Agreement has been revised to provide that PSCo's sales under it will be capped at the cost-based rates on file with the Commission in PSCo's Electric Coordination Service Tariff, and to provide for a web portal through which Joint Dispatch Agreement participants will input unit cost information used for dispatch under the Joint Dispatch Agreement. Platte River explains that access to this web portal will be restricted to authorized personnel only, and PSCo's marketing function employees will not have access to unit-specific economic data of the Joint Dispatch Agreement participants. Platte River asserts that these changes to the Joint Dispatch Agreement adequately address the Commission's concerns.⁵³

36. Tri-State continues to have a number of concerns with the Joint Dispatch Agreement and Joint Dispatch Transmission Service proposals, and argues that the Commission should reject the proposals on the ground that they have not been shown to be just and reasonable, or in the alternative, it should suspend the filings for the maximum period subject to the outcome of a hearing.⁵⁴ Tri-State argues that, rather than provide a discounted rate for non-firm transmission service, the Joint Dispatch Agreement Parties propose an in-kind exchange of transmission facilities. However, Tri-State contends that, because PSCo has significantly more transmission than its Joint Dispatch Agreement counterparts, the "in-kind" exchange is not actually

⁵¹ Platte River Comments at 4.

⁵² *Id.* at 2.

⁵³ *Id.* at 5.

⁵⁴ Tri-State Protest at 17.

comparable. Specifically, Tri-State explains that, as a network transmission customer, Tri-State has been charged for transmission service on the basis of PSCo's annual transmission revenue requirement, but that now, under the Joint Dispatch Agreement construct, PSCo will allow the Parties to use PSCo's transmission facilities for free on a non-firm basis and, in exchange, is collecting a management fee and other penalty charges for such usage.⁵⁵

37. According to Tri-State, the Parties' proposed in-kind exchange does not adequately address the compensation issue. Tri-State argues that, while the Commission has acknowledged that transmission exchanges can act as a form of in-kind compensation for transmission service, "it has also required a compensation structure where transmission contributions are infeasible or inadequate."⁵⁶ Tri-State argues that, here, the Parties are not contributing equal amounts of transmission facilities and the zero dollar rate for transmission service does not recognize the disproportionate contributions.⁵⁷

38. Tri-State asserts that another problem with PSCo's proposal is that the Parties are creating a loose power pool but are not implementing the types of transmission rate measures required by the Commission for such a pool.⁵⁸ Tri-State contends that the proposal to offer a zero dollar rate does not comport with the Commission's policy to allow for discounts on transmission service only to the extent necessary to increase throughput.⁵⁹ Tri-State asserts that PSCo is not offering a discount to its firm point-to-

⁵⁵ *Id.* at 9.

⁵⁶ *Id.* at 7 (citing *Central Iowa Power Coop. v. FERC*, 606 F.2d 1156, at 1172 (1979); *Mid-Continent Area Power Pool Agreement*, 58 FPC 2622 (1977); *Mid-Continent Area Power Pool*, 69 FERC ¶ 61,347, at 62,303 (1994)).

⁵⁷ *Id.*

⁵⁸ *Id.* at 8 (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, at 31,728 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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)).

⁵⁹ *Id.* (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,274).

point rate, but is instead providing transmission at no cost to a select group of customers for purposes unrelated to increasing throughput on its system.

39. Tri-State also argues that Black Hills, Platte River, and PSCo's merchant function currently take non-firm transmission service from PSCo in the absence of the Joint Dispatch Agreement, and the revenues from such services are credited against the transmission rates for PSCo's firm transmission customers. Tri-State argues that, instead of proposing a discount, PSCo is offering Joint Dispatch Transmission Service at a zero dollar rate, and, in doing so, is shifting amounts it would have collected and credited to transmission customers to its merchant function in the form of both a negotiated management fee and a negotiated Surplus and Deficit Energy charge. According to Tri-State, as a transmission customer of PSCo, Black Hills, and Platte River, it continues to pay for the transmission facilities that are used for Joint Dispatch Transmission Service, even though Tri-State is not a Party and cannot take Joint Dispatch Transmission Service based solely on its status as a network transmission customer of the Parties.⁶⁰

40. Tri-State argues that the Commission should distinguish participation in the Joint Dispatch Agreement from the recent energy imbalance market orders, asserting that there are key distinctions between PSCo's Joint Dispatch Agreement and the EIM. Tri-State argues that, unlike the EIM, which spans multiple balancing authority areas, PSCo's proposed Joint Dispatch Agreement is specifically limited to its own balancing authority area. According to Tri-State, the elimination of transmission charges in the EIM was needed to avoid rate pancaking and distortion of competitive bids. Tri-State contends that is not the case with respect to the proposed Joint Dispatch Agreement because PSCo is not proposing a real-time market based on competitive bidding.⁶¹

41. In addition, Tri-State argues that the Commission's reasoning for elimination of PacifiCorp's transmission charges in the EIM does not apply here.⁶² Rather, Tri-State asserts that the Commission should find that PSCo, Black Hills, and Platte River are similarly situated to the Southwest Power Pool (SPP) in the SPP real-time imbalance market orders because, under the Joint Dispatch Agreement, they are creating an imbalance market where none previously existed, each party has its own tariff under which it charges for non-firm transmission service, and each party will now provide that

⁶⁰ *Id.* at 9 (citing PSCo Transmittal Letter at 13).

⁶¹ *Id.* at 10.

⁶² *Id.* (citing *PacifiCorp*, 149 FERC ¶ 61,057, at P 66 (2014)).

same service under a single agreement.⁶³ Tri-State asserts that, because the Parties each currently charges for non-firm point-to-point transmission service, they should not be allowed to pool their transmission and eliminate the transmission charge without following the other requirements for loose power pools. Tri-State concludes that the Parties should be required to charge for non-firm transmission service in connection with Joint Dispatch Transmission Service transactions, as SPP was required to charge for transmission service in connection with its energy imbalance market.

42. Tri-State also contends that the structure of the Joint Dispatch Agreement and Joint Dispatch Transmission Service provides PSCo's merchant function an undue advantage.⁶⁴ Tri-State argues that PSCo is by far the largest of the three Parties, it operates the balancing authority area in which Joint Dispatch Transmission Service will be provided, it has market power within its balancing authority area, and it is proposing to have its merchant function administer the Joint Dispatch Agreement and Joint Dispatch Transmission Service.⁶⁵ Further, Tri-State argues that, unlike an independent system operator (ISO) or regional transmission organization (RTO) which would have no incentive to leverage its control over market administration and transmission service, PSCo is not operating independent of its merchant function.⁶⁶

43. Tri-State argues that PSCo's merchant function will have access to certain cost and dispatch information that is not available to other parties. Tri-State asserts that, while PSCo has proposed to restrict access to certain data, those restrictions are not being applied to the most confidential and important data, specifically the incremental and decremental pricing information for the generating units participating in the Joint Dispatch Agreement.⁶⁷ In this regard, Tri-State claims that the ability of PSCo's merchant function to access this pricing information "can have an effect on the non-[Joint Dispatch Agreement] bilateral market since PSCo is the largest entity in the [balancing authority area], has market power in the [balancing authority area], and will be privy to cost information that other entities do not have."⁶⁸ Tri-State contends that PSCo's

⁶³ *Id.* at 10-11 (citing *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,289, at PP 98-104 (2006) (*SPP*)).

⁶⁴ *Id.* at 11.

⁶⁵ *Id.* at 3.

⁶⁶ *Id.* at 11.

⁶⁷ *Id.* at 4, 12.

⁶⁸ *Id.* at 12.

merchant function could use this confidential information to gain an unfair competitive advantage in developing strategies for unit commitments within the Joint Dispatch Agreement process, and could influence PSCo's actions in the bi-lateral hourly, day-ahead, and long-term wholesale electricity markets.

44. In addition, Tri-State asserts that PSCo will be collecting \$1/MWh for transactions where it is not supplying from its resources or purchasing from other's resources, is offering a zero dollar rate for Joint Dispatch Transmission Service, and is merely balancing an over-supply by one Party against the under-supply of another Party. Tri-State contends that PSCo's merchant function will thereby fill the role of a neutral, independent party, and will receive a non-cost justified management fee from the other Parties.⁶⁹

45. Tri-State asserts that PSCo's proposal to charge non-PSCo Joint Dispatch Agreement participants a negotiated, non-cost justified penalty for both Deficit Energy and Surplus Energy in exchange for these parties not being assessed energy imbalance charges under the PSCo transmission tariff is not just and reasonable. According to Tri-State, a non-PSCo Joint Dispatch Agreement participant with insufficient resources to meet its hourly energy requirements within a tolerance band of 1.5 percent will purchase Deficit Energy from PSCo at a premium equal to the greater of \$10/MWh or 10 percent of PSCo's costs, and, when a non-PSCo participant generates energy in excess of 1.5 percent of its requirements, it will sell the Surplus Energy to PSCo at the system marginal price minus \$1/MWh. Tri-State contends that neither of these penalties is consistent with the existing, Commission-accepted penalty provisions of PSCo's imbalance services under the Xcel OATT. Tri-State also argues that it appears that the penalty revenues are credited to PSCo's merchant function, rather than to PSCo's transmission customers.⁷⁰

46. Tri-State additionally argues that PSCo fails to justify the Deficit Energy premium and Surplus Energy penalty charges. As an example, Tri-State argues that generators participating in the Joint Dispatch Agreement will be providing PSCo essentially free regulation service, but it is not clear how PSCo's costs of administering the Joint Dispatch Agreement are offset by any such benefits it will be receiving. According to Tri-State, these charges were arbitrarily chosen, and are not just and reasonable. Tri-State also argues that PSCo does not provide adequate support for its proposed management fee; Tri-State questions why the Joint Dispatch Agreement Parties have not included a true-up provision in the Joint Dispatch Agreement that would allow PSCo to

⁶⁹ *Id.* at 13.

⁷⁰ *Id.* (citing *Entergy Services, Inc.*, 124 FERC ¶ 61,148, at P 19 (2008)).

recover only its actual costs once those costs are known. Tri-State asserts that a true-up provision may also make Joint Dispatch Agreement participation more attractive to potential members who were not given an opportunity to participate in the negotiation of a \$0.50/MWh fee for PSCo's merchant function. Tri-State argues that, to the extent that PSCo stands to over-recover against its actual costs of operating the Joint Dispatch Agreement and Joint Dispatch Transmission Service, the Commission should require that PSCo reimburse transmission customers those excess revenues to offset the \$0 transmission rate that PSCo is offering under the Joint Dispatch Agreement. Tri-State argues that allowing PSCo to keep any profits derived from the provision of free service or the Surplus and Deficit Energy revenues would amount to a cross-subsidy for the benefit of Parties and PSCo at the expense of PSCo's transmission customers.⁷¹

47. Finally, Tri-State argues that PSCo's cost-based rate cap does not adequately mitigate market power concerns. Tri-State contends that, because PSCo has market power in its balancing authority area, it should be using mitigated offers based on the short-run marginal cost of its applicable generating unit. According to Tri-State, the Commission has previously required a mitigated offer rate cap where a market participant has local market power.⁷² Tri-State asserts that, because PSCo's cost-based tariff rate consists of a fixed demand charge and an energy charge that includes a portion of PSCo's system incremental costs, a cost-based rate cap will be higher than a mitigated offer that is based only on PSCo's short-run marginal costs.⁷³

B. PSCo's Answer

48. In its answer, PSCo argues the issues that Tri-State brings up in its protest are based on misunderstandings of the Joint Dispatch Agreement rather than fact.⁷⁴ In response to Tri-State's arguments that the revised Joint Dispatch Agreement does not properly mitigate market power and that PSCo offers should be based on the short-run marginal cost of the applicable generating unit, PSCo asserts that the revised Joint Dispatch Agreement contains a cost-based cap on the compensation that PSCo's generation may receive under the Joint Dispatch Agreement.⁷⁵ PSCo explains that the

⁷¹ *Id.* at 14-15.

⁷² *Id.* at 16 (citing *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,226, at PP 2, 67 (2015); *PJM Interconnection, LLC*, 110 FERC ¶ 61,053, at P 25 (2005)).

⁷³ *Id.*

⁷⁴ PSCo December 7 Answer at 1, 4.

⁷⁵ *Id.* at 5.

energy rates that it would receive are cost-based rates because the revised Joint Dispatch Agreement caps the prices PSCo may receive at the rates in PSCo's Electric Coordination Service Tariff.⁷⁶ PSCo argues that, if the Commission found a seller's cost-based rate to be just and reasonable, rates offered by the seller below that rate are also just and reasonable.⁷⁷ Moreover, PSCo adds that it could make short-term sales in its balancing authority area using the cost-based rates of the Electric Coordination Service Tariff to any Joint Dispatch Agreement Party, if the sale is not under the Joint Dispatch Agreement, and that PSCo would not be limited to short-run marginal cost recovery.⁷⁸

49. Additionally, while PSCo states that Tri-State is correct that the Electric Coordination Service Tariff includes demand costs in its cost-based cap, unlike the ISO and RTO precedent Tri-State relies upon, PSCo asserts that the Joint Dispatch Agreement does not provide that all resources receive a clearing price set by the marginal unit; rather, under the Joint Dispatch Agreement, a Party is paid only for incremental energy that exceeds its own energy requirements and that is economic. PSCo explains that this is only a relatively small amount of incremental energy and not the full output of the Parties.⁷⁹ PSCo also asserts that, even in the ISO and RTO context where the Commission has denied the inclusion of fixed costs in mitigated offers in the energy market, the Commission does not prohibit the contribution to fixed costs through other mechanisms.⁸⁰

50. PSCo explains that the terms of the Joint Dispatch Agreement require dispatch based on incremental cost data supplied by the Joint Dispatch Agreement participants. Moreover, according to PSCo, should a PSCo unit be eligible for compensation that may contribute to fixed costs if the system marginal price is set by a more expensive unit from a different Party, the cost-based cap on payments to PSCo will limit the payments that PSCo may receive.⁸¹

⁷⁶ *Id.*

⁷⁷ *Id.* at 6 (citing *Public Service Company of Oklahoma*, 54 FERC ¶ 61,021, at 61,032 and n.8 (1991)).

⁷⁸ *Id.*

⁷⁹ *Id.* at 6-7.

⁸⁰ *Id.* at 7-8.

⁸¹ *Id.* at 9.

51. In response to Tri-State concerns about the treatment of market-sensitive information under the revised Joint Dispatch Agreement, PSCo clarifies that competitive, sensitive information is not accessible to any marketing function employees of the Parties.⁸² PSCo explains that the web portal functions as a mechanism for Parties to input commercially sensitive information into the EMS, bypassing the review of PSCo's marketing function employees.⁸³ PSCo adds that only non-merchant employees configure and maintain the EMS dispatch algorithm.⁸⁴

52. PSCo states that Joint Dispatch Transmission Service is not analogous to a discounted transmission rate.⁸⁵ PSCo argues that Joint Dispatch Transmission Service is a lower quality service than non-firm transmission service, noting that it is available only to the extent that other transmission service has not been scheduled.

53. PSCo also explains that Joint Dispatch Transmission service does not shift revenues to its merchant function. PSCo argues that Tri-State is in error when it suggests that the Joint Dispatch Agreement will reduce non-firm revenues. PSCo states that Joint Dispatch Agreement transactions are only possible because of the Joint Dispatch Agreement, and should not reduce the incentives to use non-firm point-to-point service.⁸⁶

54. PSCo further states that the revenues its merchant function collects are narrowly tailored to the purposes of the Joint Dispatch Agreement. PSCo notes that the management fee is solely to reimburse its merchant function for the costs of operating the Joint Dispatch Agreement. PSCo states that the Deficit Energy charges are solely to ensure that Parties adhere to the purposes of the Joint Dispatch Agreement.⁸⁷

55. PSCo asserts that, despite Tri-State's arguments, PSCo's proposal for zero-rate Joint Dispatch Transmission Service seeks to resolve the same rate-pancaking issues that led the EIM to eliminate transmission charges.⁸⁸ PSCo also notes that, in *SPP*, the

⁸² *Id.*

⁸³ *Id.* at 10.

⁸⁴ *Id.*

⁸⁵ *Id.* at 10-11.

⁸⁶ *Id.* at 12.

⁸⁷ *Id.*

⁸⁸ *Id.* at 13.

Commission did not require market participants to pay transmission access charges; it merely accepted SPP's proposal to do so.⁸⁹

56. With regard to Tri-State's arguments regarding loose power pools, PSCo states that, under Tri-State's reading of Commission precedent, no reciprocal transmission exchange would be permitted unless the value of the transmission exchanged was objectively equal. PSCo argues that this is at odds with Commission precedent in the EIM and would erect practical difficulties for energy imbalance arrangements between PSCo and smaller entities.⁹⁰ PSCo argues that the Joint Dispatch Agreement does not contemplate the exchange of valuable firm transmission access, as contemplated by Commission precedent regarding power pools.⁹¹ PSCo states that smaller entities are encouraged to participate, and only require Joint Dispatch Transmission Service to participate in the Joint Dispatch Agreement.

57. PSCo also argues that it satisfies the nondiscriminatory membership provisions of Order No. 888.⁹² PSCo states that it is unaware of any reason preventing Tri-State from becoming a party to the Joint Dispatch Agreement. PSCo notes that Joint Dispatch Transmission Service is available for Tri-State under the OATTs of Xcel and Black Hills.

58. PSCo argues that the charges for Deficit and Surplus Energy are just and reasonable. PSCo states that the Joint Dispatch Agreement is not designed to sidestep energy imbalance provisions in Schedule 4 of the Xcel OATT. Rather, PSCo states that the Joint Dispatch Agreement is an entirely new and more complex arrangement that involves the balancing of all loads and generation.⁹³

59. PSCo also states that, contrary to Tri-State's suggestion, Commission precedent does not require it to credit Deficit or Surplus Energy penalties to transmission customers.⁹⁴ PSCo states that these charges are not associated with the scheduling of transmission. PSCo also argues that these charges are based on the cost of providing

⁸⁹ *Id.* at 15.

⁹⁰ *Id.* at 16.

⁹¹ *Id.* at 18.

⁹² *Id.* at 19.

⁹³ *Id.* at 19-20.

⁹⁴ *Id.* at 20-21.

service, so there will not be excess revenue to credit to transmission customers. PSCo also argues that there is no basis in Tri-State's claim that PSCo is providing free regulation service. PSCo states that the Parties do not provide each other generation capacity to support such a service.⁹⁵

60. PSCo argues that Tri-State's arguments underestimate the complexity of administering the Joint Dispatch Agreement, which involves numerous hard-to-quantify costs.⁹⁶ PSCo further argues that it is not necessary for PSCo to pay its own management fee, because its merchant function is incurring the costs.⁹⁷ PSCo states that it is hard to quantify the costs associated with the Joint Dispatch Agreement, and it reiterates its commitment to submit annual reports describing the benefits derived from the Joint Dispatch Agreement for the first two years that the Joint Dispatch Agreement is in effect.⁹⁸

IV. Deficiency Responses

61. In response to the Commission's December Conference and to the deficiency letter, PSCo submitted comments and tariff revisions. PSCo first clarifies that the cost-based cap applies to the total amount of Deficit Energy charge, including the penalty. PSCo states that when it provides Deficit Energy it will not be compensated at a level above the cost-based cap.⁹⁹

62. PSCo also clarifies how it would determine which cost-based cap it would use: the lower cost-based cap in Appendix A-2 of its Electric Coordination Service Tariff unless it is committed to more than 500 MW in sales from the Comanche 3 power plant or its system incremental costs exceed the cap in Appendix A-1.¹⁰⁰ PSCo also clarifies that it does not propose to use the Western System Power Pool Schedule Q cap.

63. PSCo also clarifies whether its marketing function would have access to load data. PSCo states that, in order to optimize dispatchable resources under the Joint Dispatch

⁹⁵ *Id.* at 21.

⁹⁶ *Id.* at 22.

⁹⁷ *Id.* at 23.

⁹⁸ *Id.* at 24.

⁹⁹ PSCo December 29 Response at 4.

¹⁰⁰ *Id.* at 4.

Agreement, it does not need to know specific load data. Rather, PSCo states that it only needs to know the net electric obligations of each Party. To address Commission staff's concern, PSCo proposes a tariff revision and a revision to section 3.4 of the Joint Dispatch Agreement to ensure that PSCo's marketing staff does not have specific load data.¹⁰¹ PSCo notes that the Commission has found it acceptable for a marketing function to have access to forecasted and real-time net system load information.¹⁰² PSCo also states that, in *Carolina Power & Light Company*, the Commission found that the marketing function could have access to system-wide load data but not information about the specific load information of third-party customers.¹⁰³

64. Further elaborating on the issue of the marketing function's access to load data, PSCo states that the Commission's rule against sharing third party load information does not apply with respect to customers of the marketing function. PSCo points out that the Parties are customers of one another. PSCo notes that, in *Allegheny Power Service Company*, the Commission permitted a marketing function to access third-party load information in order to accomplish joint economic dispatch.¹⁰⁴ PSCo notes that the Commission rejected arguments that such information sharing violates the Standards of Conduct because it was necessary for generation dispatch.

65. With regard to unit cost information, PSCo clarifies that its marketing function will not be able to access unit cost information unless all parties consent to the sharing of information.¹⁰⁵ PSCo notes that at the December Conference the Parties committed to post, on their own Open Access Same-time Information Systems (OASIS), a one-time notice of their voluntary consent.

66. PSCo also provides further clarification on the roles that business organizations within PSCo would play in implementing the Joint Dispatch Agreement. PSCo states that its transmission operations group would be responsible for all transmission operator functions including reliability redispatch.¹⁰⁶ PSCo states that the primary tool to optimize

¹⁰¹ *Id.* at 5.

¹⁰² *Id.* at 7 (citing *Colorado Springs Utilities*, 86 FERC ¶ 61,044, at 61,171 (1999)).

¹⁰³ *Id.* (citing *Carolina Power & Light Co.*, 86 FERC ¶ 61,146, at 61,512 (1999)).

¹⁰⁴ *Id.* at 8 (citing *Allegheny Power Service Co.*, 84 FERC ¶ 61,131 (1998)).

¹⁰⁵ *Id.* at 9.

¹⁰⁶ *Id.* at 10.

PSCo's system dispatch is the EMS. PSCo states that the Xcel Business System personnel will be responsible to maintain and support the EMS. PSCo states that it will have a dedicated, isolated space with a locked door to the extent Business System personnel access unit cost information. PSCo states that no marketing personnel will have access to this space.¹⁰⁷

67. PSCo also states that its Commercial Operations group will be responsible for day-to-day implementation of the Joint Dispatch Agreement. PSCo explains that there are seven departments in the Commercial Operations group. Of those departments, the Energy Trading & Organization group and the Power Operations group are classified as marketing function employees. PSCo states that personnel in the Real Time Dispatch group, part of the Power Operations department, will be primarily responsible for implementing the Joint Dispatch Agreement in real-time.

68. PSCo states that unit cost information data for each Party's dispatchable unit would be input by the Party directly into the Joint Dispatch Agreement Portal, which would transfer the data to the EMS without review or interference from marketing function employees. PSCo further states that its marketing function employees engaged in dispatch will only be able to view certain outputs derived after the economic dispatch is calculated within the EMS but would have no visibility into the determinants of what makes each unit economic and no ability to "back-out" the specific economics of each unit from the outputs. PSCo explains that the outputs visible to the PSCo marketing function employees would be the set-points of the units.¹⁰⁸ PSCo states that non-marketing employees will manage the Joint Dispatch Agreement Portal.

69. PSCo also explains that the Parties would have access to unit cost information that would allow them to validate that the proper resources are dispatched.¹⁰⁹ More specifically, PSCo states that non-marketing function employees of the Parties would have access to PSCo's unit cost information. PSCo states that two non-marketing employees from each Party would form the Audit Committee for the Joint Dispatch Agreement, and that they would perform periodic audits of Joint Dispatch Agreement operations.

¹⁰⁷ *Id.* at 11.

¹⁰⁸ *Id.* at 12.

¹⁰⁹ *Id.* at 13.

70. PSCo requests a waiver of the Standards of Conduct to the extent its clarifications do not satisfy the Commission's concerns.¹¹⁰

71. PSCo clarifies that its energy requirements under the Joint Dispatch Agreement include PSCo's off-system sales. PSCo states that, if its off-system sales were not included in the Joint Dispatch Agreement, it would be impossible to determine if a sale should be made under the Joint Dispatch Agreement.¹¹¹

72. PSCo states that Commission policy regarding designated Network Resources does not require the un-designation of Network Resources for non-firm sales.¹¹² PSCo states that the nature of Joint Dispatch Agreement transactions are non-firm. Finally, PSCo states that it does not use firm transmission rights to make Joint Dispatch Agreement transactions.

73. Black Hills states that it supports PSCo's post-conference comments, and that it concurs with them to the extent that such comments apply to Black Hills as a Party.¹¹³ Black Hills states that, in the event that all the Joint Dispatch Agreement Parties agreed to share certain unit cost information, it commits to make a one-time notice of the voluntary consent to its OASIS in the event of such voluntary consent. Black Hills also states that it and the other Parties consent to PSCo's revision to section 3.4 of the Joint Dispatch Agreement to ensure that PSCo's marketing function does not have access to any specific load served by any other Joint Dispatch Agreement Party. Black Hills requests that the Commission accept the Joint Dispatch Agreement and associated tariff revisions to be effective January 1, 2016.

Comments and Supplemental Protest

74. In its answer to PSCo's deficiency response, Platte River supports PSCo's response to the deficiency letter, post-conference comments, and revision to the Joint Dispatch Agreement. Platte River also supports PSCo's request for waiver of the 60-day notice requirement in order to allow the Joint Dispatch Agreement and associated tariff revisions to be effective January 1, 2016, arguing that no party would be prejudiced by granting this requested effective date. Platte River argues that allowing the Joint

¹¹⁰ *Id.* at 14.

¹¹¹ *Id.* at 15.

¹¹² *Id.* at 16.

¹¹³ Black Hills December 29 Response at 3.

Dispatch Agreement and tariff revisions to become effective at the earliest possible date will allow the Parties to realize the benefits of economic dispatch, and that these benefits will inure to Platte River's customers.¹¹⁴

75. In its supplemental protest to PSCo's deficiency response, Tri-State reiterates arguments made in its initial protest that PSCo's proposal to provide zero-rate Joint Dispatch Transmission Service is unjust and unreasonable and that the structure of PSCo's proposal provides PSCo's merchant function an undue advantage. In addition, Tri-State argues that PSCo's merchant function will continue to have access to actionable and confidential market information.¹¹⁵ Tri-State argues that PSCo's merchant function will be able to access: (1) a Party's individual resource status; (2) a participant's individual resource unit economic dispatch limit; (3) a participant's individual unit ramp rate; (4) the dispatch outputs of the EMS (i.e., every unit's resulting set points); and (5) the overall system marginal price. Tri-State argues that PSCo's merchant function will be able to derive unit cost information from this information.¹¹⁶

76. Tri-State also asserts that the Joint Dispatch Agreement will impact bilateral sales. Tri-State argues that, because the Joint Dispatch Agreement will serve the combined needs of all Parties, it will not distinguish between bilateral sales and native load.¹¹⁷ Tri-State argues that, as a consequence, bilateral sales made by a Party will receive the benefit of free Joint Dispatch Transmission Service.

77. In its answer to Tri-State's supplemental protest, PSCo states that it would not receive sensitive market information that provides any competitive advantage. It explains that the fuel type and vintage of the resources owned by the Joint Dispatch Agreement Parties are generally understood among participants in the region, and is not confidential information. Further, PSCo states that the long experience of each of the Joint Dispatch Agreement Parties provides them with a deep understanding of regional fuel prices, and that each Party can roughly approximate how each other's units might fall in a hypothetical bid stack that combined all of their units. PSCo also states that use of the web portal under the revised Joint Dispatch Agreement would prevent the PSCo

¹¹⁴ Platte River December 31 Answer at 2.

¹¹⁵ Tri-State Supplemental Protest at 14-15.

¹¹⁶ *Id.* at 15 (citing PSCo December 29 Response at 12).

¹¹⁷ *Id.* at 16.

marketing function from having access to specific marginal cost information associated with the resources.¹¹⁸

78. In its response to PSCo's answer, Tri-State reiterates its argument that PSCo could use information obtained under the Joint Dispatch Agreement to achieve an advantage in the bi-lateral market. Tri-State argues that PSCo has the advantage of observing dispatch in real-time, which it contends would give PSCo an undue advantage in bilateral sales.¹¹⁹ Tri-State also reiterates its argument that the Joint Dispatch Agreement would be used to support bilateral sales because it is supporting the combined energy requirements of all parties.¹²⁰

V. Discussion

A. Procedural Matters

79. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the 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) (2015), the Commission will grant the late-filed motions to intervene of Western and Platte River given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

80. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

81. We will accept PSCo's Joint Dispatch Agreement and the tariff revisions proposed by PSCo and Black Hills to implement Joint Dispatch Transmission Service. As PSCo and Platte River note, under the Joint Dispatch Agreement, the Parties will be able to realize substantial cost savings through the dispatch of their collective resources in a

¹¹⁸ PSCo February 3 Answer at 12-13.

¹¹⁹ Tri-State February 12 Answer at 4-5.

¹²⁰ *Id.* at 5-6.

more efficient manner. These cost savings will be passed on to their customers,¹²¹ will result in the more efficient usage of the Parties' resources, and as explained will not adversely affect any entity. With the revisions proposed by PSCo both in its filing of the revised Joint Dispatch Agreement and in response to the questions at the December Conference, PSCo has addressed the concerns that resulted in the Commission's rejection of PSCo's initial Joint Dispatch Agreement filing.

82. PSCo's proposal to cap its payments at the cost-based cap in its Electric Coordination Service Tariff, a currently-effective Tariff on file with the Commission, addresses the Commission's concerns regarding PSCo's ability to exercise market power. With respect to Tri-State's argument that this condition is not sufficient, and that Commission precedent requires offers to be mitigated at short-run marginal cost, we find that the instances cited by Tri-State involve situations where the compensation is not capped at a cost-based price.¹²² The cost-based cap in PSCo's Electric Coordination Service Tariff prevents PSCo from receiving compensation that exceeds the just and reasonable rate. Moreover, as PSCo notes, the inputs into the Joint Dispatch Agreement are based on incremental cost.¹²³

83. We also find that the Commission's concerns regarding the potential for PSCo's marketing function employees to access non-public information will be addressed by PSCo's proposal to implement a web-based portal. Further, in its post-conference comments, PSCo sets forth the additional safeguards that will be in place to ensure that PSCo's marketing function employees do not receive access to potential non-public transmission information. For example, PSCo has altered the Joint Dispatch Agreement to ensure that its merchant function will not have access to specific customer load data.¹²⁴ PSCo also committed to implementing additional physical security safeguards.¹²⁵

84. We also find PSCo's proposal for zero-rate transmission service as part of the Joint Dispatch Agreement to be just and reasonable. We disagree with Tri-State's

¹²¹ Joint Dispatch Agreement Transmittal at 4; Testimony of Terri K. Eaton, Exh. No. PSC-1 at 17.

¹²² Tri-State Protest at 16 (citing *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,226 at PP 2, 67; *PJM Interconnection, LLC*, 110 FERC ¶ 61,053 at P 25).

¹²³ PSCo December 7 Answer at 8.

¹²⁴ PSCo December 29 Response at 5.

¹²⁵ *Id.* at 11.

argument that PSCo's provision of zero-rate transmission service will deprive transmission-only customers of revenue credits and serve as an impermissible subsidy for Parties to the Joint Dispatch Agreement by transmission customers. Joint Dispatch Transmission Service makes available to the Parties the unused transmission capacity that is available after non-firm customers make their transmission reservations.¹²⁶ This transmission would otherwise be unused. As such, there will be no opportunity costs associated with Joint Dispatch Transmission Service.¹²⁷ Further, the Parties will not have discretion as to whether and how Joint Dispatch Transmission Service is used. The use of Joint Dispatch Transmission Service is entirely a function of least cost dispatch of the generation resources of the Parties. Therefore, Joint Dispatch Transmission Service does not represent a discount of non-firm transmission service, and does not serve as a substitute for that service. Parties will continue to be required to purchase transmission service for their resources and load and the introduction of Joint Dispatch Transmission Service will not deprive firm customers of non-firm revenue credits. Accordingly, it is not necessary for PSCo to charge a transmission rate for Joint Dispatch Transmission service.

85. With regard to Tri-State's argument that Joint Dispatch Transmission Service will violate Order No. 888's requirement that loose power pools establish "open, non-discriminatory membership provisions and modify any provisions that are unduly discriminatory or preferential,"¹²⁸ PSCo is not proposing the establishment of a loose power pool and as such the requirements cited to are not required of the arrangement proposed by PSCo. Nonetheless, we note that the Joint Dispatch Agreement allows any entity to join, provided, as relevant here, it makes arrangements with its transmission provider to have access to unused ATC at a zero dollar rate. This condition is not unduly burdensome, as it would not bar participation by any entity that seeks to receive the cost savings benefits of the Joint Dispatch Agreement. We find that PSCo and other Parties are not attempting to restrict access to their own transmission resources; rather, to the extent any resource only needs the transmission resources of Parties to join the Joint Dispatch Agreement, it only needs to sign the Joint Dispatch Agreement to receive Joint Dispatch Transmission Service.

86. We also disagree with Tri-State's argument that PSCo's proposal to provide non-firm transmission service at zero cost is contrary to Commission precedent in *SPP*, where the Commission accepted SPP's proposal under which participants were required to pay

¹²⁶ Testimony of Terri K. Eaton, Exh. No. PSC-1 at 11-12.

¹²⁷ *Id.*

¹²⁸ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,728.

for any transmission use in excess of reserved point-to-point use.¹²⁹ Tri-State's reliance on *SPP* is misplaced. The Commission's acceptance of SPP's proposal did not preclude zero-cost transmission service in these circumstances, and further, transmission service at zero cost was not at issue in *SPP*. Here, we find PSCo's proposal to be just and reasonable based on the facts presented in this case.

87. With regard to Tri-State's argument that Deficit Energy is tantamount to energy imbalance service and that Deficit Energy revenues should be allocated to transmission customers, we agree with PSCo that the services under the Joint Dispatch Agreement are not equivalent to the energy imbalance services under Schedule 4 of the Xcel OATT because they do not support transmission schedules. Service under the Joint Dispatch Agreement will involve the moment to moment dispatch of all resources on a least-cost basis using unused transmission capacity. Although PSCo's proposal necessarily replaces energy imbalance service, service under the Joint Dispatch Agreement is not related to the scheduling of transmission service, and so, the Joint Dispatch Agreement does not constitute energy imbalance service under Schedule 4 of Xcel's OATT. Deficit Energy is an energy sale made by PSCo under the Joint Dispatch Agreement. PSCo's Deficit Energy price is therefore reasonable, because it is capped by the price ceiling in the PSCo Electric Coordination Service Tariff, and is based on the actual cost of PSCo providing Deficit Energy.

88. With regard to PSCo's management fee, we find that the \$0.50 per MWh fee, which is based on an agreement between the Parties, to be reasonable. PSCo is charging Parties a narrowly-tailored management fee for software and staff work needed to implement the Joint Dispatch Agreement; the fee will be charged only to the Parties to the Joint Dispatch Agreement. As such, it should not have an adverse impact on other entities.

89. We also note that PSCo committed to file an annual report on the benefits of the Joint Dispatch Agreement for the first two years of operation,¹³⁰ and we will accept PSCo's commitment. We will require PSCo to submit an informational report due within six months of the conclusion of each of the first two years of Joint Dispatch Agreement operations.¹³¹ In this report, PSCo should provide information on how the Joint Dispatch Agreement has functioned in each of its first two years, including: (1) a summary of the

¹²⁹ *SPP*, 114 FERC ¶ 61,289 at PP 102-104.

¹³⁰ Joint Dispatch Agreement Transmittal at 15.

¹³¹ The report will be for informational purposes only and will not be noticed for comment or subject to Commission order.

costs and savings each of the participants has experienced, including comparisons of the cost for the last marginal unit of energy under the Joint Dispatch Agreement and the year preceding the implementation of the Joint Dispatch Agreement; (2) the pricing and volumes for Deficit, Surplus, and Joint Dispatch Energy; (3) whether any Joint Dispatch Agreement transactions have occurred on transmission paths where firm or non-firm transmission schedules or reservations have been curtailed; and (4) the actual costs associated with the management of the Joint Dispatch Agreement. We also note that PSCo, Black Hills, and Platte River have obligations to report their sales under the Joint Dispatch Agreement in their Electric Quarterly Reports, which will provide further transparency with regard to Joint Dispatch Agreement operations.¹³²

90. Finally, we will grant waiver of the 60-day prior notice requirement for good cause shown.¹³³ PSCo states that the Joint Dispatch Agreement proposes charges for energy that are capped at the cost-based rates included in PSCo's Electric Coordination Service Tariff, which is already on file with the Commission. In addition, allowing the Joint Dispatch Agreement and Joint Dispatch Transmission Service tariff revisions to become effective will allow the Joint Dispatch Agreement Parties to begin realizing the benefits of economic dispatch earlier. Accordingly, we will permit an effective date of January 1, 2016 for the tariff revisions implementing Joint Dispatch Transmission Service and the Joint Dispatch Agreement, and for Black Hills' tariff revisions implementing the Joint Dispatch Transmission Service and its Joint Dispatch Concurrence Filing.

The Commission orders:

(A) PSCo's tariff revisions implementing Joint Dispatch Transmission Service are hereby accepted for filing, effective January 1, 2016, as discussed in the body of this

¹³² *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

¹³³ *Central Hudson*, 60 FERC at 61,339 (finding that the Commission will grant waiver of the 60-day prior notice requirement if good cause is shown and the agreement is filed prior to the commencement of service).

order.

(B) Black Hills' tariff revisions implementing Joint Dispatch Transmission Service and its Joint Dispatch Concurrence Filing are hereby accepted for filing, effective January 1, 2016, as discussed in the body of this order.

(C) PSCo's Joint Dispatch Agreement is hereby accepted for filing, effective January 1, 2016, as discussed in the body of this order.

(D) PSCo is hereby directed to submit an informational report within six months of the conclusion of each of the first two years of Joint Dispatch Agreement operations, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.