

UNITED STATES OF AMERICA 107 FERC ¶ 61, 228
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of Colorado

Docket Nos. ER03-971-000
ER03-971-001, ER03-971-002,
and ER03-971-004

Intermountain Rural Electric
Association, Inc., et al.

Docket Nos. EL02-25-000
and EL02-76-000

v.

Public Service Company of Colorado

ORDER CLARIFYING PRIOR ORDER AND TERMINATING PROCEEDINGS

(Issued June 1, 2004)

1. In this order, we clarify our prior order and terminate proceedings regarding revised power purchase agreements (PPAs) between Public Service Company of Colorado (PSC of Colorado) and eight wholesale customers.¹ The Commission also clarifies that it approves settlement agreements between PSC of Colorado and the customers, effective January 1, 2004, and terminates the pending complaint and Federal Power Act (FPA) section 205 proceedings. This order benefits the parties by clarifying our prior order and terminating administrative hearing procedures.

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

Background

Complaint Proceedings

2. By order issued June 4, 2002 in Docket Nos. EL02-25-000 and EL02-76-000, the Commission set for hearing the complaints of Intermountain and other customers of PSC of Colorado, alleging that the Fuel Cost Adjustment provisions (FCA) in their PPAs were unjust and unreasonable because of inclusion of impermissible costs.² On January 31, 2003, in Docket No. EL03-33-000, a complaint by Aquila, Inc., asserting similar issues was set for hearing and consolidated with the ongoing proceeding in Intermountain.³

Section 205 Proceeding

3. On June 19, 2003, as later amended, PSC of Colorado filed in Docket No. ER03-971-000 an application pursuant to section 205 of the FPA to change its rates applicable to the eight wholesale customers described above.

Settlements

4. On December 30, 2003, PSC of Colorado filed a package intended to resolve the above proceedings. Included in this package were revised PPAs, that among other things, modified the proposed rates filed in Docket No. ER03-971-000, et al., together with a revised FCA.⁴

² Intermountain Rural Electric Ass'n v. Public Service Company of Colorado, 99 FERC ¶ 61,279 (2002).

³ Aquila, Inc., 102 FERC ¶ 61,111 (2003). The complaint by Aquila was conditionally withdrawn on December 29, 2003, subject to further action by the Colorado Public Utilities Commission. Aquila remains responsible for the submittal of a final notice of withdrawal in the proceeding in Docket No. EL03-33-000 pending before the administrative law judge..

⁴ On January 5, 2004, PSC of Colorado filed a signed agreement with Yampa Valley and a letter of concurrence. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 4298 (2004), and no interventions or protests were filed in response.

Order of February 27, 2004

5. The Commission accepted the revised PPAs, effective January 1, 2004, on the condition that, with respect to the pass-through of transmission costs, the language of the revised PPAs be amended to reflect that the rates and charges in the Agreements will be modified by PSC of Colorado at any such time that PSC of Colorado files with the Commission to modify its transmission rates under its OATT.⁵

Filings by PSC of Colorado and Yampa Valley, et al.

6. Concerned that the Commission's order did not expressly address the pending complaint proceedings and that the Commission did not act on the December 30, 2003 package as a settlement of the pending complaint proceedings, PSC of Colorado and Yampa, et al. request that the Commission reconsider its order so that the parties' settlement can be approved and put into effect as quickly as practicable. They ask that the Commission explicitly approve the settlements and grant withdrawal of the complaints. Further, by doing so, PSC of Colorado can make certain refunds to customers.

Discussion

7. To the extent our prior order may have been unclear, we clarify it and explicitly approve the parties' uncontested settlements and terminate these proceedings.⁶

The Commission orders:

(A) The settlements filed on December 30, 2003 and January 5, 2004 are hereby approved. The modified and amended PPAs, when completed and filed with the Commission by PSC of Colorado, will be accepted as PSC of Colorado rate schedules, as designated, effective January 1, 2004.

⁵ Public Service Company of Colorado, 106 FERC ¶ 61,189 (2004). On March 18, 2004, in Docket No. ER03-971-003, PSC of Colorado submitted a revised PPA with Intermountain and stated it will file amended rate schedules with all wholesale customers to reflect the flow through of transmission rate changes.

⁶ The Agreement with Cheyenne, as filed, was designated as Rate Schedule No. 94. By delegated Letter Order dated October 11, 2002, the Commission accepted a PPA between PSC of Colorado and Grand Valley and designated that agreement as Rate Schedule No. 94. Accordingly, the Agreement with Cheyenne will be designated as Rate Schedule No. 95.

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(B) The complaints in Intermountain Rural Electric Association, Inc., et al. v. Public Service Company of Colorado, Docket Nos. EL02-25-000 and EL02-76-000, are hereby considered withdrawn.

(C) Docket Nos. ER03-971-000, ER03-971-001, ER03-971-002, ER03-971-004, EL02-25-000 and EL02-76-000 are hereby terminated. PSC of Colorado's revised rate schedules filed in Docket No. ER03-971-003 will be addressed upon the filing of all modified rate schedules.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.