

166 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Public Service Company of Colorado

Docket No. ER18-2428-001

ORDER GRANTING CLARIFICATION

(Issued March 21, 2019)

1. On December 10, 2018, Xcel Energy Services, Inc. (Xcel), on behalf of Public Service Company of Colorado (PSCo), filed a request for clarification, or in the alternative, request for rehearing of the Commission's delegated letter order¹ accepting PSCo's filing of revisions to the Xcel Energy Operating Companies FERC Electric Tariff, Third Revised Volume No. 1 (Tariff).² In this order, we grant the request for clarification, as discussed below.

I. Background

2. On May 15, 2014, as amended on May 24, 2014, in Docket No. ER14-1969-000, PSCo filed revisions to the Tariff relating to the provision of certain ancillary services, including the implementation of Flex Reserve Energy Service³ under new Schedule 16. On December 5, 2014, the Commission conditionally accepted PSCo's proposed tariff revisions, suspended them for a nominal period to become effective January 1, 2015,

¹ *Pub. Serv. Co. of Colo.*, Docket No. ER18-2428-000 (Nov. 9, 2018) (delegated order) (November Letter Order).

² PSCo is a wholly-owned subsidiary of Xcel. Although Xcel submitted the request for clarification, or in the alternative, request for rehearing, for the purposes of this order we refer only to "PSCo".

³ Flex Reserve Service is a supplemental category of reserves needed to address large reduction of online wind generation due to losses in wind speed. *Pub. Serv. Co. of Colo.*, 149 FERC ¶ 61,208, at 1 (2014) (December 2014 Order).

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subject to refund, and established hearing and settlement judge procedures.⁴ On October 19, 2015, PSCo filed an offer of settlement and settlement agreement to resolve all issues in the proceeding (Settlement Agreement), which the Commission approved on March 3, 2016.⁵ Among other things, the Settlement Agreement mandated that the Required Capacity input to the Flex Reserve Service calculation under Schedule 16 be set to 411 MW.⁶

3. On April 15, 2016, PSCo submitted a filing to migrate certain Tariff records from one Tariff ID to another as a result of the implementation of new eTariff software.⁷ On June 13, 2016, while the rebaseline Tariff changes were pending Commission action, PSCo filed revised tariff sheets in Docket No. ER16-1916-000 to, among other things, modify certain terms associated with the provision of Flex Reserve Service, which PSCo stated were needed in order to ensure consistency with the tariff records approved by the Commission in the December 2014 Order.⁸

4. The June 2016 Filing was accepted on August 11, 2016.⁹ As is relevant to this proceeding, in the June 2016 Filing, PSCo stated that the proposed revisions were intended to correct a mistake in the reserved capacity factor for Schedule 16 listed on Table 2 to its transmission formula rate. Specifically, the reserved capacity factor, used in the calculation of Flexible Reserve Service, was mistakenly reflected as a fixed amount of 18.96 percent.¹⁰ Instead, PSCo states that the reserved capacity factor should have

⁴ *Id.*

⁵ *Pub. Serv. Co. of Colo.*, 154 FERC ¶ 61,164 (2016).

⁶ Required Capacity is the total amount of Flex Reserves needed on PSCo's system. Pursuant to the Settlement Agreement and Schedule 16, Required Capacity is a fixed value of 411 MW. *See* PSCo, Offer of Settlement and Settlement Agreement, Attachment C, Docket No. ER14-1969-000, at 1 (filed Oct. 19, 2015).

⁷ This "rebaseline" administrative filing was accepted on August 16, 2016 with an April 16, 2016 effective date. *Pub. Serv. Co. of Colo.*, Docket No. ER16-1422-000, Aug. 16, 2016 (delegated order).

⁸ PSCo, Filing, Docket No. ER16-1916-000, at 2 (June 13, 2016) (June 2016 Filing).

⁹ *Pub. Serv. Co. of Colo.*, Docket No. ER16-1916-000, Aug. 11, 2016 (delegated order).

¹⁰ June 2016 Filing at 3-4.

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been allowed to change based on the amount of wind on PSCo's system at any given time, thereby decreasing each customer's Flex Reserve Service obligation as more wind resources join the PSCo system.¹¹ PSCo also added additional tables as worksheets to Table 2, including a new Table 35, to illustrate the mathematical calculation of the Flex Reserve Service rate.

5. On September 14, 2018, in the instant proceeding, PSCo filed revisions to the Tariff (September 14 Filing). PSCo stated that the proposed revisions corrected tariff records in Schedule 16 and in Table 35 to Attachment O to make them consistent with the Settlement Agreement and June 2016 Filing.¹² PSCo explained that the September 14 Filing removed a reference in Schedule 16 to the 18.96 percent fixed reserved capacity factor that it inadvertently failed to remove in the June 2016 Filing.¹³ In addition, PSCo stated that it sought to revise Table 35 because the input on line 27 was erroneously reflected as a calculated amount rather than a fixed value of 411 MW.¹⁴ PSCo asserted that this revision would ensure that Table 35 was consistent with the text of Schedule 16.¹⁵

6. PSCo requested an effective date of April 16, 2016.¹⁶ No parties filed timely motions to intervene or protested the September 14 Filing. On November 9, 2018, the September 14 Filing was accepted to be effective November 14, 2018, the sixty-first day after the September 14, 2018 filing date.

II. Request for Clarification and/or Rehearing

7. PSCo states that it seeks clarification of the November Letter Order because it is concerned that the Commission may view the approved revisions as substantive revisions

¹¹ PSCo explained that this 18.96 percent value was calculated by dividing the amount of Flex Reserve Service Required Capacity (411 MW) by the amount of wind on PSCo's system at the time of the original filing in Docket No. ER14-1969-000. *See id.* at 4.

¹² September 14 Filing at 3.

¹³ *Id.* at 4.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.*

¹⁶ *Id.* at 1.

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to, or changes in, rates.¹⁷ PSCo states that the November Letter Order denied the requested April 16, 2016 effective date because PSCo had not made a showing of “extraordinary circumstances” to support a retroactive effective date. PSCo argues that the November Letter Order did not identify any disagreement with PSCo’s explanation that the filing contained ministerial changes and would have no effect on rates, or any disagreement with PSCo’s interpretation of the applicable tariff provisions governing charges under Schedule 16. PSCo states that the November Letter Order’s reference to the “extraordinary circumstances” test for granting waiver of the prior notice requirements may indicate that the Commission viewed the September 14 Filing as containing substantive revisions or a change in rates.

8. PSCo asserts that the revisions were only intended to provide clarification and ensure consistency with the Settlement Agreement.¹⁸ PSCo contends that granting its requested April 16, 2016 effective date would have been consistent with Commission precedent and policy. PSCo states that with or without the revisions accepted in the November Letter Order, PSCo interprets the Tariff to require a 411 MW reserve requirement for Flex Reserves and that each customer’s obligation to purchase Flex Reserves is calculated by the proportion of a customer’s wind resources to all wind resources on the PSCo system.¹⁹ PSCo describes the operation of the Schedule 16 formula and argues that Schedule 16 supports such an interpretation. PSCo also asserts that this interpretation is consistent with the Settlement Agreement and the June 2016 Filing.²⁰

9. PSCo claims that the revisions proposed in the September 14 Filing eliminated confusing and contrary references by eliminating one stray reference to a fixed 18.96 percent reserved capacity factor that it inadvertently failed to remove in the June 2016 Filing. Similarly, the September 14 Filing also replaced the default zero value in the formula rate’s Required Capacity input with the actual value of 411 MW as required by the Settlement Agreement and Schedule 16 of the Tariff. PSCo argues that

¹⁷ PSCo Dec. 10, 2018 Request for Clarification, or in the Alternative, Request for Rehearing at 7 (Request for Clarification or Rehearing).

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 9.

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elimination of these references is required to avoid nullifying other key Tariff provisions.²¹

10. PSCo states that if the Commission determines that the proposed revisions were in fact a rate change and that PSCo's interpretation of its Tariff was incorrect, it seeks rehearing.²² Under such a scenario, PSCo argues that the Commission should grant rehearing because its request for waiver of prior notice was consistent with Commission precedent and policy, and therefore, should have been granted.²³ PSCo contends that the Commission grants waiver of prior notice where a filing is uncontested and has no rate impact.²⁴ PSCo states that no one contested its proposed revisions and that the proposed revisions would not lead to a rate increase, assuming an effective date of April 16, 2016.²⁵

11. PSCo states that a failure to grant the retroactive effective date would result in giving effect to provisions of the Tariff that are inconsistent with the terms and intent of the Settlement Agreement.²⁶ PSCo also states that the Commission's denial of the requested April 16, 2016 effective date would have the unintended effect of causing Flex Reserve rates to increase from PSCo having to use the incorrect fixed value of 18.96 percent.²⁷ PSCo claims that it has calculated that under such a scenario there would be a potential \$1.3 million in surcharges for three of its customers.²⁸

²¹ *Id.*

²² *Id.*

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ In the September 14 Filing, PSCo explained that "because the revised Table 35 and Schedule 16 are part of the Tariff, the metadata for this filing reflects a proposed effective date of April 16, 2016, the earliest proposed effective date the Commission's eTariff system will accept for Tariff ID 2001 since the relevant eTariff records were established effective on April 16, 2016" pursuant to a rebaseline filing. September 14 Filing at 5; *see also* Request for Clarification or Rehearing at 4.

²⁶ Request for Clarification or Rehearing at 10-11.

²⁷ *Id.* at 10.

²⁸ *Id.*

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III. Responsive Pleadings

12. On December 10, 2018, the Platte River Power Authority filed an out of time motion to intervene and an answer to the Request for Clarification or Rehearing supporting PSCo's request.

IV. Commission Determination

A. Procedural Matters

13. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. Platte River Power Authority has not met this higher burden of justifying its late intervention.²⁹

14. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2018), prohibits answers to a request for rehearing. Accordingly, we will reject Platte River Power Authority's answer.

B. Substantive Matters

15. We grant PSCo's request for clarification. Based on the record before us, we agree with PSCo that the September 14 Filing did not result in a rate increase or any rate change at all. Instead, the Tariff revisions removed a stray reference to a value that was mistakenly not removed in the June 2016 Filing and replaced the value of an input in the formula rate in order to reflect the requirements of the Settlement Agreement and Schedule 16 of the Tariff³⁰ and to be consistent with PSCo's practices in administering

²⁹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

³⁰ See September 14 Filing at 3-4. Schedule 16 of the Tariff provides as follows:

A Transmission Customer's or Ancillary Service Customer's Flex Reserve Service requirement shall be the total Flex Reserve Requirement of 411 MW for the PSCo Balancing Authority multiplied by the customer's proportional share of wind generation in the PSCo Balancing Authority Area, based on the nameplate capacity of installed wind generation in the

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the Tariff.³¹ Accordingly, PSCo's prior calculation of rates for Flex Reserve Service under the Tariff has been consistent with the Settlement Agreement, and therefore, no adjustment to rates is necessary as a result of the September 14 Filing.

The Commission orders:

PSCo's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

PSCo Balancing Authority Area serving the customer's load or scheduled exports.

Tariff, Schedule 16, Flex Reserve Service (0.1.0)

³¹ See Request for Clarification or Rehearing at 5 ("Since the effective date of the [Settlement Agreement], when PSCo populates the formula rate it removes the zero and replaces it with the 411 MW amount mandated by the settlement agreement and Schedule 16 itself.").