

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	EPAAct Docket No.09-0055
)	
Public Service Company of Colorado))	
d/b/a Xcel Energy)	
Tacoma Hydroelectric Project)	
FERC No. 12589)	
)	
Respondents)	

Summary of Second Telephone Conference

On Thursday, March 12, 2009, I conducted a second telephone conference in this matter. Attorney Jim Hurt and my secretary, Diane Green attended the call, as did Lois Witte and Randy Bramer on behalf of the Forest Service, and Donald Clarke and Rekha Rao on behalf of PSCo.

The principal issue discussed was the meaning of my order of February 27, 2009, where I ruled on the Forest Service's Motions to Dismiss, and additionally ordered that all discovery be completed by March 16. I did not realize at the time of the order, and was not apprised by the parties, that under Rule 1.643(c) - interrogatories were required to be filed at an earlier date. I certainly had not issued an independent order requiring the submission of the interrogatory responses on any specific earlier date, and I was presented with no agreement of the parties with respect to the date such discovery was due. If my ruling on February 27 was the trigger for the 15 day period then the responses would not be due until today, while if the prehearing conference was the trigger, the March 6 date would be correct. Thus, the Forest Service had sent their interrogatory responses by March 6, which was within 15 days of the first prehearing conference, while PSCo interpreted my order to not require them to respond to any discovery

until March 16. In light of the ambiguity of my order, the parties agreed that no sanction need be imposed. Mr. Clarke agreed to email any completed interrogatory responses and to overnight or email as appropriate any completed responses to production of documents by the close of business on Thursday, and to do likewise with any completed interrogatories or compiled documents by the close of business Friday, with the remainder of his discovery response to be completed on March 16, as indicated in my order.

The Forest Service also indicated that they had obtained the services of a court reporting company which would provide overnight transcripts, including a copy for the official record.

MARC R. HILLSON
Chief Administrative Law Judge

March 16, 2009