

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Electric Company

Docket Nos. EL06-39-000
ER06-376-000

ORDER DISCLAIMING JURISDICTION

(Issued February 17, 2006)

1. In this order we grant the request of El Paso Electric Company (El Paso) to disclaim jurisdiction over its sales of electricity to Holloman Air Force Base (Holloman). Accordingly, the Commission finds El Paso's rate schedule filing is unnecessary and dismisses it.

I. Background

2. El Paso is an investor-owned public utility company. Holloman is an active military installation. El Paso states that it sells power to Holloman pursuant to a retail service contract, and delivers and meters deliveries to Holloman at a single delivery point as retail service. A portion of the power delivered to Holloman is consumed by other federal government agencies or departments that have facilities located on the base and a portion is used by private enterprises that are also located on the base. El Paso understands that any such redistribution accounts for only a small portion of the electricity that Holloman receives from El Paso, and most of that percentage is comprised of redistributions to other governmental entities. El Paso states that neither it nor Holloman has ever made any distinction between the power delivered to Holloman for its own consumption and the power Holloman redelivers to the other consumers on the base. It is El Paso's understanding that Holloman allocates its costs of power from El Paso to these other users, but does not resell the power for a profit.

3. El Paso states that Holloman also receives an allocation of power from the Western Area Power Authority (WAPA) that is wheeled through El Paso's service territory and intermingled with and delivered at the same metering point as the power sold by El Paso to Holloman.

4. El Paso states that its service to Holloman is pursuant to a service agreement between El Paso and Holloman that was executed in December 1995 and retail rate schedule approved by the New Mexico Public Regulation Commission (New Mexico Commission). El Paso states it is in the process of negotiating a replacement contract under a retail service tariff that has been approved by the New Mexico Commission. In Docket No. EL06-39-000, El Paso requests that, pursuant to Commission precedent, the Commission issue a declaratory order disclaiming jurisdiction over El Paso's agreement to sell electricity to Holloman.

5. In the event the Commission does not disclaim jurisdiction, in Docket No. ER06-376-000, El Paso submits a proposed rate schedule to provide power sales service to Holloman.¹

II. Notice

6. Notice of El Paso's filing in Docket No. EL06-39-000 was published in the *Federal Register*, 71 Fed. Reg. 594 (2006), with interventions and protests due on or before January 24, 2006. None were filed. Notice of El Paso's filing in Docket No. ER06-376-000 was published in the *Federal Register*, 71 Fed. Reg. 1,424 (2006), with interventions and protests due on or before January 13, 2006. None were filed.

III. Discussion

7. Under section 201 of the Federal Power Act (FPA), our jurisdiction attaches to the "sale of electric energy at wholesale in interstate commerce," which is defined as "a sale of electric energy to any person for resale."² The issue here is whether the sales being made by El Paso under this agreement are sales of electric energy "for resale."

8. Consistent with our decisions in similar cases,³ absent an assertion to the contrary, we will presume that any customer that traditionally has purchased its power under a state-regulated retail tariff, and that has provided primarily a submetering function, is not reselling that power and thus that the sale to the customer is not a jurisdictional sale for resale. Here, the sales by El Paso are being made under agreements that have long been regulated by the New Mexico Commission as a retail service, the customer is primarily

¹ El Paso states that the wheeling service provided under the prior agreement will now be provided under El Paso's open access transmission tariff; consequently, only El Paso's power sales to Holloman are at issue in this filing.

² 16 U.S.C. §§ 824(b)(1), (d) (2000).

³ *Alabama Power Co.*, 95 FERC ¶ 61,002 (2001); *PacifiCorp*, 92 FERC ¶ 61,032 (2000).

providing a submetering function for the power that it does not consume itself, and no party has asserted that these power sales are wholesale transactions within the Commission's jurisdiction. Accordingly, we will disclaim jurisdiction.

9. Since the Commission disclaims jurisdiction, El Paso is not required to file a rate schedule with the Commission, and we will dismiss its rate schedule.

The Commission orders:

(A) El Paso's request for disclaimer of jurisdiction in Docket No. EL06-39-000 is hereby granted.

(B) El Paso's rate schedule filing in Docket No. ER06-376-000 is hereby dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.