

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PNM Resources, Inc.
SW Acquisition, L.P.
TNP Enterprises, Inc.
Texas-New Mexico Power Company

Docket No. EC05-29-001

ORDER GRANTING REQUEST FOR CLARIFICATION

(Issued April 18, 2006)

1. This order grants the request of PNM Resources, Inc. (PNM Resources), SW Acquisition, L.P. (SW Acquisition), TNP Enterprises, Inc. (TNP Enterprises) and Texas-New Mexico Power Company (TNMP) (collectively, Applicants) for clarification of our prior Commission order in this proceeding.

Background

2. On March 2, 2005, the Commission granted the Applicants' request, under section 203 of the Federal Power Act (FPA), that the Commission authorize a disposition of jurisdictional facilities by means of the sale of all of the outstanding shares of TNP Enterprises (Stock Purchase Agreement) by SW Acquisition to PNM Resources (proposed Transaction). The Commission reviewed the proposed Transaction under the Commission's Merger Policy Statement¹ and authorized it finding that the proposed

¹ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (Merger Filing Requirements).

Transaction would not have an adverse effect on competition, rates or regulation, and was consistent with the public interest.²

3. In support of their request, the Applicants asserted that the proposed Transaction would not result in any increase in market concentration in any relevant market and would not cause an increase in generation market power for any entity. In addition, the Applicants stated that they would continue to promote development of regional wholesale markets in the Southwest and a single, consolidated transmission plan for the Southwest. They stated that as part of this commitment, the Applicants proposed in this filing a Market Monitoring Plan that would provide for an independent expert (Market Monitor) to monitor PNM Resources' and TNMP's post merger generation dispatch and the operations of their transmission systems.³

4. Among other things, with respect to vertical competition issues, the Commission responded to the issues raised by El Paso Electric Company (El Paso) regarding the joint use of transmission facilities. The Commission noted that the Applicants had committed to promote the development of a single, consolidated transmission plan for the Southwest, and we accepted the Applicants' commitment. Therefore, in Paragraph 33 of the March Order, we directed the Applicants to file with the Commission the single, consolidated transmission plan for the Southwest and, in the interim, until that plan was completed, we directed the Applicants to inform the Commission on a six-month basis of the progress in developing the plan.⁴

5. In Paragraph 34 of the March Order, we also found that the Applicants' proposed Market Monitoring Plan included provisions for the Market Monitor to identify any anticompetitive behavior regarding PNM Resources' and TNMP's operation of their transmission facilities. We stated that we relied on PNM Resources' and TNMP's commitment to continue to participate in regional transmission planning. We noted that groups such as Southwest Area Transmission (SWAT) and Southwest Transmission Expansion Plan (STEP) were engaged in regional transmission planning, and we directed the Market Monitor to monitor and report on participation by PNM Resources and TNMP in regional transmission planning endeavors such as SWAT and STEP. We added that the Market Monitor must report as to the efficacy of these groups in achieving transmission expansion and compare these efforts with the additional efforts that the Applicants would undertake as a condition of our approval in this proceeding.

² *PNM Resources, Inc., et al.*, 110 FERC ¶ 61,204 (2005) (March Order).

³ *Id.* at P 7-8.

⁴ *Id.* at P 33.

6. In paragraph 34 of the March Order, we also noted that the Market Monitor would review PNM Resources' and TNMP's calculation of Total Transfer Capability on their systems; wesTTrans' calculation of Available Transfer Capability, and report the results of that review to the Commission. We stated that given the discrepancies between the Applicants' and El Paso's assessments of the actual transmission availability and the effect of the proposed Transaction on transmission availability, we would also direct the Market Monitor to monitor the use of the PNP Resources and TNMP transmission systems for under use and to review the Applicants' report to the Commission on system usage.⁵

Request For Clarification

7. On June 14, 2005, the Applicants filed a request for clarification of the Commission's March Order. They state that the Commission's final statement in Paragraph 34 of the March Order is the subject of their request for clarification, *i.e.*,

“[G]iven the discrepancies between Applicants' and El Paso's assessments of the actual transmission availability and the effect of the Transaction on transmission availability, we will also direct the Market Monitor to monitor the use of the PNP Resources and TNMP transmission systems for under use and to review the Applicants' report to the Commission on system usage.”

8. The Applicants assert that it is their understanding that the above statement refers to the information the Applicants will be providing to the Market Monitor regarding, as identified in their application, generation dispatch of PNM Resources and loadings on constrained transmission facilities, details on binding transmission constraints, information concerning jurisdictional transaction volumes and prices charged by the Applicants and their affiliates before and after congestion management actions, the calculation of transmission Available Transfer Capability and Total Transfer Capability by the Applicants, and the Applicants' communication of data regarding these calculations to the common Western OASIS, wesTTrans.

9. In addition, the Applicants contend that: (1) the compliance filing they submitted on May 2, 2005 in this docket, as well as future semi-annual update filings, satisfy the obligations in Paragraph 33; and (2) the quarterly reports which will be filed by the Market Monitor satisfy the obligations contained in Paragraph 34 referring to a “report to the Commission on system usage.”

⁵ *Id.* at P 34.

10. The Applicants state that to the extent their understanding and interpretation of the Commission's statements in the March Order, as noted above, are incorrect, the Applicants request that the Commission clarify what additional information the Market Monitor must provide to meet the requirements contained in Paragraph 34 of the March Order. Specifically, the Applicants ask that the Commission clarify the statement "Applicants' report to the Commission on system usage."

Discussion

11. The Applicants request that we clarify what additional information is required from the Market Monitor to meet the requirements of the March Order. We find that the Applicants' understanding and interpretation of the Commission's statements, as they described above, are correct. Therefore, there is nothing further to clarify.

The Commission orders:

The Applicants' request for clarification is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.