

124 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Public Service Company of New Mexico
and New Mexico Gas Company, Inc.

Docket No. CP08-393-000

ORDER APPROVING ABANDONMENT
AND ISSUING CERTIFICATES OF LIMITED JURISDICTION

(Issued August 28, 2008)

1. On May 9, 2008, Public Service Company of New Mexico (PNM) and New Mexico Gas Company, Inc. (New Mexico Gas) filed a joint application for (1) authority for PNM to abandon certain limited-jurisdiction certificates of public convenience and necessity upon the sale of its entire gas utility business to New Mexico Gas, and (2) limited-jurisdiction certificates of public convenience and necessity for New Mexico Gas, as PNM's successor in interest, to provide interstate services and operate certain jurisdictional facilities. As discussed below, the requested authorizations are granted.

Background

2. PNM is a public utility primarily engaged in the generation, transmission, distribution and sale of electricity and the local distribution of natural gas in New Mexico. PNM's rates and services are regulated by the New Mexico Public Regulation Commission (New Mexico Commission). PNM's gas utility business qualifies for exemption from the provisions of the Natural Gas Act (NGA) and the Commission's NGA jurisdiction pursuant to section 1(c) of the NGA (the Hinshaw exemption).¹ In

¹ *Gas Company of New Mexico, a Division of Public Service Company of New Mexico, et al.*, 30 FERC ¶ 62,061 (1985) (order finding that PNM qualifies for the Hinshaw exemption under section 1(c) of the NGA and issuing PNM a limited-jurisdiction certificate pursuant to section 284.222 of the regulations, now section 284.224, 18 C.F.R. § 284.224 (2008)).

1985, the Commission granted PNM² a limited-jurisdiction, Order No. 63 blanket certificate authorizing it to make sales for resale and to provide transportation services in interstate commerce.³ PNM states that it relies on its Order No. 63 certificate authority to transport gas across its local distribution system to the interstate pipeline systems of Transwestern Pipeline Company, LLC (Transwestern) and El Paso Natural Gas Company for further delivery to interstate markets.⁴

3. In 1992, the Commission granted PNM a limited-jurisdiction NGA certificate to authorize its acquisition of an interest in natural gas pipeline and compression facilities referred to as the Blanco Hub facilities.⁵ Specifically, the 1992 order granted the necessary authorizations for the other two existing co-owners -- Transwestern and Northwest Pipeline Company (Northwest) -- to sell portions of their interests to PNM, and for PNM to hold its undivided ownership interest of 27.62 percent without affecting

² *Id.* While PNM no longer uses the “division” reference in its name, it states that it is the same corporate entity that received the limited-jurisdiction certificate in 1985.

³ In 1980, the Commission issued Order No. 63, FERC Stats. & Regs. Regulations Preambles 1977-1981 ¶ 30,118 (1980), to adopt section 284.222 (now section 284.224) of the regulations to authorize Hinshaw pipelines to provide interstate services to the same extent and subject to the same conditions that an intrastate pipeline is authorized to provide such services under section 311 of the Natural Gas Policy Act of 1978 (NGPA) and the Commission’s implementing regulations. The Commission’s current regulations governing intrastate pipelines’ interstate services under NGPA section 311 are set forth in Part 284, subparts B and C, 18 C.F.R. § 284.101 *et seq.* (2008).

⁴ PNM further states that it also makes occasional sales for resale of interstate natural gas. For such sales for resale, it relies on the authority granted to all non-interstate pipeline sellers of gas under Part 284, subpart L of the Commission’s regulations, 18 C.F.R. § 284.401 *et seq.* (2008), rather than the regulations in Part 284, subpart C, which also authorizes sales for resale by intrastate pipelines and, by operation of section 284.224, Hinshaw pipelines and local distribution companies (LDCs).

⁵ *Gas Company of New Mexico, a Division of Public Service Company of New Mexico, et al.*, 59 FERC ¶ 61,391 (1992). The Blanco Hub comprises approximately 4,100 feet of 30-inch pipeline connecting the Milagro Plant to a header at the inlet side of Transwestern’s Bloomfield Compressor Station located at the terminus of Transwestern’s San Juan Lateral; approximately 850 feet of 30-inch pipeline connecting Northwest’s 30-inch line to the same header; approximately 200 feet of 24-inch pipeline connecting the Valverde Plant to the same header; facilities to meter the gas delivered by Northwest, Milagro and Valverde, and meter the gas removed by PNM, Northwest, and Transwestern; and other appurtenant facilities.

its eligibility for the Hinshaw exemption. The 1992 order also granted PNM a certificate with blanket construction authority so that it could participate in additions to the Blanco Hub facilities to the same extent as the other two co-owners under their Part 157, subpart F blanket certificates. Finally, the 1992 order granted PNM waivers of the Commission's accounting and reporting requirements otherwise applicable to natural gas companies. PNM currently transports natural gas across the Blanco Hub facilities for use in its local distribution operations.

4. New Mexico Gas is a wholly-owned, indirect subsidiary of Continental Energy Systems LLC (Continental Energy) and was formed to acquire and operate the local distribution facilities and operations that it is purchasing from PNM. Continental Energy is a privately-held company that provides natural gas distribution services in Alaska and Michigan through its subsidiaries SEMCO Energy Gas Company and ENSTAR Natural Gas Company.

Proposal

5. PNM states that it has determined to sell the gas utility portion of its gas and electric utility system in order to concentrate its activities on the electricity distribution and transmission business. PNM conducted a competitive bidding process that resulted in the execution of an Asset Purchase Agreement with New Mexico Gas and its parent company on January 12, 2008. Pursuant to the purchase agreement, upon receipt of all necessary regulatory approvals and consents and upon the closing of the asset sale, New Mexico Gas will acquire, own and operate all of the natural gas utility plant, property and assets currently owned by PNM, and will operate them as a stand-alone LDC headquartered in New Mexico and subject to the New Mexico Commission's regulation.

6. When the asset sale closes, New Mexico Gas will engage in the same operations and business activities that are currently being undertaken by PNM's gas utility business. As a result, PNM is seeking Commission authority to abandon its limited-jurisdiction certificates and its interest in the Blanco Hub facilities in conjunction with the issuance to New Mexico Gas of those same authorizations on the same terms and conditions and with the same related waivers that PNM currently holds.

7. New Mexico Gas seeks a limited-jurisdiction blanket certificate pursuant to section 284.224 in order to provide interstate transportation service on the same basis as PNM while the remainder of its operations continue to qualify for the Hinshaw exemption.⁶ New Mexico Gas states that it satisfies all requirements for such

⁶ We note that, while a company may request a declaratory order from the Commission finding that it qualifies for the Hinshaw exemption set forth in section 1(c) of the NGA, such a declaration by the Commission is not an essential prerequisite to the applicability of the section 1(c) exemption. *Gas Company of New Mexico, a Division of*
(continued)

authorization and will provide blanket certificate service pursuant to the same terms and conditions in the Statement of Operations filed by PNM in accordance with section 284.123 of the Commission's regulations and pursuant to the rates that are on file with and approved by the New Mexico Commission for New Mexico Gas's city-gate transportation service.⁷

8. In addition, New Mexico Gas states that it will, upon receipt of all necessary governmental approvals and consents and as of the closing of the transaction, acquire and own PNM's entire ownership interest in the Blanco Hub facilities. New Mexico Gas states that no changes are anticipated with respect to the facilities or operations of the Blanco Hub pursuant to the asset sale, and the authorizations requested here by New Mexico Gas are the same as those currently held by PNM. Upon its acquisition of PNM's ownership interest in the Blanco Hub facilities, New Mexico Gas intends to utilize its interest in such facilities in the same manner as PNM, which is to transport natural gas across the Blanco Hub facilities for use in local distribution operations. New Mexico Gas requests a limited-jurisdiction NGA certificate to authorize its acquisition of PNM's undivided 27.62 percent interest in the Blanco Hub facilities, and a certificate with blanket construction authority so that it can participate in additions to the Blanco Hub facilities to the same extent as the other two co-owners under their Part 157, subpart F blanket certificates, and waivers of the Commission's accounting and reporting requirements otherwise applicable to natural gas companies. New Mexico Gas requests that the Commission make a finding that its ownership interest in and use of the Blanco Hub facilities will not jeopardize its Hinshaw status.

9. PNM and New Mexico Gas currently have before the New Mexico Commission applications for authorizations necessary to transfer PNM's gas utility system to New Mexico Gas and for New Mexico Gas to own and operate the gas utility system. The purchase agreement specifies that the authorizations sought from the Commission herein are required for the parties to proceed to closing of the transaction. PNM and New Mexico Gas therefore request that their requested abandonment and certificate authorizations, respectively, be effective as of the date of the closing on PNM's gas utility system asset sale to New Mexico Gas.

Public Service Company of New Mexico, 30 FERC ¶ 62,061 at p. 63,070 (1985); *Natural Gas Pipeline Company of America*, 18 FERC ¶ 61,235 at p. 61,473 (1982).

⁷ New Mexico Gas states that, in its application for authority to own and operate the gas utility system presently pending before the New Mexico Commission, it requests authority to adopt the same tariffs and rates that are presently in effect for PNM's gas utility business, including Rate No. 70 which is utilized by PNM for blanket certificate service.

10. New Mexico Gas requests that the Commission accept its use of the transportation rates authorized by the New Mexico Commission for New Mexico Gas's city-gate transportation service, as the Commission approved for PNM. New Mexico Gas states that, to the extent it uses its allocated capacity on the Blanco Hub facilities to engage in any transportation for third parties, it shall do so pursuant to the requested limited-jurisdiction blanket certificate, and it will comply with all reporting and filing requirements associated with that limited-jurisdiction certificate.

Interventions

11. Public notice of the applications was issued on May 29, 2008, and published in the *Federal Register* on June 6, 2008, with comments, protests, or motions to intervene due on or before June 5, 2008.⁸ No interventions, protests or adverse comments have been filed.

Discussion

12. PNM and New Mexico Gas request authorizations that will enable New Mexico Gas to own and operate PNM's gas utility system going forward in the same general manner that PNM has operated that system for many years. As proposed, this ownership change will not cause any change in jurisdictional service, and there are no new facilities proposed for construction or abandonment. New Mexico Gas states that it is able and willing properly to do the acts and perform the services described herein. Furthermore, because the PNM gas utility business is a state-regulated utility system that is subject to regulation by New Mexico state regulators, the transition of ownership from PNM to New Mexico will proceed only upon the New Mexico Commission's determination that it is consistent with the public interest, and upon the grant of all necessary state approvals.

13. The proposed authorizations are the same authorizations that the Commission previously granted to PNM in its Order No. 63 certificate, its certificate to acquire an interest in the Blanco Hub facilities, and the blanket construction certificate granted in conjunction with the Blanco Hub certificate. The Commission finds that the circumstances supporting these authorizations still exist, with the only change being the change in service provider from PNM to New Mexico Gas. Therefore, PNM is granted authority to abandon (a) the Order No. 63 certificate, (b) the Blanco Hub certificate, and (c) the blanket construction certificate granted in conjunction with the Blanco Hub certificate. New Mexico Gas is granted (1) a limited-jurisdiction blanket certificate pursuant to section 284.224 of the Commission's regulations; (2) a certificate to acquire PNM's undivided ownership interest in the Blanco Hub facilities, on the same terms and conditions as the Blanco Hub certificate issued to PNM; and (3) a blanket certificate in

⁸ 73 Fed Reg. 32,319.

order to permit New Mexico Gas to construct and operate its pro-rata share of any additional facilities that may be added to the Blanco Hub, consistent with its co-owners' Part 157, subpart F blanket certificate.

14. New Mexico Gas indicates that it will have approved rates on file with the New Mexico Commission for city-gate service when it commences service. Based on this representation, the Commission grants New Mexico Gas's request by accepting its use of the rates authorized by the New Mexico Commission for New Mexico Gas's city-gate transportation service.⁹

15. In connection with authorization of New Mexico Gas's acquisition of an interest in the jurisdictional Blanco Hub facilities, the Commission finds that acquisition and use of the facilities by New Mexico Gas will not jeopardize New Mexico Gas's Hinshaw status. Further, the Commission further waives reporting and filing requirements and accounting regulations that normally apply to natural gas companies.

16. No facilities are proposed to be constructed or physically abandoned in this application. PNM proposes to abandon its ownership interest and related certificate authority covering its gas utility facilities by sale and transfer to New Mexico Gas. Sections 380.4(a)(27) and 380.4(a)(31) of the Commission's regulations provide a categorical exclusion from the need for preparation of an environmental assessment, since the requested authorizations involve no construction of facilities.¹⁰

17. The Commission on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) PNM is granted authority to abandon its Order No. 63 certificate, its certificate under which it was authorized to acquire an interest in and use of the Blanco Hub facilities, and its blanket construction certificate granted in conjunction with the Blanco Hub certificate.

⁹ The Commission notes that if a Hinshaw pipeline or LDC does not have state approved, on-file rates for city-gate service, it must comply with the requirements for section 284.224(e)(2) to obtain the Commission's approval of rates for interstate services under a section 284.224 blanket certificate.

¹⁰ 18 C.F.R. §§ 380.4(a)(27) and 380.4(a)(31) (2008).

(B) New Mexico Gas is issued a blanket certificate of limited jurisdiction, pursuant to section 284.224 of Part 284, subpart G of the Commission's regulations, in order for it to provide transportation service in interstate commerce to the same extent and in the same manner that intrastate pipelines are authorized to engage in such transportation pursuant to subpart C of Part 284 of the Commission's regulations, and without jeopardizing New Mexico Gas's eligibility for the Hinshaw Exemption. For interstate transportation services under the section 284.224 blanket certificate, New Mexico Gas shall use its rates authorized by the New Mexico Commission for city-gate transportation service, *provided that*, in the absence of such approved rates, New Mexico Gas shall comply with the conditions of section 284.224(e)(2) and section 284.123 of the regulations. The authorization granted herein is subject to New Mexico Gas filing, within three years of the date of this order, and thereafter triennially, a rate petition pursuant to section 284.123(b) of the regulations for review of its city-gate rate with the New Mexico Commission or, alternatively, a cost and revenue study and other information sufficient to allow the Commission to determine whether any change in New Mexico Gas's rate pursuant to NGA section 5, which would apply prospectively, should be ordered. This cost and revenue data should be in the form specified in section 154.313 of the regulations.

(C) New Mexico Gas is issued a certificate of public convenience and necessity under Part 157, subpart A of the Commission's regulations to acquire an undivided interest in the Blanco Hub facilities, on the same terms and conditions as the certificate issued to PNM, the authorization for which does not affect New Mexico Gas's Hinshaw status.

(D) New Mexico Gas is issued a blanket construction certificate in order to permit New Mexico Gas to construct and operate its pro-rata share of any additional facilities that may be added to the Blanco Hub. Such blanket construction certificate shall authorize New Mexico Gas to undertake any activities that an interstate pipeline is authorized to undertake under its Part 157, subpart F blanket certificates and shall be subject to the same terms and conditions.

(E) The certificate authorizations issued in Ordering Paragraphs (B), (C) and (D) above are conditioned upon New Mexico Gas's compliance with all applicable Commission regulations, in particular the terms and conditions set forth in Paragraphs (a) and (e) of section 157.20 of the Commission's regulations.

(F) The abandonment and certificate authorizations granted by Ordering Paragraphs (A) through (D) above shall become effective, subject to New Mexico Gas's compliance with the provisions of section 157.20(a), as of the date of the closing on PNM's gas utility system asset sale to New Mexico Gas, which is subject to the New Mexico Commission's approval. PNM and New Mexico Gas shall notify the Commission of the effective date within 10 days thereof.

(G) In accordance with section 284.123(e) of the regulations, New Mexico Gas shall file, within 30 days of commencement of service, its statement of operating conditions, including rate election.

(H) New Mexico Gas is granted a waiver of the reporting and filing requirements and accounting regulations that normally apply to natural gas companies, *provided that*, the reporting requirements of section 284.126 of the regulations shall apply.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.