

131 FERC ¶ 61,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Public Service Company of New Mexico

Docket No. OA08-34-003

ORDER ON NOTIFICATION FILING

(Issued April 19, 2010)

1. On February 1, 2010, Public Service Company of New Mexico (PNM) submitted a filing (Notification Filing) informing the Commission that it had failed to process certain System Impact Studies and Facilities Studies (together, transmission studies) within the 60 day due diligence deadlines required by sections 19.9 and 32.5 of its Open Access Transmission Tariff (OATT)¹ and by Order No. 890.² As further discussed in this order, based on the extenuating circumstances described by PNM in its Notification Filing, we will excuse PNM from any monetary operational penalties for its failure to meet the due diligence deadlines during the two calendar quarters covered by its Notification Filing.

Background

2. In Order No. 890, the Commission determined that certain changes to the *pro forma* OATT were necessary to increase the transparency and expediency of transmission service processing by transmission providers, including regional

¹ On February 26, 2008, the Commission approved PNM's Order No. 890 compliance filing, effective July 13, 2007, which incorporated *pro forma* OATT sections 19.9 (which PNM adopted as section 19.10) and 32.5 into its OATT. *See Public Service Co. of New Mexico*, 122 FERC ¶ 61,176, at P 9 (2008).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

transmission organizations (RTOs) and independent system operators (ISOs).³ As a part of that effort, the Commission concluded that transmission providers could be subject to operational penalties when they fail to use due diligence to process transmission studies within 60 days, as prescribed in sections 19.3, 19.4, 19.9, 32.3, 32.4, and 32.5 of the *pro forma* OATT.⁴

3. Among the changes made to the *pro forma* OATT, Order No. 890 required transmission providers to keep track of and publicly post information on their processing of transmission studies. Under sections 19.9 and 32.5 of the *pro forma* OATT, if a transmission provider processes more than 20 percent of non-affiliates' transmission studies outside of the 60 day due diligence deadlines for any two consecutive quarters, it must make a notification filing with the Commission.⁵ After making this filing, transmission providers may be subject to increased posting requirements⁶ as well as monetary and non-monetary operational penalties.⁷ Transmission providers will be subject to operational penalties if they process 10 percent or more of non-affiliates' transmission studies outside the 60 day deadlines for each of the two calendar quarters immediately following the quarter that triggered the notification filing. The operational penalty will be assessed for each calendar quarter for which an operational penalty applies, starting with the calendar quarter immediately following the quarter that triggered the transmission provider's notification filing. The operational penalties will continue to be assessed each quarter until the transmission provider completes more than 90 percent of all non-affiliated transmission studies within the 60 day deadlines.⁸

4. The transmission provider may be excused from operational penalties, however, if it explains in its notification filings the extenuating circumstances that prevented it from meeting the 60 day deadlines and, in turn, demonstrates that it has used due diligence in

³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1353.

⁴ *Id.* P 1319, 1340-54.

⁵ For purposes of calculating the percentage of System Impact Studies and Facilities Studies processed outside the 60 day due diligence deadlines, *pro forma* OATT section 19.9(ii) specifies that the percentage should be calculated by dividing the number of studies that the transmission provider completed on time during the quarter by the total number of studies it completed during the quarter.

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1319-20.

⁷ *Id.* P 1340.

⁸ *See pro forma* OATT at section 19.9(iii).

processing the relevant transmission studies, notwithstanding its inability to meet the 60 day target.⁹ The notification filing thus gives the transmission provider “the right to document and describe any unique complexities that particular requests introduce into the study process and that prevent the transmission provider from completing the study” within the 60 day due diligence deadline.¹⁰

5. Order No. 890 required transmission providers to begin tracking their processing of transmission studies in the fourth quarter of 2007.¹¹ Section 19.9(i) of the *pro forma* OATT requires transmission providers to make notification filings with the Commission within 30 days of the end of the second consecutive quarter in which it processes 80 percent or less of transmission studies of non-affiliates within 60 days.

PNM’s Notification Filing

6. PNM’s Notification Filing states that PNM processed more than 20 percent of its System Impact Studies outside of the 60 day due diligence deadlines for two consecutive quarters. It also states that for the third and fourth quarters of 2009, PNM failed to complete both System Impact Studies that it performed during that period within the 60 day deadline, causing PNM to have more than 20 percent of its studies completed outside its due diligence deadline.¹²

7. PNM describes the specific challenges it faced that prevented PNM from completing the two transmission studies within the required 60 day timeframe. Specifically, PNM states that, as described below, a large number of transmission service requests had (and continue to have) a major impact on PNM’s ability to complete the queued studies in a timely manner. PNM explains that in the fourth quarter of 2008 PNM received 22 long-term firm point-to-point transmission service requests that required System Impact Studies to be performed. PNM further explains that 17 of those requests

⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 743-46.

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1341.

¹¹ The penalty regime became effective at the same time as the rest of the new *pro forma* OATT. *See id.*

¹² PNM states that the two System Impact Studies that were not completed within the 60 day period are studies of the “Cargill 150 MW TSR” completed on July 31, 2009, and of the “WWPP 37 MW TSR” completed on December 4, 2009. PNM Application at 6-7.

came over the same path, the Willard Station to Four Corners path,¹³ and that 13 of those were from the same transmission customer. PNM also explains that the remaining transmission requests comprise an additional 5,232 MW of requested transmission service near the Willard Station point of receipt, and that the Total Transmission Capacity of the Willard Station to Four Corners path is only 137 MW. PNM attributes the multitude of requests to the increasing interest in renewable energy development, and the geographical advantages of the area that have made it so attractive for renewable energy.¹⁴

8. In addition, PNM states that it uses a serial approach to process its queue, which PNM states ultimately caused the delay in PNM's queue. According to PNM, using this approach requires PNM to know the transmission rights and impact of the previously queued transmission request before it can complete the System Impact Studies for a transmission service request, and the transmission customer must either execute a Transmission Service Agreement (TSA) or withdraw its request. PNM states that, without this knowledge, PNM cannot adequately and accurately study the next transmission service request in the queue when it is over the same path. Coincidentally, PNM states that a unique and time-consuming transmission service request, which required several transmission system upgrades, included delays by the transmission customer that were out of PNM's control, and required PNM to negotiate a complicated TSA, ultimately caused a delay in PNM's queue.¹⁵ Furthermore, PNM states that, until the TSA was executed, PNM could not proceed with the next study request in the serial queue.¹⁶ Accordingly, PNM states that the System Impact Studies for the next transmission study requests in the queue were unavoidably delayed. PNM also notes that, if PNM were to proceed with a System Impact Studies without having the parameters of the transmission system and any necessary reinforcements or upgrades contractually solidified, it could result in a re-study being needed and this would be very costly to PNM and the transmission customer.¹⁷

¹³ The Willard Station is a 115 kV Switching Station and Four Corners is a 345 kV Switchyard.

¹⁴ PNM Application at 3.

¹⁵ PNM states that the TSA was with High Lonesome Mesa, LLC (HLM), and notes that the TSA was far more time consuming than a typical TSA. *Id.* at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 7.

9. PNM states that despite the challenges described above, PNM moved with all due diligence to complete the studies in a timely manner. For example, PNM states that in addition to PNM's manpower resources, PNM hired three outside consulting firms to assist PNM with generating interconnection and transmission studies as quickly as possible.¹⁸ In addition, PNM states that it is currently taking steps to reform its transmission and interconnection queue study processes to incorporate a clustering approach to System Impact Studies and Facilities Studies. PNM believes that a reformed queue process will allow it to timely complete its future requested studies and assist PNM in resolving the delay in its queue.¹⁹

Notice of Filing

10. Notice of PNM's Notification Filing was published in the *Federal Register*, 75 Fed. Reg. 7579 (2010), with interventions and protests due on or before February 22, 2010. None was filed.

Discussion

11. Upon review of the extenuating circumstances described by PNM in the Notification Filing, we will excuse PNM of any operational penalties relating to the late processing of the two System Impact Studies. PNM states that these delays resulted from certain extenuating circumstances that PNM encountered related to the large number of studies to be performed, problems it encountered in its negotiations with other entities, and certain personnel challenges. We find PNM's explanation credible that these factors prevented it from completing the transmission studies within the 60 day due diligence deadlines during that quarter. We also find that PNM used due diligence in completing the studies, notwithstanding the fact that those studies took longer than 60 days to complete. For example, PNM hired three outside consulting firms to assist PNM with generating the transmission studies, and PNM maintained proper communication with the transmission customers involved.

12. In addition, we support PNM's proactive measures to help prevent future transmission studies from being completed in more than 60 days (i.e., PNM's commitment to revise its current processes for handling transmission service requests and modifications to its study processes). In light of these considerations, we conclude that the extenuating circumstances described by PNM excuse its non-compliance during the

¹⁸ *Id.* at 7-8.

¹⁹ PNM states that it anticipates filing revisions to its OATT incorporating its queue reform in the second quarter of 2010. *Id.* at 8.

period covered by the Notification Filing. Therefore, we will excuse PNM of any operational penalties relating to these delays in completing the transmission studies.

13. Although we have determined that extenuating circumstances excused PNM's non-compliance during the period covered by the Notification Filing, we remain concerned regarding PNM's future compliance with the 60 day due diligence deadlines, particularly as PNM states that it is in the process of implementing structural changes to improve its performance. If PNM processes more than 20 percent of the transmission studies outside of the 60 day due diligence deadline for the first quarter of 2010, the "two consecutive quarters" requirement will be triggered and PNM will need to file another notification filing.²⁰ We expect any notification filings to also include an update on the steps PNM is taking to prevent future non-compliance and consideration of whether any additional steps to improve its performance are needed.

The Commission orders:

In light of PNM's explanation of the extenuating circumstances that prevented its timely completion of transmission studies (as reported in its notification filing), we will excuse any operational penalties based on its failure to meet the due diligence deadlines of sections 19.9 and 32.5 of its OATT and of Order No. 890, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1319.