140 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Public Service Company of New Mexico Docket No. QM12-4-000

ORDER DENYING APPLICATION TO TERMINATE
MANDATORY PURCHASE OBLIGATION

(Issued September 13, 2012)

1. On June 15, 2012, Public Service Company of New Mexico (PNM) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)[1] and section 292.310(a) of the Commission's regulations[2] to be relieved of the requirement to enter into new contracts or obligations to purchase electric energy from qualifying cogeneration and small power production facilities (QFs) with a net capacity greater than 20 MW on a service territory-wide basis, and specific relief from the obligation to purchase energy and capacity from the proposed Estancia Basin Biomass Generating Facility (Estancia Facility).[3]

2. In this order, we deny PNM's request to terminate the mandatory purchase obligation on a service territory-wide basis for QFs that have a net capacity greater than 20 MW (including the Estancia Facility). PNM's application fails to establish that potentially-affected QFs have access to wholesale markets for the sale of capacity and energy that are, at a minimum, of comparable competitive quality as markets described in sections 210(m)(1)(A) and (B) of PURPA.[4]

---

[1] 16 U.S.C. § 824a-3(m) (2006).

[2] 18 C.F.R. § 292.310(a) (2012).

[3] Western Water and Power Production Limited, LLC (Western Water and Power) filed a Form 556 self-certification of QF status for the Estancia Facility in Docket No. QF11-516-000 on September 29, 2011.

[4] 16 U.S.C. § 824a-3(m)(1)(C) (2006).

I. <u>Background</u>

3. On October 20, 2006, the Commission issued Order No. 688,[5] revising its regulations governing utilities' obligations to purchase electric energy produced by a QF and implementing section 210(m) of PURPA,[6] which provides for termination of the requirement that an electric utility enter into new power purchase obligations or contracts to purchase electric energy from QFs, if the Commission finds that the QFs have nondiscriminatory access to markets. Sections 292.309(a)(1), (2), and (3) of the Commission's regulations[7] codify sections 210(m)(1)(A), (B), and (C) of PURPA.

4. Section 292.309(a) of the regulations states:

> (a) After August 8, 2005, an electric utility shall not be required, under this part, to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility production has nondiscriminatory access to:
>
> (1)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and
> (ii) Wholesale markets for long-term sales of capacity and electric energy;
>
> (2)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and
> (ii) Competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying

---

[5] *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233 (2006), *order on reh'g*, Order No. 688-A, FERC Stats & Regs. ¶ 31,250 (2007), *aff'd sub nom. American Forest and Paper Association v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

[6] Section 210(m) was added to PURPA by section 1253 of the Energy Policy Act of 2005 (EPAct 2005). *See* Pub. L. No. 109-58, § 1253, 199 Stat. 594, 967-69 (2005).

[7] 18 C.F.R. §§ 292.309(a)(1), (2), (3) (2012).

> facility is interconnected. In determining whether a meaningful opportunity exists, the Commission shall consider, among other factors, evidence of transactions with the relevant market; or
>
> (3) Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in paragraphs (a)(1) and (a)(2) of this section.[8]

II. Application to Terminate Mandatory Purchase Obligation

5. On June 15, 2012, PNM filed an application requesting the Commission to terminate its PURPA obligation to enter into new contracts and obligations on a service territory-wide basis for QFs greater than 20 MW, and specifically for relief from the obligation to enter into a new contract or obligation to purchase from the proposed Estancia Facility.[9] In support of this, PNM asserts that: (1) what it refers to as the Four Corners Hub is a wholesale market as described in PURPA section 210(m)(1)(C); and (2) PNM provides nondiscriminatory access to that market. PNM argues that it therefore should be relieved of the obligation to enter into new contracts or obligations to purchase electric energy and capacity from QFs larger than 20 MW.[10]

6. PNM describes what it refers to as the Four Corners Hub as a collection of transmission facilities in and around the Four Corners and San Juan coal-fired generating stations in northwest New Mexico; the Four Corners and San Juan stations are located approximately nine miles apart. PNM describes the Four Corners Hub as comprised of the transmission facilities at the confluence of several high-voltage transmission lines flowing to and from load centers such as Albuquerque, Grand Junction, Phoenix, Salt Lake City, Tucson, and other locations.[11]

---

[8] *Id.*

[9] On November 30, 2011, PNM submitted an earlier application which was rejected as incomplete without prejudice to PNM Filing a new complete application; the Commission was unable to conclude that PNM listed all potentially affected qualifying facilities as required by the Commission's regulations. *See Public Service Company of New Mexico*, 139 FERC ¶ 61,128 (2012) (*Public Service Company of New Mexico).*

[10] PNM Application at 1-2.

[11] PNM states the Four Corners Hub resulted from a San Juan Area Transmission Agreement between PNM, Tucson Electric Power Company (TEC), Western Area Power Administration (WAPA), Public Service Company of Colorado (PSCo) and Tri-State Generation and Transmission Association, Inc. (Tri-State) dated June 26, 1985.

7. PNM indicates that the Four Corners Hub is also at the intersection of several balancing authority areas; including the balancing authority areas of PNM, Arizona Public Service Company (APS), TEP, WAPA, California Independent System Operator Corporation (CAISO), and PacifiCorp. According to PNM, the Four Corners Hub is a designated scheduling point – point of receipt and point of delivery for the purpose of taking transmission service under the Open Access Transmission Tariffs (OATTs) of PNM, APS, TEP, WAPA, PacifiCorp, PSCo, El Paso Electric Company (El Paso), and Tri-State.[12] PNM asserts that entities can aggregate service into a single point of receipt/point of delivery at the Four Corners Hub, rather than having to schedule more specific transmission services.

8. Given its physical location, as well as transmission scheduling practices, PNM contends that the Four Corners Hub has become a liquid market for the purchase and sale of energy in the Desert Southwest and that utilities, cooperatives, marketers, and others participate in a vibrant wholesale market there for the sale and purchase of capacity and energy on hourly, daily, monthly, and longer-term transactions.[13]

9. Additionally, according to PNM, the Four Corners Hub provides an "entry point" to the energy markets in Southern California, namely the CAISO's SP-15 market via the Eldorado 500 kV transmission line.[14] PNM also maintains that the nearby San Juan switchyard provides additional liquidity and that various load-serving entities have transmission rights from the San Juan switchyard to their load, thus creating opportunities for purchases of energy to be delivered to the San Juan switchyard for purposes of serving load.[15]

10. PNM asserts that the Four Corners Hub is liquid and competitive and cites to a number of Electronic Quarterly Report (EQR) Filings during the period from the fourth quarter of 2010 through the third quarter of 2011, noting that over three dozen unrelated entities in their EQRs reported selling 14.1 million MWh of energy at the Four Corners Hub in both short-term and long-term transactions to over 60 unrelated buyers.[16] PNM also provides a list of known and potential purchasers in the Four Corners area in an

---

[12] PNM Application at 6.

[13] *Id.*

[14] *Id* at 7.

[15] *Id.*

[16] *Id.*

attachment to its application,[17] and notes that several respected publishers report daily price indices for energy transactions at the Four Corners Hub, thereby enhancing the hub's liquidity.

11. To further support its contention, PNM states that renewable energy projects have benefited from the liquidity of the Four Corners Hub, in that three wind projects (High Lonesome Mesa Wind Facility, Argonne Mesa Wind Facility, and Red Mesa, LLC) in New Mexico have sold their output through bilateral contracts with delivery at the Four Corners Hub.[18]

12. PNM also argues that Western Water and Power's Estancia Facility is a beneficiary of the competitive market at the Four Corners Hub. Southern California Edison Company (SoCal Edison) issued a request for proposal in 2008, and Western Water and Power's bid was accepted, and Western Water and Power and SoCal Edison entered into a 20-year power purchase agreement (PPA), but PNM states that SoCal Edison terminated the PPA in 2011, and Western Water and Power is in litigation with SoCal Edison.[19] Regardless of the outcome, PNM asserts that this represents additional evidence of a competitive market at the Four Corners Hub, and Western Water and Power's access and actual participation in that market.

13. Next, PNM maintains that it provides nondiscriminatory open access to its transmission system and is not aware of any large QF with operational constraints that would prevent it from accessing the Four Corners Hub's market. Further, PNM states that any large QF or generator unable to access the market due to transmission constraints nonetheless has access to markets on a nondiscriminatory basis through the opportunity to purchase transmission upgrades. In support of this latter proposition, PNM cites to an example where a generator funded $23 million for the construction of a transmission upgrade to address insufficient transmission capacity and, likewise, when PNM conducted a system impact study for the Estancia Facility, the approximate cost for the upgrade was $37 million. PNM contends that Western Water and Power abandoned the transmission service agreement to complete the upgrades and, should Western Water and Power sell to PNM pursuant to PURPA, it would still be responsible for the cost of transmission service and related upgrades.

14. Further, PNM contends that it is not seeking to terminate any existing QF contracts, or relief from any obligation to purchase electric energy or capacity from any

[17] *See* PNM Application, Attachment C.

[18] PNM Application at 8-10.

[19] *Id.* at 9.

QF with which it has an existing contractual obligation in effect prior to the date of this requested relief. Finally, PNM believes that it does not have any non-contractual obligations as of the date of this filing and notes that the Western Water and Power complaint filed with the New Mexico Public Regulation Commission (New Mexico Commission) regarding Western Water and Power's assertion of a legally enforceable obligation with PNM has been stayed pending the outcome of this proceeding.

15. PNM concludes that the Four Corners Hub offers a competitive market that satisfies the standards of PURPA Section 210(m)(1)(C).

III. Notice of Filing and Responsive Pleadings

16. Notice of PNM's application was published in the *Federal Register*, 77 Fed. Reg. 37,895 (2012), with interventions and protests due on or before July 13, 2012. Notices of PNM's application were mailed by the Commission to each of the potentially-affected QFs identified by PNM in its application on June 19, 2012.

17. On July 13, 2012, Western Water and Power filed a motion to intervene and protest urging the Commission to deny PNM's application because it does not comport with the requirements of section 292.310 of the Commission's regulations, or in the alternative, that the application at least be denied as to the Estancia Facility.

18. Western Water and Power asserts that with respect to its Estancia Facility: (1) the application is not complete as it does not provide all the information required by section 292.310 of the Commission's regulations; (2) PNM has not met its burden of establishing that the single interchange at Four Corners constitutes wholesale markets for the sale of capacity and energy that are, at a minimum, of comparable competitive quality as those described in sections 210(m)(1)(A) and (B) of PURPA; (3) even assuming the Four Corners Hub constitutes a sufficient wholesale market, Western Water and Power does not have a meaningful opportunity to sell its capacity and energy into the Four Corners Hub due to persistent constraints in PNM's transmission system, and (4) on December 14, 2012, Western Water and Power filed a complaint against PNM with the New Mexico Commission (Docket No. 11-00466-UT) requesting the enforcement of Western Water and Power's rights under PURPA under New Mexico and federal law.[20]

19. More specifically, first, Western Water and Power asserts that PNM has failed to provide the requisite notice to all potentially affected QFs. That is, since PNM's application is premised on the argument that the Four Corners Hub satisfies the PURPA exemption requirement, in turn, any QF in the utilities' service territories that has access

[20] Western Water and Power Protest at 1-2.

to and trades at the Four Corners Hub will be affected and thus, should be provided notice of PNM's application.[21]

20. Next, Western Water and Power contends that PNM does not proffer the necessary evidence to demonstrate that the Four Corner's Hub satisfies the requirements of PURPA section 210(m) in that, while PNM notes the various purchasers conducting business at the Hub, it does not provide any real information as to whether the Four Corners Hub is independently administered or offers auction-based day-ahead and real-time wholesale markets for the sale of electric energy or the depth of the market on a daily basis.[22]

21. In fact, Western Water and Power maintains that the only bid-based market that PNM refers to is CAISO's SP-15. More importantly, Western Water and Power asserts that there is only one reference to SP-15 in the filing and that the application does not provide any transmission information about the Eldorado 500kV line, whether access is possible for a QF, or information related to CAISO's SP-15 as a potential market. Further, Western Water and Power argues that mere theoretical access to a bid-based market outside of PNM's service territory is not a sufficient basis for PNM to be relieved of its obligations under PURPA.

22. Finally, Western Water and Power notes that since it filed a complaint against PNM with the New Mexico Commission requesting enforcement of its rights under PURPA pursuant to New Mexico and federal law, the Commission should exclude Western Water and Power's QF to the extent the state agency or state court finds that it has a legally enforcement obligation or other contractual entitlement prior to the date of PNM's application.[23]

IV. Discussion

Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make Western Water and Power a party to this proceeding.

---

[21] *Id.* at 3.

[22] *Id.* at 7.

[23] *Id*. at 2.

Commission Determination

First, we address Western Water and Power's contention that PNM has not fully complied with the requirement that an electric utility filing an application with the Commission for relief from PURPA's mandatory purchase obligation must include in that application a list of all QFs potentially affected by the application.[24] Western Water and Power, citing *Public Service Company of New Mexico*, contends that PNM has failed to comply with the notice requirements of section 292.310 because it has not provided the Commission a list of all QFs located in the service territories of utilities that have access to or trade at the Four Corners Hub.[25] Western Water and Power's contention is based on the premise that, because PNM relies on market conditions at the Four Corners Hub to support its application for the requested exemption, it is necessary for the Commission to provide notice to all QFs located in the service territories of the various utilities that have access to the Four Corners Hub and for PNM to provide a list of those QFs to the Commission.

24. We disagree. We find Western Water and Power's interpretation of the notice requirement to be overly broad and decline to find that an electric utility must provide notice to QFs or other generating facilities located in the service territories of other electric utilities unless the QFs or other generating facilities are included in the list of facilities specifically included as potentially-affected QFs in section 292.310(c)(1)-(5).[26] Western Water and Power's interpretation, in contrast, if carried to its logical conclusion, could extend far from the service territory of an applicant electric utility and could be unduly burdensome. In the case before us, we do not see the need to provide notice of PNM's application beyond QFs located within PNM's service territory and the other facilities identified in the Commission's regulations.

---

[24] 18 C.F.R. §§ 292.310(b), (c) (2012).

[25] Western Water and Power Protest at 3.

[26] 18 C.F.R. § 292.310(c)(1)-(5) (2012). All potentially affected QFs include: (1) QFs that have existing power purchase contracts with the applicant; (2) other QFs that sell their output to the applicant or that have pending self-certification or Commission certifications whereby the applicant will be the purchaser of the QF's output; (3) any developer of generating facilities with whom the applicant has agreed to enter a power purchase contract or with whom the applicant has been in discussions concerning a possible power purchase contract; (4) developers of facilities that have pending state avoided cost proceeding as of the date of the application; and (5) any other facilities the applicant reasonably believes are potentially affected by its application. In these circumstances, whether or not such facilities are within the service territory of the applicant electric utility, the facilities are potentially affected.

25. We turn next to PNM's claim that the markets in and around its service territory provide non-discriminatory access to "wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B)."[27] We disagree. As a consequence, PNM's request to terminate the mandatory purchase obligation on a service territory-wide basis for QFs that have a net capacity greater than 20 MW pursuant to section 210(m)(1)(C) of PURPA is denied. Sections 292.309(a)(1), (2), and (3) of the Commission's regulations[28] codify the directives of Sections 210(m)(1)(A), (B), and (C) of PURPA and describe that type of markets that justify the termination of the mandatory purchase obligation. Section 292.309(a) describes the markets as:

> (1)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and
> (ii) Wholesale markets for long-term sales of capacity and electric energy;
>
> (2)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and
> (ii) Competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term, short-term sales, and electric energy, including long-term, and short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity exists, the Commission shall consider, among other factors, evidence of transactions with the relevant market; or
>
> (3) Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in paragraphs (a)(1) and (a)(2) of this section.[29]

26. The Commission determined that the requirements of section 210(m)(1)(A) of PURPA, codified at section 292.309(a)(1) of the Commission's regulations, described Day 2 Regional Transmission Organizations (RTOs)/Independent System Operators (ISOs) and that four then-existing Day 2 markets (Midwest Independent Transmission

---

[27] PNM Application at 5.

[28] 18 C.F.R. §§ 292.309(a)(1), (2), (3) (2012).

[29] *Id.*

System Operator, Inc. (MISO), PJM Interconnection, L.L.C. (PJM), ISO New England, Inc. (ISO-NE) and New York Independent System Operator (NYISO) satisfied the requirements of that section.[30] The Commission also established a rebuttable presumption that MISO, PJM, ISO-NE and NYISO qualify as markets described in section 292.309(a)(1) of the Commission's regulations and that QFs larger than 20 MW have nondiscriminatory access to those markets, and that electric utilities that are members of those four named RTOs/ISOs should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW.[31] Since adoption of the regulations, the Commission has relieved numerous member utilities of MISO, PJM, NYISO and ISO-NE of the mandatory purchase obligations.

27. The Commission also determined that the requirements of section 210(m)(1)(B) of PURPA, codified at section 292.309(a)(2) of the Commission's regulations, described markets where, first, the QF had nondiscriminatory access to transmission and interconnection services provided by a Commission-approved regional transmission entity pursuant to an open access transmission tariff, and, second, competitive wholesale markets provided a meaningful opportunity to sell-long term and short term capacity and electric energy to buyers other than the interconnecting electric utility. The Commission concluded that CAISO and Southwest Power Pool, Inc. (SPP) met the first prong of the section 210(m)(1)(B) test, but that it could not at that time find that any markets met the second prong of the test.[32] The Commission later found that part of the SPP market met the second prong of the test and granted relief from the mandatory purchase obligation to Oklahoma Gas and Electric Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, but denied the request for relief by Southwestern Public Service Company.[33]

28. In implementing section 210(m) of PURPA, the Commission further found that section 210(m)(1)(C) described markets that are of comparable competitive qualify as the markets described in sections 210(m)(1)(A) and 210(m)(1)(B) of PURPA.[34] The Commission found that markets in the Electric Reliability Council of Texas (ERCOT) satisfied the requirements of section 210(m)(1)(C) of PURPA; the Commission created a

---

[30] Order No. 688-A, FERC Stats & Regs. ¶ 31,250 at PP 19-30.

[31] 18 C.F.R. § 292.303(e) (2012).

[32] Order No. 688-A, FERC Stats & Regs. ¶ 31,250 at PP 31-39.

[33] *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,048, *reh'g denied*, 124 FERC ¶ 61,073 (2008).

[34] Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 34.

rebuttable presumption that electric utilities that operated within ERCOT should be relieved of the mandatory purchase obligation with respect to QFs larger than 20 MW.[35] To date, no electric utilities that operate within ERCOT have filed applications to be relieved of the mandatory purchase obligation. However, the Commission granted the requests of Pacific Gas and Electric Company, San Diego Gas & Electric Company and SoCal Edison to terminate their mandatory purchase obligations pursuant to section 210(m)(1)(C) of PURPA for QFs with a net capacity in excess of 20 MW.[36] The Commission found that four components of the California markets, when taken as a whole, contained competitive qualities comparable to those identified in PURPA sections 210(m)(1)(A) and (B).[37] The four components the Commission pointed to were: (1) California's Combined Heat and Power (CHP) Program; (2) California's Renewable Portfolio Standard (RPS) Program; (3) California's Resource Adequacy (RA) requirements; and (4) the CAISO's implementation of the Market Redesign and Technology Upgrade (MRTU) day-ahead market.[38]

29. The Commission, in implementing section 210(m) of PURPA explained that the burden of proof for applications under sections 210(m)(1)(A), 210(m)(1)(B) and 210(m)(1)(C) differ.[39] In general, the evidentiary showings for relief from the requirement that an electric utility enter into a new obligation to purchase electric energy[40] from a QF are higher under section 210(m)(1)(B) than the evidentiary showing required in section 210(m)(1)(A), and the evidentiary showings required in section 210(m)(1)(C) are higher than the evidentiary showings required in section 210(m)(1)(B).[41] The Commission explained that the different showings are required because "Day 2 organized markets, as a general matter, provide greater opportunities for QFs (and other independent non-utility generators) to compete than unorganized markets because of the existence of day ahead and real-time energy markets allow *all* competing generators to submit bids to participate in the market on a non-

---

[35] 18 C.F.R. § 292.309(f) (2012); *see* Order No. 688, FERC Stats. & Regs. ¶ 31,233 at PP 12, 173-80; Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 47.

[36] *Pacific Gas and Electric Company*, 135 FERC ¶ 61,234 (2011).

[37] *Id.* at PP 7, 24.

[38] *Id.* at P 7.

[39] Order No. 688, FERC Stats. & Regs. ¶ 31,233 at PP 38, 54.

[40] As used in PURPA, the term electric energy includes both capacity and energy.

[41] Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 54.

discriminatory basis."[42] The Commission continued, "[a]lthough other markets -- including "Day 1" markets and unorganized markets -- also provide opportunities for independent generators to compete, it is not surprising that Congress would find that, as a general matter, they have less-formalized structures for doing so and, hence, utilities seeking relief from the purchase obligation in those markets would bear a heavier evidentiary burden to obtain relief."[43] PNM asks the Commission to find that what it refers to as the Four Corners Hub is a wholesale market that is a comparable competitive quality market, as described in section 210(m)(C) of PURPA. The Commission stated that its task under section 210(m)(1)(C) is to determine the set of competitive qualities that are shared by markets satisfying the requirements of sections 210(m)(1)(A) and 210(m)(1)(B). The common objective of those two sections is to identify markets where QFs have meaningful alternatives to their local utility to sell their electric energy.[44] As discussed below, PNM's application does not support a finding that the Four Corners Hub provides markets that are of comparative competitive quality as the markets described in section 210(m)(1)(A) and 210(m)(1)(B) of PURPA.

30. PNM states that the Four Corners Hub is a collection of transmission facilities in and around the Four Corners and San Juan coal-fired generating stations in northwest New Mexico. PNM describes the Four Corners Hub as comprised of transmission facilities at the confluence of several high-voltage transmission lines flowing to and from load centers. PNM indicates that the Four Corners Hub is at the intersection of several balancing areas, and is a designated scheduling point for the purpose of taking transmission service under the OATTs of several utilities. PNM claims that, given its physical location, as well as transmission scheduling practices, the Four Corners Hub has become a liquid market for the sale of energy in the Desert Southwest. PNM also claims that the Four Corners Hub provides an "entry point" to the energy markets in Southern California, namely the CAISO's SP-15 market. PNM points to a number of EQR filings as supporting a finding that there are short-term and long-term transactions occurring at the Four Corners Hub.

31. As outlined above, the Commission has only granted one application pursuant to section 210(m)(1)(C) of PURPA, and that occasion was with respect to the California markets and that grant was based on four components of the California market that together yielded a market of a much higher competitive quality than what PNM describes in its application. The only other Commission finding made pursuant to section 210(m)(1)(C) of PURPA was the finding made with respect to ERCOT. That finding

---

[42] *Id.* at P 38 (emphasis in original).

[43] *Id.*

[44] Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at 46.

was based on the fact that ERCOT's markets were of comparative competitive quality to the Day 2 markets of MISO, PJM, NYISO and ISO-NE. The Commission made a finding that QFs there had nondiscriminatory access to markets that were the functional equivalent to those in MISO, PJM, NYISO and ISO-NE.[45] As explained more fully below, we are unable to make a similar finding with respect to the Four Corners markets on which PNM relies.

32. Each of the markets where the Commission has granted relief from the mandatory purchase obligation, or where the Commission created a rebuttable presumption that the markets justified such relief, consisted of organized markets and included RTOs or ISOs approved by the Commission, or in the case of ERCOT were the functional equivalent of such markets. In contrast, PNM seeks relief for its service territory, where there is no ISO or RTO and where there is no organized market. In Order No. 688-A, the Commission stated,

> we believe it appropriate to use the market designs identified in subparagraphs (A) and (B) [of section 210(m) of PURPA] as guides when analyzing whether an alternative market design satisfies the requirements of subparagraph (C).[[46]]

33. The data presented by PNM simply does not establish that the Four Corners Hub has the characteristics of a Day 1 market, as defined in section 210(m)(1)(B) of PURPA (transmission and interconnection services that are provided by a Commission approved regional transmission entity and competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time-sales, to buyers other than the utility to which the QF is interconnected), let alone a Day 2 market, as defined in section 210(m)(1)(A) of PURPA (independently-administered auction-based day ahead and real-time wholesale markets for the sale of electric energy and wholesale markets for long-term sales of capacity and electric energy). PNM has failed to establish that the Four Corners Hub is of a comparable competitive quality as markets described in subparagraphs (A) and (B) of section 210(m)(1) of PURPA. PNM asserts that (1) that QFs have access to a transmission hub that flows into load centers, (2) the transmission hub is an intersection of balancing authorities, (3) Four Corners Hub is a relatively liquid market for the purchase and sale of power, and (4) the Four Corners provides opportunities to sell into part of the CAISO market. These elements, even if accepted entirely, do not provide sufficient evidence of access to a market of comparable

---

[45] *See* Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 12, 173-80; Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 47.

[46] Order No. 688-A, FERC Stats. & Regs.¶ 31,250 at P 47.

competitive quality as required for a termination of its obligation to enter into new obligations to purchase from QFs.

34. First, the data presented by PNM does not establish that the Four Corners Hub has the competitive characteristics of a Day 1 market. To be relieved of the obligation to purchase in a Day 1 market an electric utility must show (1) transmission and interconnection services that are provided by a Commission-approved regional transmission entity, and (2) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time-sales, to buyers other than the utility to which the QF is interconnected.[47] PNM makes no claim that transmission and interconnection services are provided by a Commission-approved regional transmission entity. The Four Corners Hub has not been approved by the Commission as a regional transmission entity and PNM has not argued that it is the functional equivalent of what the Commission has approved as a regional transmission entity.

35. Turning to the market showings that must be made for a Day 1 market, PNM has not shown that QFs in its service territory have access to competitive markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term, and real-time sales to buyers other than the utility to which the QF is interconnected. As an initial matter, PNM does not point to markets that exist on a territory-wide basis in its service-territory. Rather, PNM points to some transmission facilities located in a far corner of New Mexico and outside of its retail service territory and designed to deliver the output of two large coal-fired plants to the utility owners of those plants. This is not the type of market that the Commission has previously approved as a Day 1 market, nor can we find it be the equivalent of a Day 1 market, particularly in the absence of a Commission-approved regional transmission entity to provide access to the market. While PNM has provided some EQR data which it contends shows that the market is liquid, it has not analyzed those data to show, as required for an electric utility in a Day 1 market to be relieved of the mandatory purchase obligation, that QFs in its service territory have a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time-sales, to buyers other than the utility to which the QF is interconnected.

36. Further PNM has not demonstrated that QFs in PNM's service territory have access to a competitive market that is comparable to a Day 2 market. A Day 2 market is defined as independently-administered auction-based day ahead and real time wholesale markets for the sale of electric energy and wholesale markets for long-term sales of

[47] Section 210(m)(1)(B) of PURPA, 16 U.S.C. 824a-3(m)(1)(B) (2006).

capacity and electric energy. [48] PNM did not attempt to claim that the Four Corners Hub has the competitive characteristics of a Day 2 market.

37. Further, there is nothing in the record to support any assertions in PNM's application that there is real access to California markets. Even if there were, PNM may not rely on the existence of comparable competitive California markets to be relieved from its PURPA mandatory purchase obligation.[49] The Commission in its rulemaking implementing EPAct 2005, noted that a utility may not rely on the existence of a Day 2 RTO of which it is not a member as a basis for termination of its PURPA obligation.[50]

38. In conclusion, based on these findings, we are unable to find that the markets which PNM points to satisfy the requirements of section 210(m)(1)(C) of PURPA; the mere fact that sales and purchases may be taking place at the Four Corners Hub is not sufficient demonstration that the Four Corners Hub wholesale market is of comparable quality to Day 1, let alone Day 2 markets.[51]

39. Finally, because the Commission has determined that PNM's application fails to establish that the Four Corners Hub is of a comparable competitive quality as markets described in sections 210 (m)(1) (A) and (B) of PURPA, there is no need for the Commission to address Western Water and Power's contention that it lacks access to a market due to the existing transmission constraints on PNM's system.

---

[48] Section 210(m)(1)(A) of PURPA, 16 U.S.C. § 824a-3(m)(1)(A) (2006).

[49] Order No. 688-A, FERC Stats. & Regs.¶ 31,250 at PP 80-83.

[50] *Id.*

[51] While PNM also claims that the Four Corners Hub is a liquid market, we have no basis in the statute or our regulations to find that a "liquid" market (however, that term may be defined – as we have no statutory or regulatory standard to judge exactly how liquid a market must be to be "liquid") is definitionally a market of "comparable competitive quality" to a Day 2 or even a Day 1 market as those markets are defined in PURPA and in our regulations.

The Commission orders:

PNM's application to be relieved of PURPA's mandatory purchase obligation is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.