

141 FERC ¶ 61,094
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.

TGP Granada, LLC and
Roosevelt Wind Ranch, LLC

Docket No. EL12-42-002

v.

Public Service Company of New Mexico and
Tortoise Capital Resources Corp.

TGP Granada, LLC and
Roosevelt Wind Ranch, LLC

Docket No. EL12-43-002

ORDER ON FILING

(Issued November 5, 2012)

1. On September 5, 2012, the Public Service Company of New Mexico (PNM) submitted an informational filing (September 5 Filing) in response to an order issued by the Commission in these proceedings on July 5, 2012.¹ In this order, we conditionally accept PNM's September 5 Filing as complying with the July 5 Order's directives. We also direct PNM to file the final Purchase Agreement with Tortoise Capital Resources Corp. (Tortoise) discussed in its September 5 Filing by November 14, 2012, or, in the alternative, notify the Commission on or before that date of any change to its schedule for consummating the Purchase Agreement, as discussed below.

Background

2. This proceeding involves the Eastern Interconnection Project (EIP), which consists of 216 miles of 345 kV transmission lines and associated facilities, rated at a capacity of 1000 MW, that connect the Blackwater Substation and the Bernalillo-Algodones

¹ *TGP Granada, LLC v. Pub. Serv. Co. of New Mexico*, 140 FERC ¶ 61,005 (2012) (July 5 Order).

Switchyard in New Mexico.² PNM currently owns 60 percent of the EIP's capacity and Tortoise, an institutional investor, owns 40 percent of the EIP's capacity (Leased Capacity), which Tortoise leases to PNM pursuant to a lease agreement (Lease) that expires on April 1, 2015. PNM operates 100 percent of the EIP's capacity pursuant to its open access transmission tariff (OATT). Due to contractual provisions in the Lease, however, PNM does not offer transmission service over the Leased Capacity beyond the Lease's expiration date.

3. TGP Granada, LLC and Roosevelt Wind Ranch, LLC (collectively, TGP) are developing a 300 MW wind project in Roosevelt, New Mexico, and seek to interconnect the project to the EIP at the Blackwater Substation. In pursuing transmission service on the EIP, TGP filed a complaint (Complaint) against PNM and Tortoise, alleging that PNM and Tortoise's refusal to offer transmission service over the Leased Capacity violates the Commission's open access requirements. In the Complaint, TGP argued, in relevant part, that the Commission should hold either PNM or Tortoise responsible for ensuring open access to the Leased Capacity beyond the expiration of the Lease. TGP also filed a petition for declaratory order or, in the alternative, a request for waiver with the Commission, regarding certain provisions in PNM's OATT.

4. In the July 5 Order, the Commission, among other things, granted TGP's Complaint on the issue of determining which entity will provide long-term transmission service over the EIP, and directed PNM, in consultation with Tortoise, to determine which entity will be responsible for offering transmission service over the Leased Capacity beyond April 1, 2015.³ The Commission directed PNM to report back to the Commission within 30 days of the date of the July 5 Order on this issue.⁴

Informational Filings

5. Since the issuance of the July 5 Order, PNM and Tortoise have each submitted two informational filings updating the Commission on their progress toward a resolution that would allow PNM to offer service on the Leased Capacity. In its first informational filing, submitted on August 6, 2012, PNM stated that it had been unable to reach an agreement with Tortoise to purchase the Leased Capacity. PNM argued that, as of that date, Tortoise remained the owner of the Leased Capacity and should be obligated to

² The background of this proceeding has previously been discussed in the July 5 Order. Thus, only the relevant background details are described briefly here.

³ July 5 Order, 140 FERC ¶ 61,005 at P 19.

⁴ *Id.* P 20.

provide long-term transmission service after April 1, 2015.⁵ In addition, both PNM and Tortoise requested additional time to continue negotiations. On August 13, 2012, the Secretary of the Commission granted a 30-day extension of time until September 5, 2012.

6. On September 5, 2012, PNM submitted a second informational filing, stating that it had reached an agreement in principle (Purchase Agreement) with Tortoise regarding the Leased Capacity. PNM states that, under the Purchase Agreement, it will purchase the Leased Capacity and provide long-term transmission service over the Leased Capacity beginning April 1, 2015. PNM states that, prior to the termination of the Lease and upon Commission approval of the Purchase Agreement, it will immediately assume responsibility for offering long-term service over the Leased Capacity and will not implement a separate queue for this capacity. PNM explains that it plans to execute the Purchase Agreement with Tortoise on or before October 31, 2012, and within 14 days of the Purchase Agreement's execution, PNM will request Commission approval of the Purchase Agreement pursuant to sections 203 and 205 of the Federal Power Act (FPA).⁶ Therefore, PNM requests additional time to finalize the Purchase Agreement with Tortoise.⁷

TGP Motion for Clarification

7. On July 24, 2012, TGP filed a motion for clarification (Motion) of the July 5 Order based on its assumption that Tortoise will be responsible for providing long-term transmission service over the Leased Capacity. In general, TGP seeks clarification of four issues: (1) that Tortoise must file an OATT, becoming a public utility subject to the Commission's jurisdiction; (2) that TGP's December 31, 2009 transmission service request submitted to Tortoise's predecessor in interest be assigned a position in Tortoise's queue; (3) that all other transmission service requests for the Leased Capacity be assigned to Tortoise's queue; and (4) that the Commission will prohibit the transfer of any pending transmission service requests in PNM's queue to Tortoise's.

⁵ While stating that the parties have made significant progress toward reaching a resolution, Tortoise stated its opposition to becoming the entity responsible for providing long-term transmission service over the Leased Capacity and, thus, becoming a public utility subject to the Commission's jurisdiction. Tortoise August 6, 2012 Informational Filing at 2.

⁶ 16 U.S.C. §§ 824b, 824d (2006).

⁷ PNM September 5, 2012 Informational Filing at 6. *See also* Tortoise September 5, 2012 Informational Filing at 2.

Notice and Comments

8. Notice of PNM's September 5 Filing was published in the *Federal Register*, 77 Fed. Reg. 60,981 (2012), with interventions or protests due on or before October 9, 2012. TGP and Cargill Power Markets, LLC (Cargill) filed timely comments.

9. TGP states that without providing the term sheet for the Purchase Agreement, the September 5 Filing does not provide sufficient information for it to take a position on the parties' proposed treatment of the Leased Capacity beyond April 1, 2015.⁸ TGP renews its request that the Commission require PNM and Tortoise to resolve the issues surrounding the Leased Capacity as soon as possible.⁹

10. Cargill conditionally supports PNM's request for additional time, subject to PNM and Tortoise submitting certain filings and providing additional information by November 15, 2012. Specifically, Cargill requests that PNM and Tortoise provide additional information on any regulatory approvals required before the Leased Capacity will be made available, as well how PNM will continue to provide transmission service if the Purchase Agreement falls through, and how Tortoise will offer service if the Purchase Agreement falls through.¹⁰ Cargill also asserts that this filing also should explain how various transmission service requests will be processed and treated.

Commission Determination

11. We conditionally accept PNM's September 5 Filing as complying with the July 5 Order's directive to identify the party responsible for providing long-term transmission service over the Leased Capacity. We note that PNM will be obligated to timely file the Purchase Agreement pursuant to sections 203 and 205 of the FPA, and we accept PNM's commitment to submit these filings within 14 days of the anticipated October 31, 2012 execution date of the Purchase Agreement, i.e., by November 14, 2012.¹¹ We disagree with TGP that PNM's September 5 Filing fails to comply with the July 5 Order's directives without the inclusion of the term sheet that the parties plan to finalize, as we will require PNM to uphold its commitment to file the finalized Purchase Agreement within 14 days of its execution. Further, we will not direct PNM to include in its filing of the Purchase Agreement the additional information requested by Cargill.

⁸ TGP October 9, 2012 Comments at 2.

⁹ *Id.* at 3.

¹⁰ Cargill October 9, 2012 Comments at 6-7.

¹¹ PNM September 5 Informational Filing at 3.

12. In accepting PNM's November 14, 2012 target date, we note that further requests for additional time may not be considered favorably by the Commission. The Commission encourages PNM's prompt filing of the Purchase Agreement to provide certainty for customers seeking transmission service over the Leased Capacity.¹² We also note that PNM's September 5 Filing indicates that the parties are still working toward finalizing the terms of the Purchase Agreement; thus, in the event that changes are made to the parties' schedule for completing the Purchase Agreement, we direct PNM to notify the Commission on or before November 14, 2012, of these changes, and provide the Commission with a definitive date by which PNM and Tortoise will execute the Purchase Agreement. As our acceptance of PNM's September 5 Filing as complying with the July 5 Order is based on the representation that PNM and Tortoise have agreed that PNM will purchase the Leased Capacity from Tortoise and, thus, would be the provider of transmission service over the Leased Capacity, changes to this agreement may affect PNM's satisfaction of the July 5 Order. Thus, if the parties cannot finalize the Purchase Agreement as described in the September 5 Filing, they must explain how they plan to comply with the July 5 Order's directive to identify which entity will provide transmission service over the Leased Capacity, as the circumstances surrounding their compliance may have changed.

13. We will not act on TGP's Motion at this time. Because any decision on the merits of TGP's Motion may be affected by the final resolution of issues between PNM and Tortoise, it would be premature to address the merits of TGP's Motion.

The Commission orders:

(A) PNM's September 5 Filing is conditionally accepted as compliant with the July 5 Order's directives, subject to PNM Filing the Purchase Agreement with Tortoise on or before November 14, 2012, as discussed in the body of this order.

¹² See, e.g., *Public Service Co. of New Mexico*, 140 FERC ¶ 61,230, at PP 60-66 (2012).

(B) PNM is hereby directed to notify the Commission on or before November 14, 2012 of any change to its schedule for consummating the Purchase Agreement, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.