

144 FERC ¶ 61,022  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of New Mexico      Docket No. ER13-1493-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

(Issued July 12, 2013)

1. On May 15, 2013, Public Service Company of New Mexico (PNM) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revisions to section 2.2 of PNM's Open Access Transmission Tariff (OATT). In this order, we accept PNM's OATT revisions, to become effective July 15, 2013, as requested, subject to a compliance filing.

**I. Background**

2. The Eastern Interconnection Project consists of 216 miles of 345 kV transmission lines and associated facilities that connect the Blackwater Substation and the Bernalillo-Algodones Switchyard in New Mexico (EIP Facilities).<sup>2</sup> PNM owns 600 MW of the EIP Facilities' capacity and, since 1985, PNM has operated the remaining 400 MW of capacity (Leased Capacity), as part of its integrated transmission system under an agreement with Tortoise Capital Resources Corporation (Tortoise). Tortoise owns and leases the 400 MW to PNM under a long-term leveraged lease agreement (Lease Arrangement) that expires on April 1, 2015. Even though PNM has administered the 1,000 MW of the EIP Facilities' capacity pursuant to its OATT, under the Lease Arrangement, PNM was prohibited from offering long-term transmission service using the Leased Capacity beyond the Lease Arrangement's April 1, 2015 expiration date.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> The EIP Facilities are rated at 1,000 MW.

**A. Capacity Over the EIP Facilities**

3. On July 5, 2012, the Commission granted a complaint filed by TGP Granada, LLC requesting that the Commission direct PNM and Tortoise to identify the party responsible for providing long-term transmission service over the Leased Capacity beyond the Lease Arrangement's April 1, 2015 expiration date.<sup>3</sup> The Commission directed PNM, in consultation with Tortoise, to resolve the issue and report back to the Commission within 30 days of the TGP Complaint Order regarding which party would become responsible for offering the transmission service at issue.<sup>4</sup> On September 5, 2012, PNM notified the Commission that it had reached an agreement in principle with Tortoise to purchase the Leased Capacity upon expiration of the Lease Arrangement and to request Commission approval of the purchase agreement's terms pursuant to sections 203<sup>5</sup> and 205 of the FPA. PNM indicated that it would assume responsibility for offering long-term transmission service over the Leased Capacity upon Commission approval of a final asset purchase agreement, in order to comply with the TGP Complaint Order.<sup>6</sup>

4. On November 14, 2012, PNM filed an application in Docket No. EC13-39-000 pursuant to section 203(a)(1) of the FPA requesting Commission authorization to acquire legal title to the Leased Capacity. In addition, on November 16, 2012, in Docket No. ER13-390-000, PNM filed an Asset Purchase Agreement for the Leased Capacity (Purchase Agreement) and associated tariff revision.

5. On January 15, 2013, the Commission conditionally accepted PNM's proposed OATT revisions and the transmission service-related provisions of the Purchase Agreement to be effective January 16, 2013, subject to the outcome of the section 203 proceeding.<sup>7</sup> The Commission also directed PNM to file the transmission service-related provisions of the Purchase Agreement for which it seeks section 205 approval in

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<sup>3</sup> *TGP Granada, LLC v. Public Service Company of New Mexico*, 140 FERC ¶ 61,005 (2012) (TGP Complaint Order), *clarification denied*, 142 FERC ¶ 61,102 (2013).

<sup>4</sup> *Id.* P 20.

<sup>5</sup> 16 U.S.C. § 824b (2006).

<sup>6</sup> *See* Informational Filing of Public Service Company of New Mexico, Docket Nos. EL13-42-002 and EL13-43-002 at 5 (Sept. 5, 2012).

<sup>7</sup> *Public Service Company of New Mexico*, 142 FERC ¶ 61,030 (2013).

Attachment EIP to its OATT, which PNM filed on February 11, 2013.<sup>8</sup> On January 16, 2013, the Commission issued an order authorizing PNM's section 203 application for the acquisition of jurisdictional facilities.<sup>9</sup>

### **B. Cargill's Transmission Service Requests**

6. On July 29, 2010, in a separate proceeding, the Commission granted a complaint filed by Cargill Power Markets, LLC (Cargill) against PNM concerning the processing of a transmission service request (TSR)<sup>10</sup> Cargill submitted to PNM, and set the associated remedy for hearing and settlement judge proceedings.<sup>11</sup> In the Cargill Complaint Order, the Commission found that PNM had unfairly invalidated the TSR that Cargill submitted. The Commission directed PNM to revise its OATT "to specify all transmission services the company provides, and to detail the procedures PNM follows when processing [TSRs]."<sup>12</sup> On December 30, 2011, the Commission conditionally approved a contested settlement agreement between PNM and Cargill, which provided for PNM to reinstate Cargill's TSR as it was originally submitted and to award Cargill \$200,000 for the harm Cargill incurred.<sup>13</sup>

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<sup>8</sup> The Commission accepted the compliance filing by delegated authority on March 27, 2013. *Public Service Company of New Mexico*, Docket No. ER13-916-000 (Mar. 27, 2013) (unpublished letter order).

<sup>9</sup> *Public Service Company of New Mexico*, 142 FERC ¶ 62,040 (2013).

<sup>10</sup> PNM's provision of transmission service beyond the Lease Arrangement's April 1, 2015 expiration date was not at issue during this proceeding, even though the term Cargill requested for TSR #7195869 extended beyond the Lease Arrangement's expiration date. Cargill requested 125 MW of point-to-point transmission service on the Blackwater-Four Corners transmission path for a five-year period, starting on June 1, 2011, and ending on June 1, 2016.

<sup>11</sup> *Cargill Power Markets, LLC v. Public Service Company of New Mexico*, 132 FERC ¶ 61,079 (2010) (Cargill Complaint Order), *reh'g denied*, 141 FERC ¶ 61,141 (2012).

<sup>12</sup> *Id.* P 23.

<sup>13</sup> *Cargill Power Markets, LLC v. Public Service Company of New Mexico*, 137 FERC ¶ 61,259 (2011). PNM submitted a compliance filing on March 12, 2012, which was accepted by delegated letter order on March 25, 2012. *Cargill Power Markets, LLC*

(continued...)

## II. Instant Filing

7. PNM states that, prior to entering into the Purchase Agreement, it had received a total of 15 TSRs seeking five-year long-term firm or competing long-term firm transmission service over the EIP Facilities from certain customers (collectively, the TSR-Holders).<sup>14</sup> PNM explains that, because it received the TSR-Holders' requests prior to PNM being able to offer transmission service over the Leased Capacity, and because the designated start dates for certain TSRs have passed, the contract terms for these TSRs will be less than five years.<sup>15</sup> As a result, the TSR-Holders are not eligible to receive rollover rights upon expiration of their contracts because, under section 2.2 of PNM's current OATT, rollover rights are only available to existing firm transmission service customers with contract terms of five years or more. To remedy this, PNM proposes to revise section 2.2 of its OATT to provide rollover rights to the TSR-Holders, on a non-discriminatory and not unduly preferential basis, regardless of whether the term of the resulting transmission service agreement (TSA) is less than five years.

8. Specifically, PNM proposes to revise section 2.2 to state that customers with Commission-accepted TSAs will be entitled to rollover rights at the end of the first term under their TSAs, regardless of the duration of the term of service in their TSAs, as long as they meet the following conditions:

- (i) the [TSA] must result from a Long-Term Firm or Competing Long-Term Firm transmission service request ("Certain TSR") on Transmission Provider's Open-Access Same Time Information System ("OASIS");
- (ii) the Certain TSR must have requested service to begin no earlier than January 1, 2011, and no later than January 1, 2014, as registered on Transmission Provider's OASIS;
- (iii) the [TSA] must be for transmission service over Transmission Provider's [EIP Facilities]; and

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*v. Public Service Company of New Mexico*, Docket No. EL10-61-002 (Mar. 25, 2013) (unpublished letter order).

<sup>14</sup> PNM includes a list of these TSRs as Attachment C to the May 15 Filing.

<sup>15</sup> May 15 Filing at 3-4.

(iv) the [TSA] must be executed, or the Commission must otherwise determine the [TSA] to become effective, on or before the end of the requested term in the Certain TSR.<sup>16</sup>

9. PNM notes that its proposed revisions require the TSR-Holders to execute a TSA before the end of their requested TSR terms. PNM explains that this requirement is necessary to be consistent with the current language in section 2.2 that provides rollover rights only to those customers with “contracts.”

10. PNM asserts that the proposed revisions to section 2.2 of its OATT are consistent with or superior to the *pro forma* OATT.<sup>17</sup> First, PNM states that the revisions will provide the TSR-Holders with the rollover rights they would have been entitled to if they had been able to execute TSAs, and PNM had been able to offer transmission service over the EIP Facilities, before PNM and Tortoise executing the Purchase Agreement. Second, PNM states that the revisions are narrowly tailored to apply only to the TSRs that were adversely impacted by the Lease Arrangement. Third, PNM states that the revisions are consistent with the Commission’s orders accepting the Purchase Agreement and associated tariff revisions, approving PNM’s acquisition of the Leased Capacity, and accepting PNM’s compliance filing. In addition, PNM states that its proposed revisions will not adversely affect a customer’s rollover rights under a TSA for capacity over the EIP Facilities in the unlikely event that the EIP Facilities are not purchased by PNM. Finally, PNM states that the revisions will expire on their own terms through the passage of time and that no further changes to section 2.2 will be needed.<sup>18</sup>

11. PNM requests that the Commission permit the proposed revisions to become effective on July 15, 2013, without suspension or hearing.<sup>19</sup>

### **III. Notice of Filings and Responsive Pleadings**

12. Notice of PNM’s May 15, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 30,299 (2013), with interventions and protests due on or before June 5, 2013. Timely motions to intervene were submitted by Navopache Electric Cooperative, Inc. and Powerex Corp. Cargill submitted a timely motion to intervene, comments, and limited

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<sup>16</sup> See May 15 Filing at Attachment A.

<sup>17</sup> May 15 Filing at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

protest. An untimely motion to intervene was filed by Iberdrola Renewables, LLC (Iberdrola). On June 21, 2013, PNM submitted a motion for leave to answer and answer to Cargill's limited protest. On July 5, 2013, Cargill submitted a request for leave to answer and limited answer to PNM's answer. On July 10, 2013, Iberdrola filed an answer to Cargill's July 5 answer.

**A. Cargill Comments and Limited Protest**

13. Cargill, as one of the TSR-Holders, with four TSRs pending in PNM's transmission queue, states that it supports PNM's efforts to ensure that the TSR-Holders retain the right to rollover their transmission service. However, Cargill asserts that PNM's May 15 Filing does not go far enough to remedy the harm suffered by the TSR-Holders from delays in PNM's processing of their requests for service over the EIP Facilities as a result of the Lease Arrangement.<sup>20</sup> Specifically, Cargill contends that PNM's failure to make the full capacity of the EIP Facilities available in a timely fashion has resulted in three problems for transmission customers: (1) depriving the TSR-Holders of sufficient lead time prior to the commencement of transmission service to develop renewable generation opportunities;<sup>21</sup> (2) shortening the term of service now available to the TSR-Holders to less than the full duration of service requested under their respective TSRs;<sup>22</sup> and (3) possibly restricting the TSR-Holders' opportunity to elect to defer service for up to five years as provided in PNM's OATT.<sup>23</sup>

14. Cargill requests that the Commission direct PNM to return the TSR-Holders "to the position they would have been in but for the processing delays on the part of PNM" by permitting the TSR-Holders to push back both the start and end dates under their TSRs for a period of up to three years.<sup>24</sup> In the alternative, Cargill suggests three remedies that PNM should, at a minimum, be required to provide to the TSR-Holders: (1) waiver of all fees associated with deferring transmission service under section 17.7 of PNM's OATT for up to three years;<sup>25</sup> (2) the option to extend the end dates under their

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<sup>20</sup> Cargill Limited Protest at 1, 8-10.

<sup>21</sup> *Id.* at 10-14.

<sup>22</sup> *Id.* at 14-15.

<sup>23</sup> *Id.* at 15-17.

<sup>24</sup> *Id.* at 13. *See also id.* at 15, 17.

<sup>25</sup> *Id.* at 13-14.

respective TSRs commensurate with the period by which their start dates have been delayed;<sup>26</sup> and (3) clarification that the TSR-Holders will be able to exercise their deferral rights even if they are unable to meet the 30-day deadline for requesting such deferrals and for the full five, one-year extensions provided in section 17.7 of PNM's OATT.<sup>27</sup>

15. Cargill also expresses concern that the four conditions PNM proposes to add in section 2.2 of the OATT could be interpreted to provide rollover rights to customers other than the TSR-Holders.<sup>28</sup> First, Cargill asks the Commission to require PNM to revise the proposed language in condition (i) to specify that the TSRs must have been submitted prior to the execution date of the Purchase Agreement and must have requested a five-year term of service to be eligible for rollover rights. Cargill also requests that condition (ii) be revised—consistent with the start dates reflected in the TSR-Holders' service requests—to replace January 1, 2014, with July 1, 2013 as the latest start date for an eligible TSR. Cargill requests clarification of condition (iii) that a TSA need not provide for service exclusively over the EIP Facilities to be eligible for rollover rights. Last, Cargill asserts that proposed condition (iv) should be deleted. Cargill points out that the TSR-Holders' TSAs might not be executed or effective prior to the end of the requested term in the applicable TSRs due to PNM's delay and not due to any fault on the part of the TSR-Holders.

16. Finally, Cargill seeks clarification that the order in which the TSR-Holders' requests are listed on Attachment C to the May 15 Filing is not the order in which PNM intends to process the TSRs.<sup>29</sup>

## **B. PNM Answer**

17. In its answer, PNM argues that granting the relief requested by Cargill would have adverse consequences for other customers. More specifically, PNM contends that pushing back the start and end dates of the TSRs would adversely impact other customers because doing so could: (1) delay the expeditious processing of TSRs in PNM's transmission queue; (2) undercut the critical function of PNM's OASIS as a historic timestamp database; (3) raise concerns from lower-queued customers that the TSR-

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<sup>26</sup> *Id.* at 15.

<sup>27</sup> *Id.* at 17.

<sup>28</sup> *Id.* at 17-21.

<sup>29</sup> *Id.* at 20-21.

Holders are being treated in an unduly preferential manner, which could lead to future complaints against PNM to modify TSRs held by lower-queued customers to suit their needs; and (4) force customers with potentially competitive bids to wait up to eight years before exercising their bids.<sup>30</sup>

18. In response to Cargill's alternative request that the Commission order PNM to waive any fees that would be required to extend commencement of service for a period of up to three years, PNM argues that, if granted, this request could adversely impact current transmission customers' rates for transmission service and would do nothing to protect the other TSRs at issue. PNM explains that revenues obtained from deferral fees are flowed through PNM's rates for transmission service and, as a result, existing transmission service customers benefit from this reduction to rates. PNM also contends that, by waiving deferral fees, PNM would be treating existing transmission customers differently because the TSR-Holders would be permitted to hold transmission capacity over the EIP Facilities at no cost—which could be viewed as a discount on transmission service.<sup>31</sup> Additionally, PNM does not agree that the TSR-Holders should be allowed to defer service five times regardless of the terms of their TSAs, as requested by Cargill. PNM argues that this proposal is inconsistent with the plain language of section 17.7 of PNM's OATT, as it is unclear how any entity that has a TSA with a term less than five years has the right to defer service under that TSA five times.<sup>32</sup>

19. In addition, PNM does not agree with Cargill's second alternative request that the Commission direct PNM to allow the TSR-Holders to extend the term of service of their TSAs to five years. PNM is concerned that extending the term of the TSAs would deny other existing or potential customers with competing bids the opportunity to compete for that capacity for the additional extended time period.<sup>33</sup>

20. PNM expressly takes no position on Cargill's request that condition (i) be modified to state that the TSR must have been submitted on PNM's OASIS prior to the execution date of the Purchase Agreement and must have requested a five-year term of

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<sup>30</sup> PNM Answer at 4-5. PNM explains that, before customers competing for the same capacity as Cargill could start receiving service, they would have to wait for the three years of lead time Cargill requests in addition to Cargill's full five-year term.

<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.* at 7.

service. In response to Cargill's request to replace January 1, 2014, with July 1, 2013, in condition (ii) as the latest start date for an eligible TSR, PNM states that it chose January 1, 2014 to provide adequate time for PNM to process the TSRs in its transmission queue and to avoid possibly encroaching on a TSR holder's five-year term. Regarding Cargill's proposed revisions to condition (iii), PNM clarifies that the TSR does not have to be exclusively over the EIP Facilities. Finally, with respect to condition (iv), Cargill's requested deletion of the requirement that customers must have an executed or effective TSA, PNM states that this criterion serves to clarify that rollover rights will only be provided to those who have TSAs, consistent with section 2.2 of the PNM's current OATT, and to ensure the expeditious processing of TSRs in PNM's transmission queue by providing a cutoff point beyond which no rollover rights shall be available for the TSR-Holders.<sup>34</sup>

21. Finally, as requested by Cargill, PNM clarifies that the order in which TSRs are listed in Attachment C of the May 15 Filing does not reflect the relative queue order of the TSRs.<sup>35</sup>

**C. Cargill Limited Answer**

22. In its limited answer, Cargill reiterates that the remedies requested in Cargill's protest are necessary to ensure that the TSR-Holders do not bear the burden of delays in processing PNM's transmission queue, and argues that these remedies will not, as PNM asserts, result in preferential treatment of these customers.<sup>36</sup> Cargill also contends that PNM's answer does not adequately address Cargill's concerns regarding the ability of the TSR-Holders to defer service for up to five one-year extensions.<sup>37</sup>

**D. Iberdrola Answer**

23. Iberdrola disagrees with Cargill's assertion in the July 5 answer that no later-queued customers would be harmed by Cargill's proposal. Iberdrola asserts that Cargill's requested waiver would harm later-queued customers, including Iberdrola. Given the likely harm to other customers, Iberdrola asks the Commission to reject Cargill's proposed modifications to section 2.2 of PNM's OATT.

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<sup>34</sup> *Id.* at 9-10.

<sup>35</sup> *Id.* at 10.

<sup>36</sup> Cargill Limited Answer at 1-5.

<sup>37</sup> *Id.* at 5-6.

#### IV. Discussion

##### A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the unopposed, timely motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), we will grant Iberdrola's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by PNM, Cargill, and Iberdrola because they have provided information that assisted us in our decision-making process.

##### B. Commission Determination

26. We find that PNM's proposed OATT revisions, with one modification, are consistent with or superior to the *pro forma* OATT. Therefore, we will conditionally accept PNM's proposed revisions to section 2.2 of its OATT, to become effective July 15, 2013, and direct a compliance filing, as discussed below.

27. In Order No. 890, the Commission allowed transmission providers to propose non-rate terms and conditions that differ from those in Order No. 890 if those provisions are consistent with or superior to the *pro forma* OATT.<sup>38</sup> To the extent deviations from the *pro forma* OATT are necessary, we have required that applicant transmission owners must explain and support the deviations sufficiently,<sup>39</sup> and we evaluate proposed OATT deviations on a case-by-case basis.<sup>40</sup> The Commission will only find proposed deviations from the *pro forma* OATT to be just and reasonable if the filing party provides an adequate explanation of how the deviations in the proposed OATT are consistent with or

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<sup>38</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 135, *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>39</sup> *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 47, *order on reh'g*, 128 FERC ¶ 61,074 (2009).

<sup>40</sup> *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071, at PP 55-60 (2006).

superior to the *pro forma* OATT, or provides a full and convincing explanation of how the *pro forma* provisions are not applicable, given the filing party's business model.<sup>41</sup>

28. PNM's proposal allows the TSR-Holders to obtain the rollover rights that they would have been entitled to if PNM had been able to offer transmission service over the EIP Facilities and the TSR-Holders had been able to execute TSAs before the Purchase Agreement was executed. Therefore, the criteria set forth in revised section 2.2 should only apply to the TSRs affected by PNM's processing delays. However, we find that PNM's proposed condition (ii), which states that the TSR must request service to begin no earlier than January 1, 2011 and no later than January 1, 2014, may allow customers other than the TSR-Holders, to whom PNM specifically designed its proposal to apply, to receive rollover rights even if they were not impacted by PNM's processing delays. Accordingly, we will direct PNM to submit a compliance filing, within 30 days of the date of this order, that revises condition (ii) to state "a TSR must have requested service to begin no earlier than January 1, 2011, and no later than July 1, 2013..." which captures the latest requested start date reflected in the TSR-Holders' TSRs.

29. We will not, however, direct any modification to the tariff conditions (i), (iii), or (iv) of proposed section 2.2. The modifications Cargill requests to condition (i) are not necessary because, as already drafted by PNM, the proposed revisions to section 2.2 allow only the TSR-Holders to receive rollover rights. In addition, we find that PNM's answer adequately clarifies that condition (iii) requires transmission customers to, at minimum, include the EIP Facilities in their requested transmission service path, but does not limit such customers to requesting service exclusively over EIP Facilities. We also agree with PNM that condition (iv) is necessary to ensure that rollover rights are only given to transmission customers with TSAs, consistent with the *pro forma* OATT.

30. Finally, we will not grant Cargill's other requests regarding the additional harm suffered by the TSR-Holders and the request to direct PNM to take further action. PNM's proposed revisions to section 2.2 of its OATT address only the ability of the TSR-Holders to obtain rollover rights. Thus, the issue before the Commission is whether revised section 2.2, which concerns only the issue of rollover rights, is consistent with or superior to the *pro forma* OATT. As discussed above, with one modification, we find that PNM's proposal satisfies this standard. We find that those arguments presented by Cargill that do not pertain to revised section 2.2 of PNM's OATT are beyond the scope of this proceeding. Nevertheless, Cargill's protest highlights customer concerns associated with the delays in processing transmission service requests. Thus, we strongly encourage

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<sup>41</sup> *Id.* P 60.

PNM to work with its stakeholders to address the concerns raised by any delays in transmission queue processing.

The Commission orders:

(A) PNM is hereby directed to submit a compliance filing, including revised tariff sheets, within 30 days of the date of issuance of this order, as discussed in the body of this order.

(B) PNM's revised OATT, as modified in accordance with Ordering Paragraph (A), is hereby accepted, to become effective July 15, 2013, as requested, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.