

145 FERC ¶ 61,302
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Aragonne Wind, LLC

Docket No. ER13-1954-001

ORDER GRANTING REQUEST FOR CLARIFICATION

(Issued December 31, 2013)

1. On November 6, 2013, the Commission issued an order granting a request by Aragonne Wind, LLC (Aragonne) for waiver of the one-year notice requirement to roll over long-term firm point-to-point transmission service under section 2.2 of the Public Service Company of New Mexico's (PNM) Open Access Transmission Tariff (OATT).¹ On December 3, 2013, PNM filed a request for clarification or, in the alternative, rehearing of the November 6 Order, seeking expedited consideration. As discussed below, we will grant the request for clarification.

I. Background

2. On July 10, 2013, Aragonne filed a request "that the Commission grant it a waiver of the one-year notice requirement applicable to customers wishing to roll over long-term firm transmission service agreements" that is contained in section 2.2 of PNM's OATT.² Aragonne requested the waiver to permit it to roll over 90 MW of long-term firm point-to-point capacity under its transmission service agreement (TSA) with PNM.³ PNM filed a motion to intervene, taking no express position on Aragonne's waiver request and noting only that it processed Aragonne's transmission service request in strict adherence with the terms of its OATT. Cargill Power Markets, LLC (Cargill) protested the filing, arguing that if Aragonne were permitted to roll over its TSA there might be insufficient transmission capacity on PNM's system to grant Cargill's queued transmission service requests in their entirety without requiring potentially expensive system upgrades.

¹ *Aragonne Wind, LLC*, 145 FERC ¶ 61,106 (2013) (November 6 Order).

² Aragonne Waiver Request at 1.

³ Aragonne subsequently submitted a clarification notifying the Commission that it had entered into an agreement to secure 75 MW of capacity and adjusting its requested waiver to seek the ability to roll over "up to 90 MW" of capacity.

3. In the November 6 Order, the Commission granted Aragonne's "request for waiver of the one-year notice requirement to roll over long-term firm point-to-point transmission service under section 2.2 of PNM's OATT."⁴ The Commission granted the waiver request on the basis that the request met the Commission's criteria for granting limited waiver of tariff provisions⁵ and would not undermine the Commission's rationale in Order No. 890⁶ for establishing the one-year notice requirement.⁷

II. Request for Clarification

4. On December 3, 2013, PNM filed a request for clarification or, in the alternative, rehearing, and expedited consideration. PNM states that Aragonne's request to roll over any portion of the 90 MW TSA⁸ is subject to a competing request by a queue participant with a January 1, 2014 start date and January 1, 2024 termination date (Competing

⁴ November 6 Order, 145 FERC ¶ 61,106 at P 17.

⁵ The Commission has granted limited waivers of tariff provisions where: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties. November 6 Order, 145 FERC ¶ 61,106 at P 18 (citing *Southeastern Power Admin.*, 143 FERC ¶ 61,210, at P 7 (2013); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011)).

⁶ *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ November 6 Order, 145 FERC ¶ 61,106 at PP 20-21.

⁸ PNM explains that Aragonne is in the process of arranging for 90 MW of firm transmission capacity to deliver the output of its generating facility to Arizona Public Service Company (APS) for the period from January 1, 2014, to January 1, 2015, and 75 MW of firm transmission capacity to deliver the output of its facility to APS for the period from January 1, 2015, through January 1, 2017. As a result, PNM concludes that Aragonne must acquire an additional 15 MW of firm capacity for the period from January 1, 2015, to January 1, 2017 to meet its commitment to APS. PNM Clarification Request at 2.

Request).⁹ Thus, PNM seeks clarification that its understanding regarding how to process Aragonne's rollover request in light of the Competing Request is consistent with the November 6 Order, as discussed below.

5. PNM explains that, pursuant to section 2.2 of its OATT, Aragonne must engage in the competitive bidding process and meet or exceed the length of the term of the Competing Request in order to roll over any of its existing transmission service.¹⁰ If Aragonne successfully matches the Competing Request, PNM states that section 17.7 of its OATT requires Aragonne to either take and pay for firm transmission service beginning on the start date of the Competing Request (i.e. January 1, 2014) or pay to defer the service start date.¹¹ Accordingly, PNM requests that the Commission confirm that, in order to roll over transmission service, Aragonne must notify PNM of its intention to match the Competing Request by December 15, 2013. In addition, if Aragonne matches the Competing Request, PNM requests that the Commission confirm that Aragonne must either take and pay for service beginning January 1, 2014, or defer the commencement of service until January 1, 2015. Finally, if Aragonne elects to defer service, PNM requests that the Commission confirm that Aragonne must notify PNM as soon as possible prior to January 1, 2014, that it intends to defer the commencement and pay PNM one-month's charge for the firm transmission capacity within 15 days of notification.¹²

6. To the extent that the Commission finds that PNM's understanding of how to process Aragonne's rollover request is inconsistent with the November 6 Order, PNM requests that the Commission provide specific guidance regarding which portions of its understanding require modification and/or how PNM should otherwise process Aragonne's rollover request. If the Commission neither confirms PNM's understanding nor provides the requested clarification, PNM seeks rehearing of the November 6 Order on the basis that the Commission erred by not providing guidance as to how PNM should process any rollover request resulting from Aragonne's requested waiver.¹³ In light of

⁹ PNM notes that even if Aragonne had rolled over its original transmission service request within the one-year deadline, that rollover request would have been subject to a competing request. *Id.* at 3, n.9. PNM reports that it notified Aragonne of the Competing Request by updating the comments section of Aragonne's transmission service request on its Open Access Same-time Information System on November 19, 2013. *Id.* at 4-5.

¹⁰ *Id.* at 3-4 (citing PNM OATT § 2.2).

¹¹ *Id.* at 4 (citing PNM OATT § 17.7).

¹² *Id.* at 5-6.

¹³ *Id.* at 6-7.

the Competing Request's January 1, 2014 start date, PNM requests that the Commission issue an order no later than December 31, 2013.¹⁴

7. On December 10, 2013, Aragonne filed an answer to PNM's request for clarification or, in the alternative, rehearing.

III. Discussion

A. Procedural Matters

8. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2013), prohibits answers to requests for rehearing. Accordingly, we reject the answer filed by Aragonne.

B. Commission Determination

9. We grant PNM's request for clarification. The November 6 Order granted Aragonne a "one-time, limited extension of the *deadline set forth* in OATT section 2.2,"¹⁵ and did not waive, or interfere with, any other aspect of the rollover process in section 2.2 or any other provision of PNM's OATT. Accordingly, we confirm that Aragonne must match the term of the Competing Request if it intends to roll over its transmission service and either take and pay for or defer commencement of its transmission service in accordance with sections 2.2 and 17.7 of PNM's OATT.¹⁶

¹⁴ *Id.* at 7.

¹⁵ November 6 Order, 145 FERC ¶ 61,106 at P 18 (emphasis added).

¹⁶ Section 2.2 of PNM's OATT states that "[t]he existing firm service customer must provide notice to the Transmission Provider whether it will exercise its right of first refusal no less than one year prior to the expiration date of its transmission service agreement." Given that providing notice one year prior to the expiration date of the transmission service agreement is not possible in this instance, requesting notification by December 15, 2013 will provide PNM with sufficient time to accept and finalize the transmission service requests prior to the start of service on January 1, 2014.

The Commission orders:

PNM's request for clarification of the November 6 Order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.