

147 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of New Mexico

Docket No. ER14-1292-000

ORDER CONDITIONALLY ACCEPTING TRANSMISSION SERVICE
AGREEMENT

(Issued June 4, 2014)

1. In this order, we conditionally accept an unexecuted Transmission Service Agreement (Agreement) between Public Service Company of New Mexico (PNM) and Cargill Power Markets, LLC (Cargill), effective December 1, 2015, as requested by Cargill, and direct PNM to revise the Agreement, in accordance with its commitment to adopt a revised effective date.

I. Background

2. On October 24, 2008, Cargill requested transmission service from PNM for a five-year period commencing January 1, 2011 and ending January 1, 2016. However, due to uncertainty regarding PNM's ability to offer transmission over a portion of the line, the Eastern Interconnection Project (EIP) facilities, PNM was unable to offer an agreement to Cargill at that time.¹ On July 5, 2012, in an order addressing a complaint filed by TGP Granada, LLC, the Commission directed PNM and Tortoise to reach an agreement regarding the EIP facilities in order to provide transmission service to transmission customers requesting service over the line.² On July 12, 2013, the Commission accepted revisions to section 2.2 of PNM's Open Access Transmission Tariff (OATT) to provide

¹ On October 24, 2008, Tortoise Capital Resource Corp. (Tortoise) held an undivided 40 percent interest in the EIP, which it leased to PNM under a lease agreement with an expiration date of April 1, 2015. PNM owned the remaining 60 percent undivided interest in the EIP.

² *TGP Granada, LLC v. Pub. Serv. Co. of New Mexico*, 140 FERC ¶ 61,005 (2012), *clarification denied*, 142 FERC ¶ 61,102 (2013) (Capacity Order).

rollover rights for transmission service requests, like Cargill's, that requested service over the EIP facilities, but whose requested commencement date had already passed during the PNM/Tortoise dispute and were therefore not able to receive transmission service for five years or more (the term that would qualify their transmission service requests for a rollover under the *pro forma* OATT).³

3. On December 30, 2013, PNM provided a counteroffer to Cargill's initial transmission service request for service to commence on January 1, 2014. Cargill responded that it would prefer an extended commencement date to coincide with the development of a new generation source that will utilize the transmission rights. After rounds of negotiation, PNM made a final offer for: (1) 0 MW of long-term firm transmission service capacity over the requested path from January 1, 2011 to January 1, 2015; and (2) 172 MW of long-term firm transmission service capacity from January 1, 2015 to January 1, 2016. Cargill would have the option to roll over its transmission service pursuant to the Rollover Order. However, the parties were unable to agree on the commencement date of transmission service, and Cargill requested that PNM file an unexecuted transmission service agreement.⁴

4. As a result, on February 10, 2014, PNM submitted the unexecuted Agreement with Cargill. The Agreement is dated January 15, 2014, and provides for PNM to provide firm point-to-point transmission service to Cargill on January 1, 2015. PNM explains that the only issue is the parties' disagreement on the appropriate effective date for transmission service under the Agreement.

5. PNM argues that its proposal to start service on January 1, 2015 is appropriate because Cargill entered its "rebid" to PNM's counteroffer under the North American Energy Standards Board's Business Practice Standards (NAESB Standards), which do not require PNM to accept the counteroffer.⁵ PNM also contends that Cargill's request is

³ *Pub. Serv. Co. of New Mexico*, 144 FERC ¶ 61,022, at P 30 (2013) (Rollover Order).

⁴ PNM Transmittal Letter at 4-5.

⁵ *Id.* at 7. PNM includes the following NAESB Standard (Version 2.1- WEQ-001-4.10.2), which provides instructions for a transmission provider in the event of a customer rebid:

Should the Customer elect to initiate or continue the negotiation of price and/or capacity by moving a transmission service request to REBID, the Transmission Provider shall respond by taking the request to a DECLINED, SUPERSEDED, ACCEPTED, or COUNTEROFFER state within the Provider Counter Time Limit.

not consistent with Commission precedent that interconnection service and transmission service are distinct and separate services. Finally, PNM is concerned that, in allowing Cargill's request for a later start date, PNM would be treating Cargill in a preferential manner, likely in violation of the OATT section 2.2 rollover rights provisions approved in the Rollover Order.⁶

6. PNM also requests waiver of the 120-day rule in the Commission's regulations to permit an effective date of January 1, 2015. PNM states that good cause exists to grant such a waiver because, given the issues surrounding the EIP facilities and the delay in processing transmission service requests, however, PNM states that it does not want to cause further delay, and that reaching resolution on the Cargill transmission service request will allow the continued processing of PNM's queue in a timely manner.

7. PNM also states that it does not want to prolong the issue, and therefore requests that the Commission make a determination on the appropriate start date for the Agreement without hearing or settlement procedures, and states that it is willing to accept the Commission's determination regarding the date of the Agreement, whatever date that may be.⁷

II. Notice of Filing, Interventions, and Protest

8. Notice of PNM's February 10, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 9461 (2014), with interventions and comments due on or before March 3, 2014. On March 4, 2014, Cargill filed a late intervention and limited protest. Cargill argues that a start date of December 1, 2015, instead of PNM's requested date of January 1, 2015, is necessary to allow for further development of a corresponding generation project, and that its requested commencement date is reasonable and not unduly discriminatory.

9. Cargill asserts that its request sat unprocessed for five years and endured unreasonable uncertainty, through no fault of Cargill's. Cargill argues that, as a result of backlog and untimely processing of PNM's transmission service queue, it has experienced a loss of lead time to foster opportunities with developers of renewable generation that can use the transmission capacity reserved by Cargill. Cargill explains that, when it first submitted its transmission service request in October 2008, it had 26 months of lead time to develop opportunities with renewable generation developers. In contrast, it is now being forced into the difficult situation of being offered service that would commence in the near future (11 months). Cargill requests that it be placed in

⁶ PNM Transmittal Letter at 7-8.

⁷ *Id.* at 9.

approximately the same commercial position it was in when it originally submitted its request.⁸ It asserts that allowing a December 1, 2015 commencement date would grant it a reasonable amount of lead time to complete a plan for commercial development of new generation to properly utilize its transmission service request after five years of delay.

10. Cargill also claims that the Commission expected PNM to work with Cargill and other transmission customers to mitigate the effects of delays with processing PNM's transmission queue. Cargill quotes the Rollover Order, where the Commission stated that "Cargill's protest highlights customer concerns associated with the delays in processing transmission service requests. Thus, we strongly encourage PNM to work with its stakeholders to address the concerns raised by any delays in transmission queue processing."⁹ Moreover, Cargill argues that its request does not violate the rollover requirements in section 2.2 of PNM's OATT or the NAESB Standards.¹⁰

11. Finally, Cargill contends that, if the Agreement is set to commence on January 1, 2015 (as requested by PNM), rather than on December 31, 2015, Cargill will bear approximately \$366,360 in fees to be paid to PNM to defer its transmission service until its planned generation project is operational. Cargill argues that this result is inequitable given that the delay and uncertainty leading up to this proceeding were no fault of Cargill. Accordingly, Cargill requests the Commission to revise the Agreement to reflect a start date of December 1, 2015. Alternatively, Cargill requests that the Commission set the proceeding for hearing.¹¹

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), we will grant Cargill's late-filed motion to intervene and protest given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁸ Cargill Protest at 16-17.

⁹ *Id.* at 15 (citing Rollover Order, 144 FERC ¶ 61,022 at P 30).

¹⁰ *Id.* at 18-20.

¹¹ *Id.* at 19-21.

B. Commission Determination

13. We will conditionally accept the unexecuted transmission service agreement with service to commence on December 1, 2015, as requested by Cargill, and direct PNM to revise the Agreement in accordance with its commitment to adopt a revised effective date, within 15 days of the date of issuance of this order. We agree with Cargill that, given the unique circumstances in this case, forcing it to use and pay for (or to pay to defer) the transmission service with less than one-year's notice is unreasonable. Cargill originally requested transmission service on October 24, 2008, but, as a result of various proceedings concerning the available transmission capacity on PNM's transmission system, Cargill was not offered a transmission service agreement until December 30, 2013.¹² These delays created uncertainty for Cargill and generation developers regarding the available transmission capacity for any new generation. Although the delay and uncertainty leading up to this proceeding were no fault of Cargill, these circumstances have placed it in a position that is not commercially reasonable. In light of the circumstances in this proceeding, we find that allowing service to commence on December 1, 2015, the date requested by Cargill, rather than on January 1, 2015, is reasonable.

14. With respect to PNM's argument that it would be treating Cargill in an unduly preferential manner by offering a later effective date to link its transmission service commencement and interconnection service commencement, we find that accommodating a December 1, 2015 start date is not based on linking the two services. Rather, it is based on the unique circumstances that caused delays and placed Cargill in an inequitable position. In other words, we are not granting Cargill a right to interconnect a generation source, but rather we are granting its request as an equitable result, given that its original request was delayed by approximately five years of litigation, through no fault of its own. Moreover, we are not persuaded by PNM's assertion that Cargill's request is inconsistent with the intent of the Rollover Order. First, Cargill's request to commence transmission service on December 1, 2015 meets the

¹² These delays include the following proceedings: (1) *Cargill Power Markets, LLC v. Pub. Serv. Co. of New Mexico*, 132 FERC ¶ 61,079 (2010), *reh'g denied*, 141 FERC ¶ 61,141 (2012) (granting a complaint by Cargill against PNM regarding a dispute over Cargill's queue position and PNM's failure to implement terms of its OATT); (2) Capacity Order, 140 FERC ¶ 61,005, at P 19 (finding that PNM had "fail[ed] to comply with open access requirements . . ." and that "the refusal by PNM and Tortoise to provide transmission service over the Leased Capacity beyond April 1, 2015 is unjust and unreasonable"); and (3) Rollover Order, 144 FERC ¶ 61,022 (accepting proposed revisions to section 2.2 of the PNM OATT regarding the rollover rights for certain TSRs, which were impacted by delays associated with Commission proceedings and resulted in their requested transmission service having terms of less than five years).

criteria established by the Rollover Order in section 2.2 of PNM's OATT.¹³ Next, while in the Rollover Order the Commission focused solely on rollover rights, it did not preclude the affected transmission customers from raising other concerns. Indeed, the Commission noted that concerns associated with delays in processing customers' transmission service requests continued to exist, and it encouraged PNM to work with its stakeholders to address these concerns.¹⁴

15. Additionally, we find that establishing a December 1, 2015 service commencement date is consistent with PNM's OATT and the conforming transmission service agreement submitted herein. Under the conforming transmission service agreement, in the absence of a need to construct any network upgrades, service may commence on the later of the requested service commencement date or any other date permitted by the Commission.¹⁵ Accordingly, allowing service to commence on December 1, 2015, as requested by Cargill, is consistent with PNM's OATT.

¹³ In the Rollover Order, the Commission provided rollover rights for Commission-accepted transmission service agreements that satisfy the following criteria stated in section 2.2 of PNM's OATT:

- (1) the transmission service agreement must result from a long-term firm or competing long-term firm transmission service request on PNM's Open-Access Same Time Information System (OASIS);
- (2) the transmission service agreement must have requested service to begin no earlier than January 1, 2011, and no later than July 1, 2013, as registered on Transmission Provider's OASIS;
- (3) the transmission service agreement must be for transmission service over PNM's EIP facilities; and
- (4) the transmission service agreement must be executed, or the Commission must otherwise determine the transmission service agreement to become effective, on or before the end of the requested term in the transmission service request.

Rollover Order, 144 FERC ¶ 61,022 at PP 28-39.

¹⁴ *Id.* P 30.

¹⁵ PNM OATT, Attachment A (Standard Transmission Service Agreement).

16. Finally, we find good cause to grant PNM's request for waiver of the 120-day notice requirement in section 35.3 of the Commission's regulations to allow the Agreement to become effective December 1, 2015, as directed herein.¹⁶ Accepting the Agreement early allows PNM and its transmission customers to be on notice with respect to the utilization of the transmission capacity that is the subject of this filing.

The Commission orders:

(A) PNM is hereby directed to submit, within 15 days of the date of issuance of this order, a compliance filing to make the Agreement effective December 1, 2015, as discussed in the body of this order.

(B) PNM's Agreement, as modified in accordance with Ordering Paragraph (A), is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ 18 C.F.R. § 35.3(a)(1) (2013).