

149 FERC ¶ 61,124  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 14, 2014

In Reply Refer To:  
Public Service Company  
of New Mexico  
Docket Nos. ER14-2300-000 and  
ER14-2300-001

Public Service Company of New Mexico  
414 Silver Avenue, SW  
Albuquerque, NM 87102

Attention: Michael L. Edwards  
Director, Federal Regulatory Policy

Dear Mr. Edwards:

1. On June 30, 2014, pursuant to section 205 of the Federal Power Act<sup>1</sup> and section 35.15 of the Commission's Rules and Regulations,<sup>2</sup> Public Service Company of New Mexico (PNM) submitted revisions to its Creditworthiness Procedures reflected in Attachment L of its Open Access Transmission Tariff (OATT), and revisions to its Large Generator Interconnection Procedures (LGIP) in Attachment N of its OATT. As discussed below, we accept PNM's tariff revisions for filing, effective August 29, 2014.
2. PNM states that it is revising its Creditworthiness Procedures to guard against the risk of transmission customer default, as well as to ensure consistency with other Commission-accepted creditworthiness procedures. PNM's proposed revisions add and modify subsections addressing the procedures for establishing and maintaining creditworthiness, specifying rights and obligations of the parties, providing collateral as security, and re-evaluating a transmission customer's creditworthiness status.<sup>3</sup> Under the

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.15 (2014).

<sup>3</sup> PNM Filing at 4-7.

proposal, a transmission customer must demonstrate creditworthiness through a satisfactory corporate unsecured debt rating from one of three rating agencies.<sup>4</sup> Additionally, PNM proposes to re-evaluate existing transmission customers' creditworthiness "from time to time in PNM's sole discretion" and, in the event a new or existing transmission customer does not meet PNM's creditworthiness requirements, a posting of security equal to five times the total anticipated maximum monthly revenues would be required.<sup>5</sup>

3. PNM also proposes revisions to its LGIP, section 3.3.1, to specify that an interconnection customer's commercial operation date must occur within seven years of its interconnection request, rather than within seven years of its in-service date. PNM states that this modification will reduce confusion and prevent projects that will never achieve commercial operation from impeding the progress of other projects in the queue.<sup>6</sup>

4. PNM requests that the Commission accept its revisions to become effective as of August 29, 2014.

5. Notice of PNM's June 30, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 38,880 (2014), with interventions and protests due on or before July 21, 2014. A timely motion to intervene was filed by El Paso Electric Company. Navopache Electric Cooperative, Inc. (Navopache) filed a timely motion to intervene and protest. On August 1, 2014, PNM filed a motion for leave to answer and answer Navopache's protest. On August 19, 2014, PNM submitted a supplemental answer to Navopache's protest.

6. In its protest, Navopache argues that the proposed changes are unjust and unreasonable as applied to existing transmission customers who maintain good payment histories and low risk profiles. Navopache contends that under the revised procedures, PNM would have the authority to re-evaluate any existing customers' creditworthiness "in its sole discretion," and thus expose existing transmission customers to significantly increased security requirements. Navopache also objects to PNM's elimination of the qualitative and quantitative criteria used to determine the customer's level of credit, arguing that it could be unduly discriminatory to small customers who are not rated or are unable to demonstrate a satisfactory rating. Navopache requests that the Commission exempt Navopache and existing similarly-situated transmission customers from PNM's proposed Creditworthiness Procedures. In the event that the Commission accepts PNM's

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<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 7.

proposed Creditworthiness Procedures, Navopache requests that the Commission require PNM to submit a compliance filing to: (1) limit PNM's ability to spontaneously; and subjectively re-evaluate a customer's creditworthiness and security adequacy; and (2) apply PNM's currently-effective Creditworthiness Procedures to existing transmission customers that are similarly-situated to Navopache.<sup>7</sup>

7. In its answer, PNM states that it is willing to remove language permitting it to perform a credit re-evaluation for existing transmission customers in its sole discretion, as well as include additional criteria that would specify reasons for PNM to re-evaluate a transmission customer's creditworthiness. PNM argues that the Commission should reject Navopache's request to be exempt from the proposed Creditworthiness Procedures, as well as reject Navopache's alternative request to require PNM to apply its currently-effective procedures to Navopache and other existing similarly-situated transmission customers. PNM states that it is not aware of any Commission precedent to support Navopache's request that PNM maintain two sets of creditworthiness procedures, and argues that granting Navopache's request may result in an undue discrimination claim against PNM.<sup>8</sup>

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PNM's answers because they have provided us with information that has assisted us in our decision-making process.

10. On August 21, 2014, Commission staff issued a deficiency letter requesting further information regarding PNM's filing. Specifically, Commission staff requested additional information regarding: (1) a transmission customer's ability to choose from PNM's acceptable forms of financial security; (2) the requirements and specifications that PNM will use to determine whether to accept a letter of credit as a form of financial security; and (3) a marked version of the tariff comparing PNM's currently-effective Creditworthiness Procedures to its proposed revised Creditworthiness Procedures.

11. On September 17, 2014, PNM submitted a response to the deficiency letter. In its response, PNM submitted a redline document comparing the currently-effective Creditworthiness Procedures to the proposed revised Creditworthiness Procedures, as

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<sup>7</sup> Navopache Protest at 3, 9.

<sup>8</sup> PNM Answer at 6-7.

well as provided clarity with respect to its financial security requirements. Specifically, PNM clarified that, while there are a number of types of financial security PNM will accept (such as cash, an unconditional and irrevocable letter of credit, an escrow account, or a parental guarantee), the transmission customer may choose from PNM's list of acceptable forms of security rather than PNM having sole discretion to decide the type of security. The deficiency response also specified the requirements and specifications that PNM will use to determine whether to accept a letter of credit as a form of financial security. In order to address Navopache's protest, PNM also revised its Creditworthiness Procedures to: (1) reinstate the qualitative and quantitative criteria it will use to assess a transmission customer's credit;<sup>9</sup> (2) remove language allowing it to re-evaluate the transmission customer's creditworthiness "in PNM's sole discretion"; and (3) specify commercially reasonable grounds that would justify re-evaluation based on a material adverse change in the transmission customer's creditworthiness. PNM states that Navopache supports the revisions included in PNM's deficiency response.<sup>10</sup> PNM requests waiver of the Commission's 60-day prior notice requirement to allow its revisions to become effective as of August 29, 2014.

12. Notice of PNM's September 17, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 58,763 (2014), with interventions and protests due on or before October 8, 2014. None was filed.

13. We find that PNM's proposed revisions to its Creditworthiness Procedures, as modified by PNM's response to the deficiency letter in Docket No. ER14-2300-001, are just and reasonable and provide clarity with respect to determining a transmission customer's ability to meet its financial obligations related to transmission service provided under PNM's OATT. Our review indicates that PNM's proposed revisions to its Creditworthiness Procedures satisfactorily address and resolve the concerns Navopache raised in its protest. For example, PNM has clarified, among other things, its procedures for establishing and re-evaluating a transmission customer's creditworthiness, as well as provided specificity with regard to its financial security requirements.

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<sup>9</sup> PNM proposes to further revise the qualitative and quantitative criteria to include: (1) audited financial statements of the transmission customer; (2) transmission customer's business history; (3) a description of the nature of the transmission customer's organization and operating environment; (4) transmission customer's existing contractual obligations, its governance, financial, accounting, risk management, and credit policies; and (5) the state and local regulatory environment in which the transmission customer operates. See PNM Deficiency Letter Response Attachment A at 2.

<sup>10</sup> PNM Deficiency Letter Response at 2.

14. We find that PNM's use of the commercial operation date is consistent with or superior to language in the *pro forma* LGIP because it provides clarity regarding the timing requirements for projects and is consistent with procedures previously accepted by the Commission.<sup>11</sup>

15. Finally, we find that good cause exists to grant waiver of the Commission's prior notice requirements. Accordingly, we accept PNM's revised Creditworthiness Procedures, as modified in Docket No. ER14-2300-001, and PNM's revised LGIP, as set forth in Docket No. ER14-2300-000, for filing, effective August 29, 2014, as requested.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>11</sup> *Arizona Public Service Co.*, 143 FERC ¶ 61,280, at P 34 (2013).