

UNITED STATES OF AMERICA **151 FERC ¶ 62,144**
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Company of New Mexico

Docket No. EC15-107-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued June 1, 2015)

On March 31, 2015, Public Service Company of New Mexico (PNM) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for a transaction in which PNM will reacquire certain undivided ownership interests in Unit 2 of the Palo Verde Nuclear Generating Station (PVNGS) to transition from certain sale/leaseback arrangements to direct ownership (Proposed Transactions). The jurisdictional facilities involved in the Proposed Transactions consist of the PVNGS Interests, defined below.

PNM states that it is a New Mexico corporation and direct, wholly-owned public utility operating company subsidiary of PNM Resources, Inc. (PNM Resources). PNM is engaged in the generation, transmission and sale of electricity at wholesale in the western United States. PNM further states that, within the State of New Mexico, it is engaged in the generation, transmission and distribution and sale of electricity at retail. According to PNM, it owns or leases 3,170 circuit miles of electric transmission lines over which it provides open access transmission service pursuant to an Open Access Transmission tariff (OATT) on file with the Commission. PNM maintains that its retail electric operations are regulated by the New Mexico Public Regulation Commission (New Mexico Commission).

PNM asserts that legal title to the undivided interests in PVNGS Unit 2 that are part of the Proposed Transactions is held by U.S. Bank National Association (USBNA), a national banking association, as trustee for certain beneficial owners (each an Owner Participant). PNM represents that the Owner Participant parties to the Proposed Transactions include: (i) PNM; (ii) CGI Capital, Inc., an equipment leasing company; (iii) Cypress Verde LLC, a single-purpose subsidiary of one or more affiliated investment funds; and (iv) Cypress Second PV Partnership, a single-purpose subsidiary of one or more affiliated investment funds.

¹ 16 U.S.C. § 824b (2012).

PNM states that the purpose and effect of each of the Proposed Transactions will be an acquisition by PNM of direct ownership of certain undivided interests in PVNGS Unit 2 from certain grantor trusts (collectively, Owner-Lessors), which the Owner-Lessors hold on a passive basis as part of a lease finance structure. PNM asserts that it has operational control over the output of the subject interests in PVNGS. PNM currently leases interests in Unit 2 of PVNGS and the five Unit 2 leases are scheduled to expire on January 15, 2016. PNM states that the option periods on certain leases could be further extended for up to an additional six years (Maximum Option Period) if the appraised remaining useful lives and fair value of the leased assets are greater than parameters set forth in the leases.

According to PNM, it notified the lessor under the one Unit 2 lease containing the Maximum Option Period provision that it would elect to renew that lease for the Maximum Option Period on the expiration date of the original lease. On March 18, 2014, PNM states that it and the lessor entered into an amendment to that lease that will implement the extension of the term of the lease, set to expire January 15, 2024. Additionally, PNM states that, for the three PVNGS Unit 2 leases which do not contain the Maximum Option Period provisions (Non-MOP Leases), PNM notified each of the Owner-Lessors that it would elect to purchase the PVNGS assets underlying those leases on the expiration date of the original leases.

PNM states that on February 25, 2014, PNM and the Owner-Lessor under one of the Non-MOP Leases entered into a letter agreement that establishes that the purchase price, representing fair market value, to be paid by PNM upon the purchase of the assets underlying that lease will be \$78.1 million on January 15, 2016. PNM asserts that this lease is for 31.25 MW of the entitlement from PVNGS Unit 2. According to PNM, it and the Owner Lessors under the other two Non-MOP Leases signed a letter agreement on May 1, 2014 that establishes a binding agreement regarding the purchase price, representing the fair market value, to be paid by PNM upon the purchase of the PVNGS assets underlying those leases of \$85.2 million on January 15, 2016. PNM represents that these leases are for 32.76 MW of the entitlement from PVNGS Unit 2.

PNM maintains that it acquired the entire beneficial interest in an Owner-Lessor that leases an interest in PVNGS Unit 2 to PNM. This lease (Owned Lease) is for 29.8 MW of the entitlement from PVNGS Unit 2. PNM states that the Owned Lease remains in existence and will expire on January 15, 2016, the same date on which the Non-MOP Leases will expire. Since PNM is the sole beneficiary of the Owner-Lessor with respect to the Owned Lease, PNM states that it will, in lieu of exercising a purchase option, liquidate the Owner-Lessor on the lease expiration date and transfer title to the interests in PVNGS Unit 2 directly to PNM.

Under the Proposed Transactions, PNM states that on January 15, 2016, it will

acquire direct ownership of, and title to, the interests in PVNGS Unit 2 which it presently holds as lessee under the three Non-MOP Leases and the Owned Lease. PNM asserts that the transfer of direct ownership of, and title to, the interests in PVNGS Unit 2 will be effected, as to each Proposed Transaction, by a deed and bill of sale or similar instrument.

PNM states that the Proposed Transactions are consistent with the public interest because they will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

PNM states that the Proposed Transactions will have no effect on competition. PNM explains that it currently and fully controls the generation output of its overall 10.2 percent interest in PVNGS Unit 2 through its ownership interest and its leasehold interests. PNM states that the Proposed Transactions will result in PNM acquiring direct ownership of, and title to, interests in PVNGS Unit 2 already included in such overall 10.2 percent interest. Therefore PNM concludes that the Proposed Transactions will not result in any change in market concentration.

PNM maintains that the Proposed Transactions will have no adverse effect on rates. PNM states that none of the Owner-Lessors or their respective beneficiaries (other than PNM) have a rate schedule on file with the Commission, and none are public utilities. PNM further states that none have any control over the dispatch of PVNGS Unit 2, thus PNM asserts that the Owner-Lessors and such beneficiaries (other than PNM) have no rates that could be affected by the Proposed Transactions. Regarding itself, PNM states that the contracts under which PNM's wholesale electricity customers take service all contain either fixed cost-based or market-based rates that will be unaffected by the Proposed Transactions. PNM further states that, pursuant to its OATT, it is unable to pass through the costs related to the Proposed Transactions to its transmission customers, and is unable to change the rates charged for transmission service without filing an application with the Commission pursuant to Section 205 of the FPA. For these reasons, PNM concludes that all of its wholesale customers and transmission customers are shielded from any rate effects of the Proposed Transactions.

PNM states that the Proposed Transactions will not have an adverse effect on regulation. PNM states that the Proposed Transactions will not diminish federal regulatory authority over PNM and that PNM will remain subject to the Commission's jurisdiction under the FPA after consummation of the Proposed Transactions. PNM further represents that the New Mexico Commission approved the sale-leaseback of PVNGS Unit 2 in 1986 and no further New Mexico Commission authorization is required for the Proposed Transactions. Thus PNM asserts that the Proposed Transactions will have no adverse effect on federal or state regulation.

PNM verifies that, based on the facts and circumstances known to it or that are

reasonably foreseeable, the Proposed Transactions will not result in, at the time of the Proposed Transactions or in the future: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the FPA.

This filing was noticed on March 31, 2015, with comments, protests or interventions due on or before April 21, 2015. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure.² Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North America Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³ The

² 18 C.F.R. § 385.214) (2014).

³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

foregoing authorization may result in a change in status. Accordingly, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any necessary filings under section 205 of the FPA to implement the Proposed Transactions.

After consideration, it is concluded that the Proposed Transactions are consistent with the public interest and are hereby authorized, subject to the following conditions:

- (1) The Proposed Transactions are authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (5) If the Proposed Transactions result in changes in the status or the upstream ownership of PNM's qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;
- (6) PNM shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transactions;
- (7) PNM must inform the Commission within 30 days of any changes in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transactions;
- (8) PNM shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated; and
- (9) PNM shall account for the Proposed Transactions in accordance with Electric Plant Instruction No. 5, Account 102, Electric Plant Purchased or Sold, and Account 114, Electric Plant Acquisition Adjustments, of the Uniform System of Accounts. PNM shall submit its final accounting entries within six months of the date that the Proposed Transactions are consummated, and the accounting submissions shall provide all the

accounting entries and amounts related to the Proposed Transactions along with narrative explanations describing the basis for the entries.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West under 18 C.F.R. § 375.307 (2014). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713 (2014).

Steve P. Rodgers
Director
Division of Electric Power Regulation – West