



July 16, 2015

Commissioner Tony Clark

FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT

Docket No. EL15-59-000

Item No. E-13

Statement of Commissioner Tony Clark on The Navopache Case

"I write separately to note that section 10.4 of the Power Sale Agreement (PSA) between Navopache Electric Cooperative (Navopache) and Public Service Company of New Mexico (PNM) does not appear particularly ambiguous. Thus, I find myself in a similar position to that expressed in Commissioner LaFleur's dissent.

"Nonetheless, I am willing to grant PNM one more chance to supplement the record to help us understand why section 10.4 does not mean what it says.¹ PNM argues that Navopache may only purchase "small, discrete, identifiable quantities of power and energy"² yet provides no language within the four corners of the PSA that supports a small limitation, or a discrete limitation, or identifies a specific quantity of power and energy that Navopache may purchase from alternative suppliers.³

"If this additional process provides an opportunity for the parties to reach settlement - then all the better - but otherwise, I would not expect a hearing to be a particularly protracted affair.

"Accordingly, I respectfully concur."

¹ See *Penzoil Co. v. FERC*, 645 F.2d 360, 388 (5th Cir. 1981), citing *Texas Eastern Transmission Corp. v. FPC*, 306 F.2d. 345, 347-48 (5th Cir. 1962), *cert. denied*, 375 U.S. 941 (1963) (finding parties should be bound to the precise language within the settlement, because of the close scrutiny with which the Commission reviews proposed settlements before giving its approval).

² PNM Protest at 12.

³ See *Power Authority of the State of New York v. Long Island Lighting Co.*, 60 FERC ¶ 61,069 (1992) (finding the Commission expects contracting parties to clearly express their intentions and not require the Commission to subsequently read into their agreements what is not there), citing *Consolidated Gas Supply Corp. v. FERC*, 745 F.2d 281, 291 (4th Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985) ("One sure way to discourage voluntary settlements is . . . to read into contracts things which are simply not expressed or not there.").