

122 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Public Service Company of New Mexico

Docket No. OA07-26-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued February 26, 2008)

1. On July 12, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Public Service Company of New Mexico (PNM) submitted its compliance filing as required by Order No. 890.² In this order, we will accept PNM's filing, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and

¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007).

whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.³

4. Further, in Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM)⁴ set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.⁵

II. PNM's Compliance Filing

5. In its July 12, 2007 filing, PNM states that, in addition to making modifications to its OATT required by Order No. 890, it is making minor changes to correct inconsistencies with the *pro forma* OATT. PNM states that Exhibit B⁶ of its filing lists these changes which include, among other things, updating Attachment E (Index of Point-To-Point Transmission Service Customers), Attachment I (Index of Network Integration Transmission Service Customers), and Attachment O (Index of Generator Interconnection Customers) to state that these lists of customers can be found in PNM's publicly posted Electric Quarterly Report (EQR). PNM also states that it is deleting its former Schedule 9 (Loss Compensation Service) to adopt the *pro forma* Order No. 890 Schedule 9 (Generator Imbalance Service), because a loss compensation service provision is not required under the *pro forma* OATT and because PNM no longer believes it is necessary for its OATT to contain a schedule for loss compensation service. PNM requests a July 13, 2007, effective date for its filing.

³ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁴ CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider's system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

⁶ Exhibit B is labeled "Changes to PNM's OATT to conform to the *pro forma* OATT that are in addition to the changes required by Order No. 890."

III. Notice of Filing and Responsive Pleadings

6. Notice of PNM's filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before August 2, 2007. The Navajo Tribal Utility Authority (NTUA) filed a timely motion to intervene and a protest. Powerex Corp. (Powerex) filed a timely motion to intervene and comments, and on August 6, 2007, Powerex filed an errata to its comments.⁷ The Incorporated County of Los Alamos, New Mexico (Los Alamos County) and the U.S. National Nuclear Security Administration (NNSA) filed motions to intervene out of time. On August 24, 2007, PNM filed an answer to the protests.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R § 385.214(d) (2007), the Commission will grant Los Alamos County's and NNSA's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PNM's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

9. As discussed below, we will accept PNM's compliance filing, as modified, to be effective July 13, 2007. We also direct PNM to file, within 30 days of the date of this order, a further compliance filing as discussed below.

1. Clustering

a. PNM's Filing

10. PNM proposes, in section 19.4 of its OATT (Clustering of System Impact Studies) to cluster system impact studies at the request of a customer, with the concurrence of all

⁷ In its comments, Powerex opposes certain of PNM's OATT revisions and suggests that the Commission direct PNM to modify certain provisions. Accordingly, we will treat Powerex's comments as a protest.

other customers proposed to be included in the cluster. In addition, PNM, at its own option will cluster system impact studies. When PNM initiates a cluster, it will establish a "Queue Cluster Window" with fixed opening and closing dates which will be posted on PNM's OASIS. In addition, the deadline for completing all system impact studies for which a system impact study agreement has been executed will be in accordance with section 19 of PNM's OATT (Additional Study Procedures for Firm Point-To-Point Transmission Service Requests) for all transmission service requests assigned to the same customer-initiated queue or Queue Cluster Window. Further, under proposed section 19.4, once a cluster is established a customer may not opt out of the cluster unless the customer withdraws its request for transmission service. With regard to the allocation of the costs of a clustered system impact study, PNM's proposed section 19.4 provides:

The Transmission Provider will assign the cost of producing the clustered System Impact Study, including any third-party study work required by the Transmission Provider, to each customer remaining in the queue at the time of the invoice of the cost based on an allocation comprised fifty percent (50%) on the number of requests that remain in the Cluster at the time of the cost allocation and fifty percent (50%) on the ratio of the transmission capacity reservation of each customer to the total transmission capacity reservation of all customers that remain in the Cluster at the time of the cost allocation.⁸

b. Protest and Answer

11. Powerex argues that PNM has not clearly set out its clustering procedures, including timing considerations. It argues that PNM should be required to include provisions describing the process by which PNM's customers can initiate clustered studies, customer obligations upon joining a clustered study, and under what circumstances a customer may opt out of a cluster and request an individual study. In addition, Powerex states that some of the references to certain provisions contained in section 19 of PNM's OATT were not renumbered to reflect the addition of section 19.4 and that PNM should be required to correct these references.

12. In response, PNM argues that the level of detail it included in its clustering provision is comparable to the level provided for clustering of system impact studies for generator interconnection service under the *pro forma* OATT. PNM states that in Order No. 890, the Commission provided the transmission provider with discretion to develop its clustering procedures because the transmission provider is in the best position to determine the clustering procedures that it can accommodate.⁹ Accordingly, PNM states,

⁸ PNM FERC Electric Tariff, First Revised Volume No. 6, Original Sheet No. 58.

⁹ PNM Answer at 4 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1371).

it used its discretion to develop the clustering provision that it can accommodate and, while it does not believe that its proposed clustering provision needs to be revised, it will post for comment a business practice that will provide additional detail regarding timing, notices, and process in cluster administration.

c. Commission Determination

13. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.¹⁰ In addition, the Commission gave each transmission provider discretion to develop the clustering procedures it will use because the transmission provider is in the best position to determine the clustering procedures that it can accommodate and that will prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.¹¹ Further, Order No. 890 gave the transmission provider discretion to determine whether a transmission customer can opt out of a cluster and request an individual study.

14. We disagree with Powerex that PNM's clustering provision requires further refinement. Here, PNM has revised its OATT to allow customers to initiate requests to cluster system impact studies and to allow PNM to open Queue Cluster Windows to enable customers to have their studies conducted in a cluster. PNM's clustering provision provides procedures for the posting of opening and closing dates for the Queue Cluster Window on PNM's OASIS and specifies that the deadline for completing clustered system impact studies will be in accordance with section 19 of PNM's OATT. In addition, PNM has also detailed how the cost of the clustered system impact studies will be allocated among customers participating in a clustered study and PNM's clustering provision specifies that a customer may not opt out of a cluster unless the customer withdraws its request for transmission service. Accordingly, we find that PNM's clustering provision is consistent with Order No. 890 and accept it as in compliance with Order No. 890.

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

¹¹ *Id.*

15. With regard to PNM's commitment to post a business practice for comment that will provide additional detail regarding timing, notices, and processes, we find that, to the extent PNM develops any additional rules, standards, and practices regarding clustering service requests that significantly affect transmission service, PNM must incorporate those rules, standards, and practices into its OATT.¹²

16. Finally, we agree with Powerex that PNM did not properly revise cross-references in its OATT when it added its proposed section 19.4.¹³ Accordingly, we direct PNM to file, within 30 days of the date of this order, a further compliance revising its proposed section 19.4 as discussed above.

2. Unreserved Use Penalties

a. PNM's Filing

17. PNM has added to section 28.6 of its OATT (Restrictions on Use of Service) the following language from the Order No. 890 *pro forma* OATT but PNM has not filed an unreserved use penalty rate:

The Transmission Provider shall specify any appropriate charges and penalties and all related terms and conditions applicable in the event that a Network Customer uses Network Integration Transmission Service or secondary service pursuant to Section 28.4 to facilitate a wholesale sale that does not serve a Network Load.¹⁴

b. Protest and Answer

18. Powerex argues that it is unclear whether PNM has specified the charges, penalties, and terms and conditions for every instance for which PNM's OATT permits it to levy charges and penalties. Powerex points to the *pro forma* OATT language PNM adopted in section 28.6 (Restrictions on Use of Service) of its OATT arguing that PNM has adopted this language but otherwise fails to specify the applicable charges and penalties. Powerex contends that PNM should be required to modify its OATT to specify the applicable charges and penalties, and be prohibited from levying such charges or penalties until PNM makes these modifications.

¹² See *id.* P 1649.

¹³ For example, section 19.9 of the *pro forma* OATT (Penalties for Failure to Meet Study Deadlines) references sections 19.3 (System Impact Study Procedures) and 19.4 (Facilities Study Procedures). It appears that, with the insertion of its clustering provision between the former sections 19.3 and 19.4, PNM should have changed the references in section 19.9 to sections 19.3 and 19.5.

¹⁴ PNM FERC Electric Tariff, First Revised Volume No. 6, Original Sheet No. 72.

19. PNM states that it adopted all of the language required under Order No. 890 and argues that its penalty provisions are consistent with Order No. 890. PNM states that it has chosen not to assess unreserved use penalties for unscheduled, non-reserved use of its system and that it recognizes that if it chooses in the future to start levying such charges, it will need to revise its OATT and seek Commission approval.

c. Commission Determination

20. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.¹⁵ We note that PNM's OATT does not contain an unreserved use penalty rate and, as a result, it may not charge transmission customers for unreserved use penalties. To the extent PNM wishes to assess a charge for unreserved use in the future, it must submit an FPA section 205 filing proposing such charges. We note that PNM's section 28.6 (Restrictions on Use of Service) provision uses the language from the *pro forma* OATT and is therefore consistent with the language from the *pro forma* OATT, therefore, we find that no further modifications are necessary to this section.

3. Exhibit B—Changes in Addition to Changes Required

Under Order No. 890

a. PNM's Filing

21. PNM states that it has listed in Exhibit B of its filing certain minor changes, in addition to the changes required under Order No. 890, made to correct inconsistencies with the *pro forma* OATT. PNM states it is updating Attachments E, I and O to state that these lists of customers can be found in PNM's publicly posted EQR. PNM also states that it is deleting its former loss compensation service provision because that provision is not required under the *pro forma* OATT and because PNM no longer believes it is necessary for its OATT to include this service.

b. Protests and Answer

22. NTUA states that the Commission made clear that compliance filings should contain only the OATT changes required under Order No. 890.¹⁶ According to NTUA, PNM is making certain changes to its OATT that are beyond the scope of Order No. 890.

¹⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

¹⁶ NTUA Protest at 3 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135 n 106).

Specifically, NTUA notes that PNM removed its Loss Compensation Service from its OATT and Appendix H (Reliability Management System) from PNM's Large Generator Interconnection Agreement (LGIA). NTUA states that although it is relying on PNM's representations that other aspects of its compliance filing are consistent with Order No. 890, and while it assumes that PNM has identified all additional changes in its filing, PNM should be required to remove all revisions not required under Order No. 890.

23. Powerex argues that PNM's Attachment A-1 (Form of Service Agreement for the Resale, Reassignment or Transfer of Long-Term Firm Point-To-Point Transmission Service) is applicable only to long-term firm service and that such a restriction is not consistent with the reassignment provisions set forth in Order No. 890. Powerex requests that the Commission clarify that Attachment A-1 should govern reassignment of both long-term and short-term firm point-to-point transmission service and require PNM to modify its attachment accordingly.

24. In response to NTUA, PNM maintains that to correct inconsistencies with the *pro forma* OATT it made minor changes to certain provisions of its tariff that were not affected by the Order No. 890 changes. PNM argues that these changes do nothing more than fix a few minor deviations and return the provisions to what the Commission contemplated in Order No. 888¹⁷ and Order No. 890. With regard to Powerex's comment that Attachment A-1 should apply to both long-term and short-term firm point-to-point transmission service, PNM states that Powerex should have raised this issue on rehearing of Order No. 890.

c. Commission Determination

25. In Order No. 890, the Commission stated that compliance filings need only contain the revised provisions adopted in Order No. 890, rather than the transmission provider's entire *pro forma* OATT. The Commission also stated that, in a compliance filing, the revised OATT should only be changed to the extent that the provisions were

¹⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

revised in Order No. 890. Further, if a transmission provider wishes to propose different terms and conditions, it must make a separate FPA section 205 filing.¹⁸

26. We find that most of the changes PNM proposes (as listed in Exhibit B) are minor changes that correct inconsistencies between PNM's OATT and the Order No. 890 *pro forma* OATT.¹⁹ Accordingly, we will accept these minor revisions as consistent with the Order No. 890 *pro forma* OATT.

27. However, the Commission finds that some of the changes PNM lists on Exhibit B and other revisions not listed on Exhibit B, as discussed below, are beyond the scope of Order No. 890. Specifically, PNM proposes to delete its loss compensation service from schedule 9 of its OATT and the associated definition of loss compensation service from section 3.7 (Generator Imbalance Service). PNM states that a loss compensation service provision is not required under the *pro forma* OATT and PNM no longer believes it is necessary for its OATT to contain a schedule for loss compensation service. In addition, PNM proposes to delete Appendix H to its LGIA and update Attachments E, I and O to state that these lists of customers can be found in PNM's publicly posted EQR. Further, PNM's proposed revision to section 14.7 (Curtailment or Interruption of Service) uses the

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n 106. However, the Commission also noted that to the extent a transmission provider desires to refile its entire OATT in order to simplify pagination or other tariff designation issues associated with implementing the modifications required under the Final Rule, it may do so. *Id.*

¹⁹ The following sections, as listed on PNM's Exhibit B, reflect corrections to nomenclature, punctuation or spelling to bring PNM's OATT into conformance with the Order No. 890 *pro forma* OATT: (1) headers and footers; (2) 2.3 - Reservation Procedure for Expiring Transmission Service; (3) 3 - Ancillary Services; (4) 13.6 - Curtailment of Firm Transmission Service; (5) 16.1 - Conditions Required for Transmission Customers; (6) 29.1 - Condition Precedent for Receiving Service; (7) 29.2(v) - Application Procedures; (8) Schedule 2 - Reactive Supply and Voltage Control from Generation or Other Sources Service; (9) Schedule 3 - Regulation and Frequency Response Service; (10) Schedule 5 - Operating Reserve - Spinning Reserve Service; (11) Schedule 7 - Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service; (12) Attachment A - Form of Service Agreement for Firm Point-To-Point Transmission Service; (13) Attachment F - Service Agreement for Network Integration Transmission Service; (14) Attachment M - Small Generator Interconnection Procedures for Generator Interconnections Less Than 20 MW; and (15) Attachment M-1 - Small Generator Interconnection Agreement.

word “and” rather than “or” as provided in the Order No. 890 *pro forma* OATT²⁰ and PNM has omitted the phrase “or decremental” in its proposed Schedule 4 (Energy Imbalance).²¹

28. Order No. 890 provides transmission providers the opportunity to submit FPA section 205 filings proposing non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are consistent with or superior to the *pro forma* OATT.²² PNM did not submit these changes in a filing under section 205 of the FPA nor did it explain in the instant proceeding why its proposed non-conforming tariff provisions are consistent with or superior to the *pro forma* OATT. Accordingly, we reject without prejudice the proposed tariff revisions as beyond the scope of this compliance filing, except those Exhibit B changes, set forth in footnote No. 19, we found to be minor changes to correct inconsistencies between the PNM OATT and the Order No. 890 *pro forma* OATT. If PNM wishes to revise these provisions, it must file the proposed revisions in a separate FPA section 205 filing. Therefore, we direct PNM to make a compliance filing, within 30 days of the date of this order, reflecting the removal of these changes to bring its OATT in compliance with the Order No. 890 *pro forma* OATT.

²⁰ PNM proposed section 14.7 provides as follows (in redline):

The Transmission Provider reserves the right to curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System and the systems directly and indirectly interconnected with Transmission Provider’s Transmission System.

PNM FERC Electric Tariff, First Revised Volume No. 6, Original Sheet No. 40 (emphasis added).

²¹ Schedule 4 of the *pro forma* OATT provides (in pertinent part):

The Transmission Provider shall establish charges for energy imbalance based on the deviation bands as follows: (i) deviations within +/- 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of incremental *or decremental* cost... (emphasis added).

²² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

29. In addition, we will grant Powerex's request to clarify that Attachment A-1 should govern reassignment of both long-term and short-term firm point-to-point transmission service.

30. In Order No. 890-A, the Commission recognized that inclusion of the words "long-term firm" in the title of the form of service agreement and the attached specifications in the new Attachment A-1 to the *pro forma* OATT adopted in Order No. 890 may imply that use of the service agreement is limited to long-term firm point-to-point transactions.²³ Accordingly, in Order No. 890-A, the Commission revised section 23.1 of the *pro forma* OATT (Procedures for Assignment or Transfer of Service) and the title of Attachment A-1 to remove "long-term firm." PNM has included the words "long-term firm" in its proposed Attachment A-1. We find however that because PNM and other transmission providers are required to remove that language from their Attachment A-1s when they submit compliance filings pursuant to Order No. 890-A, it is unnecessary to direct PNM to revise its Attachment A-1 in the instant proceeding.²⁴

4. CBM

31. As noted above, in Order No. 890 the Commission required transmission providers to file redesigned transmission charges that reflect the CBM set-aside to ensure that customers not benefiting from the CBM set-aside (*i.e.*, point-to-point customers) do not pay for CBM. In response to that compliance requirement, PNM indicates that it does not include CBM in its point-to-point rate or for its native load, or any other customer and, thus, no changes are needed to its rate design. We conclude that PNM's submittal complies with Order No. 890 and, accordingly, we will accept it.²⁵

²³ *Id.* P 424.

²⁴ In Order No. 890-A, transmission providers that have not been approved as RTOs or ISOs, and whose facilities are not in the footprint of an RTO or ISO, were directed to submit, within 60 days of publication of Order No. 890-A in the *Federal Register* (*i.e.*, March 13, 2008), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890-A.

²⁵ We note that to the extent PNM uses CBM in the future or provides a CBM set-aside at the request of a customer, it must revise its transmission charges consistent with the requirements of Order No. 890. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

5. Imbalance Energy Revenue Distribution

32. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.²⁶

33. PNM has not responded to the Commission's directive regarding the distribution of imbalance revenues in Order No. 890.²⁷ We direct PNM to file, within 30 days of the date of this order, a further compliance filing that proposes, consistent with Order No. 890, a mechanism to credit revenues above the transmission provider's incremental costs to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.

6. Simultaneous Submission Window

34. In Order No. 890, the Commission decided to retain its first-come, first-served policy regarding transmission service requests. However, the Commission required those transmission providers who set a "no earlier than" time limit for transmission service requests to treat all such requests received within a specified period of time, or window, as having been received simultaneously. Although the Commission left it to the transmission providers to propose the amount of time the window would be open, the Commission stated that the window should be open for at least five minutes unless the transmission provider presents a compelling rationale for a shorter window. The Commission also required each transmission provider that is required to, or decides to, deem all requests submitted within a specified period as having been submitted simultaneously to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.²⁸

35. PNM has not addressed whether or not it has adopted the use of a simultaneous submission window. If PNM has adopted the use of a "no earlier than" time limit for the submission of transmission service requests, we direct PNM to file, within 30 days of the date of this order, a further compliance filing that clearly indicates that PNM has satisfied

²⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

²⁷ *Id.* P 727.

²⁸ *Id.* P 1418-22.

the remaining compliance requirements of Order No. 890 for adoption of a simultaneous submission window.²⁹

7. Attachment J - Procedures for Addressing Parallel Flows

36. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled “Procedures for Addressing Parallel Flows” that is to be “filed by the Transmission Provider.” The Commission in the NERC Transmission Loading Relief Order³⁰ amended the *pro forma* OATT to incorporate NERC’s Transmission Loading Relief (TLR) procedures. The Commission also required that every transmission-operating public utility adopting NERC’s TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination—Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent Interconnection-wide congestion management methods used in the WECC (WSCC Unscheduled Flow Mitigation Plan) and ERCOT (section 7 of the ERCOT Protocols) regions.³¹ As a result, all transmission providers must complete Attachment J by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

37. PNM has not filed any procedures in Attachment J. PNM is directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J as shown below:

The North American Electric Reliability Corporation’s (“NERC”)'s Qualified Path Unscheduled Flow Relief for the Western Electricity Coordinating Council (WECC), Reliability Standard WECC-IRO-STD-006-0 filed by NERC in Docket No. RR07-11-000 on March 26, 2007, and approved by the Commission on June 8, 2007, and any amendments thereto, are hereby incorporated and made part of this Tariff. See www.nerc.com for the current version of the NERC's Qualified Path Unscheduled Flow Relief Procedures for WECC.

²⁹ *Id.*

³⁰ *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

³¹ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg., 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), at P 961-65, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

8. Rollover Rights Effective Date

38. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.³²

39. PNM has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, PNM's Attachment K, setting forth its transmission planning process, which was filed on December 7, 2007, in Docket No. OA08-34-000, has not yet been accepted. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct PNM to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. PNM should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment K, requesting an effective date commensurate with the date of that filing.

40. Accordingly, we will accept PNM's compliance filing, as modified, to be effective July 13, 2007. We also direct PNM to file, within 30 days of the date of this order, a further compliance filing as required above.

The Commission orders:

(A) PNM's compliance filing is hereby accepted, as modified, effective July 13, 2007, as discussed in the body of this order.

(B) PNM is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.