

133 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Public Service Company of New Mexico

Docket Nos. ER11-1915-000
ER11-1916-000
ER11-1917-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 29, 2010)

1. On October 27, 2010, Public Service Company of New Mexico (PNM) submitted for filing, under section 205 of the Federal Power Act (FPA),¹ revised sections to its Open Access Transmission Tariff (OATT), its Electric Coordination Tariff (Coordination Tariff), and two pre-OATT bilateral contracts (Bilateral Contracts) respectively to propose new transmission rates.² In this order, we accept for filing PNM's proposed revisions to its tariffs and Bilateral Contracts and suspend them for five months, to become effective on June 1, 2011, subject to refund. We also establish hearing and settlement judge procedures and consolidate the dockets, as discussed below.

I. Background

2. PNM is a vertically-integrated electric utility involved in the generation, transmission and sale of electricity in various wholesale markets in the western United States. PNM is also engaged in the generation, transmission, distribution, and sale of electricity at retail in the state of New Mexico. PNM owns or leases electric transmission lines within New Mexico and Arizona that are interconnected with lines

¹ 16 U.S.C. § 824d (2006).

² The parties receiving service pursuant to the Bilateral Contracts are Western Area Power Administration (WAPA), and El Paso Electric Company (El Paso) under FERC Rate Schedule No. 9 and FERC Rate Schedule No. 86 respectively.

owned by utilities that serve Arizona, Colorado, New Mexico, Utah, and Texas. PNM provides service pursuant to its OATT on file with the Commission.

3. PNM is a wholly-owned subsidiary of PNM Resources, Inc., a publicly-traded company. PNM Resources, Inc. acquired TNP Enterprises, Inc., the parent of Texas-New Mexico Power Company (TNMP) on June 6, 2005.³ At that time, TNMP operated a transmission system in New Mexico and a transmission system in Texas (operating within ERCOT). Following the transaction, the PNM and TNMP OATTs were consolidated in a single, joint OATT with separate rates for service over the PNM and TNMP systems.⁴ On January 1, 2007, TNMP's New Mexico assets were transferred to PNM.⁵ Effective the same day, the PNM OATT was amended to reflect the former TNMP OATT rates, thus establishing a "two zone" pricing structure with two sets of rates based on where service was taken (i.e., the historical PNM system or the former TNMP system).⁶

4. PNM states that its existing OATT rates for service over the historical PNM system were established under a settlement approved by the Commission in 2007.⁷ The settlement established an Annual Transmission Revenue Requirement (ATRR) of \$58.5 million, a point-to-point rate of \$2.07/kW-month for either firm or non-firm transmission service, and a real energy losses rate of 3.00 percent. PNM's existing rates for service over the former TNMP system were established under a settlement of the proceeding in which TNMP first filed its OATT in compliance with Order No. 888.⁸ The settlement

³ See *PNM Resources, Inc.*, 110 FERC ¶ 61,204 (2006).

⁴ See *Pub. Serv. Co. of N.M.*, 111 FERC ¶ 61,177 (2005).

⁵ *PNM Resources Inc.*, 117 FERC ¶ 62,053 (2006).

⁶ *Pub. Serv. Co. of N.M.*, Docket No. ER07-150-000 (Dec. 20, 2006) (unpublished letter order).

⁷ *Pub. Serv. Co. of N.M.*, 118 FERC ¶ 61,152 (2007).

⁸ *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).

established an ATRR of \$4,139,100 and point-to-point rate of \$2.50/kW-month for either firm or non-firm transmission service. The current real energy losses rate of 3.44 percent for service over the former TNMP system is the rate filed by TNMP with its original OATT.

5. PNM also states that its Coordination Tariff provides for Economy Energy transactions at tariff rates and wholesale Firm System Capacity/Energy Sale or Exchange transactions at either negotiated or tariff rates. A customer taking service under the Coordination Tariff may request that PNM acquire, on the customer's behalf, any necessary transmission and ancillary services under PNM's OATT. Attachments A-1 and Attachment B-1 of the Coordination Tariff restate, for reference purposes, the rates for transmission and ancillary services set forth in PNM's OATT.⁹

6. With regard to the Bilateral Contracts, under the first agreement (El Paso Agreement) PNM provides firm and interruptible transmission service to El Paso at the same rates as PNM's existing OATT rates. The losses rate under the El Paso Agreement is the same as set forth in PNM's OATT. PNM states that, under the second agreement (WAPA Agreement), PNM provides transmission service to WAPA at rates that are different from those in PNM's OATT but are based on the OATT rates.

II. PNM's Filing

7. PNM states that its current transmission rates are no longer just and reasonable, do not allow for a reasonable return on its investment in transmission plant and property, do not reflect the current costs of transmission service, or cover the increased costs PNM will incur in the near term as a result of necessary capital upgrades.

8. With respect to the latter assertion, PNM states that it is making and needs to make significant capital investments to its transmission system in the near term in order to maintain continued reliability. PNM notes that on June 1, 2010, it filed a rate case with the New Mexico Public Regulation Commission to fund these and other capital improvements. PNM also states that its present operating and financial conditions are materially different from those that existed in 2005 when its current transmission rates went into effect. In addition, PNM contends that its financial health is currently in poor condition, with Standard and Poor's rating PNM below investment grade and Moody's rating PNM at its minimum investment grade level. PNM explains that, as a result, PNM has less access to debt and equity capital, and the capital PNM can obtain is more expensive for PNM's customers than it would be if PNM were financially stronger.

⁹ Specifically, section 1.2 of the Coordination Tariff requires customers to obtain transmission service under PNM's OATT.

9. PNM proposes the following revisions to its OATT, Coordination Tariff and Bilateral Contracts: (1) an increase in the ATRR for network integration transmission service set forth in Attachment H of its OATT; (2) an increase in the point-to-point transmission service rates set forth in Schedules 7 and 8 of the OATT; (3) an increase in the real losses rates for point-to-point and network integration transmission service, as set forth in sections 15.7 and 28.5 of its OATT, respectively; (4) corresponding changes to the point-to-point rates set forth in the Coordination Tariff; and (5) corresponding changes to the point-to-point rates and, in certain cases, losses rates set forth in the Bilateral Contracts.

10. In addition to requesting new transmission rates under its OATT, Coordination Tariff, and Bilateral Contracts, PNM also requests additional non-rate changes to the OATT to reflect the change from a two-zone structure to a single OATT rate structure applicable across the entire PNM system. For this single OATT rate structure, PNM proposes an ATRR of \$99,347,540, an increase in the monthly rate for firm and non-firm point-to-point transmission service to \$2.65/kW-Month, and an increase in its real energy loss rate to 3.58 percent.¹⁰ PNM also proposes to reflect these changes in the Bilateral Contracts.

11. The Commission's eTariff filing system permits revisions to only one Tariff Identifier per tariff filing. PNM has separate Tariff Identifiers for its OATT, Coordination Tariff and Rate Schedules. Therefore, PNM made its filing in three parts, which were assigned different docket numbers. PNM requests consolidation of all three dockets. PNM requests that its proposed tariff revisions be made effective on January 1, 2011.

III. Notice and Responsive Pleadings

12. Notice of PNM's filing was published in the *Federal Register*, 75 Fed. Reg. 68,340 (2010), with interventions and comments due on or before November 17, 2010. On November 5, 2010, Navopache Electric Cooperative (Navopache) filed a timely motion to intervene and request for extension of time to file comments. On November 17, 2010, Tri-State Generation and Transmission Association, Inc. (Tri-State) and WAPA also filed timely motions to intervene and requests for extension of time to file comments.¹¹ PNM filed an answer to Navopache's request for extension, arguing that December 10, 2010 was too lengthy. However, PNM agreed that an extension to

¹⁰ The ATRR for the combined system reflects an increase of approximately 59 percent over the previous combined ATRRs of the two systems.

¹¹ Navopache requested an extended comment date of December 10, 2010. WAPA and Tri-State requested a December 3, 2010 extended comment date.

December 3, 2010 would be reasonable. Subsequently, the Commission extended the comment date up to and including December 3, 2010.¹²

13. High Lonesome Mesa, LLC, Western Water and Power Production Limited, LLC, Navajo Tribal Utility Authority (Navajo Tribal), Incorporated County of Los Alamos, New Mexico (County of Los Alamos), Iberdrola Renewables, Inc., and Xcel Energy Services Inc. filed timely motions to intervene. County of Los Alamos, Navajo Tribal, WAPA, and Tri-State all filed protests. Navopache filed a protest, including an answer to PNM's request to consolidate.¹³

14. On December 9, 2010, Tri-State submitted an answer to Navopache's and WAPA's protests. PNM filed an answer to the protests on December 15, 2010.

15. Protesters argue that PNM has not provided adequate support for the proposed tariff revisions and request that the Commission reject PNM's filing, or in the alternative, accept and suspend PNM's filing for the full five-month period, subject to refund and the outcome of a full evidentiary hearing.

16. Protesters also argue that PNM's recommended return on common equity (ROE) is excessive. WAPA, Navopache, and Tri-State argue that PNM's proposal to use a midpoint ROE in the calculation of PNM's ATRR is inconsistent with Commission policy.¹⁴ Tri-State and Navopache argue that PNM's proposed ROE is inconsistent with Commission policy because PNM fails to exclude an upper-end outlier from its proxy group, thereby raising PNM's ROE to the upper half of the zone of reasonableness.

17. Additionally, WAPA, Tri-State, and Navopache argue that PNM's proposed rate base is overstated for several reasons. WAPA and Navopache state that PNM has not justified its inclusion of transmission Construction Work in Progress in its rate base. WAPA highlights that PNM's Palo Verde generating plant is not transmission and that PNM has not justified including values associated with that generating plant in its accumulated deferred income taxes, net operating loss, and allowance for funds used

¹² See *Notice of Extension of Time*, Docket No. ER11-1915-000, *et al.* issued November 17, 2010.

¹³ Navopache filed errata to its protest to reflect its position that PNM's requested increase of its ATRR is approximately 60 percent. WAPA filed errata to its protest to include an Attachment A, which provides a summary of adjustments proposed by WAPA.

¹⁴ See Navopache Protest at 2 (citing *Virginia Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 58 (2008)).

during construction. Navopache highlights that PNM has not offered an explanation for its significant increases in Property Taxes. Further, WAPA and Tri-State argue that PNM's proposed treatment of its cash working capital requirements does not comport with the lead-lag study PNM filed in its retail case. Tri-State, WAPA, and Navopache object to the inclusion of acquisition adjustments in PNM's ATRR in connection with PNM's purchase of transmission facilities from Tri-State and in connection with PNM's purchase of an ownership interest in a lessor with whom it had entered into a sale and leaseback of the Eastern Interconnection Project facilities. Additionally, WAPA contends that PNM has not justified the inclusion of other regulatory assets and miscellaneous deferred debits in its rate base.

18. Tri-State further argues that PNM should not have included in its rate base the cost of facilities that are not integrated with PNM's transmission system; specifically Tri-State questions the inclusion of high-voltage direct current (HVDC) converter stations that Tri-State argues do not provide any benefit to PNM's alternating current (AC) transmission system. Further, Tri-State objects to the inclusion of payments for transmission by others and transmission expenses Tri-State argues are non-existent in PNM's ATRR. Additionally, Tri-State asks the Commission to investigate whether the BA Station to Blackwater Station line should be directly assigned. Navopache argues that PNM has not supported the direct assignment to Navopache of the cost associated with third-party transmission service that PNM has used to provide Network Integration Transmission Service.

19. In addition, Navopache, WAPA, and Tri-State identify numerous cost of service issues and inconsistencies that they allege the PNM filing raises. For example, Tri-State contends that PNM has understated its projected loads in developing its rates for point-to-point service, and has overstated its depreciation rates. WAPA and Tri-State argue that the proposed loss factor is overstated. WAPA states that the loss factor does not account for the differences on PNM's north and south systems. Tri-State notes that PNM's loss factor impermissibly includes losses on third-party transmission systems and the HVDC converter stations.

20. WAPA and Tri-State also argue that PNM has overstated its revenue credits. Tri-State contends that PNM has made errors in its cost allocations and revenue credits, including: (1) not crediting short-term firm transmission revenues to its Network Integration Transmission System customers; (2) crediting revenues from Schedule 1 service against the PNM ATRR instead of allocating costs to Schedule 1 service; and (3) failing to provide sufficient information to evaluate the proposed revenue credits.

21. Tri-State also argues that PNM has overstated its transmission plant in service. Additionally, Tri State, WAPA, and Navopache argue that PNM has overstated its transmission operations and maintenance expense. Tri-State and Navopache point out that PNM includes operations and maintenance costs and revenue credits associated with two WAPA transmission service contracts under which transmission service is provided

at no cost to PNM. Additionally, Navopache and Tri-State contend that PNM has overstated its transmission operations and maintenance expenses related to new Native American right-of-way settlements.

22. Tri-State also argues that PNM's demand allocators for point-to-point transmission service are internally inconsistent. Tri-State adds that PNM has not provided sufficient support for its proposed adjustments based on the PNM corporate budget as required by the Commission's regulations. In addition, Tri-State argues that PNM does not provide sufficient support for its proposed accelerated ratemaking treatment for pension expense funding. Navopache contends that PNM is not in the dire financial health that its filing purports.

23. With regard to PNM's request that the instant three dockets be consolidated, Navopache argues that PNM did not file a motion consistent with the Commission's regulations and does not provide sufficient support. Additionally, Navopache argues that the OATT, Coordination Tariff, and Bilateral Contracts involve distinct issues of fact and law and differ in scope. Navopache argues that PNM's consolidation request should be denied

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010) prohibits an answer to this protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Tri-State's, Navopache's and PNM's answers and will, therefore, reject them.

25. The Commission's practice is to consolidate proceedings where the issues are closely intertwined with each other.¹⁵ As PNM notes, it filed its proposed changes to its OATT, Coordination Tariff, and Bilateral Contracts in three separate dockets due to the technical requirements of the Commission's eTariff system. In addition, the rates under the Coordination Tariff and the Bilateral Contracts are based on PNM's OATT rates. The Commission finds that the issues that may be raised concerning the proposed revisions to the OATT, Coordination Tariff, and Bilateral Contracts are likely to be related, and this warrants consideration of all three proceedings jointly for purposes of hearing and decision. Consequently, the Commission will consolidate these proceedings for purposes of hearing and decision.

¹⁵ *Missouri River Energy Servs.*, 124 FERC ¶ 61,309, at P 39 (2008).

B. Hearing and Settlement Judge Procedures

26. PNM's filing raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we will accept PNM's proposed revisions to its OATT, its Coordination Tariff, and Bilateral Contracts for filing, suspend them for the maximum five-month period, to be effective June 1, 2011, subject to refund, and set them for hearing and settlement judge procedures.

27. Our preliminary analysis indicates that the proposed rates and other modifications have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, and otherwise unlawful. This analysis indicates that 10 percent or more of the requested rate increase may be excessive. It is our policy to suspend a requested rate increase for the maximum five-month period in those cases where our preliminary analysis indicates that 10 percent or more of the requested increase may be excessive.¹⁶ As explained above, protestors have challenged various aspects of PNM's proposed tariff revisions and argue that the proposed rate increase is excessive.

28. While we are setting these matters for a trial-type evidentiary hearing, we encourage parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁸ The settlement judge shall report to the Chief Judge and the Commission within sixty (60) days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide commencement of a hearing by assigning the case to a presiding judge.

¹⁶ *West Texas Utilities, Co.*, 18 FERC ¶ 61,189 (1982).

¹⁷ 18 C.F.R § 385.603 (2010).

¹⁸ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The Commission orders:

(A) PNM's revisions to its OATT, Coordination Tariff, and Bilateral Contracts are hereby accepted for filing and suspended for five months, to become effective June 1, 2011, subject to refund, as discussed in the body of this order.

(B) PNM's request to consolidate Docket Nos. ER11-1915-000, ER11-1916-000, and ER11-1917-000 is hereby granted.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and

rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.