

143 FERC ¶ 61,192
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 31, 2013

In Reply Refer To:
Public Service Company of New Mexico
Docket No. ER13-1213-000

Public Service Company of New Mexico
Attn: Mike Edwards
Director, Federal Regulatory Policy
414 Silver Ave, SW
MS 1115
Albuquerque, NM 87102

Dear Mr. Edwards:

1. On April 1, 2013, pursuant to section 205 of the Federal Power Act¹ and section 35.15 of the Commission's Rules and Regulations,² Public Service Company of New Mexico (PNM) submitted a notice of cancellation to cancel a Firm Point-to-Point Transmission Service Agreement (TSA) between PNM and TGP Granada, LLC (TGP).³ The notice of cancellation is accepted, effective June 1, 2013.

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.15 (2012).

³ The TSA delineates the terms under which PNM is to provide TGP with 300 MW of firm point-to-point transmission service from the Guadalupe Switching Station to the Four Corners Switchyard. The Commission accepted the TSA on May 18, 2011. *Public Service Co. of New Mexico*, Docket No. ER11-3162-000, delegated letter order, (May 18, 2011). Subsequently, TGP deferred commencement of service until January 1, 2013, pursuant to section 17.7 of PNM's *pro forma* OATT.

2. PNM explains that it is submitting the notice of cancellation, in accordance with section 7.3 (Customer Default)⁴ of its Open Access Transmission Tariff (OATT), because TGP is in default of its payment to PNM for service since January 1, 2013. PNM explains that TGP chose not to defer commencement of service beyond January 1, 2013. As a result, PNM states that it had an obligation to provide TGP with firm point-to-point transmission service, and TGP had a corresponding obligation to take and pay for that service, beginning on January 1, 2013.

3. PNM states that, on February 4, 2013, it sent TGP an invoice for the transmission service under the TSA for the month of January 2013.⁵ PNM explains that it did not receive payment from TGP for the January 2013 service. PNM further explains that on February 27, 2013, it notified TGP that it had thirty days to cure its failure to pay for the January 2013 service. PNM further states that its February 27 notice elicited no payment from TGP for the January 2013 service. Thus, PNM requests that the Commission allow the TSA to be cancelled as of June 1, 2013.

4. Notice of PNM's filing was published in the *Federal Register*, 78 Fed. Reg. 20,904 (2013), with interventions and protests due on or before April 22, 2013. On April 16, 2013, TGP filed a motion to intervene, supporting comments, and limited protest. On April 22, 2013, Aragonne Wind LLC (Aragonne Wind) filed a motion to intervene and comment. On May 1, 2013, PNM filed a motion for leave to answer and answer.

5. TGP states that it generally supports the cancellation of the TSA. However, TGP requests the Commission to establish a January 1, 2013 effective date for the TSA cancellation, instead the June 1, 2013 effective date proposed by PNM. TGP explains that, on November 30, 2012, TGP informed PNM that it would not seek to extend the

⁴ Section 7.3 (Customer Default) of PNM's OATT provides:

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request.

⁵ Payment for that invoice was due on February 25, 2013 in accordance with section 7.1 of PNM's OATT.

commencement of service beyond January 1, 2013, and that it intended to terminate the TSA upon the expiration of the deferral period.⁶ TGP states that PNM waited until April 1, 2013 to submit its notice of cancellation. Accordingly, TGP requests that the Commission grant waiver of the prior-notice requirement to permit the cancellation to become effective as of January 1, 2013. TGP states that good cause exists to grant waiver because it has not taken transmission service under the TSA and the suspension period ended on January 1, 2013.

6. Aragonne Wind states that it has a pending competing request for transmission service over the same point of receipt and delivery as TGP. Aragonne Wind states that, for reasons not explained in the filing, PNM waited until April 1, 2013 to terminate the TSA. It states that, to the extent that the TSA has not been formally terminated and PNM has not remarketed the capacity, Aragonne Wind could be adversely affected.

7. Aragonne Wind believes that demand for the capacity on PNM's system maybe overstated⁷ and states that entities that do not have viable projects to justify their queue positions will have to determine whether they want to pay to reserve capacity for their projects. Conversely, Aragonne Wind contends that those like itself with existing assets that can utilize the capacity, will likely step up and pay for a portion of the TGP capacity, with little or no deferral. Aragonne Wind contends that, in either case, expeditious processing of the queue will help assure that the appropriate amount of capacity is assigned to transmission rates in the course of PNM's pending rate case in Docket Nos. ER13-685-000, ER13-687-000 and ER13-690-000. Accordingly, Aragonne Wind urges the Commission to approve the termination of the TSA at the earliest possible time, to allow the process to commence as soon as possible.

8. In its answer, PNM argues that the Commission should reject TGP's request to waive the Commission's prior-notice requirements and should permit the cancellation of the TSA to become effective as of June 1, 2013. PNM argues that good cause does not exist to permit the cancellation of the TSA to become effective as of January 1, 2013.

9. PNM contends that, while TGP informed PNM in the November 30 Letter that TGP intended to terminate the TSA upon expiration of the deferral period, TGP does not have the ability to unilaterally terminate the TSA. PNM explains that the TSA provides that the agreement shall remain in effect until January 1, 2060 and that "[s]ervice under

⁶ TGP Protest at 3.

⁷ Aragonne Wind notes that demand for capacity across the PNM system may be overstated, as a result of: (1) low load growth nationally; (2) California's stated preference for home-grown renewable energy; and (3) Arizona utilities' reported little immediate need to contract for large amounts of additional renewable energy.

this agreement shall terminate on such date as *mutually agreed* upon by the Parties.”⁸ PNM notes that, in its response to the November 30 Letter, it clearly indicated that it did not agree to an early termination of the TSA and that TGP did not possess the unilateral right to terminate the TSA. PNM argues that the Commission’s inclusion of the “mutually agreed” language in *pro forma* transmission service agreements represents sound policy that should be adhered to in the instant proceeding. It contends that deviating from that policy and permitting a transmission customer to unilaterally terminate a TSA will increase the difficulty of efficiently managing the transmission queue, render transmission studies to be useless, and obstruct the possibility of effective planning.

10. PNM also disagrees with allegations that it delayed filing of the termination notice. Instead, PNM asserts that it acted expeditiously to cancel the TSA under the terms of PNM’s OATT. PNM explains that its invoice and notices to TGP, as well as the submission of the instant filing on April 1, 2013, adhere to the milestones provided in its *pro forma* OATT. In fact, PNM contends that the date of the instant filing is the next business day after the default of the TSA was deemed to exist according to its OATT.

11. Finally, PNM contends that, with respect to Aragonne Wind’s contention that PNM has not done anything to re-market the transmission capacity associated with the TSA, there is no provision in PNM’s OATT, or any Commission precedent, that requires a transmission provider to re-market transmission capacity on behalf of a transmission customer that has defaulted under a transmission service agreement. Instead, PNM explains that TGP had at least two options under PNM’s OATT to re-market its available transmission capacity. PNM explains that TGP could have: (1) sold, assigned, or transferred all or a portion of the available capacity under the TSA pursuant to section 23.1 of PNM’s OATT, or (2) posted transmission capacity available for resale on PNM’s Open Access Same-Time Information System pursuant to Section 23.3 of PNM’s OATT.

12. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept PNM’s answer because it has provided us information that has assisted us in our decision-making process.

14. Commission precedent supports acceptance of a notice of termination if the applicant demonstrates that the proposed termination is not unjust, unreasonable, unduly

⁸ Section 4 of the TSA.

discriminatory, or preferential,⁹ or if it is consistent with the public interest.¹⁰ Consistent with the tariff and Commission precedent, we will accept the notice of cancellation, effective June 1, 2013, as requested.¹¹

15. TGP states that it informed PNM that it intended to terminate the TSA upon the expiration of the deferral period on January 1, 2013. However, section 4 of the TSA provides that service under the agreement will terminate on “such date as mutually agreed upon by the Parties,” and the parties did not mutually agree to terminate the TSA on January 1. We are concerned that this sequence of events did not lead to the most efficient use of the capacity; PNM does not explain why it did not agree to terminate the TSA and no party represents how the capacity was used from January 1 to June 1, 2013. But TGP did not file a complaint to terminate the TSA, nor did Aragonne Wind file a complaint seeking to obtain access to the capacity at issue during this time. Accordingly, TGP’s request, to make the cancellation effective January 1, 2013, is denied.¹²

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁹ See, e.g., *Allegheny Power System, Inc.*, 102 FERC ¶ 61,318, at P 9 (2003).

¹⁰ See, e.g., *Duke Energy Moss Landing LLC*, 83 FERC ¶ 61,318, at 62,306 (1998), *order on reh’g*, 86 FERC ¶ 61,227 (1999).

¹¹ See *Calpine Construction Finance Co., L.P.*, 130 FERC ¶ 61,080, at P 16 (2010) (the Commission denied a request to terminate an agreement before the date requested by the applicant, as the applicant controlled the date of its filing).

¹² Nor do we find anything in Aragonne Wind’s comments that dictates a contrary result.