

111 FERC ¶ 61,038
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Public Service Company of New Mexico

Docket Nos. ER96-1551-010
ER96-1551-011
ER01-615-007
ER01-615-008
EL05-2-001
EL05-2-002

ORDER DENYING REHEARING AND CLARIFICATION AND REJECTING
COMPLIANCE FILING

(Issued April 14, 2005)

1. On January 19, 2005, Public Service Company of New Mexico (PNM) filed a request for rehearing and clarification of the Commission's order issued on December 20, 2004,¹ in which we instituted a proceeding under section 206 of the Federal Power Act (FPA) to determine whether PNM may continue to charge market-based rates in the PNM and El Paso control areas.² In this order, we will deny PNM's request for rehearing regarding the sufficiency of its mitigation. In addition, we will deny clarification as to the scope of PNM's market-based rate authority for the San Juan Generating Station and as to its obligation to report changes in status.

¹ *Public Service Company of New Mexico*, 109 FERC ¶ 61,296 (2004) (December 20 Order). The December 20 Order is in accordance with procedures implementing the new interim generation market power screens and mitigation policy announced on April 14, 2004 and clarified on July 8, 2004 in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

² 16 U.S.C. § 824e (2000).

2. On February 18, 2005, PNM submitted a compliance filing in response to the December 20 Order. In this order, the Commission rejects PNM's compliance filing insofar as it relates to PNM's control area. With respect to the El Paso control area, PNM submitted a revised generation market power analysis, which indicates that PNM fails the wholesale market share screen in this control area with market shares of up to 26.8 percent. Therefore, we reaffirm that the section 206 proceeding established in the December 20 Order will address both the PNM control area and the El Paso control area.

3. This order will protect customers from excessive rates and charges that may result from the exercise of market power.

Background

4. In the December 20 Order, the Commission found that PNM failed the wholesale market share screen for PNM's control area³ and that the existing mitigation in PNM's market-based rate tariff was insufficient to rebut the presumption of market power established by PNM's failure of the wholesale market share screen. In addition, we were unable to validate the results of PNM's generation market power analysis in the El Paso control area. We found that PNM failed to account for imports into the El Paso control area in compliance with the methodology set forth in the April 14 and July 8 Orders and our preliminary analysis indicated that, if PNM's calculations were performed as required by the April 14 Order, PNM could fail the market share screen in the El Paso control area in all four seasons. Accordingly, the Commission instituted a section 206 proceeding to determine whether PNM may continue to charge market-based rates in these control areas and established a refund effective date.

Request for Rehearing and Clarification

5. PNM contends that the Commission acted arbitrarily and capriciously in the December 20 Order in finding that the existing mitigation in PNM's market-based rate tariff, which applies only during periods when transmission is constrained, is insufficient to address the Commission's concerns regarding PNM's generation market power in the PNM control area and that the Commission's conclusion on this point was not based on

³ The Commission notes that the "PNM northern New Mexico control area" and the PNM control area referenced in the December 20 Order refer to the same control area as clarified in paragraph 2 of the December 20 Order where the Commission stated, "[t]he compliance filing, as amended, indicates that PNM passes the pivotal supplier screen in all markets considered but that it fails the wholesale market share screen for all four seasons in PNM's northern New Mexico control area (*or PNM control area*)" (emphasis added), footnote omitted.

substantial evidence. In support of its contention that PNM's existing mitigation is sufficient to mitigate PNM's ability to exercise market power in the PNM control area, PNM first argues that the efficacy of the existing mitigation for the Path 48 constraint has been amply demonstrated by experience and that, in the December 20 Order, the Commission ignored evidence that this mitigation has operated successfully. PNM emphasizes that no PNM transmission customer, nor any other entity, has challenged the efficacy of this mitigation, which resulted from a Commission-approved settlement that PNM entered into with its transmission customers. This settlement required PNM to include in its market-based rate tariff a provision prohibiting market-based rate sales during constrained periods. Second, PNM argues that PNM cannot exercise generation market power during non-constrained periods because wholesale transmission customers located within the constrained area receive network integration transmission service under PNM's network integration open access transmission tariff (OATT), which allows it to import secondary network resources from markets outside the constrained area during non-constrained periods. Finally, PNM argues that it has cost-based rates on file with the Commission, which, according to PNM, give customers additional protection beyond that provided by PNM's OATT.

6. PNM further requests clarification of two aspects of the December 20 Order. First, PNM requests that the Commission clarify that PNM may make sales at market-based rates at the San Juan Generating Station (San Juan), which is located electrically within PNM's control area, but at the interface with two control areas (Tucson Electric Power Company (TEP) and the Western Area Power Administration – Colorado Missouri (WACM)) in which PNM was not found to have market power. PNM contends that PNM cannot exercise market power at San Juan because it is geographically and operationally outside the area subject to the Path 48 constraint. If the Commission rejects this clarification, PNM requests that the Commission grant rehearing.

7. Second, PNM requests clarification regarding its obligation to report changes in status. PNM asserts that, while the December 20 Order contains language that may suggest that PNM currently is subject to a requirement to report changes in status to the Commission, the Commission has never imposed on PNM an obligation to report changes in status, either in its order granting PNM authority to sell power at market-based rates or in any subsequent order applicable to PNM. PNM thus urges the Commission to clarify that PNM is not currently under an obligation to report changes in status unless and until the Commission so orders, either in an order specific to PNM or in a generically applicable order. PNM states that it has no objection to being subject to such a requirement, but simply wishes to bring to the Commission's attention that no such requirement currently exists, so as to ensure that no future claim of non-compliance arises.

Compliance Filing

8. For both the PNM and El Paso control areas, the Commission directed PNM in the December 20 Order to, within 60 days: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.⁴ For the El Paso control area, the Commission gave PNM the additional option of filing revised generation market power screens and a revised simultaneous transmission import capability study, in compliance with the requirements of the April 14 Order and July 8 Orders. On February 18, 2005, PNM submitted its compliance filing.

Notice of Filing and Responsive Pleadings

9. Notice of PNM's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 11,002 (2005), with interventions or protests due on or before March 11, 2005. On March 11, 2005, El Paso Electric Company (EPE) submitted comments on PNM's compliance filing concerning PNM's revised analysis of the El Paso control area. EPE states that its review of PNM's revised analysis raises concerns regarding the possibility that PNM may be able to exercise market power during periods when import capability into the EPE control area is constrained. EPE contends that PNM has failed to meet its burden of proof to demonstrate an absence of market power in the EPE control area. In addition, EPE claims that PNM has wrongly accused EPE of having the ability to "game" the Southern New Mexico transmission system. EPE concludes that, since PNM's analyses show multiple screen failures within the southern New Mexico market, even when the market is unconstrained, mitigation is necessary and that the appropriate mitigation would be to impose a modest rate cap on PNM's sales inside this market.

10. On March 28, 2005, PNM filed an answer to EPE's comments, arguing that EPE has failed to rebut PNM's showing that it lacks market power. PNM first argues that EPE's comments mischaracterize and make baseless criticisms of the various adjustments to the generation market power screens that PNM made in its compliance filing to demonstrate that PNM lacks generation market power. Second, PNM contends that EPE has failed to rebut the presumption that PNM lacks market power with respect to sales from generation constructed after July 9, 1996. Finally, PNM argues that, if the Commission concludes that PNM has generation market power, EPE's price cap mitigation proposal should be modified so that it applies only during constrained periods.

⁴ April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-209.

11. On April 4, 2005, EPE filed a response to PNM's answer to EPE's protest. EPE objects to PNM filing an answer out of time and states that the answer does nothing to clarify the record.

12. On April 7, 2005, PNM submitted a motion for the appointment of a settlement judge. PNM states that since EPE filed its comments in this proceeding, PNM and EPE have been involved in discussions regarding EPE's concerns in an attempt to reach consensual resolution but that those negotiations have reached an impasse. PNM states that it believes that a settlement may still be possible. PNM emphasizes that, at the present time, EPE's comments represent the only record opposition to PNM's continuing authority to make market-based rate sales, and those comments are limited to the EPE control area. PNM concludes that, notwithstanding the narrow scope of the dispute between EPE and PNM, a settlement judge also might assist in resolving other matters in this proceeding.

13. On April 11, 2005, EPE submitted an answer to PNM's motion for the appointment of a settlement judge, in which it states that it does not oppose PNM's motion.

Discussion

Procedural Matters

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept PNM's and EPE's answers and will, therefore, reject them.

Sufficiency of PNM's Existing Mitigation

15. The Commission will deny PNM's request for rehearing of the Commission's conclusion in the December 20 Order that PNM's existing mitigation is insufficient to rebut the presumption of market power established by its failure of the wholesale market share screen for the PNM control area. For the reasons discussed below, we reject PNM's contentions that the Commission acted arbitrarily and capriciously in reaching this conclusion and that our conclusion was not based on substantial evidence.

16. In the December 20 Order, we found that PNM's existing mitigation was insufficient to rebut the presumption of market power because the wholesale market share screen, which accounts for transmission constraints through the use of a simultaneous import capability study, indicated that PNM's market share is over 60 percent in all seasons, even when the constraints on Path 48 are not binding. We also noted that

mitigation that is triggered only when constraints are binding would not address the market power concerns when transmission constraints are not binding.⁵

17. Given its failure of the market share screen in all seasons by large margins and the lack of any mitigation during non-constrained periods, we find that our decision in the December 20 Order was neither arbitrary nor capricious and was based on substantial evidence. As we stated in the April 14 Order, the failure of a screen in and of itself provides the basis for instituting a section 206 proceeding and establishes a rebuttable presumption of market power in the section 206 proceeding.⁶ A screen failure also satisfies the Commission's initial burden of going forward in the section 206 proceeding and shifts to the applicant the burden of presenting evidence to rebut the presumption of market power.⁷ Prior to the issuance of the December 20 Order, PNM did not present any evidence to address our concerns that it can exercise market power during non-constrained periods, much less any evidence that would have been sufficient to rebut the presumption of market power indicated by its large market shares. Thus, in the December 20 Order, we clearly articulated the reasons upon which we relied in reaching our decision, namely, that PNM's screen failure and its failure to demonstrate the existence of any PNM mitigation at all that would mitigate its ability to exercise market power during non-constrained periods. Similarly, these same facts were sufficient to satisfy our evidentiary burden of going forward.

18. On rehearing, PNM presents additional arguments in support of its contention that PNM's existing mitigation is sufficient to rebut the presumption of market power established by its screen failure. We are not convinced by PNM's arguments and reaffirm our previous finding in the December 20 Order regarding the insufficiency of PNM's mitigation.

19. We reject PNM's argument that its existing mitigation, which applies only during constrained periods, is sufficient to rebut the presumption of market power because failure of the wholesale market share screen indicates that PNM has the potential to exercise market power at all times. Transmission constraints are taken into account through the simultaneous import capability study, which determines import capacity limits and are then used to perform the generation market power screens. The simultaneous import capability study determines the maximum amount of capacity that can be imported into the relevant geographic market, considering all thermal, voltage and

⁵ December 20 Order, 109 FERC ¶ 61,296 at P 24.

⁶ April 14 Order, 107 FERC ¶ 61,018 at P 201.

⁷ July 8 Order, 108 FERC ¶ 61,026 at P 30.

stability constraints in the control area and surrounding first-tier areas. This amount is then added to the generation capacity located in the relevant geographic market. The screens thus show an applicant's generation market power potential *before* the transmission system becomes constrained. PNM's wholesale market share screen failure reflects periods of potential generation market power before and up to the transmission limits determined by the simultaneous import capability study. Therefore, PNM's existing mitigation is not sufficient because it only covers periods when transmission is constrained.⁸

20. We reject as irrelevant PNM's argument that the absence of customer complaints or protests demonstrates the efficacy of PNM's existing mitigation. The Commission instituted the instant section 206 proceeding on its own motion on the basis of PNM's failure of the wholesale market share screen. The procedures adopted in the April 14 Order provide third parties with ample opportunities to submit for Commission consideration any arguments relevant to an applicants' satisfaction of the Commission's standards for generation market power.⁹ However, the absence of customer complaints (or, for that matter, supportive comments) cannot be attributed any probative value. Consequently, the mere absence of customer complaints is not sufficient to rebut the presumption of market power established by PNM's failure of the wholesale market share screen.

21. Further, we reject as irrelevant PNM's argument that customers' option of taking network integration transmission service prevents PNM from exercising market power during non-constrained periods. The pivotal supplier screen and the wholesale market share screen take into account wholesale customers' ability to access generation suppliers other than PNM and account for access to transmission when calculating imports into the relevant control area. In accounting for wholesale customers' ability to access network transmission, PNM fails the wholesale market share screen by its own analysis.

22. Finally, we find unconvincing PNM's argument that its cost-based rate tariff on file with the Commission¹⁰ provides an additional layer of protection against any potential for PNM to exercise market power. In particular, such a cost-based rate tariff may not protect customers if PNM has the discretion to settle transactions with its

⁸ The Commission makes no finding regarding the efficacy of other aspects of PNM's existing mitigation, such as rates.

⁹ April 14 Order, 107 FERC ¶ 61,018 at

¹⁰ *Public Service Company of New Mexico*, Docket No. ER97-2585-000 (November 7, 1997) (unpublished letter order).

wholesale customers at market-based rates when the Commission cannot assure that such market-based rates are just and reasonable due to PNM's failure of the wholesale market share screen.

Market-Based Rate Authority for Sales from San Juan

23. We will deny PNM's request for clarification, or in the alternative, rehearing that PNM may make sales at market-based rates at San Juan, regardless of the outcome of this proceeding concerning its market-based rate authority in the PNM control area. As explained below, PNM has not submitted adequate evidence to support the use of an alternative geographic market other than the PNM control area. Furthermore, PNM has not adequately demonstrated that we should allow an applicant that fails a screen in its control area to make market-based rate sales at certain generators located within that same control area. The instant 206 proceeding includes the entire PNM control area, which includes the San Juan Generation Station. This is consistent with the methodology outlined in the April 14 and July 8 Orders, which provides that the control area is the default relevant geographic market.¹¹

24. We note that, although PNM contends that the Commission did not address PNM's argument that San Juan should be considered as a separate market from the PNM control area because it is located outside of the Path 48 transmission path constraint, PNM did not submit a generation market power analysis, historical sales data or other supporting evidence demonstrating that there are two separate geographic markets within the PNM control area, nor did PNM demonstrate that PNM lacks the ability to exercise market power from sales at San Juan.¹² Further, PNM did not submit an analysis demonstrating that it would pass the wholesale market share screen if two control areas were considered. The Commission's decision to institute a 206 proceeding for the PNM control area included the San Juan capacity because this is the area where the generation is physically located.

¹¹ April 14 Order at P 73, 74 and July 8 Order at 34.

¹² PNM submitted a screen analysis for the northern New Mexico market area, i.e., the area within the Path 48 transmission constraint which treated San Juan capacity as imports into the relevant market. The Commission's review indicates that if capacity from San Juan is treated as imports or as local installed capacity, this treatment does not alter the outcome of the wholesale market share screen for the PNM control area; regardless, PNM fails the wholesale market share screen by up to 69.9 percent in the PNM control area.

25. Furthermore, we are not persuaded by PNM's argument that PNM should be allowed to make sales at market-based rates from San Juan because sales at the San Juan switchyard, while physically located within the PNM control area, are made in competition with generation owned by others that is located at San Juan or in adjacent control areas where the Commission already determined that PNM does not possess generation market power. As stated above, PNM has not submitted adequate evidence to support the use of a relevant geographic market other than the PNM control area. PNM's failure of the wholesale market share screen indicates that PNM may have market power in the PNM control area. Accordingly, consistent with the April 14 and July 8 Orders, any sales by PNM at market-based rates within the PNM control area, including those made at San Juan, are included in the section 206 proceeding.

PNM's Reporting Requirement for Changes in Status

26. We will reject as beyond the scope of this proceeding PNM's request for the Commission to clarify that PNM is not currently under an obligation to report changes in status unless and until the Commission so orders, either in an order specific to PNM or in a generically applicable order. The current proceeding is limited to consideration of PNM's updated market analysis and whether PNM may continue to charge market-based rates in the PNM control area and in the El Paso control area; any determination regarding PNM's compliance with our reporting requirements would be more appropriately addressed in a separate proceeding.

27. However, we note that PNM, like all market-based rate sellers, is obligated to 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.¹³ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, PNM is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

PNM must 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. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate

¹³ *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 (2005).

authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

Compliance Filing

28. The Commission rejects PNM's compliance filing insofar as it relates to the PNM control area. In the December 20 Order, the Commission directed PNM, for the PNM control area, to either: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates. PNM has failed to comply with the Commission's directives. In its compliance filing, PNM did not submit any of the above three options and has instead chosen to raise many of the same arguments presented in its request for rehearing and clarification. Therefore, PNM's compliance filing is hereby rejected, and PNM is directed to comply with the December 20 Order within 30 days from the date of issuance of this order.

29. With respect to the El Paso control area, PNM states in its compliance filing that its analysis of the El Paso control area results in a failure of the wholesale market share screen when conducted in compliance with the requirements set forth in the April 14 and July 8 Orders, with a market share of up to 26.8 percent. As part of its compliance filing, PNM has also submitted a revised generation market power analysis using alternative scenarios and assumptions at variance with the methodology set forth in the April 14 and July 8 Orders, which purport to show that PNM lacks generation market power in the El Paso control area.

30. The December 20 Order gave PNM the option to file revised generation market power screens and a simultaneous import capability study in compliance with the April 14 and July 8 Orders.¹⁴ The Commission is not persuaded to consider the three alternative scenarios that PNM submitted because PNM has not demonstrated that the alternative screen scenarios and varying proxies are superior to the screens as designed in the April 14 and July 8 Orders.¹⁵ Furthermore, PNM did not provide historical sales data

¹⁴ December 20 Order, 109 FERC ¶ 61,296 at P 28.

¹⁵ Adjustments include: not using nameplate capacity; accounting for competitors' transmission reservations when considering imports into the El Paso control area and including imports from markets other than first-tiers; not accounting for generation PNM built in 2002 but which was available during the time period considered under PNM's

to rebut the presumption of market power. PNM has not submitted adequate evidence demonstrating that it conducted the simultaneous import capability study for the El Paso control area in compliance with Appendix E of the April 14 Order.

31. Section 35.27(a) of the Commission's regulations provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.¹⁶ If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.¹⁷ PNM states in its compliance filing that all of PNM's generation located within the WECC Path 47 boundary was constructed after July 9, 1996, thus it meets the section 35.27(a) exemption. However, the July 8 Order explains that if an existing generator was part of the portfolio of an interconnected transmission-owning utility, then the new generator would be part of the interconnected transmission-owning utility's relevant market (i.e., applicants control area and all first-tier control areas), and the utility would be required to perform the generation market power analysis.¹⁸ Therefore, it is appropriate to include an applicant's generation in first-tier control areas built after July 9, 1996 when conducting the generation market power screens.

32. We find that the revised generation market power analysis submitted by PNM is insufficient to rebut the presumption of market power established by its failure of the wholesale market share screen. Consequently, we will address as part of the section 206 proceeding we initiated in the December 20 Order whether PNM may continue to charge market-based rates in the El Paso control area.

analysis. All of these adjustments understate PNM's market share in the El Paso control area and are inconsistent with the April 14 and July 8 orders (as addressed in the December 20 Order with respect to nameplate capacity and the treatment of imports and transmission reservations and above in this order with respect to generation built after July 9, 1996).

¹⁶ 18 C.F.R. § 35.27(a) (2004). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27 of its regulations.

¹⁷ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

¹⁸ July 8 Order at P 111.

33. We will also consider EPE's concerns regarding PNM's potential to exercise market power in the El Paso control area and the appropriate mitigation for it in the section 206 proceeding.

34. For the El Paso control area, PNM is directed to, within 30 days from the date of issuance of this order, either: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

PNM's Motion for Appointment of Settlement Judge

35. We will deny PNM's motion for the appointment of a settlement judge. The Commission did not institute the instant section 206 proceeding in response to complaints submitted by customers or competitors, but rather it did so on its own motion on the basis of PNM's failure of the wholesale market share screen in the PNM control area and its failure to comply with the requirements of the April 14 and July 8 Orders in performing the generation market power screens in the El Paso control area. In addition, PNM's compliance filing indicates that PNM fails the wholesale market share screen when that screen is conducted in compliance with the requirements set forth in the April 14 and July 8 Orders. Thus, under PNM's proposal there is the possibility that PNM and EPE may reach a settlement that would not address the concerns about PNM's ability to exercise market power in at least one of the geographic markets that originally prompted us to institute the instant section 206 proceeding in the December 20 Order.

36. While we are rejecting PNM's motion to appoint a settlement judge, the Commission is willing to convene a publicly-noticed technical conference to discuss any mitigation proposal submitted by PNM. If PNM wishes to submit such a proposal, PNM should inform the Commission of its intent to do so within 15 days of the date of issuance of this order and file with the Commission any mitigation proposals within 30 days. The Commission would then direct its staff to convene a technical conference to allow Commission staff and interested parties to discuss PNM's proposals and to develop a further record that incorporates the results of the technical conference.

The Commission orders:

(A) PNM's request for rehearing and clarification are hereby denied, as discussed in the body of this order.

(B) PNM's compliance filing with respect to the PNM control area is rejected, and PNM is directed to comply with the December 20 Order within 30 days from the date of issuance of this order, as discussed in the body of this order.

(C) For the El Paso control area, PNM is directed to, within 30 days from the date of issuance of this order, either: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

(D) PNM's motion for the appointment of a settlement judge is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.