

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Haviland Holdings, Inc.

Docket No. EL04-55-000

v.

Public Service Company of New Mexico

ORDER SETTING COMPLAINT FOR HEARING, ESTABLISHING HEARING  
PROCEDURES AND REFUND EFFECTIVE DATE,  
AND REGULATORY FAIRNESS ACT NOTICE

(Issued April 16, 2004)

1. On January 14, 2004, Haviland Holdings, Inc. (Haviland) filed a complaint in this proceeding against Public Service Company of New Mexico (PNM) alleging that PNM incorrectly revoked Haviland's generator interconnection queue position and placed Haviland at the end of the queue.<sup>1</sup> Haviland requests that the Commission reinstate its original position in the queue. For the reasons set forth below, the Commission will set the complaint for hearing. This order benefits customers because it establishes a forum for the parties to resolve their concerns.

**Complaint**

2. Haviland states that it is currently developing a 400 MW generation project at Yegua Mesa in San Miguel County, New Mexico. Haviland states that it submitted a request to PNM to interconnect the Yegua Mesa project to PNM's transmission system at a point of interconnection (POI) at or near PNM's existing Guadalupe substation located near Santa Rosa, New Mexico. Haviland notes that PNM subsequently advised Haviland that its position in the interconnection queue was perfected as of October 31, 2002.

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<sup>1</sup> Haviland's primary business activity is the development of renewable energy power generation projects.

3. Haviland alleges that on July 16, 2003, PNM requested additional information regarding the project, and forwarded a System Impact Study Agreement to Haviland for signature. Haviland maintains that it complied with PNM's information request and executed the System Impact Study Agreement on July 30, 2003 (July 30 Letter). According to Haviland, the July 30 Letter forwarding the System Impact Study Agreement to PNM included a request to change the POI from at or near the Guadalupe substation to a point about 10 miles east of Santa Rosa. Haviland alleges that both its written and subsequent oral communication with PNM emphasized that, if a change in the POI would result in a loss of Haviland's position in the queue, then it would withdraw the request to change the POI.

4. Haviland contends that PNM evaluated the proposed new POI under the generator interconnection procedures set forth in PNM's Open Access Transmission Tariff (OATT), which provide that a customer requesting a change in POI will retain its queue position only if the changes do not materially affect its interconnection, the results of the Generator Interconnection Evaluation Study, the results of the Generator Interconnection Facilities Study, or the interconnection of any other interconnection customer in the queue.<sup>2</sup> Based on these results, Haviland avers that PNM determined that the proposed change in POI was not material, and therefore Haviland would retain its queue position. Haviland states that PNM subsequently issued Haviland a revised System Impact Study Agreement incorporating the new POI.

5. According to Haviland, Superior Renewable Energy, LLC (Superior), an interconnection customer behind Haviland in the interconnection queue, subsequently objected to Haviland's proposed POI change, and complained to the Commission's Hotline Staff. Haviland alleges that Commission staff advised PNM that, under the generator interconnection procedures in the Commission's Order No. 2003 and PNM's OATT, any change in a POI is a material change resulting in loss of queue position, and any proposal to revert back to the original POI constitutes a second material change, also resulting in loss of queue position.<sup>3</sup> As a result of these conversations with Commission staff, PNM advised Haviland by letter dated October 10, 2003 that it was moving Haviland's interconnection request to the end of the queue.

6. Haviland argues that, although Order No. 2003 procedures were not in effect at the time of its proposed POI change, principles of fundamental fairness and due process

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<sup>2</sup> Public Service Company of New Mexico, FERC Electric Tariff, Second Revised Volume No. 4, Attachment J, Section 2.2 (Changes in Interconnection Information).

<sup>3</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), order on reh'g, Order No. 2003-A, 106 FERC ¶ 61,220 (2004).

mandate that the procedures set forth in Large Generator Interconnection Procedures (LGIP) section 4.4.3 in that final rule should apply to Haviland's project. Specifically, Haviland argues that, under these procedures, PNM is required to evaluate the proposed modification and inform Haviland in writing whether the modification is considered to be a material modification. At that point, Haviland asserts, it has the option either to withdraw the proposed modification or to submit a new interconnection request for the modification.

7. Haviland states that these procedures were not followed in that PNM did not advise Haviland in writing that the change in the POI would be a material change, and did not give Haviland an opportunity to withdraw its proposed POI. Haviland notes that it was never given this opportunity even though it advised PNM both in writing and orally that if the proposed change in POI would affect its queue position, Haviland would revert to its original POI.

8. Haviland requests that the Commission find: (1) Haviland's alternative POI is within the terms of its original interconnection request;<sup>4</sup> (2) PNM's initial determination that Haviland's proposed POI change was not a material change should be respected; (3) even if the alternative POI is deemed to be a change in the original request, the change in the POI is not material; (4) if the Commission determines that the change is material, Haviland should be permitted to revert to its original POI because it reserved that right in its July 30 Letter to PNM; and (5) principles of fundamental fairness require that Haviland be given the choice to revert to its original POI.

9. Haviland, therefore, requests that the Commission reinstate Haviland's position in PNM's interconnection queue.

### **PNM Answer**

10. On February 5, 2004, PNM filed an answer to Haviland's complaint requesting the Commission dismiss Haviland's complaint. PNM challenges certain factual claims in Haviland's complaint. First, PNM denies that Haviland's request for a change in POI was contingent on the request being granted without loss of Haviland's interconnection queue position. Second, PNM disagrees with Haviland's characterization that the new POI location 20 miles from the Guadalupe station was within the scope of its initial request.

11. PNM also denies Haviland's allegation that it acted unfairly and without due process by failing to comply with Order No. 2003. Moreover, PNM argues that Haviland

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<sup>4</sup> Haviland argues that its original request was for interconnection at or near the Guadalupe station, and that the proposed change in POI to about 20 miles from the station could be considered "near" and therefore within the original request.

has made no showing that it acted contrary to the principles set forth in Order No. 2003. PNM also points out that the Order No. 2003 LGIP procedures were not in effect at the time these events occurred. However, even if Order No. 2003 was in effect, PNM argues that Haviland is ignoring a provision in LGIP section 4.4.3 that does not support its position. Nonetheless, PNM argues that Haviland's change in POI constitutes a material change under Order No. 2003. PNM notes that LGIP section 4.4.3 provides in part that a change in POI requires a new interconnection request even if there is no material modification of the impact on the transmission system. PNM argues that, contrary to Haviland's argument, LGIP section 4.4.3 does not support its position because any change in POI is determined to be a material modification regardless of any electrical effects resulting from the change. Therefore, PNM concludes that it complied with, and correctly implemented, Order No. 2003 when it revoked Haviland's interconnection queue position and placed Haviland's project at the end of the queue.

12. PNM contends, further, that Haviland's July 30 Letter did not request PNM to evaluate whether the proposed change in POI would be a material modification. Accordingly, PNM argues that it was under no obligation either to advise Haviland in writing on issues of material modification or to grant Haviland the opportunity to withdraw its request. Therefore, PNM states that the Commission should summarily reject Haviland's contention relating to due process.

### **Notice of Filing and Responsive Pleadings**

13. Notice of Haviland's complaint was published in the Federal Register, 69 Fed. Reg. 3574 (2004), with the answer to the complaint and other comments, interventions or protests due on or before February 5, 2004.

14. On February 5, 2004, Superior filed a timely motion to intervene and comments opposing Haviland's complaint. Superior states that PNM's decision to revoke Haviland's interconnection position was required by the generator interconnection procedures in PNM's OATT section 2.2. Specifically, section 2.2 provides in part that an interconnection customer may retain its queue position only if the changes do not materially affect the interconnection of any other interconnection customer in the queue. Superior argues that Haviland's decision to change its POI had a material impact on Superior's lower-queued project. Superior alleges that Haviland's change in POI would require Superior to expend an additional \$5 to \$8.5 million in interconnection costs that it would not have been required to pay if Haviland maintained its original POI. Therefore, since Haviland's change had a material impact on another customer in the queue, Superior argues that Haviland cannot maintain its queue position in accordance with section 2.2 in PNM's OATT. Superior states that PNM was required by section 2.2 to revoke Haviland's queue position and acted properly in doing so.

15. Superior agrees with PNM that the generator interconnection procedures set forth in Order No. 2003 were not in effect at the time of Haviland's request to change its POI. Moreover, Superior, like PNM, argues that Order No. 2003 interconnection procedures do not support Haviland's complaint, but support PNM's decision to change Haviland's queue position.

## **Discussion**

### **Preliminary Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice of Procedure, 18 C.F.R. § 385.214 (2003), Superior's timely, unopposed motion to intervene serves to make it a party to this proceeding.

### **Hearing Procedures**

17. As an initial matter, we find that the events subject to Haviland's complaint occurred prior to the January 20, 2004 effective date of Order No. 2003. As a result, the generation interconnection procedures in Order No. 2003 are not relevant to the Commission's determination on the issues in this proceeding. Therefore, the existing generator interconnection procedures in PNM's OATT contain the relevant criteria for determining whether PNM correctly concluded that Haviland should lose its queue position.

18. The matters raised by Haviland present issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the trial-type evidentiary hearing ordered below. These material issues of fact include, but are not limited to: (1) whether Haviland's proposed change in POI materially affected its interconnection, the results of the Generator Interconnection Evaluation Study, the results of the Generator Interconnection Facilities Study, or the interconnection of any other interconnection customer in the queue; and (2) whether Haviland actually reserved the right to revert back to its original POI in the event PNM decided the proposed change was a material change.

19. As it appears that PNM's implementation of its OATT may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful, we will set the complaint for investigation and a trial-type evidentiary hearing under section 206 of the Federal Power Act (FPA).<sup>5</sup>

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<sup>5</sup> 16 U.S.C. § 824e (2000).

20. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent with our general policy of providing maximum protection to customers,<sup>6</sup> we will set the refund effective date at the earliest date possible, *i.e.*, 60 days after the date of the filing of the complaint or March 14, 2004.

21. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to render such a decision. Ordinarily, to implement that requirement, we would direct the presiding judge to provide a report to the Commission 15 days in advance of the refund effective date in the event the presiding judge had not: (1) certified to the Commission a settlement which, if approved, would dispose of the proceeding; or (2) issued an initial decision. The presiding judge's report would advise the Commission of the status of the proceeding and provide a best estimate of the expected date of the certification of a settlement or the issuance of an initial decision, which, in turn, would allow the Commission on or before the refund effective date to estimate the date when it expects to render its decision.

22. Here, however, given that the refund effective date is March 14, 2004, the Commission cannot follow its usual procedure. Although we do not have the benefit of a presiding judge's report, based on a review of the record and considering the complexity of the issues raised, we expect that, assuming the proceeding does not settle, the presiding judge should be able to issue an initial decision within approximately ten months from the date of this order, or by January 31, 2005. If the presiding judge is able to render a decision within that time, we estimate that we will be able to issue our decision within approximately four months of the filing of briefs on and opposing exceptions, or by July 29, 2005.

The Commission orders:

(A) 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 the Federal Power Act, particularly section 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 public hearing shall be held in Docket No. EL04-55-000 concerning this complaint, as discussed in the body of this order.

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<sup>6</sup> See, *e.g.*, Canal Electric Company, 46 FERC ¶ 61,153 at 61,539, reh'g denied, 47 FERC ¶ 61,275 (1989).

(B) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) The Secretary shall promptly publish in the Federal Register a notice of Commission initiation of section 206 proceedings in Docket No. EL04-55-000.

(D) The refund effective date in Docket No. EL04-55-000 established pursuant to section 206(b) of the Federal Power Act is March 14, 2004.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.