

111 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of New Mexico and
Texas-New Mexico Power Company

Docket No. ER05-689-000

ORDER ON JOINT TARIFF FILING

(Issued May 6, 2005)

1. The Commission, in this order, accepts the Joint Open Access Transmission Tariff (Joint OATT or Tariff) submitted for filing by Public Service Company of New Mexico (PNM) and Texas-New Mexico Power Company (TNMP) (collectively, Applicants). Our decision not only helps ensure the elimination of rate pancaking for transmission customers, but also helps ensure reliable electric power at just and reasonable rates in the New Mexico region.

I. Background

Description of the Parties

i. PNM

2. PNM, a New Mexico corporation, is a public utility and a wholly-owned subsidiary of PNM Resources. PNM engages in the generation, transmission, distribution and the sale of electricity, and in the transmission, distribution, and the sale of natural gas in New Mexico. PNM also engages in the generation, transmission, and wholesale sale of electricity in the state of Arizona. PNM has been granted blanket authority to sell power at market-based rates.

ii. TNMP

3. TNMP is a wholly owned public utility Texas corporation that is a subsidiary of TNP Enterprises, and is subject to the jurisdiction of the Commission, the New Mexico Public Regulation Commission (NMPRC), and the Public Utility Commission of Texas. TNMP has been granted blanket authority by the Commission to sell power at market-based rates. TNMP provides electric transmission and distribution services in 97 Texas municipalities and adjacent rural areas. TNMP, however, does not serve

any retail customers in Texas. Applicants state that all of TNMP's services in Texas are within the Electric Reliability Council of Texas (ERCOT), and therefore not subject to the Commission's jurisdiction.

II. The Instant Filing

4. On March 9, 2005, pursuant to section 205 of the Federal Power Act (FPA), Applicants filed a Joint OATT of the PNM Resources, Inc. (PNM Resources) Operating Companies. Applicants state that the instant filing is in response to the Commission's March 2 Order¹ in which, the Commission granted PNM Resources,² request for all necessary Commission approvals for a proposed acquisition by PNM Resources of TNP Enterprises and its subsidiaries, including TNMP.³ According to Applicants, the Joint OATT, as filed, would provide its customers with a single OATT for the provision of open access transmission services by both PNM and TNMP following consummation of the acquisition.

5. Applicants explain that the Joint OATT would, upon becoming effective, supersede the current PNM and TNMP OATTs on file with the Commission. According to Applicants, while the proposed Joint OATT adopts in its entirety, the non-rate terms and conditions of the existing Commission-approved PNM OATT, the proposed revisions are necessary in order to reflect the inclusion of TNMP as a transmission provider under the Joint OATT. In particular, Applicants further explain the revisions are necessary to include TNMP's rate and transmission line loss provisions.

6. Applicants contend that the rates for point-to-point and network integration transmission services within the system of each operating company will remain the current transmission rates as accepted under each respective currently-effective OATT for each operating company.⁴ Applicants state that for point-to-point transaction using the facilities of both companies, they propose to charge the higher of respective single-system rates, consistent with the Commission's decision in *Northern*

¹ *PNM Resources, Inc.*, 110 FERC ¶ 61,204 (2005) (Docket No. EC05-29-000) (March 2 Order).

² PNM Resources, TNP Enterprises, TNMP, and SW Acquisition, L.P.

³ See Docket No. EC05-29-000 where Applicants sought Commission approval of the sale of 100 percent of TNP Enterprises' outstanding common shares held by SW Acquisition to PNM Resources.

⁴ On March 30, 2005, PNM submitted for filing a transmission rate increase for transmission services under its OATT in Docket No. ER05-741-000.

*States Power Co.*⁵ Applicants state that this approach will eliminate rate pancaking and therefore requests Commission-approval, on an interim basis, pending a determination by the NMPRC regarding the amalgamation of PNM and TNMP's New Mexico assets.⁶

7. Applicants argue that the Joint OATT is consistent with, or superior to, the *pro forma* tariff issued in Order Nos. 888, *et al.* Further, while some of the terms and conditions of the Joint OATT diverge from the Order No. 888 *pro forma*, these terms and conditions have already been accepted by the Commission with regard to PNM or TNMP. Applicants also argue that the effectiveness of the Joint OATT would also moot TNMP's February 22, 2005 filing with the Commission in Docket No. ER05-625-000 to comply with the requirements of Order No. 2003-B, as well as PNM's February 14, 2005 Order No. 2003-B compliance filing in Docket No. ER05-574-000.

III. Notice of Filing, Interventions, Protests and Answers

8. Notice of Applicants' filing was published in the *Federal Register*, 70 Fed. Reg. 13,495 (2005), with comments, interventions and protests due on or before March 30, 2005. Xcel Energy Services Inc.⁷ (XES) filed a timely motion to intervene and protest.

9. According to XES, PNM, prior to the merger proposed in Docket No. EC05-29-000, owned the 220 MW Blackwater DC tie near Clovis, New Mexico, which is one of a few DC ties connecting the Western and Eastern grids (Blackwater HVDC tie). The Blackwater HVDC tie connects to the SPS system. XES also states that TNMP also has joint ownership in the Eddy County HVDC tie located near Artesia, New Mexico, which also interconnects the Western and Eastern grids (Eddy County HVDC tie).⁸

10. In its protest, XES contends that while the Joint OATT may prove to be just and reasonable, it does not, however, provide sufficient information for the

⁵ See *Northern States Power Company*, 90 FERC ¶ 61,138 (2000). See also *UtiliCorp United Inc.*, 94 FERC ¶ 61,216 (2001).

⁶ Applicants state that they expect the integration of the companies to be effective on January 1, 2007 with approval of the NMPRC.

⁷ XES filed its protest on behalf of two of its jurisdictional utility operating company affiliates, namely Public Service Company of Colorado and Southwestern Public Service Company.

⁸ TNMP owns a 67 MW interest in the 200 MW Eddy County HVDC tie.

Commission and intervenors to determine the Joint OATT's ability to mitigate market power. Specifically, XES argues, the Joint OATT, as filed, does not explain how Applicants assure open access in light of PNM's consolidated ownership of Blackwater HVDC tie and the Eddy County HVDC tie. These HVDC ties, XES explains, are essential to the assurance of open access in parts of the southwest, as well as for the transmission of power between the Eastern and Western grids. XES contends, however, that since southwestern market participants are forced to reserve and to schedule transmission service over PNM-owned HVDC ties in order to wheel energy between the Eastern and Western grids, it is essential that Applicants explain how the Joint OATT will ensure access over these facilities.

11. XES argues that the Commission must consider the Wholesale Requirements Power Sales and Service Agreement between PNM Marketing and TNMP (Requirements Agreement) when evaluating the Joint OATT's effectiveness in ensuring open access.⁹ According to XES, PNM and TNMP must prove that their marketing affiliates are subject to the same obligations with respect to transmission service reservations as their other transmission customers, and that certain provisions in the Requirements Agreement cannot usurp obligations that would apply under the joint OATT i.e., no preferential access. XES asserts, among other things, that under the Requirements Agreement, it is not clear that PNM's and TNMP's marketing affiliates operate at "arms length" with respect to transmission issues.¹⁰

12. XES also argues that the Commission must require that the Joint OATT's ancillary services provisions result in comparable treatment. XES contends that section 3 of the Joint OATT stipulates that TNMP will be in the PNM's Control Area and will offer to arrange for ancillary services for the Transmission Customer. However, XES argues, the Control Area Operator will be PNM. XES contends that no ambiguity should exist as to what entity is supplying Ancillary Services and at what price. XES further argues that Spinning Reserves should also be priced consistently between Applicants and other Transmission Customers.

13. On April 14, 2005, Applicants submitted an answer in response to XES's protest. Applicants argue that the issues raised by XES are not germane to this proceeding and that, in fact, XES raised the same arguments in another proceeding

⁹ Under this Agreement, PNM's Wholesale Marketing Department provides full energy requirements to TNMP's native load through December 31, 2006. *See* Docket No. ER01-2566-000 *et al.*

¹⁰ XES asserts that section 6 of the Requirements Agreement allows PNM preferential access to TNMP's transmission system regardless of the terms and conditions of the TNMP OATT.

objecting to the Requirements Agreement between Applicants.¹¹ Applicants argue that XES's protest should be denied as it does not raise any issue that warrant further examination by the Commission with respect to the Joint OATT. Applicants assert further that the concerns raised by Xcel involve conditions or issues not affected by or changed as a result of the creation of the Joint OATT.¹²

14. According to Applicants, TNMP's acquisition by PNM Resources does not affect open access over the Blackwater and Eddy County ties and Applicants' respective obligations as transmission providers. Further, Applicants state, compliance with the Commission's requirements for open access transmission facilities does not change simply because Applicants have filed the Joint OATT.

15. Applicants argue that contrary to XES's claims, there will not be any changes in the way that PNM Marketing and TNMP perform their respective obligations under the Requirements Agreement during the remaining term of that agreement.¹³ According to Applicants, upon consummation of the acquisition, PNM will comply with the applicable rules governing transactions with affiliates and separation of functions, as it currently does with respect to PNM Marketing.

16. In addition, Applicants assert that XES ignores the fact that pursuant to a commitment made in the acquisition proceeding, Applicants will implement a Market Monitoring Plan upon closing of the acquisition. Further, Applicants contend, the independent market monitor (IMM) will identify and address and respond to any anticompetitive behavior as well as market events or rules that result in significant increases in wholesale electricity prices or the foreclosure of competition by rivals.

¹¹ See Southwestern Public Service Company's November 13, 2001 Motion to Intervene and Protest in Docket No. ER01-2566-000.

¹² Applicants assert that these issues were raised by Xcel and considered by the Commission previously and therefore Xcel should not be permitted to pursue matters that are not affected by the filing of the Joint OATT in this docket.

¹³ Applicants assert that issues raised regarding the Wholesale Requirements Agreement restate issues Xcel presented in Docket No. ER01-2566-000. Under that Agreement, PNM Marketing acts as TNMP's agent for third-party transmission services and provides TNMP wholesale capacity and energy to serve its native load. They further note, as previously explained, in providing third party transmission services under this agreement, PNM Marketing may use its rights under a service agreement with PNM Reliability on file with the Commission, or may enter into new service agreements that would likewise be filed with the Commission. See Attachment A to Applicants' Answer at 6.

17. Applicants further contend that the Joint OATT will not result in any change to existing practices or rates regarding the provision of ancillary service by either PNM or TNMP. Applicants state that the rates for ancillary services provided by PNM, are specified in the Joint OATT, and these rates will apply in the event that TNMP arranges to obtain ancillary services from PNM as provided in the Joint OATT (as currently provided for in TNMP's stand-alone OATT). Therefore, Applicants contend, XES's concerns are misplaced.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene serves to make XES a party to this proceeding. 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 unless otherwise ordered by the decisional authority. We will accept Applicants' answer as it assists us in the decision making process.

B. Commission Determination

19. We accept the Joint OATT, as filed, effective on the later of May 8, 2005 or the closing date of the acquisition of TNMP's parent, TNP Enterprises, Inc. by PNM's parent, PNM Resources. We also accept Applicants' interim proposal to charge the "higher of" transmission pricing for transactions using both PNM's and TNMP's transmission system until the NMPRC approves the integration of both companies' transmission systems.¹⁴ We find that the Joint OATT submitted adequately consolidates the non-rate terms and conditions of the existing Commission-approved PNM OATT. We further find that the Joint OATT incorporates TNMP as a Transmission Provider and the addition reflecting TNMP's transmission rates and line losses are congruent with the *pro forma* OATT.¹⁵ Consequently we reject the issues raised by XES in its protest, as discussed below.

¹⁴ A section 205 rate filing is required for any rate change upon integration of the companies. Applicants state that integration will become effective on January 1, 2007.

¹⁵ Applicants state that the instant filing does not reflect any changes in the rates charged by TNMP and PNM for transmission services provided under their respective facilities.

20. With respect to XES's contention that the OATT, as submitted, does not provide sufficient specificity regarding which party will provide ancillary services and at what price, we disagree. TNMP is not a Control Area operator. However, the Joint OATT provides for TNMP to arrange for ancillary services to be provided by the Control Area operator, which will be PNM. XES maintains that it requires further information about the entity providing ancillary services and the price of those services. However, for ancillary services provided by PNM as the control area operator on behalf of TNMP, the Joint OATT states that, "to the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the cost charged to the Transmission Provider by that Control Area Operator."¹⁶ Therefore, in the event that TNMP arranges for ancillary services, the rates charged the transmission customer will reflect a pass-through of PNM's rates for ancillary services. Moreover, the adoption of the Joint OATT will not cause any changes to the rates and how ancillary services will be provided by either TNMP or PNM. We will therefore reject XES's arguments on this issue.

21. In response to XES's concerns that access over the HVDC ties will be affected, we find that the Joint OATT does not modify the terms and conditions for access over the ties. We agree with Applicants that their respective obligations as transmission providers, including the compliance with the Commission's requirements for open access to transmission facilities, will not change as a result of the filing of the Joint OATT. XES has not raised any specific contrary evidence, merely speculative concerns and we will therefore reject their arguments on this issue. The Commission, however, has previously approved a Market Monitoring Plan, which includes provisions for the Market Monitor to identify any anticompetitive behavior with respect to Applicants' operation of their transmission facilities.¹⁷ The role of the Market Monitor will also include investigating complaints from customers and competitors, as well as identifying and providing market events and other issues to the Commission on a regular basis.¹⁸

22. In its protest, XES raises a number of issues regarding a Wholesale Requirements Power Sales and Service Agreement (Requirements Agreement) between PNM Marketing and TNMP. As we stated in *Public Service of New Mexico*,

¹⁶ See, e.g., Schedules 3, Regulation and Frequency Response Service, Joint OATT, Original Sheet No. 85

¹⁷ See March 2 Order at P 34-37.

¹⁸ *Id.*

97 FERC ¶ 61,310 (2001), the appropriate forum to challenge the justness and reasonableness of the Requirements Agreement is in a complaint under FPA section 206.¹⁹

23. We therefore accept the Joint OATT, as filed. As we noted above, the Joint OATT incorporates TNMP under PNM's OATT as a Transmission Provider, consistent with the March 2, 2005 merger between PNM Resources, Inc. and TNP Enterprises, without any material change to the terms and conditions of PNM's OATT.

The Commission orders:

The proposed Joint OATT is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁹ 16 U.S.C. § 824(e) (2000).