

111 FERC ¶ 61,245  
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 No. ER05-741-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES  
AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued May 25, 2005)

1. In this order, the Commission accepts for filing Public Service Company of New Mexico's (PNM) proposed rates and suspends them for five months, to become effective on November 1, 2005, subject to refund. The Commission also establishes hearing and settlement judge procedures. This order benefits customers because it provides the parties with a forum in which to resolve their disputes.

**Background**

2. On March 30, 2005, PNM filed a proposed increase in its transmission rates under its Open Access Transmission Tariff (OATT), as well as under several non-OATT bilateral contracts between PNM and its firm transmission customers.<sup>1</sup> The filing also includes revisions to PNM's Electric Coordination Tariff<sup>2</sup> to reflect the proposed revised rates under PNM's OATT. The filing also includes tariff revisions to the PNM

---

<sup>1</sup> PNM states that the parties receiving service pursuant to non-OATT bilateral contracts are Western Area Power Administration (Western), El Paso Electric Company (El Paso), and Navajo Tribal Utility Authority (Tribal Authority). The proposed rates are reflected on revised tariff sheets and rate schedules.

<sup>2</sup> PNM's Electric Coordination Tariff permits Electric Utilities to acquire coordination services from PNM for resale and is designated as FERC Electric Tariff, Volume No. 5.

Resources Operating Companies Tariff filed by PNM and Texas-New Mexico Power Company (Joint OATT).<sup>3</sup> Finally, PNM proposes to update its real power loss factors for transmission service from 3.0 percent to 3.95 percent.

3. PNM proposes a 2005 transmission revenue requirement of \$69,001,601 for network transmission service provided pursuant to its OATT, compared to its existing revenue requirement of \$38,000,001. PNM also proposes an increase in the monthly rate for OATT firm and non-firm point-to-point transmission service from \$2.07/kW/month to \$2.25/kW/month, with conforming increases to the yearly, weekly, daily, and hourly rates. In addition, PNM proposes to make corresponding revisions to the unit rates for firm point-to-point transmission service under non-OATT bilateral contracts. PNM projects that its proposed transmission rates will provide additional annual revenues of approximately \$7.8 million.

4. Finally, PNM proposes the following revisions: (1) a modification to section 13.1 of the OATT to clarify that PNM sells firm point-to-point transmission service on an hourly basis, and (2) revised tariff sheets to PNM's Electric Coordination Tariff reflecting corrections to the ancillary services rates.<sup>4</sup> PNM requests that the proposed rates be made effective on June 1, 2005.

### **Notice, Interventions, and Protests**

5. Notice of PNM's filing was published in the *Federal Register*, 70 Fed. Reg. 19,746 (2005), with comments, protests, and interventions due on or before April 20, 2005.

6. The following parties filed timely unopposed motions to intervene raising no substantive issues: Tribal Authority, El Paso, Utah Associated Municipal Power Systems, Arizona Electric Power Cooperative, Inc. and Southwest Transmission Cooperative, Inc. (jointly, AEPCO/SWTC), and Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, and APS Energy Services Company, Inc. (collectively, Pinnacle West Companies).

---

<sup>3</sup> PNM Resources Operating Companies FERC Electric Tariff, Original Volume No. 1.

<sup>4</sup> PNM entered into a settlement regarding its ancillary service rates in 1998, *Public Service Company of New Mexico*, 87 FERC ¶ 61,040 (1999), but through an oversight failed to update the Electric Coordination Tariff to reflect the settled rates.

7. The following parties filed timely unopposed motions to intervene and protests: Tri-State Generation and Transmission Association, Inc. (Tri-State), the Incorporated County of Los Alamos, New Mexico (Los Alamos County), Western, and the United States Department of Energy (USDOE) on behalf of the National Nuclear Security Administration (NNSA) and other Federal Executive Agencies.

8. Western argues that PNM's submittal does not comply with the Commission's filing requirements in that it fails to provide certain significant information and should, therefore, be rejected. Should the Commission not reject PNM's filing, Western requests the Commission to suspend the proposed rates for the maximum five-month statutory period and set it for hearing. In support of its request, Western claims that PNM's inclusion of an acquisition adjustment related to facilities purchased from Tri-State fails to meet the test required to allow this type of adjustment. Additionally, Western states that PNM has improperly included expenses related to transmission service it purchases from Western and El Paso in its operation and maintenance (O&M) calculations.

9. USDOE also argues that PNM's submittal does not comply with the Commission's filing requirements and should be rejected. In the alternative, USDOE claims that its preliminary adjustments to PNM's proposed revenue requirements exceed the Commission's excessive increase criteria and should be suspended for the maximum five-month statutory suspension period. USDOE asserts that PNM's proposed acquisition adjustment of \$4.4 million related to certain assets acquired from Tri-State should be disallowed from PNM's rate base. Further, USDOE states that PNM's proposed acquisition adjustment for the EIP line lease versus ownership also should be eliminated. USDOE maintains that PNM has failed to meet the test required for these adjustments. USDOE also argues that PNM's filing overstates its revenue requirements, and USDOE suggests several adjustments, including the (1) elimination of "phantom" transmission O&M expenses, (2) elimination of all Account No. 565 O&M expense, and (3) correction of the wages and salaries allocation factor.

10. Los Alamos County challenges several of the cost inputs used by PNM to support the proposed rate increase. Los Alamos County cites PNM's inclusion of an acquisition adjustment related to PNM's acquisition of transmission facilities from Tri-State, the completion of new transmission projects, and the 10.8 percent return on equity (ROE) as questionable cost inputs. Thus, Los Alamos County requests the Commission to suspend the proposed increase for the full five-month statutory period and set the matter for hearing and investigation. Los Alamos County also recommends that the hearing be held in abeyance to permit settlement negotiations to occur.

11. Tri-State protests the filing, raising concerns, among other things, regarding PNM's rate treatment of third-party transmission purchases used to deliver network resources to PNM's transmission system. Further, Tri-State indicates that PNM's Period II cost of service study fails to include the impact on transmission of PNM's 200 MW wind farm and its purchase of a 33 percent interest in the 570 MW Luna Generating Station. Tri-State asks the Commission to suspend the filing for five months and establish an investigation and hearing.

12. On May 5, 2005, PNM filed an answer to the protests of USDOE and Western.

### **Discussion**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make those submitting 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) (2004), prohibits an answer to a protest unless otherwise ordered. We are not persuaded to accept PNM's answer and will, therefore, reject it.

14. 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.<sup>5</sup>

15. 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, or otherwise unlawful. Therefore, we will accept them for filing, suspend them for five months (as discussed below), to be effective November 1, 2005, subject to refund, and set them for hearing and settlement judge procedures.

16. In *West Texas Utilities Company (West Texas)*,<sup>6</sup> the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas*, the Commission generally would impose a maximum suspension. Here, our examination indicates that PNM's proposed rates may yield substantially excessive revenues. Therefore, we will suspend the proposed transmission rates for the maximum five-month period.

---

<sup>5</sup> The issues include, among other things, acquisition adjustments, transmission O&M expenses, and the proposed 10.8 percent ROE.

<sup>6</sup> 18 FERC ¶ 61,189 (1982).

17. While we are setting these matters for a trial-type evidentiary hearing, we encourage the 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.<sup>7</sup> 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.<sup>8</sup> 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 for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PNM's proposed rates are hereby accepted for filing and suspended for five months, to become effective on November 1, 2005, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 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 public hearing shall be held concerning the justness and reasonableness of PNM's proposed rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), 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 the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

---

<sup>7</sup> 18 C.F.R. § 385.603 (2004).

<sup>8</sup> 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 and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

designates the settlement judge. If the parties decide to request a specific judge, they must make the request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) 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 the 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.

(E) If settlement judge procedures fail, 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 this proceeding in a hearing room of the Commission, 888 First Street, NE, 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.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.