

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

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

Docket No. ER07-166-000

ORDER ACCEPTING NOTICES OF CANCELLATION
AND CONDITIONALLY ACCEPTING NOTICES OF SUCCESSION

(Issued December 21, 2006)

1. On November 2, 2006, Public Service Company of New Mexico (PNM) and Texas-New Mexico Power Company (TNMP) (applicants) filed: (1) notices of cancellation of various TNMP rate schedules and service agreements currently on file with the Commission; (2) a notice of cancellation of TNMP's open access transmission tariff (OATT) currently on file with the Commission; (3) notices of succession for certain agreements to which PNM and TNMP are parties; and (4) certain rate schedules and service agreements that previously were TNMP's but that will be assigned to PNM, pursuant to an inter-affiliate reorganization. This order conditionally accepts the filing, subject to PNM's making a compliance filing showing the affected agreements as revised by the reorganization.

Background

2. On October 20, 2006, a delegated letter order¹ authorized the disposition and acquisition of jurisdictional facilities associated with the internal corporate reorganization of the applicants. The reorganization provides that TNMP's New Mexico utility system assets and operations will be consolidated into those of PNM. Thereafter, PNM will own and operate the consolidated facilities. The jurisdictional facilities associated with the reorganization are TNMP's New Mexico transmission facilities and TNMP's rate schedules and service agreements under the TNMP OATT. The applicants state that they anticipate consummating the reorganization on January 1, 2007.

¹ *PNM Resources, Inc.*, 117 FERC ¶ 62,053 (2006).

Description of Filing

3. The filing consists of notices of cancellation of various TNMP rate schedules and service agreements. TNMP states that several of the rate schedules and service agreements have already terminated under the terms of the agreements. TNMP requests that the notices applicable to these rate schedules and service agreements be made effective on the dates that the rate schedules and service agreements terminated by their own terms.² For the remainder of the notices of cancellation, TNMP requests an effective date of January 1, 2007, so as to coincide with the effective date of the reorganization. In addition, TNMP filed a notice of cancellation, effective January 1, 2007, of its OATT. TNMP states that because it will be consolidated with PNM, its OATT will become obsolete.

4. PNM filed notices of succession for two agreements to which TNMP is a party, and for which PNM will succeed TNMP's role in these agreements. The first is the Interconnection Agreement between El Paso Electric Company, PNM and TNMP on the one hand, and Phelps Dodge Energy Services, LLC, Tucson Electric Power Company, PNMR Development and Management Corporation and Luna Power Company, LLC on the other hand (Luna Interconnection Agreement).³ The second is the Southwest New Mexico Transmission Project Participation Agreement (SNMTP Agreement) between PNM, Community Public Service Company (now known as TNMP) and El Paso Electric Company.⁴ PNM states that because these agreements are already on file for PNM, it is not re-filing the agreements. PNM requests an effective date of January 1, 2007 for the notices of succession.

5. Finally, PNM filed 12 TNMP rate schedules and service agreements which it requests be assigned to PNM, effective January 1, 2007. PNM states that no changes are being made to any of the agreements, but rather PNM is simply "stepping into TNMP's shoes" under the agreements, since TNMP is being merged and consolidated into and thereafter will be a part of PNM.

6. PNM requests waiver of the Commission's prior notice requirement to allow the effective dates it has requested.

² TNMP indicates effective dates ranging from September 15, 1995 to December 31, 2003.

³ The Luna Interconnection Agreement was accepted by delegated letter order issued October 7, 2005, in Docket No. ER05-1390-000, effective August 5, 2005.

⁴ The SNMTP Agreement was accepted by delegated letter order issued February 16, 2006, in Docket No. ER06-367-000, effective September 6, 2005.

Notice of Filing and Protest

7. Notice of the applicants' filing was published in the *Federal Register*, 71 Fed. Reg. 66,764 (2006), with interventions and protests due on or before November 24, 2006. El Paso Electric Company (EPE) filed a timely motion to intervene and protest. The applicants filed an answer to the protests.

8. EPE raises concerns regarding PNM's proposed notices of succession for the Luna Interconnection Agreement and the SNMTP Agreement. EPE states that neither of the agreements is accurately described in the filing, particularly with respect to the parties listed.⁵ EPE states that it is a party to both agreements, but it is not listed as a party to the SNMTP Agreement. EPE states that the filing makes no mention of Phelps Dodge Energy Services, LLC or Tucson Electric Power Company as parties to the Luna Interconnection Agreement, and states that the current interest of another party, PNMR Development and Management Corporation, is unclear.⁶

9. EPE states that PNM has not explained how it intends to implement its assumption of these agreements. Specifically, EPE states that PNM has not explained how it will exercise or perform the rights and obligations of TNMP under the assumed agreements given its existing interest, and seeks assurance that the combined interests of PNM and TNMP will be interpreted as the interest of a single party. EPE notes that the Commission may direct the re-filing of these agreements pursuant to Order No. 614.⁷ EPE requests that if the Commission does not require PNM to re-file the agreements it condition its acceptance of PNM's filing on PNM's commitment to exercise the combined rights of PNM and TNMP as those of a single party. EPE also requests that the Commission indicate that its acceptance of the filing is without prejudice to the right of

⁵ EPE references Table 3 in the filing transmittal letter which shows the designations and counterparties for the two agreements. The counterparties listed for the Luna Interconnection Agreement are Duke Energy Luna, EPE and PNM; and the counterparty listed for the SNMTP Agreement is PNM. (*See* Transmittal Letter at 9.)

⁶ EPE notes that on January 10, 2006, in Docket Nos. ER96-1551-015 and ER01-615-011, PNM filed a change of status informing the Commission of the beginning of operation of the Luna generation facility, which also stated that PNM, Phelps Dodge Energy Services, LLC and Tucson Electric Power Company each own a one-third interest in the facility. EPE states that, given this, the current interest of PNMR Development and Management Corporation's interest in the Luna Interconnection Agreement and/or the Luna generation facility is unclear.

⁷ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

any party to those agreements to object in the future should PNM seek to exercise its rights in a contrary manner.

10. In its answer, the applicants state that they do not take issue with EPE's proposed clarifications concerning the agreements and that they believe EPE's characterizations of the agreements are correct. They also state their assurance that the combined interests of PNM and TNMP in the agreements will be interpreted as the interest of a single party.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), EPE's timely, unopposed motion to intervene serves to make it a party to these proceedings. Answers to protests are prohibited by Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), unless otherwise ordered by the decisional authority. We find that good cause exists in this case to allow the applicants' answer to the protest, as it provides additional information that assists the Commission in the decision-making process.

B. Commission Determination

12. The Commission will grant waiver of prior notice and accept the notices of cancellation of the TNMP rate schedules, service agreements and OATT, which are uncontested, effective on the dates requested.⁸

13. With respect to the notices of succession for the Luna Interconnection Agreement and the SNMTP Agreement, the applicants' filing did not include copies of the agreements as revised to indicate the new corporate structure of the parties after reorganization. The applicants state that they did not do so because the terms and conditions of the existing agreements will not change, but rather only the corporate structure of the parties to those agreements will change. Thus, the filing reflects the

⁸ *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

belief that PNM is not required to file the revised agreements since the current agreements are already on file for PNM.⁹

14. The applicants' belief that they are not required to file the agreements is misplaced. Section 35.9 of the Commission's regulations requires every tariff and tariff sheet to be properly associated with the public utility providing the service. The Luna Interconnection Agreement and SNMTP Agreement, as well as the 12 TNMP agreements that PNM requests be assigned to PNM, list TNMP as a party and/or provider of service. Since TNMP's and PNM's interests are to be held by one party, the agreements should reflect only the merged entity PNM. Therefore, we find that these agreements do not comport with section 35.9 of the Commission's regulations. Nor do they comply with Order No. 614. Accordingly, the Commission will conditionally accept the notices of succession and the 12 assigned agreements, effective January 1, 2007, and direct PNM to make a compliance filing providing all of the agreements as updated to remove TNMP as a provider of service and to show instead the corporate structure after reorganization. In addition, PNM must reflect the correct pagination.¹⁰

15. EPE protests two aspects of the filing. First, EPE protests that PNM did not file the agreements to reflect the reorganization or include EPE as a party to one of the agreements.¹¹ EPE requests that the Commission require PNM to do so. The Commission has addressed this matter above.

16. Second, EPE protests that it is unclear what the interest of PNMR Development and Management Corporation in the Luna Interconnection Agreement will be after reorganization. For example, EPE states that Article IV of the Luna Interconnection Agreement establishes an Operating Committee and allows each party to appoint one representative to the Operating Committee. EPE states that it would expect that, with the merger of PNM and TNMP, the combined company, PNM, will be represented by a single representative. EPE states that the revised agreement should make this clear.

⁹ Identical versions of both agreements currently are on file and designated for both PNM and TNMP; the Luna Interconnection Agreement as service agreements under the OATT, and the SNMTP Agreement as Sheet Nos. 51-176 to rate schedules. The filing indicates that the parties' intention is that TNMP's rights and interests in the agreements be transferred to PNM under the PNM-designated agreements, and that the TNMP designations should be cancelled.

¹⁰ See *Keyspan Generation, LLC* 109 FERC ¶ 61,011 at P 4 (2004); see also *Boston Edison Company*, 98 FERC ¶ 61,292 (2002).

¹¹ EPE references the applicants' transmittal letter at 9.

17. In their answer, the applicants provide the assurance EPE seeks and they state that EPE's interpretation and characterizations of the agreements are correct. The applicants specifically state that the combined interests of PNM and TNMP in the agreements will be interpreted as the interest of a single party. The Commission finds that these assurances should resolve the protest.

The Commission orders:

(A) The notices of cancellation of the TNMP rate schedules and service agreements currently on file with the Commission are, hereby, accepted.

(B) The notice of cancellation of TNMP's OATT currently on file with the Commission is, hereby, accepted.

(C) The notices of succession for certain agreements to which PNM and TNMP are parties are, hereby, accepted, subject to the conditions contained in the body of this order.

(D) The rate schedules and service agreements that previously were TNMP's but that will be assigned to PNM pursuant to the inter-affiliate reorganization are, hereby, accepted, subject to the conditions contained in the body of this order.

(E) PNM is hereby directed to make a compliance filing, as discussed in the body of this order, on or before February 28, 2007.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.