

101 FERC ¶ 61, 339
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

El Paso Electric Company

Docket No. ER03-93-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING PROCEDURES

(Issued December 20, 2002)

1. In this order, we accept for filing an unexecuted Transmission Service Agreement (Revised Agreement) between El Paso Electric Company (El Paso) and Public Service Company of New Mexico (PNM), suspend it for a nominal period, and make it effective, subject to refund, January 1, 2003, as requested. We also establish hearing procedures regarding the amount of south to north transmission capability that is available on El Paso's system to meet PNM's request for transmission service. This order benefits customers because it provides the parties with a forum to determine the amount of south to north transmission capability that is available on El Paso's system and whether the Revised Agreement is just and reasonable.

Background

2. On October 24, 2001, PNM submitted a request to El Paso for 135 MW of long-term firm point-to-point transmission service under Part II of El Paso's Open Access Transmission Tariff (OATT). PNM requested service for one year commencing January 1, 2003. El Paso advised PNM that it could accommodate 30 MW of PNM's 135 MW request using existing facilities. El Paso offered to perform a Facility Study to determine what additional facilities would be needed to accommodate the remainder of PNM's request. PNM requested that El Paso perform this study, and on December 12, 2001, the parties executed a Facilities Study Agreement. On April 30, 2002, El Paso issued the Afton 345 kV to WestMesa 345 kV Transmission Service Request Final Study Report (TSR Study), in accordance with the parties' December 12, 2001 agreement. The TSR Study determined what facilities would be needed in order to provide the firm service that PNM requested. El Paso determined that it would have to construct \$13.62 million of new facilities consisting of a new PST (phase shifting

transformer) at Arroyo, install an additional 345/115kV transformer at the Diablo Substation, and 345kV & 115kV Breakers, switches & bus work.

3. After reviewing the TSR Study, PNM requested that El Paso evaluate how much of the remaining service request (for 105 MW) could be provided without removing the existing phase shifter and replacing it with a new phase shifter at Arroyo. The new phase shifter is the major cost item in the TSR Study.

4. El Paso performed an additional study (Partial Service Study) to determine the amount of transmission service that can be provided on the Afton 345 kV to WestMesa 345 kV path without the need to upgrade any of the facilities determined in the TSR study. El Paso determined in the Partial Service Study, issued in August 2002, that an additional 20 MW of firm transmission service can be provided to PNM from Afton 345 kV to West Mesa 345 kV through El Paso's existing PST under certain conditions. This partial transmission service is in addition to the 30 MW already provided by El Paso under the previous Transmission Service Agreement executed on June 11, 2002. El Paso determined that the 20 MW firm transmission service can only be provided when PNM's Afton Generator is on-line and is the source of the 20 MW, and the existing 30 MW of service is being used for delivering power from the Afton Generator as well. El Paso claims that this additional 20 MW of transmission service will be "generation dependent" service.

5. El Paso tendered a revised service agreement to PNM on August 28, 2002, providing for an additional 20 MW of "generation dependent" service. On September 26, 2002, PNM advised El Paso that it objected to the Revised Agreement, and asked El Paso to file it unexecuted with the Commission.

6. El Paso claims, as outlined in their Facility Study, that additional facility construction will be necessary in order to satisfy the remaining 85 MW of PNM's request.

The Filing

7. On October 29, 2002, El Paso filed the Revised Agreement between El Paso and PNM. El Paso tendered the Revised Agreement to PNM in August 2002, and PNM requested El Paso to file it with the Commission unexecuted. El Paso requests that the Revised Agreement be accepted without change or condition and that it be made effective January 1, 2003.

8. The Revised Agreement modifies an executed service agreement entered into between El Paso and PNM on June 11, 2002. The executed service agreement provides

for 30 MW of long-term firm point-to-point transmission service between the Afton 345 kV Substation and the WestMesa 345 KV Substation. The Revised Agreement now includes the existing long-term firm point-to-point service of 30 MW and the "generation dependent" service of 20 MW. According to El Paso the two services are being linked together as a result of the Partial Service Study.

9. El Paso states that because of the unique nature of the 20 MW of "generation dependent" service, an additional provision regarding PNM's rollover rights is necessary. El Paso claims that this capacity may not exist in the future. El Paso states that whether it continues to exist will depend upon whether the operation of the Afton generator will continue to create an increase in transfer capability from Afton to West Mesa. The Revised Agreement provides that in the event that PNM wishes to roll over the service at the end of the service term, El Paso will re-examine whether system conditions are such that the operation of the Afton Generator continues to create the transmission capacity that El Paso is relying upon to provide the service.

Notice of Filing and Interventions

10. Notice of the filing was published in the Federal Register, 67 Fed. Reg. 68,119 (2002), with comments, protests, or interventions due on or before November 19, 2002. A timely motion to intervene and protest was filed by PNM. On December 3, 2002, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a motion to intervene out of time. El Paso filed an answer to PNM's protest on December 4, 2002 (El Paso Answer). PNM filed an answer to El Paso's answer on December 12, 2002.

Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures, 18 C.F.R. §385.214 (2002), the timely, unopposed motion to intervene serves to make PNM a party to this proceeding. We will grant Tri-State's motion to intervene out of time given its interest in this proceeding, the early stage of the proceeding and the absence of any undue prejudice or delay.

12. Notwithstanding that Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.213 (2002), generally prohibits the filing of an answer to a protest, we find that good cause exists to grant El Paso's Answer as it assisted in our understanding and resolution of the issues. However, we are not persuaded to allow PNM's answer; accordingly, we will reject it.

13. The factual issue in dispute is the amount of south to north transmission capability that is available on El Paso's system. PNM protests El Paso's conclusions regarding the availability of south to north transmission capability on El Paso's transmission system needed to transmit the output of PNM's new 135 MW Afton Generating Station to PNM's load centers in northern New Mexico. The Afton Generating Station is located in Southern New Mexico. According to PNM, the flow of power is always into southern New Mexico on El Paso's transmission system due to the remote resources that are normally imported into this region from northwestern New Mexico and beyond. The transmission service that PNM seeks is counter to these flows. PNM asserts that El Paso has refused to adopt a netting approach to the scheduling of the transmission service from Afton to West Mesa. PNM argues that Western Electricity Coordinating Council (WECC) reliability procedures state that a transmission provider should make use of counterflows in situations comparable to the situation in this proceeding and contends that El Paso could provide the service using counter-flow schedules. Also, PNM disagrees with the methodology and assumptions used in determining the available service through the phase shifter.

14. In El Paso's Answer, El Paso states that it cannot rely on counterflows to provide firm transmission service from Afton to West Mesa. El Paso argues that the WECC has addressed this subject and its policies prohibit the creation of Available Transfer Capability (ATC) in this situation. El Paso submits that, according to WECC documents (Determination of ATC within the Western Interconnection, June 2001), generally in the Western Interconnection, netting of reservations and schedules cannot be used to increase firm ATC. The one exception to the rule is that "if there is firm load on one side of the path in question and the generation resources scheduled to serve it are on the other side of the path." El Paso states that in order for the exception to apply, the generation on one side of the path must actually serve the load on the other side of the path. Where this situation exists, there is always a flow on the path in the amount of the load. El Paso argues that when the flow on the line is not determined by load (as is the case of the West Mesa-Arroyo line), both the logic and language of the exception do not apply.

15. We find that PNM has raised issues of material fact regarding El Paso's south to north transmission capability and El Paso's Revised Agreement. These issues need further investigation and discovery. As a result, we cannot summarily decide these issues based on the evidence before us. Therefore, these issues are best addressed in the evidentiary hearing ordered below.

16. PNM also objects to El Paso's rollover rights limitation for the 20 MW of "generation dependent" transmission service. El Paso states that because of the unique nature of the 20 MW of "generation dependent" service, an additional provision

regarding PNM's rollover rights is necessary. In the Revised Agreement, El Paso proposes to re-examine system conditions before allowing PNM to roll over its service. El Paso states that it will prepare a study in order to determine whether, as a result of the construction of new transmission or generation facilities, and based on expected system conditions, the "generation dependent" transmission capacity used to provide this service has been reduced or eliminated. El Paso claims that this capacity may not exist in the future because it depends upon whether the operation of the Afton Generator will continue to create an increase in transfer capability from Afton to West Mesa. In Exelon Generation Company v. Southwest Power Pool, Inc., 101 FERC ¶ 61,226 (2002) (Exelon), the Commission explained in detail the limitations on rollover rights that are appropriate. El Paso's proposal to restrict PNM's rollover rights based on re-examination of whether system conditions are such that the operation of the Afton Generator continues to create the needed transmission capacity is not one of those limitations. If system conditions later change such that the transmission provider cannot satisfy existing customers, then the obligation is on the transmission provider to either curtail service pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.¹ The transmission provider may not, in such circumstances, deny a customer a rollover right. Therefore, we will deny El Paso's proposal to limit the rollover rights of PNM for the 20 MW of "generation dependent" transmission service. We note that if, at the time of the rollover request, PNM chooses a new power supplier and this substantially changes the location or direction of power flows it imposes on the transmission provider's system, PNM's right to continue to take service transmission from El Paso may be affected by transmission constraints associated with the change. See Order No. 888-A at 30,198 n.52.

17. Our preliminary analysis of the Revised Agreement indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the Revised Agreement for filing, suspend it for a nominal period, to become effective January 1, 2003, subject to refund, and set it for hearing.

The Commission orders:

(A) El Paso's Revised Agreement is hereby accepted for filing, suspended for a nominal period, to become effective on January 1, 2003, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the

¹Exelon, 101 FERC ¶ 61,226, at P 9 (2002).

Docket No. ER03-93-000

- 6 -

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 in Docket No. ER03-93-000 concerning the justness and reasonableness of El Paso's revised unexecuted Transmission Service Agreement between El Paso and PNM, as discussed in the body of this order.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in these proceedings to be held within approximately 15 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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.