

140 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Public Service Company of New Mexico, Power Network New Mexico, LLC, and New Mexico Renewable Energy Transmission Authority Docket No. ER12-1699-000

Power Network New Mexico, LLC, and New Mexico Renewable Energy Transmission Authority Docket No. ER12-1698-000

ORDER ON WAIVER PETITION AND NEGOTIATED RATES PROPOSAL

(Issued September 20, 2012)

1. On May 2, 2012, Public Service Company of New Mexico (PNM),¹ Power Network New Mexico, LLC (Power Network), and New Mexico Renewable Energy Transmission Authority (RETA) (together, Waiver Applicants) filed a petition for limited waiver of certain PNM Open Access Transmission Tariff (OATT) provisions, which would allow the Central New Mexico Transmission Collector Project (Power Network Project) to advance to the first position in PNM's transmission queue (Waiver Request). Also on May 2, 2012, Power Network and RETA (together, Negotiated Rate Applicants) filed an application requesting authorization to charge negotiated rates for transmission rights on the Power Network Project (Negotiated Rates Application).² Negotiated Rate Applicants filed their request pursuant to section 205 of the Federal Power Act (FPA)³

¹ PNM, a New Mexico Corporation and wholly-owned public utility operating subsidiary of PNM Resources, is engaged in the generation, transmission, and sale of electricity at wholesale in the western United States.

² Commission precedent distinguishes merchant transmission projects from traditional public utilities in that the developers of merchant projects assume all of the market risk of the projects and have no captive customers from which to recover such costs. *See, e.g., Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

³ 16 U.S.C. § 824d (2006).

and section 35 of the Commission's regulations.⁴ As discussed below, we will deny the Waiver Request, and as a result, dismiss the Negotiated Rates Application as premature.

I. Background

A. The Applicants

2. Waiver Applicants and Negotiated Rate Applicants explain that RETA is a New Mexico state government instrumentality with the statutory responsibility to finance, plan, acquire, maintain, and operate transmission and energy storage facilities in order to stimulate clean energy production, create high paying jobs, encourage capital investment, and increase economic development in rural areas.⁵ RETA has the power of eminent domain, which allows it to acquire land rights necessary for renewable energy resource development in New Mexico.⁶

3. Waiver Applicants and Negotiated Rate Applicants state that, in 2010, RETA commissioned studies by Los Alamos National Laboratory (LANL) and identified the Power Network Project as a means of facilitating transmission in eastern and central New Mexico.⁷ Waiver Applicants state that the Power Network Project will help RETA advance the public interest by facilitating the development of new electric transmission projects, which is essential for further development of renewable resources in western New Mexico. Waiver Applicants and Negotiated Rate Applicants state that RETA was involved in assessing the potential route and feasibility of the Power Network Project within New Mexico, including land acquisition issues. Waiver Applicants and Negotiated Rate Applicants add that RETA is also involved in assisting the Power Network Project with any New Mexico state permitting and regulatory issues.⁸

4. Waiver Applicants and Negotiated Rate Applicants continue that, in March 2011, RETA signed a memorandum of understanding with Goldman Sachs Infrastructure

⁴ 18 C.F.R. Part 35 (2012).

⁵ RETA's authority is codified at N.M. Stat. 62-16A-1-15 (2012).

⁶ Waiver Request at 9; Negotiated Rates Application at 3.

⁷ Waiver Request at 10; Negotiated Rate Application at 16-17.

⁸ Waiver Request at 7, Negotiated Rate Application at 4, 9. RETA states that it gave public notice of its intent to develop the Power Network Project, providing an opportunity for any private developer to step in and seek to develop the Project. RETA received no response to the public notice.

Partners II, L.P. and GS International Infrastructure Partners II, L.P. (together, GSIP)⁹ to fund the Power Network Project. GSIP created Power Network, a special purpose entity, to work with RETA and develop the Power Network Project.¹⁰ Subsequently, on October 27, 2011, RETA asserts that it entered into an agreement with Power Network through which RETA will acquire and construct the Power Network Project, and RETA will lease the Power Network Project to Power Network. Waiver Applicants and Negotiated Rate Applicants explain that Power Network will be the public utility transmission provider and will enter into contracts with third parties for the operation and maintenance of the Power Network Project and the administration of the OATT for Power Network.¹¹

B. The Power Network Project

5. Waiver Applicants state that the Power Network Project is designed to provide bundled service over its new facilities and PNM's transmission system from Rio Puerco¹² to Four Corners¹³ for one composite rate. The Power Network Project will result in the construction of new facilities consisting of approximately 200 miles of 345 kV double circuit transmission facilities from eastern and central New Mexico to Rio Puerco, adding at least 1,500 MW of new electric transmission capacity.¹⁴ From Rio Puerco, the Power Network Project will also provide service over PNM's transmission system.

6. In order to provide service from Rio Puerco to Four Corners, Waiver Applicants state that Power Network submitted transmission service requests to PNM totaling 1,500 MW for long-term firm point-to-point transmission service from Rio Puerco to Four Corners, and has executed a system impact study agreement with PNM to study its

⁹ GSIP is managed by direct and indirect subsidiaries of the Goldman Sachs Group, Inc. GSIP is Goldman Sachs's primary vehicle to make direct investments in infrastructure and infrastructure-related assets and companies.

¹⁰ Negotiated Rate Application at 11-12. Through GSIP, Power Network is affiliated with two power marketers, J. Aron & Company and Power Receivable Finance, LLC. Power Network is not affiliated with any generation facilities in the PNM balancing authority area or the Western Electric Coordinating Council region.

¹¹ Waiver Request at 7-8; Negotiated Rate Application at 7-8.

¹² Rio Puerco is a switching station on PNM's system that is northwest of Albuquerque.

¹³ The Four Corners 345 kV switchyard is a gateway to western markets, including Arizona and California.

¹⁴ Waiver Request at 7-8; Negotiated Rate Application at 7-8.

requests on the same path in a single cluster.¹⁵ Waiver Applicants confirm that Power Network will pay for all of the network upgrades required to interconnect the portion of the Power Network Project in eastern and central New Mexico with PNM's transmission system in order to acquire transmission service over the PNM system to Four Corners.¹⁶ Waiver Applicants state that they have completed the preliminary engineering study for the Power Network Project, and they add that they are in the process of finalizing the routing and obtaining necessary rights of way for the new facilities. Waiver Applicants state that the Power Network Project is expected to cost \$350 million and commence commercial operation in 2015.¹⁷

C. PNM's Transmission Queue

7. Waiver Applicants state that, currently, PNM's transmission queue is processed on a first-come, first-served basis.¹⁸ Waiver Applicants state that the PNM transmission queue has a backlog of 60 requests from seven different customers for 8,400 MW of long-term firm point-to-point transmission service. Waiver Applicants state that all but one of the transmission service requests, for 70 MW, indicate a point of delivery at Four Corners. Waiver Applicants state that Power Network's queue positions are 46-60. Waiver Applicants state that, based on existing transmission commitments on PNM's system to Four Corners, even the addition of 100 MW of firm point-to-point transmission service requests from eastern New Mexico to Four Corners would trigger a major transmission expansion on the PNM system.¹⁹

8. Waiver Applicants explain that PNM intends to undertake extensive transmission queue reform, but they estimate that it will take several years to develop and fully implement transmission queue reform.²⁰

¹⁵ Waiver Request at 17-18, 30. Separately, Power Network has an interconnection request for the Power Network Project with PNM for non-tariff wire-to-wire interconnection of the merchant facility to PNM's transmission system and will be working with PNM on developing an appropriate interconnection agreement.

¹⁶ *Id.* at 13.

¹⁷ Waiver Request at 17-18; Negotiated Rates Application at 17-18.

¹⁸ *See* OATT section 13.2.

¹⁹ Waiver Request at 18.

²⁰ *Id.* at 4, 20.

D. Anchor Customer Solicitation Process

9. Waiver Applicants and Negotiated Rate Applicants state that they intend to fully subscribe the Power Network Project's capacity, both the new facilities and the capacity on the PNM transmission system to Four Corners, through an anchor customer solicitation and open season process.²¹ Waiver Applicants and Negotiated Rate Applicants assert that they have completed the first stage of the anchor customer selection process.²² Waiver Applicants and Negotiated Rate Applicants state that Power Network and RETA held an open solicitation for the Power Network Project's capacity and "reached out to" all parties in PNM's transmission and interconnection queues and others whom their research showed had interest in renewable power in New Mexico or an interest in delivering power to Four Corners.²³ Waiver Applicants and Negotiated Rate Applicants state that RETA oversaw the design and conduct of the anchor customer selection process for the Power Network Project, including identifying potential customers, developing selection criteria, developing the Precedent Agreement,²⁴ and selecting the anchor customers.²⁵

10. Waiver Applicants and Negotiated Rate Applicants state that Power Network and RETA received commitments from two customers for 1,050 MW of transmission capacity. Waiver Applicants and Negotiated Rate Applicants state that Arabella Wind LLC (Arabella), an affiliate of Gestamp Solar, was awarded 300 MW of capacity and Arabella currently holds positions 3, 4, 6, and 7 in PNM's transmission queue. Waiver Applicants and Negotiated Rate Applicants state that Power Network and RETA signed a letter of intent for 750 MW with First Wind Energy, LLC (First Wind). Waiver Applicants and Negotiated Rate Applicants state that if First Wind does not enter into a Precedent Agreement, the 750 MW would be offered in a second round open solicitation

²¹ *Id.* at 23; Negotiated Rates Application at 18.

²² Waiver Request at 24-25; Negotiated Rates Application at 18-20.

²³ Waiver Request at 5, 21.

²⁴ Waiver Request at 26; Negotiated Rates Application at 10. Waiver Applicants and Negotiated Rate Applicants state that the Precedent Agreement gives anchor customers priority access to firm transmission rights subject to entering into a negotiated transmission services agreements, and provides for the sharing of the Power Network Project's development costs, if project milestones are met. Waiver Applicants and Negotiated Rate Applicants state that the negotiated transmission services agreement will provide customers with firm transmission service for a term of 25 years from the applicable point of receipt for such customer to the Four Corners trading hub.

²⁵ Negotiated Rates Application at 10.

for anchor customers. Waiver Applicants and Negotiated Rate Applicants state that Power Network and RETA intend to hold a second anchor customer solicitation to pre-subscribe up to a total of 1,200 MW. Waiver Applicants and Negotiated Rate Applicants state that Power Network and RETA commit to allocate the remaining 300 MW through a traditional open season process.²⁶

E. Request for Waiver and Application for Negotiated Rates

11. Waiver Applicants request waiver of certain provisions of PNM's OATT to allow Power Network's transmission service requests on behalf of the Power Network Project to be first in PNM's transmission queue.²⁷

12. Separately, Negotiated Rate Applicants request the following: (1) authority to charge negotiated rates over both the new segment of the Power Network Project from eastern and central New Mexico to Rio Puerco, and on PNM's transmission system from Rio Puerco to Four Corners; (2) approval of the capacity allocation process, including the presubscription of up to 80 percent of the Power Network Project's capacity to anchor customers through the anchor customer selection process; and (3) certain waivers.²⁸ The Waiver Application and the Negotiated Rates Application are discussed separately below.

II. Notice and Responsive Pleadings

13. Notice of the Waiver Request was published in the *Federal Register*, 77 Fed. Reg. 27,221 (2012), with interventions and comments due on or before May 23, 2012. On May 22, 2012, Berrendo Wind Energy, LLC (Berrendo) requested an extension of time to file comments. On May 22, 2012, the Commission granted an extension of time until May 30, 2012. enXco, Inc. (enXco) filed a motion to intervene. Berrendo, Cargill Power Markets, LLC (Cargill), Corona Landowner's Association, Inc. (Corona),

²⁶ Negotiated Rates Application at 13, 20; Waiver Request at 24-25 (stating that during the confidential negotiations, three bidders voluntarily dropped out of the anchor customer selection process. All bidders received the same form of Precedent Agreement and the final Precedent Agreements contain the same rates, terms, and conditions for each anchor customer).

²⁷ Waiver Applicants request waiver of OATT sections 13.2, 17.1, 17.5, 18.1, 19.1, and any additional sections that may be necessary to process the Power Network Project transmission service request.

²⁸ Negotiated Rate Applicants request waiver of the requirements of subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15, and 35.16, and waiver of FERC Form No. 1 Annual Report of Major Electric Utilities, Licenses, and other filing requirements.

Dan Beck, et al. (Dan Beck), First Wind, Gestamp Asetym Solar North America, Inc. (Gestamp), Guadalupe County Livestock Producers Organization (Guadalupe), Iberdrola Renewables, LLC (Iberdrola), Lucky Corridor, LLC (Lucky Corridor), New Mexico Governor Susana Martinez (Governor Martinez), Ben Ray Lujan of the US Congress (Congressman Lujan), TGP Flying Cloud Holdings, LLC (TGP Flying Cloud), Stevan Pearce of the US Congress (Congressman Pearce), Tres Amigas LLC (Tres Amigas), Tortoise Capital Resources Corporation (Tortoise), and Western Water and Power Production Limited, LLC (Western Water) all filed timely motions to intervene and comments. The Guadalupe County Commission, Douglas J. Howe, Commissioner of the New Mexico Public Regulation Commission (New Mexico Commission) (Commissioner Howe), Patrick H. Lyons, Chairman of the New Mexico Commission (Chairman Lyons) and Tom and Jeanne Wetterman filed late comments. On June 14, 2012, Waiver Applicants submitted an answer. On June 27, 2012, Cargill filed an answer. On June 28, 2012, Tres Amigas filed supplemental comments, and TGP Flying Cloud filed an answer. On June 29, 2012, Iberdrola and Lucky Corridor submitted answers, and Berrendo filed an answer in opposition to or, in the alternative, request for leave to file an answer.

14. Notice of the Negotiated Rates Application was published in the *Federal Register*, 77 Fed. Reg. 27,221 (2012), with interventions or protests due on or before May 23, 2012. On May 22, 2012, Berrendo requested an extension of time to file comments. On May 22, 2012, the Commission granted an extension of time until May 30, 2012. Berrendo, enXco, Gestamp, First Wind, Lucky Corridor, Iberdrola, TGP Flying Cloud, Tres Amigas, and Tortoise filed motions to intervene. Berrendo, Dan Beck, TGP Flying Cloud, and Tres Amigas all filed comments. Chairman Lyons, Commissioner Howe, the Guadalupe County Commission, and Tom and Jeanne Wetterman filed late comments. On June 14, 2012, Negotiated Rate Applicants submitted an answer. On June 29, 2012, Lucky Corridor filed an answer, and Berrendo submitted an answer to or, in the alternative, request for leave and limited answer.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of Waiver Applicants, Cargill, Tres Amigas, TGP Flying Cloud, Iberdrola, Lucky Corridor, Negotiated Rate Applicants, or Berrendo, and therefore, we will reject them.

B. Waiver Request

1. Waiver Application

17. Waiver Applicants request a one-time waiver of certain provisions of PNM's OATT so that the Power Network Project may advance to the first position in PNM's transmission service queue ahead of other applicants that have yet to execute transmission service agreements.²⁹ Waiver Applicants request that the remaining transmission service queue priority be maintained. In support, Waiver Applicants argue that the Power Network Project provides a near-term solution to the backlog in PNM's transmission service queue.³⁰ Specifically, Waiver Applicants assert that the anchor customer solicitation and subsequent open season process provide a clustered alternative to the serial queue, and will allow customers that are ready to proceed to participate and receive service from the Power Network Project to Four Corners. Waiver Applicants argue that expedited service to customers that are ready to move forward and construction of new transmission infrastructure advance public policy goals, providing a first-ready, first-served approach to processing the transmission queue on an interim basis. Waiver Applicants warn that, without the Power Network Project, until comprehensive transmission queue reform can be implemented, renewable energy projects in eastern and central New Mexico that are ready to be developed will not be able to access markets in a timely way.³¹

18. Waiver Applicants also assert that the Commission has found that clearing interconnection queue backlogs may promote public policy goals.³² Waiver Applicants state that the Commission has consistently allowed generation interconnection queue adjustments that advance federal public policy objectives by (1) reducing queue backlogs on a non-discriminatory basis; and (2) promoting the development of new generation

²⁹ Waiver Request at 31.

³⁰ *Id.* at 21.

³¹ *Id.* at 5, 21- 22.

³² *Id.* at 35 (citing *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 19 (2008) (finding that the Commission is open to considering interconnection queue reforms to resolve transmission queue backlogs where those backlogs may deprive generation developers of business certainty, create additional challenges in meeting state renewable portfolio standards, and prevent least cost resources from being available in new capacity market auctions)).

resources that are ready to proceed.³³ Waiver Applicants state that, in doing so, the Commission has been willing to advance these goals despite protests from individual market participants with interconnection queue positions that may be adversely affected by the queue adjustments. According to Waiver Applicants, the Commission has found that, even though a customer might potentially suffer from some processing delay, it stood to benefit from California Independent System Operator Corp.'s queue clearing and reform efforts.³⁴ Waiver Applicants argue that the underlying rationale of promoting public policy goals by reducing interconnection queue backlogs is equally applicable in the context of transmission service queue waiver requests.

19. For example, Waiver Applicants observe that Bonneville Power Administration (Bonneville) requested and the Commission approved the use of an open season process and associated waiver request, to address Bonneville's transmission service queue backlog and implement a first-ready, first-served approach to processing its queue backlog. The Commission concluded that the open season process proposed by Bonneville increased the likelihood that new infrastructure would be built that would benefit the integrated network and facilitate the acquisition of new generation to meet load growth.³⁵

20. Waiver Applicants argue that good cause exists for the Commission to grant the one-time Waiver Request because: (1) there is a concrete problem that needs to be remedied; (2) the waiver is of limited scope; (3) the resultant benefits to customers are evident; and (4) the waiver will not have undesirable consequences overall.³⁶

³³ Waiver Request at 32 (citing *Public Service Company of New Mexico*, 136 FERC ¶ 61,231, at PP 82, 89-92 (2011) (*PNM*); *El Paso Electric Company*, 128 FERC ¶ 61,155, at PP 1, 15 (2009) (*El Paso*); *Southwest Power Pool*, 126 FERC ¶ 61,012, at P 40 (2009) (*Southwest Power Pool*); *California Independent System Operator Corp.*, 124 FERC ¶ 61,031 (2008), *reh'g denied*, 124 FERC ¶ 61,293, at PP 18-21 (2008); *California Independent System Operator Corp.*, 118 FERC ¶ 61, 226, at PP 18, 26, 28, n.10 (2007); *Midwest Indep. System Operator, Inc.*, 124 FERC ¶ 61,183, at PP 11, 17, 114 (2008) (*MISO*)).

³⁴ Waiver Request at 35 (citing *California Independent System Operator Corp.*, 124 FERC ¶ 61,031 at P 19).

³⁵ *Id.* at 36 (citing *Bonneville Power Administration*, 123 FERC ¶ 61,264, at PP 28, 37, 51 (2008) (*Bonneville Power Administration*)).

³⁶ *Id.* at 37.

21. Specifically, Waiver Applicants argue that PNM's transmission queue backlog presents a major impediment to the development of renewable generation in New Mexico, and therefore, granting the waiver remedies a concrete problem.³⁷ Waiver Applicants argue that the waiver would permit the Power Network Project to move forward and advance public policy needs, overcoming the transmission impediment to timely development of renewable energy projects that are ready to proceed. Waiver Applicants state that, if they are not granted 1,500 MW of firm transmission service from Rio Puerco to Four Corners in a timely manner, the Power Network Project will most likely not proceed.³⁸

22. Waiver Applicants argue that the Waiver Request is limited in scope, resulting in the suspension of the transmission queue requirements of the PNM OATT only to the extent necessary to allow the Power Network Project to move forward through the queue and obtain 1,500 MW of firm transmission service from Rio Puerco to Four Corners.³⁹ By granting the limited request, Waiver Applicants maintain that the Commission would permit PNM to complete the system impact and facilities studies and enter into a transmission service agreement for the Power Network Project with Power Network. PNM estimates that such studies could be completed in five months, and argue that there would be no permanent amendments to PNM's OATT as a result of the waiver.⁴⁰

23. Waiver Applicants assert that the Waiver Request will provide substantial benefits to customers. Waiver Applicants state that the Power Network Project: (1) will provide 1,500 MW of new merchant transmission that will add delivery capability and market access for new renewable generation, which is now constrained in New Mexico, without imposing the additional costs and development risks of the new facility on New Mexico customers; (2) is right-sized at 1,500 MW and located in one state, resulting in economical transmission capacity that can be constructed relatively quickly, thereby allowing customers timely access to lower-cost renewable generation from New Mexico; (3) is right-timed to commence service in the 2015 timeframe when the California and other western markets for renewable energy will need high-quality, lower cost wind and solar power to meet renewable portfolio standards; (4) will allow its customers seamless transmission service over both the Power Network Project's facilities and PNM transmission facilities to Four Corners for one composite rate; (5) will help clear both the PNM interconnection queue and the PNM transmission service queue; (6) with its attendant network upgrades, will help maintain reliability by reinforcing several portions

³⁷ *Id.* at 37-38.

³⁸ *Id.* at 38.

³⁹ *Id.* at 39.

⁴⁰ *Id.*

of the PNM transmission system that presently have high levels of use; (7) will provide jobs and bring millions of dollars in tax revenues to New Mexico; (8) has a very substantial likelihood of being built, especially given its size, expected routing, and RETA's participation, because of RETA's ability to exercise eminent domain power if necessary; and (9) will serve as a useful model for other public-private collaborations for transmission construction development.⁴¹

24. Waiver Applicants also contend that the Power Network Project will add 300 MW of firm point-to-point transmission capacity for service to Four Corners above the 1,500 MW required by the Power Network Project. Waiver Applicants note that an initial PNM feasibility study has found that, if a new line like that proposed by the Power Network Project were built from the eastern and central portion of New Mexico to Rio Puerco, in addition to all existing committed uses, up to 1,800 MW of incremental capacity could be made available between Rio Puerco and Four Corners if attendant network upgrades were also constructed. Therefore, Waiver Applicants argue that the Commission should consider that the Power Network Project has been sized to leave a significant amount of transmission capacity available for further open access transmission service requests. Waiver Applicants argue that when considering any undesirable consequences, the Commission should also consider the mitigating effect of Power Network's commitment to pay the costs of all the PNM network upgrades to provide more than the 1,500 MW of firm transmission service from Rio Puerco to Four Corners that it is seeking.⁴²

25. Finally, Waiver Applicants contend that the queue waiver will not cause undesirable consequences overall. Waiver Applicants state that, while any proposed adjustment of the queue priority may raise concerns and protests, the Commission should reject claims of speculative harm and weigh alleged harm against the benefits that the Power Network Project will provide. Given the strong public policy reasons for granting the Waiver Request and the benefits of the Power Network Project, Waiver Applicants argue that the Commission should only deny the Waiver Request if the Commission determines that any undesirable consequences of granting it would cumulatively outweigh the benefits.⁴³ Additionally, Waiver Applicants argue that allegations of harm should be rejected unless a party to this proceeding can show material adverse effect directly resulting from granting the Waiver Request. Waiver Applicants state that, in

⁴¹ Turner Testimony, Attachment 2 at PP 8-9.

⁴² Waiver Request at 39.

⁴³ *Id.* at 40-41.

previous queue proceedings, the Commission has called for the actual demonstration of harm from those claiming harm from the changes to queue processing.⁴⁴

26. Waiver Applicants argue there are no undesirable consequences for those in the queue that have lower priority than the anchor customers of the Power Network Project, because granting waiver will not affect them. Waiver Applicants note that, under the first-come, first-served rule, all customers in the queue are necessarily subject to consequences that flow from the requests of those with higher queue positions.⁴⁵ Additionally, Waiver Applicants argue that the Commission could conclude that there are no undesirable consequences for anyone who: (1) protests the waiver but has no position in the queue; (2) is not seeking delivery to Four Corners; or (3) already has a signed transmission service agreement under which the customer is either taking or deferring service.⁴⁶

27. Waiver Applicants argue that the majority of transmission service requests in the PNM transmission service queue identify a point of receipt where no substation exists, or at an existing PNM substation that has no available transmission capability to deliver power to the PNM backbone system, where it can then be delivered to the Four Corners trading hub.⁴⁷ Waiver Applicants state that the minimum amount of necessary new construction required to accommodate the existing transmission queue would include transmission lines from eastern New Mexico to some “strong” point of interconnection on the PNM backbone system, like Rio Puerco. Therefore, Waiver Applicants argue that these upgrades are necessary, with or without the Power Network Project.⁴⁸

28. In sum, Waiver Applicants argue that failure to grant the request for waiver will harm the market, consumers, and the public generally, because without the waiver, the Power Network Project will likely not proceed.⁴⁹

⁴⁴ *Id.* (citing *Cargill Power Markets, LLC. v. Pub Serv. New Mexico*, 137 FERC ¶ 61,257 at PP 33-35; *see also Shetek Wind Inc., v. MISO*, 138 FERC ¶ 61,250 at PP 61, 114-115).

⁴⁵ *Id.* at 41.

⁴⁶ *Id.*

⁴⁷ *Id.* at 42.

⁴⁸ *Id.*

⁴⁹ *Id.* at 44.

2. Comments in Support

29. Governor Martinez and several members of Congress as well as First Wind, Gestamp, Corona, Guadalupe, and the Guadalupe County Commission support the Waiver Request, stating that it resolves a concrete problem and provides benefits to customers.⁵⁰ They argue that the waiver will facilitate the addition of 1,500 MW of transmission capacity and will clear the backlog of projects in the queue allowing those projects defined as “ready” to move forward. Additionally, Governor Martinez several members of Congress as well as First Wind, and Gestamp state that the waiver serves public policy objectives, including renewable energy development, job creation, and providing business opportunities to New Mexico’s customers and landowners.⁵¹

30. First Wind adds that the requested waiver is limited in scope and unique because it is supported by RETA, a government instrumentality, thereby demonstrating that the Project is consistent with New Mexico’s public policy objectives. First Wind argues that, without the waiver, the Power Network Project’s request for transmission service would delay the Power Network Project while it waits in the transmission queue, which could jeopardize the development of the Power Network Project.⁵²

3. Protests

a. General

31. Iberdrola,⁵³ Western Water,⁵⁴ Tres Amigas, and Berrendo argue that PNM’s proposal does not comply with PNM’s open access obligations. Tres Amigas and Berrendo state that PNM has not engaged in an open and transparent transmission planning process with stakeholder participation, as required by Order No. 890.⁵⁵

⁵⁰ See, e.g., Guadalupe May 9, 2012 Comments at 1, Governor Martinez May 25, 2012 Comments at 2.

⁵¹ First Wind May 30, 2012 Comments at 3; Gestamp May 30, 2012 Supporting Comments at 3; Congressman Pearce May 29, 2012 Comments at 1-2; Congressman Lujan May 31, 2012 Comments at 1-2; Governor Martinez May 25, 2012 Comments at 1.

⁵² First Wind May 30, 2012 Comments at 3, 4.

⁵³ Iberdrola May 30, 2012 Protest at 4 (Iberdrola is developing 1,000 MW of renewable wind resources in New Mexico and has 16 queue positions in the PNM transmission service queue at 8-18 and 20-24).

⁵⁴ Western Water May 23, 2012 Protest at 4.

⁵⁵ Tres Amigas May 30, 2012 Comments at 8; Berrendo May 30, 2012 Comments at 21.

Iberdrola contends that granting this waiver will undermine the Commission's open access policies and create uncertainty for developers evaluating projected costs and timeframes in existing transmission queues.⁵⁶ Berrendo notes that Waiver Applicants rely on Commission-approved interconnection and transmission queue reform in other cases to support their requested waiver. However, Berrendo notes that the Waiver Applicants do not allege that the PNM transmission system will function more efficiently as a result of the Power Network Project, as is alleged in other Commission-approved interconnection and transmission queue reform orders.⁵⁷

32. Chairman Lyons states that the waiver request is inconsistent with Commission precedent and emphasizes that granting the waiver will add uncertainty for developers who have relied on the consistent application of rules and processes for renewable development. Chairman Lyons requests that the Commission direct PNM to engage its stakeholders in reforming its queue process.

33. Commissioner Howe requests that the Commission consider the merits of holding a technical conference in the State of New Mexico, on an expedited basis, in order to consider the technical merits of arguments for and against the Power Network Project from those directly affected by the project. Commissioner Howe notes that, although the Power Network Project has been debated in New Mexico, it is not jurisdictional to the New Mexico Commission and there has been no formal discussion or resolution on the matter.

34. Western Water argues that the Commission has previously rejected requests for waiver of *pro forma* interconnection procedures.⁵⁸ According to Western Water, PNM's proposed action is not consistent with the Commission's open access policy because it would grant a preferred customer the ability to advance its queue position and then hold that position until it raises the financing for its project. Western Water argues that this harms both those in the queue and those not yet in the queue.⁵⁹

35. Tres Amigas states that PNM has not shown that the Power Network Project is the most efficient and effective transmission project for New Mexico, and therefore it does

⁵⁶ Iberdrola May 30, 2012 Protest at 10 (citing *Coso Energy Developers*, 134 FERC ¶ 61,088 (2011)).

⁵⁷ Berrendo May 30, 2012 Comments at 7, 18.

⁵⁸ Western Water May 23, 2012 Comments at 5 (citing *Xcel Energy Operating Companies*, 106 FERC ¶ 61,260, at P 1, *reh'g denied as moot*, 109 FERC ¶ 61,072 (2004) (*Xcel Energy*)).

⁵⁹ *Id.* at 6.

not satisfy open access planning requirements.⁶⁰ Tres Amigas also contends that granting the waiver will give Waiver Applicants a virtual monopoly over power exports from New Mexico to Western markets.⁶¹

36. Tres Amigas argues that the Commission should hold the Waiver Request in abeyance and convene settlement discussions in which PNM can respond to the many pending requests for transmission service on a timely basis, and interested parties can initiate an open and transparent review of transmission planning alternatives for moving renewable energy from eastern and central New Mexico to Four Corners.⁶² Iberdrola also argues that, if the Commission does not deny the waiver, the Commission should set it for hearing and settlement judge procedures.⁶³

37. Berrendo questions the urgency of the Waiver Request, stating that it is unsupported and, arguing that, if the Power Network Project is worthwhile, investors will remain even if the Waiver Request is denied.⁶⁴ Berrendo also questions Waiver Applicants' reliance on a study by LANL that identified where in New Mexico projects such as the Power Network Project would most benefit the state and project developers. Berrendo notes that the LANL study did not even identify the Power Network Project "as an actual project recommended by LANL's power flow modeling."⁶⁵

38. Cargill states that PNM has not distinguished the Power Network Project from any other project that needs certainty to proceed with commercial plans and would like to develop its project in a timely manner. Cargill argues that a delay in processing requests in the transmission queue does not make the Waiver Applicants' request an emergency worthy of a waiver, even if it jeopardizes funding for the Power Network Project.⁶⁶

⁶⁰ Tres Amigas May 30, 2012 Comments at 9 (arguing that other transmission owners subject to Order No. 890 are able to responsibly manage their transmission queues on a timely basis, and engage in regular transmission planning in accordance with their OATT Attachment Ks, which are designed to produce a fair and efficient solution compatible with wholesale competition, and do not provide undue preference for a small number of investors).

⁶¹ Tres Amigas May 30, 2012 Comments at 8.

⁶² *Id.* at 2.

⁶³ Iberdrola May 30, 2012 Protest at 19-20.

⁶⁴ Berrendo May 30, 2012 Comments at 24-26.

⁶⁵ *Id.* at 6, 15.

⁶⁶ Cargill May 30, 2012 Protest at 7.

b. Limited in Scope

39. TGP Flying Cloud argues that the Waiver Request is not limited in scope because it would simply suspend the tariff's queue provisions to allow the Power Network Project to obtain priority transmission access, which would have far reaching effects on other transmission customers.⁶⁷ Berrendo echoes this concern, asserting that although the Waiver Applicants state that the Power Network Project will be the only transmission project that can affiliate with RETA, the Waiver Application does not confirm that this will be the only instance in which RETA will seek a waiver.

40. Lucky Corridor argues that it is unclear whether Waiver Applicants have submitted sufficient justification for the waiver of the transmission queue provisions of the PNM OATT. Moreover, Lucky Corridor maintains that Waiver Applicants have failed to provide justification for why waiver of other OATT provisions are relevant to the Project or should be waived.⁶⁸

c. Benefits

41. Commissioner Howe states that the Power Network Project could insulate New Mexico ratepayers from the risks inherent in developing a renewable energy export industry in New Mexico and provide a model for the nation if RETA is successful.

42. Cargill, Iberdrola, Lucky Corridor, and Berrendo argue that there will be no or only speculative benefits to customers, and they note that Waiver Applicants make no mention of development milestones, such as securing long term power purchase agreements. Iberdrola argues that, at a minimum, the customers in PNM's transmission service queue should have the opportunity, consistent with the current tariff, to evaluate all options available for transmitting renewable generation from New Mexico to western markets, including the utilization of existing transmission capacity throughout the state.⁶⁹

43. Berrendo asserts that the physical impact of the Power Network Project at Rio Puerco and on the PNM system has yet to be determined and will require extensive study. Berrendo states that it is not aware of any North American Electric Reliability Corporation or PNM OATT-compliant engineering or economic study that shows that the Power Network Project will relieve congestion or provide economic benefits. Berrendo contends that the Power Network Project does not appear to provide the benefits it

⁶⁷ TGP Flying Cloud May 30, 2012 Protest at 9.

⁶⁸ Lucky Corridor May 23, 2012 Comments at 6, 8.

⁶⁹ Iberdrola May 30, 2012 Protest at 17.

claims, such as providing a looped circuit with reliability benefits in an N-1 or N-2 contingency.⁷⁰

44. Iberdrola and Lucky Corridor argue that Waiver Applicants have not shown that the waiver will resolve the backlog of processing in PNM's transmission queue. Iberdrola even expresses doubt that the transmission queue backlog is a problem, claiming that the PNM interconnection queue, prior to reform, had a backlog of 15,000 MW from 44 customers, twice that of the current backlog.⁷¹ Iberdrola asserts that the parties have not demonstrated a benefit to higher-queued customers.⁷²

45. Lucky Corridor, Berrendo, Cargill, Iberdrola, Tres Amigas, and Western Water argue that Waiver Applicants did not demonstrate that the waiver represents a first-ready, first-served approach. Cargill argues that Waiver Applicants have not distinguished projects that are ready to go forward and are in PNM's transmission queue from other projects. Cargill argues that a waiver is not justified merely because a customer seeks service from the Power Network Project.⁷³ Additionally, Cargill notes that it did not receive an invitation to submit a request for service from or to otherwise participate in the Power Network Project.⁷⁴

46. Lucky Corridor states that Waiver Applicants have failed to demonstrate that the Power Network Project is commercially viable and ready to move forward. According to Lucky Corridor, although Power Network has conducted the first round of anchor customer selection, it has yet to secure any firm customer agreements, and Waiver Applicants have failed to identify milestones that would indicate the Power Network Project's readiness. Lucky Corridor is concerned that, if the Power Network Project is not ready, granting the waiver will complicate the transmission backlog, halting transmission service for up to five years.⁷⁵

47. Tres Amigas similarly argues that Waiver Applicants have not shown that the Power Network Project is ready to buy service and thus needs a waiver of the transmission queue provisions. Tres Amigas states that the applicants do not indicate whether the anchor customers have power purchase agreements, or whether future

⁷⁰ Berrendo May 30, 2012 Comments at 6, 15.

⁷¹ Iberdrola May 30, 2012 Protest at 8.

⁷² *Id.* at 17.

⁷³ Cargill May 30, 2012 Protest at 12.

⁷⁴ *Id.* at 10.

⁷⁵ Lucky Corridor May 23, 2012 Comments at 3-4.

participation is contingent on having a power purchase agreement. Tres Amigas contends that, unless the Power Network Project's anchor customers have executed a power purchase agreement, these customers are no more ready to commit to pay for transmission service than any other developer.⁷⁶

48. Berrendo argues that the Power Network Project has not received needed state environmental approvals, and does not have site control, local permits, power flow studies, stability studies, executed Precedent Agreements, or interconnection agreements.⁷⁷ Berrendo notes that Waiver Applicants have no agreements with purchasers of power who request delivery at Four Corners. According to Berrendo, the Power Network Project also lacks power purchase agreements with generation developers who are identified by Waiver Applicants, but have yet to sign Precedent Agreements.⁷⁸

d. Undesirable Consequences

49. Cargill and Iberdrola argue that the waiver will have the effect of allowing every customer of the Power Network Project, including those without established positions in the transmission queue, to move ahead of existing transmission queue customers.⁷⁹ Iberdrola argues that Waiver Applicants' statement that there can be no undesirable consequences for those who have lower priority in the queue is nonsensical, because Power Network's requests are last in the queue.⁸⁰ Tom and Jeanne Wetterman state that granting the Waiver Request would be unfair to developers and landowners that are involved in the development of other projects in the PNM transmission queue. Chairman Lyons states that the waiver request is not fair to transmission customers already in the queue.

50. Iberdrola notes that purchasing transmission service from the Power Network Project would not necessarily eliminate the need for transmission service from PNM, creating the potential for pancaked transmission rates, which the Commission has held are unjust and unreasonable.⁸¹ Iberdrola argues that the increased time required to process the requests will increase Iberdrola and others' costs significantly, affecting the prospect of developing the renewable generation that Waiver Applicants claim they are

⁷⁶ Tres Amigas May 30, 2012 Comments at 11.

⁷⁷ Berrendo May 30, 2012 Comments at 15.

⁷⁸ *Id.* at 16.

⁷⁹ Cargill May 30, 2012 Protest at 9.

⁸⁰ Iberdrola May 30, 2012 Protest at 12.

⁸¹ *Id.* at 13.

encouraging through the Power Network Project.⁸² As a result, Iberdrola states that granting waiver will put formerly high-queued transmission customers at a disadvantage in negotiating transmission rates.⁸³

51. Iberdrola also states that granting the waiver would increase difficulties associated with synchronizing the interconnection and transmission queues. Iberdrola notes that, if the waiver is granted, the interconnection agreements that affiliates of Iberdrola have negotiated and entered into with PNM in good faith would be worthless.⁸⁴

52. Iberdrola questions Waiver Applicants' assertion that there will be an emphasis on transmission queue position in the second anchor customer solicitation process. Iberdrola states that selling priority positions back to higher-queued position holders once they have been superseded by the Power Network Project may be an effective business strategy, but it presents significant harm to those same queue position holders that are seeking to develop renewable resources in New Mexico.⁸⁵

53. TGP Flying Cloud notes that many projects in the transmission queue are not geographically situated in such a way as to make the Power Network Project attractive for them. Therefore, TGP Flying Cloud contends that those customers should not lose their queue priority because they cannot take advantage of the Power Network Project.⁸⁶ According to TGP Flying Cloud, it has a pending transmission request that would utilize PNM's transmission infrastructure to deliver power from eastern New Mexico to western markets, and it is not participating in the Power Network Project. TGP Flying Cloud argues that it should not lose its queue position and the attendant rights to use transmission capacity because it is not participating in the Power Network Project.⁸⁷

54. Cargill states that all of the other parties in the transmission queue will be harmed by the waiver, because virtually all of them have requests that terminate at Four Corners.⁸⁸ Additionally, Cargill notes that Power Network does not have an OATT on

⁸² *Id.* at 10.

⁸³ *Id.* at 13.

⁸⁴ *Id.* at 11.

⁸⁵ *Id.* at 3.

⁸⁶ TGP Flying Cloud May 30, 2012 Protest at 2.

⁸⁷ *Id.* at 9.

⁸⁸ Cargill May 30, 2012 Protest at 14.

file at this time, and it has not secured development funding and capital investment.⁸⁹ Therefore, Cargill argues that a customer switching from the PNM transmission queue to the Power Network Project may risk substantial additional costs, as well as risks associated with financing and regulatory delays.⁹⁰

55. Berrendo questions what the results of transmission planning studies would show in terms of the need for the Power Network Project, and in particular whether 1500 MW of transfer capacity is a correct assumption in terms of the effect on the remaining projects in the PNM transmission service queue and on existing facilities. As a result, Berrendo asserts that there is no way to know if any system efficiency will be gained or lost if the waiver is granted and the Power Network Project goes forward.⁹¹ Western Water argues that the Waiver Request will allow the Power Network Project to corner the market on the remaining available transmission capacity on the PNM system from the Albuquerque area to Four Corners, which will likely hinder other market participants from gaining access to Four Corners for decades.

56. Berrendo argues that granting the Waiver Request will not improve delivery capability and market access to renewable resources, but it will render the remainder of the transmission service requests inert by consuming the remaining available transmission capacity, not expanding it.⁹² Berrendo notes that PNM witness Mr. Mechenbrier testified that PNM had not studied the Power Network Project. Rather, PNM conducted a study that found that a line “like the line” proposed (which characteristics are undefined) could provide up to 1,800 MW of delivery capacity from Rio Puerco to Four Corners. Berrendo argues that there is no study or data provided to demonstrate how the Power Network Project could deliver 1,500 MW to Four Corners while maintaining system reliability.⁹³

57. Tres Amigas observes that the pending transmission service requests on PNM’s OASIS for service to Four Corners exceed the available transmission capacity on PNM’s system, and that granting the Waiver Request will preempt nearly 100 percent of the capacity on PNM’s system to Four Corners.⁹⁴ Tres Amigas states that, with current transmission commitments, there is a total of 1,507 MW of transmission capacity

⁸⁹ *Id.* at 10.

⁹⁰ *Id.* at 10, 11.

⁹¹ Berrendo May 30, 2012 Comments at 23.

⁹² *Id.* at 23.

⁹³ Mechenbrier Testimony at 14-15.

⁹⁴ Tres Amigas May 30, 2012 Protest at 3.

available to Four Corners, and granting the Waiver Request will leave 7 MW of capacity for the rest of the market.⁹⁵ Tres Amigas questions the assertion that 300 MW of capacity will be made available at Four Corners.⁹⁶ Tres Amigas contends that granting the Waiver Request will actually stifle renewable power development in New Mexico by further constraining PNM's transmission system.⁹⁷

58. Tres Amigas points out that Mr. Mechenbier confirms that there is very little east to west transmission capacity currently available on the PNM system, and that even offering an additional 100 MW of firm-point-to-point transmission service from eastern New Mexico to Four Corners would trigger the need for major expansion of the PNM transmission system at a very high incremental cost. Tres Amigas argues that PNM is currently withholding 400 MW of transmission capacity on the Eastern Interconnection Project. Tres Amigas questions whether the Power Network Project may produce an additional 300 MW to Four Corners, as Waiver Applicants have alleged.⁹⁸

59. Cargill notes that it is not clear how much capacity is available at Four Corners, and it asserts that allowing the Power Network Project to move ahead in the transmission queue would require the other transmission customers to absorb the costs of needed future network upgrades. Cargill asserts that Waiver Applicants do not acknowledge that being able to enter the market ahead of others will result in a delay in processing Cargill and others' transmission requests or that it will adversely affect Cargill's ability to enter into commercially-viable transactions.⁹⁹

4. Commission Determination

60. We will deny Waiver Applicants' request for waiver of PNM's OATT requirements. The Commission has found good cause to grant waiver where the waiver is of limited scope, there are no undesirable consequences, and the resultant benefits to

⁹⁵ *Id.* at 9 (stating that there is approximately 1,657 MW of Total Transfer Capability on the "WNM/ABQ-FourCorner/SJ345" transmission path, of which 190 MW has been confirmed for existing transmission contracts. As such there is a total of 1,507 MW of available transmission capacity to move power to Four Corners.).

⁹⁶ *Id.* at 4.

⁹⁷ *Id.* at 9.

⁹⁸ *Id.* at 7.

⁹⁹ Cargill May 30, 2012 Protest at 15 (noting that a request to change the path rating for Path 23 due to upgrades to the 525/345 kV transformer at Four Corners was recently approved, but even with such upgrades the rating of Path 23 is only 1000 MW).

customers are evident.¹⁰⁰ Waiver Applicants have not demonstrated good cause for their requested waiver.¹⁰¹

61. According to Waiver Applicants, the Power Network Project will help clear the transmission queue in a “way that is designed to ensure non-discriminatory access to transmission on a first-ready, first served basis.”¹⁰² We disagree that this approach will ensure not unduly discriminatory access. In Order Nos. 888¹⁰³ and 890,¹⁰⁴ the Commission adopted policies to prohibit public utilities from using their monopoly power over transmission to unduly discriminate against others by requiring all public utilities to file a *pro forma* OATT. As one component of the *pro forma* OATT, transmission providers are required to process requests for long-term firm point-to-point transmission service on a first-come, first-served basis. The first-come, first-served approach to transmission service requests was implemented as a means of fostering greater competition in wholesale power markets by reducing opportunities for public

¹⁰⁰ See *California Independent System Operator Corp.*, 118 FERC ¶ 61,226 (2007); *California Independent System Operator Corp.*, 124 FERC ¶ 61,031 (2008); *California Independent System Corp.*, 132 FERC ¶ 61,132 (2010); *California Independent System Operator Corp.*, 133 FERC ¶ 61,020 (2010); *Coso Energy Developers*, 134 FERC ¶ 61,088 (2011); *Pacific Gas and Electric Company*, 134 FERC ¶ 61,265 (2011).

¹⁰¹ *TGP Granada, LLC and Roosevelt Wind Ranch, LLC v. Public Service Company of New Mexico, Tortoise Capital Resource Corp. and TGP Granada, LLC and Roosevelt Wind Ranch, LLC*, 140 FERC ¶ 61,005, at P 44 (2012) (*TGP Granada*).

¹⁰² Waiver Request at 28, 32.

¹⁰³ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,281-287, *order on reh’g*, Order No. 888-B, FERC Stats. & Regs. 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁰⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

utilities to exercise undue discrimination.¹⁰⁵ Consistent with the requirements of Order Nos. 888 and 890, PNM's tariff states, "long-term firm point-to-point transmission service shall be available on a first-come, first-served basis, i.e., in the chronological sequence in which the Transmission Customer has reserved service."¹⁰⁶ Granting the waiver as requested would provide an undue preference for the Power Network Project absent any demonstration by Waiver Applicants that existing and future PNM transmission service customers would be treated in a not unduly discriminatory manner. We reject Waiver Applicants assertion that, just as in *Bonneville Power Administration*, the Power Network Project will result in new transmission infrastructure that will allow "ready renewable projects to move forward."¹⁰⁷ The Waiver Applicants' proposal here is a contested request for a limited, one-time approval for one specific project to move ahead of customers currently in the transmission service queue in an unduly discriminatory manner, and it does not contain protections that customers in the transmission service queue be treated in a not unduly discriminatory manner. Unlike *Bonneville*, PNM is not proposing a comprehensive transmission service queue reform.

62. The Waiver Applicants state that the Power Network Project will benefit customers by helping to "clear both the PNM interconnection queue and the PNM transmission service queue, in a way that is designed to ensure non-discriminatory access to transmission on a first-ready, first-served basis."¹⁰⁸ As discussed above, we find that the Waiver Applicants have not shown that the Power Network Project will provide not unduly discriminatory access to transmission customers. The Waiver Applicants have not demonstrated how they will determine which transmission customers are ready, or shown that the Power Network Project and its customers are clearly more ready than other customers in the transmission service queue. For example, we note that customers are not required to have physical assets to enter the transmission queue and not all the customers in the transmission queue may wish to buy bundled capacity rights over the portion of the Power Network Project that is new and PNM capacity from Rio Puerco to Four Corners.

63. Granting the waiver also could result in undesirable consequences, including harm to the parties that are not able to participate in the Power Network Project. The transmission service requests in the queue over Path 48 to Four Corners exceed the available transmission capacity. Path 48 is capable of accommodating some existing transmission service requests before substantial network upgrades, such as a new

¹⁰⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1394.

¹⁰⁶ *See pro forma* OATT section 13.2(i).

¹⁰⁷ Waiver Request at 36.

¹⁰⁸ Waiver Request at 28.

transmission line, are required. By moving the Power Network Project to first in the transmission queue, a major portion of the existing capacity of Path 48 will be taken up by the Power Network Project.¹⁰⁹ Granting the Power Network Project transmission rights on Path 48 to Four Corners may require network upgrades, which Power Network commits to pay for; however, further network upgrades (such as a new transmission line) may be required to interconnect any subsequent customers. The cost of the further network upgrades, beyond those needed to interconnect the Power Network Project, would then be borne by the existing customers in the transmission queue who were moved down in the queue. Waiver Applicants have not adequately supported how the shift in cost responsibility would not harm displaced customers in the transmission queue. Thus, we find that granting the requested waiver is likely to result in undesirable consequences to customers in the transmission queue that do not participate in the Power Network Project.

64. Moreover, Power Network is not alone in its efforts to manage regulatory and financial risks associated with project development in New Mexico. Current and future transmission queue customers, some of whom have been awaiting transmission service for years, would face financial uncertainty due to the delayed processing of their transmission projects if the Power Network Project is moved to first in the PNM transmission queue. Additionally, to the extent that any of the existing queued customers decide to become customers of the Power Network Project to obtain transmission service on the PNM system, these customers may end up paying more for transmission service than if they obtained transmission service directly from PNM. The Waiver Applicants here propose to use the Power Network Project to offer transmission service on a portion of the PNM system at negotiated rates, while PNM's transmission service is offered at cost-based rates.

65. Consistent with our finding in *TGP Granada*,¹¹⁰ we also find that Waiver Applicants' request is not limited in scope because it would displace a significant amount of the current customers in PNM's transmission service queue. Thus, we find that the Waiver Request is not of limited scope, particularly given the potential for undesirable consequences to transmission customers seeking transmission service to Four Corners. We also find that Waiver Applicants have not sufficiently demonstrated that such a departure from Commission policy and the filed OATT is warranted. For these reasons,

¹⁰⁹Tres Amigas May 30, 2012 Protest at 8 (Tres Amigas claims that, after accommodating the Power Network Project, only 7 MW will be available on Path 48 to Four Corners), Waiver Request at 19 (Waiver Applicants state that the Power Network Project and its additional Network Upgrades would provide an additional 300 MW above the 1,500 MW needed to accommodate the Power Network Project).

¹¹⁰ *TGP Granada*, 140 FERC ¶ 61,005 at P 44.

we find that Waiver Applicants have not demonstrated good cause for the Waiver Request.¹¹¹

66. We note that PNM states that it intends to initiate a stakeholder process to evaluate transmission queue reform. The Commission is concerned about the impact of congested transmission service queues, and has expressed an interest in innovative approaches to evaluating the transmission queue.¹¹² However, relying on the Commission to allow waiver of the OATT provisions pertaining to the transmission queue is not a substitute for developing efficient, transparent and non-discriminatory queue procedures. In light of the recent filings requesting waiver of the PNM transmission queue to gain priority transmission queue positions, including the Waiver Application here, the Commission strongly encourages PNM to continue working with its stakeholders to develop an open and transparent means of processing its transmission queue. PNM and its stakeholders may consider all relevant factors, including those put forth by Waiver Applicants, when assessing potential transmission queue reforms, provided that any final proposal filed with the Commission will process the queue in a manner that is open, transparent, and provides non-discriminatory access to transmission for all customers.

C. Request for Negotiated Rate Authority

1. Negotiated Rate Application

67. Negotiated Rate Applicants request the following: (1) authorization to charge negotiated rates for 1,500 MW of firm transmission capacity on the Power Network Project; and (2) approval of the capacity allocation process, including the presubscription of up to 80 percent of the Power Network Project capacity to anchor customers through the anchor customer selection process described in their Negotiated Rates Application. Negotiated Rate Applicants also request waiver of the requirements of subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15, and 35.16. Additionally, Negotiated Rate Applicants request waiver of FERC Form No. 1, Annual Report of Major Electric Utilities, Licenses and Others filing requirements.¹¹³

¹¹¹ We remind PNM, however, that it has an obligation to process transmission requests, including efficient processing of the transmission queue, in a timely manner. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1296; *see* OATT section 17.5 and 18.4.

¹¹² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-1371.

¹¹³ Negotiated Rates Application at 34.

68. Negotiated Rate Applicants argue that they satisfy the four factors used by the Commission to evaluate negotiated rate applications: (1) justness and reasonableness of rates; (2) potential for undue discrimination; (3) potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.¹¹⁴

2. Commission Determination

69. We find that Negotiated Rate Applicants' request to charge negotiated rates for transmission capacity on the Power Network Project is premature. The Power Network Project, as it is configured, provides a bundled service over the new facilities from eastern and central New Mexico to Rio Puerco, and also over PNM's transmission system from Rio Puerco to Four Corners. In this order, we deny the Waiver Request, thereby denying the Power Network Project priority access to transmission capacity on PNM's transmission system from Rio Puerco to Four Corners. Because Waiver Applicants tied the advancement of the Power Network Project to the granting of the Waiver Request, it is unclear if the Negotiated Rate Applicants will retain the proposed configuration of the Power Network Project in view of the Commission's denial of the waiver application. Therefore, the Commission does not have sufficient information on the configuration of the Power Network Project, absent the requested waiver, to make a decision on the Negotiated Rates Application. Our decision here is without prejudice to the Negotiated Rate Applicants subsequently seeking negotiated rate authority for their project.

The Commission orders:

(A) The Waiver Request is hereby denied, as discussed in the body of this order.

(B) The Negotiated Rates Application is hereby dismissed as premature, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹⁴ *Chinook*, 126 FERC ¶ 61,134 at P 37.