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November 26, 2012

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, DC 20426

**Re: Docket No. RM10-23-00
WestConnect Regional Planning Process, FERC Order 1000**

Madam Secretary:

The New Mexico Public Regulation Commission ("NMPRC") regulates New Mexico electric utilities, specifically, Public Service Company of New Mexico (PNM) and El Paso Electric Company (EPE), that are classified as Transmission Owners ("TOs") and that are enrolled as members of the WestConnect Planning Region in accordance with FERC Order No. 1000.

The NMPRC appreciates the efforts that the WestConnect TOs have taken to include states' commission representation in the planning and cost allocation process, as required by the Order. The NMPRC is particularly pleased that the TOs made movement during the formative stages of the planning and cost allocation process to recognize the need for meaningful participation by state commission and staff members as well as other stakeholders in regional planning and cost-allocation processes, post-implementation. The documents submitted to FERC on October 11, 2012, by the TOs in their compliance filing demonstrate this progress.

The staff and Commissioners of the states of Arizona, Nevada, Colorado and New Mexico have been involved in the WestConnect Regional Planning Process, with the support of staff from the Western Interstate Energy Board since the issuance of Order No. 1000. The four state commissions have communicated frequently regarding the WestConnect regional planning

process implementation and governance. We have jointly identified areas of concern where ambiguities exist in West Connect planning and cost allocation documents filed by the jurisdictional TOs, and it is our understanding that the commissions of Colorado, Arizona and Nevada may also be submitting comments. The comments we offer in the attached are reflective of these discussions.


The NMPRC generally supports the processes and structures described by PNM and EPE in their Attachment Ks. However, the underlying implementing documents -- the WestConnect Regional Planning Process Business Practice Manual (BPM) and the WestConnect Planning Participation Agreement (PPA) -- are still in development. As such, numerous topics are still open, including a concern with the relationship between the between the Planning Management Committee and the WestConnect Steering Committee. Depending on how these matters are addressed in the final BPM and PPA, the meaningful participatory role that appears to have been accorded to state commissions could be diminished, to the detriment of the public interest. The NMPRC expects that through continued discussions and collaborative efforts, all concerns will be satisfactorily accommodated. However, as the BPM and PPA stand now, the documents are not adequate.

To assure that satisfactory resolution is achieved, the NMPRC recommends that FERC require the TOs to submit the finalized BPM and PPA into the docket within a reasonable timeframe and that a reasonable amount of time be provided thereafter for public review and comment.

The NMPRC appreciates this opportunity to provide comments for the Commission's consideration.

Sincerely,

New Mexico Public Regulation Commission



Patrick H. Lyons
Chairman

cc: PRC Commissioners
PRC Utility Division Bureau

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities	Docket Nos. RM10-23-000
Public Service Company of New Mexico	ER13-79-000
El Paso Electric Company	ER13-91-000

COMMENTS OF THE NEW MEXICO PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission (“NMPRC”), respectfully submits its Comments in response to the Order Nos. 1000 and 1000-A¹ compliance filings submitted by Public Service Company of New Mexico (“PNM”) and El Paso Electric Company (“EPE”) on October 11, 2012.

The NMPRC files these comments pursuant to the Commission’s Notice of Compliance Filings in the above-referenced dockets, and the Notice of Extension of Time² (setting November 26, 2012 as the comment deadline for these filings).

General Comment

The NMPRC realizes that cost allocation is a requirement of the order, and that the utilities in their filings have responded to the order requirements, but we believe it is important for the NMPRC to emphasize that states have authority to influence the transmission expansion process through various means, including planning, siting, construction, and cost recovery in

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012).

² Notice of Extension of Time at 3, FERC Docket No. ER13-62-000, *et al.* (Nov. 1, 2012).

retail rates. The NMPRC submits that cost recovery is directly impacted by the Order 1000 cost allocation requirements. Cost recovery is accomplished through rate cases filed by investor-owned utilities, which are regulated by both the Commission and state regulatory commissions. In making cost recovery decisions, state regulatory commissions must determine whether the transmission-related costs are “just and reasonable” before passing these costs on to the ratepayers.

Because Order 1000 requires utility transmission providers to form regions for purposes of conducting transmission and cost allocation, a transmission project approved by a particular region for purposes of cost allocation will result in an allocation of costs via the Commission-approved tariff. State utility commissions will not have the authority to review such costs being passed on to the ratepayers through traditional cost recovery retail rate proceedings, pursuant to the filed rate doctrine.³ Rather, as more projects will be built over time through the regional cost allocation process, an increasing portion of costs are likely to be passed on to the ratepayers beyond the direct control of state commissions through traditional cost recovery proceedings.

WestConnect Governance

Before Order 1000, the governance structure of WestConnect consisted of a Steering Committee for purposes of the overall governance and a Planning Management Committee for purposes of transmission planning.⁴ Only utility transmission owners were permitted to vote on these two

³ The filed rate doctrine requires a state to allow a regulated utility to recover 100 percent of its FERC-filed wholesale costs in its state-regulated retail rates – without a formal state commission determination in advance. *See, e.g., Narragansett Electric Co. v. Burke*, 381 A.2d 1358 (1977) (finding that where FERC sets a rate for the sale of power to a wholesale purchaser, a state may not exercise jurisdiction over retail rates to prevent the wholesale purchaser from recovering, at retail, the FERC-approved rate), cert. denied 435 U.S. 972 (1978).

⁴ *See*, “WestConnect FERC Order 1000 Overview,” presentation at WestConnect FERC Order 1000 Stakeholder Meeting (February 8, 2012), *available at*:

committees. These utilities were, and continue to be, governed by the WestConnect Project Agreement for Subregional Transmission Planning.⁵ This “pre-Order 1000” Planning Management Committee was designed to handle transmission planning processes in compliance with Order 1000’s predecessor, Order 890, on behalf of WestConnect members.

After the Order 1000 was issued, WestConnect organized several ad-hoc task forces to address the requirements of the Order. One task force proposed formation of a new Planning Management Committee (“PMC”) to handle all Order 1000 related transmission planning and cost allocation procedures on behalf of WestConnect.⁶ The PMC would have both stakeholders and state commissions as its voting members.⁷ The Governance Strike Team’s original proposal also contemplated the formation of a Governance Committee to replace the WestConnect Steering Committee.⁸ The original draft document on this subject matter discussed the relationship between the PMC and the WestConnect Governance Committee, where the Governance Committee would have the ultimate approval authority for Order 1000-compliant

http://westconnect.com/planning_order_1000_stakeholder.php.

⁵ WestConnect Project Agreement for Subregional Transmission Planning, effective May 23, 2007, *available at*:

http://westconnect.com/filestorage/wc_regional_planning_project_agmt_exec_copy_052307_amended_obj_proc_011409.pdf.

⁶ The new PMC will not become active until the WestConnect Order 1000 transmission planning and cost allocation processes, as provided in the WestConnect utilities’ October 11, 2012 compliance tariff filings, are approved by the Commission. *See*: WestConnect Regional Planning Process Business Practice Manual, Version 11, p. 32 (last revised October 12, 2012), *available at*:

http://westconnect.com/planning_order_1000_bpm.php.

⁷ [Minutes of the WestConnect FERC Order 1000 IMC Meeting pp. 2-3 \(June 19, 2012\)](http://westconnect.com/planning_order_1000_stakeholder.php), *available at*: http://westconnect.com/planning_order_1000_stakeholder.php; [Minutes of the WestConnect FERC Order 1000 Governance Strike Team Meeting pp. 6-10 \(June 20, 2012\)](http://westconnect.com/planning_order_1000_governance.php), *available at*:

http://westconnect.com/planning_order_1000_governance.php.

⁸ [Minutes of the WestConnect FERC Order 1000 Stakeholder Meeting pp. 12-14 \(June 7, 2012\)](http://westconnect.com/planning_order_1000_stakeholder.php); [Presentation at the WestConnect FERC Order 1000 Stakeholder Meeting, slides 42-48 \(June 7, 2012\)](http://westconnect.com/planning_order_1000_stakeholder.php); *available at*: http://westconnect.com/planning_order_1000_stakeholder.php.

transmission plans and cost allocation procedures.⁹ In addition, the Governance Committee would handle non-Order 1000 matters.¹⁰ Stakeholders and state regulatory commissions were to have votes on both the Governance Committee and the PMC. Stakeholders and state regulatory commissions provided input on that draft document and it stayed relatively consistent up until early July 2012. However, during the first week of July 2012, discussions among the transmission owners took place and the draft document was amended without any input from state regulatory commissions or other key stakeholders.¹¹ Ultimately, the new draft only described the PMC, removed any reference to a Governance Committee, and failed to mention its relationship to the existing WestConnect Steering Committee. That omission, in turn, raises the possibility that the Steering Committee, which does not allow for votes by stakeholders or state regulatory commissions, could ultimately veto the PMC, potentially rendering the state and stakeholder votes on the PMC meaningless.

It is also important to note that the WestConnect Regional Planning Process Business Practice Manual (“BPM”)¹² does not clarify the relationship between the Steering Committee

⁹ Minutes of the WestConnect FERC Order 1000 Stakeholder Meeting pp. 12-14 (June 7, 2012); Presentation at the WestConnect FERC Order 1000 Stakeholder Meeting, slides 44-47 (June 7, 2012); *available at*: http://westconnect.com/planning_order_1000_stakeholder.php.

¹⁰ *Id.*

¹¹ Minutes of the WestConnect FERC Order 1000 Governance Strike Team Meeting pp. 2-6 (July 3, 2012) (discussion on “Straw Proposal Review” indicates the existence of a PMC and a Governance Committee); Minutes of the WestConnect Order 1000 Governance Strike Team Meeting pp. 1- 7 (July 11, 2012) (*see*: comments on page 1, indicating that the new proposal would remove the Governance Committee, leave the existing Steering Committee and PMC in place, and move the approval authority for Order 1000 matters to the PMC; *see also*: comments on page 2, indicating the reasoning behind the transmission owners’ proposal); *available at*: http://westconnect.com/planning_order_1000_governance.php.

¹² WestConnect Regional Planning Process Business Practice Manual, Version 11, p. 6 (last revised October 12, 2012), *available at*: http://westconnect.com/planning_order_1000_bpm.php.

and the PMC.¹³ Instead, these issues are reserved for resolution via the Planning Participation Agreement (“PPA”), which has not been drafted at this time.¹⁴

Further uncertainties surrounding the PPA remain. These uncertainties include, among others, the legal relationship between members of the PMC, who will actually sign the PPA to become a member of the PMC,¹⁵ a clarification regarding the content of “executive sessions” for transmission owners only, and specific notice requirements for exiting the PMC. Finally, it remains unclear when the PMC would take effect.

Requirement to submit the BMP and PPA into the Docket

For the reasons above and to assure that matters are resolved appropriately, the NMPRC recommends that the FERC require transmission owning and operating utilities in the WestConnect to submit into the docket, within a reasonable timeframe, the finalized versions of the BPM and the PPA. In addition, the FERC should allow a reasonable period of time after the submittal for public review and allow comments to be provided on the adequacy of these documents.

WHEREFORE, the NMPRC respectfully submits its comments in the above-captioned matter. The NMPRC respectfully requests that the Commission withhold approval of the Order 1000 compliance tariffs filed by PNM and EPE on October 11, 2012 until these utilities appropriately address the concerns raised by these comments. Specifically, with respect to the concerns with the lack of coordination, openness and transparency in the WestConnect Order 1000 compliance and post-compliance processes, the NMPRC respectfully requests the

¹³ *Id.*

¹⁴ The PPA is referred to simply as “The Agreement” for purposes of the BPM. *Id.* at 2, 7, 8.

¹⁵ The WestConnect regional compliance filings explain that an entity cannot vote on the PMC until it has executed the PPA. However, the PPA will not be established until the PMC takes effect—i.e., when the Commission acts upon the compliance filings.

Commission withhold its approval until the compliance tariff filings have been appropriately modified to reflect these concerns and that any supporting documentation, including the BPM and PPA, are similarly modified to reflect these concerns, consistent with the compliance tariff filings.

A handwritten signature in blue ink, appearing to read "Robert Parker", written over a horizontal line.

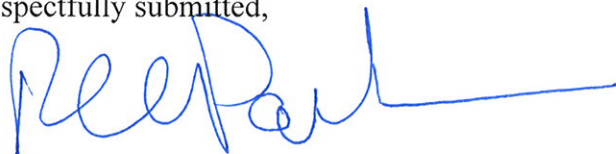
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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.211), I hereby certify that I have served a copy of the foregoing document upon each person listed on the official service lists maintained by the Secretary of the Commission in the above-captioned proceedings.

Dated this 26th day of November, 2012.

Respectfully submitted,



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