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DOCKET NO. 35460

PETITION OF PNM RESOURCES, INC. AND CAP ROCK ENERGY CORPORATION REGARDING PROPOSED MERGER AND ACQUISITION OF STOCK	§ § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF'S RESPONSE TO ORDER NO. 1

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this response to Order No. 1 and would show the following:

I. BACKGROUND

On March 14, 2008, PNM Resources, Inc. (PNM) and Cap Rock Energy Corporation (Cap Rock) filed a petition requesting the Commission approve of a proposed merger and acquisition of stock pursuant to Section 14.101(b), 39.262(l)-(m), and 39.915 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. (Vernon 2007 and Supp. 2007) (PURA) and P.U.C. SUBST. R. 25.74. Under the proposed transaction, PNM Resources will gain control of Cap Rock. On March 17, 2008, Order Number 1 was issued requiring Staff to file comments by April 7, 2008, concerning the sufficiency of the petition, including notice, and whether additional notice may be required to comply with the applicable procedural rules. Order Number 1 further required the parties to file a joint proposed procedural schedule, including deadlines for (1) affidavits evidencing proof of notice; (2) intervention; (3) discovery; (4) requests for referral to the State Office of Administrative Hearings (SOAH) for a hearing on the merits, if necessary; (5) Commission Staff's recommendation; and (6) Applicant's response to Commission Staff's recommendation or, in the alternative, a settlement of all issues, including proposed findings of fact and conclusions of law, and proposed ordering paragraphs.

II. STAFF'S RECOMMENDATION

A. Comments Regarding Application.

The Applicants have prepared the Commission's Application for Sale, Transfer, or Merger form applicable to a transaction that involves the sale of at least 50% of the stock of a public utility. In addition to the submitted form, Applicants have filed testimony in support with

its petition and application. Based on the Applicants filings, Staff recommends that the application be found sufficient.

B. Comments Regarding Notice.

Applicants provided a copy of their proposed notice as exhibit 3 in their application. Applicants propose to provide notice of the filing by mailing the proposed notice by first class mail to: (1) all other parties to the acquisition; (2) all municipalities and counties in Cap Rock's service area; (3) Cap Rock's retail customers; and (4) all neighboring utilities, including electric cooperatives. Applicants will also provide notice by mailing a copy of the Petition and the Application by first class mail to counsel for all parties in: (1) Docket No. 28813; and (2) Docket No. 32185. Finally, Applicants request approval of further notice of the docket by publication of the notice attached as Exhibit 3 to the Petition in local newspapers once a week for two consecutive weeks. Staff recommends that such notice be considered sufficient pursuant to P.U.C. PROC. R. 22.55.

C. Proposed Procedural Schedule.

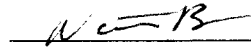
PURA §§ 39.262(m) and 39.915(b) require that the Commission determine whether the transaction is in the public interest not later than the 180th day after the date the petition was filed; if the commission has not made a determination before the 181st day after that date, the transaction is considered approved. The petition was filed on March 14, 2008, which means that the Commission is required to make the public interest determination by September 10, 2008. As a result, Staff and the applicants request that the proceeding be promptly referred to the State Office of Administrative Hearings so that if a hearing is necessary, it can be conducted while still allowing sufficient time for the Commission to make the required public interest finding by September 10, 2008.

DATED: APRIL 7, 2008.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 7, 2008, in accordance with P.U.C. PROC. R. § 22.74.



Nathan Barrow