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Governor

Connie Corona
Executive Director

Public Utility Commission of Texas

TO: Shelah Cisneros
Commission Counsel

All Parties of Record

FROM: Isaac Ta *IT*
Administrative Law Judge

RE: **Docket No. 54731** – *Report on Texas-New Mexico Power Company; Finding of Violations 16 TAC § 25.25, Related to Issuance and Format of Bills; § 25.241, Relating to Form and Filing of Tariffs; Tariff for Retail Delivery Service Sections 4.7.2 and 4.7.2.2*

DATE: **November 5, 2024**

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by November 19, 2024.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

/s/
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DOCKET NO. 54731

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| REPORT ON TEXAS-NEW MEXICO | § | PUBLIC UTILITY COMMISSION |
| POWER COMPANY; FINDING OF | § | |
| VIOLATIONS 16 TAC § 25.25, | § | OF TEXAS |
| RELATED TO ISSUANCE AND | § | |
| FORMAT OF BILLS; § 25.241, | § | |
| RELATING TO FORM AND FILING OF | § | |
| TARIFFS; TARIFF FOR RETAIL | § | |
| DELIVERY SERVICE SECTIONS 4.7.2 | § | |
| AND 4.7.2.2 | § | |

PROPOSED ORDER

This Order addresses the agreement between Commission Staff and Texas-New Mexico Power Company (TNMP) regarding Commission Staff's investigation of TNMP for violations of 16 Texas Administrative Code (TAC) §§ 25.214(c) and 25.241(b), concerning compliance with sections 4.7.2 and 4.7.2.2 of TNMP's tariff for retail delivery service, and 16 TAC § 25.130(d) related to deployment and use of advanced meters. The agreement also serves as a report to the Commission under 16 TAC § 22.246(h)(1). Commission Staff recommends that in lieu of an administrative penalty, TNMP completely write-down its regulatory asset related to its COVID-19 expenses, totaling \$1,052,609. TNMP agrees to completely write down its COVID-19 regulatory asset and to not seek recovery of any amounts it booked in this regulatory asset. The Commission approves the resolution as set forth in agreement and to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Respondent

1. TNMP is a Texas corporation registered with the Texas secretary of state under filing number 19241500.
2. TNMP owns and operates for compensation in Texas facilities and equipment to transmit and distribute electricity in the Electric Reliability Council of Texas (ERCOT) region.
3. TNMP holds certificate of convenience and necessity (CCN) number 30038 to provide service to the public.

Advanced Metering System Deployment and Non-Compliance with Tariff

4. In an order filed on July 11, 2011, in Docket No. 38306, the Commission approved TNMP's advanced metering system (AMS) deployment plan.¹
5. In an order filed on November 14, 2014, in Docket No. 43239, the Commission approved TNMP's request to amend its AMS deployment plan.²
6. On February 21, 2019, TNMP received notice that the communications network on which its AMS system operated, AT&T's third generation (3G) network, would be decommissioned effective February 2022.
7. On October 2, 2020, TNMP filed an application in Docket No. 51387 in which it sought permission to change its deployed advanced meter technology from that approved in its previously-approved and completed AMS deployment plan to accommodate the transition to operating on an upgraded communications network.³
8. In an order filed on January 14, 2021, in Docket No. 51387, the Commission approved TNMP's request to change its deployed advanced meter technology.
9. TNMP scheduled a rollout installation of more than 170,000 new advanced meters using radio frequency mesh communication technology to begin in April 2021 and conclude by October 2022.
10. On July 30, 2021, TNMP notified the Commission and market participants through the ERCOT retail market subcommittee listserv and in a monthly compliance filing in Docket No. 39772⁴ that its advanced metering infrastructure vendor, Itron, informed TNMP that it was experiencing supply chain constraints related to the rollout of new meters due to COVID-19 pandemic as of July 16, 2021.

¹ *Texas-New Mexico Power Company's Request for Approval of Advanced Metering System (AMS) Deployment and AMS Surcharge*, Docket No. 38306, Order (July 11, 2011).

² *Application of Texas-New Mexico Power Company for Amendment to its Commission-Approved AMS Deployment Plan*, Docket No. 43239, Final Order (Nov. 14, 2014).

³ *Application of Texas-New Mexico Power Company for Change in Deployed Advanced Meter Technology*, Docket No. 51387, Order (Jan. 14, 2021).

⁴ *TNMP Compliance Filings for Monthly Advanced Metering Status Reports Pursuant to the Commission's Final Order in Docket No. 38306*, Docket No. 39772, 39772 - TNMP AMS Deployment Status Report_202108 (July 30, 2021).

11. On October 27, 2021, TNMP met with Commission Staff to review the impacts of the implementation delay.
12. TNMP began installation of its new advanced meters in February 2022.
13. After the AT&T 3G network ceased operating, which rendered TNMP's legacy 3G meters unable to communicate, TNMP began performing estimated meter readings for its legacy meters that had not yet been replaced.
14. Under section 4.7.2 of its tariff, TNMP may not estimate a meter reading more than three times consecutively.⁵
15. Under section 4.7.2.2 of its tariff, TNMP may not perform an estimated meter reading for more than three consecutive scheduled meter reading dates for a retail customer's premise when the retail customer has not denied TNMP access to the meter.⁶
16. During calendar year 2022, TNMP performed estimated meter readings of 17,474 meters within its service territory for more than three consecutive months.
17. Commission Staff asserts TNMP violated section 4.7.2.2 of its tariff each time it performed as estimated meter reading of a meter within its service territory for more than three consecutive months.
18. Commission Staff asserts TNMP violated 16 TAC § 25.214(c) each time it failed to comply with the provisions of its tariff by performing an estimated meter reading of a meter for more than three consecutive months.
19. Commission Staff asserts TNMP violated 16 TAC § 25.130(d) by failing to sufficiently plan for and execute a strategy to mitigate significant problems it experienced in implementing its AMS deployment plan approved by the Commission.
20. TNMP asserts that, based on section 4.2.4 of the tariff, the violations occurred due to labor disturbances and equipment and material shortages during the COVID-19 pandemic that were beyond its control and could not reasonably be anticipated or prevented through the

⁵ *Application of Texas - New Mexico Power Company for Authority to Change Rates*, Docket No. 48401, Compliance Filing of TNMP Tariff for Wholesale and Retail Delivery Service, Tariff for Retail Delivery Service at Section 4.7.2 (Jan. 4, 2019).

⁶ *Id.*, Tariff for Retail Delivery Service at Section 4.7.2.2.

use of reasonable measures. Specifically, TNMP asserts that it was unable to obtain meters from the manufacturer due to the chip shortage and supply chain constraints caused by COVID-19, and it was unable to hire and retain a sufficient number of contract meter readers in all areas of TNMP's service territory due to labor shortages during the pandemic.

Seriousness of Violations

21. Failure to ensure meter reading accuracy as required by TNMP's tariff for retail delivery service creates an economic hazard or potential economic hazard to the public, as extended periods of estimation may result in under- or over-billing for electricity consumption that a customer cannot reasonably predict. Extended periods of meter estimation can result in instances in which customers may receive surprising and outsized electric bills for consumption that never occurred or occurred months prior to the date the bill was issued, which can create an unexpected financial burden for a customer. Additionally, extended periods of estimated meter readings create a potential economic hazard for the retail electric providers (REPs) serving the customers in TNMP's service area. Unpredictable and unreliable billing based on prolonged periods of estimated meter reading can cause confusion and consternation for the REPs' customers, which can lead to issues that can be harmful to a REP.

Compliance History and Deterrence of Future Violations

22. Commission Staff's records do not indicate a history of similar violations involving TNMP.
23. During the rollout of its AMS, TNMP provided monthly progress reports on the significant delays or deviation from its AMS deployment plan and the reasons for the delay or deviation.
24. The complete write-down of the entire balance of TNMP's COVID-19 regulatory asset, totaling \$1,052,609, in lieu of an administrative penalty is an appropriate resolution of the alleged violations because it will provide relief to TNMP's customers in the form of an avoided rate increase associated with the expenses accounted for in TNMP's regulatory asset. The amount of the write down is a significant economic signal to TNMP that is sufficient and necessary to promote compliance with and deter future similar violations of tariffs for retail delivery service and adherence to AMS deployment plans by transmission and distribution utilities.

COVID-19 Regulatory Asset

25. In the Commission's order filed on March, 26, 2020, in Project No. 50664,⁷ TNMP was authorized to account for expenses related to the COVID-19 pandemic as a regulatory asset and seek recovery of those expenses during a future comprehensive rate review.
26. TNMP had recorded \$1,052,609 in its COVID-19 regulatory asset at the time it entered into an agreement with Commission Staff to resolve the alleged violations.⁸

Report on Violations and Notice

27. On March 8, 2023, Commission Staff filed in this docket its report to the Commission regarding its investigation of TNMP.
28. On March 20, 2023, Commission Staff provided notice of its report to the Commission to TNMP. TNMP received notice of Commission Staff's report on March 22, 2023.
29. On April 6, 2023, TNMP filed a request for hearing.

Agreement

30. TNMP cooperated with Commission Staff's investigation.
31. TNMP acknowledges the bases for the violations alleged by Commission Staff, although it disagrees with Commission Staff's asserted violations based on section 4.2.4 of its tariff.
32. On October 3, 2024, Commission Staff and TNMP entered into an agreement in which Commission Staff recommended, and TNMP agrees to, in lieu of an administrative penalty, a complete write-down of TNMP's regulatory asset related to its COVID-19 expenses, totaling \$1,052,609, in resolution of the violations described in this Order.
33. As of the date of the agreement, TNMP has completely written down its COVID-19 regulatory asset, which totaled \$1,052,609 in recorded expenses.⁹

⁷ *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Project No. 50664, Order Related to Accrual of Regulatory Assets (Mar. 26, 2020).

⁸ *Application of Texas-New Mexico Power Company for Extension of the Filing Requirements Under 16 TAC § 25.247(B)(2)(B)*, Docket No. 54823, *Application of Texas-New Mexico Power Company for Extension of the Filing Requirements Under 16 TAC § 25.247(B)(2)(B)* at 39 (Apr. 5, 2023).

⁹ *Year-End 2023 Electric Utility Earnings Reports in Accordance with 16 TAC § 25.73*, Docket No. 55977, *Texas-New Mexico Power Company's Earnings Monitoring Report Filing and Notice of Extension of Filing Requirements* (Apr. 1, 2024).

34. TNMP agrees to provide an affidavit from its president attesting to the accuracy and veracity of the expenses underlying and recorded in its regulatory asset related to COVID-19, as well as to the total amount recorded in its regulatory asset as of the date of the agreement.
35. TNMP agrees to remove 100% of the amounts recorded in its regulatory asset related to COVID-19 from all reports and filings in which TNMP is required to disclose the recorded amount, including but not limited to, its annual reports required by the Commission under 16 TAC § 25.73, Federal Energy Regulatory Commission Form 1, its annual audited financial, and its next comprehensive rate review. TNMP further agrees to include a reference to this Order within its annual reports filed with the Commission under 16 TAC § 25.73 and audited financials until one year after the date of the Commission's final order in TNMP's next comprehensive rate proceeding.
36. TNMP agrees that it will not seek recovery of any expenses or amounts that it has recorded in its regulatory asset related to COVID-19 in any future rate proceeding.
37. The parties agree that the write-down of the entire balance of the COVID-19 regulatory asset in lieu of an administrative penalty is an appropriate resolution to the alleged violations because it will provide relief to TNMP's customers in the form of an avoided rate increase associated with the expenses accounted for in the regulatory asset.
38. TNMP agrees to make efforts to ensure compliance with the requirements set forth within the provisions of its tariff going forward, including the actions described above and any other reasonable actions TNMP finds necessary.
39. On October 7, 2024, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

Evidence

40. In Order No. 4 filed on November 4, 2024, the ALJ admitted as evidence in the record of this proceeding the parties' agreement, including all attachments, filed on October 7, 2024.

Informal Disposition

41. More than 15 days have passed since the completion of all notice requirements.
42. No person filed a protest or motion to intervene.

43. TNMP and Commission Staff are the only parties to this proceeding.
44. No party requested a hearing, and no hearing is needed.
45. Commission Staff recommended approval of the agreement.
46. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this matter under PURA¹⁰ §§ 14.001, 14.003, 14.051, 15.023, 15.024, and 39.101.
2. TNMP is a public utility as defined in PURA § 11.004 and a transmission and distribution utility as defined under PURA § 31.002(19) and 16 TAC § 25.52(137).
3. TNMP violated 16 TAC §§ 25.214(c) and 25.241(b) by failing to comply with sections 4.7.2 and 4.7.2.2 of its tariff each time it performed an estimated meter reading of a meter within its service territory for more than three consecutive months in calendar year 2022.
4. The parties agree TNMP violated 16 TAC § 25.130(d)(9) by failing to sufficiently plan for and execute a strategy to mitigate significant problems it experienced in implementing its AMS deployment plan approved by final order of the Commission.
5. Under PURA § 15.023, the Commission has the authority to impose administrative penalties against TNMP for violation of PURA and Commission rules.
6. Under 16 TAC § 25.8(b)(2), the violations described herein are Class B violations.
7. Under 16 TAC § 25.8(b)(2)(A), the Commission may impose a penalty against TNMP of up to \$5,000 per violation per day for a Class B violation.
8. TNMP was provided proper notice of Commission Staff's investigation into this matter, the results of the investigation, information about TNMP's right to a hearing, and

¹⁰ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

an opportunity to explain its activities, as required under 16 TAC §§ 22.241(a)(2) and 22.246(f)(2).

9. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).
10. The Commission processed this docket in accordance with applicable statutes and Commission rules.
11. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the agreement and recommended resolution to the extent provided in this Order.
2. TNMP must comply with the terms of the agreement and this Order.
3. Within 30 calendar days of the date of this Order, TNMP must file in this docket an affidavit from its president attesting to the accuracy and veracity of the expenses underlying and recorded in its regulatory asset related to COVID-19, as well as to the total amount recorded in its regulatory asset as of the date of the agreement.
4. To the extent it has not already done so, TNMP must completely write down its regulatory asset related to COVID-19 expenses within 30 calendar days of the date of this Order.
5. Within 30 calendars days of the date of this Order, TNMP must file an affidavit attesting that it has completely written down its regulatory asset related to COVID-19 expenses.
6. TNMP must remove 100% of the amounts recorded in its regulatory asset related to COVID-19 from all reports and filings in which TNMP is required to disclose the recorded amount, including but not limited to, its annual reports required by the Commission under 16 TAC § 25.73, Federal Energy Regulatory Commission Form 1, its annual audited financials, and its next comprehensive rate review. TNMP must include a reference to this Order within its annual reports filed with the Commission under 16 TAC § 25.73 and

audited financials until one year after the date of the Commission's final order in TNMP's next comprehensive rate proceeding.

7. TNMP must not seek recovery of any expenses or amounts that it has recorded in its regulatory asset related to COVID-19 in any future rate proceeding.
8. This Order resolves only the claims identified in this Order.
9. The Commission is not constrained in any manner from requiring additional action or penalties from matters that are not resolved by this Order.
10. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
11. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the _____ day of _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS J. GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

COURTNEY K. HJALTMAN, COMMISSIONER