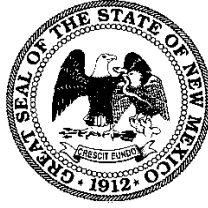


NEW MEXICO PUBLIC REGULATION COMMISSION

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FOR IMMEDIATE RELEASE

NEW MEXICO PUBLIC REGULATION COMMISSION ISSUES ORDER OF CONTINUANCE FOR FACEBOOK/GREATER KUDU, LLC, AND PUBLIC SERVICE COMPANY OF NEW MEXICO

(SANTA FE, NM—JUNE 23)—The New Mexico Public Regulation Commission (PRC) today issued an order of continuance for Greater Kudu, LLC, a subsidiary of Facebook, and Public Service Company of New Mexico (PNM), in their Application for Approval of Two Purchased Power Agreements and an Energy Storage Agreement, requesting they modify their Agreement to be fair to other PNM customers in New Mexico.

While PNM's current proposal, docket #21-00031-UT, could result in economic development benefits and renewable energy benefits that may be in the public interest, PRC staff found that they could not conclude that there would be "no net adverse impact" on PNM's other customers, as required by the special services contract. The PRC asked PNM and Greater Kudu, LLC, to address the Commission's concerns with the proposed financial transaction. The Commission found that the arrangement, as currently written, could result in annual revenue shortfalls ranging in the millions of dollars, which other customers would have to cover due to the credits that could completely zero-out Facebook's bill.

The Commission noted this is not logical— that a customer could reduce its bill by using more resources.

In addition, PNM testified that future costs to non-Facebook customers are highly uncertain and will be determined in a future rate case. The proposal asked the Commission to make a decision without the benefit of key information, such as production revenue requirements and whether the currently projected storage demand might change.

District 1 Commissioner Cynthia Hall said she saw "no reason for many of the provisions [in the proposal] other than to make it complicated." Commissioner Hall called on PNM and Greater Kudu, LLC, to create "a simple agreement...that is separate and distinct from PNM serving their remaining customers in New Mexico."

“This continuance and the articulation of our concerns...demonstrates our desire to see this project go through,” Commissioner Joseph Maestas of District 3 stated.

Commission Chairman Stephen Fischmann of District 5 closed his comments by saying, “We’re looking for every possible way to make this deal work...but it has to be a fair deal.”

The New Mexico Public Regulation Commission (NMPRC) regulates the [utilities](#), [telecommunications](#), and [motor carrier](#) industries to ensure fair and reasonable rates, and to assure reasonable and adequate services to the public as provided by law.

The NMPRC also promotes public safety through the offices of [State Fire Marshal](#), the [Firefighter Training Academy](#), [Pipeline Safety Bureau](#) and [Transportation Division](#).

#

Sullivan-Leshin, Isaac, PRC

From: Sullivan-Leshin, Isaac, PRC
Sent: Wednesday, June 23, 2021 3:01 PM
To: Records, PRC, PRC
Subject: 21-00031-UT; Filing Submission
Attachments: 21-00031-UT, Order for Continuance.pdf

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S)
APPLICATION FOR APPROVAL OF TWO PURCHASED POWER)
AGREEMENTS AND ENERGY STORAGE AGREEMENT PURSUANT TO)
17.9.551 NMAC, AN ADDENDUM TO THE SPECIAL SERVICE) Case No. 21-00031-UT
CONTRACT WITH GREATER KUDU, LLC, AND AMENDED RIDER NO.)
49)
_____)

Please file the attached ORDER FOR CONTINUANCE into the above captioned case.

Thank you.

Isaac Sullivan-Leshin
Paralegal for Office of General Counsel



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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF)
NEW MEXICO’S APPLICATION FOR APPROVAL OF)
TWO PURCHASED POWER AGREEMENTS AND)
ENERGY STORAGE AGREEMENT PURSUANT TO) Case No. 21-00031-UT
17.9.551 NMAC, AN ADDENDUM TO THE SPECIAL)
SERVICE CONTRACT WITH GREATER KUDU, LLC,)
AND AMENDED RIDER NO. 49)**

ORDER FOR CONTINUANCE

THIS MATTER comes before the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) upon the February 8, 2021, Public Service Company of New Mexico (“PNM”) filing of an Application for Approval of Two Purchased Power Agreements and an Energy Storage Agreement Pursuant to 17.9.551 NMAC, an Addendum to the Special Service Contract with Greater Kudu LLC, and Amended Rider No. 49 (the “Application”) and whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. In the Application, PNM asks that the Commission approve two Purchase Power Agreements (“PPAs”) and an Energy Storage Agreement (“ESA”) as follows: (a) PPA between PNM and NMRD Data Center III, LLC (“NMRD III”), for 50 MW of solar energy from the Encino North Solar Energy Center (“Encino North PPA”); (b) PPA between PNM and Sky Ranch Solar, LLC (“Sky Ranch Solar”) for 190 MW of solar energy from the Sky Ranch Solar facility (“Sky Ranch PPA”); and (c) ESA between PNM and Sky Ranch Energy Storage (“Sky Ranch Energy Storage”) for 100 MW of four-hour energy capacity from the Sky Ranch Energy Storage Facility (“Sky Ranch ESA”). PNM also requested that the Commission approve an Addendum to the Second Amended and Restated Special Services Contract (“SSC”) between PNM and Facebook, Inc. subsidiary Greater Kudu, LLC (“Customer”), as well as the First Amended Rider No. 49.

PNM proposed to recover the costs of the two PPAs and the ESA directly from Customer through Rider No. 47. PNM also proposed the Addendum to the SSC and the amendments to Rider No. 49 to clarify the capacity value of controlled storage projects procured pursuant to the SSC for purposes of calculating the Contribution to Production Component of Rate No. 36B, Special Service Rate, applicable to the Customer.

2. Also on February 8, 2021, PNM filed its *Motion for Expedited Consideration* (“Motion for Expedited Consideration”) which requested that PNM’s Application be approved on or before June 1, 2021 so that the PPAs and ESA could be approved in time for Customer’s break ground date of the potential expansion of its data center in Los Lunas, New Mexico. PNM represented that Approval by June 1, 2021 would help Customer to retain construction crews on site and maintain continuous construction.

3. On February 17, 2021, the Commission issued its *Initial Order and Order on PNM’s Motion for Expedited Consideration* (“Initial Order”) in which it agreed that this matter should be considered on an expedited basis. The Initial Order shortened the 60-day notice period to 51 days in order to accelerate the possible hearing date so that the Commission would have sufficient time to review the record as close as possible to the requested June 1, 2021, approval date. The Initial Order also stated that the Commission may approve the Application without a hearing if no protest is filed, and the Commission set a public hearing to be held on April 28, 2021, if deemed necessary by the Commission. The Initial Order also set deadlines for parties to file testimony, with Utility Division Staff (“Staff”) and intervenors to file testimony on or before April 14, 2021, and rebuttal testimony filed by April 21, 2021.

4. On February 15, 2021, New Mexico Affordable Reliable Energy Alliance (“NM AREA”) filed a Motion to Intervene and Request for Discovery.

5. On March 3, 2021, the Commission issued an Order suspending PNM's Advice Notice No. 574 for an initial period of nine (9) months, or a shorter period, if the Commission orders, so that PNM's Advice Notice No. 574 will not become effective by operation of law on March 8, 2021.

6. On March 5, 2021, PNM filed its Affirmation of Newspaper Publication and PNM Web Publication, confirming that public notice of this proceeding as directed by the Commission had been published in the *Alamogordo Daily News*, the *Las Cruces Sun-News*, the *Albuquerque Journal*, and the *Union County Leader* on February 24, 2021. Notice was also posted on PNM's website before February 25, 2021.

7. On March 19, 2021, Western Resource Advocates ("WRA") filed a Motion for Leave to Intervene and Request for Discovery.

8. On March 26, 2021, Coalition for Clean Affordable Energy ("CCA") filed a Motion for Leave to Intervene.

9. On April 14, 2021, Staff witness John Reynolds filed direct testimony recommending that the Commission should extend the procedural schedule to allow for a public hearing before a hearing examiner and opposing the ESA and Addendum or in the alternative, deny approval of the ESA, Addendum to the SSC and amended Rider No. 49.

10. On April 21, 2021, PNM and NM AREA filed rebuttal testimony disagreeing with Staff's recommendation to extend the procedural schedule to allow for a public hearing before a hearing examiner, and supporting approval of the ESA, Addendum to the SSC and amended Rider No. 49.

11. On April 22, 2021, the Commission issued its *Order Vacating April 28 Public Hearing* because Staff and PNM and NM AREA did not agree, the Commission found that it was

premature to hold the April 28 hearing.

12. On April 28, 2021, the Commission issued an *Order Setting Procedural Schedule and Notice of Public Hearing*, setting forth the following procedural schedule: (1) Staff and any intervenor shall complete all discovery prior to May 26, 2021; (2) file direct testimony on or before June 2, 2021; (3) file rebuttal testimony on or before June 9, 2021; (4) hold a public hearing at the Commission's open meeting on June 16, 2021, to be presided over by a designated presiding officer; (5) a public comment period shall occur at the beginning of the Commission's open meeting on June 16, 2021, for members of the public who are not protestors or intervenors to comment on the proposed Application; and (6) a Proposed Recommended Decision shall be filed by the parties either individually or jointly on or before June 23, 2021.

13. On May 3, 2021, the Commission issued an Order designating Ms. Carolyn Glick as the presiding officer.

14. On June 2, 2021, Staff filed supplemental testimony stating that Staff had not amended its position on the ESA and Addendum despite additional information that had been provided by PNM.

15. Also on June 2, 2021, CCAE filed a Statement of Position supporting PNM's application.

16. On June 9, 2021, PNM filed additional rebuttal testimony in which it responded to the Staff supplemental testimony, noting in significant part that PNM's other customers will only stand to benefit from the Addendum and ESA.

17. On June 10, 2021, the Commission issued an *Order Revising Due Date of PNM's Filing of its Proposed Recommended Decision and Changing Proposed Recommended Decision to Proposed Final Order*. The Commission thereby changed the date of the parties filing of

Proposed Final Order from June 23, 2021, and required PNM to file its Proposed Final Order on June 14, 2021.

18. On June 14, 2021, PNM filed a proposed form of Final Order.

19. On June 16, 2021, a public hearing was held before the Commission, presided over by Hearing Examiner Carolyn Glick.

20. **Standards for PPA Approval:** Rule 551 provides that no electric utility may become irrevocably obligated as a purchaser under a long-term purchased power agreement (“LTPPA”) without first obtaining the Commission’s written approval of the agreement. An LTPPA is a PPA with a term of five years or more, inclusive of the base term and any extensions, for which the utility intends to seek rate recovery from New Mexico retail customers, except for PPAs required to be approved under the Renewable Energy Act (“REA”) and PPAs with Qualifying Facilities (“QFs”) pursuant to 17.9.570 NMAC. Because the two PPAs and ESA are for a term of more than five years, and are not subject to the REA or with a QF pursuant to 17.9.570 NMAC, PNM is obligated to obtain Commission approval before becoming irrevocably bound under them. Under Rule 551, the Commission must issue a final order no later than six months from the date PNM files its Application. 17.9.551.10(B) NMAC.

21. Rule 551, at Section 8(D), imposes certain evidentiary requirements when a utility seeks approval of a PPA, including that the utility provide a copy of the PPA, explain its key terms, and describe the benefits of entering into the PPA.

22. Rule 551.9 provides that the Commission may authorize ratemaking treatment for PPAs.

23. In Case No. 15-00083-UT, the Commission held that the review and approval procedure for a PPA is similar to the review and approval procedure for a Certificate of Public

Convenience and Necessity pursuant to NMSA 1978, Section 62-9-1, and that the utility must demonstrate by a preponderance of the evidence that its proposed PPA complies with Rule 551 and is in the public interest. *Recommended Decision*, pp. 18-25 (September 21, 2015), *adopted by Final Order* (October 7, 2015). The Commission has equated “public convenience and necessity” with “public interest” and has equated “public interest” with “a net public benefit.” *Id.*

24. **Standard for Approval of Changes in Utility Rates:** Pursuant to NMSA 1978, Section 62-8-1, “[e]very rate made, demanded or received by any public utility shall be just and reasonable.” Pursuant to NMSA 1978, Section 62-3-1, it is the “declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.” Pursuant to NMSA 1978, Section 62-8-7(C), when a utility files an application for new rates, the Commission “may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates.”

25. **PNM’s Application and Supporting Testimonies:** PNM’s Application seeks Commission approval of the following:

- a. The Addendum to the Second Amended and Restated SSC with Customer, as approved in Case No. 18-00268-UT. The Addendum to the SCC clarifies the capacity value of controlled storage projects procured pursuant to the SCC for purposes of calculating the Contribution to Production Component of Rate No. 36B applicable to

Customer.

b. The following two PPAs and one ESA: (i) the Encino North PPA between PNM and NMRD III, for 50 MW of solar energy from the Encino North Solar Energy Center over a twenty-year term at a price of \$20.45 per MWh; (ii) the Sky Ranch PPA between PNM and Sky Ranch Solar for 190 MW of solar energy from the Sky Ranch Solar Facility over a twenty-year term at a price of \$20.64 per MWh; and (iii) the Sky Ranch ESA between PNM and Sky Ranch Energy Storage for 100 MW of four-hour energy capacity from the Sky Ranch Energy Storage Facility for a twenty-year term at a price of \$6.60 per kW-month. PNM proposes to recover the costs of the two PPAs and the ESA from the Customer as provided in the Restated SSC, Second Revised Rate No. 36B and Rider No. 47 and Amended Rider No. 49. The energy and capacity provided by the two PPAs and the energy storage capacity provided by the ESA are necessary to meet the Customer's electric service requirements at its Data Center.

c. Modifications to the Production Cost Allocation Rider, Original Rider No. 49, will clarify how the capacity value of controlled storage projects procured pursuant to the SSC for purposes of calculating the Contribution to Production Component of Rate No. 36B, Special Service Rate, are applicable to the Customer.

d. Variances to:

i. Commission Rule 17.1.2.10(B)(2)(b) NMAC which requires a statement comparing proposed new rates with present rates; and

ii. Commission Rule 17.9.530 ("Rule 530") which prescribes minimum data requirements to be filed in support of a tendered new rate schedule.

26. In support of its Application, PNM submitted the pre-filed Direct Testimonies of

Ms. Stella Chan, PNM's Director of Pricing, and Messrs. Thomas G. Fallgren, PNM's Vice President of Generation; Nicholas L. Phillips, PNM's Director of Integrated Resource Planning; Todd R. Fridley, Vice President of New Mexico Operations for PNM; Kyle T. Sanders, Director of Cost of Service for PNM; and Michael J. Settlage, Pricing Principal for PNM.

27. PNM witnesses Phillips and Chan also filed rebuttal testimony, and Ms. Chan filed additional rebuttal testimony.

28. PNM also filed responses on May 7, 2021, May 24, 2021, and June 11, 2021 to Bench Requests 1, 2 and 3, respectively, issues by the Commission on April 30, 2021, May 18, 2021, and June 3, 2021, respectively.

29. **Testimony of the Parties: PNM's Testimony.** PNM witness Chan provided an overview of PNM's Application and the testimony filed in support of the Application. She also provided background information on service to the Customer, explained the purpose of the two PPAs and ESA, and addressed certain requirements of Rule 551, including the potential impact on PNM's financial metrics. Ms. Chan also testified that the PPAs, ESA, Addendum, and amendments to Rider No. 49 are in the public interest and should be approved as requested. She testified that the PPAs and ESA are necessary to meet the Customer's capacity and energy needs for the Data Center near Los Lunas, New Mexico, which continues to expand. The Customer is substantially investing to expand its Data Center and requires certainty that PNM will be able to provide the renewable energy, pursuant to the Restated SSC, to meet the Data Center's expanding energy requirements in a timely manner. To accomplish this, as provided in Section 3 of the Restated SSC, PNM is obligated to secure "Additional Renewable Energy Procurements at reasonable cost and on terms mutually acceptable to both PNM and [the] Customer, the costs of

which shall be directly assigned to serve [the] Customer’s load, subject to NMPRC approval.”¹ The Restated SSC addresses how PNM and the Customer work collaboratively, expeditiously and in good faith to: (a) determine when PNM should bring new renewable resources into service to match the Data Center’s projected load; (b) identify and evaluate the costs and benefits of new renewable resources available to meet that growth; and (c) determine the location(s) of those Additional Renewable Energy Procurements to avoid constraints on PNM’s transmission system.² In accordance with those terms, PNM and the Customer have determined that the additional renewable and energy storage resources that are the subject of PNM’s Application need to be procured by PNM to meet the Data Center’s projected load. Ms. Chan also explained that none of the costs of the PPAs and ESA will impact PNM’s financial condition because Customer will pay 100% of the costs, and the Customer is obligated to pay those costs if the SSC is terminated.

30. PNM witness Michael J. Settlege supports the Addendum to the SSC as well as the amendments to Rider No. 49. Mr. Settlege explained that the Addendum is necessary to supplement and clarify the provisions of the SSC related to Alternative Capacity Projects.³ The Addendum specifies how the capacity contribution of Alternative Capacity Projects that are controlled by PNM, defined in the Addendum as Controlled Storage Projects, will be calculated for purposes of determining the Contribution to Production Component (“CPC”) of the Special Service Rate.⁴ Specifically, the Addendum explains how the Production Revenue Requirement Offset (“PRRO”), which is a component of the CPC, is calculated for Controlled Storage Projects. The CPC is calculated by subtracting the PRRO from the Production Revenue Requirement

¹ PNM Ex. SC-2, Restated SSC, § 3.1 at 8.

² *Id.*, Restated SSC §§ 3.1.2 through 3.1.4, at 8-9, as noted in Case No. 16-00191-UT Final Order ¶ 69.

³ Settlege Direct Testimony at 4. An “Alternative Capacity Project” is defined at Section 1.1 of the SSC as “any project that can provide capacity to serve the Customer’s needs, including but not limited to, energy storage.” PNM Ex. SC-2, at 8.

⁴ Settlege Direct Testimony at 6-7.

(“PRR”) and dividing the difference by the Customer’s annual billable demands.⁵ The PRR is calculated by multiplying (i) the quotient determined by dividing the Retail Production Capacity Revenue Requirement used to set proposed rates in PNM’s general rate case by the sum of all Retail Production Capacity Coincident Peak Demands used to allocate the Retail Production Capacity Revenue Requirement to rate classes in PNM’s general rate cases, and (ii) the sum of Customer’s Production Coincident Peak Demands. The PRRO is calculated by multiplying the quotient determined pursuant to the foregoing clause (i) by the sum of Coincident Peak Production for all the Renewable Energy Facilities and Alternative Capacity Projects procured by PNM pursuant to the SSC. For Renewable Energy Facilities and Alternative Capacity Projects that are not Controlled Storage Projects, the SSC is adequate. However, for Controlled Storage Projects, additional clarification is necessary.⁶ This approach is necessary to update the SSC to differentiate between Controlled Storage Projects (PNM-controlled projects) and Alternative Capacity Projects controlled by a third party on Customer’s behalf. A PNM-controlled resource provides value to all customers because PNM can control the resource to benefit all customers.⁷ Additionally, the Addendum clarifies when and how the Customer will receive the capacity benefits associated with the battery storage.⁸

31. In addition, explained why the Addendum’s provision for an incremental PRRO upon commercial operation of a Controlled Storage Project is appropriate. First, PNM and all its customers will receive system benefits from adding Controlled Storage Projects to its system immediately upon its commercial operation date. Thus, to encourage the Customer to add such resources in a timely manner, and not delay their implementation in an attempt to correspond with

⁵ Settlage Direct Testimony at 7.

⁶ Settlage Direct Testimony at 7.

⁷ Settlage Direct Testimony at 7-8.

⁸ Settlage Direct Testimony at 8.

a rate case test period, it is appropriate to recognize the benefit to the Customer through the incremental PRRO at the same time the benefits are realized by PNM.⁹ Second, the costs of the Controlled Storage Project will be recovered from the Customer through Rider 47 upon commercial operation. If there were no recognition of incremental PRRO at the same time, the Customer would be incurring those costs with no associated benefits.¹⁰ Finally, permitting the Customer to begin realizing the incremental PRRO upon the commercial operation date of a Controlled Storage Project is consistent with the timing of the Customer's realization of the benefits of the Renewable Energy Facilities procured pursuant to the SSC.¹¹

32. PNM witness Fallgren describes the solar and energy storage facilities at issue, and he provides an overview of the PPAs and ESA, summarizing their key terms and conditions. The Encino North PPA has a term of twenty years and is for 50 MW of solar energy in Rio Rancho, New Mexico near the PNM Rio Puerco Switchyard and is expected to produce 149,000 MWh of energy annually.¹² The price for the Encino North PPA is \$20.45/MWh.¹³

33. The Sky Ranch PPA has a term of 20 years and is for 190 MW of solar energy between Belen and Los Morros, New Mexico and is expected to produce approximately 557,000 MWh of energy annually.¹⁴ The price for the Sky Ranch PPA is \$20.64/MWh.¹⁵ The Sky Ranch ESA is for 100 MW of four-hour battery storage co-located with the Sky Ranch Solar Facility, providing up to 365 equivalent charge/discharge cycles per year.¹⁶ The price for the Sky Ranch ESA is \$6.60/kW-month, or \$660,000.¹⁷

⁹ Settlage Direct Testimony at 12-13.

¹⁰ Settlage Direct Testimony at 13.

¹¹ Settlage Direct Testimony at 13.

¹² Fallgren Direct Testimony at 4-5, 7.

¹³ Fallgren Direct Testimony at 5.

¹⁴ Fallgren Direct Testimony at 9-10, 13.

¹⁵ Fallgren Direct Testimony at 10.

¹⁶ Fallgren Direct Testimony at 14-15.

¹⁷ Fallgren Direct Testimony at 15.

34. The twenty-year terms for the PPAs and ESA begin on the Commercial Operation Date (expected June 1, 2023, for the Encino North PPA and December 31, 2023, for the Sky Ranch PPA and ESA).¹⁸ Neither the PPAs, nor the ESA have an option to extend, and commission approval of the PPAs and ESA is a condition precedent to the PPAs and ESA taking effect.¹⁹

35. PNM is under no obligation to pay for any fixed or variable administrative, transactional, or operation and maintenance costs under the PPAs and ESA. The PPAs and the ESA require the seller to post security, increasing its monetary incentive to meet its capacity and schedule requirements.²⁰ For the PPAs, PNM is only obligated to pay for the energy actually delivered.²¹ In the event the Revised SSC is cancelled, PNM may terminate the PPAs and ESA.²² Additionally, PNM may collect damages upon occurrence of an Event of a Default by NMRD III, Sky Ranch Solar, or Sky Ranch Energy Storage.²³ For the Encino North PPA and Sky Ranch PPA, the damages would include the cost of replacement energy and liquidated damages to offset the cost of alternative resources.²⁴ For the Sky Ranch ESA, the damages would include the cost of replacement capacity and liquidated damages to offset the cost of alternative resources.²⁵

36. Mr. Fallgren testified that the PPAs and ESA will better meet Customer's needs, as defined by the Customer, than PNM-owned resources would.²⁶ In addition, the Customer was involved in the process of choosing the developers and projects and approved the costs of renewable energy in each of the PPAs.²⁷ The selected resources meet Customer's unique service

¹⁸ Fallgren Direct Testimony at 8-9.

¹⁹ Fallgren Direct Testimony at 4, 9, 14.

²⁰ Fallgren Direct Testimony at 20-21.

²¹ Fallgren Direct Testimony at 5, 10, 16.

²² Fallgren Direct Testimony at 21.

²³ Fallgren Direct Testimony at 6-7, 11-12, 17.

²⁴ Fallgren Direct Testimony at 6-7, 11-12.

²⁵ Fallgren Direct Testimony at 17-18.

²⁶ Fallgren Direct Testimony at 21-22.

²⁷ Fallgren Direct Testimony at 22.

needs and are consistent with the provision of safe and reliable power to all of its customers.

37. NMRD III is a subsidiary of NM Renewable Development, LLC which is owned 50% by PNMR- D, a wholly-owned subsidiary of PNM Resources, Inc., PNM's parent company, and 50% by AEP OnSite Partners, LLC, a wholly-owned subsidiary of the publicly traded utility holding company, American Electric Power, Inc. Because the Encino North PPA is between PNM and an affiliate, PNM timely filed a Notice of Class I Transaction with the Commission pursuant to 17.6.450 NMAC on February 8, 2021.²⁸

38. PNM witness Phillips addressed resource planning-related matters associated with the Customer's expanded retail load and the proposed new solar and storage resources, including consistency with the 2020 integrated resource plan.²⁹ Mr. Phillips also explained the system benefits of the proposed 100 MW storage procurement, stating that the storage resource is 50 MW more than PNM identified as necessary to offset the Customer's increased load. Therefore, the additional storage will stand to benefit all PNM customers.³⁰

39. PNM witness Fridley described the cost of the transmission system upgrades associated with the PPAs and ESA. He explained that the estimated cost for interconnection facilities for the Encino North PPA is \$10.8 million for network upgrades and \$774,007 for the transmission provider's interconnection facilities for a total cost of \$11.6 million.³¹ The \$774,007 cost of transmission provider's interconnection facilities does not qualify as network upgrades and will be paid by NMRD III. The network upgrade cost of \$10.8 million will be returned to the Interconnection Customer in a lump sum payment.³² PNM did not request ratemaking treatment

²⁸ Chan Direct Testimony at 14.

²⁹ Phillips Direct Testimony at 8-9.

³⁰ Phillips Direct Testimony at 7-8.

³¹ Fridley Direct Testimony at 15.

³² Fridley Direct Testimony at 15.

for the transmission system upgrade costs in this case.

40. Mr. Fridley further explained that the Sky Ranch Solar project is under one PPA, but the project was submitted to PNM as a Transmission Provider to process under its OATT as two separate projects leading to two separate LGIAs: Sky Ranch – Solar I (120 MW) and Sky Ranch Solar II (70 MW). The estimated cost for interconnection facilities for Sky Ranch Solar I is \$49.9 million for Network Upgrades and \$760,959 for the transmission provider's interconnection facilities for a total cost of \$50.6 million.³³ The \$760,959 cost of Transmission Provider's Interconnection Facilities does not qualify as Network Upgrades and will be paid by Sky Ranch Solar, LLC. The Network Upgrade cost of \$49.9 million will be returned to Sky Ranch Solar, LLC in a lump sum payment.³⁴ The estimated cost for interconnection facilities for the Sky Ranch Solar II is \$2.7 million for Network Upgrades and \$778,383 for the transmission provider's interconnection facilities for a total cost of \$3.5 million. The \$778,383 cost of Transmission Provider's Interconnection Facilities does not qualify as Network Upgrades and will be paid by Sky Ranch Solar, LLC. The Network Upgrade cost of \$2.7 million will be returned to Sky Ranch Solar, LLC in a lump sum payment.³⁵ Additionally, because the Sky Ranch Storage facility will be co-located with the solar facility, the batteries are not expected to increase the resource sized interconnected to PNM's transmission system beyond those already identified above for the Sky Ranch Solar facilities.³⁶ PNM witness Sanders explained how the transmission system upgrade costs are typically treated for ratemaking purposes, noting that the incremental revenue requirements associated with the interconnection of the facilities component will not impose net incremental cost on PNM's other retail customer. PNM did not request ratemaking treatment for

³³ Fridley Direct Testimony at 19.

³⁴ Fridley Direct Testimony at 19.

³⁵ Fridley Direct Testimony at 21.

³⁶ Fridley Direct Testimony at 22.

the transmission system upgrade costs in this case.

41. **Staff's Testimony:** Staff submitted the testimony of John J. Reynolds. Mr. Reynolds opposed PNM's request to expedite the schedule for approving the Application, and Mr. Reynolds observed that no timely protest had been filed. Mr. Reynolds recommended that the Commission hold a hearing in the matter because he contended that the Addendum appeared to add significant complexity to how the Customer contributes to production costs incurred by PNM and relied on by the Customer to meet its energy needs when its dedicated intermittent resources are unable to.³⁷ He also contended that the ESA was outside the scope of PNM's voluntary renewable energy program.³⁸ Mr. Reynolds further testified that the proposed PPAs and ESA would cause additional costs that may have a negative impact on the rates for other retail electric customers, which would run afoul of the "No Net Adverse Impact" standard.

42. Mr. Reynolds acknowledged that PNM's Application and testimony appeared to satisfy some of the requirements of Rule 551, however Staff had the following issues. Mr. Reynolds argued that Mr. Fallgren's testimony did not provide evidence that a utility-owned resource could have been an alternative to the PPA and ESA because Mr. Fallgren only testified that the Customer selected the resource.³⁹ Mr. Reynolds urged that the transmission Network Upgrades should not be recoverable from all customers.⁴⁰ Finally, Mr. Reynolds urged that evaluation of the ESA required more Commission attention to understand the implications of allowing a non-utility to support a large storage resource.⁴¹

43. Mr. Reynolds also filed supplemental testimony on June 4, 2021. Mr. Reynolds

³⁷ Reynolds Direct Testimony at 8.

³⁸ Reynolds Direct Testimony at 7.

³⁹ Reynolds Direct Testimony at 12-13.

⁴⁰ Reynolds Direct Testimony at 15-16.

⁴¹ Reynolds Direct Testimony at 20.

stated that PNM had provided additional information in responses to bench requests and that some of the information PNM had provided was helpful in understanding how PNM's Customer would be compensated for its payments to the Sky Ranch Energy Storage facility.⁴² Mr. Reynolds testified that his concerns remained, and he believed that the Customer would "profit" at the rate of \$214,169 per month from the ESA.⁴³ Mr. Reynolds testified that he calculated this number by looking to the monthly cost of \$660,000 Customer would pay and compared it to the \$874,169 PRRO Mr. Settlage identified in response to the *Superseding Amended Second Bench Request Order*.⁴⁴ Mr. Reynolds also noted that although he remained opposed to the Sky Ranch Energy Storage Facility and the Addendum approval, he did not necessarily object to that type of storage resource in a future case.⁴⁵

44. ***NM AREA's Testimony***-NM AREA Witness Mr. James R. Dauphinais provided rebuttal testimony in support of PNM's Application. Mr. Dauphinais disagreed with Staff that a hearing was required.⁴⁶ Mr. Dauphinais noted that Staff admitted no party had filed a protest to PNM's Application.⁴⁷ Mr. Dauphinais also rebutted Mr. Reynolds's claim that the proposed ESA does not fall within the scope of PNM's renewable energy program, noting that the ESA is squarely an Alternative Capacity Project.⁴⁸ Mr. Dauphinais then concluded that PNM's testimony had demonstrated that the Addendum would have no net adverse impact on other retail electric customers.⁴⁹

45. Additionally, Mr. Dauphinais responded to Staff's argument that the Customer's

⁴² Reynolds Supplemental Testimony at 3.

⁴³ Reynolds Supplemental Testimony at 3, 5-6.

⁴⁴ Reynolds Supplemental Testimony at 4.

⁴⁵ Reynolds Supplemental Testimony at 5.

⁴⁶ Dauphinais Rebuttal Testimony at 5.

⁴⁷ Dauphinais Rebuttal Testimony at 5.

⁴⁸ Dauphinais Rebuttal Testimony at 5-7.

⁴⁹ Dauphinais Rebuttal Testimony at 5, 7.

choice of electric supplier is not sufficient evidence for showing that a utility-owned alternative was not a better alternative.⁵⁰ In doing so, he argued that the Customer's choice of supplier is a key provision of the SSC and was approved in Case No. 16-00191-UT.

46. ***PNM's Rebuttal*** -PNM filed rebuttal testimony through witnesses Phillips and Chan and also the additional rebuttal of Ms. Chan. Ms. Chan explained in her rebuttal testimony that Mr. Reynold's recommendations should be rejected. Ms. Chan explained that the Addendum and First Revised Rider No. 49 are necessary components of the Commission's approval of the ESA. According to Ms. Chan, the parties' obligations under the ESA are conditioned on Commission approval of the Addendum.⁵¹ Moreover, the Addendum enables PNM to control the Sky Ranch Energy Storage Facility while fairly reflecting appropriate capacity benefits of the storage resource to the Customer.⁵² Next, Ms. Chan explained that the Addendum clarifies how the capacity contribution of Controlled Storage Projects will be calculated for purposes of the Special Service Rate, Rate No. 36B, and that PNM's obligation to procure storage comes from the Commission-approved SSC and is not changed by the Addendum.⁵³ As Ms. Chan explains, the Addendum is necessary because Section 3.1.2 does not distinguish between a contractual obligation to dispatch the energy storage resource to maximize the benefit to the Customer versus maximizing the benefit to the overall PNM system.⁵⁴ Without this, Customer would not pay for a system storage resource.⁵⁵ Ms. Chan then goes on to explain why the Addendum does not introduce significant complexity.⁵⁶ Ms. Chan also describes how the new resources are consistent with the SSC and PNM's renewable program, noting that the SSC Section 1.1's Alternative

⁵⁰ Dauphinais Rebuttal Testimony at 8-9.

⁵¹ Chan Rebuttal Testimony at 2.

⁵² Chan Rebuttal Testimony at 2.

⁵³ Chan Rebuttal Testimony at 3.

⁵⁴ Chan Rebuttal Testimony at 4.

⁵⁵ Chan Rebuttal Testimony at 4.

⁵⁶ Chan Rebuttal Testimony at 5-6.

Capacity Project, as approved in Case No. 18-00269-UT, is any project that can provide capacity to serve the Customer's needs, including but not limited to energy storage.⁵⁷ Finally, Ms. Chan emphasized that approval of the Application would be in the public interest, consistent with the public interest findings made in Case Nos. 16-00191-UT, 18-00009-UT, and 18-00269-UT and would bring substantial economic benefits to New Mexico.

47. Mr. Phillips's rebuttal addressed several issues, including: (1) why the procedural schedule in this case should not be extended; (2) the procurement process that led to the resources proposed in the Application; and (3) why approval of the Application is necessary to protect the public interest and allow the Customer to expand in New Mexico. Like Ms. Chan, Mr. Phillips explained that approval of the Addendum is necessary for the ESA to take effect.⁵⁸ Mr. Phillips further explained that delay is unwarranted because PNM's Application and proposed procedural path is consistent with past approvals, and the cost responsibility falls solely on the Customer.⁵⁹ Next, Mr. Phillips explained the collaborative process, as provided by the SSC, between PNM and the Customer which resulted in selecting the proposed resources. This process included informing the Customer that any procurement for renewable resources would also need additional capacity, and the Customer ultimately decided to procure—at its expense—even more capacity than required to maintain system stability.⁶⁰ Mr. Phillips also explained that the public interest would not be served by rejecting the ESA because PNM would then need to issue an additional RFP for capacity resources to maintain system reliability, and these costs would be recoverable from all customers rather than from only the Customer.⁶¹ Addressing broader resource planning issues,

⁵⁷ Chan Rebuttal Testimony at 7-8.

⁵⁸ Phillips Rebuttal Testimony at 2.

⁵⁹ Phillips Rebuttal Testimony at 4.

⁶⁰ Phillips Rebuttal Testimony at 5-7.

⁶¹ Phillips Rebuttal Testimony at 9-10.

Mr. Phillips notes that the proposed PPAs and ESA benefit the state of New Mexico in its expediently progressing towards 80% renewable and 100% carbon-free resources.⁶² Finally, Mr. Phillips concludes by noting that Staff appears to have changed its position, because it did not have the same concerns over compliance with Rule 551.8(D)(9) in Case No. 18-00009-UT.⁶³

48. Ms. Chan's additional rebuttal focused on responding to Mr. Reynolds's supplemental testimony's claims that the Customer would profit \$214,169 per month and that the Sky Ranch Energy Storage facility should not be approved.⁶⁴ Addressing any supposed profit by the Customer, Ms. Chan explained that Mr. Reynolds used a flawed methodology to calculate the Customer's benefit.⁶⁵ Mr. Reynolds subtracted the ESA monthly payment from PRRO and found a positive balance, but the proper metric is subtracting the smaller of either the incremental PRRO or the CPC from the monthly cost of the ESA.⁶⁶ Applying this approach, Ms. Chan demonstrated that, had the ESA been in effect, Customer's net financial impact from January 2020 through February 2021 would have ranged from an approximate cost of \$560,000 to a benefit of \$40,000.⁶⁷ Notably the benefit of approximately \$40,000 was the only instance in that time range where the Customer would have experienced a benefit (rather than a cost).⁶⁸ Ms. Chan also explained that even during the one month where Customer would have experienced a positive benefit, PNM's other customers would not bear that cost.⁶⁹

49. PNM further explained in its Response to the Third Bench Request Order, the net financial impact to the Customer of a 100 MW Controlled Storage Resource, such as the ESA, is

⁶² Phillips Rebuttal Testimony at 10-11.

⁶³ Phillips Rebuttal Testimony at 11-12.

⁶⁴ Chan June 9, 2021 Rebuttal Testimony at 1.

⁶⁵ Chan June 9, 2021 Rebuttal Testimony at 2-4.

⁶⁶ Chan June 9, 2021 Rebuttal Testimony at 2-3.

⁶⁷ Chan June 9, 2021 Rebuttal Testimony at 3.

⁶⁸ Chan Surrebuttal Testimony at 3.

⁶⁹ Chan Surrebuttal Testimony at 4.

less favorable to the Customer than the impact of a 50 MW Controlled Storage Resource would be.⁷⁰

50. Next, PNM witness Ms. Chan explained why the Commission should approve the ESA and PNM's Application. Ms. Chan noted that Case No. 18-00269-UT approved the SSC, and the Commission determined that PNM may procure Alternative Capacity Projects (i.e., any project that can provide capacity to serve Customer's needs) like Sky Ranch.⁷¹ Moreover, under the SSC, PNM is obliged to procure additional renewable and/or Alternative Capacity Projects to meet the Customer's energy and capacity needs.⁷² Ms. Chan concluded by noting that the Sky Ranch ESA is vital to system reliability, and given Customer's growing load, PNM would need to procure an alternative resource if the Commission does not approve it.⁷³ However, if such a resource were procured outside the context of the Rate No. 36B voluntary renewable energy program, then the cost of new capacity would be borne by all PNM retail customers.⁷⁴

51. ***CCAIE's Statement of Support***-CCAIE's Statement of Position noted that CCAIE supports economic development based on New Mexico's abundant renewable resources. CCAIE also explained that PNM's Green Tariff promotes economic development while also reducing carbon dioxide emissions, and CCAIE further explained that the large increase in energy usage at the Data Center should be met through 100% renewable energy.

52. On June 21, 2021, PNM, NMAREA and Staff filed closing statements.

53. **Commission's Determination**: The Commission finds, after reviewing the pleadings, all pre-filed testimony, all testimony taken at the public hearing on June 16, 2021,

⁷⁰ PNM's Response to Third Bench Request Order at 3 BR REQUEST H, p. 5.

⁷¹ Chan Surrebuttal Testimony at 5.

⁷² Chan Surrebuttal Testimony at 5 (citing Restated SSC Section 3.1).

⁷³ Chan Surrebuttal Testimony at 6.

⁷⁴ Chan Surrebuttal Testimony at 6-7.

reviewing the transcript from the public hearing, and reviewing the closing statements of PNM, Staff and NMAREA, that Staff's Direct, Supplemental and public hearing testimony all recommending disapproval of the ESA and the SSC Addendum are very persuasive because Mr. Reynolds testified that he could not conclude there would be "No Net Adverse Impact" on PNM's other customers as required by the SSC. However, the Commission acknowledges that PNM's current proposal potentially could result in economic development benefits and renewable energy benefits that may be in the public interest. Therefore, the Commission would like to give PNM and the Customer the opportunity to modify the transaction to address the Commission's concerns with the financial transaction, as we understand it, described as follows: a) PNM enters into an ESA with the developer; b) Customer pays the entire ESA bill (Customer's annual Sky Ranch ESA Cost recovered through Rider 47 @\$6.60 /kW) on behalf of PNM totaling approximately \$7.9 million annually; c) PNM provides Customer with an offset⁷⁵ at a rate of approximately \$54 per KW of capacity allocated to Customer (\$54 is the current production revenue requirement and capacity costs as determined in the last 2015 rate case which is updated with each rate case). Currently, the production revenue requirement cap on payments to Customer could rise significantly as Customer's storage Addendum resources are added; d) the offset provided to Customer is capped at the projected total production revenue requirement in the most recent 2015 rate case; e) if Customer demand requires 100% allocation of the ESA battery capacity (100 MW) under this payment arrangement, PNM calculated that the credit/offset to Customer would be millions on their annual bill. This appears to result in millions of annual revenue shortfall for other customers to cover and other customers would essentially be paying Facebook millions annually for capacity only Customer uses; f) the higher the capacity demands Customer places on the

⁷⁵ The offset is capped at approximately \$10.4 million and becomes a credit to Customer's monthly bills at 1/12 per month.

system, the less Customer pays to support those demands on the system and it is undisputed that Customer can zero their capacity payments entirely by the offset/credit mechanism. To the Commission, this appears that the current proposed Addendum financial structure is counter intuitive, in other words, it seems logical that Customer would pay more as it utilizes more resources – not less; g) PNM has testified that future costs to non-Facebook customers are highly uncertain and will be determined in a future rate case placing the Commission in the position of being requested to make a decision in this matter without knowing what production revenue requirements will turn out to be in future rate cases and without knowing if the currently projected storage demand per kwh of renewable energy might change as experience with storage increases; h) while Customer agreed to pay the full ESA price for the time being, the Commission is concerned that other PNM customers may be responsible to cover Customer’s credits/offsets in years 3-20 of the contract under the proposed Addendum.

54. For these reasons, the Commission finds that, under PNM’s current proposal in its Application, as set forth in the proposed Addendum and proposed ESA, other PNM ratepayers appear to be responsible to pay any revenue shortfall from all of the offsets/credits to Customer’s bills and thus the Addendum and ESA do not meet the standard of no additional costs to non-Facebook customers (see, SSC’s “No Net Adverse Impact” and Direct, Supplemental and public hearing testimony of Utility Division Director, Mr. John Reynolds). Further, the Commission finds that, in order to fulfill its mission under the Public Utility Act and the New Mexico Constitution, it is in the public interest, results in fair, just and reasonable rates, and balances the interests of the public utility and the ratepayers, to require PNM to renegotiate the Addendum and ESA with Customer to address the following issues and concerns of the Commission: a) Devise a pricing system between Customer and PNM which: i) charges more to Customer as their capacity demands

increase, rather than less; ii) eliminates any markup on the ESA contract price for capacity utilized for non-Facebook customers; and iii) creates a price certain per KW of storage capacity utilized for all parties; b) Demonstrates the 50 MW of storage above and beyond Customer's needs will be utilized by all of PNM's system customers in a loads and resources table showing excess capacity and reserves; c) When PNM will file its next rate case and,; d) Will PNM stipulate as to when it will file its next rate case? e) Will PNM stipulate to not shift these costs to non-Facebook customers; f) Whether there is any plan to include shifting these project costs to non-Facebook customers in any way, including through any future rate decoupling proposals; g) What ongoing tracking can PNM commit to providing that will show whether the Customer is bearing the expense of the project and related network upgrades; h) Why 100MW and not 50MW for ESA? i) Is the system's reliability so precarious that an additional 50MW is required? j) How does this 50MW tip the balance for PNM's system? k) Why is the project not being handled like FB's previous PPAs/ESAs, i.e. owned and operated by the developer which were not transferred to PNM for ownership, control, operation for the whole PNM system and where the loads are dedicated to FB? and l) a definite plan and specific commitments identifying how PNM will work with the Customer and key stakeholders to mitigate repeated requests for expedited Commission consideration.

IT IS THEREFORE ORDERED:

- A. This matter is continued as set forth herein.
- B. PNM and Customer shall meet to come to mutual agreement on modifications to the current Application that would renegotiate the issues and concerns set forth in Paragraph 54 herein.
- C. Pursuant to 1.2.2.17 NMAC, the Commission hereby designates Robert Lennon as a mediator to conduct and facilitate the negotiations between PNM and the Customer in order to

fully address the issues and concerns set forth in Paragraph 54 herein. The mediator shall conduct at least two ½ day sessions and shall be in accordance with 1.2.2.17 NMAC.

D. By close of business on July 14, 2021, PNM shall file in this docket a written, mutually agreed upon renegotiated modification to its Application addressing the issues and concerns set forth in Paragraph 54 herein.

E. By close of business on July 21, 2021, Staff and NMAREA shall file a Response to the mutually agreed upon renegotiated modifications to its Application that will be filed by PNM on July 14, 2021 and shall include a statement of approval, disapproval or approval with conditions.

F. Copies of this Order shall be sent to all persons listed on the attached Certificate of Service.

G. This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 23rd day of
June, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF)
NEW MEXICO'S APPLICATION FOR APPROVAL OF)
TWO PURCHASED POWER AGREEMENTS AND AN)
ENERGY STORAGE AGREEMENT PURSUANT TO) Case No. 21-00031-UT
17.9.551 NMAC, AN ADDENDUM TO THE SPECIAL)
SERVICE CONTRACT WITH GREATER KUDU LLC,)
AND AMENDED RIDER NO. 49)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order for Continuance** was sent via email to the parties listed on the date indicated below:

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DATED this 23rd day of June, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal

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