

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL TO ABANDON)
SAN JUAN GENERATING STATION UNITS)
2 AND 3, ISSUANCE OF CERTIFICATES)
OF PUBLIC CONVENIENCE AND)
NECESSITY FOR REPLACEMENT POWER)
RESOURCES, ISSUANCE OF ACCOUNTING)
ORDERS AND DETERMINATION OF)
RELATED RATEMAKING PRINCIPLES AND)
TREATMENT,)

Case No. 13-00_____-UT

PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)

Applicant)
_____)

DIRECT TESTIMONY

OF

GERARD T. ORTIZ

December 20, 2013

NMPRC CASE NO. 13-00_____ -UT
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WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

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PNM Exhibit GTO-1	Gerard T. Ortiz Experience and Qualifications
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AFFIDAVIT

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I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Gerard T. Ortiz. I am Vice President, Regulatory Affairs, for Public Service Company of New Mexico (“PNM” or the “Company”). My business address is 414 Silver Avenue, SW, MS-1105, Albuquerque, New Mexico 87102.

Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS VICE PRESIDENT, REGULATORY AFFAIRS.

A. As Vice President, Regulatory Affairs, I am responsible for PNM’s overall regulatory strategy in New Mexico. I oversee Pricing and Regulatory Services, Regulatory Policy and Case Management, Retail Renewable Energy and Integrated Resource Planning.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS.

A. I graduated from New Mexico State University in 1981 with a Bachelor of Science degree in Electrical Engineering. I obtained a Master of Business Administration degree, with a concentration in Finance, from the Robert O. Anderson Graduate School of Management at the University of New Mexico in 1988. I am a Registered Professional Engineer in the State of New Mexico (Registration No. 9687). Since 1981, I have been employed by PNM, and have held a variety of engineering, supervisory, and managerial positions in

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1 Distribution Engineering, Electric Marketing, Business Planning, and Market
2 Services in addition to my current assignment. A statement of my experience and
3 qualifications, including a list of the New Mexico Public Regulation Commission
4 (“NMPRC” or “Commission”) proceedings in which I have testified or filed
5 testimony, is attached as PNM Exhibit GTO-1.

6
7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?**

8 **A.** The purpose of my testimony is to support PNM’s Application for the following
9 approvals, within nine months, but no later than twelve months, of the date of filing:

10 (1) abandonment of San Juan Generating Station (“SJGS” or “San Juan”) Units
11 2 and 3 by December 31, 2017, with an accounting order allowing full recovery of the
12 undepreciated investment in SJGS Units 2 and 3 as of the date of retirement through a
13 regulatory asset amortized over twenty years with a carrying charge equivalent to
14 PNM’s pre-tax weighted average cost of capital (“WACC”) on the unamortized
15 balance;

16 (2) issuance of a certificate of public convenience and necessity (“CCN”) to
17 include Palo Verde Nuclear Generating Station (“PVNGS”) Unit 3 as a supply resource
18 to serve New Mexico retail customers effective January 1, 2018, at a value for
19 ratemaking purposes of \$335 million and recovery of the costs associated with funding
20 the decommissioning trust for PVNGS Unit 3 on a pro-rata basis;

21 (3) issuance of a CCN and any other necessary approvals for the acquisition of
22 an additional 78 megawatts (“MW”) of capacity in SJGS Unit 4 effective January 1,

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2015, at a value for ratemaking purposes of approximately \$52.5 million in exchange for an equal amount of capacity in SJGS Unit 3;

(4) recovery of the costs of selective non-catalytic reduction equipment (“SNCR”) together with balanced draft on SJGS Units 1 and 4 to be installed by January 31, 2016, not to exceed \$82 million, with cost overruns recovered in rates only after a Commission determination in a future rate case that they were prudently incurred, using 17.3.580 NMAC (“Rule 580”) to guide the process; and,

(5) issuance of an accounting order allowing PNM’s cost of compliance with the Best Available Retrofit Technology (“BART”) determination for SJGS under the August 21, 2011, Federal Implementation Plan (“FIP”) issued by the U.S Environmental Protection Agency (“EPA”) to be placed in a regulatory asset for future recovery in a rate case, with a determination in this proceeding that such costs are reasonable and were prudently incurred.

These approvals are either necessary for, or facilitate, compliance with environmental requirements under the Clean Air Act (“CCA”) for SJGS associated with a Revised State Implementation Plan (“Revised SIP”) issued by the New Mexico Environmental Improvement Board (“EIB”), which is pending approval by the EPA.

II. SUMMARY OF TESTIMONY AND IDENTIFICATION OF WITNESSES

Q. PLEASE DESCRIBE THE TOPICS YOU WILL DISCUSS IN YOUR TESTIMONY.

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1 **A.** I will begin by summarizing the key points I address in my testimony and then
2 identifying the other witnesses PNM is presenting in support of the Application and the
3 topics they will address. After that, I will describe in more detail the specific approvals
4 PNM is requesting in its Application and why these approvals should be granted.
5 I will also explain the timing associated with PNM's Application and other
6 approvals necessary for the Revised SIP to be implemented. I will discuss the
7 regulatory principles applicable to PNM's Application and the tests and factors to
8 be considered in determining if the Application and its various components
9 should be approved. I will also discuss past decisions of the Commission and its
10 predecessors that may be relevant to consideration of the Application.

11
12 **Q.** **PLEASE SUMMARIZE THE KEY POINTS YOU ADDRESS IN YOUR**
13 **TESTIMONY.**

14 **A.** There are a number of key points I address in my testimony in more detail. They
15 include:

- 16 • It is in the public interest to abandon SJGS Units 2 and 3 because PNM has identified
17 adequate alternatives to maintain service reliability to customers that are less costly than
18 being able to continue to operate SJGS Units 2 and 3 with selective catalytic reduction
19 ("SCR") technology installed on all four units of SJGS. These alternatives to operating
20 SJGS under the FIP will mitigate exposure to future environmental regulations; result in
21 a better balanced and diversified resource portfolio; and will be less risky in the face of
22 always uncertain fuel prices and future carbon regulation. Under these circumstances,

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1 the present and future public convenience and necessity do not require their continued
2 operation.

- 3 • Proper regulation should allow full recovery of the undepreciated prudent investment in
4 the retired plant in order to provide the proper regulatory incentives for management to
5 make the appropriate economic decisions with regard to existing plant and facilities.

- 6 • The undepreciated investment in SJGS Units 2 and 3 was prudently incurred and PNM
7 is acting reasonably in pursuing abandonment. Therefore, in order to properly balance
8 the interests of customers and investors and the overall public interest, PNM should be
9 allowed full recovery of the remaining prudent investment, amortized over a twenty year
10 period with a carrying charge at PNM's pre-tax WACC on the unamortized balance.

11 The used and useful concept is not a relevant consideration supporting a different result.

- 12 • The acquisition cost of the additional capacity in SJGS Unit 4 is the proper valuation for
13 ratemaking purposes because customers benefit from the acquisition and the acquisition
14 resulted from an arm's length transaction.

- 15 • PNM's offer to recertify PVNGS Unit 3 at its proposed value for ratemaking purposes is
16 supported by the independent valuation analysis performed by Concentric Energy
17 Advisors, Inc. and should be accepted by the Commission. Mr. O'Connell's testimony
18 demonstrates that PVNGS Unit 3 is a less costly resource for PNM's customers than
19 other alternatives even at a higher rate base valuation than what PNM is proposing.
20 PVNGS Unit 3, as an existing nuclear plant with a recent license extension, provides
21 numerous benefits over other alternatives, as demonstrated by the testimony of Mr.
22 Olson.

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- 1 • PNM's Application provides a path to comply with environmental requirements
2 applicable to SJGS that costs less than other alternatives, provides a properly diversified
3 supply portfolio and achieves greater overall environmental improvements than the FIP,
4 which requires the installation of more costly SCR on all four units of SJGS, as
5 discussed by Mr. Darnell. Under the circumstances presented, PNM's actions are
6 prudent and reasonable, benefitting customers and the overall public interest, and its
7 Application should be approved in its entirety.

8
9 **Q. PLEASE BRIEFLY EXPLAIN THE DIFFERENCES AMONG THE REVISED**
10 **SIP, THE TERM SHEET AND PNM'S APPLICATION IN THIS CASE.**

11 **A.** As described in more detail in Mr. Darnell's testimony, the Revised SIP is New
12 Mexico's plan, approved by the EIB, for complying with the EPA's Regional Haze
13 Rule. It calls for achieving certain limits on nitrogen oxide ("NOx") emissions at SJGS
14 by closing SJGS Units 2 and 3 and installing SNCR technology at SJGS Units 1 and 4.
15 As explained in more detail by Mr. Darnell, the Revised SIP is not synonymous with the
16 Term Sheet entered into among the New Mexico Environment Department ("NMED"),
17 EPA and PNM. Neither is the Revised SIP nor the Term Sheet the same as PNM's
18 Application in this case. PNM's Application is designed to seek the approvals that must
19 be obtained from the Commission in order to comply with the Revised SIP and also
20 seeks additional relevant approvals so that the proper balancing of customer and investor
21 interests and the overall public interest is achieved.

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1 **Q. WHO ARE THE OTHER WITNESSES WHO WILL TESTIFY IN**
2 **SUPPORT OF PNM'S APPLICATION IN THIS CASE?**

3 **A.** Ronald Darnell, Senior Vice President, Public Policy for PNM, provides an
4 overview of the environmental regulations applicable to SJGS's operations which are
5 driving the need to retire SJGS Units 2 and 3 and find replacement power. He will
6 summarize the history surrounding the environmental requirements under the CAA
7 related to the BART NOx determination for SJGS. He will then discuss the limited
8 options available to PNM to bring SJGS into compliance with the applicable
9 environmental requirements, including the FIP issued by the EPA which would require
10 the installation of expensive SCR on each operating unit of SJGS, and the proposed
11 Revised SIP. In doing so, Mr. Darnell demonstrates the prudence and reasonableness of
12 PNM's actions in pursuing the Revised SIP to benefit customers. Mr. Darnell will
13 describe the overall environmental benefits of PNM's proposed plan compared to
14 compliance with the FIP. He will also describe the Term Sheet and PNM's efforts to
15 mitigate adverse impacts on the economy of the Four Corners region. Mr. Darnell
16 explains that PNM is offering to have PVNGS Unit 3 recertified contingent on the
17 Commission's adoption of PNM's proposed fair valuation of PVNGS Unit 3 for
18 ratemaking purposes.

19
20 Chris Olson, Vice President, Generation for PNM, provides background concerning
21 SJGS and its current ownership structure. He will explain that the Revised SIP will
22 require a revised participation agreement resulting in a new ownership structure for
23 SJGS following the implementation of the Revised SIP and the retirement of SJGS

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1 Units 2 and 3. He explains that negotiations among the San Juan owners are currently
2 underway. He explains that the probable minimum additional amount of capacity that
3 PNM will acquire in SJGS Unit 4 to partially replace the capacity lost due to retirement
4 of Units 2 and 3 is 78 MW. He summarizes the various regulatory approvals necessary
5 for the revised ownership structure. To support the issuance of a CCN for additional
6 capacity in SJGS Unit 4, he will discuss its operational and compliance status as well as
7 its status as a source of continued reliable and cost-effective generation capacity. With
8 regard to the approval of PNM's costs associated with the installation of SNCR and
9 balanced draft on SJGS Units 1 and 4, he will discuss the cost of this technology and
10 describe the processes and measures that PNM has taken to assure the reasonableness of
11 these costs. He will describe the need for and benefits of installing balanced draft at this
12 time. On the issue of a CCN for PNM's interest in PVNGS Unit 3, he provides a
13 discussion of its recent operational and compliance status as well as the benefits of
14 adding nuclear capacity from an existing facility to PNM's resource portfolio for serving
15 New Mexico retail customers in order to partially replace the capacity lost due to the
16 abandonment of SJGS Units 2 and 3. He also discusses the transmission capacity that is
17 expected to be used to bring power from PVNGS Unit 3 to New Mexico retail
18 customers. He explains why PNM had to incur certain initial costs associated with the
19 installation of SCR on all four SJGS units in order to meet the compliance deadline
20 under the FIP and describes the steps PNM took to ensure the reasonableness of the
21 costs that were incurred.

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1 Patrick J. O’Connell, PNM’s Director of Planning and Resources, describes the
2 proposed changes in PNM’s supply portfolio to comply with the Revised SIP. Mr.
3 O’Connell provides a more detailed explanation of possible alternatives to PNM’s
4 proposed plan to comply with the Revised SIP including: compliance with the
5 FIP; compliance with the Revised SIP without recertifying PVNGS Unit 3; and
6 early retirement of all four units of SJGS. He explains why PNM’s proposal is
7 the most cost-effective approach to maintaining service reliability while meeting
8 the applicable environmental requirements. He shows that PVNGS Unit 3 is part
9 of the most cost-effective resource portfolio even at valuations higher than the
10 value proposed by PNM. Mr. O’Connell explains how PNM’s approach
11 comports with integrated resource planning (“IRP”) requirements.

12
13 J. Edward Cichanowicz, an independent expert specializing in environmental
14 control technologies for fossil fuel-fired power stations, provides testimony that
15 explains the requirements of the EPA’s Regional Haze Rule under the CAA
16 relevant to the BART NO_x determination for SJGS. He describes SNCR and its
17 costs. He explains that the existing environmental emissions controls installed at
18 SJGS Units 1 and 4 both complement and enhance the operation and performance
19 of the SNCR. In addition Mr. Cichanowicz testifies that PNM’s cost estimates for
20 SNCR and balanced draft are reasonable and that SJGS Units 1 and 4 with SNCR
21 and balanced draft will remain economically viable considering reasonably
22 foreseeable future environmental regulations. Mr. Cichanowicz also discusses the

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1 benefits of existing nuclear generation for purposes of compliance with air
2 emission requirements relative to other alternatives.

3
4 Thomas Sategna, Vice President and Corporate Controller for PNM Resources,
5 Inc. and PNM, explains the proper accounting treatment associated with
6 abandonment of SJGS Units 2 and 3 and for the transfer of capacity between
7 SJGS Units 3 and 4 to support the accounting orders requested by PNM. He
8 describes the regulatory history of PVNGS Unit 3 as background for PNM's
9 proposal to include it in rate base at the proposed fair valuation. In addition, Mr.
10 Sategna provides testimony justifying the issuance of an accounting order
11 authorizing PNM to record as a regulatory asset the costs incurred to comply with
12 the FIP prior to agreement on the Term Sheet. He states that PNM will seek in a
13 future rate case to recover the litigation costs associated with the FIP and the
14 Revised SIP, including the costs associated with this Application, as well as the
15 costs associated with negotiating the revised San Juan participation agreement.

16
17 John Reed, Chairman and Chief Executive Officer of Concentric Energy
18 Advisors, Inc. and CE Capital Advisors (collectively, "Concentric"), presents
19 Concentric's valuation study of PVNGS Unit 3 which supports the reasonableness
20 of PNM's proposed rate base valuation.

21
22 Henry Monroy, Director, Cost of Service and Corporate Budget for PNM,
23 identifies the costs associated with PNM's Application and provides a description

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1 of the expected incremental revenue requirements and the estimated rate impacts
2 on customers. Mr. Monroy explains the assumptions he used to develop the
3 incremental revenue requirements, including assumptions regarding rate of return
4 and jurisdictional allocation factors. He also compares the incremental revenue
5 requirements associated with approval of PNM's Application with the
6 incremental revenue requirements associated with the alternative scenarios
7 described in Mr. O'Connell's testimony.

8
9 Terry Horn, Vice President and Treasurer for PNM Resources, Inc. and PNM,
10 describes the methods PNM proposes to use to finance PNM's capital needs and
11 why these methods are reasonable. Mr. Horn discusses the importance of fair and
12 equitable treatment of investors for prudent investments made to reliably and
13 cost-effectively serve customers so as to maintain, and hopefully improve, PNM's
14 credit standing to the ultimate benefit of customers. Mr. Horn explains the need
15 for Commission approval of the ratemaking principles and treatment associated
16 with recertification of PVNGS Unit 3 proposed by PNM, including the rate base
17 valuation needed by PNM in order to commit PVNGS Unit 3 to Commission
18 jurisdiction. Mr. Horn describes the current status of the PVNGS Unit 3
19 decommissioning trust and explains PNM's request for approval of the proper
20 ratemaking treatment for the trust consistent with PNM's request for a CCN for
21 PVNGS Unit 3. Mr. Horn provides information regarding the ownership and
22 leasing arrangements for PVNGS Units 1 and 2 and PNM's plans regarding the

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1 PVNGS leases so that the Commission has a clear understanding of how the
2 leases affect PNM's resource portfolio over the next few years.

**III. ABANDONMENT OF SJGS UNITS 2 AND 3 AND
REPLACEMENT POWER**

7 **Q. WHAT APPROVALS IS PNM SEEKING WITH REGARD TO SJGS UNITS 2
8 AND 3?**

9 **A.** PNM is seeking authority to abandon SJGS Units 2 and 3 as utility property providing
10 service to New Mexico retail customers effective December 31, 2017. Pursuant to the
11 Revised SIP, if approved, SJGS Units 2 and 3 would be shut down.

13 **Q. WHAT FACTORS DOES THE COMMISSION USE TO DETERMINE IF
14 ABANDONMENT SHOULD BE AUTHORIZED?**

15 **A.** The Commission has stated that "...an applicant for abandonment must make a factual
16 showing that the proposed abandonment is consistent with the present and future public
17 convenience and necessity, and that the public interest otherwise will in no way be
18 disserved by the proposed abandonment."¹ To satisfy this factual showing, the
19 Commission articulated what is known as the *Commuters' Committee* factors. These
20 factors are: (1) the extent of the carrier's loss on the particular branch or portion of the
21 service, and the relation of that loss to the carrier's operation as a whole; (2) the use of

¹ *Re Public Service Company of New Mexico*, 119 PUR 4th 48, 51 (NMPSC 1990, Case No. 2296), *aff'd Public Service Company of New Mexico v. New Mexico Public Service Commission*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169

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1 the service by the public and prospects for future use; (3) a balancing of the carrier's loss
2 with the inconvenience and hardship to the public upon discontinuance of service; and
3 (4) the availability and adequacy of substitute service. The Commission's test is a
4 flexible one that can and should be adapted to meet the specific facts and circumstances
5 being evaluated.² Therefore, in some cases one or more of these factors may not be
6 relevant and other relevant factors may be identified. For purposes of this case, I believe
7 that there are two primary factors to be considered in determining the public
8 convenience and necessity under the circumstances presented, which I will discuss later
9 in my testimony.

10
11 **Q. PLEASE ADDRESS THE *COMMUTERS' COMMITTEE* FACTORS IN THE**
12 **CONTEXT OF PNM'S APPLICATION TO ABANDON SJGS UNITS 2 AND 3.**

13 **A.** The first factor is irrelevant to the abandonment of SJGS Units 2 and 3. Both Units are
14 in rate base and providing PNM an opportunity to receive its authorized rate of return.
15 They are no more or less profitable than any other assets included in PNM's rate base
16 from that perspective. In addition PNM's current rates provide for cost recovery of a
17 representative amount of operating and maintenance expenses associated with SJGS
18 Units 2 and 3. Thus, financial losses to PNM from operating SJGS Units 2 and 3 are not
19 a consideration and not a reason for seeking abandonment.

20
21 The next three factors should be considered together. SJGS Units 2 and 3 are currently
22 being used to serve the public and would continue to serve, with SCR installed, in the

² *Id.*

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1 absence of lower cost alternatives. Because the Revised SIP, if all necessary approvals
2 are obtained, would allow SJGS Units 1 and 4 to meet BART requirements under the
3 EPA's Regional Haze Rule with much cheaper SNCR if, and only if, SJGS Units 2 and
4 3 are retired, there are lower cost alternatives to continued operation of SJGS Units 2
5 and 3. The alternative proposed in PNM's Application maintains service reliability to
6 customers, does not impose hardship or inconvenience to the public, and results in
7 benefits to customers from lower overall cost of service. Importantly, the alternative
8 approach proposed in PNM's Application provides substantial environmental benefits
9 not achievable with the operation of SJGS Units 2 and 3, even with the high cost SCR
10 installed. Under these circumstances, it is my opinion that the present and future public
11 convenience and necessity allows abandonment of SJGS Units 2 and 3 pursuant to
12 PNM's Application.

13
14 **Q. YOU MENTIONED TWO PRIMARY FACTORS THAT SHOULD BE**
15 **CONSIDERED IN DETERMINING THE PUBLIC CONVENIENCE AND**
16 **NECESSITY IN THIS CASE. WHAT ARE THEY?**

17 **A.** I believe that the two primary factors are the availability of replacement power, or
18 alternative sources of supply, and the relative economics associated with continued
19 operation of SJGS Units 2 and 3 compared to the economics associated with retiring
20 SJGS Units 2 and 3 and using the alternative sources of supply. These two factors are
21 inherently considered in the last three *Commuters' Committee* factors when those three
22 factors are properly analyzed together, as I have done earlier in my testimony.

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**Q. YOU MENTIONED THAT IT WAS IMPORTANT TO RECOGNIZE THE
ADDITIONAL ENVIRONMENTAL BENEFITS REALIZED FROM PNM'S
APPLICATION. WHY DO YOU BELIEVE THESE ADDITIONAL
BENEFITS ARE RELEVANT?**

A. I believe that the Commission's determination of the public convenience and necessity must be made considering the overall public interest, which in my mind is broader than the interests of customers. Although I am not providing a legal interpretation, I believe that this is at least implicitly indicated by the requirement in the New Mexico Public Utility Act ("PUA") that the Commission "shall specifically consider the impact of the proposed abandonment of service on all consumers served in this state, directly or indirectly, by the facilities sought to be abandoned."³ This is further supported by the fact that the declaration of policy section of the PUA identifies the public interest as a separate consideration from the interests of consumers and investors.⁴ Finally, identification of replacement power supplies is closely related to the principles and objectives of the IRP process as established by the Commission's IRP Rule. The IRP Rule states: "For resources whose costs and service quality are equivalent, the utility should prefer resources that minimize environmental impacts."⁵

**Q. WHAT PROCESS HAS PNM USED TO ASSURE THAT PROPOSED
ABANDONMENT OF SJGS UNITS 2 AND 3 IS CONSISTENT WITH THE**

³ NMSA 1978, § 62-9-5 (2005)

⁴ NMSA 1978, § 62-3-1(B) (2008)

⁵ 17.7.3.6 NMAC

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**FUTURE PUBLIC CONVENIENCE AND NECESSITY AND THAT THE
PUBLIC INTEREST WILL NOT OTHERWISE BE DISSERVED?**

A. PNM has performed the same resource planning analysis that would be employed during the preparation of its IRP. This is appropriate for a variety of reasons. First, New Mexico and the Commission require the development of a long-term resource plan through an IRP process. Second, resource planning requires a long-term view to ensure the development of the most cost-effective portfolio. Finally, the resources that PNM recommends to be brought in as jurisdictional resources between 2015 and 2018 not only replace the capacity for the retired SJGS Units, but will also become part of the foundation for PNM's long-term resource portfolio.

**Q. HAVE THE REPLACEMENT RESOURCES TO BE DEPLOYED BETWEEN
2015 AND 2018 BEEN ADDRESSED IN PNM'S PAST IRP REPORTS?**

A. No. Neither the 2008 nor the 2011 IRP reports contemplated retiring SJGS Units 2 and 3 with SNCR installed on SJGS Units 1 and 4. PNM filed its most recent IRP on July 18, 2011. Subsequently, protests to the 2011 IRP were filed by various environmental groups. On August 25, 2011, the Commission issued its Initial Order in Case No. 11-00317-UT setting the protests for hearing. Ultimately a hearing was never held. As a result the Commission neither expressly accepted the 2011 IRP as compliant with the IRP Rule nor allowed it to be deemed accepted as compliant pursuant to 17.7.3.12(A) NMAC. On September 16, 2013, PNM filed a Notice of Material Event pursuant to 17.7.3.10 NMAC regarding the EIB's approval of the Revised SIP which constitutes a material change during the time frame covered by the 2011 IRP four year action plan.

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1 On September 18, 2013, the Commission issued a Notice of Proposed Dismissal
2 ordering Case No. 11-00317-UT to be closed effective October 18, 2013, unless a
3 motion demonstrating good cause to keep the docket open was filed by that date. No
4 such motion was filed.

5
6 Although no protests were filed against the 2008 IRP and it was accepted by the
7 Commission as compliant with the IRP Rule, its four year action plan is expired. As
8 discussed in more detail by Mr. O'Connell, PNM has begun the IRP public advisory
9 process required by the IRP Rule in order to file its next IRP in 2014. PNM has used the
10 public advisory process for the 2014 IRP in the development of the resource plan
11 presented in this filing.

12
13 **Q. WHY NOT WAIT FOR THE 2014 IRP TO BE FILED?**

14 **A.** Given the timelines for approval of the Revised SIP and related compliance deadlines,
15 and the need for Commission approval of a major feature of the Revised SIP, i.e.
16 abandonment of SJGS Units 2 and 3, PNM believes that it is necessary to file the
17 Application early enough to give the Commission sufficient time to evaluate how to
18 proceed to protect the present and future public convenience and necessity. As
19 discussed more fully by Mr. O'Connell, PNM released information regarding the 2014
20 IRP for the public advisory process sooner than in previous years so as to be able to
21 provide the Commission with information about public input even prior to the filing of
22 the formal 2014 IRP.

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1 Q. WHY IS IT NECESSARY TO TAKE A LONG-TERM VIEW WHEN
2 CONDUCTING RESOURCE PLANNING?

3 A. There are several reasons why the long-term should be considered when undertaking a
4 resource planning study. Resource alternatives generally have long useful lives.
5 Decisions made today will necessarily affect decisions in the future. Basing decisions
6 solely on immediate circumstances would undoubtedly result in a sub-optimal portfolio.
7 For example, basing resource additions simply on load growth in a single year would
8 likely result in bringing into service many small, peaking facilities or simply relying on
9 power purchases in the wholesale market. This would foreclose the addition of any
10 larger, more capital intensive but more efficient plants. The fuel source would be based
11 primarily on the lowest priced fuel at any given time. This would not adequately take
12 into account the variability of future fuel prices. This would likely result in a more
13 expensive long-term portfolio. A long-term view, on the other hand, will base resource
14 decisions on life-cycle cost analysis, and take into account the variability of future
15 planning variables.

16
17 Q. WHAT REPLACEMENT POWER SUPPLIES HAS PNM IDENTIFIED THAT
18 WOULD ASSURE THAT THE PROPOSED ABANDONMENT OF SJGS
19 UNITS 2 AND 3 IS CONSISTENT WITH THE FUTURE PUBLIC
20 CONVENIENCE AND NECESSITY AND THAT THE PUBLIC INTEREST
21 WILL NOT OTHERWISE BE DISSERVED?

22 A. PNM has identified a cost-effective portfolio comprised of several resources to replace
23 the approximately 418 MW of retired SJGS capacity. These resources include a

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1 minimum of 78 MW of additional capacity in SJGS Unit 4 and PNM's share of PVNGS
2 Unit 3 representing 134 MW for which CCNs are being requested in this case. Also,
3 PNM's studies identify that 40 MW of new utility-scale solar, and a 177 MW gas plant,
4 for which PNM plans to apply for CCNs in the future, as part of the cost-effective
5 portfolio that will reliably serve customers' needs even with the retirement of SJGS
6 Units 2 and 3. These proposed resources comprise a total of 429 MW. It is important to
7 note that they were selected based on a twenty year planning analysis.
8

9 **Q. IS PNM SEEKING APPROVAL FOR CCNS FOR ALL OF THESE**
10 **RESOURCES IN THIS FILING?**

11 **A.** No. At this time, PNM is only seeking CCNs for an additional 78 MW of capacity in
12 SJGS Unit 4 and for the 134 MW represented by PNM's interest in PVNGS Unit 3 to
13 replace the retired SJGS Units 2 and 3. As demonstrated by Mr. Olson, abandonment of
14 SJGS Units 2 and 3 results in the loss of approximately 418 MW of baseload capacity in
15 PNM's supply portfolio. PNM proposes to exchange 78 MW of capacity in SJGS Unit
16 3 for an additional 78 MW in SJGS Unit 4. This exchange reduces the amount of
17 undepreciated investment in abandoned plant that must be recovered and should also
18 help to resolve some of the complicated legal issues associated with SJGS Unit 4
19 ownership by California governmental utilities. SJGS Unit 4 has long been recognized
20 by the Commission and its predecessors as a critical, low-cost resource in PNM's most
21 cost-effective supply portfolio. Even with this additional capacity in SJGS Unit 4, the
22 amount of coal-fired generation in PNM's diversified supply portfolio is reduced by 340
23 MW.

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1
2 Next, as demonstrated by Mr. O'Connell, the results of his IRP analysis identifies
3 PVNGS Unit 3 as a component of the most cost-effective portfolio, even at a valuation
4 higher than offered by PNM. This will provide approximately 134 MW of additional
5 low-cost nuclear capacity. I will address issues around issuing a CCN for PVNGS Unit
6 3 later in my testimony.

7
8 **Q. WHAT ABOUT THE OTHER REPLACEMENT RESOURCES?**

9 **A.** PNM and the State agreed that PNM would build a gas peaking plant in the future to be
10 sited at SJGS with an estimated capacity of 150-200 MW to partially replace the power
11 lost due to the retirement of SJGS Units 2 and 3. Mr. O'Connell's testimony
12 demonstrates that this siting makes economic sense. However, PNM is not seeking a
13 CCN for that plant at this stage nor for the solar capacity identified by Mr. O'Connell.
14 Mr. O'Connell's analyses shows the resource additions that are projected to be
15 necessary through 2018 to assure that customer needs are met in the most cost-effective
16 manner, including the addition of gas generation and renewable energy resources.
17 Further, as described by Mr. Olson, it is possible that negotiations regarding a new
18 ownership structure might make additional capacity in SJGS Unit 4 beyond 78 MW
19 available. Those actions, while not being approved in this case, help to demonstrate that
20 abandonment of SJGS Units 2 and 3 is consistent with the present and future public
21 convenience and necessity and that the public interest will not otherwise be disserved.
22 Instead, the public interest will be served by approval of PNM's Application in this case.
23 PNM's customer needs will be adequately and reliably served by a reasonable,

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1 diversified, cost-effective supply portfolio with substantial environmental benefits that
2 would not be achievable by the alternative of compliance with the FIP.

3
4 **Q. WHY IS IT IMPORTANT TO HAVE A REASONABLY DIVERSIFIED**
5 **SUPPLY PORTFOLIO?**

6 **A.** The Commission and its predecessors have long recognized the benefits of diversifying
7 the fuel mix of a supply portfolio. Fuel diversity is important in minimizing the risk that
8 some unanticipated event may adversely impact the price or supply of any one fuel
9 thereby adding more potential volatility to customers' electric bills. On the flip side, fuel
10 diversity assures that customers will receive the benefits of events that favorably impact
11 the price or supply of a particular fuel. Given the circumstances that exist today, it is
12 reasonable to reduce the amount of coal and increase the amount of nuclear generation
13 from existing nuclear plants in PNM's supply portfolio due to the likely increased
14 regulation of greenhouse gas emissions. In the near term, additional amounts of gas
15 generation and renewable energy resources are warranted. In my opinion, it would not
16 be wise to totally eliminate any particular fuel source from a reasonably diversified
17 supply portfolio. For example, although today there is increasing pressure on use of
18 coal-fired generation due to increasing environmental requirements, existing coal plants
19 remain cost-effective with their state-of-art suite of emissions controls, as described by
20 Mr. Cichanowicz. And there is increasing pressure due to environmental concerns on
21 natural gas production. I note that in 1978 the federal Powerplant and Industrial Fuel
22 Use Act (now repealed) was enacted into law. It was designed to foster the use of coal
23 and fuels other than natural gas as a boiler fuel in new plants due to concerns regarding

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1 natural gas supplies. Although that is not a concern at this point in time, it demonstrates
2 how the risks associated with a particular type of generation can change over time.
3 There are also environmental concerns that have been raised with regard to renewable
4 energy resources as well. For example, some environmental considerations involving
5 solar and wind generation include land disturbance and other land use impacts; impacts
6 to soil, water and air resources; impacts to vegetation, wildlife, wildlife habitat and
7 sensitive species; visual, cultural, paleontological, socioeconomic, and environmental
8 justice impacts; and potential impacts from hazardous materials. Given that the future
9 can not be seen with perfect clarity, it is best to have a diversified supply portfolio.

10
11 **Q. ARE THERE ADDITIONAL APPROVALS FOR THE REPLACEMENT**
12 **POWER SUPPLIES THAT PNM IS SEEKING IN THIS CASE?**

13 **A.** The PUA requires prior Commission approval for the sale, purchase or acquisition by a
14 utility of public utility plant or property constituting an operating unit or system or a
15 substantial part of an operating unit or system.⁶ PNM does not believe that approval
16 under this provision of the PUA is required for the trade of capacity between SJGS Unit
17 3 and Unit 4 due to the limited amount of capacity involved. However, if the
18 Commission determines that approval under this provision of the PUA is required, PNM
19 is requesting that it be granted.

20
21 **Q. IF THIS ADDITIONAL APPROVAL IS REQUIRED, IS THERE AN**
22 **ADDITIONAL SHOWING THAT PNM MUST MAKE?**

⁶ NMSA 1978, Section 62-6-12(A)(4) (1989)

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1 **A.** No. The Commission has determined that approval pursuant to this section is met if the
2 approval is sought in conjunction with issuance of a CCN or abandonment approval and
3 the standard for granting a CCN or for authorizing abandonment is met.⁷
4

5 **Q. WHAT ADDITIONAL AUTHORIZATIONS RELATED TO ABANDONMENT**
6 **OF SJGS UNITS 2 AND 3 IS PNM SEEKING?**

7 **A.** PNM is seeking authorization to recover in future rate cases the undepreciated
8 investment in SJGS Units 2 and 3, including the accounting order described by Mr.
9 Sategna. Mr. Monroy identifies the amount of the undepreciated investment and how it
10 was calculated. Mr. Sategna identifies the period of time over which the undepreciated
11 investment should be amortized and the carrying charge to be applied to the unrecovered
12 amount until fully amortized.
13

14 **Q. WHAT IS THE PROPER TEST TO USE TO DETERMINE IF RECOVERY**
15 **OF THE UNDEPRECIATED INVESTMENT IN SJGS UNITS 2 AND 3**
16 **SHOULD BE ALLOWED AFTER THEY ARE ABANDONED?**

17 **A.** The proper test is composed of two parts: (1) whether the investment at issue was
18 prudently incurred; and, (2) whether it is reasonable to abandon the plant. Both parts of
19 this test are met by PNM's Application.
20

21 **Q. HOW SHOULD PRUDENCE BE DETERMINED?**

⁷ *Re Public Service Company of New Mexico*, 2013 WL 4045659, *3 (NMPRC Case No. 13-00004-UT)

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1 **A.** The following description of prudence was adopted in NMPSC Case No. 2087 in the
2 Order on Burden of Proof and Specific Issues to be Addressed and has continued to be
3 relied on by the Commission:

4 Prudence is that standard of care which a reasonable person would be
5 expected to exercise under the same circumstances encountered by
6 utility management at the time decisions had to be made. In
7 determining whether a judgment was prudently made, only those facts
8 available at the time judgment was exercised can be considered.
9 Hindsight review is impermissible.⁸
10

11 Under the prudent investment concept, customers are not to be charged for negligent,
12 wasteful or improvident expenditures, or for the cost of management decisions which
13 are not made in good faith. Customers are not expected to pay for management's lack
14 of honesty or sound business judgment. Well-accepted regulatory practice is that every
15 investment may be assumed to have been made in the exercise of reasonable judgment,
16 unless the contrary is shown. This discussion of prudence was recently confirmed in
17 PNM's last rate case, NMPRC Case No. 10-00086-UT.⁹
18

19 **Q. HOW HAVE YOU DETERMINED THAT THE INVESTMENT IN SJGS**
20 **UNITS 2 AND 3 WAS PRUDENTLY INCURRED?**

21 **A.** A CCN was issued for PNM's ownership interests in SJGS Unit 2 in NMPSC Case No.
22 965 and for Unit 3 in NMPSC Case No. 1221. They have been included as a New
23 Mexico retail jurisdictional resource and served PNM's customers for about forty years.
24 PNM is only seeking approval to retire these two units because of increased

⁸ Pages 4-5 (Oct. 4, 1988)

⁹ Certification of Stipulation, page 61 (June 21, 2011), adopted by Final Order Partially Approving
Certification of Stipulation (July 28, 2011)

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1 environmental compliance costs associated with keeping them operational and because
2 PNM has found a more cost-effective alternative to their continued operation in
3 compliance with the FIP.

4
5 Since SJGS Units 2 and 3 were certified, none of the investment in them has ever been
6 challenged as being imprudent or unreasonable in any way, with one exception that was
7 rejected by the Commission which I will discuss shortly. The Commission has never
8 determined that any portion of the investment in SJGS Units 2 and 3 should be denied
9 rate recovery in any rate case. In NMPSC Case No. 2146, Part II, a case to determine
10 which supply resources should be included in PNM's supply portfolio to serve New
11 Mexico retail customers, there was no issue raised by anyone regarding SJGS Units 2
12 and 3. Similarly, in NMPRC Case No. 08-00305-UT, additional supply resources were
13 identified to meet growing customer demand. No one questioned the continued use of
14 SJGS Units 2 and 3. Also, stipulations adopted in NMPRC Case No. 3137 (Merchant
15 Plant) and NMPRC Case No. 04-00315-UT sought to preserve use of PNM's low-cost
16 baseload capacity, including SJGS Units 2 and 3, to serve PNM's New Mexico retail
17 customers and existing wholesale firm supply customers.

18
19 The only time investment in SJGS Units 2 and 3 has been challenged was in PNM's last
20 rate case, NMPRC Case No. 10-00086-UT. In that case an intervenor claimed that
21 PNM's investment in pollution control technology for all four units of SJGS pursuant to
22 a 2005 federal Consent Decree was imprudent. The Commission expressly rejected the

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1 intervenor's argument.¹⁰ Further, as discussed by Mr. Olson, continued investment in
2 SJGS Units 2 and 3 is being limited to what is needed for prudent and reliable operation
3 during the time they remain in service. Thus, there is no question that the investment in
4 SJGS Units 2 and 3 was and is prudent.

5
6 **Q. THE SECOND PART OF THE TEST YOU HAVE ARTICULATED IS**
7 **WHETHER THE ABANDONMENT OF SJGS UNITS 2 AND 3 IS**
8 **REASONABLE. HOW SHOULD REASONABLENESS IN THIS CONTEXT**
9 **BE DETERMINED?**

10 **A.** First, the Commission will make the ultimate determination about whether it is in the
11 public interest for SJGS Units 2 and 3 to be abandoned under the circumstances. If it is
12 not in the public interest, then the issue of rate recovery of retired plant investment
13 becomes moot, although such a determination raises additional complex issues
14 regarding installation of SCR to keep all four units operational due to the FIP. Second,
15 the Commission will evaluate the reasonableness of PNM's overall actions and
16 Application. Mr. Darnell has described in detail the actions PNM has taken to mitigate
17 the economic effects on customers of compliance with environmental requirements
18 under the CAA and the EPA's Regional Haze Rule. Regulation should provide the
19 proper incentives for management to act reasonably. If it is reasonable to retire plant
20 because there is a cheaper alternative for customers, that decision should not come with
21 adverse financial impacts on shareholders. Otherwise there is a disincentive for
22 management to make economic decisions regarding continuing operations of a plant,

¹⁰ Final Order Partially Approving Certification of Stipulation, ¶¶ 150-153, at pages 65-67 (July 28, 2011)

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1 which may no longer be economic due to obsolescence or other reasons, such as exist in
2 this case where environmental compliance to keep them operating becomes more
3 expensive than other alternatives.

4
5 Generally, the Commission has determined reasonableness of expenditures by
6 comparing the costs to the benefits. Mr. O'Connell in his testimony has provided a
7 cost/benefit analysis that compares the cost of a portfolio to allow compliance with the
8 Revised SIP to the cost of a portfolio that assumes the continued operation of all four
9 SJGS units with SCR as required by the FIP. PNM has included in the costs of
10 complying with the Revised SIP the costs associated with full recovery of the
11 undepreciated investment in SJGS Units 2 and 3. As can be seen from Mr. O'Connell's
12 analysis, customers are better off with the Revised SIP than any other feasible resource
13 alternatives for meeting environmental requirements for SJGS under the Regional Haze
14 Rule. The net benefits of the retirement alternative are the difference in the net present
15 value between compliance with the Revised SIP and compliance with the FIP.

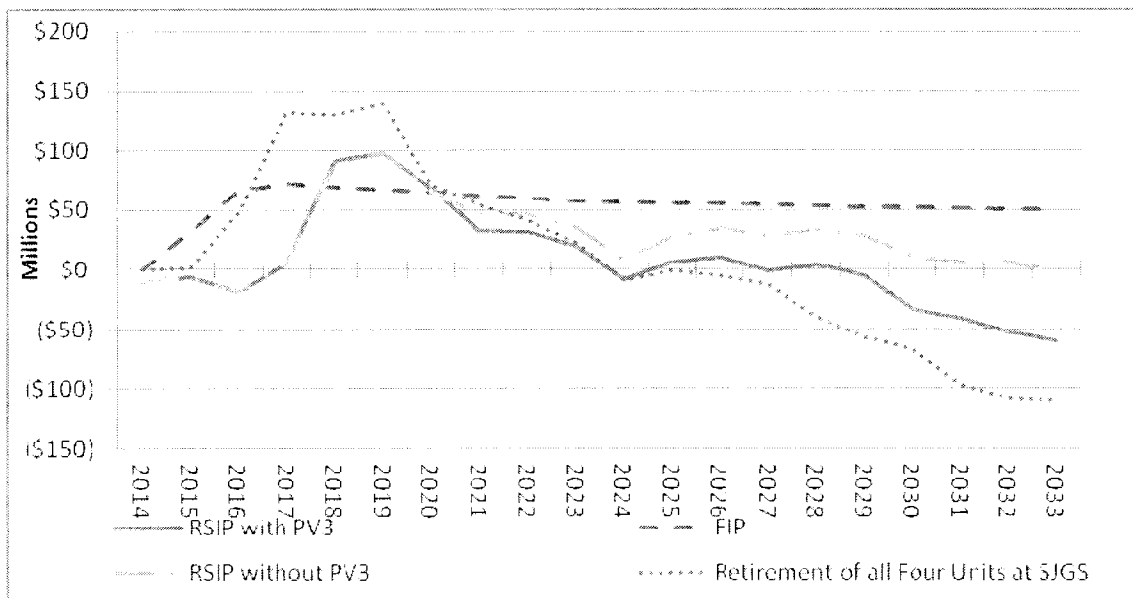
16
17 **Q. SHOULD THE COMMISSION DETERMINE NET BENEFITS BY LOOKING**
18 **AT IMMEDIATE RATE IMPACTS OR COSTS OVER A LONGER TIME**
19 **FRAME?**

20 **A.** Although immediate rate impacts are relevant for the Commission to consider, it is more
21 appropriate to look at the present value of benefits over a longer time frame, such as the
22 IRP planning horizon. If one looks only to the immediate impacts, it could mask the
23 longer term impacts which could prove to be much more costly to customers in the long

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run, or even the short to middle term. Mr. O'Connell's analysis demonstrates that the net present value of the costs of complying with the Revised SIP as proposed in PNM's Application is lower than the net present value of the costs of alternatives. As shown in Table 1, below, FIP compliance would have imposed cost impacts sooner than Revised SIP compliance pursuant to PNM's Application. Although the immediate cost impacts associated with PNM's Application are somewhat higher than the cost impacts associated with FIP compliance in 2018, the cost impacts associated with the FIP start earlier and the situation reverses within five years, with the cost impacts associated with PNM's Application decreasing rapidly while the cost impacts associated with FIP decline very little over the remainder of the planning horizon.

TABLE 1



Q. WHAT DO YOU CONCLUDE FROM THIS ANALYSIS?

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1 **A.** PNM's remaining investment in SJGS Units 2 and 3 was prudently incurred and its
2 actions resulting in retirement prior to full recovery is beneficial to customers.
3 Therefore, PNM should be allowed full recovery of the undepreciated investment in
4 SJGS Units 2 and 3.

5
6 **Q. WHAT WOULD BE THE REPERCUSSIONS IF PNM IS REQUIRED TO**
7 **WRITE OFF THE UNDEPRECIATED INVESTMENT AND NOT RECOVER**
8 **IT IN RATES?**

9 **A.** Although it may result in lower rates in the near-term, it would also result in very
10 unbalanced impacts to shareholders and ultimately increase customer costs. As testified
11 to by Mr. Horn, if shareholders are penalized for reasonable actions taken by PNM,
12 PNM's status in the capital markets is unnecessarily harmed, causing increased capital
13 costs in the future, potential credit rating actions and potential difficulties in accessing
14 the capital markets on favorable terms and conditions. The higher cost of borrowing
15 associated with these issues will ultimately be borne by consumers. Also, it must be
16 emphasized that proper regulation balances the interests of customers and investors with
17 neither interest being paramount. Recovery of the undepreciated investment in SJGS
18 Units 2 and 3 is necessary to properly balance the interests of customers, investors and
19 the overall public interest.

20
21 **Q. IS THE "USED AND USEFUL" CONCEPT A RELEVANT CONSIDERATION**
22 **IN THIS ANALYSIS?**

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1 **A.** No. In order to properly balance the interests of customers and investors, as well as the
2 overall public interest, the used and useful concept is not a proper consideration in the
3 determination of whether or not the undepreciated investment in SJGS Units 2 and 3
4 should be recovered after retirement. I have already described the proper test to be used.

6 **Q. WHY NOT?**

7 **A.** There are a number of reasons. First, the Commission has been clear in previous cases
8 that the used and useful concept is only one factor to be considered in ratemaking. The
9 Commission has said that the appropriate ratemaking treatment of plant does not
10 automatically follow from a used and useful determination.¹¹

12 Second, strict application of the used and useful concept in these circumstances ignores
13 that SJGS Units 2 and 3 have been used and useful in serving customer needs for
14 approximately forty years. PNM has continued to invest in these plants to keep them
15 operational and reliable precisely because they have long been an important low-cost
16 resource in a cost-effective supply portfolio. To ignore this history sends the wrong
17 incentive to utility management regarding the actions to be taken involving resource
18 decisions. As demonstrated, PNM is seeking to retire SJGS Units 2 and 3 because
19 doing so, even with full recovery of the undepreciated investment, is more cost-effective
20 for customers and provides greater environmental benefits than keeping them
21 operational in compliance with the FIP. Thus, full recovery of undepreciated investment

¹¹ *Re Public Service Company of New Mexico*, 101 PUR 4th 126, 163 (NMPSC Case No. 2146, Pt. II, 1989), *aff'd New Mexico Industrial Energy Consumers v. New Mexico Public Service Commission*, 1991-NMSC-018, 111 N.M. 622, 808 P.2d 592; *Re Public Service Company of New Mexico*, 157 PUR 4th 540, 567-568 (NMPUC Case No. 2567, 1994)

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1 under these circumstances is the only way to properly balance the interests of customers
2 and investors and the overall public interest.

3
4 Finally, the used and useful concept is a factor that may be considered for purposes of
5 rate base valuation. As a general regulatory principle, it is not a consideration in
6 determining the amount of expenses that should be recovered. That is determined by
7 reference to prudence and overall reasonableness of the expense to be recovered. As
8 discussed by Mr. Sategna, when plant is retired the remaining costs are taken out of
9 plant in service and should be placed in a regulatory asset account to be amortized over a
10 specified period of time. Without an accounting order such as described by Mr.
11 Sategna, the undepreciated investment becomes an expense item that flows through the
12 profit and loss statement in one year. The accounting order allows amortization of this
13 large expense item over time to mitigate the impacts on both customers and investors.
14 Thus the used and useful concept is not applicable to a determination of whether the
15 undepreciated investment in abandoned plant should be recovered in rates.

16
17 **IV. CCN APPLICATION FOR ADDITIONAL CAPACITY IN SJGS UNIT 4**

18 **AND RECERTIFICATION OF PVNGS UNIT 3**

19
20 **Q. FOR WHAT FACILITIES IS PNM SEEKING A CCN IN THIS CASE?**

21 **A.** PNM is seeking a CCN for additional capacity in SJGS Unit 4 and its ownership interest
22 in PVNGS Unit 3.

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**Q. WHAT FACTORS DOES THE COMMISSION TRADITIONALLY
CONSIDER IN DECIDING ON A CCN APPLICATION FOR OPERATION
OF UTILITY PLANT?**

A. As its name indicates, the Commission considers the public convenience and necessity. The Commission generally has equated the public convenience and necessity with the public interest and has stated that the standard implies a net public benefit.¹² Because the need for additional capacity in SJGS Unit 4 and recertification of PVNGS Unit 3 is dependent on the approval of abandonment of SJGS Units 2 and 3, the requests for abandonment and CCNs for replacement power must be viewed together. I have already addressed the benefits of abandoning SJGS Units 2 and 3, which are dependent on identifying cost-effective replacement power supplies which includes the additional capacity in SJGS Unit 4. Mr. O'Connell's and Mr. Olson's testimony and exhibits provide the demonstration of the net benefits to be derived from providing a CCN for the operation of the additional 78 MW of capacity in SJGS Unit 4 and recertification of PVNGS Unit 3.

Q. ARE THERE OTHER FACTORS THAT MAY BE CONSIDERED?

A. Yes. PNM must demonstrate consistency with its most recent IRP that has been accepted by the Commission, or demonstrate that material changes have occurred which warrant a different course of action. Also, Staff witnesses have testified in previous cases that Staff applies the following standards to its review of CCN applications: (1)

¹² NMPRC Case No. 13-00004-UT, Recommended Decision, page 3 (May 23, 2013), *adopted by* Final Order on Recommended Decision (June 26, 2013)

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1 there is a need for the facility; (2) the facility is the most economical choice among the
2 feasible alternatives; (3) no environmental violations are noted; and, (4) no valid public
3 opposition is received or the applicant is able to mitigate valid public concerns and
4 impacts, thus making the project in the public interest.

5
6 **Q. ARE THESE STANDARDS SATISFIED IN THIS CASE?**

7 **A.** Yes. As demonstrated by Mr. O'Connell, PNM is currently in the process of preparing
8 its 2014 IRP. Earlier in my testimony I discussed the status of the 2011 IRP, including
9 PNM's filing of a Notice of Material Event. Neither it nor the 2008 IRP contemplated
10 the need to identify replacement resources due to retirement of SJGS Units 2 and 3. The
11 adoption of the Revised SIP by the EIB represents a material change warranting a
12 different course of action from what has been provided in earlier IRPs. Clearly there is a
13 need for additional capacity if SJGS Units 2 and 3 are abandoned. Compliance with the
14 Revised SIP as proposed by PNM is the most economical choice among the feasible
15 alternatives. PNM's Application is designed to meet environmental requirements.

16
17 **Q. WHAT ABOUT THE OTHER FACTORS THAT STAFF TRADITIONALLY**
18 **CONSIDERS?**

19 **A.** Mr. Olson discusses SJGS Unit 4 and PVNGS Unit 3 compliance with environmental
20 requirements. PNM understands that some groups may object to PNM acquiring
21 additional capacity in SJGS Unit 4 because of their belief that PNM should not have any
22 interest in coal generation at all. That opposition may be expressed through
23 interventions in this case. However, PNM believes that such opposition is not valid.

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1 PNM's additional ownership does not mean that there will be more coal generation
2 coming from SJGS Unit 4 under the Revised SIP. And the net amount of PNM's
3 ownership of coal generation is reduced by 340 MW under PNM's Application. The
4 opposition from some segments of the public must be balanced by the positive
5 economic impact to PNM's customers, especially given the fact that PNM's additional
6 ownership interest will have zero environmental impact. In addition there have been
7 concerns raised about the impact on the economy of the Four Corners region of New
8 Mexico. Mr. Darnell discusses the measures agreed to by PNM to mitigate the adverse
9 impacts. Also, because PVNGS Unit 3 has already been built and initially certified by
10 the Commission, and it continues to operate, PNM is not aware of any public opposition
11 to having it recertified for New Mexico retail customers.

12
13 **Q. WHAT ELSE MUST PNM SHOW IN ORDER TO OBTAIN A CCN?**

14 **A.** Section 62-9-6 of the PUA requires a showing that, if the applicant is a corporation, it
15 must have its articles of incorporation on file with the Commission. In addition, the
16 PUA requires evidence, as the Commission may require, to demonstrate the consent and
17 franchise of the municipality where the construction and operation of the facility is
18 proposed. I am attaching to my testimony as PNM Exhibit GTO-2 a copy of PNM's
19 currently effective articles of incorporation. I do not believe that the provision requiring
20 evidence of consent by the municipality wherein operation is proposed is applicable.
21 SJGS is not located within the boundaries of any municipality. I would also point out
22 that PNM was already granted a CCN for ownership of 50% of SJGS Unit 4 in NMPSC
23 Case No. 1221 in 1975. As with SJGS Unit 4, I do not believe that this provision of the

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1 PUA is applicable to the circumstances of PVNGS Unit 3. PVNGS is located about
2 fifty miles west of Phoenix, Arizona, outside of any municipality. PNM's existing
3 interest in PVNGS Unit 3 was originally certified by the Commission in NMPSC Case
4 No. 1216 in 1977.

5
6 **Q. WHAT IS THE CONSIDERATION PNM IS LIKELY TO PAY FOR THE**
7 **ADDITIONAL 78 MW OF SJGS UNIT 4?**

8 **A.** PNM will likely trade its interest in an equivalent amount of capacity in SJGS Unit 3.
9 PNM is seeking approval to consummate the transfer as of January 1, 2015. The
10 estimated net book value of the SJGS Unit 3 capacity at January 1, 2015, is
11 approximately \$52.5 million (\$673/kW). The estimated net book value of the SJGS
12 Unit 4 capacity at January 1, 2015, is approximately \$50.7 million (\$650/kW).

13
14 **Q. WHAT VALUATION DOES PNM PROPOSE FOR RATEMAKING**
15 **PURPOSES?**

16 **A.** PNM proposes that the additional capacity in SJGS Unit 4 be valued for ratemaking
17 purposes at its exchange value, i.e. the net book value of 78 MW of SJGS Unit 3 which
18 is estimated to be approximately \$52.5 million. In addition there will be additional
19 investments that will be made in Unit 4 that will be added to rate base, including the
20 addition of SNCR and balanced draft.

21
22 **Q. WHY IS THIS VALUATION REASONABLE FOR RATEMAKING**
23 **PURPOSES?**

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1 **A.** Although the estimated net book value of 78 MW of capacity in SJGS Unit 3 is slightly
2 higher than the equivalent amount of capacity in SJGS Unit 4, the proposed exchange
3 results in net benefits to customers by facilitating compliance with the Revised SIP and
4 avoiding the higher costs associated with other alternatives. By acquiring additional
5 capacity in SJGS Unit 4 from M-S-R and Anaheim in exchange for the equivalent
6 amount of capacity in SJGS Unit 3 prior to retirement, the amount of plant PNM is
7 abandoning is reduced and so is the amount of undepreciated investment that should be
8 recovered, benefitting both customers and shareholders. The fact that the exchange
9 value may be higher than the net book value for 78 MW of Unit 4 does not mean that
10 the acquisition premium should not be recovered in rates. The acquisition is an arm's
11 length transaction. M-S-R and Anaheim on one side of the transaction and PNM on the
12 other side, are unrelated parties acting in their own perceived best interests, with
13 experienced and qualified advisors. Further, PNM's customers benefit from the
14 transaction as already explained.

15
16 **Q. WHY DOES PNM NEED A CCN FOR PVNGS UNIT 3 TO SERVE NEW**
17 **MEXICO RETAIL CUSTOMERS IF PVNGS UNITS 1 AND 2 ARE ALREADY**
18 **PROVIDING SERVICE?**

19 **A.** All three units of PVNGS were granted CCNs in NMPSC Case No. 1216. However, in
20 the late 1980's after the three units of PVNGS became operational, PNM was
21 confronted with having more capacity available to serve customers than the demand for
22 electricity plus a reasonable reserve margin. Due to a number of factors, including
23 impacts on the overall economy from the Arab Oil Embargo of the 1970's and the Three

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1 Mile Island accident, the costs of constructing PVNGS increased dramatically to reflect
2 extremely high financing costs and additional safety measures. Thus the New Mexico
3 Public Service Commission ("NMPSC") was confronted with the need to develop a
4 regulatory plan to properly balance customer and investor interests. Part of that plan
5 was exclusion of PVNGS Unit 3 as a jurisdictional resource. The NMPSC at that time
6 determined that the then present and the future public convenience and necessity, as the
7 NMPSC foresaw it, did not and would not require the use of PVNGS Unit 3 to serve
8 New Mexico retail customers and so authorized its abandonment and decertification.
9 PNM was allowed to make whatever use of it was in the best interests of its
10 shareholders, subject to a hazard sharing arrangement wherein PVNGS Unit 3 supplies
11 needed power to replace power from PVNGS Units 1 or 2 if either of those Units is out
12 of service. Since that time PNM has sold power on the wholesale market from PVNGS
13 Unit 3, the revenues of which have not been counted for jurisdictional ratemaking
14 purposes. All those revenues have accrued exclusively to shareholders. However, since
15 the NMPSC order of abandonment, there have been dramatic changes in power supply
16 needs for New Mexico retail customers that have been caused by new and emerging
17 environmental requirements on coal generation. While nuclear generation remains
18 extremely expensive to build, existing nuclear generation is relatively inexpensive to
19 operate and has zero greenhouse gas emissions. Mr. Olson discusses the transmission
20 arrangements in place to assure available capacity to deliver power from all three
21 PVNGS Units on a consistent basis. Mr. Horn addresses the decommissioning
22 requirements associated with PVNGS Unit 3.

**DIRECT TESTIMONY OF
GERARD T. ORTIZ
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**Q. WHY SHOULD THE COMMISSION GRANT A CCN FOR PVNGS UNIT 3
TO SERVE NEW MEXICO RETAIL CUSTOMERS?**

A. As described by Mr. O'Connell, PNM's analysis shows PVNGS Unit 3 as part of the most cost-effective supply portfolio for PNM even at higher valuations than offered by PNM. In addition to capital costs, there is a wide range of factors that must be considered when evaluating resource alternatives including: fuel costs, other O&M costs, availability of existing plants as opposed to construction of new plants, permitting risks for new plants, reliability, transmission concerns and decommissioning funding. Consideration of these factors points to adding PVNGS Unit 3 to PNM's resource portfolio for serving New Mexico retail customers. Its addition contributes to a properly balanced diversified supply portfolio of nuclear, coal, gas and renewable energy which helps mitigate against the risk of future greenhouse gas emission regulation and volatility of gas prices. The capacity from PVNGS Unit 3 is already owned by PNM and, though decertified and abandoned by the NMPSC almost 25 years ago, it has been used to serve New Mexico retail customers under the hazard sharing arrangement I mentioned earlier. As discussed in more detail by Mr. Olson, it is a high capacity factor plant with an excellent operational track record. Its license to operate has been extended to 2047 by the Nuclear Regulatory Commission. When plant reliability, operating costs and emissions are considered, existing nuclear generation becomes an even more attractive resource.

**Q. WHAT VALUATION FOR PVNGS UNIT 3 IS PNM PROPOSING FOR
RATEMAKING PURPOSES?**

**DIRECT TESTIMONY OF
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1 **A.** PVNGS Unit 3 is not currently subject to Commission jurisdiction. As with the
2 acquisition of any new resource, the acquisition of PVNGS Unit 3 as a jurisdictional
3 resource should be at a fair valuation. A fair valuation in this context is one which fairly
4 compensates PNM for giving up its right to continue operating PVNGS Unit 3 as a
5 resource excluded from Commission jurisdiction, retaining all income through license
6 expiration for the benefit of shareholders. Mr. Darnell identifies the valuation for
7 ratemaking purposes which PNM is willing to accept as fair. Mr. Horn discusses further
8 the proper valuation for PVNGS Unit 3 for ratemaking purposes. This valuation is
9 supported by the independent valuation analysis provided by Mr. Reed.

11 **V. CONCLUSION**

13 **Q. WHAT CONCLUSIONS SHOULD BE DRAWN FROM YOUR TESTIMONY?**

14 **A.** Compliance with the Revised SIP which allows SJGS Units 1 and 4 to operate with
15 NOx emissions limits based on SNCR technology, technology that is much less
16 expensive than SCR technology required by the FIP, is more beneficial to the public
17 than is continued operation of all four units of SJGS with SCR and, for that matter,
18 abandonment of all four units of SJGS which is higher cost and the highest risk
19 alternative analyzed by Mr. O'Connell. The use of SNCR on SJGS Units 1 and 4 is
20 contingent on retiring SJGS Units 2 and 3. Since PNM needs the power that would
21 otherwise be provided by SJGS Units 2 and 3, abandonment can only be allowed if
22 economic replacement power is identified. PNM has identified economic replacement
23 power and therefore compliance with the Revised SIP provides net benefits to customers

**DIRECT TESTIMONY OF
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1 by not having to comply with EPA's FIP. The valuation of the identified additional
2 capacity is reasonable under the circumstances due to the net benefits provided to
3 customers by the additional capacity at the proposed valuation. PNM's Application
4 should be approved as presented.

5
6 **Q. BY WHAT DATE DOES PNM NEED A DECISION FROM THE**
7 **COMMISSION?**

8 **A.** The PUA states that if the Commission has not issued an order granting or denying an
9 application for a CCN within nine months from the date the application is filed with the
10 Commission, approval is deemed granted. However, for good cause the Commission
11 may extend the time for an additional six months.¹³ If the Commission is able to issue
12 an order within the nine month statutory period, i.e. no later than September 20, 2014,
13 that would be close to the point in time when the EPA is expected to act on the Revised
14 SIP. A final order from the Commission in this case would be an important factor for
15 the EPA as it decides whether to approve the Revised SIP. However, if the Commission
16 determines that additional time is necessary, PNM requests that the Commission extend
17 the time no more than an additional three months to December 20, 2014, which
18 coordinates with the anticipated timing of a CCN application for the additional gas
19 generation resources I have described in my testimony. In addition, PNM anticipates
20 beginning construction of the SNCR project in November or December of 2014 to meet
21 the target in-service date of January 2016. This also supports PNM's request for an

¹³ NMSA 1978, § 62-9-1(C) (2005)

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1 order in this case by September 2014. PNM believes that a year is sufficient time to
2 conduct the proceedings in this case.

3

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A. Yes, it does.**

6

GCG #517354

PNM EXHIBIT GTO-1

Consisting of 6 pages

GERARD T. ORTIZ EXPERIENCE AND QUALIFICATIONS

Name: Gerard T. Ortiz

Address: PNM Resources Inc.
414 Silver Ave. SW
Albuquerque, NM 87102

Position:

Professional Engineer Registration: State of New Mexico - #9687

Education: B.S., Electrical Engineering, New Mexico State University, 1981
M.B.A., Finance Concentration, University of New Mexico, 1988

Employment: Employed by Public Service Company of New Mexico since 1981.
Positions held within the Company include:

Executive Director, New Mexico Retail Regulatory Services
Director, Regulatory Policy and Case Management
Director, Market Services
Director, Business Resource Planning
Marketing Manager, Healthcare/Communications Segment
Engineering Supervisor
Distribution Engineer

Testimony Filed:

<u>Proceeding</u>	<u>Regulatory Body</u>	<u>Docket Number</u>
In the Matter of the City of Albuquerque To Institute Retail Pilot Load Aggregation Program and Its Request for Related	NMPUC	2782
In the Matter of PNM's transition plan Pursuant to the Electric Utility Industry Restructuring Act of 1999 – Part II Testimony in Support of Merchant Plant	NMPRC	3137
In the Matter of the application of PNM For Approval of Voluntary Renewable Energy Rider	NMPRC	03-00101-UT

	<u>Proceeding</u>	<u>Regulatory Body</u>	<u>Docket Number</u>
1			
2			
3			
4	In the Matter of the application of PNM	NMPRC	03-00352-UT
5	For Approval of Rio Rancho 2003 Underground		
6	Projects Rider Pursuant to Advice Notice		
7	No. 299		
8			
9	In the Matter of the application of PNM	NMPRC	05-00261-UT
10	For Approval of Gas Energy Efficiency		
11	Programs and Program Cost Rider Pursuant		
12	To the New Mexico Public Utility and		
13	Efficient Use of Energy Acts		
14			
15	In the Matter of the application of PNM	NMPRC	05-00275-UT
16	For a Certificate of Public Convenience		
17	And Necessity for the Afton Generation		
18	Station		
19			
20	In the Matter of the application of PNM	NMPRC	05-00418-UT
21	For Approval of Rio Rancho 2005		
22	Underground Projects Rider Pursuant to		
23	Advice Notice No. 319		
24			
25	In the Matter of Staff's Petition for the	NMPRC	05-00443-UT
26	Docketing of a Case to Address Issues		
27	Arising from PNM's Fiber Optic Network		
28	Pilot Program		
29			
30	In the Matter of the application of PNM	NMPRC	06-00095-UT
31	For Approval of Rio Rancho Unser		
32	Boulevard Road Widening Project		
33	Underground Rider Pursuant to Advice		
34	Notice No. 323		
35			
36	In the Matter of the application of PNM	NMPRC	06-00302-UT
37	For Approval of Rio Rancho 2006 Underground		
38	Project Rider Pursuant to Advice Notice		
39	No. 326		
40			
41	In the Matter of the application of PNM	NMPRC	06-00354-UT
42	For Approval of the ML Tap Underground		
43	Project Rider Pursuant to Advice Notice No.		
44	328		
45			

	Regulatory	Docket
<u>Proceeding</u>	<u>Body</u>	<u>Number</u>
In the Matter of the application of PNM For Approval of Electric Energy Efficiency Programs and Load Management Programs Program Cost Tariff Riders Pursuant to the New Mexico Public Utility and Efficient Use of Energy Acts	NMPRC	07-00053-UT
In the Matter of the Investigation of the Continuation of PNM's Gas Energy Efficiency Programs and Program Cost Tariff Rider	NMPRC	07-00151-UT
In the Matter of the application of PNM For Approval of the City of Santa Fe 2007 Underground Projects Rider Pursuant to Advice Notice No. 335	NMPRC	07-00170-UT
In the Matter of the application of PNM For Approval of the Santa Fe County 2007 Underground Projects Rider Pursuant to Advice Notice No. 339	NMPRC	07-00373-UT
In the Matter of the application of PNM For Approval of the City of Albuquerque Unser 12 2007 Underground Project Rider Pursuant to Advice Notice No. 344	NMPRC	07-00463-UT
In the Matter of the application of PNM For Approval of the City of Rio Rancho 2008 Underground Projects Rider Pursuant to Advice Notice No. 346	NMPRC	08-00100-UT
Inquiry into Charges to Customers Of Public Service Company of New Mexico's Voluntary Renewable Energy Program Under Rider 11 and the Emergency Fuel Adjustment Clause	NMPRC	08-00229-UT
In the Matter of the application of PNM For Approval of the County of Santa Fe 2009 Underground Projects Rider Pursuant to Advice Notice No. 367	NMPRC	09-00056-UT

	<u>Proceeding</u>	<u>Regulatory Body</u>	<u>Docket Number</u>
1			
2			
3			
4	In the Matter of the application of PNM	NMPRC	09-00091-UT
5	For Approval of the City of Rio Rancho 2009		
6	Underground Projects Rider Pursuant to Advice		
7	Notice No. 369		
8			
9	In the Matter of the Application of Public	NMPRC	09-00321-UT
10	Service Company of New Mexico		
11	For Approval of a Plan to		
12	Manage Fuel and Purchased Power Costs		
13	By Entering into Certain Forward Market		
14	Transactions		
15			
16	In the Matter of the Application of Public	NMPRC	10-00018-UT
17	Service Company of New Mexico		
18	For Approval of a New Voluntary		
19	Renewable Energy Program to Replace		
20	The Company's Existing Sky Blue		
21	Program and for Approval to Terminate		
22	The Sky Blue Program		
23			
24	In the Matter of an Investigation by the	NMPRC	10-00042-PL
25	Pipeline Safety Bureau of the New Mexico		
26	Public Regulation Commission Concerning		
27	A Complaint Filed by the International		
28	Brotherhood of Electrical Workers		
29			
30	In the Matter of the Application of Public	NMPRC	10-00073-UT
31	Service Company of New Mexico For		
32	Approval of the City of Rio Rancho 2010		
33	Underground Projects Rider Pursuant to Advice		
34	Notice No. 388		
35			
36	In the Matter of the Application of Public	NMPRC	10-00100-UT
37	Service Company of New Mexico For		
38	Approval of the City of Albuquerque 2010		
39	Underground Projects Rider Pursuant to Advice		
40	Notice No. 391		
41			

	<u>Proceeding</u>	<u>Regulatory Body</u>	<u>Docket Number</u>
1			
2			
3			
4	In the Matter of the Application of Public	NMPRC	10-00280-UT
5	Service Company of New Mexico For		
6	Approval of 2010 Electric Energy Efficiency		
7	And Load Management Programs and		
8	Revisions to Program Cost Tariff Riders		
9	Pursuant to the New Mexico Public		
10	Utility and Efficient Use of Energy Act		
11			
12	In the Matter of the Application of Public	NMPRC	10-00286-UT
13	Service Company of New Mexico for		
14	Approval of the County of Santa Fe		
15	Underground Project Rider Pursuant to Advice		
16	Notice No. 401		
17			
18	In the Matter of the Proposed Revisions to	EIB	EIB-01(R)
19	The State Implementation Plan for		
20	Regional Haze		
21			
22	In the Matter of the Public Service	NMPRC	11-00265-UT
23	Company of New Mexico's		
24	Renewable Energy Portfolio		
25	Procurement Plan for 2012		
26			
27	In the Matter of the Application	NMPRC	12-00007-UT
28	Of Public Service Company of New Mexico		
29	For Approval of Renewable Energy		
30	Rider No. 36 Pursuant to Advice		
31	Notice No. 439 and for Variances		
32	From Certain Filing Requirements		
33			
34	In the Matter of Public Service	NMPRC	12-00131-UT
35	Company of New Mexico's		
36	Renewable Energy Portfolio		
37	Procurement Plan for 2013		
38			
39	In the Matter of Public Service	NMPRC	13-00175-UT
40	Company of New Mexico's Application		
41	For a Certificate of Public Convenience		
42	And Necessity and Related Approvals		
43	For the La Luz Energy Center		
44			

	Regulatory	Docket
<u>Proceeding</u>	<u>Body</u>	<u>Number</u>
In the Matter of Public Service Company of New Mexico's Renewable Energy Portfolio Procurement Plan for 2013 And Proposed 2014 Rider Rate under Rate Rider No. 36	NMPRC	13-00183-UT
In the Matter of the Application Of Public Service Company of New Mexico For Continued Use of Fuel and Purchased Power Cost Adjustment Clause	NMPRC	13-00187-UT

PNM EXHIBIT GTO-2

Consisting of 20 pages



OFFICE OF THE
PUBLIC REGULATION COMMISSION

RESTATED CERTIFICATE OF INCORPORATION

OF

PUBLIC SERVICE COMPANY OF NEW MEXICO

3243953

The Public Regulation Commission certifies that duplicate originals of Restated Articles of Incorporation attached hereto, duly signed and verified pursuant to the provisions of the

BUSINESS CORPORATION ACT

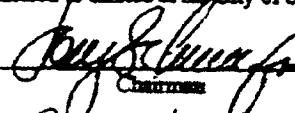
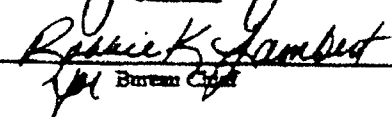
(53-11-1 to 53-18-12 NMSA 1978)

have been received by it and are found to conform to law.

Accordingly, by virtue of the authority vested in it by law, the Public Regulation Commission issues this Restated Certificate of Incorporation and attaches hereto a duplicate original of the Restated Articles of Incorporation.

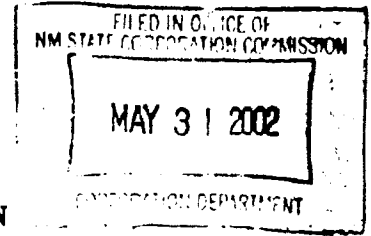
Dated: MAY 31, 2002

In testimony whereof, the Public Regulation Commission of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to be affixed at the City of Santa Fe.


Chairman

Secretary

**ARTICLES OF AMENDMENT TO
THE RESTATED ARTICLES OF INCORPORATION
OF 0089680
PUBLIC SERVICE COMPANY OF NEW MEXICO**

3243953



Pursuant to the provisions of NMSA 1978, Section 53-13-4 (2001), Public Service Company of New Mexico adopts the following Articles of Amendment to its Restated Articles of Incorporation, as amended:

I. ARTICLES FIRST through EIGHTH of the Restated Articles of Incorporation, as previously amended, are amended as follows, and ARTICLES NINTH through FOURTEENTH are deleted:

A. *ARTICLE FIRST is amended to read: "ARTICLE I*

Name

The name of the Corporation is **Public Service Company of New Mexico."**

B. *ARTICLE SECOND is amended to read: "ARTICLE II*

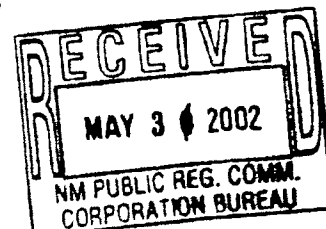
Period of Duration

The period of its duration is perpetual."

C. *ARTICLE THIRD is amended to read: "ARTICLE III*

Purpose

The purposes of the Corporation are to provide electric and gas utility services and to engage in any other lawful business for which corporations may be incorporated under the laws of the State of the New Mexico. The Corporation shall have all the powers that are lawful for a corporation to exercise under New Mexico law."



D. *ARTICLE FOURTH is amended to read: "ARTICLE IV*

Authorized Number of Shares

A. **Authorized Capital Shares.** The total number of shares of stock which the Corporation shall have the authority to issue is Forty (40) Million shares of Common Stock, no par value, and Ten (10) Million shares of Preferred Stock, no par value, and shall be issued for such minimum consideration as authorized by the Board of Directors.

B. **Common Stock.** The Board of Directors is authorized by resolution to provide from time to time for the issuance of shares of Common Stock to existing holders of Common Stock subject to the following restrictions and qualifications:

(1) **Dividends.** Subject to any rights of holders of Preferred Stock, dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors in accordance with dividend policy established by the shareholders may be declared and paid on the Common Stock from time to time from any available funds, property or shares.

(2) **Voting Rights.** Subject to any rights of holders of Preferred Stock to vote on a matter as a class or series, each outstanding share of Common Stock shall be entitled to one vote on each matter submitted to a vote of holders of Common Stock at a meeting of shareholders. Cumulative voting for the election of directors of the Corporation shall not be permitted.

(3) **Liquidation, Dissolution or Winding Up.** In the event of any liquidation, dissolution or winding up of the Corporation, the holders of Common Stock shall be entitled to receive the net balance of any assets of the Corporation remaining after any distribution of the assets of the Corporation to the holders of

Preferred Stock to the extent necessary to satisfy any preferences to the assets and satisfaction of all debt of the Corporation.

(4) Other Preferred Stock Rights. The issuance of shares of Common Stock to existing holders of Common Stock shall be subject to the rights of holders of outstanding Preferred Stock as provided in Article VIII.

C. Preferred Stock. The Board of Directors is authorized by resolution to provide from time to time for the issuance of shares of Preferred Stock in series and to fix, from time to time before issuance, the designation, preferences, privileges and voting powers of the shares of each series of Preferred Stock and its restrictions or qualifications, limited to the following:

- (1) the serial designation, authorized number of shares and the stated value;
- (2) the dividend rate, if any, the date or dates on which the dividends will be payable, and the extent to which the dividends may be cumulative;
- (3) the price or prices at which shares may be redeemed, and any terms, conditions and limitations upon any redemption;
- (4) the amount or amounts to be received by the holders in the event of dissolution, liquidation, or winding up of the Corporation;
- (5) any sinking fund provisions for redemption or purchase of shares of any series;
- (6) the terms and conditions, if any, on which shares may be converted into, or exchanged for, shares of other series of Preferred Stock, of the

Corporation, but may not be converted into, or exchanged for, shares of Common Stock of the Corporation; and

(7) the voting rights, if any, for the shares of each series, limited to circumstances when:

(a) the Corporation fails to pay dividends on the applicable series; and

(b) when a proposed amendment to these Articles would have an adverse impact on the rights and privileges of the preferred stockholders.

D. Preemptive Rights. The holders of Preferred Stock shall not have a preemptive right to acquire authorized but unissued shares, securities convertible into shares or carrying a right to subscribe to or acquire shares, except under such terms and conditions as may be provided by the Board of Directors."

E. *ARTICLE FIFTH is amended to read: "ARTICLE V*

Directors

The number of directors of the Corporation shall be as specified in the Bylaws but shall be no less than three (3) and no more than twelve (12). Directors shall be elected annually at the annual meeting of shareholders."

F. *ARTICLE SIXTH is amended to read: "ARTICLE VI*

Limitation on Liability

The liability of the directors of the Corporation for monetary damages shall be eliminated or limited to the fullest extent permissible under New Mexico law as it may be amended from time to time."

G. *ARTICLE SEVENTH is amended to read: "ARTICLE VII*

Bylaws

A. The common shareholders of the Corporation are authorized to alter, amend and repeal the Corporation's Bylaws, or adopt new Bylaws. The Board of Directors of the Corporation is authorized to alter, amend and repeal the Corporation's Bylaws, except as provided in this Article."

B. The Board of Directors is not authorized to alter, amend or repeal the provisions of the Corporation's Bylaws relating to the number of Directors, compensation of Directors, selection of the Chairman of the Board of Directors, and selection of the President.

C. The Bylaws of the Corporation shall:

(1) provide for the shareholders to fix the number of directors;

(2) require that Board compensation be established by the shareholders;

(3) require that the Chairman of the Board be selected by the shareholders; and

(4) require that the President of the Corporation be selected by the shareholders."

H. *ARTICLE EIGHTH is amended to read: "ARTICLE VIII*

1965 SERIES PREFERRED STOCK

A. The only series of Preferred Stock that is outstanding as of the effectiveness of these Restated Articles of Incorporation is the Cumulative Preferred Stock, 1965 Series, 4.58% (the "1965 Series Preferred Stock"). The rights and privileges accorded to

holders of the 1965 Series Preferred Stock shall not be diminished as a result of adoption of these Restated Articles of Incorporation. The specific terms of the 1965 Series Preferred Stock are set forth in the "Certificate Setting Forth Resolutions of Board of Directors Creating a Series of Cumulative Preferred Stock and Fixing the Amount, Designation, Characteristics and Terms Thereof", dated January 21, 1965 (the "1965 Series Resolutions"). The general rights and privileges of the 1965 Series Preferred Stock are set forth in this Article, which shall be applicable only to the 1965 Series Preferred Stock. The 1965 Series Preferred Stock is senior to the Common Stock and the Common Stock is subject to all the rights and preferences of the 1965 Series Preferred Stock.

B. The 1965 Series Preferred Stock has the preferences and voting powers or restrictions, or qualifications as set forth in this Article. In addition, the 1965 Series Preferred Stock has the designations, terms and characteristics set forth in the 1965 Series Resolutions.

C. The holders of the 1965 Series Preferred Stock, in preference to the holders of any stock ranking junior to the 1965 Series Preferred Stock, shall be entitled to receive cash dividends at the rate per annum specified in the 1965 Series Resolutions, and no more, payable on dates fixed by the Board of Directors at the time of creation of the series, when and as declared by the Board of Directors, out of any funds of the Corporation legally available for that purpose. The dividends shall be cumulative from the first day of the dividend period in which the stock shall have been originally issued and shall be paid, or declared and set apart for payment, before any dividends shall be declared or paid on or set apart for any class of stock ranking junior to the 1965 Series

Preferred Stock as to dividends or assets, so that if, for any past dividend period, dividends or the current dividend period dividends on the 1965 Series Preferred Stock shall not have been paid, or declared and set apart for payment, the deficiency shall be fully paid or declared and funds set apart for the payment of those dividends before any dividends shall be declared or paid on or set apart for any class of stock ranking junior to the 1965 Series Preferred Stock as to dividends or assets. No dividends shall at any time be paid on or set apart for any share of 1965 Series Preferred Stock unless at the same time there shall be paid on or set apart for all shares of 1965 Series Preferred Stock then outstanding dividends in such amount that the holders of all shares of 1965 Series Preferred Stock shall receive or have set apart for them a uniform percentage of the full annual dividend to which they are, respectively, entitled. The term "dividend period," as used herein, refers to each period of three consecutive calendar months ending on the day next preceding each date on which dividends, if declared, shall be payable. Unless and until full cumulative dividends upon the 1965 Series Preferred Stock for all past dividend periods and for the current dividend period shall have been paid, or declared and set apart for payment, no dividend whatsoever (other than a dividend payable in shares of any class of stock ranking junior to the 1965 Series Preferred Stock as to dividends and assets) shall be paid or declared on, and no distribution shall be made or ordered in respect of, any class of stock ranking junior to the 1965 Series Preferred Stock as to dividends or assets, and no money (other than the net proceeds received from the sale of stock ranking junior to the 1965 Series Preferred Stock as to dividends or assets) shall be set aside or applied to the purchase or redemption (through a sinking fund or otherwise)

of any class of stock ranking junior to the 1965 Series Preferred Stock as to dividends or assets.

D. In the event of the liquidation, dissolution or winding up, whether voluntary or involuntary, of the Corporation, the holders of shares of 1965 Series Preferred Stock shall be entitled, in preference to any class of stock ranking junior to the 1965 Series Preferred Stock as to dividends or assets, to be paid in full, out of the net assets of the Corporation, the liquidation price of their shares plus an amount equal to the accrued dividends on their shares to the date of distribution. In the event the liquidation, dissolution or winding up of the Corporation is voluntary, the holders of the 1965 Series Preferred Stock shall also be entitled to receive for each share, in preference to any class of stock ranking junior to the 1965 Series Preferred Stock as to dividends or assets, such premium or premiums as may be fixed by the Board of Directors at the time of creation of the series. Unless and until payment in full is made to the holders of shares of the 1965 Series Preferred Stock, no distribution shall be made to any class of stock ranking junior to the 1965 Series Preferred Stock as to dividends or assets. If upon any liquidation, dissolution or winding up, the assets distributable among the holders of the 1965 Series Preferred Stock are insufficient to permit the payment of the full preferential amounts to which they are entitled, then the entire assets of the Corporation to be distributed shall be distributed among the holders of the 1965 Series Preferred Stock ratably in proportion to the full preferential amounts to which they are respectively entitled. A statutory consolidation or merger of the Corporation shall not be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this section.

E.(1) The Board of Directors of the Corporation shall have the right at any time, subject to any initial limiting period set forth in the 1965 Series Resolutions, and from time to time to redeem all or any part of the 1965 Series Preferred Stock by paying to the holders of the shares to be redeemed the redemption price or prices of the shares, which shall include, in each case, an amount equal to the accrued dividends on the shares to the date fixed for redemption. In the case of the redemption of shares, the redemption price or prices shall be the redemption price or prices as fixed by the Board of Directors at the time of creation of the series plus an amount equal to the accrued dividends to the date fixed for redemption. Not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption of any shares of the 1965 Series Preferred Stock, notice of the intention of the Corporation to redeem the shares, specifying the date and place of redemption, shall be deposited in a United States post office or mail box at any place in the United States addressed to each holder of record of the shares to be redeemed at his or her address as it appears upon the records of the Corporation and the time of the mailing shall be deemed to be the time of the giving of notice.

(2) In every case of redemption of less than all of the outstanding shares of the 1965 Series Preferred Stock, at the option of the Board of Directors, the redemption shall be made pro rata or the shares of the series to be redeemed shall be chosen by lot in the manner prescribed by resolution of the Board of Directors; provided, however, that the selection shall be made as set forth in this subsection, in respect of any registered holder of the 1965 Series Preferred Stock having one thousand (1,000) shares or more of the 1965 Series Preferred Stock registered in his or her name. If, at the time any selection by lot is to be made, one thousand (1,000) shares or more of the aggregate

number of shares of the 1965 Series Preferred Stock are registered in the name of one holder, then before making the selection by lot, the Corporation shall allocate to each registered holder holding one thousand (1,000) shares or more of the series a proportion of the shares to be redeemed equal, as nearly as practicable, to the proportion that the shares of the series then outstanding registered in the name of the holder bears to all shares of the series then outstanding. In that case, the selection by lot of the number of shares to be redeemed not so allocated shall be made from the registered holders holding less than one thousand (1,000) shares of the series.

(3) The Corporation may deposit in trust with a bank or trust company the aggregate redemption price of the shares to be redeemed, for payment on or before the redemption date to the holders of the shares, upon surrender of the certificates for the shares. The bank or trust company shall be named in the notice of redemption, shall be located in the City of New York, New York, and shall have capital, surplus and undivided profits aggregating at least \$2,000,000. The deposit in trust may, at the option of the Corporation, contain terms so that, if the holder of any shares of 1965 Series Preferred Stock called for redemption does not claim the amount on deposit for the payment of the redemption price within six years after the date fixed for redemption, the bank or trust company shall on demand pay the amount to the Corporation or its successor. The bank or trust company shall thereafter be released from any and all further liability with respect to the payment of the redemption price and the holder of the shares shall be entitled to look only to the Corporation or its successor for payment. Upon the giving of notice of redemption and upon the deposit of the redemption price, or if no deposit is made, upon the redemption date (unless the Corporation defaults in

making payment of the redemption price as set forth in the notice), the holders shall cease to be stockholders with respect to the shares, and from and after the making of the deposit and the giving of the notice, or, if no deposit is made, after the redemption date (the Corporation not having defaulted in making payment of the redemption price as set forth in the notice), the shares shall no longer be transferable on the books of the Corporation, and the holders shall have no interest in or claim against the Corporation with respect to the shares, but shall be entitled only to receive the redemption price from the bank or trust company, or from the Corporation, without interest, upon surrender of the certificates.

(4) The term "accrued dividends," as used in this Article, shall mean, in respect of any share of the 1965 Series Preferred Stock as of any given date, the amount of dividends payable on the share, whether or not earned or declared, computed, at the annual dividend rate fixed for the share, from the date on which dividends on the share became cumulative through the given date, less the aggregate amount of all dividends which have been paid or which have been declared and set apart for payment on the share. Accumulations of dividends shall not bear interest.

(5) Upon the redemption of shares of the 1965 Series Preferred Stock, the shares shall resume the status which they had prior to the adoption by the Board of Directors of resolutions creating the series, as provided in section B of this Article and shall thereafter have the status of authorized but unissued shares of the Preferred Stock of the Corporation and may be reissued from time to time upon adoption of a resolution or resolutions by the Board of Directors of the Corporation creating a new series of Preferred Stock or increasing the number of shares constituting any series of Preferred

Stock then outstanding, as provided in section B and subject to the provisions of section F.

(6) Nothing contained in this section shall limit any legal right of the Corporation to purchase any shares of the 1965 Series Preferred Stock.

F.(1) So long as any shares of 1965 Series Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the holders of at least two-thirds of the outstanding shares of 1965 Series Preferred Stock:

(a) Amend the provisions of the Articles of Incorporation so as to create or authorize any stock ranking prior in any respect to the 1965 Series Preferred Stock; or issue any such stock; or

(b) Change, by amendment to the Articles of Incorporation, or otherwise, the terms and provisions of the 1965 Series Preferred Stock so as to affect adversely the rights and preferences of the holders.

No consent of the holders of the 1965 Series Preferred Stock shall be required in respect of any transaction enumerated in this subsection (1) if at or prior to the time when the transaction is to take effect provision is made for the redemption or other retirement of all shares of 1965 Series Preferred Stock at the time outstanding, the consent of which would otherwise be required.

(2) So long as any shares of the 1965 Series Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the holders of a majority of the total number of shares of 1965 Series Preferred Stock then outstanding:

(a) Issue any shares of the 1965 Series Preferred Stock or shares of any stock ranking on a parity with the 1965 Series Preferred Stock, other than in

exchange for, or for the purpose of effecting the redemption or other retirement of, shares having an aggregate redemption price approximately equal to the redemption price of the shares being issued, unless:

(I) the net income (determined in accordance with accepted accounting principles) of the Corporation available for the payment of dividends shall, for a period of twelve consecutive calendar months within the fifteen calendar months next preceding the issue of the shares, have been at least two (2) times an amount equal to the dividend requirements for one year on all shares of the 1965 Series Preferred Stock and on all other shares of stock, if any, ranking prior to or on a parity with the 1965 Series Preferred Stock, which shall be outstanding after the issue of the shares proposed to be issued; and

(II) the gross income after federal income taxes (determined in accordance with accepted accounting principles) of the Corporation available for the payment of interest charges shall, for a period of twelve consecutive calendar months within the fifteen calendar months next preceding the issue of the shares, have been at least one and one-half ($1\frac{1}{2}$) times the aggregate, for a twelve months period, of the dividend requirement and the annual interest charges on all funded indebtedness and notes payable of the Corporation maturing more than twelve months after, and outstanding at, the date of the issue of the shares; and

(III) the capital represented by the Common Stock and the surplus accounts of the Corporation shall be not less than the aggregate

amount payable on the involuntary dissolution, liquidation or winding up of the Corporation, in respect of all shares of the 1965 Series Preferred Stock and all shares of stock, if any, of equal or prior ranking, which shall be outstanding after the issue of the shares proposed to be issued.

(b) Issue or assume any unsecured debentures or other unsecured indebtedness, but excluding unsecured indebtedness maturing within eighteen months after issuance, for any purpose other than the refunding of secured or unsecured indebtedness previously created or assumed by the Corporation and then outstanding, or the retiring, by redemption or otherwise, of shares of the 1965 Series Preferred Stock or shares of any stock of equal or prior ranking, if

(I) immediately after the issue or assumption the total amount of all indebtedness of the Corporation, both secured and unsecured indebtedness due more than one year after issuance shall exceed sixty-five per cent (65%) of the aggregate of (i) the total amount of all indebtedness maturing more than one year from the date as of which that unsecured indebtedness will be issued, and then outstanding, and (ii) the total of the capital and surplus of the corporation, as then recorded on its books; and

(II) the gross income after federal income taxes (determined in accordance with accepted accounting principles) of the Corporation available for the payment of interest charges shall not, for a period of twelve consecutive calendar months within the fifteen calendar months next preceding the issue of the unsecured debentures, have been at least one and three quarters ($1\frac{3}{4}$) times the aggregate of the dividend

requirements for one year on all shares of the 1965 Series Preferred Stock and on all other shares of stock, if any, of equal or prior ranking to the 1965 Series Preferred Stock, which shall be then outstanding, and the annual interest charges on all funded indebtedness and notes payable of the Corporation maturing more than twelve months after, and outstanding at, the date of the issue of the unsecured debentures or other unsecured indebtedness.

No consent of the holders of 1965 Series Preferred Stock shall be required in respect of any transaction enumerated in this subsection (2) if, at or prior to the time when the transaction is to take effect, provision is made for the redemption or other retirement of all shares of the 1965 Series Preferred Stock at the time outstanding, the consent of which would otherwise be required.

No provision contained in this section is intended or shall be construed to relieve the Corporation from compliance with any applicable statutory provision requiring the vote or consent of a greater number of the outstanding shares of the 1965 Series Preferred Stock.

G. So long as any shares of the 1965 Series Preferred Stock are outstanding, the Corporation shall not declare or pay any dividends on its Common Stock (other than dividends payable in Common Stock) or make any distribution on, or purchase or otherwise acquire for value, any of its Common Stock (each such payment, distribution, purchase or acquisition being referred to as a "common stock dividend"), except to the extent permitted by the following provisions of this section:

(a) No common stock dividend shall be declared or paid in an amount which, together with all other common stock dividends declared in the twelve consecutive calendar months ended with and including the calendar month in which the proposed declaration is made, would in the aggregate exceed fifty per cent (50%) of the net income of the Corporation available for dividends on its Common Stock for the twelve consecutive calendar months ending on the last day of the calendar month next preceding the declaration of the common stock dividend, if at the end of the calendar month the ratio ("capitalization ratio") of the sum of (i) the capital represented by the Common Stock (including premiums on Common Stock) and (ii) the surplus accounts, of the Corporation, to the sum of (x) the total capital and (xx) the surplus accounts, of the Corporation (after adjustment, in each case, of the surplus accounts to reflect payment of the common stock dividend) would be less than twenty per cent (20%);

(b) If the capitalization ratio shall be twenty per cent (20%) or more, but less than twenty-five per cent (25%), no common stock dividend shall be declared or paid in an amount which, together with all other common stock dividends declared in the twelve consecutive calendar months ended with and including the calendar month in which the proposed declaration is made, would exceed seventy-five per cent (75%) of the net income of the corporation available for dividends on its Common Stock for the twelve consecutive calendar months ending on the last day of the calendar month next preceding the declaration of the common stock dividend; and

(c) If the capitalization ratio shall be twenty-five per cent (25%) or more, no common stock dividend shall be declared or paid which would reduce capitalization ratio to less than twenty-five per cent (25%) except to the extent permitted by paragraphs (a) and (b) of this section.

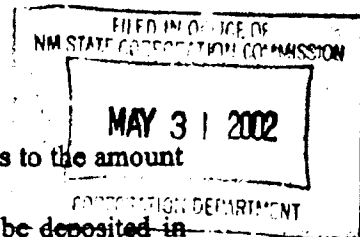
For the purpose of paragraphs (a), (b) and (c): (i) the net income of the Corporation available for dividends on its Common Stock for any twelve month period is to be computed after deducting an amount equal to dividends accrued for the twelve month period on shares of stock having preference as to dividends over the Common Stock and (ii) the total capital of the Corporation shall be deemed to consist of the aggregate of (x) the principal amount of all outstanding indebtedness of the Corporation maturing one year or more after the date of issue and (xx) the par or stated value of all outstanding capital stock (including premiums on capital stock) of all classes of the Corporation. All indebtedness and capital stock owned by the Corporation shall be excluded in determining total capital. Surplus accounts shall be deemed to include all earned surplus, paid in surplus, capital surplus or any other surplus of the Corporation. Purchases or other acquisitions of Common Stock shall be deemed, for the purpose of this section, to have been made as of the date on which the purchases or acquisitions are consummated.

H. No holder of the 1965 Series Preferred Stock shall be entitled to vote for the election of directors or in respect of any matter, except as provided in section F of this Article or in this section, or as may be required by law. If, however, dividends payable on the outstanding 1965 Series Preferred Stock shall be accumulated and unpaid in an

amount equivalent to four (4) quarterly dividends, the holders of the stock shall be entitled, until all accumulated and unpaid dividends shall have been fully paid or declared and funds set apart for payment: (a) voting for as a single class, at the next annual meeting of stockholders, to elect one third of the directors to be elected at that annual meeting of stockholders and at the following annual meeting of stockholders, if dividends payable on the outstanding 1965 Series Preferred Stock continue to be due and unpaid, to elect a majority of the directors to be elected at that annual meeting of stockholders, and to continue to elect a majority of the Board of Directors until all accumulated and unpaid dividends on the outstanding 1965 Series Preferred Stock shall have been paid; and (b) to vote on all questions so that the holders shall have one (1) vote for each ten dollars (\$10) of stated value per share of 1965 Series Preferred Stock (stated values not equaling dollar increments shall be rounded up to the next ten dollar increment for these purposes), and this right to vote shall not be cumulative; provided that if and when profits available for dividends are in excess of accumulated and unpaid dividends, then the declaration and payment of the dividends shall not be unreasonably withheld.

In consideration of the issue by the Corporation, and the purchase by the holders, of shares of the capital stock of the Corporation, each and every present and future holder of shares of the capital stock of the Corporation shall be conclusively deemed, by acquiring or holding the shares, to have expressly consented to each and every term and provision of this section and to have agreed that the voting rights of the holder and their restrictions and qualifications shall be as set forth in this section.

I. No share of stock or evidence of indebtedness shall be deemed to be "outstanding" as that term is used in the Articles of Incorporation, as amended, if, prior



to or concurrently with the event in reference to which a determination as to the amount outstanding is to be made, the requisite funds for its redemption shall be deposited in trust for that purpose and the requisite notice for its redemption shall be given or the depository of the funds shall be irrevocably authorized and directed to give or complete the notice of redemption."

II. This amendment was adopted by the shareholders on May 17, 2002.

III. The number of shares outstanding and entitled to vote on the amendment was 39,117,799.

IV. The number of shares voting in favor of the amendment was 39,117,799 with no votes being cast against and no votes abstaining.

PUBLIC SERVICE COMPANY OF NEW MEXICO

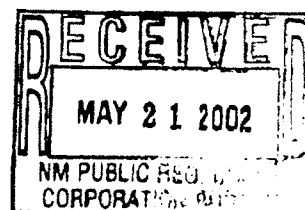
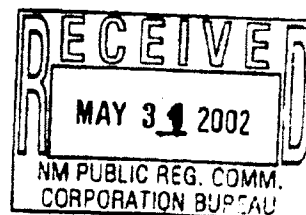
By:


JERRY STERBA

Chairman, President and Chief
Executive Officer

DATED:

May 17, 2002



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL TO ABANDON)
SAN JUAN GENERATING STATION UNITS)
2 AND 3, ISSUANCE OF CERTIFICATES)
OF PUBLIC CONVENIENCE AND)
NECESSITY FOR REPLACEMENT POWER)
RESOURCES, ISSUANCE OF ACCOUNTING)
ORDERS AND DETERMINATION OF)
RELATED RATEMAKING PRINCIPLES AND)
TREATMENT,)

Case No. 13-00____-UT

PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)

Applicant)

AFFIDAVIT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

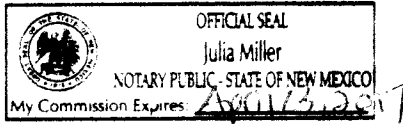
GERARD T. ORTIZ, Vice President, Regulatory Affairs for Public Service Company of New Mexico, upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Gerard T. Ortiz** and it is true and accurate based on my own personal knowledge and belief.


SIGNED this 5th day of December, 2013.



GERARD T. ORTIZ

SUBSCRIBED AND SWORN to before me this 5th day of December, 2013.





NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

April 23, 2017