DOCKET NUMBER
26-0000114
FILED DATE & TIME
11/02/2026 12:24 PM MST
FILED WITH NMPRC

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF PURCHASED POWER AGREEMENTS, ENERGY STORAGE AGREEMENTS, AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR 2029-2032 SYSTEM RESOURCES AND THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT	)	**Docket 26-0000114**

RECOMMENDED DECISION

Jocelyn Barrett
Chief Hearing Examiner

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Hearing Examiner

November 2, 2026

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ABBREVIATIONS

ABCWUA	Albuquerque Bernalillo County Water Utility Authority
CCAE	Coalition for Clean Affordable Energy
CCN	Certificate of Public Convenience and Necessity
Commission	New Mexico Public Regulation Commission
DCA	Development and Construction Agreement
ESA	Energy Storage Agreement
FPPCAC	Fuel and Purchased Power Cost Adjustment Clause
IRP	Integrated Resource Plan
Mid-State	Mid-State Transmission Project
MW	Megawatt(s)
NMAC	New Mexico Administrative Code
NM AREA	New Mexico Affordable Reliable Energy Alliance
NMDOJ	New Mexico Department of Justice
NMEDD	New Mexico Economic Development Department
NMSA 1978	New Mexico Statutes Annotated 1978
PNM	Public Service Company of New Mexico
PPA	Purchased Power Agreement
PUA	Public Utility Act
Rule 551	17.9.551 NMAC
SB 170	Senate Bill 170 (2025)
Staff	Commission Utility Division Staff

I. EXECUTIVE SUMMARY

(1) On May 29, 2026, Public Service Company of New Mexico ("PNM") filed its Application for Approval of Purchased Power Agreements, Energy Storage Agreements, and Certificate of Public Convenience and Necessity for 2029-2032 System Resources and the Abandonment of the Four Corners Power Plant ("Application"). The Application presents a portfolio of generation and storage resources intended to address PNM's identified system needs during the 2029-2032 period, anticipated economic-development load growth, and other resource-planning objectives.

(2) As relevant to Phase I of this proceeding, PNM requests approval pursuant to 17.9.551 NMAC ("Rule 551") of four long-term purchased power agreements ("PPAs") and six long-term energy storage agreements ("ESAs"). The PPAs consist of two agreements for a combined 800 megawatts ("MW") of wind generation from the Palomas facilities, a 150 MW solar PPA for the Cat Hills facility, and a 90 MW solar PPA for the Wildcat facility. The ESAs consist of 150 MW of four-hour battery storage at Cat Hills, 50 MW of four-hour battery storage at Wildcat, 150 MW of four-hour battery storage at Gila Monster, 90 MW of eight-hour battery storage at TAG II, 60 MW of eight-hour battery storage at Britton, and 110 MW of eight-hour battery storage at Encino. PNM also requests an accounting order pursuant to NMSA 1978, Section 62-6-26 for deferred ratemaking treatment of certain costs associated with the Palomas PPA, Wildcat PPA, and Wildcat ESA that PNM identifies as associated with anticipated economic-development load.

(3) The Application originally included additional requests for a certificate of public convenience and necessity ("CCN") for the La Luz II natural-gas generation project, abandonment of PNM's generation interest in the Four Corners Power Plant, and related relief, and identified continued operation of the Reeves Generating Station through 2044 as an assumption underlying PNM's proposed resource portfolio. On August 19, 2026, the proceeding was bifurcated. Phase I

addresses the PPAs and ESAs and the accounting-order relief associated with those resources. The remaining requests and issues presented by the Application were reserved for Phase II. This Recommended Decision therefore addresses only Phase I.

(4) The parties substantially narrowed the issues requiring adjudication in Phase I. The record supports PNM's need for additional resources during the 2029-2032 period, and Staff recommends approval of the four PPAs and six ESAs. Staff determined that the Application was timely under Rule 551 and that the proposed agreements satisfy the requirements of that rule. The remaining disputes primarily concern the relationship between the Palomas PPAs and the proposed Mid-State Transmission Project ("Mid-State"), PNM's illustrative cost-allocation and rate-impact evidence, and PNM's requested accounting treatment under Section 62-6-26.

(5) The Palomas PPAs present a unique issue because additional transmission capability is necessary to deliver the Palomas resources to PNM's system and PNM presently anticipates that Mid-State will provide that capability. PNM has not requested approval of Mid-State in this proceeding, and concerns were raised regarding whether approval of the Palomas PPAs could affect issues that properly belong in a future proceeding concerning Mid-State. The Hearing Examiners recommend approval of the Palomas PPAs but conclude unequivocally that such approval does not constitute or imply approval of Mid-State or predetermine its need, route, location, right-of-way, or other matters reserved for a future proceeding. The Hearing Examiners further recommend adoption of Staff's proposed protection of a $654.5 million threshold, above which PNM must obtain further Commission authorization before recovering transmission and network-upgrade costs from customers if material changes in transmission costs undermine the competitive basis upon which the Palomas PPAs were selected.

(6) PNM also presented illustrative analyses concerning the allocation of costs associated with the proposed resources and their potential effect on customer rates. The parties disagree regarding the relevance and weight that should be afforded those analyses. Because PNM does not request approval of a final cost-allocation methodology or determination of customer-class responsibility in Phase I, the Hearing Examiners recommend that the analyses be treated as illustrative and nonbinding. Except where an existing mechanism permits direct assignment, the ultimate allocation and recovery of these costs should remain subject to determination in an appropriate future ratemaking proceeding.

(7) PNM further requests authority under Section 62-6-26(E) to defer certain costs associated with the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA that it identifies as associated with anticipated economic-development load. The Hearing Examiners conclude that PNM has not established that the requested accounting treatment satisfies the statutory requirements of Section 62-6-26(E). Nevertheless, the Commission may authorize deferred accounting treatment independently under its general ratemaking authority. The Hearing Examiners therefore recommend denial of the request under Section 62-6-26(E), but approval of a limited accounting order under the Commission's general authority, subject to conditions restricting the deferral to costs associated with no more than 150 MW[1] of anticipated incremental load, requiring separate accounting and annual reporting, minimizing deferred balances, and preserving the Commission's authority over subsequent cost recovery.

(8) Accordingly, and for the reasons discussed in this Recommended Decision, the Hearing Examiners recommend that the Commission approve the four PPAs and six ESAs presented in

[1] This amount is an aggregate maximum for determining potentially eligible deferred costs, not a finding of actual demand or a guarantee of recovery.

Phase I, including the Palomas PPAs subject to the customer protections described below; clarify the limited effect of that approval with respect to any future Mid-State proceeding; treat PNM's illustrative cost-allocation and rate-impact evidence as nonbinding for future ratemaking purposes; deny PNM's requested accounting treatment under Section 62-6-26(E), but authorize limited deferred accounting treatment under the Commission's general ratemaking authority, subject to the limitations and safeguards described herein.

II. BACKGROUND[2]

(9) PNM filed its Application on May 29, 2026, seeking approval of a portfolio of resources intended to meet its projected system needs for the 2029-2032 period. The Application requests approval of four long-term PPAs and six long-term ESAs pursuant to Rule 551; a CCN for the approximately 40 MW La Luz II natural-gas generation project; abandonment of PNM's generation interest in the Four Corners Power Plant upon expiration of the existing Coal Supply Agreement in 2031; and accounting-order treatment pursuant to NMSA 1978, Section 62-6-26.[3] The Application also identifies continued operation of the Reeves Generating Station through the end of 2044 as an assumption underlying PNM's proposed resource portfolio.[4]

(10) On June 24, 2026, the Hearing Examiner issued a Procedural Order establishing the initial procedural schedule for the proceeding. Among other deadlines, the Procedural Order established August 31, 2026, as the deadline for Staff and intervenor direct testimony; September 10, 2026, as

[2] This section summarizes relevant background. The full electronic record of this proceeding is available at https://e360.prc.nm.gov/portal/public/.

[3] PNM Hearing Exhibit 1, Public Service Company of New Mexico's Application for Approval of Purchased Power Agreements, Energy Storage Agreements, and Certificate of Public Convenience and Necessity for 2029-2032 System Resources and the Abandonment of the Four Corners Power Plant (May 29, 2026) ("PNM Hrg Ex. 1 (Application)") at 2-4.

[4] *Id.*

the deadline for rebuttal testimony; September 17, 2026, as the deadline for the parties to file a Joint Statement of Uncontested Issues; and October 7, 2026, as the commencement date for the evidentiary hearing.[5]

(11) Numerous parties intervened in the proceeding, including the Coalition for Clean Affordable Energy ("CCAE"), Western Resource Advocates ("WRA"), New Energy Economy ("NEE"), Diné Citizens Against Ruining Our Environment ("Diné CARE"), San Juan Citizens Alliance ("SJCA"), Naeva, and Tó Nizhóní Aní (collectively, "Community Groups"), the New Mexico Affordable Reliable Energy Alliance ("NM AREA"), the Albuquerque Bernalillo County Water Utility Authority ("ABCWUA"), the New Mexico Department of Justice ("NMDOJ"), and the City of Albuquerque.

(12) On July 31, 2026, CCAE, WRA, NEE, the Community Groups, and NM AREA filed a Joint Motion to Amend the Procedural Schedule to Bifurcate the Contested, Non-Time-Sensitive Requests ("Joint Motion").[6] The Joint Movants proposed that the PPAs and ESAs proceed under the existing procedural schedule while PNM's requests concerning La Luz II, Four Corners, Reeves, and other non-PPA and ESA matters proceed under a separate schedule.[7] The Joint Movants principally relied upon the six-month review period applicable to the PPAs and ESAs under Rule 551 and the additional time they contended was necessary to develop an adequate record concerning the remaining requests.[8]

[5] Procedural Order (June 24, 2026) at 3-4.

[6] Joint Motion to Amend the Procedural Schedule to Bifurcate the Contested, Non-Time-Sensitive Requests (July 31, 2026) ("Joint Motion").

[7] *Id.* at 9-11.

[8] *Id.*

(13) Following responses from PNM, Staff, and ABCWUA, the Hearing Examiner issued an Order Partially Granting Joint Motion to Amend Procedural Schedule and Bifurcate Proceeding on August 19, 2026.[9] The Order divided the proceeding into two phases. Phase I includes all PPAs and ESAs for which PNM seeks approval, together with the accounting-order relief associated with those resources. Phase II includes all remaining matters presented by the Application, including the La Luz II CCN, Four Corners abandonment, and issues concerning continued operation of Reeves. The existing procedural schedule remained in effect for Phase I.[10]

(14) Staff and intervenors filed direct testimony addressing Phase I on August 31, 2026. Staff witness Daren K. Zigich addressed PNM's need for additional generation, the proposed PPAs and ESAs, PNM's procurement process, customer cost allocation, and recommendations concerning future resource procurements.[11] Staff witness Jonah B. Mauldin addressed PNM's requested accounting treatment under Section 62-6-26 and the appropriate treatment of PPA energy charges.[12] NM AREA witness Brian C. Andrews addressed the proposed PPAs and ESAs, PNM's illustrative cost-allocation analysis, and the requested accounting order.[13]

(15) Also in late August 2026, Gregory Chakalian and Melissa Threet separately moved for leave to intervene out of time. Both are landowners in the Loma Parda area of Torrance County who asserted that the proposed Mid-State Transmission Project could utilize or expand an existing PNM transmission corridor affecting their properties. Their proposed testimony focused on the

[9] Order Partially Granting Joint Motion to Amend Procedural Schedule and Bifurcate Proceeding (August 19, 2026) ("Bifurcation Order").

[10] *Id.* at 1-2, 6-8.

[11] Staff Hearing Exhibit 2, Prepared Direct Testimony of Daren K. Zigich ("Staff Hrg. Ex. 2 (Zigich Direct)").

[12] Staff Hearing Exhibit 1, Prepared Direct Testimony of Jonah B. Mauldin ("Staff Hrg. Ex. 1 (Mauldin Direct)").

[13] NM AREA Hearing Exhibit 1, Direct Testimony and Exhibit of Brian C. Andrews ("NM AREA Hrg. Ex. 1 (Andrews Direct)").

relationship between the Palomas PPAs pending in Phase I and the proposed Mid-State Transmission Project.[14]

(16) On September 9, 2026, the Hearing Examiner granted Mr. Chakalian and Ms. Threet limited intervention. Their participation was restricted to Phase I and to their identified concerns regarding the Palomas PPAs and the relationship of those PPAs to the proposed Mid-State Transmission Project.[15] The Order expressly excluded from Phase I adjudication of the siting, routing, right-of-way, landowner-impact, and other issues properly reserved for a future proceeding concerning Mid-State.[16] To permit PNM, Staff, and the other parties an opportunity to respond to the newly admitted testimony, the deadline for rebuttal testimony was extended to September 17, 2026.[17]

(17) On September 16, 2026, the Hearing Examiner denied NM AREA's Motion in Limine seeking to strike portions of the direct testimony of PNM witnesses Julio C. Aguirre and Kyle T. Sanders concerning PNM's illustrative cost-allocation and rate-impact analyses.[18] The Order concluded that evidence concerning potential customer-cost consequences could be relevant to consideration of PNM's requested resource approvals even though the Commission was not being asked in this proceeding to establish rates or make final customer-class allocation determinations.[19] The Order emphasized, however, that admission of the evidence did not establish the

[14] Order Granting Gregory Chakalian and Melissa Threet's Limited Intervention and Extending Rebuttal Deadline ("Limited Intervention Order") at 1-2.

[15] Limited Intervention Order at 4-5.

[16] *Id.*

[17] *Id.*

[18] Order Denying NM AREA's Motion in Limine (Sept. 16, 2026).

[19] *Id.* at 3.

appropriateness of the underlying assumptions or methodologies for future ratemaking purposes and preserved the parties' ability to challenge the weight to be afforded the evidence.[20]

(18) PNM, Staff, and other parties filed rebuttal testimony on September 17, 2026. Among other matters, Staff witness Zigich addressed the concerns raised by the Limited Intervenors concerning the Palomas PPAs and Mid-State.[21] Although Staff continued to support approval of the PPAs and ESAs generally, Staff identified additional potential customer risks arising from changes in the cost or timing of the transmission facilities necessary to deliver the Palomas resources and proposed additional protections addressing those risks.[22]

(19) Also on September 17, 2026, the parties filed their Joint Statement of Uncontested Issues.[23] The Joint Statement substantially narrowed the matters requiring adjudication at hearing. Staff and the intervenors did not oppose overall approval of the Cat Hills PPA and ESA, Wildcat PPA and ESA, Gila Monster ESA, TAG II ESA, Britton ESA, or Encino ESA.[24] The intervenors likewise did not oppose overall approval of the Palomas PPAs, although Staff and the Limited Intervenors continued to contest unconditional approval of those agreements.[25] PNM agreed that approval of the Palomas PPAs should not constitute approval of Mid-State or any particular route for the proposed transmission project.[26]

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[20] *Id.* at 4-5.

[21] Staff Hearing Exhibit 3, Prepared Rebuttal Testimony of Daren K. Zigich (Staff Hrg. Ex. 3 (Zigich Rebuttal)").

[22] *Id.* at 8.

[23] Joint Statement of Uncontested Issues (September 17, 2026).

[24] *Id.* at 2.

[25] *Id.* at 2-3.

[26] *Id.* at 3.

(20) The Joint Statement identified the principal remaining Phase I disputes as including the conditions, if any, that should accompany approval of the Palomas PPAs; the relevance and weight of evidence concerning PNM's illustrative cost-of-service and rate-impact analyses; and the appropriate scope and treatment of PNM's requested Section 62-6-26 accounting order.[27]

(21) On September 23, 2026, the Limited Intervenors filed a Joint Motion in Limine seeking limitations upon the purpose and effect of evidence concerning Mid-State, including PNM Exhibit LAW-2 and any subsequently executed Mid-State Development and Construction Agreement ("DCA").[28] PNM opposed the Motion.[29] On October 6, 2026, the Hearing Examiners denied the Motion, concluding that the requested advance evidentiary limitations were unnecessary and premature.[30] The Order nevertheless confirmed that approval of a Mid-State CCN, transmission routing, and adjudication of property-rights issues were outside the scope of Phase I and preserved the Limited Intervenors' ability to address at hearing the relationship between the Palomas PPAs and Mid-State to the extent relevant to the Phase I approvals.[31]

(22) The Hearing Examiners conducted the Phase I evidentiary hearing on October 7 and 8, 2026. PNM, Staff, the intervenors, and the Limited Intervenors were afforded the opportunity to present testimony, conduct cross-examination, introduce exhibits, and address the disputed Phase I issues.

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[27] *Id.* at 3-6.

[28] Melissa Threet and Gregory Chakalian's Joint Motion in Limine and Brief in Support of Limiting the Purpose and Effect of Mid-State Evidence, PNM Exhibit LAW-2, and any Definitive Mid-State Development and Construction Agreement (September 23, 2026) ("Limited Intervenors' Motion in Limine").

[29] Public Service Company of New Mexico's Response to Joint Motion in Limine (September 30, 2026) ("PNM Response to Limited Intervenors' MIL").

[30] Order Denying Joint Motion in Limine (Oct. 6, 2026).

[31] *Id.* at 2-3.

(23) On October 14, 2026, the Hearing Examiners issued a Post-Hearing Briefing Order permitting, but not requiring, the parties to submit post-hearing briefs.[32] The parties that elected to submit post-hearing briefs filed them on October 23, 2026.

III. DISCUSSION

(24) PNM seeks Commission approval of four PPAs and six ESAs pursuant to Rule 551.[33] Rule 551 establishes, among other things, the filing and informational requirements applicable when a public utility seeks approval of a long-term purchased power agreement and requires the utility to provide information concerning, among other matters, the agreement's term, pricing, capacity and energy, nonperformance provisions, the facilities providing the contracted service, necessary permits and approvals, and operational or other benefits.[34]

(25) The Phase I resources consist of two 400 MW Palomas wind PPAs, a 150 MW Cat Hills solar PPA and associated 150 MW four-hour ESA, a 90 MW Wildcat solar PPA and associated 50 MW four-hour ESA, a 150 MW four-hour Gila Monster ESA, a 90 MW eight-hour TAG II ESA, a 60 MW eight-hour Britton ESA, and a 110 MW eight-hour Encino ESA.[35] Each agreement has a 20-year term.[36] PNM witness Gary Barnard provided testimony addressing the specific informational requirements of Rule 551, including the terms and duration of the agreements, facility characteristics and expected output, pricing, nonperformance provisions, required permits and approvals, interconnection, and operational benefits.[37]

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[32] Post Hearing Briefing Order (October 14, 2026).

[33] PNM Hearing Exhibit 8, Direct Testimony of Gary B. Barnard ("PNM Hrg. Ex. 8 (Barnard Direct)") at 6.

[34] *See* 17.9.551.8(D)(2), (5), (11) NMAC.

[35] PNM Hrg. Ex. 8 (Barnard Direct) at 2-4.

[36] *Id.* at 6.

[37] *Id.* at 6-10.

(26) The need for additional resources is well supported in the record. PNM's resource analysis incorporates significant new load expected during the period in which the proposed resources will enter service.[38] PNM's modeling includes increased load associated with its Rate 36B customer, approximately 350 MW of additional large-load growth associated with customers having signed reimbursement agreements, and PNM's planning assumption of an additional 200 MW[39] associated with anticipated economic-development load under Section 62-6-26.[40] The record further reflects that the proposed resources are needed in the context of PNM's broader resource requirements, including anticipated economic-development growth and the planned 2031 exit from the Four Corners Power Plant ("Four Corners").[41]

(27) PNM evaluated the proposed resources through its 2029-2032 competitive procurement and portfolio-modeling process.[42] The resulting preferred portfolio included the RFP resources for which PNM seeks approval in this proceeding and, as relevant to Phase I, consists of 350 MW of four-hour battery storage, 260 MW of eight-hour battery storage, 240 MW of solar generation, and 800 MW of wind generation.[43] PNM's analysis considered resource adequacy, applicable public-policy requirements, portfolio costs, and environmental impacts in evaluating resources to serve its projected needs.[44]

[38] PNM Hearing Exhibit 7, Direct Testimony of Thomas P. Duane ("PNM Hrg. Ex. 7 (Duane Direct)") at 3-4.

[39] 200 MW is an assumption incorporated into PNM's resource planning, not an independently established amount of qualifying economic-development load.

[40] *Id.* at 4.

[41] Staff Hrg. Ex. 2 (Zigich Direct) at 3.

[42] PNM Hrg. Ex. 7 (Duane Direct) at 4 and 20.

[43] *Id.* at 21-22.

[44] *Id.* at 4.

(28) Staff independently evaluated whether PNM had adequately demonstrated the need for additional resources and concluded that it had.[45] Staff observed that the resources presently proposed are not, by themselves, sufficient to meet all of the economic-development load PNM projects and that PNM anticipates procuring additional resources through a supplemental RFP.[46] Staff nevertheless concluded that the resources presented in Phase I are needed to address the substantial load growth projected to begin in the 2028-2029 timeframe.[47]

(29) Staff also reviewed PNM's compliance with Rule 551 and concluded that the Application was timely under 17.9.551.8(B) NMAC.[48] Staff specifically reviewed Mr. Barnard's testimony addressing the informational requirements of 17.9.551.8(D) NMAC and found his description of the relevant facts accurate. Staff therefore concluded that the PPAs and ESAs satisfy the requirements of Rule 551.[49]

(30) The parties substantially agree with approval of the resources other than the conditions associated with the Palomas PPAs discussed separately below. Staff and the intervenors do not oppose Commission approval of the Cat Hills PPA and ESA, Wildcat PPA and ESA, Gila Monster ESA, TAG II ESA, Britton ESA, or Encino ESA.[50] The Limited Intervenors take no position on those resources because their participation is limited to the Palomas PPAs and their relationship to Mid-State.[51] The intervenors likewise do not oppose approval of the Palomas PPAs, although the

[45] Staff Hrg. Ex. 2 (Zigich Direct) at 8.

[46] *Id.* at 8.

[47] *Id.*

[48] *Id.* at 18.

[49] *Id.*

[50] *See*, *e.g.*, Joint Statement of Uncontested Issues at 2.

[51] *Id.*

appropriate conditions accompanying that approval remain disputed.[52]

(31) The record supports approval of the Cat Hills PPA and ESA, Wildcat PPA and ESA, Gila Monster ESA, TAG II ESA, Britton ESA, and Encino ESA. PNM has demonstrated a substantial need for additional capacity and energy during the period in which these resources are expected to enter service. The resources were selected through PNM's competitive procurement and portfolio-evaluation process as components of the portfolio intended to meet those needs. The evidence establishes that the agreements contain the information required by Rule 551, and no party has identified a Rule 551 deficiency that would warrant rejection of any of these eight agreements.

(32) Approval is also consistent with the public interest. The Commission is not being asked merely to determine whether the contracts are procedurally complete. The relevant inquiry includes whether the proposed acquisitions reasonably respond to PNM's demonstrated resource needs while protecting customers from unreasonable costs and risks. The evidence demonstrates an imminent and substantial increase in PNM's forecasted load, while the portfolio analysis reflects consideration of reliability, cost, legal and policy requirements, and environmental impacts in selecting resources to respond to that need. Nothing in the record establishes that rejection of any of the eight uncontested agreements would produce a more reasonable or lower-risk alternative for customers.

(33) The Hearing Examiners therefore recommend approval of the Cat Hills PPA and ESA, Wildcat PPA and ESA, Gila Monster ESA, TAG II ESA, Britton ESA, and Encino ESA pursuant to Rule 551. The record likewise supports approval of the Palomas PPAs under Rule 551, but the Palomas resources present additional transmission-related risks and issues that do not apply to the

[52] *Id.* at 2-4.

other agreements. The appropriate conditions and limitations accompanying approval of the Palomas PPAs are therefore addressed separately below.

A. The Palomas PPAs Should Be Approved Subject to Conditions Protecting Customers and Preserving the Commission's Authority Over the Mid-State Project

(34) The Palomas PPAs present additional considerations because delivery of the contracted wind energy depends upon transmission infrastructure that has not yet received Commission approval.[53] PNM seeks approval of two PPAs for a combined 800 MW of wind generation from the Palomas facilities.[54] Although PNM selected the Palomas resources through its competitive procurement and portfolio-evaluation process, delivery of the contracted energy requires additional transmission capability, which PNM presently anticipates will be provided by the proposed Mid-State Transmission Project ("Mid-State").[55] As PNM witness Ms. Laurie Williams explained, the Palomas facilities and Mid-State are interdependent, and the anticipated development of the Palomas resources depends upon the development of the transmission facilities necessary to deliver their output to PNM's system.[56]

(35) PNM has entered into a binding term sheet with Pattern Energy, the developer of Mid-State, establishing the principal terms contemplated for a Development and Construction Agreement ("DCA").[57] The term sheet was included as Exhibit LAW-2 to Ms. Williams's direct testimony.[58] Ms. Williams explained that the contractual arrangements were structured around the

[53] PNM Hearing Exhibit 5, Rebuttal Testimony of Laurie A. Williams ("PNM Hrg. Ex. 5 (Williams Rebuttal)") at 9.

[54] PNM Hrg. Ex. 8 (Barnard Direct) at 2-4.

[55] PNM Hearing Exhibit 4, Direct Testimony of Laurie A. Williams ("PNM Hrg. Ex. 4 (Williams Direct)") at 10-11, 17-19.

[56] PNM Hrg. Ex. 5 (Williams Rebuttal) at 9.

[57] *Id.*

[58] PNM Hrg. Ex. 4 (Williams Direct), Ex. LAW-2 (Mid-State Term Sheet).

anticipated development of both projects and that, if either project is not approved or constructed, the other is unlikely to proceed.[59] The arrangements include contractual provisions addressing circumstances in which the projects cannot proceed as contemplated.[60] The term sheet, however, is not itself a Commission authorization to construct Mid-State, and the ultimate regulatory disposition of that project remains uncertain.[61]

(36) The relationship between the Palomas PPAs and Mid-State raises two distinct questions. The first is whether the Commission may reasonably approve the Palomas PPAs based upon the present evidentiary record without simultaneously determining the need for, location of, or other regulatory requirements applicable to Mid-State. The second is whether additional conditions are necessary to protect customers against the financial consequences of changes in the cost, timing, or configuration of the transmission facilities upon which the Palomas resources depend. These questions are related but require separate consideration. Approval of the PPAs does not necessarily establish the reasonableness of any particular transmission project, and the reservation of transmission-related issues for a future proceeding does not, by itself, resolve the potential financial risks associated with the PPAs.

i. The Relationship Between the Palomas PPAs and Mid-State Does Not Warrant Denial or Delay of the PPAs

(37) Limited Intervenors, Gregory Chakalian and Melissa Threet, raised concerns that approval of the Palomas PPAs could effectively prejudge matters reserved for a future proceeding

[59] PNM Hrg. Ex. 5 (Williams Rebuttal) at 9.

[60] *Id.*

[61] *Id.* at 10-12.

concerning Mid-State.[62] Their concerns principally involve the possibility that contractual commitments, project-development expenditures, or timing requirements associated with the Palomas resources could create pressure to approve a particular transmission route or configuration.[63] They also question whether the contractual and development arrangements presently reflected in the record adequately preserve the Commission's ability to evaluate alternatives when the Mid-State application is presented.[64]

(38) The Limited Intervenors do not oppose approval of the Palomas PPAs themselves.[65] In their post-hearing brief, the Limited Intervenors further request protections concerning the status and subsequent modification of the DCA and related contractual arrangements, the evidentiary significance of the existing term sheet, and the treatment of potential customer costs arising from delays or changes in the transmission project.[66] They also seek to preserve consideration of reasonable transmission alternatives, including potential use of existing transmission corridors, in the future Mid-State proceeding.[67]

(39) PNM acknowledges the relationship between the Palomas resources and Mid-State but maintains that the transmission project should be evaluated in a separate regulatory proceeding.[68] Ms. Williams testified that the final route, engineering design, and property rights necessary for Mid-State are not before the Commission in this proceeding. Those matters will be addressed

[62] Chakalian Hrg. Ex. 1 (Chakalian Direct); Joint Post-Hearing Brief of Limited Intervenors Chakalian and Threet (Oct. 23, 2026) ("Limited Intervenors' Brief") at 1-2.

[63] Limited Intervenors' Brief at 11-13.

[64] *Id.* at 13-17.

[65] *Id.* at 2.

[66] *Id.* at 18-19.

[67] *Id.*

[68] PNM Hrg. Ex. 5 (Williams Rebuttal) at 11.

through the applicable development and regulatory processes, including a future application for Commission approval of Mid-State.[69] PNM further maintains that requiring completion of an alternative-route analysis before approving the Palomas PPAs would improperly introduce transmission-routing issues into the present proceeding and delay consideration of the PPAs.[70]

(40) Importantly, PNM expressly agrees that approval of the Palomas PPAs should not constitute approval of Mid-State or any particular route for the transmission line. In her rebuttal testimony, Ms. Williams stated that PNM does not object to an express Commission finding confirming that approval of the Palomas PPAs does not authorize the Mid-State project, establish a particular route or right-of-way, approve transmission cost recovery, or otherwise prejudge the determinations required in a future proceeding.[71]

(41) The Hearing Examiners find that the interdependence of the Palomas resources and Mid-State does not, standing alone, warrant denial or postponement of the PPAs. The evidence establishes that the Palomas resources were selected as components of PNM's preferred portfolio to address identified resource needs.[72] The record also establishes that delivery of those resources requires transmission facilities whose ultimate approval remains subject to a separate regulatory determination.[73] These circumstances warrant appropriate limitations upon the effect of the present approval, but they do not require the Commission to resolve the transmission issues themselves before acting upon the PPAs.

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[69] *Id.* at 10-11.

[70] *Id.* at 12.

[71] *Id.* at 11.

[72] PNM Hrg. Ex. 7 (Duane Direct) at 20-22.

[73] PNM Hrg. Ex. 5 (Williams Rebuttal) at 9 and11.

(42) The Hearing Examiners further conclude that the Commission should expressly preserve its full authority to evaluate Mid-State independently. Approval of the Palomas PPAs should not constitute approval of the Mid-State Transmission Project or any CCN, route, location, right-of-way width, cost recovery, or other regulatory authorization associated with that project. Nor should approval establish a presumption that Mid-State, any particular route, or any particular transmission configuration is necessary, reasonable, or preferable to available alternatives. Any subsequent application concerning Mid-State must be evaluated upon the evidence presented in that proceeding and under the applicable statutory and regulatory requirements.

(43) This limitation is particularly important because the contractual and financial consequences of the Palomas PPAs may become relevant to a subsequent transmission proceeding. Although the Commission may consider evidence concerning those consequences to the extent permitted by applicable law, the existence of previously approved PPAs, contractual commitments, development expenditures, or project deadlines cannot substitute for the independent evidentiary showing required to authorize Mid-State. The Commission's approval of the Palomas PPAs therefore must not be construed as resolving the necessity, reasonableness, routing, or other merits of the proposed transmission facilities.

(44) The Hearing Examiners do not recommend requiring PNM to complete an alternative-route analysis as a condition precedent to approval of the Palomas PPAs. Mr. Chakalian and Ms. Threet clarified in their post-hearing brief that they were not pursuing completion of that analysis before PPA approval and instead sought to preserve consideration of alternatives in the future Mid-State proceeding.[74] Requiring such an analysis at this stage would effectively make the present resource

[74] Limited Intervenors' Brief at 2.

approvals dependent upon development of evidence directed primarily toward a transmission project that is not before the Commission. The appropriate scope and sufficiency of any alternatives analysis, including consideration of existing transmission corridors and potential landowner impacts, should instead be determined in the future Mid-State proceeding. This disposition preserves the Commission's authority and the parties' procedural rights without unnecessarily delaying action upon the Palomas PPAs.

ii. The Palomas PPAs Should Be Subject to a Condition Protecting Customers Against Material Increases in Transmission Costs

(45) Although the Hearing Examiners recommend approval of the Palomas PPAs without requiring prior approval of Mid-State, the record establishes a separate concern regarding the potential effect of transmission cost increases and delays upon the economic justification for the Palomas resources. PNM selected the Palomas PPAs through a competitive procurement process that considered the total delivered cost of the resources, including the anticipated cost of the transmission facilities necessary to deliver the contracted energy.[75] As Staff witness Daren Zigich explained, the competitive position of the Palomas bids depended in part upon assumptions concerning both transmission costs and the expected date of energy delivery.[76] A material increase in those costs or a significant delay in delivery could therefore affect the relative economic attractiveness of the Palomas resources compared with other bids considered during procurement.[77]

(46) Mr. Zigich initially recommended approval of the proposed PPAs and ESAs but supplemented his recommendation in rebuttal testimony after considering the transmission-related

[75] Staff Hrg. Ex. 3 (Zigich Rebuttal) at 4-5.

[76] *Id.* at 4.

[77] *Id.* at 5.

concerns raised by the Limited Intervenors.[78] He explained that the possibility of significant changes to the proposed transmission route introduced uncertainty regarding both the cost of delivering the Palomas energy and the timing of its availability. In particular, Mr. Zigich questioned whether the Palomas resources would have retained their competitive position if the procurement evaluation had incorporated higher transmission costs or a later commercial operation date.[79] His concern was heightened by PNM's decision to seek approval of the Palomas PPAs without simultaneously presenting the transmission facilities necessary to deliver their output for Commission approval.[80]

(47) To address that uncertainty, Mr. Zigich recommended that PNM provide one of two commitments before approval of the Palomas PPAs. First, PNM could agree not to seek rate recovery of transmission costs exceeding the amount assumed during the competitive procurement evaluation. Alternatively, PNM could provide a detailed explanation of how the Palomas bids were scored, including the treatment of network-upgrade costs and delivery timing, and commit to maintaining transmission costs at a level that would preserve the competitive position of the Palomas resources.[81] Both alternatives were intended to prevent subsequent transmission cost increases from undermining the economic basis upon which the Palomas PPAs were selected.

(48) The evidentiary hearing further developed the potential magnitude of this concern. During cross-examination, PNM witness Mr. Roger Nagel acknowledged that the current delivered cost of the Palomas resources, including transmission, was higher than the amount used in the original

[78] *Id.* at 4-5.

[79] *Id.* at 5.

[80] *Id.* at 6.

[81] *Id.* at 5-6.

procurement evaluation.[82] Mr. Nagel also acknowledged that additional increases could eventually affect the relative economic attractiveness of the Palomas resources.[83] The hearing record therefore supports Mr. Zigich's underlying concern that the economic justification for selecting the Palomas PPAs is not entirely independent of the ultimate cost of the transmission facilities required to deliver their output.

(49) PNM maintains that its contractual arrangements provide protections against transmission-related cost increases. Ms. Williams described the binding Mid-State term sheet as establishing a fixed-price framework for development of the transmission project.[84] She also acknowledged, however, that the definitive DCA remained under negotiation and that the operation of the contemplated contractual protections would depend upon the terms ultimately agreed upon by the parties.[85] Ms. Williams further acknowledged that project delays can result in increased costs.[86] Accordingly, although the existing contractual arrangements provide relevant evidence concerning PNM's efforts to manage transmission costs, they do not eliminate the uncertainty associated with the final cost and timing of Mid-State.

(50) The record also reflects that PNM's decision to pursue approval of the Palomas PPAs before seeking approval of Mid-State was influenced by concerns regarding the preservation of federal tax-credit benefits and the time required to prepare a transmission CCN application.[87] Ms. Williams explained that delaying the PPA approvals until the transmission application was ready

[82] Tr. Vol. II at 529.

[83] *Id.* at 530.

[84] PNM Hrg. Ex. 4 (Williams Direct) at 10 and 18.

[85] *Id.* at 18 and Tr. Vol. I at 122-123.

[86] Tr. Vol. I at 123.

[87] PNM Hrg. Ex. 4 (Williams Direct) at 18-19.

could have increased project-development risks and associated customer costs.[88] The Hearing Examiners recognize that these considerations provide a reasonable explanation for the sequence in which PNM has pursued regulatory approval. Nevertheless, the potential benefits of that sequencing do not eliminate the need to protect customers against material increases in the costs upon which the procurement decision was based.

(51) Following the evidentiary hearing, Staff refined its proposed customer protection. Rather than requiring one of the two commitments identified in Mr. Zigich's rebuttal testimony, Staff recommends that the Commission condition approval of the Palomas PPAs upon a limitation on recoverable transmission costs.[89] Specifically, Staff proposes a threshold equal to 110 percent of the $595 million transmission and network-upgrade cost estimate identified in Mr. Hakimian's direct testimony, above which PNM would be required to obtain further Commission authorization before recovering additional costs from customers.[90] Staff contends that costs exceeding this threshold should be borne by PNM's shareholders rather than its customers because PNM elected to seek approval of the Palomas PPAs before obtaining approval of the necessary transmission facilities.[91] This recommendation allows PNM to seek further Commission authorization for amounts exceeding the threshold. It is not an absolute prohibition on recovery under all circumstances.

(52) Staff identifies the Commission's construction-cost-overrun rule, 17.3.580 NMAC, as a reference point for its proposed 10 percent allowance.[92] Staff acknowledges that the rule does not

[88] *Id.* at 9 and 19.

[89] Staff's Post-Hearing Brief on Phase I Issues (Oct. 23, 2026) ("Staff's Brief") at 14-17.

[90] *Id.* at 17, citing PNM Hrg. Ex. 12 (Hakimian Direct) at 10, Table EH-2.

[91] *Id.*

[92] *Id.* at 16.

directly govern the transmission facilities at issue here but argues that its treatment of construction cost overruns provides a reasonable framework for limiting customer exposure.[93] The proposed limitation would apply to network-upgrade costs associated with the Palomas PPAs, including the costs of Mid-State, rather than solely to the contractual price of the purchased energy.[94]

(53) The Hearing Examiners find Staff's underlying concern persuasive. The record establishes that the Palomas PPAs were selected through an evaluation that incorporated assumed transmission costs and delivery dates.[95] It also establishes that changes in those assumptions could affect the economic basis for the procurement decision.[96] Because the Commission is being asked to approve the Palomas PPAs before the necessary transmission facilities have received regulatory approval, customers face uncertainty concerning the ultimate cost of obtaining the contracted energy.

(54) The Hearing Examiners therefore conclude that approval of the Palomas PPAs should be accompanied by a condition protecting customers against material transmission cost increases that would undermine the economic assumptions supporting their selection. Such a condition is appropriate to the present proceeding because it addresses the reasonableness of approving the PPAs based upon the costs and benefits demonstrated in the Phase I record. It does not require the Commission to determine the need for, routing of, or ultimate reasonable construction cost of Mid-State, which remain matters for a subsequent proceeding.

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[93] *Id.* at 16 n.44.

[94] Staff's Brief at 17 n.48.

[95] Staff Hrg. Ex. 3 (Zigich Rebuttal) at 4-5; PNM Hrg. Ex. 7 (Duane Direct) at 8.

[96] Tr. Vol. II at 529-530.

(55) The Hearing Examiners recommend adopting Staff's proposed 10 percent transmission-cost limitation as a condition of approval of the Palomas PPAs. PNM witness Mr. Hakimian identified approximately $595 million in network-upgrade costs associated with the Palomas resources, including the Mid-State facilities.[97] Applying Staff's proposed 10 percent allowance to that estimate establishes a threshold of $654.5 million. This threshold applies to the transmission and network-upgrade costs associated with delivery of the Palomas resources, including Mid-State, as reflected in the identified $595 million estimate. The Hearing Examiners recommend that PNM be prohibited from recovering from customers transmission and network-upgrade costs associated with the Palomas PPAs exceeding that amount, absent further Commission authorization upon a showing sufficient to justify modification of the limitation.

(56) *This condition should not be construed as approval of the $595 million estimate, a determination that costs up to $654.5 million are prudent or reasonable, or authorization to recover any particular transmission expenditure.* Those determinations remain reserved for the appropriate future proceedings. Rather, the limitation establishes a prospective customer protection associated with approval of the Palomas PPAs, while preserving the Commission's authority to determine the necessity, reasonableness, and recoverability of transmission expenditures upon an adequate evidentiary record.

(57) The Hearing Examiners further conclude that the contractual termination provisions associated with the Palomas PPAs do not eliminate the need for this protection. Although PNM has identified contractual provisions intended to address circumstances in which the transmission project cannot proceed, those provisions do not conclusively establish that customers would be

[97] PNM Hrg. Ex. 12 (Hakimian Direct) at 10, Table EH-2.

protected against all financial consequences of increased transmission costs, project delays, or the need to obtain replacement resources. The Commission should therefore decline to make any finding that approval of the Palomas PPAs guarantees recovery of transmission-related costs or establishes the prudence of costs incurred in reliance upon the anticipated development of Mid-State.

(58) Accordingly, the Hearing Examiners recommend approval of the Palomas PPAs subject to the transmission-cost limitation described above and the express reservation of Commission authority concerning Mid-State discussed in the preceding subsection. Together, these conditions permit approval of resources supported by the present procurement record while protecting customers against material changes in the assumptions underlying their selection and preserving independent consideration of the transmission facilities necessary to deliver their output.

B. PNM has not Satisfied the Requirements for an Accounting Order Pursuant to NMSA 1978, § 62-6-26(E)

(59) PNM requests an accounting order pursuant to Section 62-6-26(E) for portions of the Palomas and Wildcat PPAs and the Wildcat ESA. The request presents questions concerning whether the agreements qualify as economic-development projects under Subsection (G)(1) and whether the certification provided by NMEDD satisfies Subsection (F).

(60) The statutory provision under which PNM expressly requests deferred accounting treatment is Section 62-6-26(E), which states, in relevant part, that the Commission:

> shall allow public utilities to recover prudent and reasonable costs incurred by a public utility for the ongoing development, construction or maintenance of resources for economic development projects that provide incremental capacity, or serve incremental load growth, within the economic development project's service area.
>
> …

> A public utility shall be allowed to defer costs incurred for economic development projects that are not included in rates to a regulatory asset.
> …
> All projects shall be certified by the economic development department using industry standard guidelines for site selection and approved by the commission. All certified and approved projects shall be allowed to complete construction.[98]

(61) Section 62-6-26(G)(1) then defines an economic-development project in terms of constructing or modifying generation, storage, transmission, distribution, and other qualifying facilities or resources necessary to serve anticipated new load.

> "economic development project" means the construction or modification of new or existing electric generation facilities, energy storage facilities, transmission and distribution facilities, zero-carbon resources as defined in Subsection K of Section 62-16-3 NMSA 1978, alternative fuel facilities, energy efficiency programs, renewable energy and fuel cell facilities, recycled energy or other technologies necessary to serve reasonably anticipated new load and that have been certified by the economic development department pursuant to Subsection F of this section.[99]

(62) Subsection (F) requires NMEDD to certify whether the project will support reasonably anticipated economic development, using industry-standard guidelines for site selection.

(63) In addition to the governing statute discussed above, the present analysis and review occurs in light of prior Commission determinations involving requests under Section 62-6-26(E). In Docket No. 25-00088-UT, PNM applied for an accounting order authorizing deferral of associated costs of two economic development projects to a regulatory asset.[100] Specifically, PNM sought approval for the Westpointe 115 kV Substation Project which involved construction of a new substation to serve the Westpointe 40 business park and surrounding area, and the Mesa del Sol Project which involved substation improvements and new or upgraded 115 kV transmission

[98] NMSA 1978, § 62-6-26(E) (2025).

[99] NMSA 1978, § 62-6-26(G)(1) (2025).

100 Docket No. 25-00088-UT, PNM Application, at 1–2 (Dec. 29, 2025).

facilities to increase local load-serving capability.[101] NMEDD issued separate site-certification letters for Westpointe 40 on November 14, 2025, and Mesa del Sol on November 25, 2025.[102] PNM sought deferral of construction-related capital and operating costs while reserving determinations concerning prudence, reasonableness, and recovery for a later rate case.[103]

(64) The Commission determined that both projects satisfied the definition of an economic-development project in Section 62-6-26(G)(1), emphasizing that they involved new or upgraded substations and associated transmission facilities.[104] It found that NMEDD's certification letters, together with the projects' technical characteristics, were sufficient to establish statutory qualification, and it rejected a challenge asserting that the letters lacked adequate evidentiary support.[105] It approved the projects and authorized PNM to establish a regulatory asset, while expressly reserving prudence, reasonableness, and ultimate cost recovery for a future general rate case.[106]

(65) Like Docket No. 25-00088-UT, this proceeding involves a request for deferred accounting under Section 62-6-26(E) supported by NMEDD certifications of prospective economic-development sites. Unlike the earlier proceeding, however, PNM seeks deferral of costs associated with portions of PPAs and an ESA for third-party generation and storage resources.[107]

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[101] *Id.*

[102] *Id.* at 4.

[103] *Id.* 2-3, 5-6.

[104] Docket No. 25-00088-UT, Order Approving PNM's Application (Mar. 12, 2026) (25-00088-UT Final Order") at ¶¶ 24-26.

[105] *Id.* at 10-11, ¶¶ 28-30.

[106] *Id.* at 15-17, ¶¶ 45-47 and Ordering Paragraphs A-C.

[107] PNM Hrg Ex. 1 (Application) at 2-4.

i. PNM's Request in This Docket

(66) In its application, PNM specifies that it seeks Commission approval of an accounting order pursuant to Section 62-6-26(E) for the deferred ratemaking treatment of resources *or portions of resources* identified to meet potential future economic development loads, with deferral to a regulatory asset until those loads materialize and without prejudgment of final cost recovery.[108] PNM witness Ms. Laurie Williams explained that PNM identified additional resources to serve anticipated economic-development load.[109] For PNM, this proposed accounting order will allow it "to track the costs of these projects or portions thereof for deferral to a regulatory asset, until such time that the future loads materialize."[110]

(67) PNM's present request for this accounting order centers on the proposed deferral of costs associated with the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA resources. PNM witness Sanders presents a revenue-requirement table, Table KTS-2, *see* Figure 1, below, in his direct testimony that identifies the costs associated with the incremental economic development capacity that would be subject to the accounting order and allocated to a regulatory asset.[111] That table demonstrates that approximately $24.5 million for the portion of Palomas wind PPA, $10.9 million for Wildcat solar PPA, and $7.9 million for Wildcat ESA—totaling approximately $43.3 million in annual estimated costs—PNM proposes to defer as a regulatory asset.[112] Sanders emphasizes that the underlying allocations in this table are only illustrative and subject to future

[108] *Id.* at 3; PNM Hearing Exhibit 2, Direct Testimony of Kyle Sanders ("PNM Hrg. Ex. 2 (Sanders Direct)") at 9.

[109] PNM Hrg. Ex. 2 (Sanders Direct) at 2 (This testimony describes PNM's requested statutory treatment, not the duration ultimately authorized under the alternative accounting order).

[110] *Id.* at 43.

[111] *Id.* at 17-18.

[112] *Id.* at 18.

ratemaking review.[113] The three identified contract rows in Sanders's illustrative revenue-requirement table total approximately $43.3 million annually. Those modeled annual amounts identify the resources implicated by PNM's request and do not constitute an initial regulatory-asset balance or an approval of particular costs for deferral.

Fig. 1 PNM Table KTS-2 – Revenue Requirement Summary

Annual Revenue Requirement (in Millions)	All Retail Customer Resources	Rate 36B - Designated Resources	Economic Development Load Resources	SB170 Resources	Total
Resources Requested in Filing					
Palomas PPA - SSC	$ -	$ 97.8	$ -	$ -	$ 97.8
Palomas PPA	-	-	73.4	24.5	97.8
Cat Hills PPA	17.6	-	-	-	17.6
Cat Hills ESA	21.4	-	-	-	21.4
Wildcat PPA	-	-	-	10.9	10.9
Wildcat ESA	-	-	-	7.9	7.9
Gila Monster ESA	20.0	-	-	-	20.0
Encino ESA	-	-	24.6	-	24.6
TAG II ESA	-	-	20.5	-	20.5
Britton ESA	-	13.8	-	-	13.8
La Luz II	25.8	-	-	-	25.8
Reeves Extension	19.3	-	-	-	19.3
Four Corners Abandonment	(38.0)	-	-	-	(38.0)
Transmission Interconnections	0.8	0.3	0.4	0.6	2.1
Supplemental Revenue Requirement Impacts					
Midstate Transmission Line	-	34.0	25.5	8.5	68.1
Generic Firm Gas	-	-	40.2	40.2	80.5
Four Corners Securitization (ETC)	11.2	-	-	-	11.2
	$ 78.0	**$ 146.0**	**$ 184.8**	**$ 92.6**	**$ 501.3**

(68) PNM's accounting order request seeks deferral of costs from portions of the Palomas PPA, Wildcat PPA, and Wildcat ESA identified in PNM's Application as necessary to serve 200 MW of reasonably anticipated new economic-development load.[114] PNM's proposed 200 MW allocation originates in the resource-planning assumptions underlying its preferred portfolio. PNM witness Williams states that PNM's "integrated planning generation portfolio includes an additional resource margin sufficient to serve an additional 200 MW (or approximately 10%)

[113] *Id.* at 18-19.

[114] Rebuttal Testimony of Kyle T. Sanders at 5.

above PNM's forecasted load,"[115] and that this additional resource margin is intended to enable service to prospective customers before ordinary generation procurement could be completed.[116] PNM witness Aguirre explains further that "the projected new load associated with economic development includes electric usage estimates for 350 MW of incremental load to serve new data centers and a large electric truck charging station as well as 200 MW of future load growth to be served under the [Section 62-6-26(E)] regulatory framework."[117]

ii. The PPAs and ESAs are not Economic Development Projects Pursuant to 62-6-26(G)(1)

(69) The present Application requests an accounting order for PPAs and an ESA as economic development projects under Section 62-6-26(E). However, PNM's Application and direct testimony provide evidence concerning the anticipated economic-development load, the resources intended to serve that load, and the construction of new generating and storage facilities. PNM does not expressly explain how the PPAs and ESA satisfy the statutory definition of an economic-development project under 62-6-26(G)(1). While these filings do contain substantial evidence that the underlying facilities behind the PPAs and ESA are being developed and that PNM anticipates additional economic-development demand, they do not contain a developed legal or evidentiary explanation of why the contractual acquisition of those power and storage resources constitutes the construction or modification of an economic-development project under subsection G(1).

(70) In this context, NMDOJ challenges whether the requested accounting treatment is available for the PPAs and ESA under Section 62-6-26(G)(1). In asserting that "the regulatory asset provision only applies when the utility is constructing or modifying a generation, transmission or

[115] PNM Hrg. Ex. 4 (Williams Direct) at 15-16.

[116] *Id.*

[117] PNM Hearing Exhibit 13, Direct Testimony of Julio C. Aguirre ("PNM Hrg. Ex. 13 (Aguirre Direct)") at 10.

other related facility," NMDOJ interprets the definition as referring to the construction or modification of physical infrastructure, rather than contractual arrangements for obtaining electricity or storage services.[118] PNM, it asserts, is here purchasing electricity and storage services from third-party developers rather than constructing or modifying those facilities itself.[119]

(71) In further support of its interpretation of the limits expressed in Subsection (G)(1), NMDOJ relies on Subsection (E) for additional contextual support. NMDOJ argues in relation to Subsection (E) that PNM incurs contractual charges under the PPAs and ESA to suppliers for electricity and storage availability after facilities are built, rather than direct costs of constructing or maintaining those facilities. NMDOJ states that PNM is not incurring costs for the construction or maintenance of the solar, wind, or battery facilities in question, but rather that PNM intends to pay third parties for power and storage capacity after the facilities are built.[120]

(72) NMDOJ also draws a distinction between the Commission's determination in Docket No. 25-00088-UT and the present request. NMDOJ distinguishes that proceeding because in that case PNM proposed to construct or modify its own substations and related transmission infrastructure. NMDOJ states that in the present case PNM is buying power and storage from facilities constructed by third parties, so 25-00088-UT is inapposite.[121] As characterized by NMDOJ, that case involved the utility's construction of specific substations and transmission improvements at or near certified development locations. In its view, the Commission's determination there did not decide whether a procurement contract for a privately constructed, remotely located generating

[118] NMDOJ Phase I Post-Hearing Brief ("NMDOJ's Brief") at 4.

[119] *Id.* 4-5.

[120] *Id.* at 4-5.

[121] *Id.*

facility constitutes an "economic development project."[122] NMDOJ therefore maintains that the earlier Commission approval does not establish that PPAs or ESAs qualify under Section 62-6-26(E).

(73) Staff's support for the requested accounting treatment is conditional upon PNM demonstrating that the agreements satisfy the statutory definition of an economic-development project. In his direct testimony, when asked if PNM's request for accounting treatment is reasonable, Staff witness Jonah Mauldin states that it is, but only "as long as PNM demonstrates that the PPAs and ESA fit within the definition of "economic development projects" as defined by Section 62-6-26 (G) NMSA 1978."[123]

(74) In a footnote to his testimony, demonstrating his position that PNM has not satisfied the elements of the statute, Mr. Mauldin identifies three criteria that PNM should establish in rebuttal as demonstrating the compliance of its request with statute. He states that:

> Specifically, in rebuttal testimony PNM should establish: 1) whether the resources it seeks an accounting order for meet the definition of "economic development project" in Section 62-6-26(G)(1) NMSA 1978, 2) whether those projects have been certified by the economic development department as required by Section 62-6-26(E) NMSA 1978, and 3) how those projects "provide incremental capacity," as required by Section 62-6-26(E) NMSA 1978.[124]

(75) During the evidentiary hearing, Mr. Mauldin confirmed that PNM had not yet provided the information necessary to establish compliance with his recommended conditions.[125] When questioned further, Mr. Mauldin stated that "my position, as outlined in my Testimony, is that

[122] *Id.*

[123] Staff Hrg. Ex. 1 (Mauldin Direct) at 4-5.

[124] *Id.* at 5, n. 6.

[125] Tr. Vol. II at 531:24-532:4.

[PNM has] not, at this time, provided the necessary details, and Commission approval should be contingent on those details."[126]

(76) In its post-hearing briefing, though, Staff does not ultimately adopt a position that the enumerated project types in Subsection (G) consist predominantly of physical infrastructure and capital expenditures.[127] Staff observes there that PPAs and ESAs with no capital expenditure are contracts for providing energy and not mentioned in the statutory definition of economic development projects.[128] Staff observed that the statutory definition principally identifies physical facilities and capital expenditures, although it also includes energy-efficiency programs. Furthermore, in its Post-Hearing Brief, Staff states that its review of the statutory history of SB 170 — the precursor to the 2025 amendments that created Subsections (E), (F), and (G)—found no indication, one way or the other, that the term "economic development projects" was intended to apply to PPAs and ESAs.[129] Further, in this vein, Staff observes that while the definition of incremental costs in Subsection (G)(3) does include "fuel and purchased power costs," this definition is only used in reference to Subsections (A) and (D), not (E) and (G), the Subsections under which PNM is seeking its accounting order and deferral of costs.[130] In conclusion, Staff states that "if the Commission decides PPAs and ESAs are not included in Section 62-6-26(G)(1)'s definition of economic development projects it should deny PNM's accounting order request for deferral of the PPA and ESA costs.[131]

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[126] *Id.* at 534:6-9.

[127] Staff's Brief at 4-5.

[128] *Id.* at 5.

[129] *Id.*

[130] *Id.*

[131] *Id.* at 6.

(77) In rebuttal, PNM witness Sanders characterizes the language in Subsection (E) as covering both owned and contracted resources, and then argues that the Palomas and Wildcat portions meet the functional criteria because the underlying resources add capacity to serve prospective load.[132] He states that "a portion of the Palomas PPA, the Wildcat PPA, and the Wildcat ESA are contracted resources intended to provide incremental capacity and to support service to incremental load growth associated with the [NMEDD]-certified economic-development sites."[133] Sanders's characterization of the definition and scope of economic development project in Subsection (E) adds the words "contracted resources." Those words do not appear in Subsections (E) or (G).

(78) In its Post-Hearing Brief, PNM states in a conclusory fashion and without any rebuttal evidence that "[t]he Palomas PPA, Wildcat PPA, and Wildcat ESA satisfy this definition [of economic development project found in Subsection (G)(1)]…They involve the construction of wind-generation and battery-storage facilities."[134] PNM then concludes that "[t]he record supports the Commission finding that the identified portions of the Palomas and Wildcat generation and storage projects qualify as economic development projects under Section 62-6-26(G)(1)"[135]

iii. NMEDD Certified Sites are not Projects

(79) The other condition that PNM must satisfy to receive approval of an accounting order pursuant to Section 62-6-26(E) is a letter from the NMEDD that certifies the projects will support anticipated economic development. Subsection (F) specifically states that the economic development department shall certify, using industry standard guidelines for site selection, whether

[132] PNM Hrg. Ex. 3 (Sanders Rebuttal) at 7.

[133] *Id.*

[134] Public Service Company of New Mexico's Phase I Initial Post-Hearing Brief ("PNM's Brief") at 21.

[135] *Id.*

the economic development project will support reasonably anticipated economic development within the state.[136]

(80) PNM argues that NMEDD's certification of prospective economic-development sites satisfies the requirements of Section 62-6-26(F).[137] In contrast, NEE, CCAE, and WRA argue that Subsection (F) requires certification of the particular generation and storage projects for which PNM seeks deferred accounting treatment, rather than certification of prospective economic-development sites.[138] Staff acknowledges deficiencies but identifies alternative ways the Commission could resolve them.

(81) To support its position that the requirement under Subsection (F) is satisfied, PNM presents a letter from the NMEDD as an exhibit to the testimony of PNM witness Sanders, Exhibit KTS-2.[139] That exhibit demonstrates that on May 13, 2026, NMEDD issued a letter certifying nine potential economic-development sites within PNM's service territory, but the letter did not specifically certify any project nor the Palomas Wind PPA, Wildcat Solar PPA, or Wildcat Battery ESA.[140] The letter further describes NMEDD's understanding of its statutory certification role as relating to economic-development sites. The letter states that "[NMEDD]'s statutory role under Section 62-6-26(F) is limited to evaluating whether proposed sites demonstrate reasonable economic development potential for the state."[141]

[136] NMSA 1978, § 62-6-26(F).

[137] *See*, PNM Post-Hearing Brief at 16–17.

[138] *See*, NEE, CCAE, and WRA Joint Post-Hearing Brief at 6–8.

[139] PNM Hrg. Ex. 2 (Sanders Direct), Ex. KTS-2 at 1-3 ("NMEDD Certification Letter") (May 13, 2026).

[140] NMEDD Certification Letter at 1-3.

[141] *Id.* at 2.

(82) PNM's own understanding of the certification of the sites and its relation to the economic development resources, the Palomas and Wildcat PPAs and Wildcat ESA, is ambiguous. In his direct testimony, PNM witness Sanders seems to state that sites that NMEDD has certified are not even necessarily related to the economic development resources needed to serve those sites. When asking himself in his direct testimony whether the sites for these [economic development] resources are certified economic development sites, he does not answer with an unqualified yes.[142] He states "Not necessarily. While the NM Department of Economic Development has certified multiple sites in PNM service territory, the specific sites associated with the [economic development] resources needed to service those economic development sites are not explicitly certified."[143] He nonetheless asserts that the resources can supply electricity to NMEDD-certified locations, citing the additional nine site certifications, stating that "the generation from the resources will be able to provide electricity to the SB 170 certified economic development sites."[144]

(83) Staff points out that the present certification letter does not establish that same express connection between the certified sites and the identified PPA and ESA resources.[145] In direct testimony, Staff witness Mauldin states that "PNM did not expressly established [sic] this and the EDD certification letter stated it was certifying "sites" and did not expressly certifying "economic development projects."[146] The conditions that Mr. Mauldin set out in the his direct testimony that PNM would have to establish before receiving Staff support for an accounting order pursuant to

[142] PNM Hrg. Ex. 2 (Sanders Direct) at 42.

[143] *Id.* at 43.

[144] *Id.*

[145] Staff's Brief at 9, n.14.

[146] Staff Hrg. Ex. 1 (Mauldin Direct) at 5.

Section 62-6-26(E), discussed above, includes the condition that PNM establish that the projects have been certified.[147]

(84) In addition to the testimony of Mr. Mauldin at the evidentiary hearing that PNM had not satisfied the requirements of Section 62-6-26(E) to warrant Commission approval of an accounting order pursuant to this statute, discussed above, Staff reiterated in its post-hearing briefing that "PNM's application falls short of this requirement [in Subsection (F)] because the letter provided by PNM in support of its SB 170 accounting order request does not mention the economic development projects."[148]

(85) NMDOJ interprets the "project" to be certified under Subsection (F) as the relevant generation, storage, or other utility infrastructure, not an unrelated potential customer development site. NMDOJ argues in its post-hearing briefing that PNM has not produced any evidence of approval by NMEDD of the Palomas project of [sic.] any of the other generation or battery facilities from which PNM intends to purchase power or capacity."[149] Because the statute specifically defines economic-development projects as energy infrastructure, NMDOJ argues, the statutory certification must concern that infrastructure, rather than merely prospective customer locations. NMDOJ argues that PNM's certification letter does not satisfy this requirement.[150]

(86) During cross-examination, Mr. Sanders acknowledged that the NMEDD certification letter does not identify the Palomas or Wildcat agreements. Under further cross-examination by NEE

[147] *See* Staff Hrg. Ex. 1 (Mauldin Direct) at 5 n.6.

[148] Staff's Brief at 7.

[149] NMDOJ's Brief at 6.

[150] NMDOJ's Brief at 5-7.

counsel, Sanders states that the letter does not identify either the Palomas Wind PPA or the Wildcat PPA and ESA.[151]

(87) Nevertheless in rebuttal, PNM appears to redefine the purpose of the certification letter. Whereas in statute the letter must certify the economic development projects, Sanders asserts that "[t]he certification addresses whether the identified physical sites support reasonably anticipated economic development in New Mexico."[152] In other words, he states, "the [NMEDD] certification applies to the sites that the resources would be intended to serve…[and] does not address the locations of the Palomas or Wildcat resource projects,"[153] nor, presumably, the projects themselves.

(88) PNM argues that "the [NMEDD] certifications of the identified sites therefore establish the economic development and site-selection predicate for PNM's request for the accounting order,"[154] while concluding, in response to Staff's concerns about the letter, that though "the certification letters [sic] use the term "sites" [it] does not, standing alone, establish that PNM's request fails to comply with Section 62-6-26."[155] PNM maintains this position in post-hearing briefing, seeking to disassociate the definition of economic development project in statute from the purported purpose of the letter in Subsection (F), which provides that NMEDD must certify economic development projects. PNM argues that "[t]he relevant sites NMEDD must certify are

[151] Tr. Vol. I at 237.

[152] PNM Hrg. Ex. 3 (Sanders Rebuttal) at 6.

[153] *Id.*

[154] *Id.* at 7.

[155] *Id.* at 8.

the locations of the anticipated economic development and resulting electric load, not the physical locations of the generation or storage facilities supplying that load."[156]

(89) Further discrepancy concerns the amount of anticipated economic-development load, and attendant costs, addressed by the certification. While PNM is requesting up to 200 MW of economic development load that would be covered by the accounting order, the letter estimates that the nine certified sites could demand up to 150 MW with significant investment. The letter states that "with minimal investment, the [nine] listed sites could demand over 65 MW of power, ranging up to 150 MW with more significant investments."[157] That "certified" anticipated load demand estimate is below the accounting order requested for the costs associated with the forecasted incremental 200 MW economic development capacity.

(90) In post-hearing briefing, Staff identifies the mismatch between the 200 MW related accounting order request and the 65 MW–50 MW range identified in the in the letter, stating that "[a]nticipated [e]conomic development load is less than the generation PNM seeks to defer."[158] Staff further asserts that PNM refers to additional certified sites but does not include their supporting NMEDD letters with this application.[159] Consequently, Staff states, "the NMEDD letter provided in this case does not establish that the 200MWs of generating capacity will support reasonably anticipated economic development within the state,"[160] and "[b]ecause the certification letter provided by PNM only establishes 150MW of reasonably anticipated economic development load, it is Staff's position that, if the Commission does approve PNM's request for a SB 170

[156] PNM's Brief at 17.

[157] PNM Hrg. Ex. 2 (Sanders Direct), Ex. KTS-2 at 2.

[158] Staff's Brief at 9.

[159] *Id.* at 10.

[160] *Id.*

accounting deferral, the Commission should limit PNM's deferment to costs associated with 150MW of energy generation."[161]

iv. Hearing Examiners' Determination

(91) For the Commission to authorize the accounting order requested by PNM pursuant to Section 62-6-26(E), PNM must establish that the costs proposed for deferral were incurred for qualifying economic-development projects, as defined in Subsection (G)(1), and that those projects have been certified by NMEDD pursuant to Subsection (F). The statutory definition identifies economic-development projects in terms of the construction or modification of specified electric generation, storage, transmission, distribution, and other qualifying facilities or resources necessary to serve reasonably anticipated new load. The statute further requires NMEDD certification that the economic-development project will support reasonably anticipated economic development within the state.

(92) PNM seeks an accounting order for costs associated with the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA, which it contends will provide incremental capacity necessary to serve anticipated economic-development load. Although the underlying generation and storage facilities involve construction by third-party developers, PNM has not demonstrated that its contractual payments for electricity and storage services constitute costs incurred for the development, construction, or maintenance of economic-development projects within the meaning of Section 62-6-26(E) and (G)(1). This distinction comports with the Commission's determination in Docket No. 25-00088-UT, in which PNM sought deferred accounting treatment for the construction and modification of its own substations and associated transmission facilities. In that

[161] *Id.*

proceeding, the Commission approved specifically identified utility infrastructure projects for which PNM would incur construction and related operating costs. The Commission did not determine that PPAs or ESAs involving facilities constructed and financed by third parties qualified as economic-development projects.

(93) Independently, PNM has not demonstrated that the NMEDD certification letter satisfies the requirements of Section 62-6-26(F). Although NMEDD issued a letter citing the applicable statute and identifying nine prospective economic-development sites, the letter certifies the economic-development potential of those sites rather than the Palomas Wind or Wildcat Solar and Battery projects. PNM maintains that certification of the sites and their anticipated load satisfies Subsection (F), leaving the Commission to determine whether the identified generation and storage resources qualify under the statute. However, Subsections (E), (F), and (G)(1), together, require certification of the economic-development projects for which deferred accounting treatment is sought. The certification of prospective development sites, without identification of the projects proposed to serve them, does not establish that the statutory certification requirement has been satisfied.

(94) Finally, even assuming that the PPAs and ESA qualified as economic-development projects and that NMEDD's certification of prospective development sites satisfied Subsection (F), the certification letter does not substantiate PNM's request to defer costs associated with 200 MW of incremental capacity. The letter estimates potential demand of approximately 65 MW to 150 MW at the nine identified sites, depending on the extent of additional investment. It does not establish that those sites will require the additional 200 MW of capacity for which PNM seeks deferred accounting treatment. Accordingly, the Hearing Examiners determine that PNM has not met its burden to establish that the requested accounting treatment satisfies the requirements of

Section 62-6-26(E), (F), and (G)(1). PNM's request for an accounting order for deferral of costs associated with the identified portions of the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA pursuant to NMSA 1978, § 62-6-26(E) should therefore be denied.

C. PNM's Request for an Accounting Order May Be Approved Under the Commission's General Ratemaking Authority

(95) Although the Hearing Examiners conclude that PNM has not established entitlement to deferred accounting treatment under NMSA 1978, Section 62-6-26(E), that determination does not foreclose approval of an accounting order under the Commission's general ratemaking authority. Section 62-6-4(A) grants the Commission broad authority to regulate and supervise public utilities with respect to their rates and services.[162] Additionally, 17.9.551.9(A)-(C) NMAC expressly permits the Commission to authorize alternative ratemaking treatment for long-term purchased power agreements.[163] The Commission has previously exercised its regulatory authority to authorize the establishment of regulatory assets while reserving determinations concerning the prudence, reasonableness, and ultimate recovery of deferred costs for subsequent ratemaking proceedings.[164] Accordingly, the Commission may exercise its discretion to consider PNM's requested accounting treatment under its general statutory and regulatory authority notwithstanding PNM's failure to satisfy the specific requirements of Section 62-6-26(E).

(96) Although 17.9.551.9 NMAC specifically addresses ratemaking treatment for long-term purchased power agreements, the Commission's authority under Section 62-6-4(A) provides an independent basis for considering appropriate accounting treatment for costs associated with the

[162] NMSA 1978, § 62-6-4(A).

[163] 17.9.551.9(A)-(C) NMAC.

[164] Docket No. 18-00261-UT, Final Order Adopting Recommended Decision (Mar. 27, 2019); Docket No. 21-00083-UT, Order on Joint Motion for Accounting Order (Nov. 18, 2022) at 6, ¶ 18.

Wildcat ESA. The authorization recommended herein rests upon the Commission's general ratemaking authority and does not depend upon a determination that the ESA qualifies for alternative ratemaking treatment under Rule 551.

(97) PNM requests authority to defer costs associated with portions of the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA identified as necessary to serve 200 MW of anticipated economic-development load.[165] PNM maintains that deferral would avoid imposing costs associated with anticipated future load growth upon existing customers before that load materializes.[166]

(98) Staff supports accounting deferral subject to limitations designed to ensure that deferred costs remain appropriately related to anticipated incremental load and that the regulatory asset balance is minimized.[167] NM AREA supports deferral provided that the Commission reserves subsequent cost-recovery determinations and establishes appropriate protections concerning the terms and duration of deferral.[168] ABCWUA likewise supports deferral but recommends continuing Commission supervision, annual reporting, and notification of material changes affecting anticipated economic-development load.[169] NEE, CCAE, and WRA also advocate an accounting order under the Commission's general ratemaking authority, independently of § 62-6-26(E), although they propose a broader deferral and different conditions.

(99) The Hearing Examiners find that the substantial anticipated load growth demonstrated in this proceeding, together with the potential customer benefits of aligning cost recovery with the

[165] PNM Hrg. Ex. 2 (Sanders Direct) at 42-43.

[166] *Id.*

[167] Staff's Brief at 9-12 and 19-20.

[168] NM AREA's Post-Hearing Brief on Phase I Issues ("NM AREA's Brief") at 5-6 and 12.

[169] ABCWUA's Initial Post-Hearing Brief ("ABCWUA's Brief") at 3-7 and 9-10.

development of that load, provides a reasonable basis for authorizing limited deferred accounting treatment under the Commission's general authority. Such treatment would permit PNM to account separately for costs incurred in anticipation of future load without requiring existing customers to bear those costs before the Commission determines their appropriate allocation and recovery. Nevertheless, the uncertainty surrounding the timing and magnitude of anticipated economic-development load warrants conditions limiting the scope and duration of the authorization and protecting customers against the accumulation of unreasonable deferred balances.

(100) The Hearing Examiners therefore recommend that the Commission authorize PNM to establish a regulatory asset for eligible costs associated with the identified portions of the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA, subject to appropriate limitations and safeguards. Consistent with Staff's recommendation, the authorization should be limited to costs attributable to no more than 150 MW of anticipated incremental load, without establishing that all costs associated with that capacity are necessarily eligible for deferral or subsequent recovery.[170] PNM should maintain separate accounting records for each resource, identify the amounts deferred and their relationship to anticipated incremental load, and exclude deferred amounts from the Fuel and Purchased Power Cost Adjustment Clause, base rates, and other recovery mechanisms to prevent duplicative recovery.[171] With respect to purchased-power energy expenses, PNM shall maintain accounting and reconciliation procedures that prevent duplicative recovery and appropriately recognize the value of energy delivered, associated revenues, and credits attributable to the resources included in the deferral. PNM should also undertake economically reasonable

[170] Staff's Brief at 19-20.

[171] PNM Hrg. Ex. 3 (Sanders Rebuttal) at 9-10.

efforts to minimize the deferred balance, including accounting for benefits received through the use of the resources to serve existing customers, off-system energy sales, or other available mitigation measures.[172]

(101) The 150 MW limitation shall apply in the aggregate to the resources subject to the accounting order and shall not constitute a separate allowance for each agreement. PNM shall identify the portions of each agreement included in the deferral, the categories of costs proposed for deferral, and the methodology used to allocate those costs to anticipated incremental load. The resulting deferred amounts shall be subject to verification and subsequent Commission review.

(102) To preserve continuing Commission oversight, PNM should submit annual reports identifying costs deferred and cumulative balances by resource, any associated revenues or credits, the disposition and value of energy delivered, and measures undertaken to mitigate deferred costs.[173] The reports should also address the status of anticipated economic-development load, including material changes in projected demand, customer commitments, and development schedules.[174] PNM should promptly notify the Commission of material changes affecting the justification for continued deferral, such as changes in anticipated load, customer commitments, project schedules, resource availability, or projected deferred balances.[175] The Commission should retain authority, consistent with applicable law and procedural requirements, to prospectively modify the accounting authorization or its conditions as circumstances warrant.

[172] Staff's Brief at 19-20.

[173] *Id.*; ABCWUA's Brief at 9-10.

[174] ABCWUA's Brief at 6-7.

[175] *Id.* at 9-10.

(103) The authorization to defer additional costs shall remain subject to continuing Commission oversight and may be modified or terminated upon a determination that the anticipated incremental load no longer reasonably supports continued deferral. The timing and manner of amortization or recovery of previously deferred balances shall be determined in an appropriate subsequent ratemaking proceeding.

(104) *Authorization to establish a regulatory asset shall not constitute a determination that the deferred costs are prudent, reasonable, or recoverable, nor shall it establish the appropriate allocation of those costs among customer classes.* No carrying charges should be authorized absent further Commission approval. The appropriate termination date for further deferrals, the amortization and recovery of previously deferred amounts, and the treatment of any remaining balance if anticipated load does not materialize shall remain subject to Commission determination. PNM shall bear the burden of demonstrating the prudence, reasonableness, and recoverability of any deferred amounts for which it subsequently seeks recovery.

(105) Accordingly, the Hearing Examiners recommend that the Commission deny PNM's request for an accounting order pursuant to Section 62-6-26(E), but authorize limited deferred accounting treatment under its general ratemaking authority, subject to the safeguards described above. This approach accommodates the potential benefits of acquiring resources in anticipation of economic-development load while preserving the Commission's continuing jurisdiction and protecting existing customers against unreasonable or unsupported cost recovery.

D. PNM's Cost-Allocation and Rate-Impact Analyses are Purely Illustrative

(106) PNM presented illustrative analyses of the potential allocation of costs associated with the proposed resources and their effect on customer rates.[176] PNM witness Julio Aguirre explained that the analyses were intended to demonstrate how resource costs might be allocated among customer classes, including anticipated large-load customers, under potential future rate structures.[177] PNM expressly acknowledged that the analyses do not constitute a proposed cost-recovery methodology or final determination of customer rates and that actual cost allocation and recovery will be addressed in future ratemaking proceedings.[178]

(107) NM AREA witness Mr. Brian Andrews challenged the reliability of the analyses, explaining that they employ methodologies different from those historically used by the Commission to establish PNM's rates and do not adequately demonstrate cost causation for the proposed resources.[179] Mr. Andrews therefore recommended that the Commission afford the analyses no weight in determining the potential rate impacts of the proposed agreements.[180]

(108) Staff witness Zigich similarly characterized the analyses as illustrative and nonbinding, while recognizing that the existing Rate 36B Special Service Contract provides a mechanism for direct assignment of certain resource costs to the customer served under that arrangement.[181] Staff recommended that, absent an applicable Commission-approved mechanism permitting direct

[176] PNM Hrg. Ex. 13 (Aguirre Direct) at 13 and 16-17.

[177] *Id.* at 13.

[178] *Id.*

[179] NM AREA Hrg. Ex. 1 (Andrews Direct) at 8.

[180] *Id.* at 14.

[181] Staff Hrg. Ex. 2 (Zigich Direct) at 22.

assignment, resource costs be allocated pursuant to the methodology approved in PNM's most recent general rate case or another methodology approved in a future proceeding.[182]

(109) The Hearing Examiners find that PNM's illustrative analyses may provide general context concerning the potential financial implications of the proposed resource portfolio but are not sufficiently developed to support any determination concerning the ultimate allocation of costs among customer classes. This conclusion is consistent with PNM's express acknowledgment that the analyses are illustrative and that it is not seeking approval of a cost-allocation methodology in this proceeding. Accordingly, the Hearing Examiners recommend that the Commission afford the analyses limited weight and expressly decline to adopt their underlying methodologies or assumptions for future ratemaking purposes.

(110) Approval of the Phase I PPAs and ESAs should not constitute approval of any particular cost-allocation methodology, customer-class responsibility, or future large-load tariff. Existing Commission-approved tariffs and contractual mechanisms remain applicable according to their terms. Except where such mechanisms authorize direct assignment, the allocation and recovery of resource costs, including costs associated with Mid-State, should remain subject to determination in an appropriate future ratemaking proceeding. The limited deferred accounting treatment authorized pursuant to Section III(C) does not alter this reservation of ratemaking authority or establish a presumption concerning the allocation or recovery of any deferred costs, which shall remain subject to the conditions imposed by the Commission and further determination in an appropriate proceeding.

IV. RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds and concludes:

[182] *Id.*

(111) The Commission has jurisdiction over PNM and the subject matter of this docket.

(112) Reasonable, proper, and adequate notice of this proceeding was provided.

(113) The Commission has authority to review and approve PNM's proposed long-term purchased power agreements ("PPAs") and energy storage agreements ("ESAs") pursuant to 17.9.551 NMAC ("Rule 551").

(114) PNM seeks approval of four PPAs and six ESAs, consisting of two 400 MW Palomas wind PPAs, a 150 MW Cat Hills solar PPA, a 90 MW Wildcat solar PPA, and ESAs for 150 MW at Cat Hills, 50 MW at Wildcat, 150 MW at Gila Monster, 90 MW at TAG II, 60 MW at Britton, and 110 MW at Encino.

(115) The proposed agreements have 20-year terms and were selected through PNM's competitive procurement and portfolio-evaluation process to address identified resource needs during the 2029–2032 period.

(116) PNM has demonstrated a substantial need for additional generation and storage resources to address anticipated load growth, resource adequacy requirements, and other identified system needs.

(117) PNM has provided the information required by Rule 551 concerning the proposed agreements, including their terms, pricing, capacity, energy, facility characteristics, nonperformance provisions, necessary permits and approvals, and expected operational benefits.

(118) Commission Utility Division Staff independently evaluated the proposed resources and recommends approval of all four PPAs and six ESAs. The parties do not oppose approval of the eight non-Palomas agreements.

(119) The Cat Hills PPA and ESA, Wildcat PPA and ESA, Gila Monster ESA, TAG II ESA, Britton ESA, and Encino ESA satisfy the applicable requirements of Rule 551, respond to PNM's demonstrated system needs, and should be approved.

(120) The two Palomas PPAs provide for the purchase of a combined 800 MW of wind generation and were selected as components of PNM's preferred resource portfolio.

(121) Delivery of energy from the Palomas resources requires additional transmission capability, which PNM presently anticipates will be provided through the proposed Mid-State Transmission Project ("Mid-State").

(122) PNM has not requested Commission approval of Mid-State in this proceeding. Approval of the Palomas PPAs does not constitute approval of Mid-State, any particular transmission route or configuration, or any transmission expenditure or associated cost recovery.

(123) The need for, routing of, and other regulatory approvals associated with Mid-State must be independently evaluated in an appropriate future proceeding. Approval of the Palomas PPAs does not establish a presumption concerning Mid-State's necessity, reasonableness, or superiority to available alternatives.

(124) The relationship between the Palomas PPAs and Mid-State does not warrant denial or postponement of the PPAs or require completion of a transmission alternative-route analysis before approval of the agreements.

(125) PNM's competitive procurement evaluation of the Palomas resources incorporated assumptions concerning the costs and availability of the transmission facilities necessary to deliver the contracted energy. Material increases in transmission costs or delays in transmission availability could affect the economic basis upon which the resources were selected.

(126) The contractual arrangements identified by PNM provide some protection against transmission-related risks but do not eliminate uncertainty concerning the ultimate costs and timing of the necessary transmission facilities.

(127) Approval of the Palomas PPAs should be conditioned upon a limitation protecting customers against material increases in transmission and network-upgrade costs associated with delivery of the Palomas resources.

(128) Staff's recommended limitation of 110 percent of the approximately $595 million transmission and network-upgrade cost estimate establishes a threshold of $654.5 million, above which PNM must obtain further Commission authorization before recovering additional costs from customers.

(129) The $654.5 million threshold does not constitute approval of the underlying cost estimate or establish that expenditures below the threshold are prudent, reasonable, or recoverable. All such determinations remain subject to Commission review in appropriate future proceedings.

(130) Subject to the transmission-cost limitation and express reservation of Commission authority concerning Mid-State, the Palomas PPAs satisfy the applicable requirements of Rule 551 and should be approved.

(131) PNM requests deferred accounting treatment pursuant to NMSA 1978, Section 62-6-26(E), for portions of the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA associated with 200 MW of anticipated economic-development load.

(132) Section 62-6-26(E), (F), and (G)(1) establishes requirements governing deferred accounting treatment for qualifying economic-development projects, including NMEDD certification and Commission approval.

(133) PNM's proposed accounting treatment concerns portions of contractual arrangements for the purchase of generation and storage services from third-party resources. PNM has not sufficiently established that those arrangements satisfy the statutory definition of an economic-development project under Section 62-6-26(G)(1).

(134) The NMEDD certification evidence identifies prospective economic-development sites and anticipated load rather than certifying the particular generation and storage resource projects for which PNM seeks deferred accounting treatment.

(135) PNM's proposed 200 MW allocation reflects an assumption incorporated into its resource-planning analysis. The NMEDD certification evidence identifies anticipated load ranging from approximately 65 MW to 150 MW and does not substantiate the full 200 MW allocation.

(136) PNM has not demonstrated that its requested accounting treatment satisfies the requirements of Section 62-6-26(E), (F), and (G)(1). The request for deferred accounting treatment pursuant to Section 62-6-26(E) should therefore be denied.

(137) The Commission's general authority to regulate public utility rates and services under NMSA 1978, Section 62-6-4(A), is distinct from the specific deferred accounting provisions of Section 62-6-26(E).

(138) The Commission may authorize appropriate deferred accounting treatment under its general ratemaking authority independently of Section 62-6-26(E), subject to reasonable limitations and conditions protecting customers and preserving future ratemaking determinations.

(139) The record establishes substantial anticipated incremental load growth and a reasonable basis for authorizing limited deferred accounting treatment for costs associated with resources identified to serve that load, notwithstanding the failure to establish qualification under Section 62-6-26(E).

(140) The Commission should authorize PNM to establish a limited regulatory asset for eligible costs associated with portions of the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA under its general ratemaking authority.

(141) The accounting authorization should be limited to costs attributable to no more than 150 MW of anticipated incremental load in the aggregate across the agreements subject to the authorization. This limitation does not establish that 150 MW of qualifying load has been demonstrated or will materialize, or that any particular amount will ultimately be recoverable.

(142) PNM should identify the portions of each agreement included in the deferral, the categories of costs deferred, and the methodology used to allocate those costs to anticipated incremental load.

(143) PNM should maintain separate accounting records for each resource, prevent duplicative recovery through existing rates or other mechanisms, and take economically reasonable measures to minimize deferred balances through appropriate recognition of energy revenues, credits, and other benefits.

(144) PNM should submit annual reports identifying deferred costs and cumulative balances by resource, associated revenues and credits, mitigation efforts, and the status of anticipated economic-development load. PNM should promptly notify the Commission of material changes affecting the basis for continued deferral.

(145) The Commission should retain authority to prospectively modify or terminate the authorization to defer additional costs as circumstances warrant, subject to applicable procedural requirements.

(146) Authorization to establish a regulatory asset does not constitute approval of carrying charges, amortization, allocation, or recovery of deferred costs, or establish a presumption that those costs are prudent, reasonable, or recoverable.

(147) All determinations concerning the prudence, reasonableness, carrying charges, amortization, allocation, and ultimate recovery of deferred costs, including their treatment if anticipated economic-development load does not materialize, remain reserved for an appropriate future ratemaking proceeding.

(148) Subject to the limitations and safeguards described in this Recommended Decision, the limited accounting authorization is reasonable and consistent with the public interest.

(149) PNM's cost-allocation and rate-impact analyses are illustrative and do not establish the appropriate allocation of resource costs among customer classes or constitute a final cost-of-service methodology.

(150) Approval of the PPAs and ESAs does not constitute approval of PNM's illustrative cost-allocation methodology, rate-impact assumptions, or any resulting customer-class allocation. Such determinations remain reserved for appropriate future ratemaking proceedings.

(151) PNM has met its burden of demonstrating that the four PPAs and six ESAs should be approved under Rule 551, subject to the limitations and conditions established in this Recommended Decision.

(152) Approval of the resource agreements, denial of statutory deferred accounting treatment, authorization of limited alternative deferred accounting treatment, and reservation of future transmission and ratemaking determinations, as set forth in this Recommended Decision, are reasonable and consistent with the public interest.

V. RECOMMENDED DECRETAL PARAGRAPHS

(A) Public Service Company of New Mexico's ("PNM") request for approval of the following purchased power agreements ("PPAs") and energy storage agreements ("ESAs") pursuant to 17.9.551 NMAC is GRANTED, subject to the conditions and limitations set forth in this Order:

1) The two 400 MW Palomas Wind PPAs;

2) The 150 MW Cat Hills Solar PPA;

3) The 90 MW Wildcat Solar PPA;

4) The 150 MW Cat Hills ESA;

5) The 50 MW Wildcat ESA;

6) The 150 MW Gila Monster ESA;

7) The 90 MW TAG II ESA;

8) The 60 MW Britton ESA; and

9) The 110 MW Encino ESA.

(B) Approval of the Palomas Wind PPAs does not constitute approval of the proposed Mid-State Transmission Project ("Mid-State"), any particular transmission route, configuration, right-of-way, or associated facilities. All determinations concerning the need for, location, construction, and regulatory approval of Mid-State are RESERVED for an appropriate future proceeding. No presumption concerning the necessity, reasonableness, or superiority of Mid-State or any particular transmission alternative shall arise from approval of the Palomas Wind PPAs.

(C) As a condition of approval of the Palomas Wind PPAs, PNM shall obtain further Commission authorization before recovering from customers transmission and network-upgrade costs associated with delivery of the Palomas resources exceeding $654.5 million in the aggregate. This limitation does not constitute approval of any transmission expenditure or establish that costs below the threshold are prudent, reasonable, or recoverable. All such determinations are RESERVED for appropriate future proceedings. For purposes of this limitation, transmission and network-upgrade costs shall include the categories of expenditures reflected in the $595 million estimate identified in PNM Hrg. Ex. 12 (Hakimian Direct), Table EH-2.

(D) PNM's request for deferred accounting treatment pursuant to NMSA 1978, Section 62-6-26(E), for portions of the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA is DENIED.

(E) Pursuant to the Commission's general ratemaking authority under NMSA 1978, Section 62-6-4(A), PNM is AUTHORIZED to establish a limited regulatory asset for eligible costs associated with portions of the Palomas Wind PPA, Wildcat Solar PPA, and Wildcat Battery ESA, subject to the limitations and conditions set forth below. This authorization is independent of Section 62-6-26(E) and does not constitute a determination that the resources qualify as economic-development projects under that statute.

(F) The accounting authorization established in Ordering Paragraph E shall be limited to costs attributable to no more than 150 MW of anticipated incremental load in the aggregate across the agreements subject to the authorization. The 150 MW limitation shall not constitute a separate allowance for each agreement or establish that any particular quantity of qualifying load has materialized or that any deferred costs are recoverable.

(G) PNM shall identify and maintain records documenting the portions of each agreement included in the deferral, the categories of costs deferred, the methodology used to allocate those costs to anticipated incremental load, and the resulting deferred balances. PNM shall maintain separate accounting records for each resource subject to the authorization. Before recording costs pursuant to this authorization, PNM shall file in this docket a statement identifying the portions of each agreement subject to deferral, the eligible cost categories, and the methodology used to allocate those costs to no more than 150 MW of anticipated incremental load in the aggregate.

(H) PNM shall exclude deferred amounts from the Fuel and Purchased Power Cost Adjustment Clause, base rates, and all other cost-recovery mechanisms to prevent duplicative recovery. PNM

shall maintain accounting and reconciliation procedures that appropriately recognize the value of energy delivered, associated revenues, credits, and other benefits attributable to the resources included in the deferral.

(I) PNM shall undertake economically reasonable measures to minimize deferred balances, including, where appropriate, utilizing energy from the affected resources to serve existing customers, making economically reasonable off-system sales, and applying associated revenues, credits, or other benefits to reduce amounts deferred.

(J) PNM shall file annual reports in this docket identifying, for each resource subject to the accounting authorization:

1) Costs deferred during the reporting period and the cumulative deferred balance;
2) The categories of costs included in the deferral and any adjustments to previously reported amounts;
3) Revenues, credits, and other benefits applied to reduce deferred balances;
4) The disposition and value of energy delivered from the affected resources;
5) Measures undertaken to mitigate deferred costs, including efforts that did not result in mitigation; and
6) The status of anticipated economic-development load, including material changes in projected demand, customer commitments, and development schedules.

(K) The first annual report shall be filed within twelve months after PNM first records costs pursuant to this authorization, with subsequent reports due annually until the regulatory asset is fully disposed of or the Commission orders otherwise.

(L) PNM shall promptly notify the Commission by filing in this docket of any material change affecting the assumptions supporting continued deferral, including significant changes in

anticipated incremental load, customer commitments, resource-development schedules, or the availability of the affected resources.

(M) The Commission retains continuing jurisdiction over the accounting authorization and may prospectively modify, condition, suspend, or terminate PNM's authority to defer additional costs upon an appropriate determination that changed circumstances warrant such action, consistent with applicable procedural requirements.

(N) Authorization to establish a regulatory asset does not constitute approval of carrying charges, amortization, allocation, or recovery of deferred costs. No carrying charges are authorized by this Order. All determinations concerning the prudence, reasonableness, allocation, amortization, and ultimate recoverability of deferred amounts, including their treatment if anticipated economic-development load does not materialize, are RESERVED for an appropriate future ratemaking proceeding.

(O) PNM's illustrative cost-allocation and rate-impact analyses are ACCEPTED for informational purposes only. Approval of the PPAs and ESAs does not constitute approval of the methodologies, assumptions, or customer-class allocations reflected in those analyses. All determinations concerning the allocation and recovery of costs associated with the approved resources are RESERVED for appropriate future ratemaking proceedings.

(P) Any finding or conclusion not specifically stated here but that is necessary to make this writing coherent and complete is adopted by the Commission as if it were stated.

(Q) The Commission has taken administrative notice of all Commission orders, rules, and decisions in all Commission proceedings cited in this final order.

(R) Any matter not specifically ruled on during the hearing or in this writing is resolved consistent with this Final Order.

(S) If no motions for rehearing are filed, or if all motions for rehearing are denied by operation of law, Phase I of this Docket, pursuant to the Bifurcation Order shall close. The disposition of and closure of Phase I does not close Docket No. 26-0000114-UT. All matters reserved for Phase II by the Bifurcation Order remain pending and are not adjudicated by this Order.

(T) This Order is effective when signed.

(U) In computing time in accordance with statute, regulation, or Commission order, the computation shall begin on the date that this Order is filed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on November 2, 2026.

NEW MEXICO PUBLIC REGULATION COMMISSION

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF PURCHASED POWER AGREEMENTS, ENERGY STORAGE AGREEMENTS, AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR 2029-2032 SYSTEM RESOURCES AND THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT	)	**Docket 26-0000114**

CERTIFICATE OF SERVICE FOR PHASE I

I CERTIFY that on this date I caused the service of the Recommended Decision through the PRCe360 file and service system upon the list of registered parties therein, and a courtesy copy sent was separately via email to this official service list.

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DATED: November 2, 2026

NEW MEXICO PUBLIC REGULATION COMMISSION

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