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May 3, 2024

TO PARTIES OF RECORD IN CASE NO. 23-0353-UT

This is the Recommended Decision of the Hearing Examiner. Unless and until the Commission considers the matter and votes to approve it, the Recommended Decision has no legal effect. This matter will be considered at a future Open Meeting of the Commission. To confirm when the matter will be considered, please see the Commission's Open Meeting agenda, which is posted on the Commission's website at least 72 hours before each Open Meeting at: <https://www.nm-prc.org/nmprc-open-meeting-agenda/>.

Parties to the proceeding may file exceptions to the Recommended Decision as provided in Rule 1.2.2.37(C) NMAC of the Commission's Procedural Rules Other interested persons may submit written comments in the record of this proceeding before the Commission takes final action in the matter.

The Commission may hold a deliberative meeting to address this matter in closed session in advance of the Open Meeting at which the matter will be considered, in accord with Section 10-15-1(H)(3) of the Open Meetings Act. NMSA 1978, § 10-15-1(H)(3) (2013). In such event, notice of the deliberative meeting will be posted on the Commission's website 72 hours in advance of the deliberative meeting at the https address set forth above.

Sincerely,

A handwritten signature in blue ink that reads "Anthony F. Medeiros". The signature is written in a cursive, flowing style.

Anthony F. Medeiros
Chief Hearing Examiner
New Mexico Public Regulation Commission

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,) **Case No. 23-00353-UT**
ENERGY STORAGE AGREEMENTS, AND)
CERTIFICATES OF PUBLIC CONVENIENCE)
AND NECESSITY FOR SYSTEM RESOURCES)
IN 2026,)
)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
Applicant)
)
)
_____)

RECOMMENDED DECISION

Before
Hans Muller
Hearing Examiner

May 3, 2024

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TABLE OF ABBREVIATIONS

ABCWUA	Albuquerque Bernalillo County Water Utility Authority
BESS	Battery Energy Storage System
CCN	Certificate of Convenience and Necessity
COD	Commercial Operation Date
EPC	Engineering, Procurement, and Construction
ESA	Energy Storage Agreement
ETA	Energy Transition Act
FPPCAC	Fuel and Purchased Power Cost Adjustment Clause
IRP	Integrated Resource Plan
LOLE	Loss of Load Expectation
LTPPA	Long Term Purchased Power Agreement
MW	Megawatt
NM AREA	New Mexico Affordable Reliable Energy Alliance
NMBCTC	New Mexico Building and Construction Trades Council
NMDOJ	New Mexico Department of Justice
NMDWS	New Mexico Department of Workforce Solutions
NPV	Net Present Value
OEH	Onward Energy Holdings, LLC
PNM	Public Service Company of New Mexico
PPA	Purchased Power Agreement
PUA	Public Utility Act
QF	Qualifying Facility
REA	Renewable Energy Act
RFP	Request for Proposals
S&P	Standard and Poor's
Sandia BESS CCN	Sandia Battery Energy Storage System Project CCN
Staff	Utility Division Staff of the Commission
WRA	Western Reserve Advocates

RECOMMENDED DECISION

Hans Muller, Hearing Examiner for this case, submits this Recommended Decision to the New Mexico Public Regulation Commission (“Commission”) pursuant to 1.2.2.37(B) NMAC. The Hearing Examiner recommends that the Commission adopt the following Statement of the Case, Discussion, Findings of Fact, Conclusions of Law, and Decretal Paragraphs in its Final Order.

1. EXECUTIVE SUMMARY

In this Decision, the Hearing Examiner recommends to the Commission to grant the PPA and ESAs as requested in PNM’s Application. The Hearing Examiner further recommends the approval of the CCN requested by PNM subject to conditions by parties listed in this Decision.

2. PROCEDURAL HISTORY

The procedural history listed here will highlight only the most significant procedural background information. The Commission’s electronic record of this proceeding at <https://edocket.prc.nm.gov> provides the full chronological procedural roadmap of the case from its inception on July 26, 2023.¹

This case was initiated with PNM’s filing of its Application requesting the Commission approve the requested resources for PNM to add approximately 100 MW of solar and 310 MW of battery energy storage—250 MW through energy storage agreements

¹ The chronological record of filings for Case No. 23-00353-UT is under the eDocket folder “100 PLEADINGS/ORDERS”, which contains at this writing 110 documents, including but not limited to the Application and all the pleadings and orders of the Commission and the Hearing Examiner.

(“ESAs”) and 60 MW through a certificate of public convenience and necessity (“CCN”) for a utility-owned battery energy storage system (“BESS”)—to meet system requirements.

The resources requested by PNM consisted of the following;

- a long-term solar Power Purchase Agreement (“PPA”) for Quail Ranch solar project with a 100 MW nameplate capacity;
- three Long-Term ESAs for the Sky Ranch II, Route 66 and Quail Ranch four-hour battery projects with a combined 250 MW capacity;
- and a CCN to construct the 60 MW four-hour BESS Sandia Storage Project.

On November 16, 2023, the Commission issued an order appointing the undersigned Hearing Examiner to preside over this matter. On November 30, 2023, the Commission issued an order setting deadlines for final action on the PNM’s request for approval of the Sandia Storage Project as July 25, 2024 and for final action on PNM’s request for approval of the PPA and ESAs by May 1, 2024, but allowing the Hearing Examiner to extend the procedural schedule to allow the Commission to enter a final order by May 31, 2024.

On November 30, 2023, the Hearing Examiner scheduled a prehearing conference for December 6, 2023. That conference occurred as scheduled and was attended by counsel from PNM, NMDOJ, NMBCTC, NM AREA, WRA, ABCWUA and Staff.

In his Procedural Order issued August 28, 2023, the Hearing Examiner approved the notice to be published by PNM by December 22, 2023. The Procedural Order set the public hearing in this matter for March 20, 2024, and continuing on succeeding days as necessary, until March 22, 2024. The order dealt with the many other subjects that procedural orders generally address such as deadlines for intervention, testimony, publication and mailing of

the Notice to Customers attached to the order, discovery issues, and deadlines for prehearing motions.

Timely motions to intervene were filed by NMDOJ (Nov. 2, 2023), NM AREA (Nov. 3, 2023), ABCWUA (Nov. 7, 2023), WRA (Nov. 20, 2023), NMBCTC (Nov. 29, 2023) and OEH (January 30, 2024). The motions were unopposed. Thus, the “Intervenors” in the case are the aforementioned parties.

The public hearing was conducted over two days between March 20 and March 21, 2024. The two-volume transcript of the hearing was reported by court reporter David Lee. The transcripts and accompanying collection of exhibits admitted into evidence during the hearing were entered into the record on March 25, 2024.

The parties’ briefs-in-chief were submitted on April 15, 2024 as NM AREA, NMBCTC, AMCWUA, PNM and Staff submitted their briefs. Responses briefs were due and submitted on March 25, 2024. Response briefs were filed by PNM on April 29, 2024.

3. STANDARDS APPLICABLE TO THE APPLICATION

3.1 Legal Standards Governing this Matter

3.1.1 Statutory Authority

The Commission has statutory authority under Rule 551 at Section 8(A) which states that no electric utility shall become irrevocably obligated under a long-term purchased power agreement (“LTTPA”) without first obtaining the commission’s written approval of the agreement.² Under Rule 551, the Commission must issue a final order no later than six months from the date PNM files its Application. 17.9.551.10(B) NMAC.

² 17.9.551.8(A) NMAC.

3.1.2 Evidentiary Standard.

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

In Case No. 15-00083-UT, the Commission held that the review and approval procedure for a PPA is similar to the review and approval procedure for a CCN pursuant to NMSA 1978, Section 62-9-1, and that the utility must demonstrate by a preponderance of the evidence that its proposed PPA complies with Rule 551 and is in the public interest.

Recommended Decision, pp. 18-25 (September 21, 2015), *adopted by Final Order* (October 7, 2015). The Commission has equated “public convenience and necessity” with “public interest” and has equated “public interest” with “a net public benefit.” *Id.*

3.1.3 PPA Approval Standards

An LTTPA is a PPA with a term of five years or more, inclusive of the base term and any extensions, for which the utility intends to seek rate recovery from New Mexico retail customers, except for PPAs required to be approved under the Renewable Energy Act (“REA”) and PPAs with Qualifying Facilities (“QF”) pursuant to 17.9.570 NMAC. Because the PPA and ESA are for a term of more than five years and are not subject to the REA or with a QF pursuant to 17.9.570 NMAC, PNM is obligated to obtain Commission approval before becoming irrevocably bound under them.

Rules 551.8(A-C) require a public utility to obtain Commission approval before becoming irrevocably obligated under a LTPPA, to file an application for approval of the PPA within thirty days of executing the agreement, and to serve a copy of the application on Staff, the NMDOJ, and all parties in its most recent general rate case.

Rules 551.8(D)(1) and (2) require a utility to provide a copy of each PPA it seeks approval of and an explanation of the PPA's key terms and conditions.

Rule 551.8(D)(3) requires a utility to provide a description of transmission costs the electric utility will incur or pay to receive the purchased power.

Rule 551.8(D)(4) requires an explanation of how the utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers.

Rule 551.8(D)(5) requires a general description of the generating facilities covered by the PPAs.

Rule 551.8(D)(6) requires the utility to provide evidence that entering into the PPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost.

Rule 551.8(D)(7) requires the utility to provide evidence of the PPA's impact on the utility's financial condition and financial metrics.

Rule 551.8(D)(8) requires the utility to provide evidence that a PPA is consistent with the utility's most recent Commission-accepted IRP unless material changes have occurred.

Rule 551.8(D)(9) requires the utility to provide evidence addressing whether a utility-owned resource could have been constructed as an alternative to the PPA with greater benefit to the utility's customers.

Rule 551.8(D)(10) requires the utility to provide evidence addressing the methodology and criteria by which the PPA was selected.

In addition to complying with Rule 551, PNM must demonstrate by a preponderance of the evidence that the requested PPA and ESA are in the public interest.³

3.1.4 CCN standards

The Public Utility Act requires public utilities to obtain a CCN before constructing or operating any new utility plant or system.⁴ In determining whether to issue a CCN, the Commission must consider whether the new public utility plant or system is consistent with the public convenience and necessity.⁵ The “public convenience and necessity” standard has been interpreted as requiring the showing of a “net benefit to the public.”⁶ The utility

³ See 15-00083-UT, *Recommended Decision*, pp. 18-25 (September 21, 2015), *adopted by Final Order* (October 7, 2015)

⁴ NMSA 1978, § 62-9-1(A). In addition, under Section 62-9-1(B), a public utility may, but is not required to, request a determination of ratemaking principles and treatment for the proposed facilities. The utility must have its articles of incorporation on file with the Commission and make a showing that it has received the consent and franchise from the municipality where the construction and operation is proposed. NMSA 1978, § 62-9- 1(B).

⁵ NMSA 1978, §§ 62-9-1(A) and 62-9-6; see Case No. 15-00185-UT, *Recommended Decision* (NMPRC Sept. 30, 2015), at 6 (“The Commission has equated the ‘public convenience and necessity’ with the public interest.”) (citing *Re Pub. Serv. Co.*, 119 P.U.R. 4th 48, 50 (1990), *aff’d*, *Pub. Serv. Co. v. N.M. Pub. Serv. Comm’n*, 1991-NMSC-083), approved in *Final Order Adopting Recommended Decision with Modification* (Oct. 7, 2015); NMPRC Case No. 13-00297-UT, *Corrected Recommended Decision* (3/6/2014), at 8, approved in *Final Order* (6/11/2014).

⁶ See *e.g.*, Case No. 07-00398-UT, *Recommended Decision* (NMPRC 02/6/2008), at 6, approved in *Final Order* (Feb. 14, 2008); Case No. 3571, *Recommended Decision of the Hearing Examiner* (NMPRC 5/18/2001), at 6-7, approved in *Final Order* (NMPRC 6/19/2001); Case No. 1891/1892, *Re Southern Union Company*, *Final Order* (NMPSC 12/12/1984), at 15 (“We believe that the proper review is an overall assessment of whether, upon a balancing of the benefits and costs to the public of the proposed transactions,

applicant must also show that it has considered alternatives before going forward with a project.⁷ Thus, the utility applicant must show that the resource alternative it proposes “is the most cost-effective among feasible alternatives.”⁸ Whether a utility has properly evaluated alternatives is an issue to be determined based upon the evidence in a hearing.⁹ In the final analysis, the Commission’s determination should be consistent with the overarching regulatory policy pronouncement set forth at the beginning in the Public Utility Act:

It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.¹⁰

The Commission must also review the CCN Application consistent with NMSA 1978 § 62-9-1 (D) which states the Commission shall approve energy storage systems that:

there is a net benefit to the public likely to be realized if the abandonment of service and issuance of a new certificate are granted.”). See also *New Energy Econ. v. N.M. Pub. Regulation Comm’n*, 2018-NMSC-024, ¶ 14, 416 P.3d 277 (“The PRC has interpreted ‘public convenience and necessity’ to entail a net public benefit.”) (citing *In re Valle Vista Water Util. Co.*, 212 P.U.R. 4th 305, 309 (2001), i.e., Case No. 3571, Recommended Decision of the Hearing Examiner, at 6-7.).

⁷ See Case No. 22-00270-UT, Recommended Decision (NMPRC 12/08/2023), at 42 (“[U]tilities must conduct reasonable alternatives analyses before selecting resources. Deficiencies in analyses may warrant nonrecovery of all or a portion of the costs of resources imprudently selected.”), approved in Final Order (NMPRC 01/03/2024) at 20-24; Case No. 15-00261-UT, Corrected Recommended Decision (NMPRC 8/15/2016) at 96- 99 (same), approved in Final Order Partially Adopting Corrected Recommended Decision (NMPRC 9/28/2016); NMPUC Case No. 2382, Final Order Approving Recommended Decision (NMPUC 11/20/1995), at 48-49.

⁸ Case 19-00349-UT, Recommended Decision (NMPRC 11/16/2020), at 16-17 (citing NMPRC Case Nos. 15-00261-UT, 13-00390-UT, 15-00205-UT, and NMPUC Case No. 2382), adopted by order of the Commission (NMPRC 12/16/2020).

⁹ Case 17-00129-UT, Order Denying NEE’s Motion to Dismiss (NMPRC 8/11/2017), at 6.

¹⁰ NMSA 1978, § 62-3-1(B).

- (1) reduce costs to ratepayers by avoiding or deferring the need for investment in new generation and for upgrades to systems for the transmission and distribution of energy;
- (2) reduce the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services;
- (3) assist with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid;
- (4) support diversification of energy resources and enhance grid security;
- (5) reduce greenhouse gases and other air pollutants resulting from power generation;
- (6) provide the public utility with the discretion, subject to applicable laws and rules, to operate, maintain and control energy storage systems so as to ensure reliable and efficient service to customers; and
- (7) are the most cost effective among feasible alternatives.

4. DISCUSSION

4.1 The Facilities

PNM's Application seeks to add additional resources for PNM to meet peak load requirements in 2026 rather than being subject to purchasing additional resources on the open market in order to meet those requirements.

The resources proposed by PNM are summarized as follows:¹¹

1. Sandia Battery Energy Storage System Project CCN ("Sandia BESS CCN"). A CCN for the Sandia Battery Energy Storage System, a 60 MW four-hour battery storage facility located near PNM's existing Sandia Substation in southeast Albuquerque, New Mexico. PNM entered an Engineering, Procurement, and Construction ("EPC") contract with DEPCOM Power Inc. to

¹¹ PNM Post-Hearing Brief at pages 1-2.

build the facility, which will be owned by PNM, is anticipated to cost approximately \$131 million, and is expected to have a COD of May 1, 2026.

2. Quail Ranch Solar Project (“Quail Ranch PPA”). A long-term PPA between PNM and Quail Ranch Solar LLC for all the output of the Quail Ranch solar photovoltaic facility over a twenty-year term at a rate of \$29.84/MWh, which has a nameplate capacity of 100 MW, to be located in Bernalillo County, New Mexico, and is expected to have a Commercial Operation Date (“COD”) of November 2, 2025.

3. Quail Ranch Energy Storage Project (“Quail Ranch ESA”). A long-term ESA between PNM and Quail Ranch Energy Storage LLC for the capacity and energy storage of the Quail Ranch Energy Storage Project over a twenty-year term at a volumetric rate of \$49.20/MWh, co-located with a 100 MW four-hour battery storage facility co-located with the Quail Ranch solar facility, expected to have a COD of November 2, 2025.

4. Sky Ranch Energy Storage Project (“Sky Ranch ESA”). An ESA between PNM and Sky Ranch II Energy Storage LLC for the capacity and energy storage of the Sky Ranch II Energy Storage Project over a twenty-year term at a volumetric rate of \$28.04/MWh, a 100 MW four-hour battery storage facility co-located with the Commission-approved Sky Ranch solar project in Valencia County, New Mexico, and expected to have a COD of February 1, 2026.

5. Route 66 Energy Storage Project (“Route 66 ESA”). An ESA between PNM and Route 66 Energy Storage LLC for the capacity and energy storage of the Route 66 Energy Storage Project over its contractual (approximately 20 year) term at a volumetric rate of \$48.95/MWh, a 49.5 MW four-hour battery storage facility co-located with the Commission-approved Route 66 solar facility in Cibola County, New Mexico, expected to have a COD of February 1, 2026.

4.2 PNM’s Reserve Resources

PNM asserts that without approval of the resources PNM will have only 89 MW of reserve resources for a reserve margin under 4% and a LOLE of 1.29, more than twelve times

the industry standards.¹² PNM states that approval of the resources requested would result in a LOLE of 0.113 which equates to 364 MW of reserves.¹³

5. ANALYSIS

5.1 PPA Analysis

The Hearing Examiner notes that all parties that submitted testimony in this case agree that the Quail Ranch PPA should be approved. Staff witness Parks testified that the proposed PPA meets the requirements of the PPA Rule, will allow PNM to meet summer 2026 resource adequacy constraints, complies with the goals of the New Mexico ETA, and is an adequate resource replacement for the Rockmont Solar Project included in the 2020 IRP.¹⁴ NM AREA witness James Dauphinais recommended the Commission approve the Quail Ranch PPA and did not identify any issues of concern related to the PPA.¹⁵ No other parties have stated objections to the Commission approving PNM's requested PPA.

The record reflects that PNM has supported the PPA application with evidence required under Rule 551.8(D)(1-10) for approval of the PPA.

In satisfaction of Rule 551.8(D) subsections 1 and 2, PNM witness Heslop provided copies of the ESAs and the PPA as well as a description of key terms and conditions of each agreement.¹⁶

¹² PNM Post- Hearing Brief at page 4 citing PNM Ex. 4 (Wintermantel Reb.) 2:21-2:14; PNM Ex. 9 (Phillips Reb.) 5:17-6:11, 10:10-11:2, PNM Ex. NLP-1 (Reb); PNM Ex. 6 (Monroy Reb.) 1:22-2:11.

¹³ *Id* at page 5 citing PNM Ex. 9 (Phillips Reb.) 10:3-9.

¹⁴ *Id*, at page 23 citing Staff Ex. 3 (Parks Dir.) 4:17-22.

¹⁵ *Ibid*, citing NM AREA Ex. 1 (Dauphinais Dir.) 4:8-20.

¹⁶ PNM Ex. 10 (Heslop Dir.) 9:13-14:7; PNM Exhibit JWH-2; PNM Exhibit JWH-3; PNM Exhibit JWH-4; PNM Exhibit JWH-5.

In satisfaction of Rule 551.8(D) subsection 3, PNM witness Duane testified that no additional PNM facilities were needed for interconnection or network upgrades to accommodate the PPA.¹⁷

In satisfaction of Rule 551.8(D) subsection 4, PNM witness Monroy explained how PNM proposes to seek recovery of costs associated with the PPA through PNM's FPPCAC in accordance with Rule 551.9(A).

In satisfaction of Rule 551.8(D) subsection 5, PNM witness Heslop testified as to the generating facilities that will be used to generate and store power, the approvals required to construct and operate the generating units, the expected construction time and commercial operation dates, the fuel type and supply resources, and other provisions addressing the utility's ownership options during or after the term of the agreements.¹⁸

In satisfaction of Rule 551.8 (D) subsection 6, PNM witness Phillips testified that the PPA is necessary to provide safe and reliable electricity at the lowest reasonable cost.¹⁹

In satisfaction of Rule 551.8 (D) subsection 7, PNM witness Nichols testified as to the of the impact on PNM's financial condition and financial metrics of the PPA.²⁰

In satisfaction of Rule 551.8(D) subsection 8, PNM witness Phillips testified that the PPA is consistent with PNM's 2020 IRP.

In satisfaction of Rule 551.8(D) subsections 9, 10 and 11, PNM witness Heslop testified that the resources were the most cost-effective bids received in the competitive RFP,

¹⁷ PNM Ex. 15 (Duane Dir.) 11:5-6.

¹⁸ PNM Ex. 10 (Heslop Dir.) 4:4-5:2.

¹⁹ PNM Ex. 7 (Phillips Dir.) 31:2-7.

²⁰ PNM Ex. 14 (Nichols Dir.) 3:10-14.

described the methodology used to select these resources in the RFP, and described the operational and other benefits of the PPA.

The Hearing Examiner finds that PNM has fulfilled the requirements for approval of the PPA and as the PPA is uncontested by the parties, the Hearing Examiner recommends the Commission approve the requested PPA.

5.2 ESA Analysis

PNM's request for approval of the ESA has drawn opposition from Staff and NM Area.

NM AREA recommends the Commission approve the requested ESAs. but expressed concern over the structure of the ESA contracts and the basis of the approval for volumetric pricing. The Hearing Examiner will review those concerns later in this recommended decision.

Staff argued against approval of the ESAs indicating that Staff found that PNM has failed to meet the requirements set in 17.9.551.8 NMAC. Specifically, Staff states that PNM's Application failed to provide evidence that entering into the ESAs is consistent with the provisions of safe and reliable electric utility service at the lowest reasonable cost, and that the ESAs are consistent with the electric utility's most recent Commission-accepted integrated resource plan (PNM's 2020 IRP) or has included justification for this deviation from the IRP.²¹ Staff further argued that PNM has not demonstrated that the ESAs are consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost. Staff states the Application is devoid of any data or analysis supporting the

²¹ Staff Post-Hearing Brief at page 5 citing Staff Exh. 4 (Zigich Dir.) 3:18 -4:7.

need for the proposed ESAs on a reliability basis.²² Staff also takes issue with the selection of 4-hour batteries by PNM. Staff states that a better tool would be a resource that provides clean, dispatchable power such as geothermal, hydro, or a renewable clean fueled resource that is not energy constrained. Absent those resources, other forms of energy storage or hybrid generation and storage systems that can provide long-duration power and energy would be preferred over the selected 4-hour storage battery in Staff's opinion.²³

In response to Staff's claims in opposition, PNM states that much of Staff's opposition to PNM's proposed resources is based on misconceptions about PNM's existing resource portfolio, PNM's 2020 IRP and the process for review and approval of utility resources before the NMPRC.²⁴ PNM states that the alternative options proposed by Staff are not viable or cost-effective options.²⁵ PNM also takes exception to Staff's suggestion that PNM continue to make market purchases to cover any shortfall. PNM states that there is a risk that PNM would not be able to acquire the power necessary to meet customer needs, and if it was able to do so, the cost would be exceeding high.²⁶ PNM claims that their analysis of Staff's recommendation for PNM to rely solely on market purchases over the 20-year planning horizon showed this option would cost customers more than \$1 billion on a net present value basis.²⁷ Responding to Staff's claim that PNM failed to demonstrate that the ESAs are consistent with the 2020 IRP, PNM states that an IRP is a planning tool and is not

²² *Id.*, at pgs. 5-6 citing Staff Exh. 4 (Zigich Dir.) 7-12.

²³ *Id.* at page 6.

²⁴ PNM Post-Hearing Brief at page 33.

²⁵ *Id.*, at page 34

²⁶ *Id.*, at page 35 citing Tr. Vo. I (Phillips) 187:25-188:19.

²⁷ *Id.*, at page 35 citing PNM Ex. 9 (Phillips Reb.) 5:17-6:11, 12:13-13:2.

intended to identify specific resources for future inclusion in a utility generation portfolio.²⁸ PNM states the IRP process examines the system needs and how best those needs might be met using generic resources for modeling. PNM's specific resources are identified through the RFP process and ultimately in a resource procurement case, such as the present proceeding.²⁹ PNM further takes issue with Staff's recommendation to approve the PPA but not the ESA stating the Quail Ranch PPA and the Quail Ranch ESA were bid as a package. PNM states the result of the approval of the Quail Ranch PPA but not the Quail Ranch ESA would be that PNM would have to renegotiate the PPA, which would result in higher cost and a potential failure of the availability of the resource when needed in 2026.³⁰

The record reflects that PNM has supported the ESA application with evidence required under Rule 551.8(D)(1-10) for approval of the ESA. The Commission has previously ruled that ESA applications must be approved under the PPA Rule subject to the requirements of Rule 551.8(D). PNM's witnesses supplied the testimony required for the individual sections of Rule 551.8(D) as noted above in the PPA analysis.

The Hearing Examiner takes exception to Staff's argument that a geothermal, hydro, or a renewable clean fueled resource would be a preferred alternative tool to the current application. Rather than review the proposed alternatives to the RFP process conducted by PNM and identify which of those would be more cost effective, Staff describes projects which are outside of the RFP process without regard as to the feasibility of those projects

²⁸ PNM Consolidated Response Brief at page 10.

²⁹ *Ibid.*

³⁰ *Id.*, at pages 11-12 citing PNM Ex. 8 (Phillips Reb.) 6:12-18.

supplying power by 2026. Staff admitted at the hearing that they did not conduct an analysis as to whether the proposed preferred projects of Staff were feasible by 2026.³¹

The Commission has indicated that it is incumbent upon an applicant to show that a proposed facility is the most cost effective among feasible alternatives.³² While the Commission does not burden intervenors to provide their own modeling analyses, the Commission requires that intervenors show that the modeling performed by the Applicant was based upon poor or false assumptions.³³

The Hearing Examiner notes however, that if a burden of an applicant is to show the proposed facility is the most cost effective among feasible alternatives, that same burden must also exist upon an intervenor to demonstrate that a proposed alternative project is also feasible to be considered a viable alternative project. It is insufficient for an intervenor to propose an alternative project without providing evidence that the project is also feasible to meet the needs of the application. The preferred projects suggested by Staff then should not be considered as viable alternative projects for compliance with Rule 551.8 (D).

Staff further does not provide evidence that the modeling performed by PNM was based upon poor or false assumptions. At the hearing, NM Area witness Dauphinais provided evidence that he had reviewed the EnCompass economic analysis and SERVVM resource adequacy analysis modeling performed by PNM and verified the evidence.³⁴ At the hearing, Staff did not question witness Dauphinais as to how he verified the modeling. Staff, on the

³¹ Tr. Vol. II (Zigich) 340:341:12, 363:10-17.

³² See Case 19-00349-UT, *Order Adopting Recommended Decision* at page 3.

³³ *Ibid.*

³⁴ NM Area Exh. 2 (Dauphinais Reb.) 4:7-10.

other hand, stated their analysis demonstrated a need to improve upon PNM's current reserve margin, but does not identify particular poor or false assumptions associated with PNM's modeling. Rather, Staff states that the information necessary to perform an analysis was not included in PNM's Application, so Staff found the application incomplete.

The Hearing Examiner finds that the evidence presented by PNM in the Application and during discovery was sufficient for determining that the proposed projects were cost effective among the feasible alternatives for PNM. The Hearing Examiner recommends that the Commission approve the requested ESAs in PNM's Application.

5.3 CCN Analysis

As the Commission would be required to approve the CCN Application if it satisfied the conditions under NMSA 1978 § 62-9-1 (D), the Hearing Examiner will first address the CCN subject to those requirements.

5.3.1 Reduction of costs deferring the need for investment in new generation

PNM states that the site is near an existing PNM substation which reduces and limits additional transmission and substation expansion requirements. The location site then allows PNM to avoid or defer the need for investment in new generation while still contributing to resource adequacy. PNM states that without this storage facility, PNM would need to invest in other resources to provide firm capacity to the system, such as natural gas.³⁵ PNM asserts that the Sandia BESS can be installed in a shorter time frame by using existing infrastructure in an area already established and secured by PNM.³⁶ PNM indicates that new construction will require some work on the substation such as a limited gen-tie line, but a draft

³⁵ PNM Post-Hearing Brief at page 18 citing PNM Ex. 12 (Heffington Dir.) 3:5-10; PNM Ex. 7 (Phillips Dir.) 6:1-10.

³⁶ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 18:15-19:1.

interconnection agreement is in place, and the existing substation is already experiencing network upgrades that will also compliment the Sandia BESS.³⁷ PNM further indicates that the CCN will significantly reduce the need for potentially expensive market purchases which would force PNM to pay expected costs of \$150 to \$200 per MWh for blocks of hours needed to supply customers.³⁸

No party objected or supplied evidence that PNM did not satisfy this condition beyond a preponderance of the evidence. Staff indicated that the Sandia BESS can reduce costs to ratepayers if its discharge time lasts longer than the load required to serve³⁹, but did not provide information as to potential savings over market purchases or deferral of need for investment of new generation.

5.3.2 Reduction of use of fossil fuels for peak load periods

PNM states that the Sandia BESS CCN meets this criterion primarily through its ability to store energy produced from renewable sources during off-peak load periods for discharge during peak load times. The Sandia BESS will provide generation benefits by shifting energy from high solar production peak hours to demand times when solar production is minimal. PNM states that by increasing their energy storage ability, PNM can reduce curtailments of solar production, reducing and offsetting historical dependency on, and dispatch of, fossil fueled generation.⁴⁰ PNM predicts the Sandia BESS CCN will reduce

³⁷ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 18:15-19:1; PNM Ex. 15 (Duane Dir.) 12:15-17.

³⁸ *Id*, at page 17 citing Tr. Vol. I (Phillips) 187:1-15.

³⁹ Staff Ex. 1 (Sidler Dir.) 9:5-6.

⁴⁰ PNM Post-Hearing Brief, at page 19 citing 3 PNM Ex. 12 (Heffington Dir.) 19:8-10; 19:12-23.

renewable curtailments by between 30,000 and 60,000 MWh⁴¹ leading to a reduction in the use of fossil fuels that would otherwise be necessary to fulfill PNM's resource needs.

No party objected or supplied evidence that PNM did not satisfy this condition beyond a preponderance of the evidence. Staff indicates that the Sandia Bess may release the use of fossil fuels by delaying the use of fossil fuel generation to provide for existing loads.⁴²

5.3.3 Assist with ensuring grid reliability

PNM states that the Sandia BESS CCN will provide flexible and responsive capacity to the transmission system; and states the Sandia BESS will be able to start and reach full discharge capacity or full charging capacity within seconds.⁴³ PNM indicates the Sandia BESS will also provide ancillary capabilities including contingency reserves, regulation (up and down), voltage control, and frequency response. PNM indicates the capabilities also facilitate the increased integration of variable, renewable energy resources.⁴⁴ Staff acknowledges that the Sandia BESS could aid grid reliability and that the Sandia BESS is a quick responding resource than can respond to changes in load and generation quickly.⁴⁵

No party objected or supplied evidence that PNM did not satisfy this condition beyond a preponderance of the evidence.

5.3.4 Support diversification of energy resources and grid security

PNM indicates that the Sandia BESS will initially support diversification of energy sources as described in the prior sections. Staff initially argued that the Sandia BESS CCN

⁴¹ *Ibid*, citing Tr. Vol. I, (Phillips) 125:12-126:25.

⁴² Staff Ex. 1 (Sidler Dir.) 9:11-12.

⁴³ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 20:2-10.

⁴⁴ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 20:10-13.

⁴⁵ *Ibid*, citing Staff Ex. 1 (Sidler Dir.) 10:1-10.

must be collocated with renewable resources.⁴⁶ In response, PNM stated that there is no statutory or regulatory requirement that a BESS be collocated with renewable facilities. At the hearing, Staff admitted that there is no such explicit requirement.⁴⁷ PNM indicates that the Sandia BESS CCN will increase the amount of renewable energy integrated into the system by allowing excess renewable energy produced during times of high production to be stored and used later.⁴⁸ While Staff noted the possibility of charging from any resource,⁴⁹ the ability to utilize a wide variety of resources for charging fully complements the expanded diversification of energy resources.

No party objected or supplied evidence that PNM did not satisfy this condition beyond a preponderance of the evidence.

5.3.5 Reduce green house gases and other air pollutants

PNM states the Sandia BESS will generate no greenhouse gases or other air pollutants on PNM's system⁵⁰ and will reduce and offset historical dependence on fossil fuel generation through its ability to store renewable energy for use during peak load. The increased ability to store and utilize renewable resources will reduce the need for curtailments.⁵¹ PNM's modelling indicates that the Sandia BESS CCN will reduce carbon dioxide emissions by 134,000 tons between 2026 and 2039.⁵²

⁴⁶ Staff Ex. 1 (Sidler Dir.) 10:12-19.

⁴⁷ See Tr. Vol. II. (Sidler) 271:8-11.

⁴⁸ PNM Post-hearing Brief pg. 20 citing PNM Ex. 8 (Phillips Reb.) 29:18-30:6.

⁴⁹ *Ibid*, citing Staff Ex. 1 (Sidler Dir.) 10:12-19.

⁵⁰ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 21:2-7.

⁵¹ *Id*, at pgs. 20-21 citing PNM Ex. 12 (Heffington Dir.) 21:2-9.

⁵² *Id*, at page 21 citing PNM Ex. 12 (Heffington Dir.) 21:9-13.

No party objected or supplied evidence that PNM did not satisfy this condition beyond a preponderance of the evidence.

5.3.6 Provide the public utility with discretion to ensure reliable and efficient service

As the Sandia BESS will be a utility-owned energy storage system, PNM will have the discretion to operate, maintain, and control the system.⁵³ PNM will be able to directly control the preventative, predictive, and unplanned maintenance activities associated with the equipment and timely address any issues.⁵⁴ PNM states that this ability will ensure efficient operation in addition to the reduced curtailments discussed above.⁵⁵ Staff noted that after discharging, the battery will need to be recharged before it can serve customers.⁵⁶ PNM states that, as the owner, PNM will have discretion in both the charging and the discharging of this resource to optimize the benefits to the system and to customers.⁵⁷

PNM also took steps to assure that the Sandia BESS comes on-line and performs as intended. In the EPC Agreement, PNM states they included customer protections through liquidated damages for project delays as well as performance guarantees with associated liquidated damages for contracted energy storage capacity in MWh, auxiliary power consumption, and roundtrip energy storage efficiency, and a 24-month warranty on materials and services, with extended five-year warranties for inverters and transformers, and three

⁵³ PNM Ex. 7 (Phillips Dir.) 6:21-7:2.

⁵⁴ PNM Ex. 12 (Heffington Dir.) 21:19-22:7.

⁵⁵ PNM Post-Hearing Brief at page 21.

⁵⁶ Staff Ex. 1 (Sidler Dir.) 11:8-16.

⁵⁷ PNM Post-Hearing Brief at page 21.

year warranty for containerized BESS equipment.⁵⁸ PNM states that these protections will help to ensure an efficient construction process and delivery of a product that PNM and its customers can rely upon when they need it most.⁵⁹

No party objected or supplied evidence that PNM did not satisfy this condition beyond a preponderance of the evidence.

5.3.7 Most cost effective among feasible alternatives

PNM states that the cost-effective nature of the Sandia BESS begins in the RFP process for resources that could be available for the summer of 2026. The Sandia BESS is the result of an independent RFP process; PNM claims this selection results in the lowest cost to reliably serve PNM's customers.⁶⁰ The responses to the RFP were the options that PNM had to evaluate. PNM states there were no options submitted for geothermal, hydroelectric, renewable clean fueled resources that are not energy constrained, or other forms of energy storage or hybrid generation and storage systems that could provide long-duration power as advocated by Staff.⁶¹ PNM claims then that the only "feasible alternative" proposed by Staff for the Sandia BESS is relying on market purchases, which PNM argues is not cost effective or prudent.⁶²

PNM admits the Sandia BESS has a higher upfront cost with a cost of \$131 million. However, PNM argues that it provides several economic benefits to help make it the most cost effective amongst feasible alternatives. PNM states that the Sandia BESS does not face

⁵⁸ *Id.*, at pgs. 21-22 citing PNM Ex. 12 (Heffington Dir.) 12:5-16.

⁵⁹ *Id.*, at page 22.

⁶⁰ *Id.*, at page 16 citing PNM Ex. 6 (Monroy Reb.) 2:13-15.

⁶¹ *Ibid.*, citing PNM Ex. 8 (Phillips Reb.) 11:12-12:4.

⁶² *Ibid.*

the same level of risk as third-party contracts since it is on a PNM owned site. Because of this, it can avoid risks such as land easements or interconnection rights.⁶³ The Sandia BESS location allows it to utilize existing infrastructure which will minimize its cost.⁶⁴ PNM is also in a position to control procurement markups and return expectations as owner of the facility.⁶⁵ Additionally, as a utility-owned resource, it carries potential investment tax credits.⁶⁶ Tax benefits from the Inflation Reduction Act or other incentives are passed to PNM customers.⁶⁷ Unlike ESAs, PNM will be able to retain the benefit of the Sandia BESS beyond its 20-yr proposed depreciable life, providing residual benefit at no additional cost.⁶⁸ PNM concludes that in comparison to the alternatives available through the RFP, the Sandia BESS provides unique economic factors that add to its cost-effectiveness.

With respect to additional market purchases, PNM states that approval of these resources should reduce the need for market purchases and turn market purchases into economic decisions rather than reliability decisions where PNM has no choice.⁶⁹ PNM states the option of not constructing the facility and relying on market purchases dramatically increases the costs to PNM customers and increases uncertainty.⁷⁰

⁶³ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 10:6-10.

⁶⁴ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 22:9-16; PNM Ex. 15 (Duane Dir.), 12:15-17.

⁶⁵ *Ibid*, citing PNM Ex. 12 (Heffington Dir.), 22:18-20.

⁶⁶ *Ibid*, citing PNM Ex. 12 (Heffington Dir.) 22:16-18.

⁶⁷ *Ibid*, citing PNM Ex. 5 (Monroy Dir.) 8:2-3.

⁶⁸ *Id*, at page 17 citing PNM Ex. 5 (Monroy Dir.) 7:9-14.

⁶⁹ *Ibid*, citing Tr. Vol. I (Phillips) 186:3-9.

⁷⁰ *Ibid*.

Staff argues that PNM has not adequately demonstrated that the Sandia BESS is the most cost-effective alternative at this time. Staff also does not believe that 4-hour storage is a viable long-term solution for increasing the use of renewable energy.⁷¹ Staff has found that while shorter duration batteries have a lower battery capital cost on a \$/kW basis, longer duration batteries have a lower battery capital cost on a \$/kWh basis. Staff believes that the public would be better served by waiting for long-term storage options and prices to become available rather than installing more short-term storage that is still expensive.⁷²

The Hearing Examiner finds that the alternative measures advanced by Staff fail to account for whether those alternatives are feasible for the identified shortfall period of 2026 and are outside the alternatives presented in the RFP process undertaken by PNM. Staff appears to be adding additional public interest and viable long-term solution requirements to the seven requirements under 1978 NMSA § 62-9-1 (D) in which the Commission must approve a CCN for an energy storage facility. The Hearing Examiner is not compelled to take the additional requirements into consideration for purposes of this Application in light of the clear requirements listed in 1978 NMSA § 62-9-1 (D).

The Hearing Examiner finds that PNM has satisfied the requirements under 1978 NMSA § 62-9-1 (D) in which the Commission must approve a CCN for an energy storage facility. As such, the Hearing Examiner recommends approval of the requested CCN.

5.4 Other Issues Presented by the Parties

5.4.1 Staff

⁷¹ Staff Exh. 1 (Sidler Dir.), 7:10-17.

⁷² *Id.*, at p. 7, line 18- p. 8, line 3.

Staff stated that if the Commission approves the CCN, the Commission should also approve the certificated estimated cost, and the approval should also have the following additional conditions:

1. PNM shall file copies of all construction permits received for this project in this docket within two weeks of receipt of the final permit required;
2. PNM shall file in this docket the actual costs of this project, including the actual allowance for funds used during construction (“AFUDC”) amounts (if any) and how they were calculated, and also a comparison of the original estimate to the actual installed costs, within one month of becoming available;
3. PNM shall file a notice of the COD of these units; and
4. PNM shall file a notice of the date that any fuel-related benefits as a result of operation of this BESS unit shall first be included in PNM’s Fuel and Purchased Power Cost Adjustment Clause.

PNM agrees with the conditions presented above by Staff.⁷³ PNM does not agree however with conditions below presented by Staff witness Dasheno and Zigich.⁷⁴

- a. PNM should not be allowed to recover any project-associated costs incurred should the development of the ESAs be abandoned before completion.

PNM objects to the recommendation stating that it is premature and unnecessary for the Commission to make any present determination based on a hypothetical scenario where a project is abandoned for some yet unknown reason. PNM agrees it would be responsible to justify a request for any project-related costs associated with the ESAs if they were for some

⁷³ PNM Post-Hearing Brief at pg. 45.

⁷⁴ *Id.*, at pgs. 46-49.

reason abandoned before completion and operation. PNM argues that neither the Commission, PNM, nor any other party has enough information to make any informed judgement on this specific recommendation at this time.⁷⁵ For this reason, PNM states the recommendation should be rejected.

The Hearing Examiner finds that the recommendation regarding costs associated with an abandoned project would be reviewed by the Commission at a later time where the Commission would review the whether the costs were prudent or non-recoverable. PNM does not request ratemaking principles or treatment associated with cost recovery as part of the CCN application. PNM will recover the energy costs associated with the Quail Ranch PPA through its Fuel and Purchased Power Cost Adjustment Clause in accordance with Rule 551.9(A). PNM will seek recovery of the ESA costs in a PNM general rate review filing in which PNM seeks to adjust its base rates.⁷⁶ The Hearing Examiner does not find this recommendation to be necessary for purposes of the CCN approval and recommends the Commission not adopt the recommendation.

- b. Any wholesale market energy purchases that PNM incurs to potentially offset ESA or PPA contributions due to abandonment or delay should be credited back to customers.

PNM acknowledges that any costs recovered through its FPPCAC are always subject to review by the Commission and that PNM holds the burden to ensure its policies and procedures and practices are designed to meet our customers' needs in the most cost-

⁷⁵ *Id.*, at pg 46 citing PNM Ex. 6 (Monroy Reb.) 5:19-6:6.

⁷⁶ PNM Application at page 7.

effective manner. PNM argues that it also has a duty to serve its customers and meet their energy needs, and the Commission should not deny recovery of reasonable and necessary costs required to meet customers' needs. PNM states that it is not appropriate for PNM to be denied the right to recover its actual fuel and purchased power costs based solely whether there is a delay or abandonment of these resources for any reason. Given that these events have not occurred and there are no facts upon which to make any assessment of the circumstance that might lead PNM to have to make market purchases, PNM requests that this recommendation should be denied.⁷⁷

The Hearing Examiner finds that the recommendation regarding market energy purchases to be speculative. PNM testified that wholesale energy purchases are purchased in bulk transactions and denial of "any wholesale market purchases" that potentially offset any abandonment or delay is adverse to supplying reliable service to the customers by PNM. The Commission will fully review any such purchases through the FPPCAC. The Hearing Examiner does not find this recommendation to be necessary for purposes of the CCN approval and recommends the Commission not adopt the recommendation.

- c. If the ESAs in this proceeding are abandoned in favor of longer duration ESAs, then PNM customers should be held harmless for any costs associated with this transition.

PNM argues that this recommendation should be denied as the Commission should not make any determination on speculation, hypotheticals, or potential, unknown future events or outcomes. Each future resource selection should be assessed and evaluated at that

⁷⁷ PNM Post-Hearing Brief at pg. 47 citing PNM Ex. 6 (Monroy Reb.) 6:8-23.

time and consistent with then-current circumstances. If the proposed resources are approved in this case, the approvals will be based on the facts that exist at this time.⁷⁸

The Hearing Examiner finds that the recommendation regarding costs of transition to a longer duration ESA to be speculative. Should PNM request a transition to a longer duration ESA, the economic benefits and costs to customers should be fully presented to the Commission for determination. The Hearing Examiner does not find this recommendation to be necessary for purposes of the CCN approval and recommends the Commission not adopt the recommendation.

- d. PNM should be required to reevaluate imputed debt and the impact that fixed versus variable contracts have on PNM's credit metrics if PNM is acquired by a larger parent company.

PNM objects to this recommendation because PNM's credit metrics are separate and distinct from its parent company. PNM states that this requirement would make RFP evaluation unworkable as there would be an unknowable standard in each situation. PNM further states that the impact of any acquisition or merger on PNM's credit metrics or financial conditions should be evaluated in any future merger proceeding. There is no basis to impose this requirement on PNM at this time. PNM evaluated the proposed contracts and their impacts based on the information available when the bids were reviewed. There should be no hindsight reassessment for any changes in circumstances after the agreements have been negotiated and signed.⁷⁹

⁷⁸ *Ibid*, citing PNM Ex. 6 (Monroy Reb.) 6:8-23.

⁷⁹ *Id*, at page 48 citing PNM Ex. 6 (Monroy Reb.) 7:21-8-11.

The Hearing Examiner finds that the recommendation regarding credit metrics in a proposed merger is more appropriately reviewed in a merger proceeding. The Hearing Examiner does not find this recommendation to be necessary for purposes of the CCN approval and recommends the Commission not adopt the recommendation.

- e. PNM should reduce the rate base of the Sandia BESS by the 30% investment tax credit rather than amortize it over five years.

PNM states that this recommendation should be rejected because its adoption would cost PNM customers \$22.4 million over a 20-year revenue requirement on a net present value basis as shown on PNM Exhibit HEM-1 (Rebuttal) to the Rebuttal Testimony of PNM witness Monroy. This recommendation is also inconsistent with PNM's irrevocable election in 1972 to amortize Investment Tax Credits for financial reporting under generally accepted accounting principles.⁸⁰ PNM states that PNM should be required to explore potential renegotiations of the volumetric pricing structure under the ESA agreements if the impacts to PNM's credit metrics are eliminated by a change in methodology from S&P.

The Hearing Examiner finds that the recommendation regarding the treatment of a tax credit is premature and is better reviewed under a general ratemaking proceeding. The Hearing Examiner does not find this recommendation to be necessary for purposes of the CCN approval and recommends the Commission not adopt the recommendation.

- f. If S&P changes its approach to debt imputation – or if the facts and circumstances of PNM's imputed debt analysis shift – then Staff recommends that PNM promptly renegotiate the contract structures to cheaper, fixed-price ones.

⁸⁰ *Ibid*, citing PNM Ex. 6 (Monroy Reb.) 8:13-10:17.

PNM objects to this recommendation because a potential renegotiation could imperil the CODs required for PNM's 2026 summer peak loads creating a reliability risk for PNM's customers. PNM states that once the ESAs are effective, it would be very difficult to renegotiate new pricing terms. This is because the financing for the ESAs is tied to their pricing structure. PNM states that requiring renegotiation could also lead to attempts to open up other contract terms to the detriment of customers. PNM further states that S&P recently verbally confirmed its treatment of ESAs classified as leases and the resulting impact of imputed debt on PNM's credit metrics. As a result, PNM does not expect any changes to the methodology in the near term.⁸¹ PNM further stated that there is no imputed debt associated with the proposed three ESAs in this proceeding due to the volumetric pricing which resulted in the ESAs not being considered leases under generally accepted accounting principles.⁸²

The Hearing Examiner finds that the recommendation regarding renegotiation the contract structure due to changes in S&P approaches to debt imputation to be unsupported by the record and potentially adverse to the system being operational for summer 2026 needs of customers. The Hearing Examiner does not find this recommendation to be necessary for purposes of the CCN approval and recommends the Commission not adopt the recommendation.

Staff witness Zigich made the following recommendation with which PNM disagrees: PNM should be required to provide a detailed system load, generation and import/export data showing the energy and capacity needs in 2026. PNM disagrees with this recommendation

⁸¹ PNM Exh. 6 (Monroy Reb.) 11:4-6.

⁸² *Id.*, at 12:1-3.

because PNM has already provided detailed information on these topics, both in its filing and in discovery. PNM states that Staff witness Zigich does not explain what data is allegedly missing.

The Hearing Examiner finds that the recommendation regarding providing a detailed system load to be unsupported. The Commission may review such requests beyond what PNM has provided in the Commission's resource adequacy docket should additional information for analysis be required. The Hearing Examiner does not find this recommendation to be necessary for purposes of the CCN approval and recommends the Commission not adopt the recommendation.

5.4.2 ABCWUA

ABCWUA requested the Commission order PNM to supplement its application for the CCN and condition approval of the ESAs on PNM providing; 1) an emergency response plan, coordinated with relevant state and federal officials, that addresses how a fire would be dealt with if one were to occur at one of the proposed battery energy storage sites; and 2) a report describing how the energy storage lithium batteries are either recycled or discarded at the end of their useful lives.⁸³ ABCWUA states that by failing to quantify the total cost of the Sandia energy storage project or the value of the benefits the company asserts the project will provide, it is impossible to know whether the project is cost effective let alone the most cost-effective project among feasible alternatives. ABCWUA proposes to allow PNM to supplement their application.

⁸³ Post-Hearing Brief in Chief of ABCWUA, at pg. 4.

In response, PNM states ABCWUA makes the conclusory claim that PNM has not demonstrated that the Sandia BESS CCN is the lowest cost resource. This issue is raised for the first time in post-hearing briefing and ABCWUA provides no evidentiary support for its arguments. ABCWUA has not and cannot point to any other more cost-effective resources than the Sandia BESS CCN. ABCWUA claims that the Commission must evaluate the proposed resources on an individual basis rather than as a portfolio. PNM states this is incorrect as the Commission has reviewed and approved resources on a portfolio basis where, as here, the resources were evaluated and presented as a portfolio.⁸⁴

PNM continues that ABCWUA fails to state by what authority the Commission should or can impose the conditions on approval of the ESAs. These proposed conditions are not required under the PPA Rule, which govern the approval of the ESAs. PNM states it is questionable whether the Commission has the legal authority to impose disposal or recycling requirements with respect to batteries. The Commission is an administrative agency created by statute and limited to the power and authority expressly granted or necessarily implied by those statutes. The Commission does not have authority over environmental compliance issues, as the New Mexico Supreme Court has confirmed that such authority has been delegated to the New Mexico Environment Department and the New Mexico Environmental Improvement Board.⁸⁵ The Commission has declined to encroach upon environmental compliance matters outside the scope of its authority.⁸⁶

⁸⁴ PNM Consolidated Response Brief, page 15 citing Case No. 19-00195-UT, Recommended Decision on Replacement Resources, Part II, at 65-66 (NMPRC June 24, 2020), adopted, Order on Recommended Decision on Replacement Resources, Part II (NMPRC July 29, 2020).

⁸⁵ *Id.*, at pg. 17 citing *In re Application of Rhino Env'tl Servs.*, 2005-NMSC-024, ¶ 14, 138 N.M. 133.

⁸⁶ *Ibid.*, citing Case No. 19-00018-UT, *Final Order on Request for Issuance of a Financing Order*, at 7, ¶ 27 (NMPRC April 1, 2020).

The Hearing Examiner finds that the matter of cost-effectiveness has been reviewed based upon the objection by Staff, and the Hearing Examiner finds PNM has supported the evidence required. The Hearing Examiner does not recommend requiring PNM to supplement the application with additional cost effectiveness data. The Hearing Examiner further finds that the conditions of approval suggested by ABCWUA are outside the jurisdiction of the Commission and does not recommend adopting the conditions.

5.4.3 NM AREA

Although NM Area supports the approval of PNM's Application, NM AREA raises three additional issues for consideration. First, NM AREA states that in an effort to avoid the ESAs being considered imputed debt on PNM's books, PNM has selected ESA contracts that have volumetric pricing over its prior fixed pricing structure.⁸⁷ The prior fixed pricing structure was based on the capacity of the battery, while the current proposed volumetric pricing structure is tied to the output of the co-located solar generation. The volumetric pricing structure is \$18.9 million more costly on a NPV basis.⁸⁸ However, PNM estimates that in the long run the volumetric pricing structure will save customers \$13 million on an NPV basis if the impact of the imputed debt factor is considered.⁸⁹ While NM AREA understands this is an evolving issue, and supports PNM's effort in coming up with solutions, on a going forward basis, NM AREA recommends that the Commission order PNM to work with stakeholders to include the use of other volumetric pricing structures in future RFPs.⁹⁰

⁸⁷ NM AREA's Brief-In-Chief at page 17.

⁸⁸ *Ibid*, citing PNM Exh. 7 (Phillips Dir.), p. 27.

⁸⁹ *Ibid*, citing PNM Exh. 8 (Phillips Reb.) pp. 3-4.

⁹⁰ *Ibid*.

Second, NM AREA would like the Commission to make clear in its Order that in approving these ESA contracts utilizing volumetric pricing, it is doing so for the sole purpose of addressing the accounting issue PNM has raised.⁹¹ The volumetric pricing structure should have no bearing on how the costs of the ESAs are to be allocated to customer classes.⁹² The batteries are a capacity resource not an energy resource regardless of how the ESA contract is structured. PNM agrees that the volumetric pricing structure of the ESAs should not form the basis of how the costs are allocated to customer classes when setting rates.⁹³

Third, NM AREA objects to the inclusion of Paragraph BB in the First Prehearing Order. At the time of writing this Brief the Hearing Examiner has not issued a ruling on NM AREA's Motion to Remove Paragraph BB from the First Prehearing Order or in the Alternative Permit Interlocutory Appeal, filed on March 13, 2024. NM AREA hereby incorporates and relies on its arguments presented in its March 13th Motion.⁹⁴

NM AREA reiterated its recommendations that (1) PNM be required to work with stakeholders to include the use of other volumetric pricing structures in future requests for proposal; and (2) that the final order in this case make it clear that approval of the volumetric pricing of the ESAs should have no bearing on how the ESA costs are allocated to customer classes. PNM agreed that the volumetric pricing structure of the ESAs should not be used for purposes of cost allocation in this case and that actual cost allocations should be determined in a general rate case. PNM also had no objection to working with stakeholders to ensure that the most appropriate and cost-effective pricing structures are pursued in future RFPs. PNM states the recommendations by NM AREA are reasonable and PNM has no objection to them.

⁹¹ *Id.*, at pg. 18.

⁹² *Ibid.*, citing NM AREA Exh 1 (Dauphinais Dir.) pp.12-13.

⁹³ *Ibid.*, citing PNM Exh. 6 (Monroy Reb.) p.4.

⁹⁴ *Ibid.*

The Hearing Examiner finds that the two recommendations agreed to by PNM are reasonable and should be adopted by the Commission.

The Hearing Examiner now reviews NM AREA's objection to the inclusion of Paragraph BB in the First Prehearing Order. The First Prehearing Order was filed on March 5, 2024. NM AREA's Motion was filed on March 13, 2024. The Hearing Examiner notes Commission Rule 1.2.2.31(B)(2) NMAC which states as follows:

The motion must be filed in writing within three (3) days of the date of an oral ruling or service of a written ruling.

As the Motion by NM AREA was filed 8 days after the written prehearing order was issued, the Hearing Examiner finds the Motion untimely as to a request for interlocutory appeal.

The Hearing Examiner further notes Commission Rule 1.2.2.31(A)(2) NMAC which states that:

The commission does not favor interlocutory appeals from the rulings of a presiding officer and expects that appeals will be taken only in extraordinary circumstances. The movant in any such appeal bears the burden of establishing grounds for review and reversal of a ruling of the presiding officer made in the course of the proceeding.

The Hearing Examiner finds that the relief requested by NM AREA does not rise to the level of extraordinary circumstances under the Rule. The Hearing Examiner addressed concerns of the parties with further explanation of Paragraph BB and

expected decorum in the hearing.⁹⁵ The paragraph has been used in prior proceedings to which NM AREA has participated without objection, and NM AREA stated in the Motion that NM Area was not seeking to suspend the evidentiary proceedings. A hypothetical basis of an action which may or may not occur in court does not rise to the level of extraordinary circumstances. In the event that a Hearing Examiner does expel NM AREA from a future proceeding, NM AREA may raise this circumstance after expulsion for review by the Commission in a timely fashion and bears the burden for establishing grounds for review at that time.

The Hearing Examiner denies the Motion and denies the alternative request for interlocutory appeal as untimely.

5.4.4 NMBCTC

The Trades Council recommends that as part of the approval of the proposed resources that PNM be required to have the developers for the replacement projects submit monthly reports to PNM on the status of compliance with the apprenticeship requirements under NMSA 1978, Section 62-13-16.13. While PNM does not fully agree with the Trades Council legal analysis, PNM has no objection to monitoring the status of the use of apprentices by the developers of the proposed resources for purposes of contractual compliance.

The Hearing Examiner finds that NMBCTC attempts to have the Commission involved in compliance with this section of the PUA despite the language of the statute indicating that “NMDWS shall be responsible for monitoring the project for the appropriate

⁹⁵ Tr. Vol. 1, 19:17 – 22:22.

level of apprentices on the project and ensuring compliance.” The role of the Commission is that of enforcement in the matter of an alleged violation based upon a referral from the NMDWS. NMBCTC’s request to condition approval upon the requirement that PNM takes steps to ensure that the projects through which it will comply with the ETA actually do comply with the ETA and to require PNM to have the contractors submit for filing compliance reports on a monthly basis. These reports, however, would be the responsibility of NMDWS to review, and NMDWS is in the best position to request reports from PNM on a basis they so elect for purposes of compliance with this project. While PNM has no objection to monitoring the use of apprentices, the Commission should defer to the NMDWS for compliance review and not place any conditions on the CCN approval.

5.4.5 PNM corrections to Transcript

On April 8, 2024, PNM suggested multiple corrections to the Transcript of Proceedings covering Volume 1 of the public hearing in this case that was held on March 20, 2024.

No party has objected to the corrections listed in PNM’s Motion.

The Hearing Examiner agrees with the suggested corrections and the transcript should be corrected to reflect the corrections identified by PNM.

6. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** as follows:

1. All findings of fact, conclusions of law and recommendations in all Sections of this Recommended Decision are incorporated by reference as Findings of Fact and Conclusions of Law.

2. PNM is a public utility as defined in the PUA.
3. The Commission has jurisdiction over the parties and the subject matter of this case.
4. Reasonable, proper and adequate notice of this case has been given.
5. The Commission should approve PNM's request for the issuance of the Sandia Battery Energy Storage System Project CCN, a 60 MW four-hour battery storage facility located near PNM's existing Sandia Substation in southeast Albuquerque, New Mexico.
6. The Commission should approve PNM's request for the Quail Ranch Solar Project ("Quail Ranch PPA"), a long-term PPA between PNM and Quail Ranch Solar LLC for all the output of the Quail Ranch solar photovoltaic facility over a twenty-year term at a rate of \$29.84/MWh, which has a nameplate capacity of 100 MW, to be located in Bernalillo County, New Mexico.
7. The Commission should approve the ESAs requested by PNM for the Quail Ranch Energy Storage Project, Sky Ranch Energy Project, and Route 66 Energy Project and the volumetric pricing requested by PNM.
8. The Commission should approve the certified estimated cost of \$131,368,219.00.
9. The Commission should order PNM to file copies of all construction permits received for this project in this docket within two weeks of receipt of the final permit required.
10. The Commission should order that PNM file in this docket the actual costs of this project, including the actual allowance for funds used during construction ("AFUDC") amounts (if any) and how they were calculated, and also a comparison

of the original estimate to the actual installed costs, within one month of becoming available.

11. The Commission should order that PNM file a notice of the COD of these units.

12. The Commission should order that PNM file a notice of the date that any fuel related benefits as a result of operation of this BESS unit shall first be included in PNM's Fuel and Purchased Power Cost Adjustment Clause.

13. The Commission should order that PNM be required to work with stakeholders to include the use of other volumetric pricing structures in future requests for proposals.

14. The Commission should state that approval of the volumetric pricing of the ESAs should have no bearing on how the ESA costs are allocated to customer classes.

15. Any finding not expressly mentioned here but stated in the body of this decision is embraced by the Commission. Similarly, any fact rejected in the body of this decision not expressly identified hereunder is rejected by the Commission.

7. DECRETAL PARAGRAPHS

The Hearing Examiner recommends that the Commission **ORDER** as follows:

A. The findings, conclusions, decisions, rulings, and determinations in this Recommended Decision are adopted, approved, and ordered by the Commission.

B. PNM's Application is approved consistent with the findings and determinations made above.

C. Any conclusion or recommendation included in this Recommended Decision not specifically stated herein is adopted by the Commission as if it were and the full legal consequence of those conclusions or orders is imposed.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Recommended Decision

Case No. 23-00353-UT

D. Consistent with 1.2.2.35(D) NMAC, the Commission has taken administrative notice of all Commission orders, rules, decisions, and other relevant materials in all Commission proceedings cited in this Order.

E. Any matter not specifically ruled on during the hearing or in this Recommended Decision is resolved consistent with this decision.

F. The Certificate of Service attached hereto shall be the official service list in this case. Accordingly, effective immediately and subject to subsequent amendment, service of pleadings and other documents shall be made upon all persons whose email addresses are listed on the Certificate of Service.

G. Copies of this Recommended Decision will be provided to the official service list per the Commission's electronic filing and service rules.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 3rd day of May **2024**.



NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Hans Muller
Hans Muller
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF)
NEW MEXICO'S APPLICATION FOR APPROVAL OF)
A PURCHASED POWER AGREEMENT, ENERGY)
STORAGE AGREEMENTS, AND A CERTIFICATE OF) Docket No. 23-00353-UT
PUBLIC CONVENIENCE AND NECESSITY FOR)
SYSTEM RESOURCES IN 2026)**

CERTIFICATE OF SERVICE

I **CERTIFY** that on this day I sent, via email, a true and correct copy of **Recommended Decision** to the individuals listed below:

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DATED this May 3, 2024

NEW MEXICO PUBLIC REGULATION COMMISSION

Ana C. Kippenbrock, Law Clerk