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**PUBLIC REGULATION
COMMISSION**

COMMISSIONERS

GABRIEL AGUILERA
GREG NIBERT
PATRICK O'CONNELL

P.O. Box 1269
Santa Fe, NM 87504-1269

CHIEF OF STAFF

Cholla Khoury

May 6, 2025

TO PARTIES OF RECORD IN CASE NO. 24-000271-UT

This is the Certification of Stipulation of co-hearing examiner Christopher P. Ryan and John F. Kreienkamp. Unless and until the Commission considers the matter and votes to approve it, the Certification of Stipulation 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/>.

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".

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, ENERGY STORAGE)
AGREEMENTS, AND CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR SYSTEM)
RESOURCES IN 2028)**

Case No. 24-00271-UT

CERTIFICATION OF STIPULATION

**Christopher P. Ryan & John F. Kreienkamp
HEARING EXAMINERS**

May 6, 2025

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ABBREVIATIONS

BESS.....	battery energy storage system
CCAE.....	Coalition for Clean Affordable Energy
CCSD.....	Central Consolidated School District
ESA.....	energy storage agreement
FPPCAC.....	fuel and purchased power cost adjustment clause
IRP.....	integrated resource plan
LOLE.....	loss of load expectation
NEE.....	New Energy Economy
NM AREA.....	New Mexico Affordable Reliable Energy Alliance
NMDOJ.....	New Mexico Department of Justice
O&M.....	operations and maintenance
PNM.....	Public Service Company of New Mexico
PUA.....	Public Utility Act
Staff.....	PRC Utility Division Staff
WRA.....	Western Resource Advocates

Christopher Ryan and John Kreienkamp, co-presiding hearing examiners, respectfully submit this certification of stipulation to the New Mexico Public Regulation Commission in accordance with 1.2.2.20(A)(5)(b) NMAC. This certification concerns the uncontested stipulation filed on March 12, 2025. Having reviewed the stipulation as well as the full record of this proceeding, the hearing examiners certify it to the Commission with a recommendation that it be approved.

1. EXECUTIVE SUMMARY

As New Mexico's energy transition continues, the PRC will likely face increasingly difficult choices in determining what the public interest requires of electric utilities. The Commission will be required to engage in a balancing act of sorts, weighing various considerations such as affordability for ratepayers, the reliability of service, and the interests of communities across the state who suffer due to the retirement of fossil-fueled generation. Each of these considerations are present in this case, which involves a portfolio of resources proposed by PNM to ensure that it is able to meet the needs of its ratepayers beginning in the summer of 2028.

As in PNM's ongoing rate case, the parties here have reached an uncontested stipulation¹ that balances the competing interests involved to their mutual satisfaction. This uncontested stipulation, in the view of these hearing examiners, provides a net public benefit and comports with the clear legislative intent behind the Energy Transition Act² to locate resources within the Central Consolidated School District. It should therefore be approved by the Commission.

¹ For the same reasons expressed in the certification of stipulation in the PNM rate case, the uncontested stipulation in this case (which is itself a pleading) is not attached to this writing but is publicly available in e-Docket. *See* Case No. 24-00089-UT, Certification of Stipulation, at 1-2, fn. 2 (Apr. 8, 2025).

² NMSA 1978, §§ 62-18-1 to -23 (2019, as amended through 2023).

PNM's Proposed Portfolio and the Uncontested Stipulation

By way of background, PNM's proposed portfolio of resources in this case contains four resources: one PPA, two ESAs, and one CCN. To ensure a fair and competitive selection process, the resources were selected through an RFP process reviewed by an independent evaluator.³ The proposed portfolio represents a mix of utility-owned and contracted resources, which PNM argues offers the greatest benefit to its ratepayers.⁴ The four resources at issue are:

- Valencia Power Plant: a PPA for 167 MW of natural gas generation⁵
- Sun Lasso BESS: an ESA for 150 MW of 4-hour battery storage
- Corazon BESS: an ESA for 150 MW of 4-hour battery storage
- Sunbelt Project: a utility-owned facility providing 100 MW of solar power and 50 MW of 4-hour battery storage⁶ located in CCSD

³ See PNM Ex. 9, at 13 (noting that the RFP process “implement[ed] a balanced and impartial bid and bid evaluation process” and that the RFP itself “was structured with no resource type or project ownership structure specifically requested, preferred, or excluded”). It should be noted that the RFP process included only 30 MW of battery storage from the Sunbelt Project, but not the full 50 MW requested by PNM in this proceeding. See PNM Ex. 1, at 9 (“The Signatories acknowledge that the additional 20 MW BESS was not part of the RFP process, but they agree for settlement purposes that this addition component of the Sunbelt Project be approved, along with the other resources requested by PNM.”).

⁴ See PNM Ex. 4, at 5 (“PNM believes that customers benefit most through a mix of utility-owned generation and third-party contracted for resources because each brings its own set of values.”).

⁵ PNM has an existing PPA with the Valencia Power Plan that will expire in May 2028. See PNM Ex. 4, at 2.

⁶ As noted previously in footnote 3, PNM's initial application submitted the Sunbelt Project for approval as containing 30 MW of BESS with “an option” of an additional 20 MW of BESS. PNM Ex. 3, at 2. PNM explained that, if approved, this would bring the total amount of resources located in CCSD to 450 MW, the maximum amount of replacement resources contemplated by the ETA. See PNM Ex. 4, at 4; see also § 62-18-3(F) (defining “replacement resources” as, in relevant part, “up to four hundred fifty megawatts of nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility”). Despite characterizing this additional 20 MW as “an option,” however, PNM nevertheless requested that the Commission approve it as a part of the application, see PNM Ex. 4, at 4, and this was included in the uncontested stipulation. See PNM Ex. 1, at 11 (providing that the signatories agreed “that the Commission should approve the CCN for the Sunbelt Project, including the 20 MW energy storage bid enhancement”). Because this “option” was requested for approval by PNM in both its as-filed application and the stipulation, this writing consistently treats the Sunbelt Project as inclusive of all 50 MW of BESS.

These four resources are anticipated to begin operation between December 2027 and June 2028.⁷

The uncontested stipulation largely memorializes the parties' support for PNM's as-filed portfolio of resources. The signatories agree and support all four proposed resources, stating that the portfolio "provides benefits to both PNM and its customers and is necessary for PNM to continue to provide safe and reliable service to customers and accommodate future growth as it moves toward 100% carbon-free generation."⁸ The signatories also represent that PNM's portfolio satisfies all applicable statutory and regulatory requirements, provide a net public benefit, and "are necessary to the public convenience or necessity."⁹

As explained by testimony in support of both the as-filed application and the stipulation, the principal justification for the proposed portfolio is resource adequacy. The Company's witnesses testified at length about the need to have adequate resources to maintain an LOLE of 0.1,¹⁰ which it emphasizes is an "industry standard."¹¹ An LOLE of 0.1 "translates to a planning reserve margin target of approximately 16%, consistent with PNM's 2023 IRP."¹² Without additional resources, PNM's planning reserve margin in 2028 is expected to be 0.1%, far below

⁷ "The Valencia PPA has a term of 11.5 years, beginning May 31, 2028, and terminating on December 31, 2039. The Sun Lasso ESA has a 20-year term, with an expected start date of January 15, 2028, and a guaranteed start date of June 15, 2028. The Corazon ESA has a 20-year term, with an expected start date of December 31, 2027, and a guaranteed start date of June 1, 2028." PNM Ex. 6, at 4. Similarly, the Sunbelt Project has a completion date of December 31, 2027. *Id.* at 12.

⁸ PNM Ex. 1, at 12.

⁹ *Id.* at 2.

¹⁰ An LOLE of 0.1 translates into 1 day of significant load loss every 10 years. *See* Tr. at 53.

¹¹ PNM Ex. 5, at 6; *see also* PNM Ex. 4, at 10 (noting that "PNM's proposed resources meet the 0.1 days per year LOLE standard, which is also consistent with industry resource adequacy standards"). During the hearing, PNM characterized the 0.1 LOLE standard as "what's largely become an industry standard across many [u]tilities, including some of our neighboring [u]tilities and RTOs." Tr. at 90-91.

¹² PNM Ex. 5, at 6.

the target of 16%.¹³ With the resources proposed in the portfolio, however, PNM would achieve an LOLE of 0.1 in 2028, as well as a planning reserve margin of 17.7%.¹⁴

The other principal aim of PNM's portfolio was to locate a new resource within CCSD. The issue of replacement resources within CCSD, and in particular the extent to which such resources are a requirement of the ETA or the Commission's past decisions, has been highly contentious and disputed in the past, to say the least. In this case, PNM maintained that, while it was not formally proposing a "replacement resource" for the purposes of the ETA, it nevertheless "is supportive of placing cost-effective resources in the CCSD."¹⁵ This, PNM reasoned, was the intended public policy behind the ETA, if not necessarily a strict legal requirement.¹⁶ In other words, locating a resource within CCSD, namely the Sunbelt Project, would be consistent with the intent of the ETA.

The inclusion of the Sunbelt Project within the portfolio represents a balance of interests. As acknowledged frankly by PNM from the beginning of this case, "the CCSD project is not part of the overall lowest-cost portfolio to meet the expected 2028 need."¹⁷ To that end, during the RFP process, the independent evaluator stated expressly that "the optimal portfolio of resources

¹³ *Id.*

¹⁴ *See id.* at 12 ("The portfolio meets the 0.1 LOLE resource adequacy standard and achieves a planning reserve margin of 17.7% percent in 2028 and 16.1% in 2029."). Technically, the portfolio would achieve an LOLE of 0.064, which would mean 6.4 days of significant load loss every 100 years. *See* PNM Ex. 4, at 11, and Tr. at 179.

¹⁵ PNM Ex. 4, at 3.

¹⁶ *See id.* at 18-19 (explaining that the Sunbelt Project will fulfill "the statutory and regulatory intent of resources placed in the CCSD"). This was stated expressly in the uncontested stipulation. *See* PNM Ex. 1, at 10 ("Approval of the Sunbelt Project allows for additional system growth anticipated by PNM while also fulfilling the Commission's regulatory intent to locate San Juan replacement resources in the CCSD, based on the ETA's policy goal of mitigating impacts to affected communities resulting from the retirement of coal plants in the Four Corners area.").

¹⁷ PNM Ex. 4, at 9.

that meet the energy and capacity needs targeted in the RFP do not include any projects from the CCSD or Navajo Nation.”¹⁸ However, PNM nevertheless expressed a “substantial” policy preference, arising out of the ETA, to locate a new resource within CCSD.¹⁹ In the final analysis, while the collective resources proposed by PNM in this case are not the lowest-cost portfolio overall, they are nevertheless the lowest-cost portfolio that contains a resource located within CCSD.²⁰

PNM’s proposed portfolio comes at a cost. Most importantly, the total capital cost of the Sunbelt Project is estimated at approximately \$252 million.²¹ Additionally, PNM estimates the annual revenue requirement for all four resources as approximately \$78.2 million, as shown in the following table:²²

Project Name	Structure	Technology	4-Hr BESS (MW)	Solar PV (MW)	Natural Gas Capacity (MW)	Annual Revenue Requirement
Valencia Power Plant	PPA	Gas	0	0	167	\$22.2
Sun Lasso BESS	ESA	BESS	150	0	0	20.2
Corazon BESS	ESA	BESS	150	0	0	20.7
Sunbelt Project	Utility-owned	Solar/BESS	50	100	0	15.1
		Total (MW)	350	100	167	\$78.2

¹⁸ PNM Ex. 9, at Exhibit RWN-11, at p. 15 of 21.

¹⁹ *Id.*

²⁰ *Id.* at 10.

²¹ PNM Ex. 6, at 16. This total capital cost includes all 50 MW of BESS. *See id.* (explaining that the “option to increase the 30 MW battery in the Sunbelt Project by an additional 20 MW for a total of 50 MW” carries an additional cost of \$32 million “with the total capital cost approximately \$252M”).

²² A modified version of this table was included in PNM’s original witness testimony. *See* PNM Ex. 4, at 3. It appears here modified to reflect the total MW of BESS included in the Sunbelt Project, as the original table only included 30 MW of BESS. According to PNM, “The total Year 1 annual revenue requirement for the Sunbelt Project with the additional 20 MW (total of 50 MW) battery is \$15.1M, compared to \$14.2 million for the Sunbelt Project with 30 MW battery.” PNM Ex. 2, at 9-10. *See also* Staff Ex. 1, at 8 (noting the “current estimated \$15.1 million annual revenue requirement” for the Sunbelt Project).

PNM's cost recovery would depend on the resource at issue. For the PPA, energy costs would be recovered through PNM's FPPCAC, and the Company would seek recovery of demand costs through base rates.²³ Under the stipulation,²⁴ the two ESAs would also be recovered through base rates, consistent with the terms of PNM's stipulation in the rate case,²⁵ as would the costs of the Sunbelt Project.²⁶

Although the portfolio's impact on ratepayer bills is difficult to assess to a large degree of certainty outside of a rate case, PNM did provide an estimate in response to a bench request. (This estimate is appended to this writing as Attachment 1.) In particular, the Company estimates that the average residential customer with a usage of 600 kWh per month would pay an additional \$4.80 per month as a result of the portfolio.²⁷ This would amount to a bill increase of approximately 5% compared to the (estimated) average 2028 bill.²⁸ Similarly, small power customers using an average of 1,600 kWh per month would pay an additional \$9.99 per month, an increase of 4.1%.²⁹ These figures are only estimates and, especially given the sheer number of bill riders included in a ratepayer's bill,³⁰ the percentage increases in particular should be taken with

²³ PNM Ex. 1, at 8.

²⁴ PNM's as-filed application would have recovered the costs of the ESAs through the FPPCAC, see PNM Ex. 4, at 22, but agreed in the stipulation to instead seek recovery through base rates. *See* PNM Ex. 1, at 8.

²⁵ "The Signatories agree that the rate recovery for the ESAs originally proposed by PNM should be modified to reflect the stipulated rate treatment for ESAs submitted to the Commission in PNM's pending rate case, Case No. 24-00089-UT. PNM shall seek recovery of the ESA costs through base rates in a future PNM general rate review filing where PNM seeks to adjust its base rates." *Id.*

²⁶ *See id.* at 11 ("PNM shall seek recovery of the costs for the Sunbelt Project, including the additional 20 MW, through base rates in a future PNM general rate review filing where PNM seeks to adjust its base rates.").

²⁷ PNM Ex. 11, at Exhibit HEM-BR-2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ PNM included a number of bill riders in estimating these figures: "Rider 16 Energy Efficiency, Rider 23 FPPCAC, Rider 36 Renewable Energy, Rider 51 Energy Transition Charge, Rider 53 Transportation

a grain of salt. That said, however, a \$4.80 per month increase for the average residential ratepayer and a \$9.99 per month increase for the average small business ratepayer are significant and should be taken quite seriously.

Overview of Recommendation

The two principal justifications behind PNM's proposed portfolio of resources – system reliability and the public policy interest in placing a new resource in CCSD – are also the reasons why the Commission should approve the uncontested stipulation in this case. The evidence and reasoning behind each of these justifications are clear and well-documented in the record.

In its legal statement in support of the stipulation, NM AREA persuasively explained the reliability concerns underlying the proposed portfolio of resources in this case. As stated by this intervenor, the resources proposed by PNM would enable the Company “to achieve a Loss of Load Expectation (“LOLE”) consistent with industry resource adequacy standards of less than 0.1” in 2028.³¹ In practical terms, an LOLE of 0.1 translates into no more than one day of significant load loss due to outages in ten years. By contrast, as explained by NM AREA, “Without the approval of these resources, PNM’s forecasted LOLE would be 2.01 days per year.”³² This would represent a significant and unacceptable risk to the reliability of PNM’s service. Ensuring system reliability by securing additional resources is a reasonable and worthwhile endeavor.

Equally importantly, the stipulation and the proposed portfolio should be approved because they place a new replacement resource, namely the Sunbelt Project, within the boundaries of

Electrification, Grid Mod Rider (approved, but not filed).” PNM Ex. 11, at Exhibit HEM-BR-2. These riders, however, are subject to change (and potential increases) prior to 2028.

³¹ Case No. 24-00271-UT, NM AREA Statement in Support of the Unopposed Comprehensive Stipulation, at 4 (Mar. 24, 2025).

³² *Id.*

CCSD. It is undisputed that, in drafting and passing the Energy Transition Act, our Legislature desired to locate a meaningful amount of replacement resources, up to 450 MW,³³ within the boundaries of CCSD to account for the tax revenue³⁴ lost due to the retirement of the San Juan Generating Station.³⁵ At present, however, PNM explains: “Due to the default of the Rockmont project and its contract termination, only 300 MW to date have been placed in service in the CCSD since the closure of San Juan Generating Station.”³⁶

PNM has taken a somewhat nuanced position throughout this proceeding that posits that the Company simultaneously is not obligated by the text of the ETA to place additional replacement resources within CCSD but nevertheless strongly desires to do so for the public policy behind the ETA. Suffice it to say that these hearing examiners are unpersuaded by this statutory interpretation. Nevertheless, as a group, the signatories stress that the approval of the stipulation does not require the Commission to definitively determine whether the ETA requires PNM to effectively replace the Rockmont Project. The fact that the Sunbelt Project will *function* as a replacement resource, in other words, is enough for the intervenors. This appears to be correct.

³³ See § 62-18-3(F) (providing that “replacement resources” means “up to four hundred fifty megawatts of nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility, and may include energy storage capacity”).

³⁴ Staff indicated in testimony that the Sunbelt Project is estimated by PNM to provide CCSD a total of \$2 million in property tax revenue in 2028. See Staff Ex. 1, at 6-7 (explaining that, “based on PNM’s estimate, the additional 20 MW of BESS capacity will provide an extra \$258,773 in property tax revenue to the area and the CCSD[,] bringing the total, first year, property tax impact of the Sunbelt project to approximately \$2 million”). As an aside, it is puzzling that this information regarding likely tax revenue was not provided by PNM in its as-filed application, since it would seem to reinforce the Company’s position on the Sunbelt Project.

³⁵ This agreement as to the intent behind the ETA is reflected in the stipulation itself. See PNM Ex. 1, at 10 (observing “the Commission’s regulatory intent to locate San Juan replacement resources in the CCSD, based on the ETA’s policy goal of mitigating impacts to affected communities resulting from the retirement of coal plants in the Four Corners area”).

³⁶ PNM Ex. 4, at 3.

The Sunbelt Project, as a whole, provides a net public benefit. While not a part of the overall lowest cost portfolio available to PNM, the project is part of the lowest cost portfolio that includes a resource within CCSD. It achieves the purpose of the ETA to place additional resources within CCSD while helping PNM ensure the reliability of its system and while helping move the Company away from fossil fuel generation and towards the use of more renewable energy. It should be approved.

2. BACKGROUND³⁷

PNM filed its application seeking the Commission's approval of its proposed 2028 system resource additions on November 22, 2024. In its application, PNM expressly waived the six-month deadline in the Commission's rules governing the approval of PPAs and ESAs, instead requesting approval of all of the resource additions "within a nine-month timeframe, without an extension of the statutory period for final action by the Commission."³⁸ PNM also stated, however, that in the event final approval of the requested CCN required an additional extension of time, it would still request approval of the PPA and ESAs within nine months.³⁹

Approximately two weeks after PNM filed its application, on December 5, 2024, the Commission entered an order appointing the undersigned hearing examiners to preside over the

³⁷ This section includes a broad summary of the procedural history of this case. For more minute detail, please consult the full case history contained in the Commission's eDocket filing system.

³⁸ Application, at 2. By way of background, the Commission's rules impose a six-month deadline for the approval of PPAs and ESAs. *See* 17.9.551.10(B) ("The commission shall issue its final order acting on the application within six months after the date the application was filed."). However, pursuant to NMSA 1978, Section 62-9-1(C) (2019), the Commission has nine months to approve a CCN but may elect to extend this deadline for "an additional six months" for good cause. In this proceeding, PNM waived the six-month deadline in 17.9.551.10(B), instead requesting approval of all resources within the nine-month period governing CCNs.

³⁹ *See id.* at 2-3 ("However, if approval of the CCN for the Sunbelt Project exceeds nine-months, then PNM requests the PPA and ESAs are approved within the nine-month timeframe.").

case.⁴⁰ The hearing examiners proceeded to conduct a prehearing conference with the parties to discuss a procedural schedule, ultimately issuing a procedural order establishing said schedule on December 23, 2024. The procedural order also required PNM to notify the public of this proceeding through mailing notice to its customers, publishing notice in a newspaper of general circulation available in every county where PNM provides service in New Mexico, and posting notice on the Company's website.

Ten interested parties intervened in this proceeding,⁴¹ but no protests were filed in opposition to PNM's proposed resource additions.⁴² Shortly after the intervention deadline, an unopposed comprehensive stipulation was filed by PNM, Staff, and five of the ten intervenors (CCAIE, NEE, NM AREA, Prosperity Works, and WRA). CCSD subsequently became a signatory to the stipulation,⁴³ and none of the remaining intervenors lodged an objection.

⁴⁰ This order also stated that "the Commission shall endeavor to issue a final order by August 1, 2025, as requested" and directed the hearing examiners to construct a procedural schedule to accommodate this deadline. Case No. 24-00271-UT, Order Setting Deadlines and Appointing Hearing Examiner, at 4-5 (Dec. 5, 2024).

⁴¹ These intervenors were the Albuquerque County Water Utility Authority, Bernalillo County, Bernalillo Solar, Central Consolidated School District, the Coalition for Clean Affordable Energy, New Energy Economy, the New Mexico Affordable Reliable Energy Alliance, the New Mexico Department of Justice, Prosperity Works, and Western Resource Advocates.

⁴² See § 62-9-1(C) ("The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed.") and 17.9.551.10(A) NMAC ("The commission may approve an application for approval of an LTPPA without a formal hearing if no protest is filed within 60 days after the date that notice is given pursuant to a commission order.").

⁴³ Originally, CCSD supported the stipulation but did not formally join as a signatory. See PNM Ex. 1, at 1 ("CCSD states that it supports the Stipulation."). Following the hearing, CCSD formally became a signatory. See Case No. 24-00271-UT, Notice of Joinder in Unopposed Comprehensive Stipulation, at 2 (stating that "CCSD provides notice that it joins in the Stipulation as a signatory thereto") (Apr. 18, 2025).

The procedural schedule was modified to accommodate the stipulation. PNM and Staff filed witness testimony to explain why the Commission should approve the proposed resolution of the case. NM AREA also filed a briefing statement in support of the stipulation.⁴⁴

The hearing on the stipulation was held on April 2, 2025. Commissioner Patrick O’Connell was in attendance and asked questions of the witnesses. During the hearing, bench requests were issued to PNM, Staff, and NMDOJ, and several of these requests were subsequently memorialized and clarified through a written bench request order dated April 4, 2025. All parties were provided the opportunity to respond to the written bench requests if they elected to do so. Responses to these written bench requests were subsequently filed by PNM, Staff, NMDOJ, and NM AREA, and a collective response was filed by WRA, CCAE, and Prosperity Works.

Following the hearing, and at the request of the hearing examiners, PNM, NEE, and CCSD filed briefing statements concerning several legal issues concerning the Energy Transition Act discussed over the course of the proceeding.⁴⁵

3. LEGAL STANDARDS

The Public Utility Act⁴⁶ (PUA) vests the Commission with the “general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and

⁴⁴ See Case No. 24-00271-UT, NM AREA Statement in Support of the Unopposed Comprehensive Stipulation (Mar. 24, 2025).

⁴⁵ The hearing examiners note their gratitude and appreciation for all of the parties who supplied legal briefing or written responses to bench requests during this proceeding. These parties made meaningful contributions in clarifying and understanding the legal and factual issues involved.

⁴⁶ NMSA 1978, §§ 62-1-1 to -6-28 and 62-8-1 to -13-16 (1884, as amended through 2021). See § 62-13-1 (identifying the statutes within the Public Utility Act).

service regulations ... and to do all things necessary and convenient in the exercise of its power and jurisdiction.”⁴⁷

3.1. Resources

PNM’s application and the subsequent uncontested stipulation seek Commission approval of one PPA, two ESAs, and one CCN. These proposed resources are governed, respectively, by similar but slightly different legal standards: one for the PPA and ESAs, and another for the CCN. Ultimately, the fundamental question facing the Commission under either standard remains the same: whether the project in question is in the public interest.

Commission precedent establishes that, to receive approval to enter into a PPA or ESA (referred to as LTPPAs under the Commission’s rules),⁴⁸ the utility must demonstrate that the resource “is needed and will provide net benefits to customers over the duration of the agreement.”⁴⁹ To facilitate this review, the Commission’s rules, specifically 17.9.551.8 NMAC, require the utility to provide, among other items:⁵⁰

- “evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors;”
- “evidence that the LTPPA is consistent with the electric utility’s most recent commission-accepted integrated resource plan unless material changes that would warrant a different

⁴⁷ Section 62-6-4(A).

⁴⁸ The Commission’s rules define an LTPPA as “a purchased power agreement with a term of five years or more and for which an electric utility seeks or intends to seek rate recovery from its New Mexico retail customers.” 17.9.551.7(E) NMAC.

⁴⁹ Case No. 20-00182-UT, *Recommended Decision*, at 9 (Nov. 13, 2020), adopted by *Order Adopting Recommended Decision*, at 2 (Dec. 2, 2020). The appropriate legal standard for LTPPAs was addressed at length in Case No. 15-00083-UT, where the hearing examiner concluded that “the standard for review and approval of long-term PPAs such as those at issue is a modified version of the ‘public convenience and necessity’ standard for CCNs based on the application of Rule 551.” Case No. 15-00083-UT, *Recommended Decision*, at 24 (Sept. 21, 2015), adopted by *Final Order*, at 4 (Oct. 7, 2015).

⁵⁰ 17.9.551.8(D) NMAC.

course of action by the electric utility have occurred, in which case, the testimony shall include justification for deviation from the integrated resource plan;”

- “an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers;”
- “evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;” and
- “evidence addressing the methodology and criteria by which the purchased power agreement was selected[.]”

Under this legal standard, the Commission should approve the PPA or ESA if it determines that “the utility has satisfied the approval requirements of Rule 551.8 and finds that the long-term PPA is reasonable and in the public interest.”⁵¹

The legal standards for CCN proceedings are governed by Section 62-9-1. This statute provides, in relevant part, that, “No public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation.”⁵² Section 62-9-1 effectively outlines two legal standards for CCN proceedings: one general standard applicable (or potentially applicable) to all cases, and another for energy storage systems. Under the general standard, the utility must show a net benefit to the public,⁵³ which is the functional equivalent to demonstrating that the project is in the public

⁵¹ Case No. 15-00083-UT, *Recommended Decision*, at 24.

⁵² Section 62-9-1(A).

⁵³ *See* Case No. 22-00309-UT, *Recommended Decision*, at 7-8 (Feb. 21, 2024) (“The ‘public convenience and necessity’ standard has been interpreted as requiring the showing of a ‘net benefit to the public.’”) (citations omitted), adopted with modifications on other grounds by Final Order, at 13 (Mar. 14, 2024).

interest.⁵⁴ Additionally, under this general “net public benefit” test, the Commission has required a utility to show that “it has considered alternatives before going forward with a project”⁵⁵ and that the project is the most cost effective among feasible alternatives.⁵⁶

Section 62-9-1(D) also contains a specific standard for CCN applications involving energy storage systems. Under this more specific standard, the Commission is required to approve a CCN for an energy storage system that accomplishes all of the following:

- (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.⁵⁷

⁵⁴ “In prior cases, the Commission has equated the ‘public convenience and necessity’ with the public interest.” Case No. 23-00162-UT, *Recommended Decision*, at 12 (Dec. 8, 2023) (citations omitted), adopted by *Final Order*, at 5 (Dec. 21, 2023).

⁵⁵ *Id.* at 8.

⁵⁶ See Case No. 19-00349-UT, *Order Adopting Recommended Decision With Additional Instruction*, at 3 (noting that “it is incumbent upon the applicant to show that a proposed facility is the most cost effective among feasible alternatives”) (Dec. 16, 2020), and Case No. 16-00105-UT, *Order Recommending Grant of PNM’s Motion to Withdraw Application*, at 6 (“The Commission has stated that a utility carries the burden in a resource acquisition case to show that the resource it proposes is the most cost effective resource among feasible alternatives.”) (Dec. 1, 2016), adopted by *Order Granting PNM’s Motion to Withdraw Application*, at 3 (May 24, 2017).

⁵⁷ Section 62-9-1(D).

The Commission recently addressed the relationship between these two legal standards for CCN proceedings in Case No. 23-00353-UT, PNM's most recent system resources case.⁵⁸ In that decision, the Commission clarified that an application for approval of a CCN for an energy storage system must be reviewed first under the more specific standard in Section 62-9-1(D).⁵⁹ If the energy storage system satisfies this standard, then it must be granted the CCN.⁶⁰ Only if the project fails one or more of the requirements in Section 62-9-1(D) does the general standard for CCN proceedings apply.⁶¹ In other words, "the fulfillment of Section 62-9-1(D) negates the need to further review the CCN request under the 'net public benefit' test."⁶²

3.2. Review of Resources on a Portfolio Basis

Notwithstanding the resource-specific standards applicable to the Commission's review of proposed PPAs, ESAs, and CCNs, there has been at least one recent case in which resources were evaluated on a portfolio basis, rather than resource-by-resource. This was explained at length in the second recommended decision in Case No. 19-00195-UT, which explained the limitations of evaluating resources on an individual basis:

Historically, utilities have asked the Commission for approvals (either CCN or PPA) one resource at a time, and the standards that have been developed over time have focused on the characteristics of the single resource at issue. The record, here, however, indicates that any one of the resources proposed as part of a portfolio might not be the preferred selection (i.e., the most cost-effective resource among reasonable alternatives) if viewed in isolation under the traditional analyses. But the resource might form a part of the most cost-effective portfolio if considered as

⁵⁸ See Case No. 23-00353-UT, *Final Order*, at 16-17 (May 30, 2025).

⁵⁹ "The Commission clarifies that, for a request for a CCN for an energy storage system, the Commission shall first analyze the request under Section 62-9-1(D) because the Legislature has deemed it necessary to single-out energy storage systems to be held to a different standard." *Id.* at 17.

⁶⁰ See *id.* ("Upon satisfaction of the Section 62-9-1(D) test, the Commission shall issue a CCN.").

⁶¹ "If, however, the CCN request fails one or more of the seven elements under Section 62-9-1(D), then the Commission may proceed to analyze the CCN request under the general 'net public benefit' test." *Id.*

⁶² Case No. 23-00353-UT, *Final Order*, at 17.

a whole under the traditional analyses. Or the resource might form a part of the preferred portfolio when considering both the traditional analyses and the variety of additional factors in Section 3 of the ETA.

The Hearing Examiners, accordingly, recommend that the resources proposed here be evaluated as a portfolio and not as separate resources and that the factors considered include the factors under both the traditional analyses and Section 3 of the ETA. The consideration will require a balancing of interests which will involve policy judgments. Overall, the portfolio should provide a net public benefit, but the standards in Section 3 should be considered and might outweigh the most cost-effective resource focus of the traditional standards. Consequently, the individual resources proposed outside the CCSD need not be the most cost-effective if they are elements of an integrated portfolio that satisfies the standards in Section 3. Similarly, the entire portfolio of proposed resources also need not be the most cost-effective of feasible portfolios if they satisfy the standards in Section 3.⁶³

Under this portfolio-wide standard of review, the Commission would look to whether, viewed as a whole, the portfolio of resources proposed by the utility yields a net public benefit.

Evaluating proposed resources on a portfolio-wide basis – rather than as siloed, discrete resources – has the advantage of more holistically responding to the complexity of the modern electric grid. In particular, as more and more renewable energy resources are added into electric utility portfolios, resource adequacy becomes far more complicated. This point was made in the recommended decision in Case No. 21-00215-UT, which concluded that “meeting resource adequacy needs and ambitious decarbonization goals while managing cost will require a balanced portfolio that includes not just renewables and storage but firm resources as well.”⁶⁴ In other words, while individual resources themselves might be susceptible to an isolated legal review, it is more important to review a portfolio as a whole in order to determine its reasonableness and net public benefit.

⁶³ Case No. 19-00195-UT, *Recommended Decision on Replacement Resources, Part II*, at 65-66 (Jun. 24, 2020), adopted by *Order on Recommended Decision on Replacement Resources, Part II* (Jul. 29, 2020).

⁶⁴ Case No. 21-00215-UT, *Recommended Decision*, at 34 (quoting testimony) (emphasis omitted).

3.3. Stipulations

The Commission has specific administrative rules addressing the filing and consideration of uncontested stipulations.⁶⁵ The signatories to an uncontested stipulation must file it into the record,⁶⁶ at which point (in the absence of extraordinary circumstances) the hearing examiner must hold a hearing to weigh the merits of the stipulation.⁶⁷ The signatories to the stipulation shoulder the burden of supporting it “with sufficient evidence and legal argument to allow the commission to approve it.”⁶⁸ Following a hearing, the hearing examiner may either certify the stipulation to the Commission along with a recommended disposition or decide not to certify it at all.⁶⁹ Ultimately, a Commission decision approving a stipulation generally has no precedential effect, unless otherwise specified in the final order.⁷⁰

⁶⁵ See 1.2.2.20(A) NMAC.

⁶⁶ See 1.2.2.20(A)(1) NMAC (“If the staff and all parties enter into a stipulation settling some or all of the issues in a proceeding, the stipulation shall be filed and a copy presented to the presiding officer.”).

⁶⁷ “Upon receipt of a stipulation which would settle substantive issues, the commission or presiding officer shall conduct a public hearing to determine whether the stipulation should be approved by the commission, provided that in extraordinary cases, for good cause shown, the commission or presiding officer may forego a public hearing.” 1.2.2.20(A)(3) NMAC.

⁶⁸ 1.2.2.20(A)(3) NMAC. Consistent with administrative law generally, the standard of proof is a preponderance of the evidence. See Case No. 23-00255-UT, *Certification of Stipulation*, at 20 (explaining that “[t]he proponent of the stipulation must demonstrate that ... a preponderance of the evidence in the record (as a whole) supports the Commission’s conclusion”) and Case No. 15-00296-UT, *Certification of Stipulation*, at 16 (“The quantum of proof in administrative adjudications is, again unless expressly provided otherwise, a preponderance of the evidence.”).

⁶⁹ See 1.2.2.20(A)(5) NMAC.

⁷⁰ “Unless the commission explicitly provides otherwise in the order approving the stipulation, approval of a stipulation does not constitute commission approval of or precedent regarding any principle or issue in the proceeding.” 1.2.2.20(D) NMAC.

To be approved by the Commission, stipulations must be “fair, just, reasonable, and in the public interest.”⁷¹ Past Commission practice has generally looked to three criteria when considering stipulations:

- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a whole, benefit ratepayers and the public interest?
- Does the settlement, as a whole, violate any important regulatory principle or practice?⁷²

Notwithstanding the relative clarity of these three criteria unto themselves, however, there is a noticeable overlap in many cases between the second and third.⁷³ This is because public interest is often also the key regulatory principle or legal standard that must be satisfied in the case. This redundancy between the second and third criteria is readily apparent in this case, since the key regulatory principle governing the approval of PPAs, ESAs, and CCNs is, at its core, the public interest. Phrased differently, if the stipulation in this case is in accordance with applicable law and therefore satisfies the third stipulation criterion, that is so *because* it is in the public interest and satisfies the second criterion.

Although the Commission has a longstanding policy of favoring stipulated resolutions of cases,⁷⁴ it must nevertheless exercise independent judgment when considering stipulations. This

⁷¹ Case No. 15-00296-UT, *Certification of Stipulation*, at 15-16. See also Case No. 24-00113-UT, *Certification of Stipulation*, at 13 (Dec. 20, 2024).

⁷² Case No. 23-00255-UT, *Certification of Stipulation*, at 20.

⁷³ This observation concerning the Commission’s customary stipulation criteria was also made in another recent case involving PNM. See Case No. 24-00089-UT, *Recommended Decision*, at 15 (“Put most simply, the three-part test is (in reality) only a two-part test. If the stipulation is in compliance with law, it must also necessarily be in the public interest.”) (Apr. 8, 2025), pending Commission review.

⁷⁴ See, e.g., Case No. 24-00113-UT, *Certification of Stipulation*, at 12 (“It is well established that the Commission has a general policy of favoring stipulations.”) (Dec. 20, 2024), Case No. 20-00222-UT, *Certification of Stipulation*, at 29 (Nov. 1, 2021) (“The Commission has a policy of favoring stipulations.”) and Case No. 15-00296-UT, *Certification of Stipulation*, at 15 (Jul. 22, 2016) (observing the Commission’s “well-established policy permitting the filing of stipulations”). Although the Commission’s general favorability

is true of both contested and uncontested stipulations, as “the Commission sits as the ultimate arbiter of proceedings thoroughly suffused with questions of public interest.”⁷⁵ In other words, while stipulations “may aid the Commission” in grappling with difficult questions, they “are not a substitute for the exercise of discretion.”⁷⁶

4. ANALYSIS

4.1. The Stipulation Is a Product of Serious Bargaining

The first criterion historically used by the Commission in weighing the merits of stipulations is whether the agreement is the “product of serious bargaining among capable, knowledgeable parties.”⁷⁷ This criterion is arguably more complicated in the context of this case than a number of other recent stipulations⁷⁸ because, here, the uncontested stipulation does not involve significant concessions on the part of the utility. The Stipulation itself states that “the settlement negotiations between and among themselves and PNM were intended to reach an

towards stipulations is sometimes compared to that of the judiciary’s general favorability towards settlement agreements, there are critical differences. A settlement agreement in court generally removes the dispute from the tribunal, whereas “[t]he filing of a stipulation with the Commission requires the Commission to act and make certain determinations.” Case No. 21-00267-UT, *Certification of Stipulation*, at 21 (Nov. 10, 2022), adopted by *Order Adopting and Approving Certification of Stipulation*, at 1 (Nov. 30, 2022). The Commission fulfills its constitutional role and exercises its “considerable” statutory discretion in the service of the public interest, see Section 62-6-4(A), not as an arbiter of private causes of action between two private parties. See Case No. 21-00267-UT, *Certification of Stipulation*, at 24 (“The Commission is very different than a district court that is tasked with presiding over private causes of action that are controlled almost entirely by the parties litigating them.”). As a result, the Commission is not divested of its regulatory authority – or statutory responsibility – over a case merely because the parties have agreed to a stipulation.

⁷⁵ Case No. 21-00267-UT, *Certification of Stipulation*, at 24.

⁷⁶ *Id.*

⁷⁷ Case No. 16-00096-UT, *Certification of Stipulation*, at 15 (Dec. 21, 2016), adopted by *Order Adopting and Approving Certification of Stipulation*, at 5 (Jan. 11, 2017).

⁷⁸ See Case No. 24-00089-UT, *Certification of Stipulation*, at 5 (“PNM made significant concessions regarding capital structure.”), and Case No. 23-00255-UT, *Certification of Stipulation*, at 2 (“The Stipulation was a significant retreat from what NMGC requested in its Corrected Application.”) (June 6, 2024), adopted by *Final Order*, at 6 (Jul. 25, 2024).

uncontested agreement for the approval of the entire portfolio of resources requested by PNM.”⁷⁹ Similarly, during the hearing, one witness for PNM characterized the stipulation as more or less memorializing the parties’ support for the Company’s application.⁸⁰ That being said, major compromises on the part of the utility are not necessarily a prerequisite to the approval of a stipulation.

On balance, notwithstanding its lack of significant differences with the as-filed application, the evidence in the record still clearly shows that the stipulation is “the result of arms-length negotiations among parties with diverse interests.”⁸¹ For one, the stipulation itself reflects that the parties held settlement conferences on February 27 and March 7, 2025, and that the parties “engaged in formal and informal discovery with PNM regarding the Application and supporting testimonies” before reaching an agreement.⁸² In addition, both the stipulation itself and the supporting testimony filed by PNM emphasized that the Company had held bi-weekly meetings before filing its application “to keep interested stakeholders apprised of PNM’s system needs and plans for resource acquisitions.”⁸³ Testimony from Staff also reiterated that “all the parties engaged in serious discussions to find a reasonable resolution of this matter” and that the

⁷⁹ PNM Ex. 1, at 7.

⁸⁰ See Tr. at 67-68 (“You know, in large part I think the [s]tipulation kind of memorializes or adopts the [a]pplication that we filed because the [a]pplication included the 20-megawatt increase to move to 50 megawatts.”).

⁸¹ Case No. 16-00096-UT, *Certification of Stipulation*, at 71.

⁸² PNM Ex. 1, at 7.

⁸³ PNM Ex. 2, at 6. See also PNM Ex. 1, at 7 (stating that “most of the Parties have actively participated in regular bi-weekly meetings conducted by PNM to apprise interested stakeholders of PNM’s ongoing system needs, competitive bid evaluation processes, and the operational status of previously approved resource additions”).

discussions themselves “involved frank exchanges about our relative positions and resulted in a compromise.”⁸⁴

Additionally, the stipulation does include several provisions that modify the as-filed application, at least to a certain degree. This includes a statement that the uncontested resolution of the matter was not intended to establish a precedent for “future resource acquisition requests”⁸⁵ and a commitment from PNM to make a compliance filing in the event of any future renegotiation or alteration of the contractual terms of any of the resources.⁸⁶ Importantly, the stipulation also differs from the as-filed application insofar as it contains a provision stating that the cost recovery for the ESAs would match the stipulated rate treatment proposed by the stipulation in Case No. 24-00089-UT, in that costs would be recovered through base rates rather than through the FPPCAC.⁸⁷ The stipulation therefore does include some changes to the as-filed application.

This evidence is sufficient to conclude that the stipulation is indeed a product of serious bargaining among capable and knowledgeable parties.

⁸⁴ Staff Ex. 1, at 17.

⁸⁵ PNM Ex. 1, at 7. Admittedly, the impact of this component of the stipulation is somewhat limited given that the Commission’s rules already provide that stipulations generally have no precedential effect. *See supra* note 70.

⁸⁶ *See id.* at 12 (“PNM commits that if the contractual terms of any of the agreements are renegotiated or altered following approval, PNM shall make a compliance filing identifying any such changes in the contractual terms and including copies of any revised contracts.”). This provision of the stipulation would afford other parties ten days from the filing of the compliance notice to file an objection. *Id.*

⁸⁷ *See id.* at 8 (“The Signatories agree that the rate recovery for the ESAs originally proposed by PNM should be modified to reflect the stipulated rate treatment for ESAs submitted to the Commission in PNM’s pending rate case, Case No. 24-00089-UT.”). By way of background, in Case No. 24-00089-UT, PNM originally proposed to recover ESA costs through its FPPCAC before reaching a stipulation that would leave those costs in base rates. *See* Case No. 24-00089-UT, *Certification of Stipulation*, at 30 (noting that PNM’s original application “asked the Commission to allow it to recover all ESA-associated costs through PNM’s FPPCAC” but “[t]he stipulation abandons this proposed course of action”).

4.2. The Stipulation Complies with Applicable Law

As in any case, the most important question with respect to the uncontested stipulation in this proceeding is whether it satisfies the applicable legal standards. This writing finds that those standards are indeed satisfied. First, and most importantly, the portfolio as a whole provides a net public benefit. In addition, however, the proposed PPA and ESAs satisfy each of the requirements of 17.9.551.8 NMAC, and the Sunbelt Project likewise comports with Section 62-9-1(D).

4.2.1. PNM's portfolio, as a whole, provides a net public benefit.

Both PNM's as-filed application and the uncontested stipulation in this case assert two distinct benefits to be derived from the collective resources in the proposed portfolio. First, the Company argues – and the other signatories agree – that the portfolio will ensure that ratepayers receive reliable (and cost-effective) service beginning in 2028. Secondly, the inclusion of the Sunbelt Project within the portfolio will provide a public benefit by achieving one of the public policy goals behind the ETA of ensuring adequate replacement resources are located in CCSD. Both of these benefits are well-taken.

4.2.1.1. The portfolio will ensure resource adequacy and reliability.

Preliminarily, as to the first public benefit claimed by PNM and the signatories, there appears to be no serious grounds for dispute that the portfolio of resources will make a significant difference in ensuring resource adequacy and system reliability. For context, it is important to keep in mind that, without these resources, “PNM will have a reserve margin of only 0.1% and a loss of load expectation (“LOLE”) of 2.01 days per year in 2028.”⁸⁸ An LOLE of this amount would mean an expectation of more than two days per year of significant power loss, far above

⁸⁸ PNM Ex. 1, at 5.

what PNM states is the increasingly accepted standard of 0.1 LOLE (translating into one day of significant power loss every ten years).⁸⁹ By contrast, with the resources in the portfolio, PNM's reserve margin would increase from 0.1% in 2028 to 18.2% in 2028, and the LOLE would decrease from 2.01 to 0.055.⁹⁰ PNM emphasizes that this will ensure "cost-effective and reliable service while at the same time progressing to a carbon-free portfolio."⁹¹

The Commission should be satisfied that the other signatories to the stipulation agree with PNM's assessment of the value of these resources in ensuring system reliability. NM AREA, in particular, emphasized that it "is very much supportive of PNM achieving a 0.1 LOLE," noting that a 2.01 LOLE "would be an unacceptable level of service quality."⁹² This intervenor also explained that system reliability "is crucial for NM AREA members to operate their facilities and provide high paying jobs to New Mexicans."⁹³

A similar note on the importance of reliability was sounded by Staff in its supplemental testimony: "A system that is not reliable can have cascading negative impacts on the entire economy and is certainly not in the public interest."⁹⁴ Staff concluded that, in its view, the portfolio "should be approved as requested" and "the resources represent a prudent investment that

⁸⁹ PNM explained through testimony that, with a 0.1 LOLE standard, it "plans to build enough capacity that it would only expect to experience firm load shed events due to capacity shortages one day every 10 years." PNM Ex. 8, at 4. "A firm load shed event occurs any time the system must reduce load on the system by turning off power because it did not have enough generation to serve customers." *Id.* See also PNM Ex. 5, at 4 ("PNM continues to employ industry best practices for resource adequacy by utilizing the 0.1 LOLE (Loss of Load Expectation) planning standard and procuring the resources necessary to implement its identified system needs.").

⁹⁰ PNM Ex. 1, at 5.

⁹¹ PNM Ex. 4, at 4.

⁹² NM AREA Ex. 1, at 2-3.

⁹³ *Id.* at 2.

⁹⁴ Staff Ex. 2, at 2.

provide system reliability and resource adequacy into 2028 and beyond while maintaining progress toward a low carbon emissions future.”⁹⁵

Another noteworthy perspective on this issue can be found in the joint bench request response filed by WRA, CCAE, and Prosperity Works. These intervenors emphasized that the expected load growth offers another compelling justification for the portfolio:⁹⁶

PNM’s recent updated Statement of Need filed in its latest completed integrated resource planning docket, in addition to the direct testimony of Nicholas Wintermantel in this case, demonstrates that without approval of these resources, load growth in PNM’s territory would result in a forecasted planning reserve margin of 0.1% - far lower than industry standard for reliability. With the approval of the resources identified in the Stipulation, including the Sunbelt Project, that margin increases to a robust 17.7%. However, even with the addition of the proposed resources, forecasted load growth means that PNM’s modeling indicates a planning reserve margin of 16.1% in 2029, just one year later. It is likely that PNM would need to build resources to manage load growth with an in-service date of 2029, whether or not the resources in this case (with their 2028 in-service dates) are approved. Approving the Sunbelt Project now, with an expected in-service date of 2028, allows for a more generous planning reserve margin (even if that margin rapidly decreases in 2029 and following years) helping to ensure reliability during this period of anticipated load growth rather than defaulting to a ‘just-in-time’ more conservative method of resource acquisition.

This testimony is sufficient evidence to conclude that the portfolio proposed by PNM and the stipulation will benefit the public through ensuring the reliability of service.

4.2.1.2. The portfolio achieves the public policy goal of placing adequate replacement resources in CCSD.

The stipulating parties agree that the Sunbelt Project should be approved.⁹⁷ That being said, PNM and the stipulating intervenors do not agree about whether PNM was obligated by the

⁹⁵ Staff Ex. 1, at 12.

⁹⁶ Joint Bench Request Response of Western Resource Advocates, Coalition for Clean Affordable Energy, and Prosperity Works, at 2-3.

⁹⁷ PNM Ex. 1, at 9 (“Based on the evidence presented in PNM’s Application, direct testimonies, and testimony in support of the Stipulation, the Sunbelt Project meets the statutory requirements for approval of a

ETA to propose the Sunbelt Project. That is addressed here and is offered because it is directly related to Commission resolution of the question of the merits of the Sunbelt Project.

The stipulation expressly explains how the Sunbelt Project satisfies the CCN standards.⁹⁸ The stipulation also expressly concludes that “[t]he Sunbelt Project is the lowest cost proposed resource located within the CCSD that allows for additional system growth while adhering to the ETA’s initial locational preference.”⁹⁹

PNM was transparent throughout this proceeding in acknowledging that, literally speaking, the Sunbelt Project was not the most cost effective among all of the resources considered through the RFP process.¹⁰⁰ This means that there were less expensive alternatives to securing PNM’s reliability goals.¹⁰¹ However, reliability was not the only purpose behind this portfolio: placing a resource within the boundaries of CCSD was another powerful motivation. To that end, the evidence is clear that the Sunbelt Project was the most cost effective among the proposed resources within CCSD.¹⁰²

CCN, and PNM’s request for issuance of a CCN for the Sunbelt Project should be approved, including the additional 20 MW storage bid enhancement.”).

⁹⁸ *Id.* at 9-10.

⁹⁹ *Id.* at 6.

¹⁰⁰ *See* PNM Ex. 4, at 9-10 (explaining that “the CCSD project is not part of the overall lowest-cost portfolio to meet the expected 2028 need” but “the inclusion of the Sunbelt Project results in the lowest cost portfolio with a CCSD project based on the bids received”); *see also* PNM Ex. 2, at 8 (“While not included in the resource portfolio that was initially selected as the most cost-effective among feasible alternatives, the Sunbelt Project is the lowest-cost resource within the CCSD.”).

¹⁰¹ *See id.*

¹⁰² PNM Ex. 1, at 6 (“The Sunbelt [p]roject is the lowest cost proposed resource located within the CCSD that allows for additional system growth while adhering to the ETA’s initial locational preference. It is the least cost option for adding new resources in the CCSD as soon as practicable.”).

4.2.1.2.1. Party Positions on Applicability of ETA and Consequences of Those Positions

CCSD and NEE conclude that approval of the Sunbelt Project allows PNM to satisfy its remaining obligations under the ETA but also stress that the Commission need not decide whether the ETA is applicable.¹⁰³ Several other intervenors also agree that the Sunbelt Project will allow PNM to accomplish the objectives behind the ETA.¹⁰⁴ For its part, PNM appears to agree that that, in this proceeding, the Commission does not need to decide on the applicability of the ETA. However, the Company also simultaneously argues both that, under the plain language of the statute, it has no outstanding legal obligations with respect to replacement resources and that the Sunbelt Project nevertheless satisfies the intent behind the ETA.¹⁰⁵ These divergent positions are confusing, and the decision to not definitively determine the applicability of the ETA produced a record with apparent holes.

¹⁰³ See Case No. 24-00271-UT, Response to Order Seeking Clarification from CCSD, at 2 (stating that “[n]either the plain language of Section 62-18-3 of the ETA, nor legislative intent supports the conclusion that the ETA created an expiration date on the ETA’s replacement resource requirement” but “[t]he disagreement . . . does not have to be resolved to conclude that the [s]tipulation in this matter is a win-win”) (Apr. 18, 2025), and Case No. 24-00271-UT, NEE’s Legal Statement on Applicability of Energy Transition Act, at 2 (explaining that “NEE’s position is that the obligation to replace the failed Rockmont project arises not directly from the Energy Transition Act, but from the Commission’s Orders entered pursuant to its authority under the ETA” but “the Commission need not resolve this issue which is unnecessary for approval of the Stipulation”) (04/09/2025).

¹⁰⁴ See Joint Bench Request Response of Western Resource Advocates, Coalition for Clean Affordable Energy, and Prosperity Works, at 4 (“Joint Respondents point out that . . . the Sunbelt project contributes to providing the benefits, particularly to the tax base in the CCSD, which would have been provided by the approved (but defaulted) replacement resources for the San Juan Generating Station in Case No. [19]-00195-UT.”).

¹⁰⁵ “PNM did not request approval of the Sunbelt Project pursuant to Section 62-18-3 of the ETA because the requirements of that statute expired by its own terms. Regardless, the Sunbelt Project helps to fulfill an underlying goal of Section 62-18-3 that was previously implemented by the Commission -- to add to the property tax base for the CCSD that was impacted by the closure of San Juan.” Case No. 24-00271-UT, PNM’s Legal Statement on Applicability of Energy Transition Act, at 1-2 (Apr. 9, 2025).

The Commission would be justified in wondering, for instance, what is the premium PNM is willing to pay to locate the resources in CCSD? How much more will PNM's ratepayers pay to site a resource in CCSD? How much tax base will Sunbelt produce on an annual basis for CCSD? What difference, if any, is there in tax base production between Sunbelt and the defaulted Rockmont Project? Evidence on these questions is not available given the parties' willingness to enter into a stipulation so long as the Sunbelt Project is included. The stipulation ended the type of searching inquiry that generally flows from fully litigated proceedings.

All that we know about the total tax base for CCSD that will be produced by the Sunbelt Project comes from Staff. Staff notes that, during discovery, PNM disclosed that the additional 20 MW of BESS capacity the stipulation proposed that the Commission approve "will provide an extra \$258,773 in property tax revenue to the area and the CCSD bringing the total, first year, property tax impact of the Sunbelt Project to approximately \$2 million."¹⁰⁶

Still, none of what is said above changes the fact that there are two paths here and both end at the same place. The Commission can conclude that the Sunbelt Project satisfies the CCN standards and, as a pure matter of discretion, take into account benefits to CCSD as part of that inquiry. Alternatively, the Commission could conclude that Sunbelt satisfies PNM's obligations under the ETA to propose a resource in CCSD. The latter is the more sensible route; still, whichever path is traveled, the Commission ends up at the same place. The Sunbelt Project should be approved.

¹⁰⁶ Staff Ex. 1, at 6-7. PNM's testimony in support of the stipulation also emphasized that "the capital costs of the energy storage component of the Sunbelt Project are lower under the 50 MW size compared to the 30 MW size." PNM Ex. 2, at 9.

4.2.1.2.2. CCN Standards

The CCN standards were identified in an earlier section of this writing and need not be restated. As PNM points out, “[t]he Commission has significant discretion in determining the public interest when applying the CCN statute (Section 62-9-1).”¹⁰⁷ PNM and the stipulating parties are persuaded that the Sunbelt Project is in the public interest and satisfies the CCN standards. As the non-CCSD located resources would not be “feasible alternatives” in attaining PNM’s goal of placing a resource within CCSD, the signatories have demonstrated, at least from a certain point of view, that the Sunbelt Project satisfies the final requirement of Section 62-9-1(D).

The stipulation provides that the Sunbelt Project will ensure cost savings by locating the facility near an existing PNM substation and other infrastructure; minimize transmission and substation expansion requirements; reduce PNM’s use of fossil fuels to meet demand by allowing storage of energy produced from renewable resources during off-peak load periods for discharge during peak load; ensure grid reliability; support increased diversification of energy resources; and contribute to the reduction of air pollution.¹⁰⁸ This is all uncontested, and all that must be decided to resolve the case.

That said, the Commission should not close its eyes to the fact that approval of Sunbelt will ensure that PNM complies with the ETA and, despite PNM’s assertions to the contrary, there can be little doubt that the Sunbelt proposal is part of the portfolio of resources here because of the ETA. Additional background will make this point clear.

¹⁰⁷ Case No. 24-00271-UT, Legal Statement on Applicability of ETA, at 4 (04/09/2025).

¹⁰⁸ PNM Ex. 1, at 6.

4.2.1.2.3. ETA – Statutory Text

Section 62-18-3(A) of the ETA explains that if “a qualifying utility . . . abandons a qualifying generating facility in New Mexico prior to January 1, 2023,” then “the qualifying utility shall, no later than one year after approval of the abandonment, apply for commission approval of competitively procured replacement resources.”

The term “replacement resources” is defined as “up to four hundred fifty megawatts of nameplate capacity” which “may include energy storage capacity[.]”¹⁰⁹ The ETA also instructs that “such resources” must be “located in the school district in New Mexico where the abandoned facility is located,” must be “necessary to maintain reliable service[.]” and must be “in the public interest as determined by the [C]ommission.”¹¹⁰ The meaning of these directions was fully explored in Case No. 19-00195-UT.

4.2.1.2.4. Case No. 19-00195-UT

The final order in Case No.19-00195-UT explains that the core purpose behind the ETA is to ensure that the tax base in CCSD lost due to abandonment of SJGS is replaced by an alternative generation resource that will generate a similar tax base. The Commission put it this way: “[t]he statutory intent is evident[:] . . . to offset tax base reduction resulting from the closure of the qualifying facility through the placement of ‘replacement resources’ in the affected school district[.]” and “Section 3(E) confirms that ‘replacement resources shall be subject to local property taxes or a binding commitment to make an equivalent payment in lieu of taxes.’”¹¹¹

¹⁰⁹ Section 62-18-3(F).

¹¹⁰ *Id.*

¹¹¹ Case No. 19-00195-UT, *Final Order*, p.3 (07/29/2020).

In subsequent writing in the final order, the Commission explained that Section 62-18-3(A) “clearly places a duty on the utility to file proposals for placement of resources in” CCSD and this duty is imposed “to replenish the lost tax base by relaxing the normal reliance on low cost under the normal standard of most cost-effective resource.”¹¹² This conclusion about the core purpose of the ETA is not controversial or disputed.

In its initial application in Case No. 19-00195-UT, PNM indicated that the ETA requires that replacement resources be put in the CCSD to “help support the tax base for the school district and create a significant number of construction jobs for workers in San Juan County.”¹¹³

There is language in the ETA indicating that replacement resources need not match the total MWs abandoned and indicating that the Commission has discretion over siting concerns. But none of that language contradicts the core purpose of the ETA to ensure that the tax base is replaced. This was all noted in the part two recommended decision in Case No. 19-00195-UT.

The part-two recommended decision asserts that the “[m]ost prominent” policy priority of the ETA “is the legislature’s intent to locate resources in the CCSD to replace the abandoned resources at San Juan.”¹¹⁴ The ETA makes efforts to balance this priority with competing priorities. That includes minimizing environmental impacts, ensuring reliability, and limiting cost.¹¹⁵

¹¹² *Id.* at 4-5.

¹¹³ Case No. 19-00195-UT, PNM’s Consolidated Application for the Abandonment, Financing & Replacement of the San Juan Generating Station Pursuant to the Energy Transition Act, at Executive Summary p. 1 (07/01/2019).

¹¹⁴ Case No. 19-000195-UT, *Recommended Decision on Replacement Resources, Part II*, at 120 (04/24/2020).

¹¹⁵ *Id.* at 14.

One way the ETA balances these priorities, the recommendation explains, is by establishing “a maximum number of 450 MW that is required to be located in the” CCSD.¹¹⁶ Parties argued in 19-00195 that this “language may reflect a legislative intent to benefit the affected school district, but it does not require any particular amount of capacity to be located there[.]”¹¹⁷ The language leaves open the possibility that resources could “be proposed outside the affected school district to replace the abandoned capacity.”¹¹⁸

This writing is highlighted to illuminate a point underlying the writing in the RD: the Legislature intended a goal that was pragmatic. It wanted to shore up the tax loss in the CCSD caused by the abandonment of SJGS. How best to achieve that end effectively and efficiently was delegated to the Commission. The Legislature did not hamstring the Commission by saying some specific number of MWs must be placed in the CCSD or insist on one action plan. It gave the Commission flexibility in reaching the end goal of replacing the lost tax base.

The Legislature’s conferral of flexibility was prescient, as events soon unfolded that were not anticipated.

4.2.1.2.5. Rockmont

The Rockmont Project was a 100MW solar and 30 MW battery facility that was going to be sited within the CCSD.¹¹⁹ The project was discussed in Case No. 19-00195-UT and approved in Case No. 20-00182-UT.

¹¹⁶ *Id.* at 58.

¹¹⁷ *Id.* at 55.

¹¹⁸ *Id.*

¹¹⁹ Case No. 20-00182-UT, *Recommended Decision*, at 13-14 (11/13/2020).

In Case No. 20-00182-UT, the recommended decision highlighted PNM testimony that Rockmont would result in \$188 million of total capital investments; \$1.2 million of first-year property taxes; \$16 million in full-term property taxes; 290,000 construction manhours; and four permanent jobs.¹²⁰ The final order adopting the RD in Case No. 20-00182-UT was issued on December 2, 2020. That order is two pages and simply adopts the RD.

In May of 2021, PNM alerted the Commission that the Rockmont Project developer failed to provide security deposits, secure necessary rights-of-way, and enter into necessary transmission interconnection agreements.¹²¹ All were necessary to ensure timely construction of the project.

In late February 2023, PNM alerted the Commission that “the Rockmont project will not proceed.”¹²²

4.2.1.2.6. Case No. 23-00353-UT

In October 2023, PNM filed an application asking for Commission approval of a long-term 100 MW solar PPA given the name Quail Ranch; three Long-Term ESAs for four-hour battery projects with a combined 250 MW capacity given the names Sky Ranch II, Route 66, and Quail Ranch; and a CCN to construct the 60 MW four-hour BESS Sandia Storage Project.

The Commission approved the application but made clear in doing so that “the Quail Ranch Solar Project PPA . . . does not serve as a direct replacement for the Rockmont Solar Project or as a specific replacement resource for the San Juan Generating Station.”¹²³ The evidence submitted

¹²⁰ *Id.* at 17.

¹²¹ Case No. 20-00182-UT, PNM’s Compliance Notice of Purchase Power Agreement Status (05/24/2021).

¹²² Case No. 19-00195-UT, PNM’s Notice of San Juan and Palo Verde Replacement Resources Status, at 3 (02/28/2023).

¹²³ Case No. 23-00353-UT, *Final Order*, at 19 (05/30/2024).

in the case suggested that some parties understood that Quail Ranch was a SJGS replacement resource.¹²⁴ The Commission's order made clear that it was not.

In the wake of Commission final action in Case No. 23-00353-UT, a group of New Mexico legislators filed a motion for rehearing arguing that Case No. 19-00195-UT requires PNM to site "replacement resources" in CCSD and, due to the default of Rockmont, 130 MW of the replacement resources that were supposed to be sited there were not.¹²⁵ The legislators were of the view that the 130 MW "outstanding balance" had to be satisfied.¹²⁶

The Commission denied the motion for rehearing and the legislators filed a petition for writ of mandamus in the New Mexico Supreme Court. In the petition, the legislators argued (just as they did in the Commission) that "PNM has only partially complied with" prior Commission orders and still has "an outstanding 130MW balance that will help ameliorate the employment and tax base loss that San Juan County has suffered from the SJGS closure."¹²⁷

The Commission filed a responsive pleading to the petition and argued that the resources offered in Case No. 23-00353 were not SJGS replacement resources and that PNM would apply for replacement resources and make up for the defaulted Rockmont Project in a future case.¹²⁸

The Court dismissed the petition for the writ of mandamus.¹²⁹

¹²⁴ *Id.* at 18.

¹²⁵ Case No. 23-00353-UT, Legislators' Motion for Rehearing on Final Order, to Reopen the Case and Apply the ETA and Supporting Brief (06/13/2024).

¹²⁶ *Id.* at 9.

¹²⁷ *Id.*

¹²⁸ Case No. 23-00353-UT, New Mexico Public Regulation Commission and Commissioners' Response to Petition for Writ of Mandamus (08/01/2024).

¹²⁹ Case No. 23-00353-UT, Order of NM Supreme Court (09/03/2024).

4.2.1.2.7. PNM's Position on ETA Here

As noted previously, the stipulation asserts that the Sunbelt Project should be approved under the Commission's CCN standards and that the project satisfies PNM's obligations under the ETA to site resources in the CCSD. As was also previously noted, PNM's position in this case is that it is not obligated by the ETA to seek approval of replacement resources in the CCSD. PNM contends that this is the case because more than a year has passed since it was given approval to abandon SJGS. PNM put this point this way: "PNM did not request approval of the Sunbelt Project pursuant to Section 62-18-3 of the ETA because the requirements of that statute expired by its own terms."¹³⁰

PNM's position appears to be that it labored under the obligation imposed by the ETA to procure replacement resources in the CCSD for one year after the abandonment of SJGS. To that end, the facts are clear that it did indeed propose replacement resources in the CCSD within one year of the abandonment of SJGS. The Commission rejected the proposal PNM offered and instead selected a suite of resources proposed by CCAE, which included the Rockmont Project (among others). Rockmont then defaulted. Under the plain language of the ETA, PNM reasons, it need not propose replacement resources given that more than a year has passed since PNM received approval of abandonment of SJGS.

The most compelling justification PNM offers for this view of the ETA's language is rooted in PNM's correct conclusion that time has real impact in the regulatory field.¹³¹ PNM's generation

¹³⁰ Case No. 24-00271-UT, Legal Statement on Applicability of ETA, at 1.

¹³¹ *See id.* at 4 ("PNM's system has not remained static since the San Juan replacement resources were selected. Both prior and subsequent to the Rockmont Project default, numerous other new resources to meet PNM's load growth and changing system needs have been approved. As with this case, those resource additions were based on a current analysis of the utility system and its ability to meet specific customer needs and operational requirements rather than the requirements of the ETA.").

portfolio has changed since Case No. 19-00195-UT and Case No. 20-00182-UT. Its generation needs *now* are not the same as they were when the cases just noted were decided several years ago. The Legislature can be presumed to operate with knowledge that time and changed circumstances matter and, for this reason, the ETA included a time limitation for PNM to act. It was required to propose replacement resources for one year. This argument is comprehensible but doubtful.

4.2.1.2.8. Response to PNM Argument

The plain terms of the ETA indicate that what PNM must do in one year from the time of abandonment of a qualifying facility is “apply for approval” of replacement resources. The key word here is “apply.” The instruction that PNM apply within one year does not signal that PNM labors under the obligation to propose replacement resources at all for one year and one year only. There is no reason to read the directive to apply within a year to mean that once that year has passed PNM has no obligation at all to procure replacement resources to make up the lost tax base.

The one-year requirement shows that our Legislature wanted PNM to take quick action to replace the abandoned qualifying facility once abandonment was approved. Direction to take quick action cannot be conflated with intention to convey that PNM was not obligated to procure replacement resources if, for whatever reason, more than a year passed between approval of abandonment and application. This would defeat the core purpose of the ETA.

To put all this very plainly, PNM takes a provision that requires the company to act quickly as setting the parameters for the circumstances under which it must act at all. This construction is not consistent with the goal of ensuring the CCSD is made whole by the loss of SJGS. That loss is real and remains partially unmet due to the Rockmont default. The Sunbelt Project remedies this.

4.2.1.2.9. Conclusion

The parties here agree that the Sunbelt Project achieves compliance with Section 62-18-3 of the ETA by achieving the objectives that were at the core of the intent of that enactment. The stipulation explains that “[t]he Signatories agree that the Commission should approve the CCN for the Sunbelt Project, including the 20 MW energy storage bid enhancement, and that the Sunbelt Project provides the benefits to the CCSD that were contemplated by the ETA and Cases No. 19-00195-UT . . . and No. 23-00353-UT”¹³² The Commission should accept this representation and conclude that PNM has met its obligations under the ETA to ensure generation resources are sited in the CCSD to replenish the tax base lost from the SJGS retirement.

4.2.2. Each of the resources in the portfolio satisfies the applicable legal standards.

Although the portfolio proposed by PNM and the stipulation should be approved as a whole on the basis of yielding a net public benefit, the same result can be reached by looking to the specific legal standards governing each of the resources in the portfolio.

4.2.2.1. The Valencia PPA satisfies the requirements of 17.9.551.8 NMAC.

As noted previously, the PPA proposed by PNM in this proceeding is with the Valencia Power Plant, for 167 MW of natural gas generation.¹³³ PNM has an existing PPA in place with the same facility, originally signed on April 18, 2007.¹³⁴ That PPA is set to expire in May 2028.¹³⁵

¹³² PNM Ex. 1, at 11.

¹³³ PNM Ex. 4, at 2.

¹³⁴ PNM Ex. 6, at 5.

¹³⁵ PNM Ex. 4, at 2.

It is worth pointing out that PNM's 2020 to 2040 integrated resource plan filed on January 29, 2021, indicated that "our plan assumes that the Valencia PPA will expire in 2028" and referred to the "loss" of the capacity provided by the plant.¹³⁶ In other parts of the IRP, PNM said it would "replace" Valencia.¹³⁷ Load-projection tables accompanying the IRP show generation from Valencia ending in 2027.¹³⁸ PNM has, as should be evident, changed course on Valencia since January 2021 and here proposes to renew that PPA. It is not clear what caused PNM to change its position, but by the time the Company filed its most recent IRP, it had begun contemplating a new PPA with Valencia.¹³⁹

The new PPA would begin in June 2028 and run through the end of 2039.¹⁴⁰ This expiration date is important because PNM has a self-directed goal of being carbon free by 2040,¹⁴¹ five years earlier than required by the Renewable Energy Act.¹⁴² During the hearing, one witness

¹³⁶ Case No. 21-00033-UT, PNM's Electric Integrated Resource Plan for the Period 2020-2040 in Compliance with NMAC 17.7.3.9, at 126 (Jan. 29, 2021). The IRP also characterized Valencia, along with the Reeves Generating Station, as "currently crucial to meeting loads reliably within the Northern load pocket, where our peak loads can exceed the capability of the transmission system to deliver generation from other parts of the state." *Id.* at 177.

¹³⁷ *Id.* at 104, 139, and 141. At one point, the IRP expressly recognized that the Valencia PPA "expires in 2028" and stated, "PNM will review options to replace the power as the expiration date nears." *Id.* at 104.

¹³⁸ *See* Case No. 21-00033-UT, PNM's Electric Integrated Resource Plan for the Period 2020-2040 in Compliance with NMAC 17.7.3.9, at Appendix K.

¹³⁹ *See* Case No. 23-00409-UT, PNM's Integrated Resource Plan for the Period 2023-2042 in Compliance with NMAC 17.7.3.8, at 105 (Dec. 15, 2023).

¹⁴⁰ "The Valencia PPA has a term of 11.5 years, beginning May 31, 2028, and terminating on December 31, 2039." PNM Ex. 6, at 4. This PPA would not have an option to extend the term of the agreement. *Id.*

¹⁴¹ *See* PNM Ex. 4, at 4 ("PNM has determined that these resources will allow PNM to provide cost-effective and reliable service while at the same time progressing to a carbon-free portfolio by PNM's goal of 2040, which is five years earlier than the required 2045.").

¹⁴² NMSA 1978, §§ 62-16-1 to -10 (2004, as amended through 2021). The REA provides that, as of 2045, "zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico." Section 62-16-4(A)(6).

for PNM explained that the primary purpose of the Valencia PPA would be for “contingency reserves and responding in short-term efficiency situations,” but not as a resource for the Company’s base load or even peak load.¹⁴³

The evidence in the record for the Valencia PPA satisfies each of the requirements of 17.9.551.8 NMAC. This evidence includes a copy of the agreement itself¹⁴⁴ as well as supporting testimony explaining its key terms and conditions,¹⁴⁵ a general description of the facility, and the approvals required to operate it.¹⁴⁶ Among the other specific requirements of 17.9.551.8 NMAC addressed in testimony,¹⁴⁷ PNM also described the impact of the PPA on the Company’s financial condition and metrics,¹⁴⁸ how the PPA itself was selected for inclusion in PNM’s supply portfolio,¹⁴⁹ and whether a utility-owned resource could have been built as a superior alternative.¹⁵⁰

¹⁴³ Tr. at 93. Similarly, another witness for the Company testified at length about the value of the Valencia PPA in the future: “I think the value, as we move forward and the system has transformed away from dispatchable resources into our current portfolio, I think the value of natural gas being able to be called upon very quickly, whereas we may not need to run it all that much, but it’s a great resource that can be called upon and come online very quickly and really provide that stability when we need it, especially when you’re looking at Resource Planning.” Tr. at 38.

¹⁴⁴ PNM Ex. 2, at Exhibit GBB-2.

¹⁴⁵ See PNM Ex. 2, at 4-12.

¹⁴⁶ See PNM Ex. 2, at 4-12.

¹⁴⁷ Exhibit 1 of the Application contained a table cross-referencing each of the requirements in 17.9.551.8 NMAC with the various testimonies supplied by PNM. See PNM Ex. 3, at Exhibit 1.

¹⁴⁸ PNM does not anticipate any impact to its financial condition or metrics associated with the Valencia PPA,” primarily because the agreement itself is similar in cost to the existing PPA and “does not cause imputed debt.” PNM Ex. 4, at 15.

¹⁴⁹ See PNM Ex. 9, at 43-44.

¹⁵⁰ PNM explained that there “were no other alternative utility owned resources submitted in the resource evaluation process that could have been constructed as an alternative to the Valencia PPA.” PNM Ex. 6, at 11-12.

Most importantly, there is also sufficient evidence in the record to satisfy PNM's obligation to explain how it "proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers."¹⁵¹ The Company explained in testimony that its proposal would recover the costs of the Valencia PPA through a combination of its FPPCAC and base rates: the energy costs associated with the PPA would be recovered through the FPPCAC, and the demand charges would be recovered through base rates.¹⁵² PNM estimates the annual revenue requirement associated with the Valencia PPA at \$22.2 million, which is an increase of approximately \$1 to \$2 million over the existing PPA.¹⁵³

The Valencia PPA is reasonable and in the public interest. The plant "can reach full load in 12 minutes" with a minimum load of 55 MW,¹⁵⁴ which clearly supports PNM's goal of procuring a resource capable of coming online quickly and ensuring reserves. The PPA is also, according to the independent evaluator's report, part of the "least cost portfolio to meet the RFP targets and achieve PNM's reliability planning criteria."¹⁵⁵ It should, based on the evidence in the record, provide a net benefit to PNM ratepayers over the duration of the agreement.

4.2.2.2. Both ESAs satisfy the requirements of 17.9.551.8 NMAC

The two ESAs proposed by PNM in this case, Sun Lasso BESS and Corazon BESS, are both new projects not currently in operation. The two projects are substantially similar to one

¹⁵¹ 17.9.551.8(D)(4) NMAC.

¹⁵² PNM Ex. 4, at 22; *see also* PNM Ex. 1, at 8. The Valencia PPA has "a capacity charge of \$9.20/kW/month, a variable O&M charge of \$5.00/MWh (in year 1), and a start charge of \$8,000 per start," all of which would be indexed for inflation. PNM Ex. 6, at 6.

¹⁵³ Tr. at 40; *see also* PNM Ex. 4, at 3.

¹⁵⁴ PNM Ex. 6, at 10.

¹⁵⁵ PNM Ex. 10, at Exhibit RWN-12, at p. 7 of 116.

another in many respects, with each having a nameplate capacity of 150 MW and providing 4-hour storage.¹⁵⁶ The projects have expected commercial operation dates of January 15, 2028, for Sun Lasso, and December 31, 2027, for Corazon, and construction is anticipated to begin on each project upon approval from the Commission.¹⁵⁷ Testimony during the hearing indicated that the benefits of these projects included “an almost immediate 1-second response to the grid” as well as having resource reserves available rapidly.¹⁵⁸

PNM’s application and supporting testimony contained specific information as to the costs of the ESAs. Over the 20-year terms of the agreements, each has a fixed price per MW hour (with no escalations): \$15.40 for Corazon, and \$14.55 for Sun Lasso.¹⁵⁹ During the hearing, testimony from PNM stated that this pricing was “very competitive” based on “what the current market is.”¹⁶⁰ With respect to the first year revenue requirement, Corazon is slightly more expensive, costing approximately \$20.7 million, with Sun Lasso costing approximately \$20.2 million.¹⁶¹ The ESAs are not expected to impact PNM’s credit metrics.¹⁶²

The cost recovery of the ESAs was one of the stipulation’s (few) changes to PNM’s as-filed application. Under the as-filed application, PNM proposed to recover ESA costs through its

¹⁵⁶ PNM Ex. 6, at 6.

¹⁵⁷ *Id.* at 5.

¹⁵⁸ Tr. at 140-41. See also PNM Ex. 6, at 10-11 (explaining that the “ancillary services” included within both ESAs included “frequency response, load following, contingency reserve, [and] spinning reserve”).

¹⁵⁹ PNM Ex. 6, at 6.

¹⁶⁰ Tr. at 153.

¹⁶¹ PNM Ex. 4, at 3.

¹⁶² *See id.* at 16 (“Based on the contract terms included in the Corazon and Sun Lasso ESAs, which do not contain a fixed payment obligation, these ESAs will not result in any lease liabilities and, therefore, are not expected to have an impact on PNM’s key credit metrics.”).

FPPCAC, consistent with its initial application in the ongoing rate case, Case No. 24-00089-UT.¹⁶³ However, this proposal was abandoned by PNM through its stipulations in this case and the rate case.¹⁶⁴ Although the testimony in this case did not address at length why this modification is in the public interest, it is nevertheless clearly beneficial in that it is a modification consistent with the stipulation (and recommended disposition in the certification of stipulation) in 24-00089-UT.¹⁶⁵

The remaining requirements of 17.9.551.8 NMAC are addressed throughout PNM's witness testimony, as with the Valencia PPA.¹⁶⁶ Of note, the key terms and conditions of the agreements themselves include requirements to post and maintain securities¹⁶⁷ as well as provisions governing events of default.¹⁶⁸ Testimony from PNM also stated that there were "no ... alternative utility owned resources submitted in the resource evaluation process that could have been constructed as an alternative."¹⁶⁹

¹⁶³ "PNM currently has before the Commission a proposal to recover ESA costs through PNM's FPPCAC in Case No. 24-00089-UT, PNM's rate case. If that proposal is adopted, then PNM will include the ESA costs in PNM's FPPCAC when they are operational. Otherwise, PNM will seek recovery of these costs in a PNM general rate review filing where PNM seeks to adjust its base rates." PNM Ex. 4, at 22.

¹⁶⁴ *See* PNM Ex. 2, at 12 ("In that proceeding, PNM and other parties stipulated to recover of ESA costs through PNM's base rates, and the Stipulation reflects that PNM would request future rate recovery for the ESAs approved in this case that would be consistent with the outcome of the rate case.").

¹⁶⁵ *See* Case No. 24-00089-UT, Certification of Stipulation, at 30-32 (explaining that collecting ESA costs through base rates rather than the FPPCAC was a "beneficial outcome" because it avoided shifting risk from shareholders to ratepayers and ensured "consistency of treatment among the IOUs").

¹⁶⁶ *See* PNM Ex. 3, at Exhibit 1 (identifying which testimonies addressed specific requirements of 17.9.551.8 NMAC).

¹⁶⁷ *See* PNM Ex. 6, at 11 (noting that each agreement requires "development security equal to \$100,000 per MW multiplied by the guaranteed capacity (150 MW) or \$15 million" as well as, by the commercial operation date, "security equal to \$125,000 per MW multiplied by the guaranteed capacity or \$18.75 million").

¹⁶⁸ *See id.* at 7-8.

¹⁶⁹ *Id.* at 11-12.

More generally, Sun Lasso and Corazon clearly provide a net benefit to PNM's ratepayers, as required by law. Not only did these resources constitute key components of the lowest cost portfolio,¹⁷⁰ they also serve a critical role in moving PNM further towards the carbon-free resource portfolio required by the REA. PNM's testimony emphasized that, as the Company becomes increasingly reliant on wind and solar generation, its analysis "continues to show that additional storage is required to minimize the cost of balancing capacity deficiencies in low wind and solar timeframes with the low cost of energy from these resources."¹⁷¹ Sun Lasso and Corazon help accomplish these goals by "stor[ing] renewable energy and return[ing] the energy at times when capacity is needed to serve load, typically during low wind and solar generation periods."¹⁷² They are therefore in the public interest, consistent with the Commission's rules.

4.2.2.3. The Sunbelt Project Complies with Section 62-9-1(D).

Finally, the Sunbelt Project also satisfies the specific legal requirements governing the issuance of CCNs to energy storage systems. As previously explained, the Commission has held that ESAs must first be reviewed under the more specific standard of Section 62-9-1(D), and only if the project fails that standard do the more general CCN requirements apply.¹⁷³ The evidence in this case is sufficient to satisfy the seven criteria outlined by Section 62-9-1(D).

As a threshold matter, the signatories provided more than adequate evidence to satisfy the first six criteria listed in Section 62-9-1(D).¹⁷⁴ None of these six are in question. PNM's witness

¹⁷⁰ See PNM Ex. 10, at Exhibit RWN-12, at p. 7 of 116.

¹⁷¹ PNM Ex. 5, at 17.

¹⁷² *Id.*

¹⁷³ See Case No. 23-00353-UT, *Final Order*, at 17.

¹⁷⁴ It should be noted that all of this evidence is contained in the testimony of a single PNM witness. See PNM Ex. 6, at 18-23; see also PNM Ex. 3, at Exhibit 3 (providing a table showing that the evidence addressing the Section 62-9-1(D) criteria is contained in the testimony of Mr. Gary Barnard).

testimony explained that the Sunbelt Project, which will be located in close proximity to an existing substation,¹⁷⁵ will charge and then shift energy from high solar production hours to peak demand hours later in the day when solar is more limited.¹⁷⁶ By charging from solar production and other sources in the Company's renewable energy portfolio, the ESA will have the effect of reducing the use of fossil fuel generation during peak load periods as well as reducing curtailments of renewable resources.¹⁷⁷ The Sunbelt Project should have a rapid response time, which will help to ensure greater grid reliability,¹⁷⁸ and PNM's ownership of the facility will provide it greater control over dispatch and maintenance than it would with a contracted resource.¹⁷⁹ All told, the evidence addressing each of the six criteria outlined by Section 62-9-1(D)(1) to (6) is uncontested, credible, and persuasive.

¹⁷⁵ "The BESS included in the Sunbelt Project will be located near an existing PNM substation and can be installed in a relatively short time frame. The existing substation site is established, the project site has been secured by PNM, there is a Large Generator Interconnection Agreement (LGIA) in place, limited gen-tie line and substation expansion work will be required, and the project will increase reliability and resiliency for customers." PNM Ex. 6, at 19.

¹⁷⁶ *See id.* (explaining that the Sunbelt Project "will provide generation grid benefits through shifting of energy from the high solar production hours to peak demand times when solar production is minimal").

¹⁷⁷ "The Sunbelt Project, including the BESS, will be charging energy delivered from the associated 100 MW solar facility and from PNM's renewable generation portfolio. This will allow PNM to reduce the use of fossil fuels for meeting peak system demands in post-solar hours. ... The ability to store energy reduces curtailments of solar production, thus reducing and offsetting the historical dependency on, and dispatch of, fossil fueled generation." PNM Ex. 6, at 19-20.

¹⁷⁸ PNM explained that the BESS component of the Sunbelt Project will have "the ability to start and reach full discharge capacity (reflecting a system generator) or full charging capacity (reflecting a system load) within seconds." *Id.* at 20.

¹⁷⁹ *See id.* at 22 ("Given PNM's procurement, ownership, and operations of the Sunbelt Project, including the BESS, PNM will have full control and management of the dispatch and maintenance of the project within the operating requirements of the BESS and battery cell manufacturer."). *See also* PNM Ex. 4, at 4 ("Utility-owned resources provide PNM with the discretion to operate, maintain, and control energy storage systems and curtailment of solar facilities as to ensure reliable and efficient service to its customers.").

Although there is room for some dispute as to the seventh and final criterion in Section 62-9-1(D) – whether the ESA is “the most cost effective among feasible alternatives”¹⁸⁰ – the evidence is again adequate to meet this standard. As explained previously, this is so because one of the two main objectives behind the proposed portfolio is to place a resource within the boundaries of CCSD,¹⁸¹ and the portfolio is the lowest cost portfolio that satisfies this objective.¹⁸²

4.3. The Stipulation Benefits Ratepayers and the Public Interest.

The public interest is inherent in the legal standards governing the approval of PNM’s portfolio and each of the four resources proposed in this proceeding. This writing has found that the stipulation satisfies these legal standards *because* it benefits ratepayers and the public interest.

5. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The hearing examiners respectfully recommend that the Commission find and conclude as follows:

1. PNM is certified and authorized to provide public utility service within the State of New Mexico, provides electric-utility services within New Mexico, and is a public utility subject to the jurisdiction of the Commission under the Public Utility Act.
2. The Commission has jurisdiction over PNM and the subject matter of this case.
3. Reasonable, proper, and adequate notice of PNM’s application and this proceeding was provided.
4. The stipulation is supported by a preponderance of the evidence in the record.

¹⁸⁰ Section 62-9-1(D)(7).

¹⁸¹ See PNM Ex. 4, at 3, and PNM Ex. 1, at 2.

¹⁸² See *id.* at 6 (“The Sunbelt Project is the lowest cost proposed resource located within the CCSD that allows for additional system growth while adhering to the ETA’s initial locational preference.”).

5. The stipulation is a product of serious bargaining among capable and knowledgeable parties; is in the interest of ratepayers and the public; does not violate any important regulatory principle or practice; and, therefore achieves a fair, just, and reasonable settlement of the case.

6. The stipulation should be adopted and approved.

7. The portfolio of resources proposed by PNM and the signatories provide a net public benefit and should be approved.

8. The PPA and ESAs that PNM and the signatories ask the Commission to approve should be approved. The signatories to the stipulation submitted sufficient evidence to satisfy all requirements and legal standards under Rule 551. They have shown that approval of the resources will result in a net public benefit.

9. PNM should be granted any additional approval that is or may be necessary for timely commencement of the PPA and ESAs.

10. The energy costs from the PPA should be recovered through PNM's FPPCAC, and the demand charges should be considered and, as appropriate, recovered through base rates as part of a future general rate case.

11. The costs of the ESAs should be considered and, as appropriate, recovered through base rates as part of a future general rate case.

12. The Commission should approve PNM's request for approval of a CCN for the Sunbelt Project. The signatories to the stipulation submitted sufficient evidence to satisfy all requirements and legal standards under Section 62-9-1.

13. The costs of the Sunbelt Project should be considered and, as appropriate, recovered through base rates as part of a future general rate case.

6. DECRETAL PARAGRAPHS

The hearing examiners respectfully recommend that the Commission order as follows:

A. The hearing examiners' certification of stipulation and all rulings, determinations, and findings and conclusions contained in it – regardless of whether separately stated, numbered, or designated – are incorporated as the Commission's findings of fact and conclusions of law.

B. PNM's request for approval of the PPA for the Valencia Power Plant is approved.

C. PNM's request for approval of the ESA for Sun Lasso BESS is approved.

D. PNM's request for approval of the ESA for Corazon BESS is approved.

E. PNM's request for approval of a CCN for the Sunbelt Project is approved.

F. Any conclusion or recommendation 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.

G. Consistent with 17.1.2.37(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 certification.

H. Any matter not specifically ruled on during the hearing or in this certification is resolved consistent with this certification.

I. This docket is closed.

J. This order is effective immediately.

K. A copy of this order shall be served on all parties listed on the official service list for this case.

ISSUED under the seal of the Commission at Santa Fe, New Mexico, this **6th** day of **May**,
2025.



NEW MEXICO PUBLIC REGULATION COMMISSION

A handwritten signature in black ink, appearing to read "C. P. Ryan", written over a horizontal line.

Christopher P. Ryan
Hearing Examiner
Christopher.ryan@prc.nm.gov

A handwritten signature in black ink, appearing to read "John F. Kreienkamp", written over a horizontal line.

John F. Kreienkamp
Hearing Examiner
john.kreienkamp@prc.nm.gov

Attachment 1 – Estimated Bill Impacts (PNM Ex. 11, at Exhibit HEM-BR-2)

Bill impact of 2028 Resources¹
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Rate Schedule 1A Residential

Customer usage in kWh	Stip Ph 2 Bill	2028 Resource Plan Bill	Difference (\$)	Difference (%)
0	\$15.38	\$15.38	\$0.00	0.0%
200	\$40.18	\$41.61	\$1.43	3.5%
250	\$46.39	\$48.17	\$1.78	3.8%
300	\$52.59	\$54.73	\$2.14	4.1%
400	\$64.99	\$67.84	\$2.85	4.4%
500	\$79.66	\$83.40	\$3.74	4.7%
585	\$94.07	\$98.71	\$4.64	4.9%
600	\$96.61	\$101.41	\$4.80	5.0%
700	\$113.56	\$119.42	\$5.86	5.2%
800	\$130.51	\$137.43	\$6.92	5.3%
900	\$147.46	\$155.44	\$7.98	5.4%
1,000	\$172.45	\$181.83	\$9.38	5.4%
1,200	\$215.52	\$227.71	\$12.19	5.7%
1,500	\$280.13	\$296.53	\$16.39	5.9%
2,000	\$387.81	\$411.22	\$23.41	6.0%

Rate Schedule 2A Small Power

Customer usage in kWh	Stip Ph 2 Bill	2028 Resource Plan Bill	Difference (\$)	Difference (%)
0	\$31.33	\$31.33	\$0.00	0.0%
500	\$98.21	\$101.32	\$3.11	3.2%
700	\$124.96	\$129.31	\$4.35	3.5%
900	\$151.71	\$157.31	\$5.60	3.7%
1200	\$191.84	\$199.30	\$7.46	3.9%
1606	\$246.14	\$256.13	\$9.99	4.1%
2000	\$298.84	\$311.28	\$12.44	4.2%
2500	\$365.72	\$381.27	\$15.55	4.3%
3000	\$432.60	\$451.25	\$18.65	4.3%
4000	\$566.36	\$591.23	\$24.87	4.4%
5000	\$700.11	\$731.20	\$31.09	4.4%

Footnote:

¹ Riders included in the bill calculation include: Rider 16 Energy Efficiency, Rider 23 FPPCAC, Rider 36 Renewable Energy, Rider 51 Energy Transition Charge, Rider 53 Transportation Electrification, Grid Mod Rider (approved, but not filed).

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF PURCHASED POWER) Case No. 24-00271-UT
AGREEMENTS, ENERGY STORAGE)
AGREEMENTS, AND CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY FOR)
SYSTEM RESOURCES IN 2028)
)

CERTIFICATE OF SERVICE

I certify that on this date I sent, via email, a true and correct copy of the hearing examiners’ **Certification of Stipulation** to the parties listed below.

Albuquerque County Water Utility Authority ABCWUA	
Nann M. Winter	NWinter@stelznerlaw.com;
Keith Herrmann	KHerrmann@stelznerlaw.com;
L. Erica Flores	EFlores@stelznerlaw.com;
Christopher P. Melendrez	CMelendrez@abcwua.org;
Bernalillo County BERNCO	
W. Ken Martinez	Kenmartinez@bernco.gov;
Marah deMeule	Mdemeule@bernco.gov;
Natalia Sanchez Downey	NDowney@bernco.gov;
Valerie Joe	VJoe@bernco.gov;
Bernice Vigil	BVigil@bernco.gov;
Maureen Reno	MReno@reno-energy.com;
Mateo Dunne	Mateo@transformconsulting.com;
Bernalillo Solar	
Daniel A. Najjar & Carla R. Najjar	DNajjar@virtuelaw.com;
Shane P. Early	SEarly@sheppardmullin.com;
Bruce Grabow	BGrabow@sheppardmullin.com;
Central Consolidated School District CCSD	
Germaine Chappelle	Germaine@gchappellelaw.com;
Coalition for Clean Affordable Energy CCAE	
Cara Lynch	Lynch.Cara.NM@gmail.com;
Caitlin Evans	Evans.ccae@gmail.com;
Charles de Saillan	Desaillan.ccae@gmail.com;
Don Hancock	sricdon@earthlink.net;

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Official Service List

Case No. 24-00271-UT

New Energy Economy NEE	
Mariel Nanasi	Mariel@seedsbeneaththesnow.com ;
Stephanie Dzur	Stephanie@Dzur-Law.com ;
Christopher Sandberg	CKSandberg@mac.com ;
NM AREA	
Kelly Gould	Kelly@thegouldlawfirm.com ;
Peter J. Gould	Peter@thegouldlawfirm.com ;
James Dauphinais	JDauphinais@consultbai.com ;
Katrina Reid	office@thegouldlawfirm.com ;
NM Department of Justice NMDOJ	
Gideon Elliot	GElliot@nm DOJ.gov ;
Doug Gegax	DGegax@nmsu.edu ;
Maria Oropeza	MOropeza@nm DOJ.gov ;
Arleen Serrato	Aserrato@nm DOJ.gov ;
Nicole Teupell	NTeupell@nm DOJ.gov ;
Public Service Company of NM PNM	
Stacey Goodwin, Esq.	Stacey.Goodwin@txnmenergy.com ;
Christopher Atencio	Christopher.Atencio@txnmenergy.com ;
Henry E. Monroy	Henry.Monroy@pnmresources.com ;
Lisa Contreras	Lisa.Contreras@pnm.com ;
Ruth Townsend	Ruth.Townsend@pnm.com ;
PNM Regulatory	pnmregulatory@pnm.com ;
Prosperity Works	
Cara R. Lynch	Lynch.Cara.nm@gmail.com ;
Ona Porter	Ona@prosperityworks.net ;
PRC Advocacy Staff	
Nicholas Rossi	Nicholas.Rossi@prc.nm.gov ;
John Bogatko	John.Bogatko@prc.nm.gov ;
Daren Zigich	Daren.Zigich@prc.nm.gov ;
Ed Rilkoff	Ed.Rilkoff@prc.nm.gov ;
Elisha Leyba-Tercero	Elisha.leyba-tercero@prc.nm.gov ;
Elizabeth Ramirez	Elizabeth.Ramirez@prc.nm.gov ;
Peggy Martinez-Rael	Peggy.Martinez-Rael@prc.nm.gov ;
Western Resource Advocates WRA	
Cydney Beadles	Cydney.Beadles@westernresources.org ;
AnnaLinden Weller	Annalinden.Weller@westernresources.org ;
Stacey Tellinghuisen	Stacy.Tellinghuisen@westernresources.org ;
Caitlin Evans	Caitlin.Evans@westernresources.org ;

PRC General Counsel Division

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Official Service List

Case No. 24-00271-UT

Robert Lundin	Robert.Lundin@prc.nm.gov;
Scott Cameron	Scott.Cameron@prc.nm.gov;
PRC Records Management Bureau	Prc.Records@prc.nm.gov;
Hearing Examiners Division	
Ana Kippenbrock	Ana.Kippenbrock@prc.nm.gov;
Christopher Ryan	Christopher.Ryan@prc.nm.gov;
John F. Kreienkamp	John.Kreienkamp@prc.nm.gov;

DATED this May 6, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

Ana Kippenbrock

Ana C. Kippenbrock, Law Clerk