

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER OF THE APPLICATION</b>	)	
<b>OF PUBLIC SERVICE COMPANY OF NEW</b>	)	
<b>MEXICO FOR REVISION OF ITS RETAIL</b>	)	
<b>ELECTRIC RATES PURSUANT TO ADVICE</b>	)	
<b>NOTICE NO. 595</b>	)	
	)	
	)	<b>Case No. 22-00270-UT</b>
<b>PUBLIC SERVICE COMPANY OF NEW</b>	)	
<b>MEXICO,</b>	)	
	)	
<b>APPLICANT.</b>	)	
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**SECOND PROCEDURAL ORDER**

**THIS MATTER** comes before Anthony F. Medeiros and Christopher P. Ryan, Hearing Examiners for the New Mexico Public Regulation Commission (“Commission” or “PRC”), upon the Joint Motion to Amend Procedural Schedule (“Motion”) jointly filed on March 27, 2023 by the Commission’s Utility Division Staff (“Staff”), Bernalillo County, New Energy Economy (“NEE”), the Albuquerque Bernalillo County Water Utility Authority, and New Mexico Affordable Reliable Energy Alliance (collectively, “Joint Movants”). Being duly informed, the Hearing Examiners **FIND** and **CONCLUDE** as follows:

1. The Joint Movants request that the Hearing Examiners extend the procedural schedule set in their January 6, 2023 Procedural Order (“Procedural Order”) to the following dates: Staff and intervenor direct Testimony, June 16, 2023; rebuttal testimony, July 14, 2023; prehearing conference, July 26 or 27, 2023; and public hearing July 31-August 18, 2023. In requesting the extended procedural schedule for this case, the Joint Movants note that the Commission issued an Order on March 1, 2023 approving the Hearing Examiner’s February 3, 2023 Recommended Decision on Extension of Suspension Period for Additional Three Months and thereby extended the suspension period in this case to January 4, 2024.

2. The Joint Movants state that they are requesting the foregoing amendments to the procedural schedule because: (a) the Hearing Examiner in Southwestern Public Service Company's ("SPS") pending rate case, 22-00086-UT, issued an order on March 22, 2023 amending the procedural schedule in that case that directly conflicts with the present schedule in this case, most significantly the dates for the public hearing, June 20-30, 2023, a conflict Joint Movants characterize as "especially critical" for parties to this case that are also parties in the SPS rate case;<sup>1</sup> (b) since the issues to be addressed in this case have become more complex due to, among other things, the joinder of Case No. 22-00166-UT with this proceeding by virtue of the Commission's March 1, 2023 Final Order Adopting Recommended Decision on Consolidation, the Joint Movants need more time between now and the filing of their direct testimonies to propound additional discovery; (c) the complexity of this case also justifies adding at least five business days to the public hearing as proposed in Joint Movant's proposed schedule; (d) their proposed schedule also includes an additional week between direct testimony and rebuttal testimony due to the complexity of this case and the number of intervenors likely to submit direct testimony; and (e) the proposed schedule accommodates the schedules of Joint Movants' expert witnesses "while being mindful of the Hearing Examiners' need for adequate time to write their Recommended Decision."<sup>2</sup>

3. The Joint Movants reported the following party positions on the Motion:

- a. Western Resource Advocates ('WRA') supports the Joint Motion, adding that the Hearing Examiners should hold a scheduling conference to set the hearing dates.

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<sup>1</sup> Jt. Mot. at 2.

<sup>2</sup> Jt. Mot. at 2-3.

- b. PNM [Public Service Company of New Mexico] prefers to leave the hearing dates as currently scheduled, [*sic*] but is aware that the SPS hearing has shifted to PNM’s current hearing dates. If the Hearing dates are modified, PNM requests the following dates due to witness availability:
  - i. Staff and Intervenor Direct Testimony, June 16, 2023;
  - ii. Rebuttal Testimony, July 21, 2023 (*changed from July 14*);
  - iii. Prehearing Conference, July 26 or 27, 2023; and
  - iv. Public Hearing begins on August 7, 2023 (*changed from beginning on July 31*) [and runs through August 25, 2023].
- c. The Office of the Attorney General supports the Joint Motion, but prefers an August 7, 2023 start date for the Hearing.
- d. New Energy Economy still joins the Motion, but prefers an August 7, 2023 start date for the Hearing.
- e. The Coalition for Clean Affordable Energy [“CCAЕ”] is opposed to the proposed schedule due to a schedule conflict with the Hearing dates.
- f. No other parties responded prior to the filing of the Joint Motion.<sup>3</sup>

4. On March 29, 2023, the Hearing Examiners issued an order shortening the deadline for responses to Joint Movants’ Motion to March 31, 2023. Responses were filed on that date by CCAЕ, NEE, and PNM.

5. PNM prefers to leave the procedural schedule unchanged; however, if the Hearing Examiners determine that a revised schedule is appropriate then, for reasons expounded in its response, PNM requests certain modifications to the dates proposed in the Joint Motion, as set forth above.

6. NEE states that the one-week extension for commencement of the public hearing to August 7, 2023 it is requesting is attributable to the long-planned wedding of Counsel’s daughter

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<sup>3</sup> Jt. Mot. at 3-4 (emphasis in original).

on July 22, 2023. NEE explains that its suggested extension will give Counsel more time to prepare for the hearing.

7. Finally, while CCAE generally supports revising the schedule for this case, and it does not oppose the testimony and prehearing conference dates, CCAE does oppose the proposed hearing dates due to an evidentiary hearing before the New Mexico Office of the State Engineer (“OSE”) scheduled for August 7-25, 2023. Counsel for CCAE (Charles de Saillan) represents several parties in the OSE matter and will need to attend all of that hearing. Co-counsel for CCAE, Cara Lynch, also is not available to cover the hearing in this proceeding according to CCAE’s response. CCAE therefore proposes either of the following alternative revised hearing schedules: July 17-August 4, 2023 (prehearing conference on July 14); or August 28-September 15, 2023 (prehearing conference on July 26 or 27). CCAE states that it would also find hearing dates of July 24-August 11, 2023 acceptable, provided that CCAE counsel could be excused during the week of August 7-11, and that accommodation could be made for CCAE to call its witnesses and cross-examine certain witnesses during the first two weeks of the hearing.

8. Having considered the parties’ positions as set forth in the Motion and the responses to it and the totality of circumstances, including but not limited to, the press of other commission business, the Hearing Examiners find good cause to revise the procedural schedule for this case and establish related requirements as provided below.

**IT IS THEREFORE ORDERED:**

A. The remainder of the procedural schedule set in the Procedural Order – including the testimony and settlement conference deadlines, the June 20-30, 2023 public hearing setting, and the public comment hearing incorporated into the evidentiary hearing – is **VACATED**.

B. The parties will participate in at least one settlement conference on or before **May 12, 2023** at a time and place to be determined by the parties. The purpose of this required meeting is to facilitate settlement at an early point in the procedural schedule of this case when there is sufficient time in the procedural schedule to allow for a hearing on a stipulation. Hearings on stipulations require additional procedural steps.

C. Staff shall and any intervenor may file direct testimony by **June 23, 2023**.

D. If Staff recommends any changes to PNM's proposed revenue requirement, Staff shall include in its direct testimony the following:

1. Staff's proposed rates for each rate component (i.e., customer charge, volumetric rates, demand charge) for each class of service.

2. For (a) each class of service and separately for PNM South and PNM North customers (if applicable), (b) separately for the summer and non-summer months, and (c) for various levels of use:<sup>4</sup>

i. The monthly bill under current rates stating separately the customer charge, usage charge, any demand charge, the FPPCAC charge, the renewable energy rider charge, the energy efficiency rider charge, and any other separate charges (but excluding taxes and surcharges) and the total bill.

ii. The monthly bill under PNM's proposed rates as of January 1, 2024 (or whenever they would become applicable), stating separately the customer charge, usage charge, any demand charge, the FPPCAC charge, the renewable energy rider charge, the energy

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<sup>4</sup> The usage levels shown shall vary by class as necessary to reflect the general range of use within a particular class. One such usage level shall equal the level consumed by an average-use customer within the class.

efficiency rider charge, and any other separate charges (but excluding taxes and surcharges) and the total bill.

iii. The monthly bill under Staff's proposed rates, as of January 1, 2024 (or whenever the new rates would become effective), stating separately the customer charge, usage charge, any demand charge, the FPPCAC charge, the renewable energy rider charge, the energy efficiency rider charge, and any other separate charges (but excluding taxes and surcharges) and the total bill.

3. A proof of revenue showing (a) under PNM's proposed rates and Staff's proposed rates assuming an effective date of January 1, 2024, (b) separately by class of service and separately for PNM South and PNM North customers (if applicable), and (c) separately for the summer and non-summer months (if applicable):

i. The proposed customer charge, usage charge, any demand charge, the expected FPPCAC charge, the expected renewable energy rider charge, the expected energy efficiency rider charge, and any other separate charges (but excluding taxes and franchise fees).

ii. The billing determinants associated with each charge.

iii. The anticipated revenue to be collected from each charge.

iv. The total anticipated revenue to be collected from the class or subclass.

E. If any intervenor recommends a change or changes to PNM's proposed revenue requirement, then that intervenor shall include (in direct testimony) the information required of Staff under Paragraph C above (except that the intervenor's proposed rates should be substituted for Staff's proposed rates). This will ensure the Commission develops a sufficient record to adopt any proposed change (if doing so is desired).

F. Service of all documents filed in this proceeding and discovery requests and responses shall be via email unless a party requests a hard copy or unless otherwise ordered. PNM shall post the discovery requests it receives from the parties or Staff and PNM's responses to discovery requests, including exhibits, on PNM's file sharing platform. Except as provided below with respect to rebuttal testimony, all responses to discovery requests regarding Staff and intervenor testimony shall be served within **eleven (11) days** of service of the request unless otherwise agreed or ordered.

G. Responses to discovery shall be produced by close of business on the date that the certificate of service confirming such production is filed in the record. Discovery responses produced *after* 5:00 p.m. on the date that the certificate of service is filed shall be deemed produced the following day.

H. Any stipulation filed in this case shall be filed by **June 23, 2023**. This date is selected to ensure that there is adequate time in the procedural schedule to hold a hearing on a stipulation. Any stipulation filed must be accompanied by testimony in support of the stipulation. If a stipulation is filed by the date just noted, an alternative procedural schedule for hearing on a stipulation will be set.

I. To prevent the Commission from being placed in the untenable position of issuing an order rejecting a stipulation and then having insufficient time remaining in the statutory suspension period to adequately consider the application, the parties are alerted now that the Hearing Examiners may condition consideration of the stipulation on the stipulating parties' agreement to toll the running of the statutory suspension period between the date the parties file the stipulation and the date Commission takes final action on it.

J. Rebuttal testimony shall be filed on or before **July 28, 2023**.

K. Responses to discovery requests regarding rebuttal testimony shall be served within **seven (7) days** of service of the request unless otherwise agreed or ordered.

L. With regard to PNM's direct and supplemental testimony and Staff and intervenors' direct testimony, motions *in limine*, motions to strike, and other prehearing motions shall be filed on or before **July 7, 2023**. Responses to such motions shall be filed on or before **July 14, 2023**.

M. With regard to rebuttal testimony, motions *in limine*, motions to strike, and other prehearing motions shall be filed on or before **August 11, 2023**. Responses to such motions shall be filed on or before **August 18, 2023**.

N. A prehearing conference is tentatively scheduled for **August 31, 2023**, commencing at 10:00 a.m. Mountain Time ("MT") on the Zoom videoconference platform. The purpose of that conference is to address, among other things, the following matters:

- i. The order of presentation of the parties and their respective witnesses.
- ii. Designation by each party of the witnesses they intend to cross-examine and for what length of time.
- iii. Any other matters that may expedite orderly conduct and disposition of this proceeding.

O. The **August 31, 2023**, prehearing conference may be vacated by the Hearing Examiners if they determine that the conference is not necessary.

P. A public hearing will be held beginning on **September 5, 2023** and will continue through each succeeding business day until **September 22, 2023**, as determined to be necessary by the Hearing Examiners. Each hearing session shall commence at 9:00 a.m. MT unless otherwise ordered.



Q. Interested persons who are not affiliated with a party may make oral or written comment as allowed by Rule 1.2.2.23(F) NMAC. Oral comment shall be taken at a public comment hearing to be scheduled by the Commission on a date and time yet to be determined.

R. Based on present conditions and logistical issues, the Hearing Examiners have concluded that it will be necessary to conduct evidentiary hearings via the Zoom videoconference platform. Access to and participation in the evidentiary hearing shall be limited to party-participants (i.e., counsel and witnesses), the Commissioners, and other essential Commission personnel. The Zoom hearing will be livestreamed through YouTube and will be displayed on the Commission's website at <https://www.nm-prc.org>. Persons not participating in the evidentiary hearing as an attorney or witness may view the hearing on the Commission's website and shall not join the hearing via Zoom except to provide oral comment as allowed below.

S. Since the evidentiary hearing likely will be conducted via Zoom, the parties and Staff will be required to electronically distribute the exhibits they intend to offer for admission into evidence at the hearing in advance of the hearing. That electronic distribution shall provide the documents to all parties, the Hearing Examiners, and the court reporter. The requirements for those and any other necessary submissions shall be set forth in a subsequent prehearing order issued by the Hearing Examiners.<sup>5</sup>

T. Any person filing prepared testimony consistent with 1.2.2.35(I) NMAC on behalf of a party shall attend the hearing and submit to examination under oath and shall appear via the Zoom video feed. All pre-filed testimonies of a witness shall be moved into evidence when the

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<sup>5</sup> Parties will be required to utilize Dropbox to upload and download documents. See <https://www.dropbox.com>. All parties should familiarize themselves with use of that file-sharing application.

witness is first presented. Unless otherwise ordered or approved by the Hearing Examiners, only pre-filed testimony in question-and-answer form and verified by the witness—and examination of witnesses on such pre-filed testimony—shall be accepted, considered, and received in evidence along with other relevant and otherwise admissible exhibits. Oral testimony elicited by a party or Staff presenting a witness (except for appropriate redirect examination) shall consist solely of the authentication and verification of each pre-filed testimony and identifications of any permitted corrections to that testimony. The party or Staff shall not elicit oral summaries of pre-filed testimony or other oral testimony.

U. Friendly cross-examination is prohibited. Friendly cross-examination is cross-examination of a witness by a party who does not disagree with the witness’s position on an issue.

V. Each witness at the hearing, and each witness’s attorney, shall have readily available to him or her at the hearing a copy of the pre-filed testimony of each witness and any related exhibits.

W. Any interested person may examine PNM’s application and supporting documents and other documents filed in the public record of this case on the Commission’s website, <https://edocket.nmprc.state.nm.us>, or at the offices of PNM at the following address:

Public Service Company of New Mexico  
PNM Headquarters, Main Office  
Albuquerque, New Mexico 87158  
Telephone: (505) 241-2700

X. The procedural dates and requirements provided here are subject to further order of the Hearing Examiners or the Commission.

Y. Interested persons should contact the Commission at (505) 690-4191 for confirmation of the hearing date, time, and place since hearings are occasionally rescheduled or canceled if deemed not required in the discretion of the Hearing Examiners or the Commission.

Z. The Commission's rules of procedure, 1.2.2.1 NMAC et seq., shall apply in this case except as modified by order of the Hearing Examiners or Commission. The rules of procedure and other PRC rules are available online at the New Mexico Compilation Commission at <https://nmonesource.com/nmos/en/nav.do>.

AA. Anyone filing pleadings, documents, or testimony in this case shall comply with the Commission's electronic filing policy which is amended from time to time. This includes compliance with the following (not exhaustive) set of requirements. Filings must be in .pdf format. They must include an electronic signature and be sent to the Records Management Bureau's email address, [PRC.Records@prc.nm.gov](mailto:PRC.Records@prc.nm.gov), or to another Records Bureau address as set out on the Commission's webpage. Any filing must be submitted within regular business hours of the due date to be considered timely filed. Documents received after regular business hours will be considered filed the next business day. Regular Commission business hours are from 8:00 a.m. to 5:00 p.m. MT. Parties shall serve a copy on all parties of record and Staff.

BB. All filings shall be emailed to the Hearing Examiners on the date filed at [anthony.medeiros@prc.nm.gov](mailto:anthony.medeiros@prc.nm.gov) and [christopher.ryan@prc.nm.gov](mailto:christopher.ryan@prc.nm.gov) by no later than 5:00 p.m. MT. Any filing emailed to the Hearing Examiners shall include the Word or other native version of the filing (e.g., Excel or Power Point) if created in such format. Any filings not emailed to the Hearing Examiners in compliance with the requirements of this order and Commission rules are subject to being summarily rejected and stricken from the record at the Hearing Examiners' discretion.

CC. Except as expressly provided in this Order or subsequently ruled, discovery matters and any discovery disputes shall be governed by the Commission's discovery rules at 1.2.2.25 NMAC. The parties shall raise any disputes, questions, or concerns regarding discovery with the

Hearing Examiners at the earliest available opportunity so that all such issues may be considered well in advance of the hearing.

DD. An order of the Hearing Examiners or Commission is not required for agreements between or among any of the participants regarding discovery matters. All other participants shall be notified of such agreements.

EE. Motions regarding any discovery dispute shall not be considered unless accompanied by a statement that the participants have made a good faith effort to resolve the dispute but were unable to do so.

FF. This Order is effective immediately.

**PERSONS WITH DISABILITIES**

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COMMISSION AT (505) 467-9116 OR (505) 690-4191 TO REQUEST SUCH ASSISTANCE AS SOON AS POSSIBLE, PREFERABLY AS SOON AS THE PERSON RECEIVES NOTICE OF THIS PROCEEDING TO ALLOW CONSIDERATION OF THE REQUEST AND TO ARRANGE FOR A POTENTIAL REASONABLE ACCOMMODATION.

**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico this 7<sup>th</sup> day of **April 2023.**



**NEW MEXICO PUBLIC REGULATION COMMISSION**

*Anthony F. Medeiros*

**Anthony F. Medeiros  
Christopher Ryan  
Hearing Examiners**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF PUBLIC SERVICE COMPANY OF NEW )  
MEXICO FOR REVISION OF ITS RETAIL )  
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NOTICE NO. 595 )  
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PUBLIC SERVICE COMPANY OF NEW )  
MEXICO, )  
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)  
APPLICANT. )  
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Case No. 22-00270-UT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Procedural Order* issued April 7, 2023 was emailed on this date to the parties listed below.

PRC Records Management Bureau	<a href="mailto:Prc.records@prc.nm.gov">Prc.records@prc.nm.gov</a> ;
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Before the New Mexico Public Regulation Commission

INITIAL SERVICE LIST

Case No. 22-00270-UT

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NEW MEXICO PUBLIC REGULATION COMMISSION

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