

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY)
OF NEW MEXICO’S APPLICATION FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT, OWN, AND OPERATE)
TWELVE MEGAWATTS OF BATTERY STORAGE)
FACILITIES)
_____)**

Docket No. 23-00162-UT

FINAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) upon the Recommended Decision of Hearing Examiner Elizabeth C. Hurst. The Commission shall accept, approve, and adopt the Recommended Decision in its entirety as an order of the Commission as discussed below.

JURISDICTION AND PROCEDURAL HISTORY

1. The Commission has jurisdiction over this matter pursuant to NMSA 1978, Section 62-9-1 (2019).
2. On May 3, 2023, Public Service Company of New Mexico (“PNM”) filed “Public Service Company of New Mexico’s Application for a Certificate of Public Convenience and Necessity to Construct, Own, and Operate Twelve Megawatts of Battery Storage Facilities” (“Application”). The Application contains the following requests for Commission approval: 1) a certificate of public convenience and necessity (“CCN”) to construct, own, and operate the “BESS Project”; and 2) a determination that the information provided in the Application and supporting testimonies “is sufficient to provide guidelines to streamline the process for future requests for approval of battery energy storage systems on PNM’s distribution system.”¹
3. On May 17, 2023, the Commission issued the “Initial Order Assigning Hearing

¹ Application at 5.

Examiner” thereby appointing Elizabeth C. Hurst to preside as hearing examiner.

4. By the August 18, 2023 intervention deadline, the following parties intervened in the Docket: Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”), Coalition for Clean Affordable Energy (“CCAЕ”), New Mexico Affordable Reliable Energy Alliance (“NMAREA”), and Onward Energy Holdings, LLC (“Onward”).

5. A public hearing was held on October 12, 2023, and was attended by the following parties: CCAE, Onward, PNM, and Utility Division Staff (“Staff”).

6. On December 8, 2023, the Hearing Examiner issued the “Recommended Decision” (“RD”). Also on December 8th, the Hearing Examiner issued the “Order Shortening Deadline For Exceptions.”

7. By December 14, 2023, no party filed exceptions to the RD.

DISCUSSION

8. The BESS Project (BESS stands for “battery energy storage systems”) is comprised of two 6 megawatt (“MW”), 4-hour, lithium-iron-phosphate energy storage systems to be located at two existing PNM-owned solar facilities to provide improved voltage support and power quality on two overloaded feeders.²

9. New Mexico law provides, “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.” § 62-9-1(A). The Commission has interpreted the

² *Id.* at 1.

“public convenience and necessity” to be synonymous with the public interest. New Mexico law further provides an additional standard of review for energy storage systems, as follows:

In an application for a certificate of public convenience and necessity for an energy storage system, the commission shall approve energy storage systems that:

- (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.

§ 62-9-1(D).

10. The RD summarizes the facts, explains the law, and, at pages 37 to 50, analyzes the evidence to conclude that the request for a CCN for the BESS Project satisfies the seven requirements of Section 62-9-1(D) and the public interest.

11. From pages 50 to 62, the RD evaluates PNM’s second request: to establish the Application as a template for future, expedited treatment of similar energy storage project requests. The RD concludes that the request should be denied for inadequate notice, lack of substantial evidence, and that approving the request could impermissibly restrict the Commission’s statutory authority and subject other utilities to disparate treatment.³

12. The Commission agrees with the RD in its entirety.

³ RD at 62.

13. Pursuant to the testimony provided by PNM Witness Mark Fenton, the Commission recognizes the potential for the BESS Project to qualify for up to a 30% investment tax credit under the Inflation Reduction Act.⁴ This potential tax opportunity is not only financially advantageous, but it aligns with broader public interest. To this end, the Commission finds that PNM shall apply for such tax credit and include in an informational filing a statement of whether it was successful in the application. The Commission finds that, as a matter of public policy, public utilities should seek such opportunities that reduce costs for customers while maintaining transparency through the regulatory and development processes.

14. PNM requested a Commission determination as to the sufficiency of the information provided in this Application, as well as whether the Commission might provide guidelines for streamlining the process for future battery storage applications. The Commission finds that future applications are better evaluated in the broader context of PNM's grid modernization and distribution investment plans. Applicants should submit data demonstrating voltage and power quality issues on the feeders where the proposed battery storage systems are to be located.

FINDINGS AND CONCLUSIONS

15. The Recommended Decision is well taken and shall be accepted, approved, and adopted as an order of the Commission, and shall be herein fully incorporated.

16. PNM's request for a CCN is reasonable, in the public interest, and satisfies all elements of Section 62-9-1. A CCN shall be issued for the BESS Project.

17. PNM's other requests in the Application shall be denied.

⁴ Direct Testimony of Mark Fenton at 12.

IT IS THEREFORE ORDERED:

A. The Recommended Decision is ACCEPTED, APPROVED, and ADOPTED in its entirety as an order of the Commission, and it is incorporated herein by reference as part of this Final Order as though fully set forth herein.

B. By **July 1, 2024**, PNM shall submit to the Commission, and publish on its website, an informational filing detailing available funding opportunities for the BESS Project, such as opportunities under the Inflation Reduction Act or Infrastructure Investment and Jobs Act, and other relevant cost-reducing opportunities, including but not limited to, the result of applications for tax credits for the BESS Project. This informational filing shall include a comprehensive overview of all funding opportunities explored, the steps taken to secure such funding, and the results of these efforts. The purpose of this informational filing is to provide the Commission with a clear understanding of PNM's due diligence in attempting to reduce costs to customers through available federal incentives. The informational filing shall be supported by affidavit. The informational filing shall not require further action by the Commission.

C. Any matter not specifically ruled on during the pendency of this Docket is disposed of consistently with this Final Order.

D. If no motion for rehearing is filed pursuant to NMSA 1978, Section 62-10-16 (1953), this Docket shall close by operation of law.

E. This Order is effective immediately.

F. Subject to subsequent determinations of the Commission in response to any motion for rehearing filed pursuant to NMSA 1978, Section 62-10-16 (1953), this Docket shall close by operation of law upon the filing of the informational filing pursuant to Decretal paragraph B.

G. A copy of this Order shall be served upon all persons listed on the attached Certificate of Service via e-mail if their e-mail addresses are known; otherwise, via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 21st day of December, 2023.



NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Gabriel Aguilera, electronically approved
GABRIEL AGUILERA, COMMISSIONER

/s/ James F. Ellison, Jr., electronically approved
JAMES F. ELLISON, JR., COMMISSIONER

/s/ Patrick J. O'Connell, electronically approved
PATRICK J. O'CONNELL, COMMISSIONER

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COMPANY OF NEW MEXICO’S APPLICATION)
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OPERATE TWELVE MEGAWATTS OF BATTERY) Case No. 23-00162-UT
STORAGE FACILITIES)
)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
APPLICANT)
)

CERTIFICATE OF SERVICE

I certify that on this date I served on the parties listed here, via email, a true and correct copy of the Commission’s Final Order.

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DATED this December 21, 2023

New Mexico Public Regulation Commission

Ana C. Kippenbrock

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