



NEW MEXICO
**PUBLIC REGULATION
COMMISSION**

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December 8, 2023

TO PARTIES OF RECORD IN CASE NO. 23-00162-UT

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

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

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

Sincerely,

A handwritten signature in blue ink that reads "Anthony F. Medeiros".

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 A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECUSSITY TO CONSTRUCT,) CASE NO. 23-000162-UT
OWN, AND OPERATE TWELVE MEGAWATTS OF)
BATTERY STORAGE FACITLITIES)**

RECOMMENDED DECISION

**Before
Elizabeth C. Hurst
Hearing Examiner**

December 8, 2023

Table of Contents

1.	SUMMARY.....	3
2.	STATEMENT OF THE CASE	7
3.	LEGAL STANDARDS.....	11
A.	New Mexico Public Utility Act	11
B.	Commission Cost Overrun Rule.....	13
C.	Evidentiary Standard	14
4.	DISCUSSION.....	15
A.	The Application	15
B.	Request for BESS Project.....	17
1.	Overview of BESS and PNM Distribution.....	17
2.	Process that selected BESS.....	29
a.	RFP Process	31
b.	Costs.....	32
c.	Competitive nature of the bidding process and reasonable cost.....	36
3.	Other Project Aspects	36
4.	Public Interest.....	37
5.	CCAЕ.....	43
6.	Staff	44
	Recommendation.....	49
C.	Request for expedited procedure with lesser evidentiary burdens for future filings of similar case type	50
	Recommendation	60
5.	FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	62
6.	DECRETAL PARAGRAPHS	64

Pursuant to NMSA 1978, Sections 62-19-20(B), 1.2.2.29(D)(4), and 1.2.2.37(B) NMAC, Elizabeth C. Hurst, Hearing Examiner, issues the following Recommended Decision (“RD”) to the New Mexico Public Regulation Commission (the “Commission”). The Hearing Examiner recommends that the Commission adopt, in a final order, the following Statement of the Case, Discussion, Findings of Fact and Conclusions of Law, and Decretal Paragraphs.

1. SUMMARY

Public Service Company of New Mexico (“PNM”) filed an Application (“Application”) for Approval of a Certificate of Public Convenience and Necessity (“CCN”), pursuant to NMSA 1978, Section 62-9-1 (2019) and NMSA 1978, Section 62-9-6 (1967), to construct, own, and operate 12 megawatts (“MW”) of battery storage facilities (the BESS Project). This project includes the acquisition, installation, and operation of two 6 MW 4-hour Lithium Iron Phosphate (“LFP”) battery energy storage systems (“BESS”) on two distribution feeders (South Coors 12 and Tome 12) co-located at two PNM owned solar generation sites.¹ One site is located in Bernalillo County and the other site is located in Valencia County. Both of the sites are located outside of existing municipal boundaries. The BESS Project facilities will be located at the feeders with the highest constraints and will be built and owned by PNM. The BESS Project is intended to be operational in June 2024. The BESS Project has an expected service life of 20 years.

Intervenors in this case included Coalition for Clean Affordable Energy (“CCAЕ”), Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”), New Mexico Affordable

¹ The PNM Solar facilities are PNM owned, 10 MW each, and were built under renewable portfolio standards. Hearing Transcript (“Tr.”) at 89 (PNM Witness Mr. Warner).

Reliable Energy Alliance and Special Participant Greater Kudu, LLC (together “NM AREA”), and Onward Energy Holdings LLC (“Onward Energy”).

PNM provided testimony that the BESS Project will allow PNM to better manage the integration of renewable energy located at the distribution level, expand the feeder capacity to facilitate additional residential rooftop solar, and improve customer reliability.² PNM also alleged that the BESS Project is a new endeavor and a fundamental first step in PNM's solutions for maintaining increasingly decentralized and multi-directional grid in a safe, reliable, and resilient manner.³

PNM is not seeking a determination on the ratemaking treatment in this proceeding. The proposed ratemaking treatment for the BESS Project is included in PNM's pending rate Case No. 22-00270-UT. PNM seeks authorization to recover the actual cost of the BESS Project, (including allowance for funds used during construction (“AFUDC”)), which it anticipates will be in the range of \$25.84 million, with the reasonableness of the final actual costs subject to Commission review and determination in a future general rate case and subject to Rule 17.3.580 NMAC. PNM contends that this project would provide the first phase of a partial solution to two well-known system needs.⁴ First, the BESS Project provides an economical “non-wires” alternative to rapidly relieve two of PNM's most overloaded distribution feeders and provide voltage control on these feeders. Second, the BESS Project increases overall solar hosting capacity on PNM's system.⁵

² PNM Exhibit (“Ex.”) 2, Corrected Direct Testimony of Mark Fenton, at 5.

³ PNM Ex. 4, Direct Testimony of Omni Warner, at 16-17.

⁴ PNM Ex. 2 at 5.

⁵ *Id.*

Before the New Mexico Public Regulation Commission

Recommended Decision

Case No. 23-00162-UT

Section 62-9-1(D) of the PUA governs the CCN criteria to be met for an energy storage system, which is defined as “methods and technologies used to store electricity.

PNM set forth uncontested evidence that the BESS Project complied with NMSA 1978, Section 62-9-1(D)(1-7) requirements for issuance of a CCN for energy systems.

PNM Table MF-1

Section	Criteria	PNM Witness	Location
62-9-1(D)(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	Warner	Page 35
62-9-1(D)(2)	Reduce the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services	Jones	Page 22
62-9-1(D)(3)	Assist with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid	Warner	Pages 35-36
62-9-1(D)(4)	Support diversification of energy resources and enhance grid security	Warner	Pages 36-37
62-9-1(D)(5)	Reduce greenhouse gases and other air pollutants resulting from power generation	Jones	Pages 22-23
62-9-1(D)(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	Warner	Pages 24-25, 37
		Jones	Pages 20-21
62-9-1(D)(7)	Are the most cost effective among feasible alternatives	Warner	Pages 37-38

PNM provided substantial evidence that the BESS Project would benefit the public interest by mitigating operational issues caused by solar generation by providing storage; providing for arbitrage pricing opportunities; lowering system wide emissions; as a dispatch resource, providing operational flexibility; and mitigating local feeder issues.

No party objected to the issuance of a CCN for the BESS Project. CCAE and Staff of the Commission's Utility Division ("Staff") supported the issuance of the CCN. There was no public comment given or filed in this case.

The Hearing Examiner finds that there is substantial uncontested credible evidence in the record that the PNM BESS Project satisfies the requirements to be issued a CCN.

PNM expects to request approvals for similar battery storage in the future. PNM requested that the Commission determine whether the information provided in PNM's 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. PNM requested that future PNM CCN applications for battery energy storage system projects on PNM's distribution system be given a special expedited six-month review. Additionally, during the hearing, it was suggested by PNM and Staff that the Commission make a determination that future similar projects would be considered to be made in the ordinary course of business and thus exempt from the CCN requirements.

The Hearing Examiner finds that there is insufficient evidence in the record to consider the proposals for special treatment of future PNM battery projects at the time. There are too many questions about what and how to characterize a project as being similar to the BESS Project qualifying it to be determined as being constructed in the ordinary course of business and exempt from the CCN requirement, and questions about to whom such an exemption would apply. These requests were not noticed to all utilities or interested persons and potential procedural due process could plague any Commission determination on these issues at this time. PNM's further request

for special expedited CCN treatment for similar PNM projects could impermissibly restrict the Commission's statutory authority to issue CCN's and could potentially subject the Commission to disparate treatment claims from other utilities, and therefore the Hearing Examiner recommends that the Commission deny these requests.

2. STATEMENT OF THE CASE

On May 3, 2023, PNM filed its Application for Approval of a Certificate of Public Convenience and Necessity ("CCN"), pursuant to NMSA 1978, Section 62-9-1 (2019) and NMSA 1978, Section 62-9-6 (1967), to construct, own, and operate 12 megawatts ("MW") of battery storage facilities (the BESS Project). The Application indicates the BESS Project is intended to be operational in June 2024 and PNM seeks approval of the CCN for the BESS Project by December 31, 2023, in order to meet the facilities' anticipated construction schedule and to meet customer needs in 2024. PNM requests that the Commission determine whether the information provided in PNM's 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. PNM requests that future CCN applications for battery energy storage system projects on PNM's distribution system be approved within a six-month period. PNM's Application also included the testimonies of Mark Fenton, Omni Warner, Jason Jones, and Lucas McIntosh.

In its Initial Order Assigning Hearing Examiner issued on May 17, 2023, the Commission found that NMSA 1978, Section 62-9-1 (C) further requires: "The commission shall issue its order granting or denying the application within nine months from the date the application is filed with

the commission. Failure to issue its order within nine months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for an additional six months for good cause shown.” In its Initial Order Assigning Hearing Examiner, the Commission found that a hearing examiner should be assigned to this case and a proceeding should be initiated immediately. In ordering the undersigned to preside over this case, the Commission authorized her to take all action necessary and convenient thereto within the limits of the Hearing Examiner’s authority, to take any other action in this case that is consistent with Commission procedure, and to submit a Recommended Decision containing proposed findings of fact and conclusions of law regarding this case to the Commission.

On May 18, 2023, the Hearing Examiner issued an Order Setting a Pre-Hearing Conference for May 25, 2023.

On May 25, 2023, the Hearing Examiner convened a prehearing conference on this matter. Attending the prehearing conference were representatives of PNM, ABCWUA, CCAE, the New Mexico Attorney General (“NMAG”), and Staff. Among other things addressed during the prehearing conference, the Hearing Examiner established a procedural schedule for this proceeding.

On May 26, 2023, CCAE filed a Motion to Intervene.

On May 30, 2023, the Hearing Examiner issued a Procedural Order setting forth the procedural details and deadlines for this case, including: a requirement that PNM publish the Notice attached to the Procedural Order in newspapers of general circulation available in every county where PNM provides service in New Mexico by June 15, 2023; that PNM shall mail (by

bill stuffer or separately at its sole expense) the Notice attached to the Procedural Order to customers by July 13, 2023, (The font size in the mailing was required to be not smaller than the equivalent to a Times New Roman 10.5 font size); a protest deadline of August 14, 2023; an intervention deadline of August 18, 2023; an August 18, 2023, deadline for the filing of Staff and Intervenor direct testimony; a rebuttal testimony deadline of September 7, 2023; and an evidentiary hearing on October 12-13, 2023.

On May 31, 2023, ABCWUA filed a Motion to Intervene.

On June 16, 2023, NM AREA filed a Motion to Intervene.

On June 20, 2023, PNM filed Affirmation of Publication.

On July 7, 2023, Onward Energy filed a Motion to Intervene.

On July 10, 2023, PNM filed an Affirmation of Customer Mailing.

On August 18, 2023, CCAE filed the Testimony of Michael Kenney.

On August 18, 2023, Staff filed the testimony of Bamadou Ouattara, and Jack D. Sidler.

On September 7, 2023, PNM filed the Rebuttal Testimonies of Mark Fenton and Lucas McIntosh.

On September 19, 2023, PNM filed a Motion to Vacate Hearing requesting that the hearing be vacated because no protests were filed and no party filed testimony in opposition to PNM's Application.

On September 22, 2023, the Hearing Examiner issued the Second Procedural Order taking the Motion to Vacate under advisement and requesting information and clarification from CCAE

on its positions in the Motion to Vacate as well as any further issues. Staff was required to provide information and clarification on its position regarding “ordinary course” determinations.

On September 29, 2023, Staff filed Staff’s Response to the Second Procedural Order.

On September 29, 2023, CCAE filed CCAE’s Notice of Affirmation and Michael Kenney’s Affirmation.

On October 5, 2023, the Hearing Examiner issued an Order Denying the Motion to Vacate Hearing.

On October 10, 2023, PNM filed a Prehearing Memorandum.

On October 12, 2023, the hearing was held.

Commissioners Aguilera and Ellison attended the hearing.

The following appearances were entered at the hearing:

For PNM
John Verheul

For CCAE:
Charles De Saillan

Onward Energy
Joseph Yar

For Staff
Gloria Regensberg

The following witnesses appeared at the hearing and were examined on their respective pre-filed testimonies:

For PNM
Mark Fenton
Omni Warner

Lucas McIntosh
Jason Jones

For CCAE
Michael Kenney

For Staff
Jack D. Sidler
Bamadou Ouattara

Counsel for NM AREA and Counsel for ABCWUA requested and received permission to excused from appearing at the hearing. No person appeared to give public comment and no public comments were filed. All written testimony was admitted, and cross examination and redirect was permitted.

On October 17, 2023, CCAE filed the Corrected Exhibit 4 to the Direct Testimony of Michael Kenney.

On October 17, 2023, the Transcript (“Tr.”) of the Hearing was filed.

On October 19, 2023, PNM filed its Response to Hearing Bench Request 2.

On October 30, 2023, PNM filed its Suggested Corrections to the Transcript.

On November 1, 2023, Post-hearing Briefs were filed by PNM, Staff, CCAE, and Onward Energy.

3. LEGAL STANDARDS

A. New Mexico Public Utility Act

The applicable standards for governing public utilities are set forth in the New Mexico Public Utility Act ("PUA" or "Act" NMSA 1978, Section 62-3-1., et seq.) and cases decided under that act. Under the PUA, the Commission has "general and exclusive power and jurisdiction to

regulate and supervise every public utility in respect to its rates and service regulation and in respect to its securities..." NMSA 1978, Section 62-6-4(A). The PUA requires public utilities to obtain a CCN before constructing or operating any new public utility plant or system.⁶ In determining whether to issue a CCN, the Commission must consider whether the new public utility plant or system is consistent with the public convenience and necessity.⁷ The PUA authorizes the Commission to issue a CCN as requested, to refuse to issue a CCN, or to issue it for the construction or operation of a portion only of the contemplated project, and may attach to a CCN such terms and conditions consistent with the PUA that the Commission deems the public convenience and necessity require.⁸ The "public convenience and necessity" standard implies a net public benefit.⁹ In prior cases, the Commission has equated the "public convenience and necessity" with the public interest.¹⁰

NMSA 1978, Section 62-9-1(D) sets forth that "In an application for certificates 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;

⁶ NMSA 1978, Section 62-9-1(A).

⁷ NMSA 1978, Section 62-9-1(A) and NMSA 1978, Section 62-9-6.

⁸ *Id.*

⁹ *Re Valle Vista Water Utility Co.*, 212 P.U.R.4th 305, 309 (2001).

¹⁰ *Re Public Service Co.*, 119 P.U.R. 4th 48, 50 (1990); *aft'd*, *Public Serv. Co. of N.M. v. New Mexico Pub. Serv. Comm'n*, 112 N.M. 379, 815 P.2d 1169 (1991).

- (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 the feasible alternatives.

B. Commission Cost Overrun Rule

The Commission's Cost Overrun Rule, 17.3.580.2 NMAC Scope sets forth:

A. The provisions of NMPSC Rule 580 [17.3.580 NMAC] shall apply as indicated below to all electric public utilities other than rural electric cooperatives within the jurisdiction of the Commission and shall not apply to generation and transmission cooperatives whose rates are subject to the Commission's regulation under NMSA 1978, Section 62-6-4.

B. NMPSC Rule 580 [17.3.580 NMAC] shall be applicable whenever a utility has obtained or acquires a certificate of public convenience and necessity ("CCN") from the Commission to construct or operate an electric generating plant and has sought, is seeking, or anticipates seeking at any time to include the costs of construction as defined in NMPSC Rule 580.5 [17.3.580.7 NMAC] in its New Mexico jurisdictional rates. NMPSC Rule 580 [17.3.580NMAC] applies in those instances where:

- (1) The construction costs had not been included in rates as of the date the Commission proposed General Order No. 49 (codified by this NMPSC Rule 580) [17.3.580 NMAC] and where the utility subsequently filed a rate application seeking to include these costs in rates and;
- (2) The costs of construction had been included in rates as of the date General Order No. 49 was proposed but where the prudence of those costs had been explicitly identified as an unresolved issue in the order including those costs in rates or in any document, such as a stipulation or recommended decision, incorporated therein.

C. NMPSC Rule 580 [17.3.580 NMAC] applies whether the utility retains an ownership interest in the plant or has sold that interest and retained a leasehold interest in or is otherwise subject to the Commission's jurisdiction with respect to the management or operation of the plant or the power generated or made available thereby.

17.3.580.7(A) NMAC the definition of “Certified Cost Estimate” means the total cost of construction of electric generating plant for the utility, including Allowances for Funds Used During Construction ("AFUDC"), as estimated by the utility at the time of issuance by the Commission of the CCN for the plant and reflected in the order issuing the CCN.

17.3.580.13 NMAC, sets forth that the Powers of the Commission are not limited:

Nothing contained herein shall be construed to limit the Commission in its powers, duties, or authority under the Public Utility Act other than requiring specific determinations regarding the prudence of cost overruns pursuant to NMPSC Rules 580.7 and 580.8 [17.3.580.11 and 12 NMAC] as a condition precedent to rate recovery of such cost overruns. In particular nothing contained herein shall be construed to bind the Commission to any particular ratemaking methodology or to diminish the Commission's authority to review the prudence of all costs incurred by a utility, including the certificated estimated cost of plant. All material provisions of the Public Utility Act shall apply to implementation of NMPSC Rule 580 (17.3.580).

C. Evidentiary Standard

The rule in administrative proceedings is that unless a statute provides otherwise, the proponent of an order or moving party has the burden of proof.¹¹ The burden of proof is two-pronged: it includes both the burden of adducing sufficient evidence to go forward with a claim and the burden of ultimate persuasion. The standard of proof in administrative adjudications is,

¹¹ Davis, Kenneth Culp, *Administrative Law Treatise* § 16.9 at 255-57 (2 ed. 1980). *See Int’l Minerals and Chemical Corp. v. New Mexico Pub. Serv. Comm’n*, 81 N.M. 280, 283, 466 P.2d 557 (1970) (“although the statute does not specifically place any burden of proof on (Complainant) International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof”).

unless expressly provided otherwise, the preponderance of the evidence.¹² It is evidence that, when weighed with that opposed to it, has more convincing force. It has superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.¹³

4. DISCUSSION

The following subsections address each approval and authorization requested by PNM.

A. The Application

This project includes the acquisition, installation, and operation of two 6 MW 4-hour Lithium Iron Phosphate (“LFP”) battery energy storage systems (“BESS”) on two distribution feeders (South Coors 12 and Tome 12) co-located at two PNM owned solar generation sites. One site is located in Bernalillo County and the other site is located in Valencia County. Both of the sites are located outside of existing municipal boundaries. The BESS Project facilities will be located at the feeders with the highest constraints and will be built and owned by PNM. The BESS Project has an expected service life of 20 years.

¹² See Davis, *supra*, § 16.9 at 256 (“One can never prove a fact by something less than a preponderance of the evidence”).

¹³ *Black’s Law Dictionary* 547 (2nd pocket ed. 2001). See *Lujan v. Circle K. Corp.*, 1980-NMCA-107, ¶18, 94 N.M. 719 (the preponderance of evidence standard of proof essentially means “substantial support in the evidence for the findings.”...“That being true,... the fact that there may have been contrary evidence which would have supported a different finding or conclusion does not permit this court, on appeal, to weigh the evidence, (citations omitted) or speculate as to what the trial court might have done.”) (*quoting Mascarenas v. J.L. Kennedy*, 74 N.M. 665,668-69, 397 P.2d 213).

The Application indicates the BESS Project is intended to be operational in June 2024 and PNM seeks approval of the CCN for the BESS Project by December 31, 2023 in order to meet the facilities' anticipated construction schedule and to meet customer needs in 2024.

PNM's Application further notes: "While this Application is for an initial 12 MW of battery storage on PNM's distribution system, PNM expects to request approvals for similar battery storage in the future. PNM requests that the Commission determine whether the information provided in PNM's 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. PNM requests that future CCN applications for battery energy storage system projects on PNM's distribution system be approved within a six-month period in light of the anticipated increased use of such battery energy storage systems and related market conditions which require prompt regulatory approval."

PNM's Application further avers that PNM "is not seeking a determination on the ratemaking treatment of the BESS Project in this proceeding. The proposed ratemaking treatment for the BESS Project is the subject of PNM's pending rate case in Case No. 22-00270-UT. In Case No. 22-00270-UT, PNM provided a cost estimate for the BESS Project of \$22.27 million. PNM seeks authorization to recover the actual cost of the BESS Project, including allowance for funds used during construction ("AFUDC"), which it anticipates will be in the range of \$25.84 million, with the reasonableness of the final actual costs subject to Commission review and determination in a future general rate case and subject to Rule 17.3.580 NMAC."

PNM asserts that no location approval determination is necessary under NMSA 1978, Section 62-9-3 for its requests.

PNM supported its Application with the Direct Testimonies of Mark Fenton, Omni Warner, Lucas McIntosh, and Jason Jones. PNM witnesses Fenton and McIntosh also provided rebuttal testimony in response to the direct testimonies of certain other parties.

B. Request for BESS Project

1. Overview of BESS and PNM Distribution

PNM Witness Mr. Fenton, Executive Director of Regulatory Policy and Case Management, testified that PNM is seeking to add 12 MW of battery storage encompassed in the BESS Project at two specific sites on the PNM distribution system.¹⁴ PNM asserted that Section 62-9-1(D) of the PUA specifically governs the CCN criteria to be met for an energy storage system, which is defined as “methods and technologies used to store electricity.”¹⁵ The BESS Project is a battery energy storage system used to store electricity.¹⁶ Energy storage on distribution level systems has not been determined to be in the ordinary course of business to date. Therefore, PNM asserts that this Application is governed by Section 62-9-1(D).¹⁷

Installing BESS is an important part of achieving PNM’s goal of a carbon-free system by 2040.¹⁸ BESS facilitates PNM’s shift away from fossil fuel resources and supports the system

¹⁴ PNM Ex. 2 at 4.

¹⁵ *Id.* at 13.

¹⁶ *Id.*

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 4.

integration of smaller, more distributed renewable resources.¹⁹ This specific project will provide the first phase of a partial solution to two well-known system needs.²⁰ First, the BESS Project provides an economical “non-wires” alternative to rapidly relieve two of PNM’s most overloaded distribution feeders and will provide voltage control on these feeders. Second, the BESS Project increases overall solar hosting capacity on PNM’s system as described by PNM witness Warner.²¹

PNM Witness Warner, Director of Distribution Engineering to PNM, testified that the BESS Project will be located on PNM’s distribution system.²² Distributed energy storage systems of the size proposed offer system-wide grid benefits, can improve service quality at the distribution level, and are a quick and flexible solution to increase the effective hosting capacity for distributed generation (“DG”) on PNM’s distribution feeders. Twenty feeders are already hosting DG facilities (mostly solar), that in the aggregate, exceed circuit capacity. As a result, PNM is currently unable to accommodate additional solar DG connections on these feeders. Additionally, these feeders are operating at increasing levels of risk where the overcapacity of connected solar DG may negatively impact the quality (voltage) of power delivered to other customers or cause thermal overloads that could lead to failed equipment and power outages.²³

PNM proposes to locate the BESS Project at two locations that are outside of any municipal limit:

¹⁹ *Id.* at 4-5.

²⁰ *Id.* at 5.

²¹ *Id.*

²² PNM Ex. 4 at 2.

²³ *Id.*

South Coors 12 Feeder – A 6 MW BESS of four-hour storage duration located adjacent to the South Valley Solar site. There are currently 59 pending solar interconnections (391 kW total) on hold because this feeder is currently overcapacity.²⁴

Tome 12 Feeder – A 6 MW BESS of four-hour duration located adjacent to the Rio Del Oro Solar site. There are currently 28 pending solar interconnections (165 kW total) on hold due to this feeder currently being overcapacity.²⁵

PNM Table OW-2 below details the customer type and count served on each feeder.²⁶

PNM Table OW-2

Feeder	Residential Customers	Commercial Customers	Total Customers
South Coors 12	2668	154	2822
Tome 12	1752	85	1837

Mr. Warner testified that the BESS Project will increase the effective hosting capacity of these feeders and defer the need for distribution feeder construction to accommodate growing PV interconnections and customer load requirements.²⁷ Mr. Warner asserted that his testimony supports the technical need for the BESS Project and confirms PNM assertion that the project meets the criteria for a CCN listed in Section 62-9-1(D)(1), (3), (4), (6), and (7) of the Public Utility Act (“PUA”).

In providing the technical overview of PNM’s Distribution System, Mr. Warner testified that traditional distribution lines, or feeders, transmit electrical power from a distribution

²⁴ *Id.*

²⁵ *Id.* at 3.

²⁶ *Id.* at 21.

²⁷ *Id.* at 3.

substation to a customer’s point of connection.²⁸ Distribution feeders can be constructed overhead or underground and are generally comprised of electrical components such as breakers, relays, underground cable or overhead conductor, poles, reclosers, switchgear, voltage regulators, capacitors, switches, fuses, and load servicing transformers. Distribution feeders must be able to deliver energy produced (supply) to serve energy demand (load). Feeder capacities are determined by how much energy can flow through equipment and conductors while maintaining parameters set by national standards (e.g., American National Standards Institute or “ANSI”) and equipment specifications. A PNM distribution feeder’s hosting capacity is defined by the maximum peak power flow the feeder equipment can handle without risking impact to the power quality delivered to customers or risking equipment failure.²⁹ The capacity of the two distribution feeders (South Coors 12 and Tome 12) covered in this application happen to both be 8.359 MW.³⁰ However, the capacity among feeders can vary based on a number of factors.³¹

Voltage limits are established to ensure customer-owned equipment functions properly and safely. Customer and utility equipment can fail if the system exceeds the standard voltage for prolonged periods of time.³² Distribution feeders also have an ampere (amp) rating which sets the maximum amount of current that can safely flow through these feeders. Heat is produced as energy (current) flows through conductors, cables, breakers, switches, and devices. As current increases, the distribution feeder risks approaching thermal limits established by design criteria and

²⁸ *Id.* at 4.

²⁹ *Id.* at 4.

³⁰ *Id.* at 4-5.

³¹ *Id.* at 5.

³² *Id.*

equipment ratings (conductor, cable, breakers, switches, etc.). Exceeding these thermal limits can degrade equipment leading to failure. In the electric industry, a general reference to a feeder rating usually refers to the feeder's thermal rating.³³

Traditionally, feeders deliver power in one direction, from substations to the connected customers. DG, including ground-mount and rooftop solar interconnected to distribution feeders, inject intermittent energy on the system that can exceed local loads.³⁴ That additional energy can exceed load significantly and drive reverse power flow to magnitudes beyond equipment ratings and safety limits. Each distribution feeder must be sized so that energy flow in either direction, at any point in time, does not exceed the capacity of its equipment (conductor, insulators, breakers, etc.). When net load or generated energy capacity exceed equipment ratings, the components of the feeder begin to deteriorate and negatively impact the quality (voltage) of power delivered to other customers and can cause thermal overloads that could lead to failed equipment and power outages. PNM refers to this as "Solar Saturation" which is the maximum DG capacity allowed to safely operate on the system without changes to infrastructure.³⁵ Mr. Warner notes that a recent National Renewable Energy Laboratory ("NREL") publication on PV hosting capacity explains that "The fast deployment of distributed solar photovoltaics (PV) stretches the electric grid toward limitations and creates operational concerns for utilities."³⁶

³³ *Id.*

³⁴ *Id.* at 6.

³⁵ *Id.* Currently there are 20 distribution feeders that are at or near maximum solar DG capacity. *Id.* at 10.

³⁶ *Id.* at FN 1 citing Wang, Wenbo, Daniel Thom, et.al. 2022. PV Hosting Capacity Estimation: Experiences with Scalable Framework; Preprint. Golden, CO: National Renewable Energy Laboratory. NREL/CP-6A40-81851.<https://www.nrel.gov/docs/fy22osti/81851.pdf>.

Mr. Warner testified that were several solutions that PNM considered to relieve Solar Saturation and to enable additional DG to interconnect to these feeders:

- (1) constructing a dedicated feeder to connect certain solar facilities directly back to substations;
- (2) upgrading the overall power capacity of existing distribution feeders and substations;
- (3) installing control devices on solar DG that can curtail generation at times of potential overload; or
- (4) installing energy storage systems that can absorb excess generation from solar DG and store the energy until it can safely be delivered.³⁷

Mr. Warner concluded that considering the value of BESS identified in this testimony as well as those outlined in the testimony of PNM witness Jones, BESS is the most cost-effective for the functions that it is performing and the benefits that it is providing. This is the only feasible alternative that provides a timely resolution for PNM's overloaded distribution feeders.³⁸ PNM Table OW-1 below summarizes the benefits of each of each of the alternatives available to PNM to resolve constraints from existing Solar Saturation on distribution feeders.³⁹

PNM Table OW-1⁴⁰

³⁷ PNM Ex. 4 at 11-12.

³⁸ *Id.* at 14.

³⁹ *Id.* at 14-15.

⁴⁰ *Id.* at 15.

Before the New Mexico Public Regulation Commission

Recommended Decision

Case No. 23-00162-UT

Project Value	Definition	PNM Solution Options			Remarks
		Option 1 - Deploy 6 MW of BESS at Each of Two Solar Sites	Option 2 - Add Dedicated Feeders to Two Solar Sites	Option 3 - Upgrade both Feeders to Higher Capacity	
Project Cost:	Cost to implement the solution including planning, design, construction, commission	\$25.8 M	~\$23 M	\$30 - 50 M	Option 2 is similar cost to Option 1 but does not provide the following added benefits.
Time to Implement:	Length of time to implement the solution from inception to energization	< 1 year	1-2 years	2-4 years	Option 1 facilitated by construction on existing site with existing infrastructure.
Project Risks:	Timing and uncertainty of obtaining construction permits and rights of way	Low	Moderate	High	Option 1 facilitated by construction on existing site with existing infrastructure.
Operational Risk:	Current risk to the safe and reliable operation of the distribution feeder	Low	Low	Moderate	Option 1 & 2 involve limited interface with / outage for distribution feeder.
Add Resource Capacity:	Ability to meet generation requirements at peak customer load hours across system	Yes	No	No	Option 1 adds resource capacity while others do not.
System Capacity:	Accommodate additional renewable resources without curtailment	>\$8 kW - month \$18M in offsets over 20 yrs	Adds local capacity only	Adds local capacity only	Option 1 benefits system in total while Options 2 & 3 benefit local area only.
Energy Arbitrage:	Store low-cost excess electricity to serve customers later to avoid high prices	Yes, up to \$500,000 in offsets per year	No	No	Option 1 better utilizes available system renewable energy.
Voltage Regulation:	Provides fast energy responses to prevent voltage fluctuations	Yes	No	No	Option 1 offers ancillary services while other options do not.
Frequency Regulation:	Provides fast energy responses to prevent frequency fluctuations	Yes	No	No	Option 1 offers ancillary services while other options do not.
Renewable Curtailment Reduction:	Reduce need to curtail during generation over supply	Avoidance of ~75,000 MWhr over 20 yrs	NA	NA	Option 1 better delivers renewable energy during peak demand periods.
Operational Flexibility:	Ability to flexibly manage power flows to meet evolving grid operational needs	Yes	No	No	Option 1 offers ancillary services and contingency reserves - other options do not.
Reduce Carbon Emissions:	Reduce emissions by maximizing renewables and avoiding fossil fuel peak generators	Reduction of ~70,000 tons of CO2 over 20 yrs	No	No	Option 1 offsets fossil fueled generation while other options do not.

Highest Net Value

PNM has deployed a BESS solution in the past but not for this specific application.⁴¹ The PNM Prosperity Energy Storage Project, in partnership with the U.S. Department of Energy, Sandia National Laboratories, the University of New Mexico, Northern New Mexico College and Ecoult/East Penn Manufacturing (the battery maker), implemented the nation’s first solar storage facility fully integrated into a utility power grid. This project uses smart grid technology to advance renewable energy. The knowledge gained from this project has allowed PNM to plan for other parts of PNM’s system, including the BESS Project.⁴² In addition to the Prosperity Energy Storage

⁴¹ *Id.* at 16.

⁴² *Id.*

Project (commissioned in 2011), PNM is under contract to add the Jicarilla Storage project (20 MW) in the Jicarilla Apache Nation, and the Arroyo Storage project (150 MW) in McKinley County in 2023.⁴³

Mr. Warner concludes that the use of BESS to manage interconnected solar DG risk on the distribution system is a new use case that can be scaled across PNM's operations and practices for future grid planning and design.⁴⁴ The BESS Project is a new endeavor for PNM and a fundamental first step in PNM's solution for maintaining an increasingly decentralized and multi-directional grid in a safe, reliable, and resilient manner. BESS provides a dispatchable resource that can help balance supply and demand on the grid, especially when controlled by the utility based on the utility's knowledge of how power is flowing on the feeder (load, production, and storage). PNM intends to establish this model to help manage hosting capacity constraints across its distribution system to further enable a carbon-free grid by maximizing the production and use of distributed renewable energy safely and reliably.⁴⁵ With BESS on the distribution system, PNM will have the ability to absorb excess renewable energy (with minimal losses) and use that energy for all customers when needed - creating less strain on the system, allowing for enhanced safety and more reliable operations.⁴⁶ BESS will also aid in maximizing the value and utilization of carbon-free energy from existing and future solar sites to help enable a carbon-free grid for PNM customers.⁴⁷ The BESS Project will be operated to bring the voltage and thermal issues into the operational

⁴³ *Id.* at 16-17.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.*

⁴⁶ *Id.* at 18.

⁴⁷ *Id.* at 18-19.

rating of the feeders.⁴⁸ The BESS Project will increase the hosting capacity on the distribution feeders as demonstrated in the Burns & McDonnell analysis.⁴⁹

PNM also asserts that PNM's ownership of the BESS Project will ensure that the proposed energy system project will provide the 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 in compliance with Section 62-9-1(D)(6).⁵⁰

PNM posits that the deployment of BESS can be applied to other grid management objectives.⁵¹ These include the following:

System Resiliency - The traditional single directional flow of the distribution electrical system makes it vulnerable to the threat of major natural disasters or extreme weather events. BESS could help reduce customer impacts from unexpected blackouts and surges if configured correctly as a potential, but limited, backup power supply. BESS could provide emergency electrical supply for all or portions of a feeder to ensure that critical emergency functions or facilities have power, including schools, hospitals, police and fire stations, and communications networks. Additional steps would need to be taken to configure BESS and the feeder to accomplish this objective.

Energy Supply Capacity – As traditional fossil fuel power plants shut down and load evolves, distributed BESS may serve as broader system supply capacity to help mitigate regional and temporary misalignment of load and supply capabilities through traditional transmission systems.

Ancillary Services – Historically performed by fossil fuel generating resources, BESS can help ensure that the electrical grid is functioning properly by providing frequency regulation, voltage control (coupled with volt-VAR initiatives referenced in PNM's grid modernization plan), spinning reserves, and load following services with less marginal costs and less environmental impact than traditional generation.

Bulk System Planning - PNM envisions integration of BESS to play a major role in supporting bulk energy system planning. Aggregating energy storage and pairing BESS with the

48 *Id.* at 22.

49 *Id.*

50 *Id.* at 25.

51 *Id.* at 25-26.

transmission grid could provide synergies to help with congestion relief, voltage support, regulation, and several other applications that are important to maintaining the safe, consistent operation of PNM's bulk electric grid.

Energy Equity – Batteries can help support PNM's objectives to enable underserved communities to access clean and affordable energy. By shifting stored electricity to manage costs when electricity is more expensive (during peak hours), and unlocking additional capacity for community solar projects, these communities can gain access to renewable energy without exposure to dramatic upfront costs.⁵²

PNM performed an initial Environmental Justice ("EJ") review using EPA's EJScreen, an EPA mapping and screening tool, of both sites planned for the BESS Project and there were no EJ findings that would trigger any significant mitigation recommendations.⁵³

PNM avers that the BESS Project will help to reduce costs to PNM's customers by avoiding or deferring the need for investment in new generation or for upgrades to systems for the transmission and distribution of energy as required under Section 62-9-2(D)(1).⁵⁴ Co-locating BESS with existing established solar sites where land, existing interconnection contracts in place, and key infrastructure already in place, allows for timely benefits to increase hosting capacity, defer transmission or distribution investments and increases reliability and resiliency for customers.⁵⁵

PNM also maintains that BESS Project offers extremely flexible and responsive capacity to the distribution system and potentially back feed into the transmission system.⁵⁶ With the ability to start and reach full discharge capacity (reflecting a system generator) or full charging capacity

⁵² *Id.* at 26-27.

⁵³ *Id.* at 28.

⁵⁴ *Id.* at 35.

⁵⁵ *Id.*

⁵⁶ *Id.* at 36.

(reflecting a system load) within seconds it provides very favorable ancillary service capabilities to facilitate grid reliability and system stability. Ancillary service capabilities that can be provided include contingency reserves, regulation (up and down), voltage control, and frequency response, among others. All these services facilitate the increased integration of variable, renewable energy resources which PNM concludes complies with 62-9-1(D)(3).⁵⁷

The BESS Project will support diversification of energy resources and enhance grid security as required under Section 62-9-1(D)(4) by increasing hosting capacity on the distribution feeders safely allowing additional customer-owned DG interconnections to the feeders.⁵⁸

PNM Witness Jones, Director of Generation Engineering, testified that from a generation perspective, energy storage technologies play an essential role in safely and effectively integrating carbon-free generation resources like solar and wind by adding operational flexibility.⁵⁹ This flexibility, when applied to its distribution system, will allow PNM to provide ancillary services, minimize the curtailment of renewable energy, and provide fast response times for both power supply and grid management needs.⁶⁰ Dispatchable BESS resources enable PNM to incorporate and manage increased Variable Energy Resources (“VER”), such as wind and solar, on its system.⁶¹ Furthermore, the implementation of this project serves to relieve congestion on existing distribution feeders and facilitates the growth of residential solar and storage installations, as described in PNM witness Warner’s testimony. Utility ownership allows PNM the greatest amount

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ PNM Ex. 7, Direct Testimony of Jason Jones, at 2.

⁶⁰ *Id.* at 2-3.

⁶¹ *Id.* at 3.

of flexibility in prioritizing how to use the BESS under dynamic system operating conditions as well as for economic dispatch of solar generation.

This project, involving two solar sites, represents an initial demonstration of the value and benefits of a BESS system when added to distribution level feeders. BESS may be deployed in modular increments to facilitate shorter construction and in-service lead times. Five additional PNM-owned solar sites interconnected on the distribution system have been evaluated for additional BESS installations. The evaluation indicated positive local and system benefits. The installation of this initial project at two sites will allow PNM to gain valuable experience and knowledge when developing future BESS projects at other sites.⁶²

Safety

Mr. Jones testified that today's BESS technology is generally safe, but PNM acknowledges that battery storage projects can present some risk of fire.⁶³ These fires have typically originated due to 1) battery design or chemistry, 2) battery manufacturing, and 3) battery installation and operation. The BESS battery cells manufactured by the selected supplier, Powin Energy, LLC ("Powin"), have not experienced fires with their design. One reason is these batteries work on a LFP based chemistry. The LFP cells do not suffer from the problem of thermal runaway like lithium-ion batteries that are manufactured of other materials do. LFP cells have achieved the highest standard in product safety, meaning the batteries do not need additional fire-proof barriers and fire-retardant materials added to the module design to be safely installed and utilized. Powin

⁶² *Id.*

⁶³ *Id.* at 4.

oversees the installation of their batteries. The use of a vertically integrated, purpose-built, engineered system designed and assembled by a single equipment provider helps ensure safe installation, which also helps mitigate potential fire exposures.⁶⁴

2. Process that selected BESS

Procurement- For purposes of the BESS Project, PNM is using an Engineer Procure Construction Management (“EPCM”) contract structure which uses multiple prime contractors.⁶⁵ In this contracting approach, PNM has engaged, and will engage, different contractors for different phases of the project. PNM hired Burns & McDonnell Engineering Co. (“Burns & McDonnell”) to serve as engineer to develop an initial conceptual design and total project cost estimate for the BESS Project.⁶⁶ The selection of Burns & McDonnell for this scope of work is based upon their significant experience with energy storage projects as addressed by PNM witness Lucas McIntosh. As discussed in more detail below, PNM procured the energy storage equipment, including related software and hardware, from Powin through a competitive request for proposal (“RFP”) process. PNM is in the process of issuing an RFP for a construction contract for construction tasks,

⁶⁴ *Id.*

⁶⁵ *Id.* at 5. This contracting structure for the BESS Project is based on the realities of the battery storage market. *Id.* at 6. Market demand for energy storage has increased significantly in recent years resulting in substantial uncertainty and variability in the cost and timelines of energy storage projects. LFP battery cost escalation and supply chain issues have resulted in battery suppliers generally being unwilling to quote firm equipment pricing for any extended period (i.e., more than 15 days). In addition, battery storage suppliers and engineering, procurement, and construction (“EPC”) contractors are now adding increased margin and contingency costs to offset these market risks. *Id.*

⁶⁶ *Id.* at 5.

including related plant facilities and equipment needed to install and connect the BESS at the existing PNM sites.⁶⁷

At the hearing, in response to the Hearing Examiner’s questions, Mr. Jones testified that this was PNM’s first contract with Powin and they have been very collaborative in working on all the technical issues to work closely together to ensure a good design that meets our criteria.⁶⁸

In responding to market conditions, PNM determined that the most effective way to timely implement the BESS Project was to directly negotiate and procure the BESS equipment as owner-furnished equipment in an effort to lock down the equipment pricing and to reserve manufacturing “slots” to secure the desired project in-service dates.⁶⁹ To facilitate this, on March 9, 2023, PNM entered into a Limited Notice to Proceed with Powin and paid \$5.32 million in order to provide certainty for its customers on the pricing, availability, and schedule of the BESS Project equipment.⁷⁰ Locking down the BESS Project cost and schedule by contracting directly to purchase the equipment has helped to mitigate the risks of contractor markups and other

⁶⁷ *Id.* Mr. Jones testified that the construction RFP had been issued about a month and a half ago and they were waiting for the results of the RFP at the end of the month, and then awarding the contract by the end of the fourth quarter. Tr. at 226-227.

⁶⁸ Tr. at p. 216.

⁶⁹ PNM Ex. 7 at 7.

⁷⁰ Headquartered in Tualatin, Oregon, Powin was founded in 1989 as a high-quality, high-volume contract manufacturing company with a large supplier network and relationship base in Asia and North America. Powin’s business model spans from battery cell procurement through project operation and allows the company to control the full integration of its systems, closely manage assembly costs, control quality, and have certainty around supply chain. Powin’s battery energy storage systems are vertically integrated and purpose-built for utility-scale, commercial and industrial, and microgrid applications. *Id.* at 14. Powin indicates that it has built over 2.5 GWh of energy storage systems, has 3.5 GWh under construction, and an additional 11 GWh under contract globally. *Id.* at 15.

contingencies that PNM and other utilities have been facing when planning and developing BESS installations.⁷¹

a. RFP Process

An RFP was initially issued on October 14, 2021, for up to seven energy storage sites with a desired in-service date prior to the summer of 2023.⁷² A copy of the 2021 RFP is attached as PNM Exhibit JJ-2. The RFP received limited proposals from three bidders involving varying scopes of supply, with two bidders offering BESS equipment only, and the third bidder offering a full EPC scope. Proposals were thoroughly evaluated through the end of 2021, and the process was temporarily placed on hold due to ongoing challenges and uncertainties associated with the effects of the COVID-19 pandemic and market conditions.⁷³

During the summer of 2022, the RFP process was re-initiated, and the prior bidders were re-engaged for the BESS installations to be in-service by the summer of 2024.⁷⁴ PNM performed a thorough evaluation process, including issuance of bid clarification questions, preparation of a bid comparison document, and comparison of lifecycle costs of the batteries, including not only capital costs, but also costs for preventative maintenance, capacity maintenance, and overall lifecycle operation and maintenance costs.⁷⁵ The evaluation also compared the proposed technologies' performance and operational flexibility characteristics. Following this evaluation process, PNM selected Powin as the supplier of the BESS equipment for the BESS Project as the

⁷¹ *Id.* at 7.

⁷² *Id.* at 8.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 9.

bidder that represented the lowest evaluated cost from the RFP evaluation that also confirmed the ability to supply the BESS equipment within the required timeframe. PNM then proceeded with the negotiation of energy storage equipment from Powin.⁷⁶

b. Costs

The estimated cost for the BESS Project, including engineering, materials, construction, loads, and tax, is shown in PNM Table JJ-1 below.⁷⁷

PNM Table JJ-1 – BESS Project Costs

BESS Equipment	\$ 17,738,685.84
Construction	\$ 2,778,000.00
Project Management and Engineering	\$ 2,132,000.00
Taxes, Loads & AFUDC	\$ 3,195,444.16
Total Estimated Cost	\$ 25,844,130.00

The project costs do not include any additional percentages for contingencies.

Mr. Jones testified that the Project costs in this filing are higher than the costs reflected for this project in PNM’s pending general rate case. Project estimates when the rate case was prepared in mid-2022 were based on available information at that time. Costs have since increased which resulted in the actual contracted-for BESS system price to be higher than the rate case estimate.⁷⁸

⁷⁶ *Id.* To gain an industry-wide perspective of battery energy storage procurements, PNM engaged the assistance of Roger Nagel, PE, of Aion Energy LLC (“Aion”) for the commercial review and evaluation of the BESS proposals. *Id.* PNM also engaged HDR Engineering, Inc. (“HDR”) for the technical specification and technical evaluation of the proposals. Both Aion and HDR were involved in 2 negotiating the BESS Agreements with Powin. *Id.* at 9-10.

⁷⁷ *Id.* at 10.

⁷⁸ *Id.*

In response to the Commissioner’s question about when cost analyses and projections occur in the process, Mr. Jones testified that “we put together preliminary designs and preliminary solutions. And at that point we start looking for price ranges of what the solutions may cost, so it’s fairly early on.”⁷⁹ “We essentially go out and do due diligence, and then we work with partners to get estimates and quotes, and so it’s not too far along in the process, generally.”⁸⁰ Mr. Jones also testified that because of market conditions, purchasing equipment and basically just the disruption of COVID and the supply chain, it was more challenging.⁸¹

PNM engaged Burns & McDonnell to develop a cost estimate for the engineering, construction, and oversight of the BESS Project. This cost estimate is discussed in detail by PNM witness Lucas McIntosh, Managing Director of the Power Grid Advisory team, who summarized the study conducted in 2022 by Burns & McDonnell that provided PNM with an estimate of the construction and installation costs of each BESS site not included in the BESS vendor equipment and services.⁸² A copy of the Burns & McDonnell 2022 cost estimate (“2022 Estimate”) is attached as PNM Exhibit LM-3.⁸³ The 2022 Estimate considered seven potential sites identified by PNM and listed in PNM Table LM-2.⁸⁴ A single generic cost estimate was developed as representative of all the sites utilizing assumptions that account for expected conditions for all seven sites since all sites are relatively similar in grade and other conditions listed in the assumptions table of the

79 Tr. at 217.

80 *Id.*

81 *Id.*

82 PNM Ex. 5, Direct Testimony of Lucas McIntosh at 1-2.

83 *Id.* at 2.

84 *Id.* at 11.

report.⁸⁵ The 2022 Estimate resulted in a Class 4 estimate of the cost of construction and installation work for each site, in addition to the equipment and services expected to be provided by the BESS vendor, to be \$2,455,000.⁸⁶ Detailed assumptions associated with this estimate are described in the 2022 Estimate.⁸⁷ The 2022 Estimate represents an opinion based on experience, reference projects, historical information, and judgement of Burns & McDonnell. It is important to note that current materials and equipment markets are changing quickly. Some of the material and labor estimates used in this study may already be out of date, especially for specialty equipment like electrical switchgear, transformers, etc.⁸⁸

PNM applied the applicable New Mexico Gross Receipts Tax rates for the locations of the selected sites within Bernalillo and Valencia Counties.⁸⁹ The AFUDC was estimated based upon a 6% interest rate as applied to the Powin Agreements cash flow, combined with the expected engineering, construction, and load cost cash flow over the project duration of 15 months (from Limited Notice to Proceed for the BESS equipment to commercial operation). Administrative and General loads applied to this project are consistent with PNM's current forecasts for administrative expenses.⁹⁰

PNM is reasonably confident in the accuracy of the total project cost estimate based upon the fact that the largest component of the project costs, the battery energy storage equipment, has

⁸⁵ *Id.*

⁸⁶ *Id.* at 12.

⁸⁷ *Id.* at 13.

⁸⁸ *Id.*

⁸⁹ PNM Ex.7 at 11.

⁹⁰ *Id.* at 11-12.

been finalized in the Powin Agreements, which have locked in the pricing and delivery schedule of this equipment. This represents approximately seventy percent of the total project costs.⁹¹ PNM would follow the Commission's Cost Overrun Rule as it applies to any excess over the \$25.8 million cost estimate in this case.⁹² The cost estimate reflects unsubsidized costs. Under the recently enacted Inflation Reduction Act, the BESS Project could potentially qualify for an investment tax credit of up to 30% (not including bonus credits) of the qualifying costs associated with the project. PNM is structuring the BESS Project so that it could qualify for the investment tax credit; this includes requirements for paying the prevailing wage in the construction and maintenance of the project. However, PNM cannot presently determine whether and how much of an investment tax credit it will ultimately be eligible for. As discussed by PNM witness Mark Fenton, any benefits from the tax credit will be provided to PNM's customers and would be addressed by PNM in a general rate case.⁹³

The Powin Agreements are fixed price, equipment supply agreements with a defined payment and delivery schedule, which includes the estimated shipment costs to the project sites.⁹⁴

⁹¹ *Id.* at 12.

⁹² *Id.* at 13. Mr. Fenton testified that to the extent the actual costs of the project are different from the estimated cost of \$25,884,130, PNM would provide the information required by the Cost Overrun Rule (17.3.580 NMAC) to request recovery of these costs in its next rate case. PNM Ex. 2 at 11. He further testified that although the cost overrun rule applies to an "electric generating plant" as defined in 17.3.580.7(E) NMAC, the BESS Project will provide system capacity, as do generation plant additions. Therefore, PNM believes that application of Rule 17.3.580 NMAC to the BESS Project is consistent with the objectives of the rule. The estimated capital cost of the BESS Project does not include any amount for contingencies. *Id.*

⁹³ PNM Ex. 7 at 13.

⁹⁴ *Id.* at 15.

The Powin Agreements include provisions for technical field support during equipment receiving and construction as well as for the commissioning services to be performed by Powin.⁹⁵

c. Competitive nature of the bidding process and reasonable cost

The response to the RFP drew a limited number of bids.⁹⁶ PNM repeatedly engaged with multiple BESS equipment suppliers, by reaching out for quote refreshes from those suppliers willing to participate in this procurement process. PNM also reached out to industry counterparts to leverage their experience and knowledge, relied on outside consultants for their industry expertise, and requested justification of changes to and characteristics of bidder proposals in conjunction with ongoing market conditions. PNM has determined that the cost of the BESS Project, in comparison to other bids received in response to this competitive bidding process, as well as costs and cost escalations experienced and resulting from other PNM-contracted energy storage agreements, is reasonable and competitive.⁹⁷

3. Other Project Aspects

Deliveries

Deliveries of the various BESS system components are scheduled to be staggered from March 27, 2024, through May 29, 2024, to facilitate the sequence of project construction activities.⁹⁸

Interconnection to PNM systems

⁹⁵ *Id.*

⁹⁶ *Id.* at 16.

⁹⁷ *Id.*

⁹⁸ *Id.* at 17.

The output of the BESS system will pass through the system inverters to convert the DC power to AC power.⁹⁹ It will subsequently pass-through medium voltage transformers to step the output voltage up to 12.47 kV. At this voltage, the BESS system will be tied into the existing solar generation pad-mounted switch, also at 12.47 kV, prior to the output being delivered to the existing site interconnection. As a result, there are no material modifications to the physical infrastructure associated with the project site interconnection with PNM's electrical grid. A separate, bi-directional electrical meter will be provided to monitor and measure the output and charging energy associated with the BESS installation.¹⁰⁰

Other Approvals

Mr. Jones testified that the only potential required permits would be fugitive dust air permits for dust control during project construction.¹⁰¹ PNM will meet with the local fire marshals to discuss and establish required safety protocols and procedures associated with potential emergency conditions.

LTSA-a long-term service agreement ("LTSA") for the two-site project for the first year of operation is valued at \$72,000, which includes preventative maintenance, remote operation center support, and spare parts management.¹⁰²

4. Public Interest

⁹⁹ *Id.* at 18.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 19.

¹⁰² *Id.*

Mr. Jones testified that the BESS project serves the public interest in several respects and the system benefits include the following:

1) The BESS Project mitigates operational issues caused by high solar generation by adding energy storage capacity to PNM's system. This energy storage capacity enables the ability to balance the system in times of high solar output and provide energy to the system during times of high demand. This project's ability to provide firm energy during peak load helps PNM meet capacity margin requirements. By increasing system capacity, the BESS Project helps to meet some of the system's forecasted needs of additional bulk transmission level and distribution level capacity resources. Recent costs for adding capacity to PNM's system in the form of fixed capacity agreements range from \$7.46/kW-month to \$9.97/kW-month for 4-hour duration BESS systems. Based on this pricing, the BESS Project is expected to add roughly \$18 million worth of fixed capacity to PNM customers over the life of the BESS Project, assuming \$8/kW-month and normal battery degradation.¹⁰³

2) The BESS Project mitigates operational issues caused by high solar generation by shifting energy from solar peak to net demand peak (arbitrage).¹⁰⁴ PNM customers will benefit from wholesale pricing differences that exist between solar peak and net demand peak, because the BESS will charge at solar peak hours when the price is low and return the energy to the system at net 1 demand peak hours when the price is high.¹⁰⁵ Based on historical Locational Marginal Pricing data trends of the wholesale electricity market, the Burns & McDonnell report projects the arbitrage value for a 4-hour duration battery to add up to \$10 million of additional cost savings over the life of the project.¹⁰⁶ This benefit satisfies Section 62-9-1(D)(6) of the Public Utility Act.¹⁰⁷

3) Charging to the BESS system is expected to occur at times when renewable production is at its greatest. With the additional load from charging the BESS, renewable generators will be less at risk for curtailment. With no other system changes, this project is expected to reduce renewable curtailments up to 3750 MWh/year.¹⁰⁸

4) Installation of this system is expected to help lower system-wide emissions.¹⁰⁹

103 *Id.* at 20.

104 *Id.*

105 *Id.* at 20-21.

106 *Id.* at 21.

107 *Id.*

108 *Id.*

109 *Id.*

5) As a dispatchable resource, the BESS Project can also add the system benefit of operational flexibility to help optimize grid operation, and potentially provide ancillary services such as frequency regulation, spinning/non-spinning reserves, and for resource adequacy. This BESS system can be charged or dispatched to the distribution feeder or to the transmission system as necessary.¹¹⁰

6) The BESS Project will help mitigate localized feeder issues caused by solar saturation on two of PNM's distribution feeders which will improve system reliability as well as allow the greater use of distributed generation.¹¹¹

Mr. Jones testified that under 62-9-1(D)2, the BESS project, in conjunction with BESS system charging energy delivered from PNM's renewable generation portfolio, will be able to reduce the use of fossil fuels for meeting peak system demands.¹¹² Energy produced by renewable resources that is stored in the BESS system during off-peak load periods will be able to be discharged flexibly and rapidly during the peak load periods and after peak solar generation hours. The ability to store energy can reduce curtailments of solar production, thus reducing and offsetting the historical dependency on, and dispatch of, fossil fueled generation. A project this size is expected to offset up to 3,500 tons of CO₂ per year.¹¹³

Mr. Jones further testified that under 62-9-1(D)5, because the BESS Project does not generate greenhouse gases or other air pollutants and because the BESS Project will offset fossil fueled generation as described above by storing and subsequently discharging energy produced by renewable resources, the BESS Project will reduce greenhouse gas and other air pollutant

110 *Id.*

111 *Id.* at 22.

112 *Id.* at 22.

113 *Id.*

production.¹¹⁴ As noted above, historical support of peak loads after the daily peak solar generation hours has been served by thermal resources. This project will offset this fossil generation with renewable energy stored from off-peak periods.¹¹⁵

Additionally, Mr. Jones testified that under 62-9-1(D)7, considering the value identified in this testimony as well as those outlined in PNM witness Warner's testimony, it is the most cost-effective for the functions that it is performing and the benefits that it is providing.¹¹⁶ This is the only feasible alternative that provides a timely resolution for PNM's overloaded distribution feeders. In addition, the BESS Project is, and will continue to be, the product of competitive bid processes and will utilize existing site infrastructure and electrical interconnections to minimize costs.¹¹⁷ All of these factors, combined with the potential to receive investment tax credit as well as the direct purchase of the BESS equipment by PNM and the direct management by PNM of the LTSA program to avoid contractor or developer procurement risk markups and return expectations make this the most cost-effective alternative.¹¹⁸

PNM avers that it has met the statutory criteria for approval of the BESS Project and Mr. Fenton provides a Table MF-1 that links the seven criteria under Section 62-9-1(D) with the direct testimonies of PNM witnesses Warner and Jones.¹¹⁹

PNM Table MF-1

114 *Id.* at 23.

115 *Id.*

116 *Id.* at 23.

117 *Id.*

118 *Id.* at 23-24.

119 PNM Ex. 2 at 15-16.

Before the New Mexico Public Regulation Commission

Recommended Decision

Case No. 23-00162-UT

Section	Criteria	PNM Witness	Location
62-9-1(D)(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	Warner	Page 35
62-9-1(D)(2)	Reduce the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services	Jones	Page 22
62-9-1(D)(3)	Assist with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid	Warner	Pages 35-36
62-9-1(D)(4)	Support diversification of energy resources and enhance grid security	Warner	Pages 36-37
62-9-1(D)(5)	Reduce greenhouse gases and other air pollutants resulting from power generation	Jones	Pages 22-23
62-9-1(D)(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	Warner	Pages 24-25, 37
		Jones	Pages 20-21
62-9-1(D)(7)	Are the most cost effective among feasible alternatives	Warner	Pages 37-38

Mr. Fenton additionally testified that the BESS Project must also meet the more general CCN standards required under Section 62-9-1. The Commission has equated “public convenience and necessity” with the public interest and found that the CCN statute implies there must be a net public benefit in order to grant a CCN.¹²⁰ The utility has the burden of showing that the resource it proposes is the most effective resource among feasible alternatives.¹²¹ Mr. Fenton testified that the BESS Project will assist in meeting customer needs and forecasted load growth, allow for an increase in solar hosting capacity, reduce costs to customers and help ensure that PNM can provide

¹²⁰ *Id.* at 16.

¹²¹ *Id.*

safe and reliable service for its customers.¹²² The BESS Project will begin to address the issue of overcapacity on distribution feeders which has been the subject of customer and Commission concerns. The BESS Project will aid in alleviating the capacity-constrained distribution feeders and will facilitate the use of DG energy to serve all customers. These benefits all serve PNM customers as well as the public interest.¹²³

Section 62-9-6 requires that a corporation applying for a CCN have its articles of incorporation on file with the Commission. PNM's current articles of incorporation can be found in the record of Case No. 13-00390-UT, in PNM Exhibit GTO-2 to the December 20, 2013.¹²⁴ Additionally, Section 62-9-6 also requires evidence, as the Commission may require, demonstrating the consent and franchise of the municipality where construction and operation of a new facility will occur.¹²⁵ PNM Witness Warner confirms that both sites for the BESS Project are outside of any municipal boundary so this requirement of Section 62-9-6 is inapplicable.¹²⁶

Further, Mr. Fenton testified the BESS Project is consistent with PNM's most recent IRP was filed in 2021 and accepted by the Commission in Case No. 21-00033-UT in 2022.¹²⁷ At page 116 of PNM's filed 2021 IRP, it is noted that "[o]ur analysis considers four-hour lithium-ion batteries as options to meet future capacity and flexibility needs in our portfolio, both as standalone

¹²² *Id.* at 17.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 17-18.

¹²⁶ *Id.* at 18; PNM Ex. 4 at 2.

¹²⁷ PNM Ex. 2 at 18.

projects and paired with solar PV as hybrid projects.”¹²⁸ On page 178 of PNM’s 2021 IRP, as part of its Four-Year Action Plan, PNM stated that it would “[d]evelop energy storage as a capacity resource and monitor its real-world performance in a resource adequacy context to better understand risks.”¹²⁹

Mr. Fenton also provided testimony on PNM’s stakeholder outreach meeting process.¹³⁰ The purpose of the stakeholder meetings was to solicit input from stakeholders expected to have an interest in this proceeding so that their concerns could be considered prior to filing the application for the BESS Project.¹³¹ It is PNM’s view that the general response to the BESS Project was positive. The stakeholder meetings were primarily conducted by video conference, although in-person attendance was also an option. The meetings were informal with an initial briefing on the BESS Project by PNM subject matter experts, including PNM witnesses Warner and Jones. The meetings were then opened for questions by the participating stakeholders.¹³²

5. CCAE

Mr. Michael Kenney, Senior Program Manager of the Utility Program at the Southwest Energy Efficiency Project (“SWEEP”) testified for CCAE. Mr. Kenney testified that the purpose

128 *Id.* at 18. At the hearing, since the IRP included “lithium-ion” batteries, and the BESS uses “lithium iron” batteries, Mr. Fenton was asked whether the IRP considered other battery composition, and he indicated that “he believed that was.” Tr. at 52. The Hearing Examiner issued an oral Bench Request on this issue and Counsel for PNM reported that in Case No. 21-00033-UT, PNM’s last IRP, in the IRP itself on pages 35 and 37-38, batteries and battery technologies were discussed and considered. Tr. at 78.

129 PNM Ex. 2 at 18-19.

130 *Id.* at 19-20.

131 *Id.* at 20.

132 *Id.*

of his testimony is to express CCAE's general support for the approval of PNM's application.¹³³ This project will save customer's money and advance decarbonization in New Mexico. However, CCAE also recommends that PNM expand its analysis and use of NWAs beyond Company-owned batteries to include other resources such as energy efficiency and demand response which can provide additional value to customers and the grid. In addition, CCAE recommends that the Commission require PNM to provide an update to the energy arbitrage component of the benefit cost analysis to ensure that all the costs and benefits of this project are accounted for.¹³⁴

Mr. Kenney also testified that he strongly encouraged PNM to develop a robust stakeholder-informed process to regularly assess the ability of NWAs to avoid or defer investments into its distribution system, like the study conducted by PNM's consultant.¹³⁵

In response to the PNM Rebuttal Testimony of Lucas McIntosh and Mark Fenton, Mr. Kenney acknowledged his concerns regarding the stakeholder process and the arbitrage analysis had been resolved by Mr. Fenton's Rebuttal Testimony at 5-6 and Mr. McIntosh's Revuttal Testimony at 3-8.¹³⁶

6. Staff

Staff Witness Mr. Sidler, a Professional Engineer with the Commission's Utility Division, testified that Staff recommends that the Commission approve PNM's request for CCNs for a 12 MW BESS installed as two 6 MW units, and to approve the Certified Estimated cost for these

133 CCAE Ex. 1, Direct Testimony of Michael Kenney, at 2.

134 *Id.* and at pp. 7-8.

135 *Id.* at 8.

136 Affirmation of Michael Kenney on Behalf of CCAE filed on September 29, 2023, and Tr. at 255-256.

projects including AFUDC.¹³⁷ Mr. Sidler testified that PNM's testimony satisfies the requirements for NMSA 1978, Section 62-9-1(D) requirements 2, 3, 4, and 5.¹³⁸

Mr. Sidler testified that approval of the CCN's should have the following additional conditions upon them:¹³⁹

1. PNM shall file copies of all construction permits received for this project in this docket within two (2) weeks of receipt of the final permit required;

2. PNM shall file in this docket the actual costs of this project, including the actual allowance for funds used during construction (AFUDC) amounts (if any) and how they were calculated, together with a comparison of the original estimate to the actual installed costs, within one (1) month of becoming available;

3. PNM shall file a notice of the COD for the BESS units; and

4. PNM shall file a notice of the date that any fuel related benefits as a result of operation of these BESS units shall first be included in PNM's Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC").

PNM did not file any rebuttal testimony accepting or rejecting Staff's conditions. However, in PNM's Post Hearing Brief, PNM set forth that it does not object to any of these conditions and notes that condition 4 above will essentially commence at the same time as condition 3.¹⁴⁰ In other

137 Staff Ex. 1. Direct Testimony of Jack D. Sidler at 15.

138 *Id.* at 10-11. Mr. Sidler also testified that Staff Witness Ouattara would be presenting testimony on NMSA 1978, Section 62-9-1(D) requirements 1,6, and 7.

139 *Id.* at 5, and 15-16.

140 PNM Post Hearing Brief at 4.

words, benefits will begin to flow through the FPPCAC as soon as these BESS systems come online and no separate filing from condition 3 is necessary.¹⁴¹

Regarding the issue of PNM's request for AFUDC, and the Commission's Rule 530 on AFUDC 17.9.530.14.8(B)(5)(a-c) NMAC, Mr. Sidler testified that Staff supports PNM's request for AFUDC.¹⁴² PNM will need to file the Schedule B-5 information in the rate case containing the AFUDC requested amount.¹⁴³ At such time the specific amounts of funds, capitalization rates, methods, procedures, and calculations used in computing the AFUDC amount will be subject to full review and examination.¹⁴⁴ At the hearing, when asked if he knew where the 6% rate requested by PNM to accrue on AFUDC came from, Mr. Sidler testified that he did not, but that 6-7% usually seems to be about average to what he had seen.¹⁴⁵

Staff Witness Mr. Bamadou Ouattara, an Economist in the Commission's Utility Division, testified that Staff believes that the BESS Project will help reduce costs to ratepayers in many ways.¹⁴⁶ First, by increasing PNM's overall system capacity, the BESS Project enables PNM to store energy during high solar output and provide energy to the system during times of high demand.¹⁴⁷ In monetary terms, the BESS Project is expected to add approximately \$18 million worth of fixed capacity to PNM customers over its lifetime, assuming an \$8/kWh-month fixed

141 *Id.*

142 Staff Ex. 1 at 14.

143 *Id.* at 15.

144 *Id.*

145 Tr. at 269.

146 Staff Ex. 2, Direct Testimony of Bamadou Ouattara, at PDF 891. There are no page numbers on this Exhibit and so the Hearing Examiner will refer to the Transcript Exhibit PDF page number in Infoshare.

147 *Id.*

capacity agreement cost and normal battery degradation.¹⁴⁸ Moreover, since the BESS 2 Project increases system storage capacity, it will improve the system's overall ability to shift energy from solar peak to net demand peak (arbitrage).¹⁴⁹ Burns & McDonnell, a consulting firm hired by PNM, estimated that the arbitrage value for a 4-hour duration battery will add up to \$10 million of additional cost savings over the life of the BESS Project. Another way the BESS Project reduces costs to ratepayers is through the construction and installation advantages it offers. In fact, since the project will be collocated with existing and well-established solar facilities, its installation is expected to be faster and easier as it does not require the same geographical needs and planning associated with the construction of new feeders and substations. Also, the project will benefit from the existing interconnection contracts and distribution infrastructure, which is faster and cheaper to increase hosting capacity, defer transmission or distribution investments, and increase reliability and resiliency for customers.¹⁵⁰

Mr. Ouattara testified that Staff believes that the BESS Project is the most cost-effective.¹⁵¹ Staff reviewed PNM's comparison of 3 different alternatives of adding storage capacity to the system: Option 1 is the BESS Project, option 2 consists of adding feeders to the two solar sites, and option 3 consists of upgrading both feeders to higher capacity.¹⁵² In terms of costs, the BESS

148 *Id.* at 891-892.

149 *Id.* at 892.

150 *Id.* The Hearing Examiner notes some concern regarding Staff's ultimate conclusions on costs after Mr. Ouattara testified at the hearing that he did not find the terms and conditions of the equipment contracts to be significant. While he agreed that the terms of the contract were important to the economic analysis, his focus was on the importance of the project as a whole. Tr. at 286-287.

151 Staff Ex. 2 at 892.

152 *Id.* at 892-893.

Project 2 is the second cheapest among the three alternatives, however, this project has many more advantages:

The project has the least implementation time, from inception to energization.

The project has low construction and operational risks.

The project is the only one among feasible alternatives with the ability to add resource capacity, thus meeting generation requirements at peak customer load hours across system.

This project has the potential to add \$18 million in fixed capacity over 11 years assuming an \$8/kWh-month fixed capacity agreement cost and normal battery degradation.

This option better utilizes available system renewable energy by storing energy when needed and releasing it when needed.

This option offers fast energy responses to prevent voltage fluctuations.

This option offers the ability to deliver renewable energy during peak demand period and offers ancillary services and contingency reserves, while other options do not.

This option has the potential to reduce emission by increasing usage of renewable energy generation and to potentially reduce fossil fuel generation.¹⁵³

Staff believes that the BESS Project has the highest net value among feasible alternatives.¹⁵⁴

Mr. Ouattara also testified that Staff believes that ownership of the project will give PNM full control over operation and maintenance activities.¹⁵⁵ Staff agrees with PNM witness Omni Warner that ownership of the Project will give PNM full control and monitoring of the feeder, load, production and storage, allowing it to effectively optimize the feeder's use, benefit and safety.¹⁵⁶

¹⁵³ *Id.* at 893.

¹⁵⁴ *Id.* at 894.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 894-895.

Also, Staff agrees with Omni Warner's assessment that incorporating the BESS Project into PNM's existing distribution network will ensure safety, quality of power flow, while directly controlling all types of maintenance activities will ensure reliable and efficient service to customers.¹⁵⁷

Staff concludes that PNM's Application meets the requirements of Paragraphs (D)(1), (D)(6), and (D)(7) of NMSA 1978, Section 62-9-1 of the PUA.¹⁵⁸ Staff recommends that PNM's Application for a Certificate of Public Convenience and Necessity to purchase, own, and operate 12 MW of battery storage facilities be approved, subject to any additional conditions the Commission deems necessary, as approval is in the public interest.¹⁵⁹

Recommendation

PNM has provided sufficient uncontroverted credible evidence that meets the statutory criteria for approval of the BESS Project as presented in Table MF-1 that links the seven criteria under NMSA 1978, Section 62-9-1(D) with the direct testimonies of PNM witnesses Warner and Jones. The project will reduce costs to ratepayers by providing an alternative to new generation and deferring or avoiding otherwise needed upgrades to PNM's current distribution system. By locating batteries on overloaded feeders with existing large solar installations, PNM can reduce the use of fossil fuels for meeting demand beginning in 2024. The BESS Project will also aid in ensuring grid reliability, support increased diversification of energy resources, contribute to the reduction of air pollutants resulting from power generation, and ensure efficient service to PNM's customers. The BESS Project is also the most cost-effective among feasible alternatives.

¹⁵⁷ *Id.* at 895.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 896.

Further, PNM has provided credible uncontroverted evidence in the record sufficient to determine that the BESS Project would be in the public interest and would result in a net public benefit. PNM provided credible evidence that the BESS Project would benefit the public interest by mitigating operational issues caused by solar generation by providing storage, providing for arbitrage pricing opportunities, lower system wide emissions, as a dispatch resource, providing operational flexibility, and mitigate local feeder issues.

For these reasons, the Hearing Examiner finds that the credible uncontroverted evidence in the record supports a determination that PNM has met the standards for issuance of a CCN and a net public benefit will result from allowing PNM to construct, own and operate the BESS project; that the estimated costs of the BESS project as presented in the Certified Estimated Costs are reasonable; and that the proposed recovery of the final actual costs in PNM's rates should be subject to review by the Commission through a general ratemaking proceeding.

C. Request for expedited procedure with lesser evidentiary burdens for future filings of similar case type

PNM acknowledges that Section 62-9-1(D) requires that a utility obtain a CCN for a battery storage system.¹⁶⁰ However, PNM hopes that this case can serve as a template for what it consider to be prompt regulatory approval of future distribution system BESS CCNs.¹⁶¹ PNM requests that the Commission consider potential ways to streamline the regulatory process and identify any

¹⁶⁰ PNM Ex. 2 at 8-9.

¹⁶¹ *Id.* at 9.

further information that would allow for a CCN approval for BESS project applications in a period of six months or less.¹⁶²

At the hearing, Staff Witness Mr. Sidler, testified that Staff believes that the information and testimonies filed by PNM in this case are sufficient to act as guidelines for future PNM cases requesting similar BESS projects.¹⁶³ With this installation being the first of its kind for PNM it is not being done in the ordinary course of business.¹⁶⁴ Mr. Sidler further testified that currently there are no fixed standards for determining what constitutes the ordinary course of business.¹⁶⁵ He recommended that the Commission make a determination of the point that these installations will be in the ordinary course of business thus not necessitating CCN applications in this case pursuant to NMSA 1978, Section 62-9-1(A).^{166 167}

In Staff’s Post Hearing Brief, Staff refers to Staff’s Response to Second Procedural Order, where Staff provided some analysis related to criteria used to evaluate whether a project is done in the ordinary course of business and related to the requirements for a CCN from past Commission decisions, New Mexico state courts, and other jurisdictions.¹⁶⁸ Given the authority and analysis provided in that response, and given the testimony provided during the hearing, it remains Staff’s position that there is not sufficient evidence in this case to recommend that this BESS project is

¹⁶² *Id.*

¹⁶³ Tr. at 271-272. However, this opinion did not extend to other utilities. *Id.* at 272.

¹⁶⁴ Staff Ex.1 at 6.

¹⁶⁵ *Id.* at 7.

¹⁶⁶ *Id.* Section 62-9-1(A) provides that a CCN is not required for the extension of any plant or system within areas it serves that are necessary in the ordinary course of its business.

¹⁶⁷ Tr. at 274-278.

¹⁶⁸ Staff Post-hearing Brief at 7.

conducted in the ordinary course of business. Staff also cannot concede that any future similar BESS projects should be subject to filing pursuant to the requirements in 17.5.440 NMAC without additional evidence related to when these projects may become routine installations on PNM’s system.¹⁶⁹ During the hearing, in response to a question from the Hearing Examiner, Staff responded that ordinary course of business related to the number of installations, and when the installations become “routine installations.”¹⁷⁰

Staff concluded that given the evidence in this case, the Commission’s options include: (1) deferring the decision on ordinary course of business to a future similar filing; or (2) deciding to conduct a rulemaking specific to the requirements in NMSA 1978, Section 62-9-1 and that may include amending 17.5.440 to outline additional requirements for battery installations; or (3) outlining the requirements for future similar filings that may expedite the decision making process as PNM requested in its Application.¹⁷¹

Staff sets forth that due process requires “reasonable notice and an opportunity to be heard.”¹⁷² A customer notice should be “reasonably calculated, depending upon the practicalities and peculiarities of the case, to apprise interested parties of the pending action and afford them an opportunity to present their case.”¹⁷³ Staff concludes that in this case, the language in the Notice

169 *Id.*

170 *Id.* at 6.

171 *Id.* at 7-8. In Staff’s Response to the Second Procedural Order at p. 8, citing *Dona Ana Mutual Domestic Water Consumers Association v. New Mexico Public Regulation Commission*, 2006 NMSC 032, ¶ 16, 140 N. M. 6, 11, 139 P. 3d 166, 171 (2006), Staff averred that the Commission had “policy-making authority in several areas” including “rate-making powers, associated duties, and procedures” granted through NMSA 1978, Sections 62-6-4 through 62-6-26.1.

172 *Id.* at 10 citing *Albuquerque Bernalillo County Water Utility Authority v. New Mexico Public Regulation Commission*, 2010 NMSC 013, ¶ 21, 148 N. M. 21, 32, 229 P. 3d 494, 505 (2010).

173 *Id.*, ¶ 22, 148 N. M. at 32, 229 P. 3d at 505.

may be sufficient for the Commission to find that it informed the public that PNM was requesting “authorization for the use of an expedited approval process for this PNM project and other similar projects in the future,” however, the Commission could conclude there may not be sufficient information in the Notice to inform the public of the request for an ordinary course of business determination.¹⁷⁴

In his Rebuttal Testimony, Mr. Fenton testified that projects made in the ordinary course of business do not require a CCN application pursuant to NMSA 1978, Section 62-9-1(A), and as such, the Commission would be notified of similar projects as prescribed by 17.5.440.8(C) NMAC.¹⁷⁵ Rule 440 is used to keep Staff and Commission apprised of a variety of construction projects, often at the distribution system level, that are being installed and for which PNM intends to seek rate recovery in future rate cases.¹⁷⁶ PNM requests that the Commission either authorize BESS projects to be filed as prescribed by 17.5.440.8(C) NMAC or through a CCN application similar to this application with an approval in six months or less.¹⁷⁷

At the hearing, Mr. Fenton testified that ordinary course projects, similar to a substation or transformer, are typically where 440 filings have been made.¹⁷⁸ Rule 440.8: "Report requirements for extension system improvements, repairs or replacements or additions", it's typically used for

174 Staff Post Hearing Brief at 10.

175 PNM Ex. 3, Rebuttal Testimony of Mark Fenton, at 8.

176 *Id.*

177 *Id.* at 8-9.

178 Tr. at 25. The Hearing Examiner notes that 17.5.440 NMAC is entitled "Extension System Improvements, Repairs or Replacements, Additions and Cooperative Agreements Between or Among Utilities" and is referred to as a “440” filing.

distribution projects.¹⁷⁹ It also can be used for certain generation projects over certain dollar thresholds. For example, for transmission distribution projects, it's for projects over a million dollars. For generating facilities, it's for costs that are over \$2 million, meeting the criteria within the rule.¹⁸⁰ Mr. Fenton further testified that 440 filings are filed with the Commission and served upon Staff.¹⁸¹ If the project is over \$8 million, the Commissioners are copied to make them aware of the project.¹⁸² It is Mr. Fenton's understanding that the Commission's Staff review the 440 filings.¹⁸³ Mr. Fenton testified that a 440 is more of an informational filing that the prudence of the projects are determined in a rate case.¹⁸⁴

The Hearing Examiner inquired about the lack of required notice that would occur to local landowners/ratepayers if the Commission accepted the "ordinary course determination" for these projects and required only a 440 filing.¹⁸⁵ Mr. Fenton testified that "you are making a good point about the notice".¹⁸⁶ Mr. Fenton then testified that if the Commission decided that it wasn't in the ordinary course of business, and that a CCN was appropriate, PNM requested that the CCN application be addressed in a timely manner.¹⁸⁷

Mr. Fenton was also asked if the Commission were to make this kind of determination in this case, would be applicable to any utility that filed a similarly situated project or would it only

179 Tr. at 26.

180 *Id.*

181 *Id.*

182 *Id.* at 27.

183 *Id.*

184 *Id.* at 30.

185 Tr. at 35-36.

186 *Id.* at 36.

187 *Id.* at 36-37.

be PNM-specific?¹⁸⁸ Mr. Fenton testified that it would probably depend on the language in your recommended decision and ultimately the Commission's order as to what it would apply to and what future similar projects meant.¹⁸⁹ “I think the language in the order would probably carry the weight of what it ultimately applied to.”¹⁹⁰ Commissioner Ellison asked “Given that a policy like this would affect all stakeholders, wouldn't it be more appropriate to consider a policy change on whether distribution-level battery systems would require a CCN in that grid modernization rulemaking so that all parties have a chance to give their thoughts on it?”¹⁹¹ Mr. Fenton testified that “I think that's a reasonable approach. I mentioned it earlier. I think that is a reasonable approach, because certainly today, 62-9-1(D) specifically talks about CCNs for energy storage systems, so I think that is something that could be discussed in that rulemaking. I agree with you, Commissioner Ellison.”¹⁹²

In their Post-Hearing Brief, PNM (and Staff) cite Case No. 2673, where the Commission considered whether construction of a distribution line, the project that was the subject of PNM's application, was exempted from obtaining a CCN if the construction was necessary in the ordinary course of PNM's business. As set forth in the Hearing Examiner's Scoping Order, both Staff and PNM argued that the subject project “is necessary in the ordinary course of PNM's Business”

188 *Id.* at 61.

189 *Id.*

190 *Id.*

191 *Id.* at 71.

192 *Id.*

because “utilities routinely construct distribution substations, as well as radial transmission lines to them without explicit Commission permission.”¹⁹³

PNM also cited Case No. 19-00129-UT which it asserted provides some guidance on the issue of whether a CCN is required (this case was PNM’s request to acquire a Renewable Energy Transmission Authority’s (“RETA”) 345kV transmission project and associated facilities in eastern New Mexico). Specifically with regard to transmission level facilities, the Recommended Decision discussed that “the Commission has interpreted and applied” NMSA 1978, Section 62-9-1(A) “to require a CCN for the construction and operation of facilities that are used to provide retail service and the costs of which are to be included in retail rates.”¹⁹⁴ The Recommended Decision went further to say that “the Commission has not required a CCN for facilities that are not used to provide retail service and the costs of which are not recovered in retail rates.”¹⁹⁵ The Hearing Examiner went on to find that “consistent with these prior cases, PNM should be required to obtain a CCN before it seeks any cost recovery in the future for the RETA Project and the PNM Upgrades.”¹⁹⁶ He further recommended adoption of the conditions proposed by PNM for the type of approval the Hearing Examiner recommends here -- that a CCN not be issued here and that PNM seek the issuance of a CCN in the future in the event PNM seeks recovery of unrecovered

193 *Re Pub. Serv. Co. of New Mexico*, 1998 WL 996465 (N.M.P.U.C. Oct. 19, 1998) Recommended Decision at 19, 21-23 extensively referring to 115kV transmission lines.

194 NM Post Hearing Brief at 5-6 citing Case No. 19-00129-UT, *In the Matter of Public Service Company’s Application for Approval to Acquire the Western Spirit 345 KV Transmission Line*, Recommended Decision (September 11, 2019) p. 30; the Final Order (October 2, 2019) adopted the Recommended Decision except for a modification to proposed decretal paragraph H.

195 Case No. 19-00129-UT Recommended Decision at 30-31. (In this instance, distribution-level facilities are at issue, rather than transmission-level facilities).

196 *Id.* at 32.

costs in retail rates. Condition 4 is re-worded to include a provision that costs may not be recovered from retail ratepayers if the request for recovery is the result of inadequate contractual provisions and security in the TSA.¹⁹⁷ Finally, he noted that a future CCN proceeding would be based upon the facts known at the time PNM seeks to include costs in retail rates, and, as such, it would be the more appropriate opportunity to address PNM's request. It might also provide a greater level of scrutiny than the review of a potentially narrower request in a rate case to recover the costs in retail rates.¹⁹⁸

PNM concludes that the "ordinary course" of its business exception to the PUA's CCN requirement is fact-specific and requires a case-by-case determination. Factors to be considered have included: (1) The estimated cost of the proposed project; (2) Whether the project is customary, normal, or regular within the company's own business or within the relevant industry at large; (3) The factors driving the project; and (4) The urgency of the project.¹⁹⁹ PNM argues that the majority of factors discussed above weigh in favor of a Commission determination that construction and operation of battery energy storage systems on PNM distribution feeders should, in the future, be considered to be in the ordinary course of business, and therefore the exception to the CCN requirement in Section 62-9-1 should apply.²⁰⁰ Even if the Commission determines that a CCN will continue to be required for similar such projects, PNM recommends that the Commission provide direction in this proceeding regarding the appropriate parameters for expedited process

¹⁹⁷ *Id.* at 33.

¹⁹⁸ *Id.* at 34.

¹⁹⁹ PNM's Post Hearing Brief at 7.

²⁰⁰ *Id.* at 9.

(i.e. – a maximum of six months for a final determination) in any subsequent case, in order for PNM to be able to respond to the market conditions that require prompt action and regulatory approvals.²⁰¹

In its Post Hearing Brief, Onward Energy (owner of Valencia Energy Facility who provides power to PNM under a PA) acknowledged PNM’s effort to explore new technologies and creative solutions to alleviate congestion on certain feeders and indicated that it is generally supportive of PNM’s desire to most effectively and efficiently utilize the most appropriate resource mix to address such issues.²⁰² However, Onward Energy asserted its belief that questions concerning how best new equipment and technologies can be used to maximize system efficiency and reliability should be part of a collective effort that is overseen by the Commission that affords all parties in interest an opportunity to discuss the challenges presented and to consider the implications of these new technologies for future applications.²⁰³

Onward Energy argued that there are several reasons that weigh heavily against PNM’s request to avoid CCN approval for future battery storage related projects: (1) significant disclosure and due process concerns associated with effectively allowing PNM to implement these technologies “in the dark”. PNM should be required to fully report to the Commission the results of its BESS Project experiment. Other stakeholders and the Commission should be afforded a full and fair opportunity to review and challenge the conclusions reached by PNM from its experiences with the BESS Project. Onward Energy concludes that it would not serve the public interest to

201 *Id.* at 9-10.

202 Onward Energy Brief in Chief at 1.

203 *Id.* at 1-2.

allow PNM to shield their conclusions and expectations from the public and stakeholders by relying upon the "ordinary course" exception to CCN approval to this evolving and new technology;²⁰⁴ (2) The BESS Project was a relatively small and targeted application of battery storage technology confined to a very particular application on PNM's distribution system and this BESS Project cannot rationally serve as precedent for future projects that will be vastly different in both size and application – the antithesis of what is considered "ordinary course" – prior to the BESS Project construction and commissioning, and before any of the benefits and operational learnings are known;²⁰⁵ and (3) PNM's request raises significant due process and policy considerations if the Commission were to use this proceeding to establish global policy decisions, having concrete impacts on other utilities, that have had no notice of and/or cause to participate in this case.²⁰⁶

Onward Energy concludes that while it has no objection to the specific relief requested as it relates to this BESS Project, however, for this proceeding to now morph into essentially a rulemaking proceeding – without notice to other utilities and stakeholders – would be contrary to due process requirements of reasonable notice and an opportunity to be heard. Accordingly, PNM's request to be excused from the CCN process for future projects is inconsistent with fundamental requirements of notice and due process.²⁰⁷

204 *Id.* at 3.

205 *Id.* at 3-4.

206 *Id.* at 4.

207 Onward Energy Brief in Chief at 4.

CCAIE argues that it does not believe that the Commission should determine that similar battery storage projects in the future would be in the ordinary course of business. CCAIE believes that such a determination would be premature at this time. CCAIE concludes that the issue is not clearly before the Commission, and the record on the issue has not been adequately developed.²⁰⁸ CCAIE argues that the issue has not been adequately developed, through testimony and other evidence, for the Commission to make an informed determination that any future battery storage project similar to the BESS Project is in the ordinary course of business and thus exempt from the CCN requirement.²⁰⁹ Questions about battery size, and battery technology, for example, have not been discussed.²¹⁰ The Commission would need to decide how battery storage projects that are “in the ordinary course of business” would fit into the existing Commission regulations.²¹¹ CCAIE recognizes the Commission should not determine that similar battery storage projects are in the “ordinary course of business” where there is a lack of substantial or cognizable notice to the interested parties or to the public.²¹²

Recommendation

The Hearing Examiner has considered PNM’s request for a determination that future PNM projects similar to the BESS Project receive “ordinary course” determinations in order to qualify them under the exception to the CCN Rule, such that they would not be required to request and receive CCN determinations, or in the alternative, that the Commission grant PNM some type of

208 CCAIE Post-Hearing Brief at 6.

209 *Id.* at 7-8.

210 *Id.* at 8-9.

211 *Id.* at 9.

212 *Id.* at 9-12.

special expedited consideration for similar future PNM projects. There is scant precedent from Commission cases where utility projects have been considered without the requirement that the utility undergo the level of scrutiny that rightfully accompanies a CCN application. Most of the prior cases involved generation assets or 115 kV transmission lines for wholesale purposes where there was no attempt to recover costs from retail customers. Some of those types of projects were considered to be in “the ordinary course of business” and did not require CCNs.

There is no Commission rule or statutory reference that defines “in the ordinary course of business”. Intervenors point out there are many unanswered questions about what type of projects an ordinary course of business exception could apply, and there was no evidence presented in this case that could assist the Commission in creating this type of standard. Troubling to the Hearing Examiner, parties gave no opinion about whether PNM’s requests for future treatment of BESS projects including new determinations for what qualifies as a “project within the ordinary course of business” would apply to other utilities. PNM and Staff’s request for this specific treatment was not set out at the time the notice was issued. Therefore, the notice issued in this case did not include information about a potential Commission policy decision to define “ordinary course of business” projects or how to set standards or guidelines for when and how such projects would be determined to qualify for the ordinary course of business exemption to the CCN requirement. Thus, other utilities and interested parties were not notified of a “ordinary course” determination request and since it potentially impacts them, they should be given notice in order to comport with procedural due process.

The Hearing Examiner recommends that PNM and Staff's requests for a determination of ordinary course treatment for future BESS projects be denied for two reasons. First, there was no notice to potentially impacted parties of this request for a Commission policy determination, and legally inadequate notice to all utilities or interested persons can violate procedural due process and plague any Commission determination on these issues at this time. Second, the Hearing Examiner finds there is no evidence in the record to make a legally or factually reasonable recommendation to the Commission on the parameters or guidelines of an "ordinary course" definition or its qualifications for use as an exception to the CCN requirement.

Additionally, PNM's request for special expedited CCN treatment for similar PNM projects could impermissibly restrict the Commission's statutory authority in scope and time to issue CCN's and could potentially subject the Commission to disparate treatment claims from other utilities. There was no evidence offered as to what a "similar" project would be. Therefore, for all of these reasons, the Hearing Examiner recommends that the Commission deny PNM's request for a special expedited PNM battery CCN project procedure and maintain its authority and time deadlines under the CCN statute.

If the Commission wishes to consider issues of "ordinary course" definitions or determinations, or expedited CCN determinations in the future, the Hearing Examiner recommends that the Commission conduct such inquiries in any appropriate future proceedings that are noticed to all utilities and interested persons.

5. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Statement of the Case, Discussion, Determinations, and all findings and conclusions therein, whether or not separately stated, numbered, or designated as findings and conclusions, are incorporated by reference herein as findings and conclusions. Based on the foregoing Statement of the Case, Discussion, and Determination, the Hearing Examiner recommends that the Commission further **FIND** and **CONCLUDE** as follows:

1. PNM is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, provides electric utility services within the State of New Mexico, and as such, is a public utility subject to the jurisdiction of the Commission under the PUA. As a public utility, PNM is required to furnish adequate, efficient, and reasonable service at just and reasonable rates in conformity with Sections 62-8-1 and 62-8-2 of the PUA.

2. The Commission has jurisdiction over the parties to and the subject matter of this case.

3. Due and proper notice of this case and its subject matter was given in accordance with the PUA and Commission rules.

4. A preponderance of evidence in the record presented in this case supports that it is in the public interest for the Commission to issue a CCN authorizing PNM to construct, operate, and own the BESS Project, and to accrue AFUDC.

5. PNM's Certified Estimate of Cost of Construction for the BESS installation is authorized subject to all applicable Commission Rules and any and all ratemaking aspects of the BESS Project, including AFUDC, are reserved for current and future Commission ratemaking proceedings.

6. Any compliance or other required filing should be made in this case and served upon all parties of record.

7. Requests for special future treatment of PNM battery projects or CCN requests for PNM battery projects are **DENIED**.

8. PNM's suggested corrections to the transcripts for its witnesses filed pursuant to 1.2.2.34(C)2 NMAC are accepted.

9. PNM's post-hearing responses to the Hearing Examiner's Bench Requests made during the hearing shall be considered evidence of record pursuant to 1.2.2.35(K) NMAC.

6. DECRETAL PARAGRAPHS

Based upon the Findings of Fact and Conclusions of Law set forth herein and the record as a whole, the Hearing Examiners recommends that the Commission **ORDER** as follows:

A. The Statement of Case, Discussion, decisions, rulings, and all findings and conclusions contained therein, whether separately stated, numbered, or designated as findings, conclusions, and analyses, are hereby adopted, and approved as findings, conclusions, rulings, and determinations of the Commission.

B. A preponderance of evidence in the record supports that it is in the public interest for the Commission to issue a CCN authorizing PNM to construct, operate, and own the BESS Project, and to accrue AFUDC.

C. PNM's Certified Estimate of Cost of Construction for the BESS installation is authorized subject to all applicable Commission Rules and any and all ratemaking aspects of the

BESS Project, including AFUDC, are reserved for current and future Commission ratemaking proceedings.

D. PNM shall make compliance filings in this docket of any future amendments, revisions or other material changes to the Agreements filed in this proceeding by PNM. Such compliance filings shall be made within ten (10) days of executing the agreement and served upon parties in this case.

E. Requests for special future treatment of PNM battery projects or CCN requests for PNM battery projects are **DENIED**.

F. Any matter not specifically ruled on in this case or in this Order is disposed of consistent with this Order and Commission rules.

G. This Order is effective immediately.

H. Copies of this Order shall be sent to all persons on the attached Certificate of Service.

I. This Docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 8th day of December, 2023.

NEW MEXICO PUBLIC REGULATION COMMISSION



Elizabeth C. Hurst

Elizabeth C. Hurst
Hearing Examiner

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)	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 Recommended Decision.

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DATED this December 8, 2023

New Mexico Public Regulation Commission

Ana C. Kippenbrock

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