

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR DECERTIFICATION AND)
ABANDONMENT OF 114 MW OF LEASED)
PALO VERDE NUCLEAR GENERATING)
STATION CAPACITY AND SALE AND)
TRANSFER OF RELATED ASSETS AND FOR)
APPROVAL TO PROCURE NEW)
RESOURCES UNDER 17.9.551 NMAC)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant.)
_____)**

Case No. 21-00083-UT

REVISED PROCEDURAL ORDER

THIS MATTER comes before Carolyn R. Glick, Hearing Examiner for the New Mexico Public Regulation Commission, as a follow-up to the May 6, 2021 prehearing. This Revised Procedural Order differs from the Procedural Order issued on May 10, 2021, only with respect to changes to the attached Notice to more accurately reflect the revenue and bill impacts of PNM’s proposals. The Hearing Examiner **FINDS AND CONCLUDES:**

1. On April 2, 2021, Public Service Company of New Mexico (PNM) filed an Application for approval to:
 - Abandon PNM’s 104 MW of Leased Interests in Palo Verde Nuclear Generating Station (PVNGS) Unit 1 upon termination of the leases on January 15, 2023, and abandon PNM’s 10.4 MW of Leased Interest in PVNGS Unit 2 upon termination of the lease on January 15, 2024 (collectively, the Leased Interests);
 - Sell PNM-owned assets related to PVNGS which include PVNGS switchyard facilities, transmission facilities, common or “excluded” assets under the PVNGS leases in the Unit 1, Unit 2, and common facilities as necessary for the operation of the 114 MW of Leased Interests, and nuclear fuel associated with the Leased Interests (collectively, the PVNGS Assets). PNM says that it proposes to sell the PVNGS Assets to the Salt River Project

Agriculture Improvement and Power District (SRP), a current co-owner of PVNGS that will purchase the Leased Interests from the lessors when the leases terminate;

- Create regulatory assets in the amounts of the remaining undepreciated investments in leasehold improvements for the Leased Interests, and associated costs, with consideration of their recovery in a future rate case. The proceeds of the sale of the PVNGS Assets will be used to reduce the amounts of the regulatory assets to be recovered;
- Enter into the following purchased power agreement (PPA) and two energy storage agreements (ESAs) pursuant to 17.9.551 NMAC (Rule 551), titled “Prior Approval for Purchased Power Agreements,” for resources to replace the PVNGS leased capacity: an agreement with Jicarilla Solar Energy Center I, LLC for 150 MW of solar energy from the Jicarilla Solar Energy facility; an agreement with Jicarilla Energy Storage Center I, LLC for 40 MW of four-hour energy storage capacity from the Jicarilla Energy Storage Facility; and an agreement with Sandia Peak Grid, LLC for 100 MW of two-hour energy storage capacity from the Sandia Peak Grid facility; and
- Enter into the following PPA and ESA for resources for system reliability: an agreement with Atrisco Solar, LLC for 300 MW of solar energy from the Atrisco Solar Facility and an agreement with Atrisco Energy Storage, LLC for 150 MW of four-hour energy storage capacity from the Atrisco Energy Storage Facility.

2. Rule 551 states that the Commission shall issue a final order on an application for approval of a PPA within six months after the date the application is filed. Rule 551.10(B).

However, Rule 551 also states that the Commission may grant a request for a procedural variance from the Rule. Rule 551.12(B).

3. In its Application, PNM requests that the Commission issue a final order by October 4, 2021 because the PPAs and ESAs involve time-sensitive commercial transactions with third parties. Application at 4.

4. On April 21, 2021, the Commission issued its Initial Order Assigning Hearing Examiner (Initial Order). The Initial Order states that PNM’s requests for approval of replacement resources depend on the Commission’s approval of its requested abandonment of the Leased Interests. Therefore, the Order concludes that the six-month deadline in Rule 551 does not begin until after the Commission acts on PNM’s request for abandonment approval. Initial Order, ¶¶ 6-7.

5. In its Initial Order, the Commission recognized two competing considerations. First, it noted that PNM requests approval of several resources, which, the Commission said, “may impose sufficient significant additional burden on the resources of the Commission and parties to justify possibly waiving the time limitations of 17.9.551.10(B) at some point in this proceeding.” *Id.*, ¶ 8. Second, the Commission recognized PNM’s request for expediency to meet Commercial Operation Dates in advance of the 2023 Summer Peak. *Id.*, ¶ 9. Thus, the Commission said:

In order to balance these considerations and provide sufficient opportunity for full consideration for PNM’s total Application, at this time the Commission will not defer consideration of PNM’s requests for approval of the proposed PPAs to a separate proceeding, but will address them in this docket together with the abandonment request subject to a finding above that the six-month time limit of 17.9.551.10(B) NMAC has not been triggered.

Id.

6. Decretal Paragraph C of the Initial Order says:

The issues reserved to a separate proceeding from Case 15-00261-UT by the order on Remand concerning whether PNM’s acquisition and renewal of leased PVNGS capacity exposed ratepayers to additional financial liability beyond that to which ratepayers would have been exposed had PNM chosen to abandon the leased PVNGS capacity and obtained non-nuclear replacement generating capacity and whether PNM should be denied recovery of such additional amount of future additional decommissioning costs as a remedy for PNM’s imprudence established in this case shall be addressed in this proceeding. PNM shall file testimony addressing these issues in accordance with the procedural order to be issued by the hearing examiner.

7. The Commission appointed the undersigned to preside over this case. *Id.*,

¶ D.

8. The Hearing Examiner scheduled a prehearing on May 6, 2021.

9. The procedural schedule developed at the May 6, 2021 prehearing, set forth below, should be adopted.

IT IS THEREFORE ORDERED:

A. A public hearing shall be held beginning on October 12, 2021, commencing at 9:00 a.m. MDT, and shall continue as necessary through October 22, 2021. At a later date, the Hearing Examiner shall decide whether to hold the hearing in person, at a location to be determined, or through the Zoom videoconference platform.

B. On or before June 4, 2021, PNM, at its own expense, shall publish the notice attached to this Procedural Order once in a newspaper of general circulation in every county where PNM provides service.

C. On or before May 14, 2021, PNM shall post a copy of the Notice attached to this Procedural Order on its website (<http://www.PNM.com/regulatory>).

D. On or before June 4, 2021, PNM shall mail or email to its customers (by bill stuffer or separately) a copy of the Notice attached to this Procedural Order.

E. On or before June 25, 2021, PNM shall file Supplemental Testimony in response to Paragraphs 10 and C of the Commission's Initial Order Assigning Hearing Examiner, issued on April 21, 2021. Additionally, PNM shall answer the following questions in its Supplemental Testimony:¹

1. For each PVNGS leased interest that PNM seeks authority to abandon in this case:

¹ If PNM has answered any of these questions directly in its prefiled testimonies, it may cite to the page of the prefiled testimony or attached exhibit for the answer rather than repeat that response in its Supplemental Testimony.

- a. identify the “facility” or portion of “facility,” if any, that PNM seeks authority to abandon;²
- b. identify the initial cost to PNM of any such facility or portion of facility;
- c. identify the date that the facility or portion of facility began providing service;
- d. identify PNM’s book value of the facility or portion of facility as of May 1, 2021; and
- e. state whether PNM owns the facility or portion of facility. If PNM does not own the facility or portion of facility, identify the owner of the facility or portion of facility.

2. Why does PNM need Commission approval to abandon its Leased PVNGS Interests when PNM has already given irrevocable notice to the PVNGS lessors of its decision to return the Leased Interests?

3. Does the Commission have the authority to deny PNM’s request to abandon its Leased PVNGS Interests (if such approval is required), when PNM has already given irrevocable notice to the PVNGS lessors of its decision to return the Leased Interests?

4. Page 83 of the Corrected Recommended Decision issued in Case No. 15-00261-UT states:

For all of the leasehold improvements paid for in part by PNM, title or ownership to the improvements has belonged to the Lessors when such improvements were installed. Tr. (6-28-16) 4077, 4122-23 (Eden). PNM said that if it did not extend a lease or purchase Leased Assets at the end of the initial lease term, title to and possession of improvements would remain with the Lessor. NEE Exh. 30.

² See NMSA 1978, § 62-9-5 (2005) (“No utility shall abandon all or any portion of its facilities subject to the jurisdiction of the commission, or any service rendered by means of such facilities, without first obtaining the permission and approval of the commission.”).

Question relating to the above excerpt: why does PNM need Commission approval to sell the PVNGS Assets when PNM does not own these Assets?

5. Have the lessors agreed to sell the PVNGS Assets to SRP when the leases terminate?

6. If the Commission approves PNM's request to abandon its 104 MW of Leased Interests in PVNGS Unit 1:

a. on what date does PNM anticipate stop using this 104 MW of Leased Interests to serve customers?

b. what would be the beginning date of the regulatory asset balance or regulatory asset balances associated with the 104 MW of Leased Interests in PVNGS Unit 1?

7. If the Commission approves PNM's request to abandon its 10.4 MW of Leased Interest in PVNGS Unit 2:

a. on what date does PNM anticipate stop using this 10.4 MW of Leased Interests to serve customers?

b. what would be the beginning date of the regulatory asset balance or the regulatory asset balances associated with the 10.4 MW of Leased Interests in PVNGS Unit 2?

8. State the number of regulatory assets that PNM seeks authority to establish. For each such regulatory asset that PNM seeks approval to establish:

a. identify each category of facility included in the regulatory asset that PNM seeks authority to establish; and

b. state the anticipated beginning regulatory asset balance, as offset by the sale of the PVNGS Assets, unrounded, and applying existing approved depreciation rates.

9. What does PNM mean by "the costs of obtaining a Commission abandonment order" as stated in Paragraph G of its Application?

10. Per page 3 of PNM's Proposed Form of Notice to Customers, why is there so much uncertainty in the amount of projected savings to customers (between \$22 and \$55 million)?

11. Did PNM have the option to extend the leases comprising the 104 MW of PVNGS Unit 1 at the end of their current lease terms?

12. Did PNM have the option to extend the lease comprising the 10.4 MW of PVNGS Unit 2 at the end of the current lease term?

13. Per page 24, lines 19-20 of Kyle Sanders' Direct Testimony, how did PNM calculate that it would repurchase the leased capacity at a price of \$515/kW when the leases expire if PNM repurchased the leases?

14. Given that PNM is required to pay fair market value to purchase the PVNGS Leased Interests at the end of the lease term,³ why has PNM agreed to sell its PVNGS Assets at net book value⁴?

15. Based on Exhibit TGF-4 to Thomas Fallgren's Direct Testimony, what is PNM's estimated decommissioning cost, unrounded, as of May 2020, of the 64.1 MW of PVNGS Unit 2 interests purchased by PNM on January 15, 2016?

16. Based on Exhibit TGF-4 to Thomas Fallgren's Direct Testimony, what is PNM's estimated decommissioning cost, unrounded, as of May 2020, of the 114 MW of leased PVNGS Unit 1 capacity for which PNM seeks approval to abandon in this case?

17. As of May 1, 2021, what is the balance, unrounded, of PNM's PVNGS Unit 1 Nuclear Decommissioning Trust?

18. As of May 1, 2021, what is the balance, unrounded, of PNM's PVNGS Unit 2 Nuclear Decommissioning Trust?

³ Case No. 15-00261-UT, Corrected Recommended Decision at 79 (8-15-16).

⁴ Thomas Fallgren Direct at 27.

19. What dollar amount, unrounded, does PNM currently recover through rates for decommissioning costs for PVNGS Units 1 and 2?

20. What is the dollar change, if any, unrounded, in PNM's estimated decommissioning costs for PVNGS Unit 1 from the 2011 PVNGS Decommissioning Cost Study to the 2019 PVNGS Decommissioning Cost Study?

21. What is the dollar change, if any, unrounded, in PNM's estimated decommissioning costs for PVNGS Unit 2 from the 2011 PVNGS Decommissioning Cost Study to the 2019 PVNGS Decommissioning Cost Study?

22. If PNM's estimated decommissioning costs for PVNGS Units 1 and 2 have changed from the 2011 PVNGS Decommissioning Cost Study to the 2019 PVNGS Decommissioning Cost Study, identify the reasons for the changes.

23. What factors could change PNM's estimated decommissioning costs for PVNGS Units 1 and 2 on a going forward basis?

24. In Paragraph 4 of its Proposed Form of Notice to Customers, PNM says that it seeks approval to enter into a PPA and two ESAs to replace the PVNGS leased capacity. In Paragraph 5 of that Proposed Form of Notice, PNM says that it seeks approval to enter into another PPA and ESA for "resources for system reliability." As PNM acknowledges in its Application, whether to approve an abandonment application depends in part on the availability and adequacy of substitute service. Are the resources for which PNM seeks approval in both Paragraphs 4 and 5 necessary to provide adequate substitute service for the PVNGS leased capacity for which PNM seeks authority to abandon? Is there any other significance, for purposes of reviewing these requested approvals, to the purposes for which PNM seeks the approvals?

25. Is the Hearing Examiner correct that if the Commission approves PNM's proposed PPAs and ESAs, PNM will begin recovering the energy costs incurred under the PPAs and ESAs from ratepayers through PNM's fuel and purchased power adjustment clause

(FPPCAC) upon their commercial operation dates, but if the Commission approves PNM's proposed abandonments in this case, PNM will not stop recovering the costs of the Leased PVNGS Interests and PVNGS Assets, until the Commission removes these costs from PNM's rate base?

26. State the total dollar amount, unrounded and by category (*i.e.*, lease cost, etc.), of the costs of the Leased PVNGS Interests and PVNGS Assets that PNM seeks authority to abandon in this case and which PNM currently recovers through base rates.

27. State the total dollar amount, unrounded and by category, of the costs of the Leased PVNGS Interests and PVNGS Assets that PNM seeks authority to abandon in this case and which PNM does not recover through base rates, if any.

28. State, with as much specificity as possible, the expected beginning commercial operation dates of each PPA and ESA for which PNM seeks approval in this case.

29. State, for each PPA and ESA for which PNM seeks approval in this case, the annual estimated cost that:

- a. PNM expects to recover from customers through its FPPCAC; and
- b. PNM expects to recover from customers other than through its FPPCAC.

30. State, for each PPA and ESA for which PNM seeks approval in this case, any annual estimated cost that PNM would not recover through its FPPCAC.

31. If the Commission approves PNM's abandonment requests in this case, state, with as much specificity as possible, when PNM plans to file a general rate case to seek removal from its base rates of costs of the Leased PVNGS Interests and PVNGS Assets.

32. If the Commission approves PNM's request to abandon its 104 MW of Leased Interests in PVNGS Unit 1 upon termination of the lease on January 15, 2023, and abandon PNM's 10.4 MW of Leased Interest in PVNGS Unit 2 upon termination of the lease on January 15, 2024, and if PNM continues to recover the costs of those Leased Interests and

PVNGS Assets in its base rates upon termination of the leases, does PNM agree to create a regulatory liability for those costs that it continues to recover after the leased interests terminate, and for the costs in that regulatory liability to be returned to ratepayers as determined in PNM's next general rate case? If no, explain why.

33. Pages 107 to 108 of the Corrected Recommended Decision in Case No. 15-00261-UT state, under the heading "Sale/Leaseback Payments:"

PNM recovered its original cost of construction of PV Units 1 and 2 of approximately \$644.3 million plus a before-tax-gain of approximately \$236 million when it sold the Units to the investors in 1985 and 1986. Harland 5-25-16 Supp. 3. The investors recovered their cost plus a return through the lease payments made to them. PNM recovered its lease payments from ratepayers. Indeed, in Case No. 2262, the Commission explained that for ratemaking purposes the lease payments are the equivalent to paying capital costs.

Over the lease terms, PNM, on a total company basis, paid \$2.083 billion in lease payments. Exh. JAP-3, p.5 to Peters 5-25-16 Supp. PNM made the payments to the Indenture and Collateral Trust, which made debt service payments to bondholders and provided an equity return to the Owner Trust, which ultimately flowed through to the Owner Trusts' equity investors and supported contributions to a sinking fund for the "return of" capital to the lenders. Eden 5-25-16 Supp. 3-5. The "return of" capital is similar to recovering depreciation expense. Thus, irrespective of what length of time PNM was authorized to depreciate PV Units 1 and 2, ratepayers fulfilled their "return of" capital obligations by funding a sinking fund over 30 years. Ratepayers' contributions to the sinking fund or the amount that made up the "return of" capital was based upon \$900 million of capital and not "the original cost" of approximately \$644.3 million. Thus, ratepayers not only fully paid for the depreciation of the original cost of PV Units 1 & 2, they also returned an additional \$256 million of capital less the then calculated gain net of tax, or \$42.5 million. The debt associated with the sinking funds has been fully paid and there are no sinking fund contributions included in PNM's requested revenue requirement. Eden 5-25-16 Supp. 22.

The 30-year term of the lease payments also accelerated recovery of capital expenditures. If the return of capital obligations had been recovered through depreciation expense, recovery would have occurred over the 40-year useful life authorized by the Nuclear Regulatory Commission. Because recovery occurred over 30, not 40, years, Ms. Crane said that it would be reasonable to calculate the NBV of the 64.1 MW using a 30-year service life. She explained:

It would be reasonable to utilize a 30-year period for this plant because that is the term of the original lease. Accordingly, it is reasonable to assume that the investors used a 30-year time horizon to evaluate the proposed transaction. While the Lessors also had the option to sell the plant at the end of the lease period, the valuation at that time was uncertain. Therefore, my expectation is

that the original lessors evaluated the transaction based on a 30-year timeframe. Therefore, it would be reasonable for the Commission to utilize a 30-year period to determine the accumulated depreciation associated with the original transaction.

Crane 6-14-16 Supp. 14. Question relating to the above excerpt: in light of the evidence admitted in Case No. 15-00261-UT, summarized in the above excerpt, what is PNM's response to the position that PNM has fully recovered, through ratepayer payments, all of its costs of its Leased PVNGS Interests and PVNGS Assets that PNM seeks authority to abandon in this case and has no undepreciated investments left to recover through regulatory assets?

F. Any person desiring to intervene to become a party (intervenor) must file a motion for leave to intervene in conformity with Rules of Procedure 1.2.2.23(A) and 1.2.2.23(B) NMAC on or before June 18, 2021.

G. Staff shall, and any Intervenor may, file Direct Testimony on or before August 20, 2021.

H. Any Rebuttal Testimony shall be filed on or before September 30, 2021.

I. To be considered, a stipulation must be filed on or before September 3, 2021.

J. Discovery responses shall be served within 11 days of service of discovery requests.

K. Deadlines for filing particular motions and responses to such motions are as follows:

1. The deadlines for filing dispositive motions and responses to such motions are June 25, 2021 and July 9, 2021, respectively.

2. The deadlines for filing motions in limine, motions to strike and any other prehearing motions regarding PNM's prefiled direct and supplemental testimonies and responses to such motions are July 2, 2021 and July 12, respectively.

3. The deadlines for filing motions in limine, motions to strike and any other prehearing motions regarding Staff/Intervenor prefiled direct testimonies and responses to such motions are September 3, 2021 and September 13, 2021, respectively.

4. The deadlines for filing motions in limine, motions to strike and any other prehearing motions regarding rebuttal testimonies and responses to such motions are October 4, 2021 and October 7, 2021, respectively.

5. The deadlines for filing any other prehearing motions and responses to such motions are September 20, 2021 and September 28, 2021, respectively.

L. On or before October 5, 2021, PNM, after conferring with all parties and Staff, shall email the Hearing Examiner and the email service list with:

1. a proposed order of testifying witnesses;
2. a proposed order of cross examination of PNM's witnesses; and
3. a proposed order of cross examination of Intervenor and Staff witnesses.

M. On or before October 6, 2021, each party and Staff shall email the Hearing Examiner and the email service list with its requested allocation of time to cross examine each witness. The Hearing Examiner then intends to allocate time periods for each party and Staff to cross examine each witness. The Hearing Examiner "may at [her] discretion limit the time for providing direct testimony or cross-examination at any public hearing if necessary to promote the proper and orderly management of such public hearing." 1.2.2.32(G)(3) NMAC.

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

O. Interested persons should contact the Commission at 505-690-4191 for confirmation of the hearing date, time and place since hearings are occasionally rescheduled.

P. The Commission's Rules of Procedure, 1.2.2 NMAC, shall apply except as modified by order of the Hearing Examiner or Commission. The Rules of Procedure are available online at <http://164.64.110.134/nmac/home>.

Q. Interested persons may examine PNM’s Application and all other documents filed in this case online at <http://nmprc.state.nm.us> under “Case Lookup EdoCKET.” Interested persons may contact Ana Kippenbrock at ana.kippenbrock@state.nm.us or 505-690-4191 for assistance in accessing EdoCKET.

R. Interested persons who are not affiliated with a party may make written or oral comments without becoming intervenors. Oral comments will be entertained only at the 9:00 a.m. start of the hearing on October 12, 2021, and will be limited to three minutes per commenter. Written comments may be submitted before the Commission takes final action by sending the comments electronically to prc.records@state.nm.us. Pursuant to 1.2.2.23(F) NMAC, comments shall not be considered evidence.

S. The filing of documents in this case shall be accomplished by emailing the documents to PRC.Records@state.nm.us. Documents shall be emailed in pdf form and signed electronically. Documents filed in this case shall also be served on all email addresses listed on the most recent certificate of service issued by the Hearing Examiner and shall be served via email on the Hearing Examiner at Carolyn.glick@state.nm.us.

T. When this Procedural Order states a deadline, the deadline is 5:00 p.m. MDT for emailing a document to PRC.Records@state.nm.us and for emailing a document to the email service list, including the Hearing Examiner. If this deadline is not complied with, the Hearing Examiner may, in her discretion, not consider the document.

U. The Certificate of Service for this case is attached to this Order. Pursuant to 1.2.2.10(C)(4) NMAC, the attached service list shall be used until further notice for service of all pleadings, orders, notices, testimony and other documents to the individuals and their respective addresses as specified thereon.

V. It is unnecessary for a party or Staff to move into evidence, or request that administrative notice be taken of, state commission, state and federal court decisions and administrative agency decisions.⁵

⁵ While 1.2.2.35(D) NMAC contemplates taking administrative notice of state commission, state court and federal court decisions, it is actually unnecessary to do so. Such decisions are more appropriately the subject of “judicial notice of law.” Judicial notice of law is “the commonsense doctrine that the rules of evidence governing admissibility and proof of documents generally do not make sense to apply to statutes or judicial opinions—which are technically documents—because they are presented to the court as law, not

W. Any person whose testimony has been filed shall attend the hearing and submit to examination under oath.

X. All prefiled testimonies of a witness shall be moved into evidence when the witness is first presented.

Y. The oral testimony elicited by a party or Staff presenting a witness shall (except for redirect examination) consist of authentication and verification of each prefiled testimony and identifications of any permitted corrections to that testimony. The party or Staff shall not elicit oral summaries of prefiled testimony or other oral testimony.

Z. Any person with a disability requiring special assistance to participate in this proceeding should contact the hearing examiner at Carolyn.glick@state.nm.us at least 24 hours before the hearing begins.

Issued at Santa Fe, New Mexico on May 11, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick
Carolyn R. Glick
Hearing Examiner

to the jury as evidence.” *City of Aztec v. Gurule*, 2010-NMSC-006, ¶ 12, 147 N.M. 693, 228 P.3d 477 (internal citation omitted). Courts take judicial notice of law every time they cite a statute or judicial decision, although they do not do so explicitly. *Id.* As a practical matter, legal citations are made without “invoking the machinery of judicial notice because there is usually no doubt about what the law actually says.” *Getty Petroleum Marketing, Inc. v. Capital Terminal Co.*, 391 F.3d 312, 324 (1st Cir. 2004) (Lipez, J., concurring). If material is readily available, the proponent need not formally request judicial notice of law; “the submission of a readily retrievable citation, or of copies of the relevant documents, ought to suffice.” *Id.* at 333. *Cf. Chapman v. Chase Manhattan Mortgage Corp.*, No. 04-CV-0859-CVE-FHM, 2007 WL 4268774, at *2 n.7 (N.D. Okla. Nov. 30, 2007) (federal courts are bound to apply precedent without formally taking judicial notice of law); *Lucero v. R.K. Wong*, No. C 10-1339 SI (pr), 2011 WL 5834963, at *5 (N.D. Cal. Nov. 21, 2011) (“It is unnecessary to request that the court judicially notice published cases from California and federal courts as legal precedent; the court routinely considers such legal authorities in doing its legal analysis without a party requesting that they be judicially noticed. To the extent petitioner wants the existence of published or unpublished cases judicially noticed as adjudicative facts, doing so is of very limited value because the court can take notice that such decisions exist, but the court does not take judicial notice that those decisions are correct.”); *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (taking judicial notice of another court’s opinion, not for truth of facts in that opinion, but for its existence)

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR DECERTIFICATION AND)
ABANDONMENT OF 114MW OF LEASED)
PALO VERDE NUCLEAR GENERATING)
STATION CAPACITY AND SALE AND)
TRANSFER OF RELATED ASSETS)
AND FOR APPROVAL TO PROCURE)
NEW RESOURCES UNDER 17.9.551 NMAC)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant.)
_____)**

Case No. 21-00083-UT

NOTICE TO PNM CUSTOMERS

NOTICE is given that on April 2, 2021, Public Service Company of New Mexico (PNM) filed an Application with the New Mexico Public Regulation Commission (Commission or NMPRC) for approval to:

- 1) Abandon PNM’s 104 MW of Leased Interests in Palo Verde Nuclear Generating Station (PVNGS) Unit 1 upon termination of the leases on January 15, 2023, and abandon PNM’s 10.4 MW of Leased Interest in PVNGS Unit 2 upon termination of the lease on January 15, 2024 (collectively, the Leased Interests);
- 2) Sell PNM-owned assets related to PVNGS which include PVNGS switchyard facilities, transmission facilities, common or “excluded” assets under the PVNGS leases in the Unit 1, Unit 2, and common facilities as necessary for the operation of the 114 MW Leased Interests, and nuclear fuel associated with the Leased Interests (collectively, the PVNGS Assets). PNM says that it proposes to sell the PVNGS Assets to the Salt River Project Agriculture Improvement and Power District, a

current co-owner of PVNGS that will purchase the Leased Interests from the lessors when the leases terminate;

- 3) Create regulatory assets in the amounts of the remaining undepreciated investments in leasehold improvements for the Leased Interests, and associated costs, with consideration of their recovery in a future rate case. The proceeds of the sale of the PVNGS Assets will be used to reduce the amounts of the regulatory assets to be recovered;
- 4) Enter into the following purchased power agreement PPA and two energy storage agreements (ESAs) pursuant to 17.9.551 NMAC (“Rule 551”) for resources to replace the PVNGS leased capacity: an agreement with Jicarilla Solar Energy Center I, LLC for 150 MW of solar energy from the Jicarilla Solar Energy facility; an agreement with Jicarilla Energy Storage Center I, LLC for 40 MW of four-hour energy storage capacity from the Jicarilla Energy Storage Facility; and an agreement with Sandia Peak Grid, LLC for 100 MW of two-hour energy storage capacity from the Sandia Peak Grid facility; and
- 5) Enter into the following PPA and ESA for resources for system reliability: an agreement with Atrisco Solar, LLC for 300 MW of solar energy from the Atrisco Solar Facility and an agreement with Atrisco Energy Storage, LLC for 150 MW of four-hour energy storage capacity from the Atrisco Energy Storage Facility.

On June 15, 2020, PNM was required to give the PVNGS lessors irrevocable notice of PNM’s return or proposed repurchase of the 104 MW of Unit 1 Leased Interests as of the date of the lease terminations (with similar notice for the 10 MW of Unit 2 Leased Interest due January 15, 2021). PNM says that its analysis leading up to the notice deadline

showed that customers will save money if PNM returns the Leased Interests rather than repurchasing them. PNM provided notice to the lessors on June 11, 2020 that it would return the leases upon their respective termination dates. PNM says that its most recent resource analysis indicates that when considering the aggregate resource acquisitions needed in 2023 to replace the leased capacity, maintain system reliability and meet expected customer loads, the savings to customers will be between \$22 to \$55 million on a net present value basis, compared to purchasing the Leased Interests and ensuring sufficient resources for system reliability.

If the Commission approves PNM’s requests in this case, PNM estimates a \$12.6 million reduction in costs once PNM stops recovering the costs associated with the Leased Interests and begins recovering the costs of the proposed regulatory assets and replacement PPA and ESAs. However, depending on when PNM files a general rate case to remove the costs from rates, PNM may continue to recover the costs associated with the Leased Interests from ratepayers after it begins recovering energy costs of the proposed PPA and ESAs through its fuel clause. The following table estimates the allocation of the \$12.6 million reduction in costs among PNM’s rate classes once PNM stops recovering the costs associated with the Leased Interests and begins recovering the costs of the proposed regulatory assets and replacement PPA and ESAs.

<u>Abandonment and Replacement</u>	
Consolidated Customer Class	Impact (\$)
1 - Residential	(\$8,542,761)
2 - Small Power	(\$1,502,876)
3B - General Power	(\$1,533,072)
3C - General Power Low LF	(\$286,839)
4B - Large Power	(\$940,327)
5B - Lg. Svc. (8 MW)	(\$61,898)

10 - Irrigation	(\$47,166)
11B - Wtr/Swg Pumping	(\$4,556)
15B - Universities 115 kV	(\$28,271)
30B - Manuf. (30 MW)	(\$161,746)
33B - Lg. Svc. (Station Power)	(\$884)
35B - Lg. Svc. (3 MW)	\$220,201
36B - SSR - Renew. Energy Res.	\$241,389
6 - Private Lighting	\$4,632
20 - Streetlighting	(\$3,707)

Once PNM stops recovering the costs associated with the Leased Interests and begins recovering the costs of the proposed regulatory assets and replacement PPA and ESAs, PNM estimates the net bill impact will be a savings of approximately \$1.61 per month for a residential customer using an average of 600 kWh per month.

PNM estimates the costs of the procurement of the reliability resources to be approximately \$20 million. The following table estimates the allocation of the estimated \$20 million increase in costs among PNM's rate classes.

<u>Reliability Resources</u>	
Consolidated Customer Class	Impact (\$)
1 - Residential	\$9,915,298
2 - Small Power	\$2,308,914
3B - General Power	\$3,388,666
3C - General Power Low LF	\$429,729
4B - Large Power	\$1,964,153
5B - Lg. Svc. (8 MW)	\$94,745
10 - Irrigation	\$59,968
11B - Wtr/Swg Pumping	\$225,122
15B - Universities 115 kV	\$122,172
30B - Manuf. (30 MW)	\$639,430
33B - Lg. Svc. (Station Power)	\$5,483
35B - Lg. Svc. (3 MW)	\$568,167
36B - SSR - Renew. Energy Res.	\$211,030
6 - Private Lighting	\$17,866
20 - Streetlighting	\$40,476

PNM estimates the net bill impact of adding the proposed system reliability resources will be an increase of approximately \$1.87 per month for a residential customer using an average of 600 kWh per month.

PNM presents these estimated costs and bill impacts for informational purposes only, and the final order in this case may vary PNM's estimated costs and bill impacts.

Any interested person may inspect PNM's Application filed in this case at PNM's offices, by appointment, at 414 Silver Avenue, SW, Albuquerque, New Mexico, telephone number 505-241-2700. Interested persons may also examine PNM's Application and all other pleadings, testimony, exhibits, and other documents in the public record for this case on the Commission's website at <https://edocket.nmprc.state.nm.us>. Interested persons may contact Ana Kippenbrock at ana.kippenbrock@state.nm.us or 505-690-4191 for assistance in accessing Edocket. This case has been docketed as Case No. 21-00083-UT and any inquiries should refer to this case number.

The procedural schedule for this case is as follows:

- A. PNM shall supplemental testimony by June 25, 2021.
- B. Any person desiring to intervene to become a party (intervenor) must file a motion for leave to intervene in conformity with Commission Rules of Procedure 1.2.2.23(A) and 1.2.2.23(B) NMAC on or before June 18, 2021.
- C. The Commission's Utility Division Staff shall, and any intervenor may, file direct testimony on or before August 20, 2021.
- D. Any rebuttal testimony shall be filed on or before September 30, 2021.

E. To be considered, a stipulation must be filed on or before September 3, 2021.

F. A public hearing shall be held beginning on October 12, 2021, commencing at 9:00 a.m. MDT, and shall continue as necessary through October 22, 2021. At a later date, the Hearing Examiner shall decide whether to hold the hearing in person, at a location to be determined, or through the Zoom videoconference platform.

Interested persons who are not affiliated with a party may make oral or written comment without becoming an intervenor. Oral comment shall be taken at the commencement of the public hearing on October 12, 2021 and shall be limited to three minutes per commenter. Written comments may be submitted before the Commission takes final action by sending the comment, which shall reference NMPRC Case No. 21-00083-UT, to prc.records@state.nm.us. Public comments, whether oral or written, shall not be considered as evidence in this proceeding.

The procedural dates and requirements provided herein are subject to further order of the Commission.

The Commission's Procedural Rules, 1.2.2 NMAC, apply to this case except as modified by Order of the Commission. The Rules of Procedure are available online at <http://164.64.110.134/nmac/home>.

Pleadings, testimony and other documents shall be served on all parties and Staff in the way specified in the most recent Certificate of Service issued by the Hearing Examiner. Anyone filing pleadings, documents, or testimony in this case shall comply with the Commission's electronic filing policy, as amended from time to time. This includes filings in .pdf format, with electronic signatures, sent to the Records Bureau's e-mail address,

as set out on the Commission's website, at: prc.records@state.nm.us, within regular business hours of the due date to be considered timely filed. Documents received after regular business hours will be considered as being filed the next business day. Regular business hours are from 8:00 a.m. to 5:00 p.m. MDT. Parties shall serve a copy of all filings on all parties of record and Staff. All filings shall be emailed by no later than 5:00 p.m. MDT on the date they are filed with the Commission. In addition, all filings shall be emailed to the Hearing Examiner on the date filed to Carolyn.glick@state.nm.us by no later than 5:00 p.m. MDT. Such emailing shall include the Word or other native version of the filing (e.g., Excel or Power Point) if created in such format. Any filings not emailed to the Hearing Examiner in compliance with the requirements of the Procedural Order and Commission rules are subject to being summarily rejected and stricken from the record in the Hearing Examiner's discretion.

Interested persons should contact the Commission at 505-690-4191 for confirmation of the hearing dates because hearings are occasionally rescheduled.

Any person with a disability requiring special assistance to participate in this proceeding should contact the hearing examiner at Carolyn.glick@state.nm.us at least 24 hours before the hearing begins.

ISSUED at Santa Fe, New Mexico, this 11th day of May, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick

Carolyn R. Glick, Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF PUBLIC)
SERVICE COMPANY OF NEW MEXICO FOR)
DECERTIFICATION AND ABANDONMENT OF 114 MW)
OF LEASED PALO VERDE NUCLEAR GENERATING)
STATION CAPACITY AND SALE AND TRANSFER OF)
RELATED ASSETS AND FOR APPROVAL TO PROCURE)
NEW RESOURCES UNDER 17.9.551 NMAC)**

Case No. 21-00083-UT

PUBLIC SERVICE COMPANY OF NEW MEXICO,

Applicant

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email to the parties listed below a true and correct copy of the Revised Procedural Order.

Stacey Goodwin Leslie Padilla Richard Alvidrez Mark Fenton Steven Schwebke Raymond Gifford Mariel Nanasi Christopher Sandberg Joan Drake Haley B. Adams Nann M. Winter Keith Herrmann Dahl Harris Peter Auh Andrew Harriger Jody Garcia Steven S. Michel April Elliott Cydney Beadles Pat O'Connell Douglas J. Howe Cholla Khoury Gideon Elliot Jennifer Van Wiel Andrea Crane Doug Gegax Joseph Yar Jeffrey Spurgeon Bruce C. Throne Rob Witwer Jeffrey Albright Michael I. Garcia Amanda Edwards Matt Dunne	Stacey.Goodwin@pnmresources.com ; Leslie.padilla@pnmresources.com ; Ralvidrez@mstlaw.com ; Mark.Fenton@pnm.com ;; Steven.Schwebke@pnm.com ; RGifford@wbkllaw.com; Mariel@seedsbeneaththesnow.com ; eksandberg@me.com ; jdrake@modrall.com ; hadams@modrall.com ; nwinter@stelznerlaw.com ; kherrmann@stelznerlaw.com ; dahlharris@hotmail.com ; pauh@abcwua.org ; akharriger@sawvel.com ; JGarcia@stelznerlaw.com ; smichel@westernresources.org ; April.elliott@westernresources.org ; Cydney.Beadles@westernresources.org ; pat.oconnell@westernresources.org ; dhowe@highrocknm.com ; ckhoury@nmag.gov ; gelliot@nmag.gov ; jvanwiel@nmag.gov ; ctcolumbia@aol.com ; dgegax@nmsu.edu ; joseph@yarlawoffice.com ; spurgeonJ@southwestgen.com ; bthroneattv@newmexico.com ; witwerr@southwestgen.com ; JA@Jalblaw.com ; mikgarcia@berncogov ; AE@Jalblaw.com ; dunneconsultingllc@gmail.com ;	Kyle J. Tisdel Ally Beasley Ahtza Dawn Chavez Joseph Hernandez Nicole Horseherder Jessica Keetso Mike Eisenfeld Robyn Jackson Jane L. Yee Larry Blank, Ph.D. Saif Ismail Peter J. Gould Kelly Gould Jim Dauphinais Michael Gorman Justin Lesky Stephanie Dzur Ramona Blaber Don Hancock April Elliott Noah Long Brian J. Haverly Jason Marks Matthew Gerhart R. Scott Mahoney David L. Schwartz Katherine Coleman Thompson & Knight Randy S. Bartell Sharon T. Shaheen Jennifer Breakell Hank Adair Cindy A. Crane Peter Mandelstam	tisdell@westernlaw.org ; beasley@westernlaw.org ; ahtza@navaeducationproject.org ; joseph@navaeducationproject.org ; nhorseherder@gmail.com ; jkeetso@yahoo.com ; mike@sanjuancitizens.org ; Robyn.jackson@dine-care.org ; jyee@cabq.gov ; lb@tahoeconomics.com ; sismail@cabq.gov ; peter@thegouldlawfirm.com ; Kelly@thegouldlawfirm.com ; jdauphinais@consultbai.com ; mgorman@consultbai.com ; jlesky@leskylawoffice.com ; Stephanie@Dzur-law.com ; Ramona.blaber@sierraclub.org ; srcidon@earthlink.net ; ccae@elliottanalytics.com ; Nlong@nrdc.org ; bjh@keleher-law.com ; lawoffice@jasonmarks.com ; matt.gerhart@sierraclub.org ; Scott.Mahoney@avangrid.com ; david.schwartz@lw.com ; Katie.coleman@tklaw.com ; Tk.eservice@tklaw.com ; rbartell@montand.com ; sshaheen@montand.com ; jbekell@fmtn.org ; hadair@fmtn.org ; crcrane@enchantenergy.com ; peterm@enchantenergy.com ;
--	--	--	--

<p>Maureen Reno Richard L. C. Virtue Daniel A. Najjar Steven Gross Martin R. Hopper Kurt J. Boehm Bill Templeman Justin Bieber Karl F. Kumli, III Mark Detsky K. C. Cunilio Julie A. Wolfe Andrew Wernsdorfer Joel Johnson</p>	<p>mreno@reno-energy.com; rvirtue@virtuelaw.com; dnajjar@virtuelaw.com; gross@portersimon.com; mhopper@msrpower.org; kboehm@bkllawfirm.com; WTempleman@cmtisantafe.com; jbieber@energystat.com; karlk@dietzedavis.com; mdetsky@dietzedavis.com; kcunilio@dietzedavis.com; julie@dietzedavis.com; andy@berrendoenergy.com; Joel@berrendoenergy.com;</p>	<p>Steve W. Chriss Barbara Fix Katherine Lagen Camilla Feibelman Michael C. Smith Bradford Borman Elizabeth Jeffreys Peggy Martinez-Rael Elizabeth Ramirez Jack Sidler Elisha Leyba-Tercero Gabriella Dasheno Eli LaSalle Ana Kippenbrock Carolyn Glick</p>	<p>Stephen.chriss@wal-mart.com; baafix@earthlink.net; Katherine.lagen@sierraclub.org; Camilla.Feibelman@sierraclub.org; Michaelc.smith@state.nm.us; Bradford.Borman@state.nm.us; Elizabeth.jeffreys@state.nm.us; Peggy.Martinez-Rael@state.nm.us; Elizabeth.Ramirez@state.nm.us; Jack.sidler@state.nm.us; Elisha.Leyba-Tercero@state.nm.us; Gabriella.Dasheno@state.nm.us; Eli.Lasalle@state.nm.us; Ana.Kippenbrock@state.nm.us; Carolyn.glick@state.nm.us;</p>
--	--	---	--

DATED on May 11, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick
Carolyn R. Glick
Hearing Examiner