

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, OWN, AND) **CASE NO. 23-000162-UT**
OPERATE TWELVE MEGAWATTS OF)
BATTERY STORAGE FACITLITIES)

SECOND PROCEDURAL ORDER

THESE MATTERS come before the Hearing Examiner upon Public Service Company of New Mexico’s (“PNM’s”) Motion to Vacate Hearing filed on September 19, 2023 with the New Mexico Public Regulation Commission (NMPRC or Commission). The Hearing Examiner **FINDS AND CONCLUDES:**

1. PNM is requesting 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”).

2. The Procedural Order issued on May 30, 2023 in this case set forth that “[i]f no written Protests are timely filed, the Commission may vacate and waive a formal hearing on this matter.”

3. The Public Utility Act provides, with respect to applications for certificates of public convenience and necessity, that “[t]he commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed.” NMSA 1978, § 62-9-1(C).

4. PNM asserts that the 60-day deadline for written protests has passed, and no persons have filed protests. Furthermore, no party filed testimony in opposition to PNM’s

Application, and the deadline to intervene and file any such testimony has passed. Accordingly, PNM argues that its Application is unopposed and therefore good cause exists to vacate the public hearing.

5. PNM also avers that Coalition for Clean Affordable Energy (“CCAIE”) Witness Mr. Kenney testified that CCAIE “generally supports approval of PNM’s Application”. Mr. Kenney’s testimony included additional recommendations for the Commission’s consideration in this case regarding PNM “non-wires alternatives” as well as update requirements to the energy arbitrage component of the cost benefit analysis, and creation of a robust stakeholder process to present future “non-wires” opportunities. In the Motion to Vacate, PNM claims that CCAIE purportedly accepts the conclusions and commitments made by PNM Witnesses McIntosh and Fenton in their rebuttal testimonies.

6. Prior to filing the Motion to Vacate, PNM requested positions on this Motion from Commission Utility Division Staff (“Staff”) and the parties to the case. Their positions are as follows: Staff and CCAIE do not oppose. Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”) and Onward Energy Holdings, LLC (“Onward Energy”) take no position. No other party provided a position.

After considering the information provided in the Motion to Vacate as well as the other referenced pleadings, the Hearing Examiner finds that there is insufficient information upon which to rule on the Motion to Vacate at this time. Therefore, the following additional information shall be provided:

1) Testimony or verified affirmation from CCAE as to PNM's claims regarding CCAE's acceptance of PNM's solutions to CCAE's recommendations to the Commission regarding this Application (as set forth by PNM in its Motion to Vacate). A verified statement should also be filed that indicates whether CCAE has any other outstanding issues or recommendations on this Application.

2) In his testimony, Staff Witness Mr. Sidler recommends that the Commission decide that this type of battery storage facility be determined to be "in the ordinary course of business" and asserts that such a finding would obviate the need for any Commission CCN consideration for similar future projects. Staff shall provide a pleading that sets forth where such a determination was proposed in the notice for this case. If it was not noticed, then Staff shall explain why the Commission would or could legally consider such an action in this case. Further, Staff shall provide testimony and/or legal pleadings that include sufficient factual and legal justifications for the Commission to make "ordinary course determinations" that result in not requiring CCNs.

Being advised in the premises, the Hearing Examiner finds that there is good cause to require additional information as follows and **ORDERS**:

- A. The Motion to Vacate the Hearing is taken under advisement at this time.
- B. By noon on September 29, 2023, CCAE shall file testimony or verified affirmation from CCAE as to PNM's claims regarding CCAE's acceptance of PNM's solutions to CCAE's recommendations to the Commission regarding this Application (as set forth by PNM in its Motion

to Vacate). A verified statement shall also be filed that indicates whether CCAE has any other outstanding issues or recommendations on this Application.

C. By noon on September 29, 2023, Staff shall file a pleading that sets forth where an “ordinary course” determination that would not require CCN determinations for subsequent similar projects was proposed in the notice for this case. If it was not noticed, then Staff shall explain why the Commission would or could legally consider such an action in this case. Further, Staff shall provide testimony and/or legal pleadings that include sufficient factual and legal justifications for the Commission to make “ordinary course determinations” that result in not requiring CCNs for future plants.

D. Any pleadings in response to either CCAE’s pleadings or Staff’s pleadings may be filed by noon on October 4, 2023.

E Any parts of the Procedural Order issued on May 30, 2023 not modified by this Second Procedural, are in full force and effect.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this **22nd** day of **September 2023**.

NEW MEXICO PUBLIC REGULATION COMMISSION



Elizabeth C. Hurst

Elizabeth C. Hurst
Hearing Examiner
elizabeth.hurst@prc.nm.gov

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

CERTIFICATE OF SERVICE

I certify that on this date I served on the parties listed here, via email, a true and correct copy of the Second Procedural Order issued on September 22, 2023.

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DATED this September 22, 2023.

New Mexico Public Regulation Commission

Ana C. Kippenbrock

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