BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NO. 595	)	**Case No. 22-00270-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant	)	

DIRECT TESTIMONY

OF

JOSEPH A. MILLER, JR.

December 5, 2022

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WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

DIRECT TESTIMONY OF
JOSEPH A. MILLER, JR.
NMPRC CASE NO. 22-00270-UT

I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is Joseph A. Miller Jr. I am President and CEO of Pegasus-Global Holdings, Inc.® ("Pegasus-Global"), an international management consulting firm that provides services in the power, energy, and infrastructure industries. My business address is 1750 Emerick Rd., Cle Elum, WA. 98922.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. My testimony is on behalf of Public Service Company of New Mexico ("PNM" or "Company").

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS CASE?

A. I was requested to conduct an independent assessment of PNM's decisions related to the expiration of the Palo Verde Nuclear Generating Station ("PVNGS" or "Palo Verde") leases and in response to the Commission's *Order on Joint Motion for Accounting Order* ("Accounting Order").[1] In the Accounting Order, the Commission asked PNM to address a number of issues. In my testimony, I address the following issues:

[1] NMPRC Case No. 21-00083-UT, *Order on Joint Motion for Accounting Order*, dated November 18, 2022.

- whether PNM is entitled to recover undepreciated investments provided that it will no longer own the undepreciated improvements.[2]
- issues raised concerning the Generally Accepted Accounting Principles ("GAAP") requirement that costs sought to be included in a regulatory asset must be "unusual" or "infrequently occurring", how those terms should be construed by the Commission, and whether undepreciated investment in generation plant that is being abandoned pursuant to NMSA 1978, Section 62-1-1 et seq. may meet the definition of these terms.[3]
- whether PNM's decision to renew the five leases and repurchase 64.1 MW of PVNGS Unit 2 capacity exposed ratepayers to additional financial liability beyond that to which they would otherwise have been exposed, and whether PNM should be denied recovery of future decommissioning expenses as a remedy for imprudence.[4]

In addressing the issues, I discuss the following:

(1) The utility industry's use of sale-leaseback financing for assets, including nuclear assets.

(2) Whether PNM's decision to abandon the leased interest associated with the 114 MW leased interest in Palo Verde was reasonable and prudent.

[2] Accounting Order, Ordering Para. E, p. 8.
[3] Accounting Order, Ordering Para. D, p. 7.
[4] Accounting Order, Ordering Para. C, p.7.

(3) The reasonableness of PNM's recovery of capital costs associated with leasehold improvements after the expiration of the Palo Verde 114 MW leased interest in 2023 and 2024.

(4) The history of PNM's obligation related to the decommissioning of the leased PVNGS interests, the reasonableness of this obligation, and the impact of the finding of imprudence related to a portion of these obligations as they pertain to the leased interests.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A. I graduated from Purdue University with a Bachelor of Science degree in Mechanical Engineering. I also completed twelve post graduate level courses in Business Administration at Indiana State University.

I began my career in 1991 as a staff engineer at Duke Energy Indiana's Cayuga Generating Station. Since that time, I held various roles of increasing responsibility in the operations, engineering, maintenance and strategy areas, including the role of station manager, first at Duke Energy Kentucky's East Bend Generating Station, followed by Duke Energy Ohio's Zimmer Generating Station.

I was named General Manager of Analytical and Investment Engineering in 2010. In this role, I began providing leadership in modernizing one of the largest

fossil fuel generating fleets in the county. This involved supporting and directing the analysis of plant abandonments and new resource replacements in addition to setting lifecycle strategy for the remaining plants in the fleet. This included carrying out all facets of environmental compliance planning for the coal plants that would remain in operation. In this role, I was also responsible for financial and engineering analysis of capital upgrade projects as well as project controls for the company's fleet of nuclear, fossil, and hydroelectric plants.

Following the merger between Duke Energy and Progress Energy, I became the Vice President of Central Services. In this position, I had oversight of 500 employees and responsibility for engineering, environmental compliance planning, generation and regulatory strategy, NERC and regulatory compliance, technical services and maintenance services for the company's fleet of 89 fossil and hydroelectric power plants in North Carolina, South Carolina, Ohio, Indiana, Kentucky and Florida.

In 2019, I began providing strategic and regulatory consulting services primarily to clients undertaking transitions in the production or sourcing of their electricity.

In the last 12 years, in multiple states, I have sponsored 64 testimonies in regulatory proceedings, including base rate, fuel, certificate of public convenience and necessity, plant abandonment and environmental cases.

I became President and Chief Executive Officer of Pegasus-Global in October 2022. My experience and qualifications, including the regulatory cases in which I have submitted testimony, are attached as PNM Exhibit JAM-1.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. After the summary of the key conclusions, I present industry information on the history of sale-leaseback arrangements. I then discuss nuclear and coal unit abandonment/retirements, along with regulatory treatment of the residual costs of these actions. I discuss the specifics of the Palo Verde Units 1 and 2 leases, including the reasonableness of the abandonment of the leases, the appropriateness of recovery of the costs of the leasehold improvements, and the establishment of a regulatory asset for recovery of the residual costs. Finally, I discuss PNM's obligations related to nuclear decommissioning.

II. SUMMARY OF KEY CONCLUSIONS

Q. WHAT ARE THE KEY CONCLUSIONS OF YOUR TESTIMONY?

A. PNM's proposal to recover the residual costs associated with the Palo Verde Units 1 and 2 lease agreements is reasonable, prudent and is the appropriate course of action in light of the ongoing costs of operation as compared to the cost of procuring alternatives. The sale-leaseback arrangements were common in the industry at the times these agreements were entered into. The structure of the Palo Verde Units 1 and 2 lease agreements is in line with similar agreements made at the time,

including provisions such as passive investors with no decision-making authority over budgets, operations, maintenance and capital expenditures, and no impact to license conditions.

While the abandonment/retirement of nuclear and coal assets is unusual and infrequent for individual utilities, it is common in the industry and review of how other abandonment/retirements have been treated is instructive for analyzing PNM's actions in this case. State utility commissions have generally allowed recovery of unrecovered costs through a regulatory asset or securitization. I also conclude that the Company should be allowed to recover through the establishment of regulatory assets the undepreciated capital investments for the Palo Verde Units 1 and 2 as of the dates of the lease expirations because:

(1) the Commission approved the terms of the leases whereby PNM was responsible for leasehold improvements. These types of arrangements were approved by this and other regulatory bodies on the basis of the benefits to customers.

(2) the investments were and are necessary for PNM customers to receive the benefits of the sale-leaseback transactions. Capital improvements are necessary for regulatory compliance and to ensure PVNGS is available to serve load through the end of the lease terms.

(3) these investments were prudently incurred and necessary for Palo Verde to continue to provide safe and reliable service to PNM customers

through the end of the lease terms. The process for vetting the investments is sound and ensures the reasonableness of the investment decisions.

(4) the Commission previously approved rates based on the inclusion of these investments in rate base as well as the applicable depreciation schedule.

(5) the regulatory compact necessitates that utilities have an opportunity to recover prudently incurred costs such as those associated with the Palo Verde leases. Recovery provides the appropriate incentive for PNM to make the appropriate decisions on behalf of customers when newer and lower cost energy resources become available; and

(6) even with recovery of the undepreciated investments, PNM customers will still realize a cost savings compared to PNM repurchasing the Palo Verde lease interests. The abandonment decision will provide benefits to customers.

I also conclude that PNM did not expose customers to additional financial liability beyond that to which they would have been exposed had PNM chosen to abandon the leased PVNGS capacity. My conclusion is based on evidence which demonstrates that PNM would have retained responsibility for its share of the ultimate PVNGS decommissioning costs regardless of whether the assets continued to be in PNM's generation portfolio.

III. ASSESSMENT PROCESS

Q. HOW DID YOU UNDERTAKE YOUR ASSESSMENT?

A. I reviewed documentation from previous PNM regulatory cases involving the use of sale-leasebacks, resource planning and abandonment decisions, as well as cases from within the electric industry. I also reviewed pertinent terms of the underlying leases and participated in multiple meetings with PNM personnel. I also reviewed relevant industry information. Finally, I drew heavily from my experience over the past 10 years with power plant abandonment analysis, decision making and rate treatment.

Q. WHAT INDUSTRY AND COMPANY DOCUMENTATION DID YOU REVIEW TO SUPPORT YOUR TESTIMONY?

A. I reviewed past petitions, testimonies and orders from the original Palo Verde Units 1 and 2 Certificate of Public Convenience and Necessity cases, the San Juan Units 2 and 3 abandonment case, the PNM 2015 base rate case, the San Juan Units 1 and 4 abandonment case, the 2017 integrated resource plan, the 2020 integrated resource plan stakeholder process information, as well as the 2021 proceeding on the decertification of 114 MWs of PVNGS and approval of replacement assets. Industry articles, presentations and reports were also reviewed as part of my analysis. I also reviewed numerous orders and related filings associated with abandonment/retirement of nuclear and coal-fired units across the U.S.

IV. INDUSTRY USE OF SALE-LEASEBACK FINANCING WAS AND IS COMMON IN THE UTILITY INDUSTRY AND PROVIDES CUSTOMER SAVINGS

Q. WHAT IS A SALE-LEASEBACK?

A. A sale-leaseback is an alternative means of financing that became prevalent in the utility industry in the 1980's. The Economic Recovery Tax Act of 1981[5] ("ERTA") was a key driver of these arrangements. The ERTA provided for an investment tax credit of 10 percent on investment in qualified property. The Act also included the Accelerated Cost Recovery System, which changed the rules for depreciating assets purchased from 1980 to 1986. Typically, these arrangements involved an asset sale to a private equity investor, who then leased the asset back to the original owner. The investors typically leveraged the assets with 60 to 80 percent debt. This arrangement produced a lower cost-of-capital than that of a traditional investor-owned utility.

Q. WHY WERE SALE-LEASEBACK TRANSACTIONS USED BY UTILITIES?

A. Large capital expenditures coupled with high interest rates placed financial strains upon many public utilities during the early- and mid-1980's. Further, customer "rate shock" would occur when these large investments were added to the utility rate base. Sale-leaseback transactions provided a mechanism to relieve utilities

[5] Pub.L 97-34

from some of the financial strain and lower the initial rates to customers. Tax reform enhanced this benefit, resulting in the successful completion of several sale-leaseback transactions from 1981 through 1987, as discussed below.

In addition, utilities often found that the available tax credits that resulted from their large capital expenditures exceeded their taxable earnings, so unused tax credits built up. The sale-leaseback transactions allowed the buyers to take advantage of the tax credits, which allowed the buyers to reduce the lease payments, to the benefit of customers.

Q. HAVE THERE BEEN CHANGES TO THE FEDERAL TAX CODE THAT AFFECTED THE USE OF SALE-LEASEBACK TRANSACTIONS?

A. Yes. The Tax Reform Act of 1986[6] eliminated many of the benefits of the investment tax credit as well as changed the method allowed for depreciation. Thus, the number of sale-leaseback transactions quickly declined.

Q. HOW DID CUSTOMERS BENEFIT FROM SALE-LEASEBACK FINANCING OF UTILITY RESOURCES?

A. Sale-leaseback financing provided several benefits to utility customers through the better utilization of tax credits, effectively lowering the cost-of-capital and eliminating the construction financing from the utility's books and the rate base.

[6] Pub.L 99-514

The cost-of-capital and depreciation were converted to a more levelized cost of service as part of the utility's operating rates. Under traditional ratemaking, the utility would bring the cost of the new plant into its rate base, increasing the rates significantly and then slowly reducing them over time as the rate base value declined. Sale-leaseback financing through the utilization of tax incentives and lower costs of capital can generally generate significant savings to the customer in comparison to traditional ratemaking.

By entering into a sale-leaseback transaction, the cost of financing was reduced, debt on balance sheets relieved, rate shock decreased, and a positive net present value to customers was achieved.

Q. HOW COMMON WERE SALE-LEASEBACK TRANSACTIONS RELATED TO UTILITY PLANTS?

A. My review found fourteen utility company sale-leaseback transactions of significance for the period of 1980 through 1988. Seven were related to nuclear assets, five were coal assets, and two were transmission lines. Five of the seven nuclear transactions were related to Palo Verde. The two remaining nuclear transactions included one by Ohio Edison and one by Philadelphia Electric. The Philadelphia Electric transaction did not transfer ownership of the asset but involved the transfer of investment tax credits that could not be used by

Philadelphia Electric. Ohio Edison received approval for transactions involving Perry Unit One and Beaver Valley Unit 2.

The coal asset transactions were by Tucson Electric, Montana Power, Portland Gas and Electric, Catalyst Energy Development, and Centurion Energy. The transactions are summarized in the table below.[7]

AUTUMN 1995, VOLUME 34, NUMBER 4 53

Table 1—Electric Utility Sale and Leaseback Transactions

Company	Announcement Date	Transaction Description	Amount ($ millions)
Portland General Electric	June 1978	Headquarters building	$57
Philadelphia Electric	December 1981	Tax benefit transfer—nuclear plant	$53.7
Public Service NM	January 1985	Transmission line	$68
Public Service NM	November 1985	Percentage interest in nuclear power plant	$400
Tucson Electric	Late 1985	Coal plant	$850
Montana Power	December 1985	Percentage interest in coal plant	$292
Portland General Electric	January 1986	Percentage interest in coal plant	$233
El Paso Electric	August 1986	Percentage interest in nuclear power plant	$502
Public Service NM	August 1986	Percentage interest in nuclear power plant	$415
Niagara Mohawk	November 1986	Transmission line	$100
AZP Group	December 1986	Percentage interest in nuclear power plant	$491
Catalyst Energy Development	January 1987	Coal plant	$705
Ohio Edison	April 1987	Percentage interest in nuclear power plant	$509
Centerior Energy	June 1987	Percentage interest in coal plants	$1,000
El Paso Electric	January 1988	Percentage interest in nuclear power plant	$250
CMS Energy	June 1990	Cogeneration plant	$1,541

Q. WHAT OTHER NUCLEAR SALE-LEASEBACKS HAVE YOU REVIEWED?

A. I reviewed the available Nuclear Regulatory Commission ("NRC") documents that involved Ohio Edison's application and approval of their sale-leaseback

[7] Moyer, R. Charles, and V. Sivarama Krishnan. "Sale and Leaseback Transactions: The Case of Electric Utilities." Quarterly Journal of Business and Economics, vol. 34, no. 4, 1995, pp. 46–59. JSTOR, www.jstor.org/stable/40473156. Accessed 5 May 2020. I have not independently verified the dollar amounts for the transactions. The purpose of the table is to show that electric utility sale-leaseback transactions were common in the late 1970s through around 1990.

transactions for Perry Unit One[8] and Beaver Valley Unit 2.[9] The documents include discussions linking their review to those of Palo Verde. PNM was the first sale-leaseback transaction involving a nuclear facility and was truly groundbreaking. Every subsequent transaction, including those that occurred after the 1987 period (Waterford and Grand Gulf),[10,11] was patterned after the initial PNM transaction. The documents indicate the same conditions as those found in the Palo Verde leases – passive investors, no decision-making authority over budgets, operations, maintenance and capital expenditures, and no impact to license conditions.

V. INDUSTRY EXPERIENCE WITH ABANDONMENT OF UTILITY ASSETS

A. Abandonment/Retirement of Utility Assets is Common

Q. WHY WOULD A UTILITY ABANDON AN ASSET SUCH AS A POWER PLANT?

A. In simple terms, a utility would abandon an asset when it is no longer able to perform OR when there is an opportunity to optimize generation sources and the overall cost to serve customers through introduction of alternative resources. In some cases, an asset is determined to be unusable going forward, such as in the case of the Crystal River Nuclear Station in Florida and the San Onofre Nuclear Station

[8] NRC Docket No. 50-440, Federal Register Notice, License No. NPF-58, February 5, 1987.
[9] NRC Docket No. 50-412, Amendment No.1, License No. NPF-73, September 23, 1987.
[10] NRC Docket No. 50-382, Amendment 57, License No. NPF-38, September 18, 1989.
[11] NRC Docket No. 50-416, Amendment 54, License No. NPF-29, December 19, 1988.

in California. In the case of Diablo Canyon (discussed below), Pacific Gas & Electric ("PG&E") determined that the capacity was not needed and did not pursue relicensing, planning to allow the license to expire. In the case of many coal plants, the assets could have continued to operate but were no longer being economically dispatched as base load generation. These coal plants still had fixed operations and maintenance costs and may have been facing large expenditures for environmental upgrades.

Q. ARE THERE OTHER EXAMPLES OF UTILITIES ABANDONING/ RETIRING ASSETS?

A. Many. The most common way that utilities abandon assets is by retiring the assets. According to the US Energy Information Administration ("EIA") in July 2019, U.S. power companies announced the retirement of more than 546 coal-fired power units, totaling about 102 gigawatts ("GW") of generating capacity, with plans to retire another 17 GWs by 2025. Similarly, EIA noted in March 2019 that seven nuclear plants were retired since 2013 with a combined capacity of 5.3 GWs. [12]

With respect to nuclear capacity, I examined a number of these in preparation of my testimony. As referenced above, Duke Energy Florida retired Crystal River 3, San Diego Gas and Electric ("SDG&E") and Southern California Edison ("SCE")

[12] From EIA website, *More U.S. coal-fired power plants are decommissioning as retirements continue,* Today in Energy, July 26, 2019, https://www.eia.gov/todayinenergy/detail.php?id=40212; *Despite closures, U.S. nuclear electricity generation in 2018 surpassed its previous peak,* Today in Energy, March 21, 2019, https://www.eia.gov/todayinenergy/detail.php?id=38792

retired the San Onofre nuclear power plant, and PG&E planned to retire the Diablo Canyon nuclear plant, which I discuss further below. I also examined a number of coal plant retirement and abandonment cases. I discuss the regulatory treatment of coal plant undepreciated assets below.

B. Regulators Have Generally Allowed Utilities To Recover Residual Costs Associated With Retirement/Abandonment

Q. HOW HAVE REGULATORS TREATED THE REMAINING COSTS ASSOCIATED WITH RETIREMENTS/ABANDONMENTS OF NUCLEAR AND COAL PLANTS?

A. The three nuclear abandonment cases I noted above involved very large residual costs. The Florida Public Service Commission ("FPSC") approved the securitization of $1.3 billion of regulatory assets associated with Crystal River 3. The Florida legislature established this option as a way to lower customer costs for nuclear plant retirements, according to the Chair of the Florida PSC.[13]

The California Public Utilities Commission ("CPUC") approved a settlement in the San Onofre retirement case which allowed SDG&E and SCE to recover their undepreciated net investments in the plant, with some exclusions, at a lower shareholder Return on Equity than approved in the most recent general rate case.[14]

[13] Florida PSC news release dated 11/17/2015, *PSC Approves Crystal River 3 Nuclear Plant Financing*; Duke Energy Carolinas Securities and Exchange Commission 10-K filing for 2016.
[14] California PUC news release dated 11/20/2014, *CPUC Approves San Onofre Settlement that Returns $1.45 Billion to Consumers.*

The CPUC approved a settlement in the Diablo Canyon retirement case which allowed PG&E to recover its remaining capital investments prior to plant retirement plus a portion of additional costs related to the abandoned license renewal project and cancelled capital projects.[15]

In my review of state regulatory treatment related to the retirement/abandonment of coal plants, I found that the vast majority provided for recovery of the undepreciated assets either through establishment of a regulatory asset or securitization of the costs.[16]

Q. WHAT IS THE RELEVANCE OF ABANDONMENT/RETIREMENT OF COAL PLANTS?

[15] California Utilities Commission Decision 18-01-022 in Application 16-08-006 dated January 16, 2018, *Decision Approving Retirement of Diablo Canyon Nuclear Power Plant*. On September 2, 2022, California State Senate Bill SB 846 (Stats. 2022, Ch. 239) was signed into law. SB 846 allows for the extension of the operation of Diablo Canyon Units 1 and 2 beyond the current retirement dates under specific conditions as provided. The law states however that the bill "does not alter the recovery of costs, including those previously approved by the [California Utilities Commission], to operate Diablo Canyon Units 1 and 2 until the current expiration dates." Section 712.8(m) of SB 846.

[16] For example, the Public Utilities Commission of Nevada approved Nevada Power's amortization of the net book value of the Reid Gardner plant as a regulatory asset over the requested 6-year period. (PUC Nevada Docket Nos. 17-06003 & 4, Order dated December 28, 2017.) The North Carolina Utilities Commission approved Progress Energy Carolinas' request to amortize over 10 years the undepreciated investment associated with the abandoned Asheville coal plant. (NCUC Order in Docket No. E-2, Sub 1142, Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase, dated February 23, 2018). In addition, while I focused mainly on coal and nuclear, I also found that the Florida PSC approved establishing a regulatory asset for the remaining book value of the FP&L's Lauderdale 4 and 5 and Martin Units 1 and 2, natural gas fired plants. (Florida PSC Order No. PSC-2019-0045-PAA-EI, Docket No. 20180155, dated January 22, 2019.) The Florida PSC also approved Gulf Power's request to recover the remaining undepreciated book value and remaining inventory of Plant Smith. (Florida PSC Docket No. 2016-0186-EI, Order No. PSC-17-0178-S-EI, dated May 16, 2017.) The Alabama Public Utilities Commission issued a blanket order in 2011 allowing Alabama Power Company to recover costs associated with plant retirements. (Alabama PUC, Informal Docket No. U-5033, September 7, 2011.) The Public Service Commission of Kentucky allowed Kentucky Power to establish a rider to recover the costs of retiring Big Sandy Unit 2, amortizing the costs over a period of time. (Kentucky PSC Docket No. 2012-00578, Order dated June 22, 2015.) The Michigan Public Service Commission allowed Consumers Energy to issue securitization bonds to finance the recovery of the remaining book value of the seven coal units discussed above. (Michigan PSC Case No. U-17453, order dated December 6, 2013.)

A. Regulatory treatment of the abandonment/retirement of owned assets, regardless of fuel source, is instructive for leased assets due to the similarity of the regulatory and accounting issues. Regardless of the fuel source and whether the asset was leased or owned, there are likely residual costs that must be dealt with. In one respect, abandonment of a leased plant is simpler because the original plant costs are not in rate base with an unrecovered net book value. However, whether the asset is owned or leased, the utility has been responsible for capital improvements for which the net book value remains on the utility's books. Therefore, to the extent that regulators have allowed recovery (through amortization or securitization where allowed by law) of the original plant, adjusted for accumulated depreciation plus capital improvements over the years the plant was in service, such actions demonstrate that recovery is normally approved.

VI. PALO VERDE UNITS 1 AND 2

C. The Sale-Leaseback Agreements Were Undertaken for The Benefit of Customers and Were Approved By This Commission

Q. WERE THE SALE-LEASEBACK ARRANGEMENTS PROJECTED TO BE BENEFICIAL TO CUSTOMERS AT THE TIME THE ARRANGEMENTS WERE EXECUTED?

A. Yes. As PNM's then CFO, Albert Robison, testified in Case No. 2019, Phase I, "The sale and leaseback financing of the facilities will provide benefits to PNM's customers through two channels. First, the net present value of capital costs (and

the total nominal costs) will be reduced by transfer of tax benefits and the recapitalization of the plant financing with greater debt leverage. Second, the revenue requirements will be levelized over the life of the plant …." In addition, New Mexico Public Service Commission Utility Economist Phil Valdez explained in his testimony that the lease payment represented a lower cost-of-capital than would ownership under PNM's composite cost-of-capital because the new owners would recapitalize the plant with greater debt leverage. He further explained that PNM's tax situation was such that it could not take full advantage of tax benefits at that time. The sale transferred the benefits of tax depreciation to the lessors.[17]

Q. AT THE TIME OF THE PALO VERDE SALE-LEASEBACKS, WHAT WERE THE PROJECTED FINANCIAL BENEFIT TO CUSTOMERS?

A. The Company originally estimated in Case Nos. 1995 and 2019 a $259.6 million (1986 dollars) savings in present worth savings to customers under traditional ratemaking for PNM's leased interest in Palo Verde Units 1 and 2.[18] That is equivalent to approximately $703 million in 2022 dollars.

As described earlier, the acquiring parties were able to utilize significantly more debt in their financing and take more advantage of tax incentives. Also, this

[17] NMPRC Case No. 2019, PNM's Application for approval of the Palo Verde Sale-Leaseback Agreements, February 1986, Robison Exhibit AJR-3, page 2, Valdez Direct Testimony, page 2.
[18] NMPSC Case No. 1995, *Final Order,* dated November 27, 1985, paragraph 15 at p. 5, and Case No. 2019, Phase I, *Final Order,* dated July 8, 1986, p. 4.

financing had the effect of levelizing costs that were included in rates and reducing initial rate shock for customers.

Q. WHAT WERE THE TERMS ASSOCIATED WITH THE END-OF-LEASE IN PNM'S ORIGINAL AGREEMENTS?

A. The Palo Verde sale-leaseback transactions provided PNM the right to repurchase the Palo Verde ownership interests upon final expiration of the leases. The operating assumption at the time of the sale-leaseback transactions was that PNM would reacquire the ownership interests in Palo Verde at the end of the leases in accordance with the lease terms.

Q. DID THE NEW MEXICO COMMISSION APPROVE PNM'S SALE-LEASEBACK TRANSACTIONS FOR PVNGS?

A. Yes, the Commission approved the original sale-leaseback transactions in Case Nos. 1995 and 2019.[19]

D. PNM'S Abandonment Decision Is Reasonable In Light of Improvements In Alternative Technologies

Q. WHAT ACTION HAS THE PRC TAKEN ON THE ABANDONMENT OF THE LEASES?

[19] NMPSC Case No. 1995, *Final Order*, dated November 27, 1985, NMPRC Case No. 2019, Phase I, *Order Approving Stipulation and Phase I of the Application*, dated July 8, 1986, and Phase II, *Final Order*, dated July 8, 1986.

A. In Case No. 21-00083-UT, the Commission dismissed with prejudice PNM's request to decertify and abandon the PVNGS leased assets, adopting the portion of the Hearing Examiner's Recommended Decision which found that "the Commission has effectively already granted PNM authority to abandon the PVNGS Leased Interests when they terminate" based on the Commission's previous approval of the PVNGS leases in Case Nos. 1995 and 2019.[20]

In the Accounting Order, the Commission ordered PNM to establish a regulatory liability account to track all costs associated with the expiration of the leases and allowed PNM to establish regulatory asset accounts to track the undepreciated investments associated with the expiration of the 104.1 MW Leased Interests for Palo Verde Unit 1 and the 10.42 MW Leased Interest for Unit 2, noting that PNM "may seek ratemaking treatment of those assets in its future rate case."[21] My testimony speaks to PNM's request to recover costs associated with the leases. The first step to cost recovery is establishment of the prudency of the utility's actions. For the reasons stated below, I conclude that PNM acted appropriately in deciding to abandon the leases and to replace that capacity with other resources. In reaching this conclusion, I have examined the decision to abandon from an overall industry perspective.

[20] NMPRC Case No. 21-00083-UT, *Partial Order on Recommended Decision*, dated August 25, 2021, p. 5-6, and *Recommended Decision on Motions to Dismiss*, dated July 28, 2021, p. 15-16.
[21] Accounting Order, Ordering Paras. A and B, pp. 6-7.

Q. HAVE YOU REVIEWED PNM'S ANALYSIS SUPPORTING THE ABANDONMENT OF THE LEASEHOLDS FOR PALO VERDE UNITS 1 AND 2?

A. Yes.

Q. DOES PNM'S ABANDONMENT OF 114 MW OF LEASED CAPACITY IN PALO VERDE UNITS 1 AND 2 MEET THE COMMISSION'S STANDARD FOR ABANDONMENT?

A. Yes. The Commission has used the *Commuters' Committee* standard in past cases. In this case, the Commission has already determined that it approved the abandonment of the leases at the time it originally approved the leases, but I reviewed the decision by PNM to abandon the leases to determine if PNM's actions meet the Commission's established standards for abandonment. The arguments in this case are very similar to the arguments presented by the Company and accepted by the Commission with regard to the abandonment of San Juan Units 1 and 4 in Case No. 19-00018-UT. The abandonment and subsequent replacement of the capacity will cause no hardship on customers; in fact, customers will benefit from the savings associated with PNM's plan.

Q. WHAT FACTORS INFLUENCED THE DECISION TO ABANDON THE LEASES?

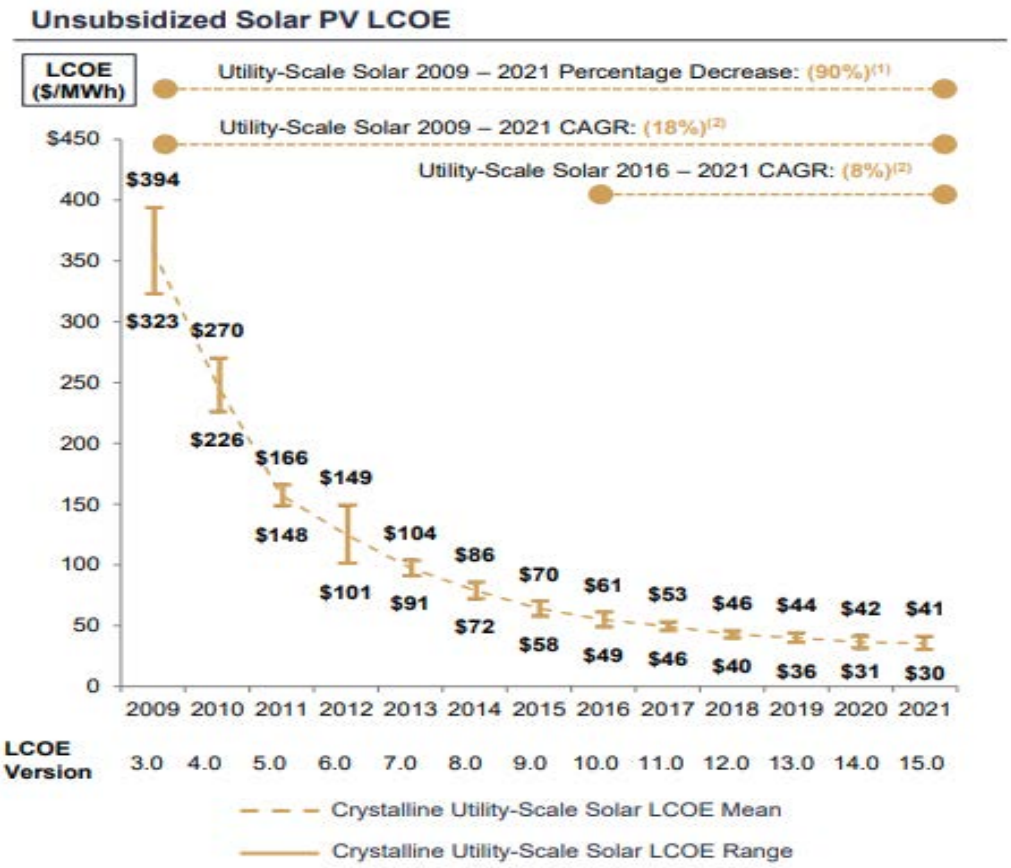
A. As described in more detail below, advancements in technology have created more cost-effective options for customers while also ensuring reliability. The opportunity to examine alternative resources arises as a result of the expiration of the leases.

Q. WHAT ADVANCES HAVE BEEN MADE IN GENERATION RESOURCE ALTERNATIVES IN RECENT YEARS?

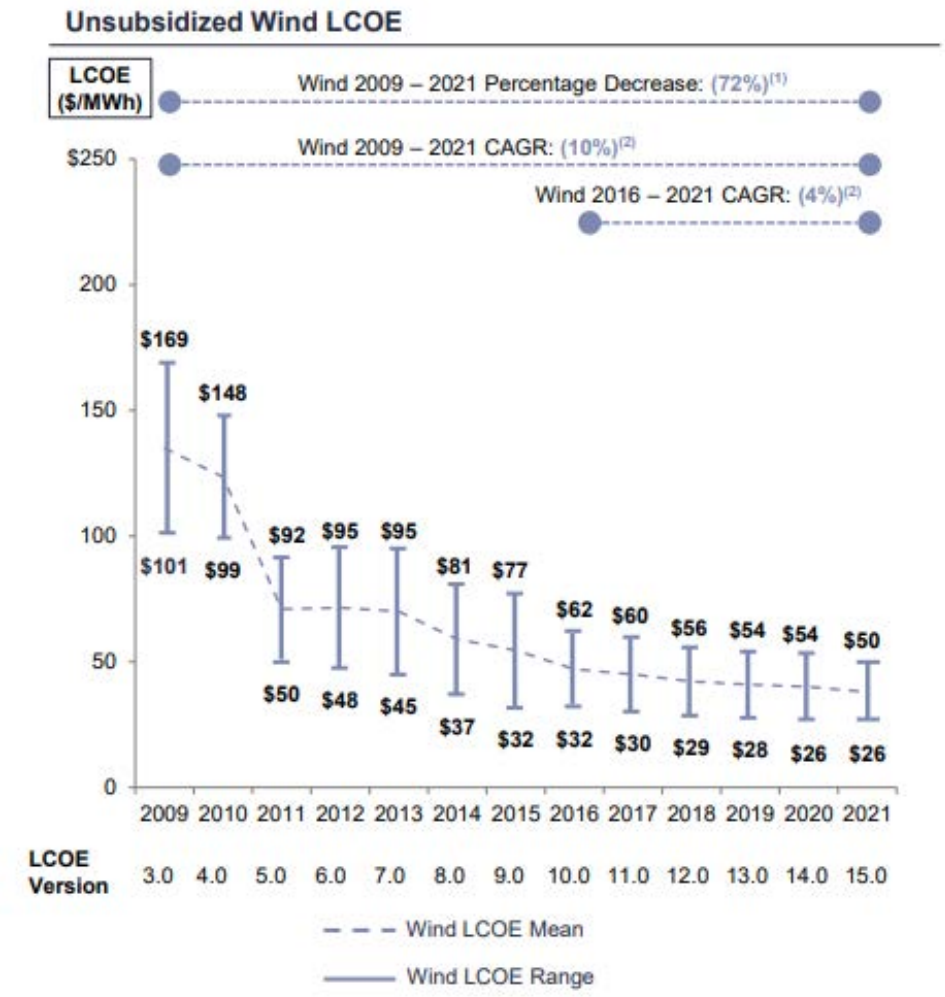
A. Significant cost advancements in renewables have occurred in the past few years primarily due to developments in technology and manufacturing process efficiency. PNM Figures JAM-1 and JAM-2 below show the falling cost of utility-scale solar and on-shore wind technologies, respectively, without any subsidization included.[22] The charts below contain the historic levelized cost of energy ("LCOE") which is a measure of the average cost of electricity over the life of an asset.

PNM Figure JAM-1. Levelized cost of energy for utility-scale solar without tax subsidies

[22] From the Lazard website, *Levelized Cost of Energy, Levelized Cost of Storage, and Levelized Cost of Hydrogen*, October 28, 2021. https://www.lazard.com/media/451905/lazards-levelized-cost-of-energy-version-150-vf.pdf



PNM Figure JAM-2. Levelized cost of energy for onshore wind without tax subsidies

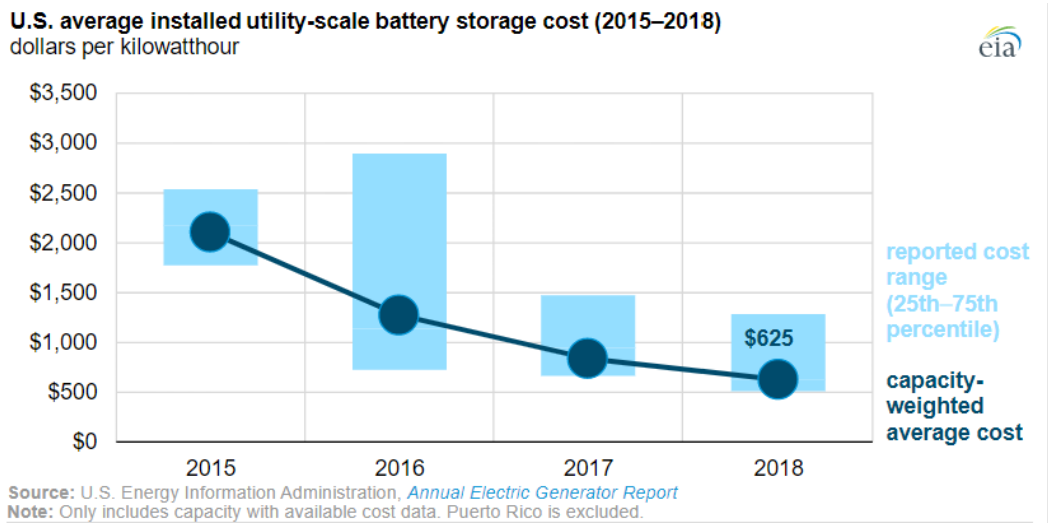


The charts above also provide perspective on the amount of reduction in renewable prices that has occurred since 2012 and 2013 when the original lease extension decisions were required. PNM received utility-scale solar pricing from the 2020 Request for Proposals ("RFPs") below $20/MWh, inclusive of subsidization.

PNM Figure JAM-3 shows utility-scale battery storage costs decreased by nearly 70% between 2015 and 2018.[23]

[23] From the EIA website, *Today in Energy*, October 23, 2020. https://www.eia.gov/todayinenergy/detail.php?id=45596

PNM Figure JAM-3. Utility-scale battery storage cost reduction



PNM received utility-scale battery storage pricing below $200/kWh from the 2020 RFPs.

E. Recovery of Costs Associated with PVNGS Leasehold Improvements

Q. HOW ARE CAPITAL IMPROVEMENTS TREATED IN THE PALO VERDE UNITS 1 AND 2 LEASE AGREEMENTS?

A. The PVNGS leases as approved by the Commission specifically require PNM to be responsible for capital improvements for the PVNGS leased assets and to maintain the facilities in commercial operating condition during the lease terms. These requirements were necessary for the consummation of the sale-leaseback transactions. Thus, PNM is responsible for the cost of all necessary capital improvements associated with their leased interests. Ownership of these capital

improvements is vested in the lessors. In my experience, these are common provisions for leased property.

Q. HOW ARE THE COSTS OF THE LEASEHOLD IMPROVEMENT RECOVERED?

A. Leasehold improvements are treated as capital expenditures, booked to "plant in service", and included in rate base for which the utility has an opportunity to earn a return of and on the expenditures. In a subsequent rate proceeding, a utility must demonstrate that the expenditures were prudently made and that the assets are "used and useful."

For the purposes of discussing prudency and the concept of "used and useful," I have categorized these costs into two groups:

1) Costs for capital improvements (including the PVNGS switchyard, transmission, and common facility assets ("PVNGS STC costs")) that have already been subject to Commission review and approval through the ratemaking process. This would include all costs of improvements as of the last general rate case for PNM in 2016 (Case No. 16-00276-UT).

2) Costs for capital improvements (including any PVNGS STC costs) that have been or will be incurred since the last rate case up until at the time of lease expirations.

For both categories, PNM is proposing in this proceeding to record the remaining undepreciated investments in the capital improvements as regulatory assets for recovery. I will discuss each of these below.

Q. LOOKING AT THE COSTS THAT WERE INCLUDED IN RATES PREVIOUSLY, HAVE THESE COSTS BEEN FOUND TO BE PRUDENTLY INCURRED?

A. Yes. Historically, PNM has been authorized to recover its share of these prudently incurred capital investment costs in the normal course of ratemaking. This Commission has allowed rates to be set based on the inclusion of these costs in PNM's rate base. In PNM's 2015 rate case (Case No. 15-00261-UT), the Commission concluded that PNM had not conducted an adequate analysis of available alternative resources at the leases' initial deadline for PNM to return the assets, extend the period of the leases at half the original lease payment amount, or repurchase the leases at a fair market price to be determined after notice was given to the lessors. While the Commission concluded PNM's decision-making was flawed, it concluded that the PVNGS interests remained certificated, used and useful plant necessary to service customers. The Commission also concluded that the reduced payment amount for the 114 MW of Leased Interests had been pre-approved by the Commission and was reasonably recovered in rates, along with the associated leasehold improvement investments for those interests.[24] In PNM's

[24] NMPRC Case No. 15-00261-UR, *Final Order Partially Adopting Corrected Recommended Decision*, dated September 28, 2016, p. 35.

most recent rate case (Case No. 16-00276-UT) the Commission accepted the revenue requirements associated with the leasehold improvements for PVNGS.

Q. PLEASE ADDRESS THE SECOND CATEGORY OF COSTS RELATED TO CAPITAL IMPROVEMENTS SINCE THE LAST RATE CASE.

A. The second category is costs for capital improvements that have been incurred or will be incurred up until the time of the lease expirations. PNM, as the lessee under the PVNGS leases, is required and will continue to be required to make capital investments in PVNGS up until the time leases expire. PNM witness Heffington discusses the process for making capital investment decisions for PVNGS. As part owner of PVNGS, PNM has a vote in the decisions in proportion to its generation entitlement shares. As noted by Mr. Heffington, these investments were and are necessary for the continued safe and reliable operation of PVNGS and to comply with the requirements of the NRC. The capital investments for PVNGS undergo a rigorous review process by the plant owners and PNM is contractually obligated to pay for its share of these costs. These capital investments, made on behalf of PNM customers, are necessary in order for customers to receive the benefits provided by the leased capacity of the last three plus decades. The measurement of prudency for these investments should be the same as for the capital investments to date. PNM has historically been authorized to recover its share of these prudently incurred capital investment costs in the normal course of ratemaking.

Q. HOW IS PNM SEEKING TO RECOVER THE UNDEPRECIATED LEASEHOLD IMPROVEMENTS THAT PNM WILL INCLUDE IN THE REGULATORY ASSET ACCOUNTS AS ALLOWED BY THE ACCOUNTING ORDER?

A. PNM is requesting approval to include the recovery over a 20-year period of the costs in these regulatory assets as part of the revenue requirements in this rate case. Specifically, PNM is seeking recovery of regulatory assets for (1) PNM's undepreciated investments for the leasehold in PVNGS Unit 1 in the amount of $89 million; (2) PNM's undepreciated investments for the leasehold in PVNGS Unit 2 in the amount of $7.3 million; (3) PNM's costs of obtaining the approval of the replacement resources in the amount of $1.6 million; and (4) $0.3 million for the estimated difference in proceeds from the sale of the 114 MW to the Salt River Project Agricultural Improvement District ("SRP") and the actual book value of the associated PNM-owed PVNGS assets and fuel supply. The inclusion of these costs in the revenue requirements would allow PNM the opportunity to fully recover these costs as well as a reasonable return on these investments. I address the proposed recovery related to the undepreciated investments in PVNGS Units 1 and 2.

F. Recovery of Residual Costs Associated with The Expiration of The Leases Is Reasonable and Prudent and Encourages Sound Investment Decisions by Utilities

Q. PLEASE ADDRESS THE UNDEPRECIATED COSTS THAT WILL EXIST AT THE TIME OF THE EXPIRATION OF THE LEASES. FIRST, WHAT ARE THE COSTS ASSOCIATED WITH EXPIRATION OF THE LEASES?

A. PNM witness Sanders describes the specific costs associated with the expiration of the leases for which PNM is requesting establishment of regulatory assets. As explained by PNM witness Sanders, PNM started with the net book value of the undepreciated existing assets as of June 30, 2022. PNM included additional capital improvements made through the expiration of the leases, net of accumulated depreciation through the remaining life of the leases. The value was increased by estimated Construction Work in Progress as of the date the leases expire. PNM decreased the value to account for the proceeds from the sale of certain assets to SRP.

Q. WHAT IS THE EXPECTED UNDEPRECIATED INVESTMENT AMOUNT THAT WILL BE ON PNM'S BOOKS IN 2023 AND 2024 AT THE END OF THE LEASE TERMS?

A. As described in the direct testimony of PNM witness Sanders, it is expected that $96.3 million will remain.

Q. WHY IS PNM'S REQUEST FOR RECOVERY OF THESE REGULATORY ASSETS REASONABLE AND APPROPRIATE?

A. I discuss below why the recovery of these regulatory assets is reasonable and an appropriate method of recovery for these costs that are no longer in service. The "regulatory compact" requires the recovery of these assets to keep incentives aligned between PNM shareholders and PNM customers.

Q. PLEASE SPEAK TO THE CONCEPT THAT A REGULATORY ASSET MUST BE "UNUSUAL" OR "INFREQUENTLY OCCURRING" FOR RECOVERY.

A. In the Accounting Order the Commission ordered the parties to "address the issues raised in [PNM's 2015 rate case] Recommended Decision concerning the GAAP requirement that costs that a utility seeks to include in a regulatory asset must be 'unusual' or 'infrequently occurring'."[25]

The concept of regulatory assets as related to unusual or infrequently occurring costs appears to have arisen in Case No. 21-00083-UT. In the 2015 rate case which the Commission points to in the Accounting Order, the Hearing Examiner raised the issue of what appeared to be more frequent utility requests for creation of regulatory assets and liabilities. Relying on testimony by Attorney General witness Andrea Crane, the Recommended Decision concluded that regulatory assets

[25] Accounting Order, Ordering Para. D,2 p. 7.

"should be the exception, not the norm."[26] The Recommended Decision in Case. No. 21-00083-UT pointed back to this finding and expanded on it, positing that "[GAAP] permit[s] a public utility to defer, through creation of a regulatory asset, 'unusual' or 'infrequently occurring' costs."[27] In the 21-00083-UT case, the Hearing Examiner pointed to two cases where PNM had received approval to abandon and replace San Juan Units 1 and 4 as evidence that undepreciated investments are not "unusual" or "infrequently occurring."[28]

In fact, GAAP does not include a requirement that regulatory assets be "usual" or "infrequently occurring." And the Commission has not applied such a standard to regulatory assets in the past. For example, in the San Juan Generating Station case (Case No. 19-00018-UT), the Hearing Examiners recommended and the Commission adopted a finding that PNM be authorized to create regulatory assets for over $8 million of certain one-time costs that do not qualify as Energy Transition Costs, that would not be securitized, to preserve PNM's ability to recover the costs through amortization in base rates in a future general rate case.[29] In addition, the question of whether costs are "infrequent" or "unusual" has not been the determining factor in whether the costs should result in the creation of a regulatory asset and subsequent recovery. The Recommended Decision in the San

[26] NMPRC Case No. 15-00261-UT, *Corrected Recommended Decision*, dated August 15, 2016, p. 131
[27] NMPRC Case No. 21-00083-UT, *Recommended Decision on Motions to Dismiss*, dated July 28, 2021, p. 19.
[28] NMPRC Case No. 21-00083-UT, *Recommended Decision on Motions to Dismiss*, dated July 28, 2021, p. 22.
[29] NMPRC Case No. 19-00018-UT, *Recommended Decision on Abandonment and Non-Securitized Costs*, dated February 21, 2020, p. 28-29, *Final Order on Request of Public Service Company of New Mexico for Authority to Abandon Its Interest in San Juan Generating Station Units 1 and 4 to Recover Non-Securitized Costs*, dated April 1, 2020, p. 2.

Juan case referenced *N.M. Attorney Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-32, ¶ 18, for the proposition that "[r]egulatory assets are often created to spread out the recovery of nonrecurring costs over a period of years so as to avoid substantial rate increases, which may occur if full recovery was allowed as soon as the utility made an expenditure."[30] In the same rate case where the Hearing Examiner concluded that regulatory assets "should be the exception, not the norm," the Commission adopted PNM's request (and the Hearing Examiner's recommendation) for a regulatory asset related to the impairment of Accumulated Deferred Income Taxes, as well as a regulatory asset for rate case expenses.[31] The Commission noted with regard to rate case expenses that the Hearing Examiner "correctly noted that longstanding Commission practice has been recovery of [rate case] expenses…."[32]

In Case No. 21-0083-UT, the Hearing Examiner in the Recommended Decision stated that:[33]

> Under FASB ASC 980, a rate-regulated utility may capitalize as a regulatory asset an incurred cost that would otherwise be charged to expense if future recovery in rates is "probable." *Robert L. Hahne & Gregory Aliff, Accounting for Pub. Utils., § 12.02[2] (2020); PNM's Consolidated Reply at 12.* A Commission order authorizing creation of a regulatory asset is one basis for a utility's conclusion that future recovery in rates of an incurred cost is probable. *Id.*

[30] *Id.* at 32 n.76 (also *citing City of Corpus Christi v. Pub. Util. Comm'n of Tex.*, 51 S.W.3d 231,244-45 (Tex. 2001)). 19-20.
[31] NMPRC Case No. 15-00261-UT, *Corrected Recommended Decision*, dated August 15, 2016, p. 131, *Final Order Partially Adopting Corrected Recommended Decision*, dated September 28, 2016, p. 62, 66-67.
[32] NMPRC Case No. 15-00261-UT, *Final Order Partially Adopting Corrected Recommended Decision*, dated September 28, 2016, p. 67.
[33] NMPRC Case No. 21-00083-UT, *Recommended Decision on Motions to Dismiss*, dated July 28, 2021, p. 19-20.

I conclude that the costs for which PNM is seeking to establish regulatory assets meet the standard for consideration as a regulatory asset.

Q. IS PNM'S PROPOSAL FOR RECOVERY RELATED TO ABANDONMENTS THROUGH A REGULATORY ASSET CONSISTENT WITH HOW OTHER REGULATORS HAVE TREATED THE ISSUE?

A. PNM's proposal is consistent with how the Commission and other state and federal regulators have interpreted the accounting rules related to abandonments. Accounts for regulatory assets and liabilities are included as part of the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts. Regulatory assets and liabilities are used frequently by utilities across the country with approval from state and federal regulators. Utilities frequently use them for many things in addition to undepreciated costs due to plant retirements prior to full recovery of costs. The controlling standard related to the use of a regulatory asset to recover undepreciated costs associated with abandoned or retired plants is FASB 980-360-35. FASB 980-360-35 establishes that creating a "new asset" is the correct mechanism for accounting for the remainder of costs after abandonment. The criteria for a utility to establish such an asset is whether it is likely that recovery will be allowed by regulators.[34]

[34] https://asc.fasb.org/1943274/2147478654

Establishment of regulatory assets and subsequent recovery of costs is consistent with how other state and federal regulators have interpreted the accounting rules related to abandonments. I note above that utilities commissions across the country have frequently used regulatory assets to allow utilities to recover the costs of facilities for which abandonment was the right decision for customers.

Q. SHOULD THE COMMISSION ADOPT THE "UNUSUAL" OR "INFREQUENTLY OCCURING" STANDARD FOR REGULATORY ASSETS?

A. Not in my opinion. Were such a standard to be adopted, it would logically be applied to both regulatory assets AND regulatory liabilities, limiting the Commission's options for dealing with expenses and income outside the normal ratemaking process. PNM witness Henry Monroy discusses the impacts of such a standard further in his testimony.

However, if the Commission were to adopt the "unusual" or "infrequently occurring" standard outside of GAAP on its own, the residual costs associated with the expiration of the leases would meet this standard. The State of New Mexico's efforts at reducing carbon emissions, retiring fossil fuel generation, and moving to increasingly cost-effective renewable resources have created the unique circumstances and costs associated with PNM abandoning its interests in both Palo Verde and San Juan. When these generating units were built many years ago, it is

likely no one anticipated the circumstances utilities, including PNM, are currently facing with increasing pressure to radically transform their generating systems from large central generation, principally fossil and nuclear powered, to the diverse distributed principally renewable focused generation system that utilities are seeking to create today.

Therefore, I conclude that the expiration of the PVNGS leases event qualifies as an infrequently occurring or unusual cost and that the use of regulatory assets to track and subsequently recover the undepreciated PVNGS leasehold improvements meet accounting standards for consideration as a regulatory asset. While in some cases PNM has the opportunity to take advantage of securitization to address its stranded assets with the transition to a greener generation fleet, regulatory assets remain an important regulatory mechanism to ensure recovery of undepreciated investment over a period of time that is fair to customer rates. The Commission should not impede the beneficial transition to renewables by penalizing utilities, in the form of cost disallowance, of undepreciated investments. In summary, this Commission can and should allow PNM to establish and recover these costs through the use of regulatory assets.

G. PNM's Actions for Palo Verde Meet This Commission's and Other Regulators' Standards for Prudency

Q. DOES THE NEW MEXICO PUBLIC UTILITY ACT REQUIRE PNM TO DEMONSTRATE THAT ITS COSTS INCURRED WERE REASONABLE AND PRUDENT?

A. Yes. It is my understanding that the pertinent standard to be used by the NMPRC is prescribed by the Legislature in the New Mexico Public Utility Act[35], which either explicitly or implicitly requires that PNM demonstrate that its costs incurred are reasonable and prudent in order to be recoverable. The Commission has used this definition of prudency in past cases:

> Prudence is the standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.[36]

Q. IN CONDUCTING YOUR INDEPENDENT ASSESSMENT ARE YOU APPLYING CERTAIN GENERALLY RECOGNIZED PRUDENCE STANDARDS?

A. Yes. In addition to the standard used by the NMPRC, my assessment is founded on the following definition:

> Decisions are prudent if made in a reasonable manner in light of conditions and circumstances which were known or reasonably should have been known when the decision was made.

[35] NMSA 1978, §§ 62-1-1 to 7 (1909, as amended through 1993), 62-2-1 to -22 (1887, as amended through 2013), 62-3-1 to -5 (1967, as amended through 2019), 62-4-1 (1998), 62-6-4 to -28 (1941, as amended through 2018), 62-8-1 to -13-16 (1941, as amended through 2019).
[36] *See PNM v. NMPRC*, 2019-NMSC-012, ¶ 29,444 P.3d 460.

This prudence definition is consistent with the prudence standard Pegasus-Global has applied in multiple jurisdictions and is also consistent with the prudence standard cited in numerous publications on the subject of prudent management decisions.[37] This definition has also been accepted and used by regulators in other jurisdictions; all recognizing that prudence must be evaluated given the circumstances that existed at the time, cannot be made in hindsight, and is made in the consideration of alternative options.

For example, the Ohio Public Service Commission in its Order regarding the prudence of the Perry Nuclear Plant defined prudence as:

> A prudent decision is one which reflects what a reasonable person would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made. [38]

The Ohio Supreme Court adopted this definition in its ruling on the appeal in that case.[39]

In the Examiner's Report regarding the prudent costs of the Comanche Peak Nuclear Plant, the Examiner found that the Texas Commission has consistently adopted the following standard of prudence in light of alternatives available:

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[37] "Cost Recovery for Pre-Approved Projects", Patricia D. Galloway and David Cousineau, *Public Utilities Fortnightly*, June 2013; "New Day for Prudence", Kris R. Nielsen, Patricia D. Galloway and Charles W. Whitney, *Public Utilities Fortnightly*, December 2009; "The Prudency Management Audit – A New Challenge for the Civil Engineer", Kris Nielsen and Patricia Galloway, Transition in the Nuclear Industry, Proceedings of the Symposium Sponsored by the Construction and Energy Divisions of the American Society of Civil Engineers in Conjunction with the ASCE Convention in Denver, Colorado, April 29 – 30, 1985.

[38] Public Utilities Commission of Ohio, Opinion and Order, Case No. 85-521-EL-COI in the matter of the Perry Nuclear Plant, pages 10-11, January 12, 1988.

[39] Cincinnati v. Pub. Util. Comm. (1993), 67 Ohio St. 3d 523, 530 620 N.E.2d 826,830.

> The exercise of that judgment and the choosing of one of that select range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available at the point in time such judgment is exercised, or option is chosen…. This prudence standard does not require perfection. If there is a range of prudent options available to the utility, any choice within the range meets the prudent investment test; the Commission may not substitute its judgment for the utility's judgment by subjectively assessing which of the prudent options is "best"….The prudence standard also precludes the use of hindsight. In other words, the Commission must judge the reasonableness of a decision or conduct solely in light of the circumstances, information, and options existing at the time the decision was made, or the conduct occurred. [40]

And in the Iatan 1 & 2 SPC, the Missouri Commission said the following in the ratemaking and practices section of its Order:

> The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services, subject to judicial review of the question of reasonableness. A "just and reasonable" rate is one that is fair to both the utility and its customers, it is no more than is sufficient to "keep public utility plants in proper repair for effective public service, [and]…to insure the investors a reasonable return upon funds invested." …the Commission must also afford the utility an opportunity to recover a reasonable return on the assets it has devoted to the public service. There can be no argument but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment.[41]

Further, on January 11, 2010, FERC in Opinion 505 confirmed the prudence standard previously adopted by FERC:

> [We] reiterate that managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers. In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management (or that of another jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time. We note that while in hindsight it may be clear that a management decision was wrong, our task is to review the prudence of

[40] Public Utility Commission of Texas, Docket No. 9300, Examiner's Report regarding the Commanche Peak Steam Electric Station, page 9, June 12, 1991
[41] Public Service Commission of the State of Missouri, Report and Order, File No. ER-2010-0355 regarding the Iatan 1&2 supercritical pulverized coal plant, pages 14-15, April 12, 2011

> the utility's actions and the costs resulting therefrom based on the particular circumstances existing either at the time the challenged costs were actually incurred, or the time the utility became committed to incur those expenses. [42]

In essence, management makes prudent decisions when management makes an informed decision under the circumstances at the time the decision is made. FERC also stated in Opinion 505 that:

> The utility does not have the burden of demonstrating that expenditures are prudent. Rather, a challenger to prudence must create a serious doubt as to the prudence of an expenditure; however, once that serious doubt is created, the burden shifts to the applicant to demonstrate that the expenditure was prudent. [43]

Q. CAN YOU EXPLAIN WHAT YOU MEAN BY "INFORMED DECISION UNDER THE CIRCUMSTANCES AT THE TIME THE DECISION IS MADE"?

A. Yes. Prudence cannot be judged with the benefit of hindsight, primarily because a hindsight perspective involves the use of information and circumstances which did not exist or was not available at the time that management had to make its decision. Only those circumstances that were known – or that should have been known – to management at the time the decision is made can be considered when judging the prudence of management's decisions and actions. Management decisions are not made in static conditions and may necessarily rely upon imperfect information or changing circumstances. Prudence recognizes these challenges and relies on the concept of foreseeability in two ways:

[42] Entergy Services, 130 FERC ¶ 61,023 (quoting New England Power Co., 31 FERC ¶at 61,084).
[43] Entergy Services, 130 FERC ¶ 61,023 at 61,099 (citing Kentucky Utilities Co., 62 FERC ¶ 61,097 at 61,698 (1993).

- first, an action or lack of action of a utility manager is not unreasonable or imprudent if it involves or is affected by events which were unforeseen and reasonably unforeseeable at the time; and
- second, the cost calculations for any imprudence found properly reflect only the reasonably foreseeable consequences of the imprudent decision-making processes or performance.

Q. SHOULD PRUDENCE BE JUDGED WITH HINDSIGHT?

A. No. Prudence cannot and should not be judged from a hindsight perspective. As noted in certain orders issued by other utility Commissions, only those circumstances that were known or that reasonably should have been known at the time the decision is made, should be considered.

The Indiana Utility Regulatory Commission has found:

> In determining whether the utility acted prudently we must review the circumstances as they existed considering what was known or should reasonably have been known at the time of the actions. We should not engage in a hindsight analysis. [44]

The Kansas Corporation Commission noted:

> …the common usage of the term 'prudence' has been established by our Supreme Court as carefulness, precaution, attentiveness and good judgment. The Court, and the Commission in the Wolf Creek Order, both implicitly rejected using 'hindsight,' or in other words, 'the perception of the nature and import of events after they have occurred' … this claim hinges on a hindsight analysis, which is clearly prohibited. [45]

[44] October 21, 2009 Indiana Public Utilities Regulatory Commission, Cause No. 38707 FAC76 S1, 2009, Ind. PUC LEXIS 400 [*26] at *46 (October 21, 2009)
[45] The State Corporation of the State of Kansas, Docket No. 10-KCPE-415-RTS, Order 1) Addressing Prudence; 2) Approving Application, in part; & 3) Ruling of Pending Requests, page 15, November 22, 2010

The New Mexico Supreme Court has also confirmed that hindsight review in assessing prudence is disallowed:

> In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.[46]

Q. IS RECOVERY OF THE LEASEHOLD IMPROVEMENTS APPROPRIATE GIVEN THE ASSETS WILL NO LONGER BE USED AND USEFUL?

A. Yes. The used and useful standard is commonly applied in deciding when assets should be placed in "plant in service" and, thus, eligible to earn a return of and on the asset. The concept of "used and useful" arose out of the Federal Power Act and the Federal Power Commission's strict rules which required that facilities be permanently and regularly used to provide service.[47] The New Mexico Supreme Court has determined that "[o]ur caselaw confirms that the 'used and useful' concept is but one factor among many to be considered by the Commission in its rate base analysis."[48] The Supreme Court has also found that whether utility property is "used and useful" and therefore to be included in rate base is a factual determination.[49]

[46] *Pub. Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012, ¶ 29
[47] *"Used and Useful: Autopsy of a Ratemaking Policy,"* Energy Law Journal Vol 8:303-335, 1987, p. 312, citing "Interstate Power Co., 2 F.P.C. 71, 75-76, 92 (1939); *Cf.* Peoples Gas Light & Coke Co., 27 Pub. Util. Rep. 3d (PUR) 209, 217-19 (1959). *See supra* note 34."
[48] *New Mexico Industrial Energy Consumers v. New Mexico Public Regulation Commission*, 104 N.M. 565, 725 P.2d 244 (1986).
[49] *Alto Village Services v. New Mexico Public Service Comm.*, 92 N.M. 323, 587 P.2d 1334 (1978)

In essence, where an asset has been placed into service, or is "in use," it is generally considered used and useful; this "used and useful" plant in service is recovered in a utility's rate base. PNM is not asking that the undepreciated investments remain in rate base as plant in service; it is requesting authorization to create regulatory assets and recover the as yet unrecovered costs over a period of years. This is standard procedure for assets that have been used and useful but are no longer in service and have not been fully depreciated. As noted above, the CPUC approved a settlement in the Diablo Canyon retirement case which allowed PG&E to recover its remaining capital investments prior to plant retirement plus a portion of additional costs related to the abandoned license renewal project and cancelled capital projects.[50] In addition, as noted above, the CPUC approved a settlement in the San Onofre retirement case which allowed SDG&E and SCE to recover their undepreciated net investments in the plant, with some exclusions, at a lower shareholder Return on Equity than approved in the most recent general rate case.[51] Recovery is also normal with regard to coal assets. See my footnote 16 for a sample of coal plant retirements where recovery has been allowed.

Recovery is warranted even though the assets will not be used in the future. The Company entered into the sale-leaseback transactions and the Commission approved the transactions based on the expected benefits of the sale-leaseback

[50] California Utilities Commission Decision 18-01-022 in Application 16-08-006 dated January 16, 2018, *Decision Approving Retirement of Diablo Canyon Nuclear Power Plant*.
[51] California PUC news release dated 11/20/2014, *CPUC Approves San Onofre Settlement that Returns $1.45 Billion to Consumers.*

agreements. PVNGS has been "used and useful" for PNM customers for over 30 years. Customers have received the benefits of the transactions without having fully paid yet for those benefits under the depreciation rates for PVNGS set by the Commission. To the extent that the leasehold improvements associated with PVNGS have been deemed used and useful by the Commission in past cases, they are included in rates that were set based on Commission-approved depreciation schedules that were tied to the licensing life of PVNGS rather than the term periods of the leases.

Once the lease is abandoned, it is appropriate that the associated leasehold improvements be removed from plant in service, but a mechanism for their continued recovery is needed. Investors provided the funding for the capital improvements as required in the sale-leaseback agreements with an expectation of full recovery of and on their investment. This is the regulatory compact. As I discussed above, state regulators typically provide an opportunity for utilities and their investors to receive a return of and on the undepreciated assets associated with abandoned plants.

I believe New Mexico's Energy Transition Act is also instructive. While the Act does not apply to the abandonment of the nuclear lease interests, the New Mexico legislature provided a mechanism for the full recovery of undepreciated

investments of qualifying generating facilities in the definition of energy transition costs eligible for securitization. The Act defines energy transition costs to include:

> c) undepreciated investments as of the date of abandonment on the qualifying utility's books and records in a qualifying generating facility that were either being recovered in rates as of January 1, 2019, or are otherwise found to be recoverable through a court decision; and d) other undepreciated investments in a qualifying generating facility incurred to comply with law, whether established by statute, court decision, or rule, or necessary to maintain the safe and reliable operation of the qualifying generating facility prior to the facility's abandonment.[52]

This statutory language is entirely consistent with and reflects the standard of ratemaking that is normally accorded utilities when plant is retired before the end of its depreciable life, in favor of alternative less costly resources.

H. The Regulatory Compact Necessitates Utilities Have an Opportunity to Recover Prudently Incurred Costs Such As Those Associated With The Expiration of The Palo Verde Leases

Q. WHAT IS THE REGULATORY COMPACT AND HOW DOES IT APPLY IN THIS CASE?

A. In short, the regulatory compact ensures that there is a fair balancing of the public interest of customers with the business interests of utilities and their shareholders. Utilities have an obligation to serve, providing safe and reliable service at a reasonable cost to all customers in their service territories, in exchange for an opportunity to recover for their shareholders prudently incurred costs plus a

[52] NMSA 1978, § 62-8-2(H)(2)(c) and (d).

reasonable return on their investments. The U.S. Supreme Court has upheld the tenets of the regulatory compact. In *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 693 (1923), the Supreme Court found that "[t]he return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable [the utility] to raise the money necessary for the proper discharge of its public duties." In *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, (1944), the Supreme Court found, "the return to the equity owner should be . . . sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital." In *Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968), the Supreme Court found that "the 'end-result' of the Commission's orders must be measured as much by the success with which they protect those [broad public] interests as by the effectiveness with which they 'maintain credit … and … attract capital.'"[53] These cases are the bedrock upon which utilities plan their investments and upon which investors provide the funds for the utilities' investments for the public interests of their customers. Even this Commission has found that, "As a general rule, utilities are able to recover from its ratepayers the cost of a facility that is prematurely retired...."[54]

[53] *Fed. Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923); *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).
[54] NMPRC Case No. 08-00078-UT, Final Order Partially Approving Certification of Stipulation, December 11, 2008, at 4.

The New Mexico Supreme Court acknowledged the regulatory compact in 2015, noting:

> Electric utility regulation consequently reflects a compact between utilities and the public. *See Jersey Cent. Power & Light Co. v. Federal Energy Regulatory Comm'n (FERC),* 810 f.2d 1168, 1189 (D.C.Cir 1987) (Starr, J., concurring). A utility is given a monopoly over a service area, and in exchange accepts government regulation of its business, including price regulation. *Id.* Under this arrangement, utility investors obtain a stability in earnings that would likely be unattainable in less regulated industries, while "ratepayers are afforded universal, non-discriminatory service and protection from monopolistic profits." *Id.*[55]

The regulatory compact protects both customers and utilities with regulators ensuring the balance is maintained. It is in the spirit of the regulatory compact that utilities invest in large central generating stations such as PVNGS. In its approval of the sale-leaseback transaction, this Commission has already determined that entering into the transaction was prudent. The decision to enter into the transaction met the obligation to serve the public interest by providing the benefits of the leases to customers for over 35 years.

In addition to the original sale-leaseback agreement, this Commission has consistently approved rates that included the costs associated with the required leasehold improvements. To conclude that PNM should not be allowed to continue to recover all of its prudently incurred costs associated with the sale-leaseback transaction would be contrary to the regulatory compact.

[55] *New Mexico Atty. Gen. v. New Mexico Public Regulation Comm'n,* 2015-NMSC-032, ¶ 12, 359 P.3d 133.

Q. HOW DO YOU RECONCILE YOUR CONCLUSION WITH THE COMMISSION'S DETERMINATION THAT PNM WAS IMPRUDENT IN DECIDING TO REPURCHASE 64 MW OF LEASED INTERESTS AND TO EXTEND THE LEASE PERIODS FOR THE 114 MW OF LEASED INTERESTS AT ISSUE IN THIS CASE?

A. As I noted above, in PNM's 2015 rate case, while the Commission concluded PNM's decision-making was flawed, it concluded that the PVNGS leased interests remained certificated, used and useful plant necessary to service customers. The Commission also concluded that the reduced payment amount for the 114 MW of Leased Interests had been pre-approved by the Commission and was reasonably recovered in rates, along with the associated leasehold improvement investments for those interests.

Q. ISN'T IT TRUE THAT THE COMMISSION DENIED PNM'S REQUEST FOR RECOVERY OF LEASEHOLD IMPROVEMENTS IN ITS PURCHASE OF 64.1 MWS OF PVNGS UNIT 2?

A. The Commission concluded in PNM's 2015 rate case that the price paid for the 64.1 MWs already included the book value for the leasehold improvements.[56] The Commission denied any additional separate recovery of the leasehold

[56] NMPRC Case No. 15-00261-UT, *Final Order Partially Adopting Corrected Recommended Decision* dated 9/28/2016, at page 39: "…the Commission finds that the costs of the improvements and common plant will already be recovered by the inclusion of $1306/kW NBV in rate base…".

improvements beyond the allowed amounts of the purchase price. The facts in this case are completely different. The litigated leasehold improvement issue in the 2015 rate case involved a purchase of assets, not the expiration of the leases. In the case of expiration of the leases, PNM has no opportunity other than the establishment of a regulatory asset for recovery of the leasehold improvements.

Q. BASED ON YOUR REVIEW, WERE THESE LEASEHOLD IMPROVEMENTS PRUDENTLY INCURRED?

A. Yes. As discussed by PNM witness Heffington, these capital improvements were subject to a vetting process that determined that improvements were necessary to maintain the safe, reliable and cost-effective generation of electricity for customers.

Q. WHAT ARE THE POTENTIAL CONSEQUENCES IF PNM IS NOT ALLOWED TO RECOVER ALL OF ITS PRUDENTLY INCURRED COSTS ASSOCIATED WITH THE LEASES?

A. As noted above, regulatory and judicial precedent (*e.g. Hope, Bluefield,* and *Permian Basin)* have established that it is reasonable for investors in regulated utilities to expect that they will have the opportunity to fully recover prudently incurred costs and earn and fair and reasonable return on their investments. Denying further recovery of undepreciated investments because plant is removed from service earlier than expected when depreciation rates are established fundamentally denies investors that opportunity. Investors will be reluctant to

invest in companies where the trust of the regulatory compact has been broken, denying utilities access to needed capital for investment, driving up the cost to attract investors, and thus in turn driving up rates and costs to customers because of a utility's higher cost-of-capital.

In addition, such action would make a utility more likely to avoid long-term capital investments, seek shorter depreciation lives, and be reluctant to abandon facilities even when it may appear to be in the best interest of customers, as is shown in this case. None of these outcomes is good for customers.

Q. WOULD SHARING THE COSTS EQUALLY BETWEEN THE COMPANY AND CUSTOMERS BE A GOOD WAY TO BALANCE THE INTERESTS OF CUSTOMERS AND INVESTORS?

A. No. As I noted, the regulatory compact ensures that there is a fair balancing of the public interest of customers with the business interests of utilities, but fair balancing does not equate to splitting costs. The public interest for customers is served in the receipt of reliable electric service for all. The business interests of utilities are served when the utility has an opportunity to earn a fair return of and on its prudently incurred investments made by the shareholders on behalf of the customer. The concept of cost "sharing" of prudently invested, previously approved costs would penalize investors and breach the regulatory compact. Such an arrangements is a "bait and switch" proposition for investors. Investors funded these investments

with a reasonable expectation of earning a reasonable allowed return. To "share" the costs is not really sharing; it is changing the original deal. Customers have obtained years of benefits which include lower costs than if PNM had maintained ownership of the 114 MW of PVNGS instead of entering into the lease interests and years of low cost, reliable service from PVNGS.

Not only were these costs prudently incurred, my review of the analysis undertaken at the time the decision was made to abandon the leases finds that the decision to abandon the lease was the prudent decision in the best interests of customers. If the Commission approves PNM's plan to replace the 114 MW of PVNGS capacity, customers will have already received the benefits of service from the Leased Interests and will continue to receive benefits of safe and reliable service from the replacement resources. The decision to abandon the lease was in the public interest. On the other hand, investors have not fully received the benefit of their investment in PVNGS. Therefore, any action by this Commission other than allowing full recovery of and on the capital investments for leasehold improvements is contrary to the regulatory compact. Allowing investors to receive a full return on and of their investment completes the regulatory compact for these investments.

Q. SHOULD THE SHARING ARRANGEMENT BETWEEN CUSTOMERS AND INVESTORS IN THE SAN JUAN UNITS 2 AND 3 ABANDONMENT

CASE SERVE AS PRECEDENT FOR THE PVNGS LEASE EXPIRATIONS?

A. No. The sharing arrangement was the result of settlement which all parties agreed would not be used as precedent in future cases, and in which PNM as well as other parties received the benefit of the overall bargain.[57] Settlements are a compromise by parties that are unique to the circumstances of each case and may reflect one or more party relinquishing rightful regulatory positions in exchange for other desirable outcomes.

Q. ISN'T IT TRUE THAT IF PNM HAD CONTINUED TO DEPRECIATE THE INVESTMENTS IN PVNGS BASED ON THE ORIGINAL LIFE OF THE PLANT, THE INVESTMENTS WOULD BE FULLY (OR ALMOST FULLY) DEPRECIATED BY THE TIME THE LEASES EXPIRE?

A. While this statement is true, it is also true that customers would have been paying higher rates since 2008 when this Commission approved the extended depreciation schedules for the PVNGS investments in PNM's 2008 rate case (Case No. 08-00273-UT) to match the extended life of PVNGS, instead of the lease period.[58] But more importantly, PNM is required to match the depreciation schedules to the life

[57] NM PRC Order in Case No. 13-00390-UT, *Certification of Stipulation*, dated November 16, 2015. See paragraph 48 (p. 15) of Attachment B, *Original Stipulation as Modified by Supplemental Stipulation.*

[58] NM PRC Case No. 08-00273-UT, *Final Order Conditionally Approving Stipulation,* May 28, 2009. The depreciation schedules were adjusted to match the extended life of PVNGS even though life extension had not been granted by the NRC. There was a high degree of confidence that the licenses would be extended so the depreciation schedule was extended, subject to PNM coming back in to adjust the depreciation schedule in the event the licenses were not extended. The licenses were ultimately extended. The most recent Commission review of the PVNGS depreciation schedule was in the 2015 rate case. The depreciation of the recently purchased 64.1 MW of Unit 2 of PVNGS was contested but there was no objection to the continued use of the extended service life for the depreciation of the lease hold improvements.

of the asset. The New Mexico Administrative Code 17.3.510.10(A) NMAC requires that electric utilities "shall keep their books and records in compliance with the Uniform System of Accounts for Public Utilities and Licensees" as prescribed by the FERC. 17.3.340.9 NMAC, titled "Authorization of Depreciation Practices to be Observed by Public Utilities," states that, "Depreciation … is the process by which an equitable method of accounting will permit the recovery of the original cost less net salvage over the *service life* of a depreciable asset." (emphasis added).

I. Pegasus-Global Review of PNM's Abandonment Analysis Found That the Analysis Was Sound

Q. BASED ON YOUR REVIEW, WAS THE PROCESS PNM USED IN ITS DECISION TO ABANDON THE SALE-LEASEBACK APPROPRIATE?

A. Yes. In Case No. 21-00083-UT, PNM utilized advanced economic models capable of solving for multiple objectives such as reliability and total cost to customers. The range of potential leased interest purchase prices utilized in modeling was informed by the historical allowable price together with reduced sensitivity values as a proxy for a fair market value actually negotiated with the current lessors/owners. PNM used the results of actual RFPs to inform the cost and performance of candidate replacement resources. Having reviewed the assumptions, methods, and analysis laid out in Case No. 21-00083-UT, I find PNM was reasonable and prudent in its abandonment of the leases.

Q. ARE THERE OTHER FACTORS TO CONSIDER IN DETERMINING WHETHER THE RECOVERY OF COSTS ASSOCIATED WITH THE ABANDONED PLANTS IS REASONABLE?

A. Yes. In addition to satisfying the *Commuters' Committee* standards, the second consideration is whether the abandonment decision is in the public interest.[59] The utility must show that replacing the generation is better than retaining the plant, as measured by cost effectiveness as well as other factors.

Q. WILL CUSTOMERS REALIZE COST SAVINGS BY PNM NOT REPURCHASING PALO VERDE UNITS 1 AND 2 LEASE INTERESTS?

A. Yes. PNM calculated in Case No. 21-00083-UT (PNM Witness Phillips' direct testimony) that there would be customer savings on an NPV basis of abandoning the 114 MW of Palo Verde leased interests of approximately $171M at the time the notice to lessors was due. This calculation demonstrates realized cost savings for customers.[60]

VII. DECOMMISSIONING EXPENSES ASSOCIATED WITH PVNGS

A. Review of Prior Records and Cases

Q. WHAT IS THE HISTORY OF THE PVNGS CAPACITY THAT IS IN QUESTION?

[59] NMST 62-9-5. "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. The commission shall grant such permission and approval, after notice and hearing, upon finding that the continuation of service is unwarranted or that the present and future public convenience and necessity do not otherwise require the continuation of the service or use of the facility"
[60] PNM Exhibit JAM - 2. Direct Testimony of Nicholas Phillips, NMPRC Case No. 21-00083-UT, April 2, 2021, p. 22-23.

A. The Accounting Order references PNM's decisions to renew five leases (totaling 114 MWs) and repurchase of 64 MWs of owned interest in Unit 2 of PVNGS that was addressed in Case No. 15-00261-UT. As explained by PNM Witness Elisabeth A. Eden in Case No. 15-00261-UT, as the expiration dates of some of PNM's PVNGS Units 1 and 2 leases drew near, PNM had three choices: it could allow the leases to expire, renew them at 50% cost of the original lease, or purchase the leased assets at fair market value. PNM was required to make decisions no later than three years in advance of the actual expiration of the leases.[61] In 2013, PNM exercised its option to extend for eight years the leases on 114 MWs of capacity at PVNGS Units 1 and 2. In 2015, PNM exercised its option to repurchase its 64.1 MWs of PVNGS Unit 2 leased capacity so that it would thereafter be PNM-owned capacity.

Q. WHAT SPECIFIC RELIEF DID PNM REQUEST IN CASE NO. 15-00261-UT RELATED TO THE COSTS ASSOCIATED WITH THIS CAPACITY?

A. In Case No. 15-00261-UT, PNM sought to include in retail rates the lease costs for the renewed leases and the full purchase price for the 64.1 MWs of purchased capacity. In addition, PNM's test period expenses included $2.6 million for decommissioning PV Units 1 and 2.[62] PNM Witness Eden testified that PNM's Unit 1 Nuclear Decommissioning Trust ("NDT") was funded at 94.6% and Unit 2 was funded at 105.3%. [63]

[61] PNM Exhibit JAM-3, Supplemental Testimony of Elisabeth Eden, NMPRC Case No. 15-00261-UT, May 25, 2016, p. 6-7.
[62] *Corrected Recommended Decision*, Case No. 15-00261-UT (NMPRC Aug.15, 2016), p. 171 (citing Direct Testimony of James Dittmer on behalf of The Albuquerque Bernalillo County Water Utility Authority, Exhibit JRD-3, p. 6).
[63] PNM Exhibit JAM-4, Direct Testimony of Elisabeth Eden, NMPRC Case No. 15-00261-UT, August 27, 2015, p. 32.

Q. WHAT WAS PNM WITNESS EDEN'S TESTIMONY IN THE 2015 CASE ABOUT PNM's DECOMMISSIONING RESPONSIBILITY?

A. PNM witness Eden testified in Case No. 15-00261-UT that PNM's decommissioning obligation would continue if PNM allowed the lease to expire and the asset to return to the Lessor. Specifically, she testified that "…. once a lease expires, and if the asset is returned to the Lessor, PNM would continue to be responsible for its share of decommissioning costs incurred following the retirement and dismantling of the unit, in addition to any capital project costs on projects pending at the date of the lease expiration." [64]

Q. WHAT WAS THE HEARING EXAMINER'S RECOMMENDATION WITH REGARD TO THE PRUDENCY OF PNM'S DECISION AND THE DECOMMISSIONING COSTS ASSOCIATED WITH THE CAPACITY?

A. The Hearing Examiner concluded that "PNM's decisions to extend the five PV leases [totaling 114 MWs] and purchase the 64.1 MW PV were imprudent because it failed to show by a preponderance of the evidence that it (i) reasonably examined alternative courses of action and that its decisions to extend the leases and purchase the 64.1 MW were its most cost effective resource choices; and (ii) adequately and timely notified the NMPRC of its decisions regarding PV Units 1 and 2." [65] The Hearing Examiner agreed with an intervenor's recommendation to cease the

[64] PNM Exhibit JAM-3, Supplemental Testimony of Elisabeth Eden, NMPRC Case No. 15-00261-UT, May 25, 2016, p. 22-23.
[65] Corrected Recommended Decision, NMPRC Case No. 15-00261-UT, August 15, 2016, p. 89.

decommissioning funding due to current levels of the trust funds. The Hearing Examiner noted that: "If in the future it appears that fund balances may be insufficient to fund decommissioning costs, rate recovery for decommissioning expenses can be reinstated." [66]

Q. WHAT WAS THE COMMISSION'S ORDER ON THE ISSUE OF DECOMMISSIONING?

A. In its Final Order, the Commission found:

> The Commission notes that a result of this failure is that PNM's actions in renewing and reacquiring the leases have exposed ratepayers to costs associated with decommissioning responsibilities that likely would not have been incurred had an alternative resource other than nuclear been selected. Accordingly, while the Commission finds that these plants may continue in service, the Commission finds that the appropriate remedy to protect the ratepayers from the effect of PNM's imprudence is to shift the future burden of decommissioning related costs from the ratepayers to PNM. … In the event additional funding is required, PNM shall bear those expenses without recovery from ratepayers. [67]

On appeal, the New Mexico Supreme Court remanded the decommissioning question back to the NMPRC stating that PNM had been denied due process.[68] In the Order on Remand, the Commission concluded that:

> The appropriate remedy should narrowly address the Commission's concern specifically directed at the additional liability, if *any*, that the newly acquired and re-leased PVNGS capacity may have created for ratepayers for additional decommissioning fund contributions beyond that amount for which ratepayers were already obligated based on the proportional period of time the PVNGS resources had

[66] *Corrected Recommended Decisio*n, Case No. 15-00261-UT (NMPRC Aug. 15, 2016), p. 173.
[67] Final Order Partially Adopting Corrected Recommended Decision, September 28, 2016, Case No. 15-00261-UT, paragraph 117, p. 38.
[68] *Public Serv. Co. of N.M. vs. N.M. Public Reg. Comm'n*, 2019-NMSC_012, ¶ 60-56, 444 P.3d. 460

> been dedicated to serving ratepayers prior to the reacquisition and renewal of the leased capacity. The Commission does not seek to disturb, but rather accepts, the hearing examiner's recommendation that the decommissioning fund was fully funded and that PNM could seek additional contributions based only on ratepayers' existing obligations for the period of time PVNGS had served ratepayers prior to the lease reacquisition and renewals.[69]

The Order further stated that a separate proceeding should be established to address the issue.[70] In the Initial Order Assigning Hearing Examiner in Case No. 21-00083-UT, the NMPRC added this issue to that case.[71] Subsequently, after granting a rehearing in Case No. 21-00083-UT, the Commission deferred this issue to the present rate case.[72]

B. PNM'S Responsibility for Decommissioning Originates with the Initial Investment in Palo Verde

Q. WHAT IS PNM'S DECOMMISSIONING RESPONSIBILITY PER THE SALE-LEASEBACK AGREEMENTS?

A. PNM Witness Eden explained in Supplemental Testimony in Case No. 15-00261-UT that under the Sale-Leaseback Agreements, PNM as Lessee is solely responsible for all costs associated with the underlying assets, including lease payments, capital investments, O&M expenses, and decommissioning liabilities. When a lease expires, PNM continues to be responsible for decommissioning expenses and any capital project costs for projects pending at the date of the lease

[69] *Order on Remand*, para. 25, pp. 9-10, Case No. 15-00261-UT (NMPRC Jan. 8, 2020).
[70] *Id.* at para., p.10.
[71] Initial Order Assigning Hearing Examiner, Case No. 21-00083-UT, paragraph 11, page, 4.
[72] Accounting Order, pp 6-8.

expiration.[73,74] To summarize this language, the PVNGS lessors took no responsibility for decommissioning. PNM retains all responsibility for decommissioning regardless of its actions related to abandoning the leases, extending the leases, or repurchasing the leased capacity.

Q. WAS IT REASONABLE THAT PNM RETAINED THIS RESPONSIBILITY AT THE TIME OF THE SALE-LEASEBACK?

A. Yes. The PNVGS lessors only took the responsibility and risk of funding the initial plant construction cost which allowed customers to more fully realize the tax incentives afforded by the Economic Recovery Tax Act of 1982. Similar to leasehold improvements and operation and maintenance costs which were to be covered by PNM, the lessors took no responsibility for decommissioning costs.

In order to obtain NRC approval of the sale-leaseback arrangement, PNM had to provide assurance that PNM retained all the obligations of the license. In fact, PNM

[73] PNM Exhibit JAM-3, May 25, 2016, Supplemental Testimony of Elisabeth Eden, NMPRC Case No. 15-00261-UT, p. 23.

[74] Participation Agreement dated December 16, 1985, between MFS Leasing et al and PNM, filed on January 14, 1986, as *Exhibits: PNM's Sale and Leaseback of an Undivided Interests in PVNGS Unit 1*, p. 44-45: (A) The Lessee will comply with its obligations under Applicable Law concerning the decommissioning and retirement from service of Unit 1 … (i) the cost of removal, decontamination and disposition of equipment and fixtures, the cost of safe storage for later removal, decontamination and disposal and the cost of entombment of equipment and fixtures, and (ii) the cost of (x) razing of Unit i, (y) removal and disposition of debris from the PVNGS Site and (z) restoration of relevant portions of the PVNGS Site) . … B) Except to the extent provided in clauses (C) and (D) below, as between the Lessee, the Owner Trustee, the Owner Participant and any transferee (including by way of lease) or assign of any of the Lessor's or the Owner Participant's right, title or interest in Unit 1, **the Lessee agrees to pay, be solely responsible for, and to indemnify such parties against, all costs and expenses relating or allocable to, or incurred in connection with, the decommissioning and retirement from service of Unit 1, notwithstanding (i) the occurrence of the Lease Termination Date, any Event of Default, Default, Event of Loss, Deemed Loss Event or any other event or occurrence, (ii) any provision of any Transaction Document, or other document, instrument or agreement, including the ANPP Participation Agreement, (iii) any provision of the License or any other license or permit, or (iv) any Applicable Law, charter or by-law provision, Governmental Action or other impediment, including, without limitation, the bankruptcy or insolvency of the Lessee, either now or hereafter in effect; it being understood that the obligations of the Lessee under this clause (B) are and shall be absolute and unconditional.**

filed a brief addressing a question raised in a meeting as to whether the lessors needed to be Licensees for PVNGS. PNM responded that they did not, noting:

> So long as the lease is in effect and PNM is not in default thereunder, **the equity investors have no role in the operation of PVNGS Unit l**. …The equity investors have no right to control or influence PVNGS; extension of the Commission' jurisdiction is therefore not required. [75]

Q. HOW IS THE ISSUE OF DECOMMISSIONING LIABILITY ADDRESSED IN PNM'S NRC FACILITY OPERATING LICENSE?

A. Below is language from PNM's application for NRC approval of the sale-leaseback transaction for Unit 1:

> PNM will also retain responsibility for the payment of its share of the operating and maintenance expenses and costs of capital improvements during the term of the leaseholds and thereafter, in the absence of other Commission action, for 10.2 percent of the costs of decommissioning associated with PVNGS Unit 1.[76]

The NRC approved the sale-leaseback transaction accepting PNM's application language and maintaining PNM's decommissioning responsibility in Amendment 3 to the Facility Operating License as stated below:

> The facility will operate in conformity with the above application and the Commission's Order of December 12, 1985, the provisions of Act, and the rules and regulations of the Commission;[77]

PNM's application for approval of the sale and leaseback of Unit 2 stated:

> The ANPP Participation Agreement also establishes the rights and obligations of the ANPP Participants. **One of the primary**

[75] Brief of [PNM] is Support of the Application in Respect of a Sale and Leaseback Financing Transaction by [PNM]," NRC Docket No. STN-50-528, November 4, 1985, p. 3-4.
[76] CFR Vol 50, No. 214, 45956.
[77] Amendment 3 to Facility Operating License NPF 41, NRC Docket No. STN 50-528, p. 2.

> **obligations assumed by the ANPP Participants** under the ANPP Participation Agreement **is the obligation to share** the costs of construction, operation, maintenance, **decommissionin**g and capital improvements of PVNGS, in accordance with their respective generation entitlement shares.[78]

Q. IN WHAT OTHER MANNER DOES THE NRC LICENSE ADDRESS THIS ISSUE?

A. The language in the NRC license makes clear only the license holder can have control over anything related to control of PVNGS. The license specifies:

> Specifically, the lessor and anyone else who may acquire an interest under this transaction **are prohibited from exercising directly or indirectly any control over the licensees** of the Palo Verde Nuclear Generating Station, Unit 1. For purposes of this condition, … this financial transaction **shall have no effect on the renewed operating license for the Palo Verde nuclear facility throughout the term of the renewed operating license.[79]**

Q. WAS THE ISSUE ADDRESSED IN PNM'S FILINGS WITH THE NMPRC FOR APPROVAL OF THE SALE-LEASEBACK OF PNM'S PORTION OF PVNGS?

A. Yes. Specifically related to decommissioning, PNM provided a Term Sheet in lieu of the lease agreement (since it was still being negotiated) when it filed its application. The Term Sheet included a planned amendment to the Lessee/Lessor Participation Agreement to state that:

> notwithstanding such sale-leaseback, the transferring ANPP Participant shall not be released from any of its payment obligations under the Project Agreement during the entire term of the Project

[78] Application in Respect of Sale and Leaseback Transactions by [PNM], NRC Docket No. STN 50-529, dated February 14, 1986, p. 11.
[79] Amendment 3 to Facility Operating License NPF 41, NRC Docket No. STN 50-528, p. 2.

Agreement, including, without limitation, its obligations with respect to the decommissioning of PVNGS or any Unit at PVNGS.[80]

Q. BASED ON YOUR REVIEW OF THE AGREEMENTS AND THE FACTS PROVIDED TO THE NMPRC, HAVE PNM'S CUSTOMERS BEEN EXPOSED TO ADDITIONAL LIABILITY BECAUSE PNM EXTENDED THE LEASES OF 114 MWS AND PURCHASED 64 MWS OF PVNGS CAPACITY?

A. No. I conclude that PNM did not expose customers to additional financial liability beyond that to which they would have been exposed had PNM chosen to abandon the leased PVNGS capacity. PNM retains the decommissioning responsibility regardless of whether the leases were abandoned or renewed or whether PNM re-purchased the previously leased capacity as demonstrated by the evidence I have presented above.

C. Because There is No Additional Liability, There is No Need to Address the Second Part of the Question on the Order.

Q. PLEASE ADDRESS THE SECOND PART OF THE ISSUE IN THE ORDER.

A. In the Accounting Order, the NMPRC also asked whether PNM should be denied recovery of such additional amount of future additional decommissioning costs as a remedy for PNM's imprudence. As I have shown above, PNM did NOT expose

[80] PNM Exhibit JAM-5, RBS Exhibit 1 (page 3 of Summary of Terms) to Direct Testimony of RB Starnes in Docket No. 1995, Volume 2, filed October 9, 1985.

customers to additional financial liability beyond that to which they would have been exposed had PNM chosen to abandon the leased PVNGS capacity. Therefore, there is no "additional amount of future additional decommissioning costs" that resulted from PNM's decision to consider.

Q. SHOULD THE NEED ARISE, DO YOU BELIEVE PNM SHOULD BE ALLOWED THE OPPORTUNITY TO SEEK ADDITIONAL DECOMMISSIONING FUNDS ASSOCIATED WITH THE OWNED AND LEASED INTERESTS THAT ARE SUBJECT IN THIS CASE?

A. Yes. The Company entered into the sale-leaseback transactions and the NMPRC approved the transactions based on the expected net benefit to customers. In that sale-leaseback transaction, the Lessors only funded the initial plant construction. PNM maintained the responsibility for its share of the ultimate decommissioning cost even if it abandoned those leased interests at the end of the initial lease. Therefore, customers were not exposed to additional financial liability as a result of PNM's repurchase and lease extension decisions. Decommissioning costs estimates are periodically determined through required technical studies. While to date PNM has adequately funded the necessary trusts to pay for decommissioning in the future (as explained by PNM Witness Greinel), the actual future costs are an unknown. As such, I believe PNM should be allowed the opportunity to seek additional funds for the owned and leased interests that are subject in this case in

order to maintain trust funds at the level determined by the decommissioning costs, and when actual decommissioning costs are known in the future.

VIII. CONCLUSION

Q. IS IT YOUR OPINION THAT THE DECISION TO ABANDON THE PALO VERDE UNITS 1 AND 2 LEASES WAS THE APPROPRIATE COURSE OF ACTION FOR PNM CUSTOMERS?

A. Yes. Allowing the Palo Verde leases to expire was a prudent decision by PNM and was the appropriate course of action in light of the ongoing costs of operation as compared to the cost of procuring alternatives.

Q. DO YOU BELIEVE RECOVERY OF THE LEASEHOLD IMPROVEMENTS IS WARRANTED?

A. Yes. These investments were prudently incurred by PNM on behalf of customers. The investments were required by the leasehold agreements that have historically provided significant value for customers. Rates established to provide recovery of these investments have been approved by the Commission in previous rate cases. Recovery of the residual costs is not only fair, it sends the proper signal to PNM to continue making decisions that are in the best interest of customers as market factors continue to change and lower cost sources of electricity emerge.

Many electric utility customers across the country paid and are paying for significant portions of the construction costs for failed nuclear plants that never generated a single kilowatt-hour of electricity. Palo Verde has been a success story. PNM's investments in this station have enabled customers to receive the benefits of what will be nearly 40 years of reliable, cost-effective and clean power.

PNM has kept its end of the original deal that made this possible.

Q. WERE CUSTOMERS SUBJECT TO INCREASED EXPOSURE TO PNVGS DECOMMISSIONING LIABILTY AS A RESULT OF ITS ACQUISITION OF THE 64 MW INTEREST IN UNIT 2 AND THE EXTENSION OF THE LEASES FOR UNITS 1 AND 2?

A. No. As discussed earlier, PNM retained the decommissioning responsibility regardless of whether the leases were abandoned or renewed or whether PNM re-purchased the previously leased capacity

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

GCG#530117

Statement of Qualifications

PNM Exhibit JAM-1

Is contained in the following 3 pages.

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PROFILE

Accomplished Energy Executive valued for leadership experience in operations, engineering, generation fleet modernization, and both generation and regulatory strategy.

- Provided leadership and regulatory support in modernizing one of the largest generation fleets in the country.
- Demonstrated success in managing and overseeing daily operations of power plants, including monitoring operations for efficiency and safety while ensuring regulatory requirements are followed.
- Strong, effective communicator aiding in the cultivation of client relationships, diffusing situations, and maintaining positive interactions with colleagues.
- Creative problem-solver who thrives in environments that require the capacity to prioritize concurrent projects both calmly and efficiently.
- Track record of successful management of budgets between $100 million and $400 million.
- Adept in all facets of mergers and acquisitions, including financial evaluation, negotiations and working directly with client senior management teams.
- Sought-after keynote speaker, panelist, and presenter at industry conferences.

Select career accomplishments:

- Sponsored testimony before utility commissions in 55 regulatory proceedings, including base rate, CPCN, fuel, plant abandonment, and environmental cases in multiple states.
- Led the analysis and developed for fleet compliance with complex environmental regulations, including MATS, CSAPR, ELG and CCR.
- Generated and executed reliability improvement plan that achieved top quartile performance for coal fleet.
- Established program to ensure compliance with more than 50 North American Electric Reliability Corporation (NERC) standards.
- Generated idea and strategy to convert three coal plants to also burn natural gas, reducing fuel cost by 20%.
- Initiated and orchestrated annual technical conference for best practices and information sharing, networking, training and knowledge transfer attended by nearly 800 people.
- Significant involvement in acquisition and divestiture due diligence, evaluation, and negotiations.
- Provided real-time monitoring and advanced analytics for equipment at approximately 150 coal and gas units.
- Produced and maintained design criteria for new combined cycle and solar plants.
- Initiated and facilitated valuable regular meetings with peers at AEP, TVA, Southern and Dominion.

PROFESSIONAL EXPERIENCE

President and CEO of Pegasus-Global Holdings, Inc. **2022 – Present**

Leading a firm that is globally recognized for providing expert technical and managerial services to the power, energy, and infrastructure sectors.

Owner of J Miller Energy Consulting, LLC **2019 – 2022**

Providing management and strategy consulting to the energy industry. Offering services ranging from strategic and resource planning, operational efficiency improvement, generation and regulatory strategy development, and expert testimony as well as merger and acquisition support.

Duke Energy Corporation **1991 – 2019**

Duke Energy (NYSE: DUK), a Fortune 125 company, is one of the largest electric utility holding companies in the U.S., generating and delivering electricity, distributing natural gas and operating a growing renewable energy portfolio.

Vice President/Central Services & Compliance, *Charlotte, NC* *(2014 – 2019)*

Total oversight of 550 employees, engineering, environmental compliance planning, generation and regulatory strategy, NERC and regulatory compliance, technical services and maintenance services for the company's fleet of 89 fossil hydro power plants in North Carolina, South Carolina, Ohio, Indiana, Kentucky and Florida.

- Ensured compliance with multiple environmental, safety and NERC regulations across six operating states.

- Implemented plant retrofits to improve fuel flexibility to achieve reduction in generating costs while maintaining reliability.
- Conducted analysis of plant retirements and new generation replacement in addition to setting lifecycle strategy for all large assets in fleet.
- Chair of enterprise engineering council.

General Manager/Strategic Engineering, *Charlotte, NC* *(2012 – 2014)*

- Negotiated agreement with Indiana Office of Utility Consumer Counselor on $400 million environmental filing.
- Led multi-department initiative resulting in early retirement of fossil plants.
- Identified unique compliance method that allowed Crystal River units 1 & 2 (900MW) to comply with BART and MATS rules, reducing grid reliability concerns and avoiding $200 million in potentially unrecoverable transmission projects.
- Implemented plant retrofits to improve fuel flexibility to achieve $168 million in savings while maintaining reliability.
- Led the evaluation and negotiation of generation asset purchase.
- Represented company in numerous rate case, fuel and environmental filings, and wholesale customer meetings.

General Manager/Generation Support, *Charlotte, NC* *(2010 – 2012)*

- Headed up financial and engineering analysis of capital projects and project controls responsibility for the company's fleet of nuclear, fossil and hydroelectric plants.
- Facilitated and carried out all facets of environmental compliance planning and strategy.
- Served as Merger Integration Team Leader of Fossil Hydro Generation Operations Services Team (2011).

Station Manager/Power Operations, *Zimmer Station, OH* *(2006 – 2010)*

- Personally surpassed 13 years and 2.75 million worked-hours leading employees without a lost-time injury.
- Introduced improvements to gypsum processing and scrubber waste operations, resulting in savings of $5 million per year.
- Facilitated and executed needed modifications to allow station to burn coal from the Illinois Basin.
- Served on the management committee during labor negotiations with IBEW 1347 (2006).

Station Manager/Power Operations, *East Bend Station, KY* *(2002 – 2006)*

- Led efficiency-improvement effort allowing station to achieve its second-best heat rate in 25-year history.
- Improved SO2 scrubbing and fuel cost to become the cheapest plant in the Cincinnati region.
- Led corporate Human Resources and Benefits teams through a continuous improvement process resulting in annual cost savings of $10 million; provided support to Legal, Risk Management and Executive Benefits teams.

Earlier positions of increasing responsibility:
Group Manager/Power Operations, *Cincinnati, OH* *(2000 – 2002)*
Support Team Group Leader/Power Operations, *Cayuga Station, IN* *(1997 – 2000)*
Staff Engineer/Power Operations, *Cayuga Station, IN* *(1991 – 1997)*

BOARD EXPERIENCE

William States Lee College of Engineering, University of North Carolina Charlotte
Advisory Board Member, 2014 – 2020

EDUCATION & PROFESSIONAL DEVELOPMENT

University of North Carolina at Chapel Hill Executive Education
Strategic Leadership Program, 2009
Indiana State University, Terre Haute, IN
Master of Business Administration coursework (12 of 16 courses completed), 1997
Purdue University, West Lafayette, IN
Bachelor Degree in Mechanical Engineering, 1991

HONORS & AWARDS

James B. Duke Award recipient for innovative mercury emissions reduction strategy, 2015

Testimony History

Nature of Proceeding	Petition Date	Company	Regulatory Body	Docket #	Testimony
Ongoing Review of Edwardsport IGCC Project	1/27/2010	Duke Energy Indiana	IURC	43114	Direct, Rebuttal and Supplemental
Fuel and Fuel-Related Cost Adjustment	10/18/2011	Duke Energy Carolinas	PSC of SC	2012-3-E	Direct
Fuel and Fuel-Related Cost Adjustment	3/7/2012	Duke Energy Carolinas	NCUC	E-7 Sub 1002	Direct
Environmentalal Cost Recovery	4/26/2012	Duke Energy Indiana	IURC	ECR - 19	Direct
CPCN for Pollution Control Equipment	6/28/2012	Duke Energy Indiana	IURC	44217	Direct and Rebuttal
Fuel and Fuel-Related Cost Adjustment	10/23/2012	Duke Energy Progress	PSC of SC	2013-1-E	Direct
Environmental Cost Recovery	10/26/2012	Duke Energy Indiana	IURC	ECR - 20	Direct
Fuel and Fuel-Related Cost Adjustment	12/28/2012	Duke Energy Carolinas	PSC of SC	2013-3-E	Direct
Base Rate Adjustment	1/4/2013	Duke Energy Carolinas	NCUC	E-7 Sub 1026	Direct and Rebuttal
Base Rate Adjustment	2/15/2013	Duke Energy Carolinas	PSC of SC	2013-59-E	Direct
Fuel and Fuel-Related Cost Adjustment	3/6/2013	Duke Energy Carolinas	NCUC	E-7 Sub 1033	Direct
Environmental Cost Recovery	4/29/2013	Duke Energy Indiana	IURC	ECR - 21	Direct
Fuel and Fuel-Related Cost Adjustment	6/12/2013	Duke Energy Progress	NCUC	E-7 Sub 1031	Direct
Fuel and Fuel-Related Cost Adjustment	10/8/2013	Duke Energy Progress	PSC of SC	2014-1-E	Direct
Fuel and Fuel-Related Cost Adjustment	10/8/2013	Duke Energy Carolinas	PSC of SC	2014-3-E	Direct
Environmental Cost Recovery	10/28/2013	Duke Energy Indiana	IURC	ECR - 22	Direct
CPCN for Pollution Control Equipment	11/7/2013	Duke Energy Indiana	IURC	44418	Direct and Settlement
Fuel and Fuel-Related Cost Adjustment	2/24/2014	Duke Energy Carolinas	NCUC	E-7 Sub 1051	Direct
Environmental Cost Recovery	4/28/2014	Duke Energy Indiana	IURC	ECR - 23	Direct
Fuel and Fuel-Related Cost Adjustment	5/28/2014	Duke Energy Progress	NCUC	E-7 Sub 1045	Direct
Fuel and Fuel-Related Cost Adjustment	10/7/2014	Duke Energy Progress	PSC of SC	2015-1-E	Direct
Fuel and Fuel-Related Cost Adjustment	10/7/2014	Duke Energy Carolinas	PSC of SC	2015-3-E	Direct
Environmental Cost Recovery	10/28/2014	Duke Energy Indiana	IURC	ECR - 24	Direct
Fuel and Fuel-Related Cost Adjustment	2/10/2015	Duke Energy Carolinas	NCUC	E-7 Sub 1072	Direct
Environmental Cost Recovery	4/28/2015	Duke Energy Indiana	IURC	ECR - 25	Direct
Fuel and Fuel-Related Cost Adjustment	4/29/2015	Duke Energy Progress	NCUC	E-7 Sub 1069	Direct
Fuel and Fuel-Related Cost Adjustment	10/1/2015	Duke Energy Progress	PSC of SC	2016-1-E	Direct
Fuel and Fuel-Related Cost Adjustment	10/1/2015	Duke Energy Carolinas	PSC of SC	2016-3-E	Direct
Environmental Cost Recovery	10/28/2015	Duke Energy Indiana	IURC	ECR - 26	Direct
Fuel and Fuel-Related Cost Adjustment	2/3/2016	Duke Energy Carolinas	NCUC	E-7 Sub 1104	Direct
Environmental Cost Recovery	4/28/2016	Duke Energy Indiana	IURC	ECR - 27	Direct
Fuel and Fuel-Related Cost Adjustment	5/17/2016	Duke Energy Progress	NCUC	E-7 Sub 1107	Direct
Base Rate Adjustment	6/2/2016	Duke Energy Progress	PSC of SC	2016-227-E	Direct
CPCN for Dry Bottom Ash Conversion	7/28/2016	Duke Energy Kentucky	KY PSC	2016-00268	Direct
Fuel and Fuel-Related Cost Adjustment	10/12/2016	Duke Energy Progress	PSC of SC	2017-1-E	Direct
Fuel and Fuel-Related Cost Adjustment	10/12/2016	Duke Energy Carolinas	PSC of SC	2017-3-E	Direct
Environmental Cost Recovery	10/28/2016	Duke Energy Indiana	IURC	ECR - 28	Direct
Fuel and Fuel-Related Cost Adjustment	1/5/2017	Duke Energy Carolinas	NCUC	E-7 Sub 1129	Direct
Base Rate Adjustment	4/18/2017	Duke Energy Progress	NCUC	E-2 Sub 1142	Direct and Rebuttal
Environmental Cost Recovery	4/28/2017	Duke Energy Indiana	IURC	ECR - 29	Direct
Fuel and Fuel-Related Cost Adjustment	5/3/2017	Duke Energy Progress	NCUC	E-7 Sub 1146	Direct
CPCN for Alternate Fuel Source	5/31/2017	Duke Energy Kentucky	KY PSC	2017-00186	Direct
Base Rate Adjustment	6/7/2017	Duke Energy Carolinas	NCUC	E-7 Sub 1146	Direct
Base Rate Adjustment	9/15/2017	Duke Energy Kentucky	KY PSC	2017-00321	Direct
Fuel and Fuel-Related Cost Adjustment	10/4/2017	Duke Energy Progress	PSC of SC	2018-1-E	Direct
Fuel and Fuel-Related Cost Adjustment	10/4/2017	Duke Energy Carolinas	PSC of SC	2018-3-E	Direct
Environmental Cost Recovery	10/25/2017	Duke Energy Indiana	IURC	ECR - 30	Direct and Rebuttal
Fuel and Fuel-Related Cost Adjustment	1/4/2018	Duke Energy Carolinas	NCUC	E-7 Sub 1163	Direct
Fuel and Fuel-Related Cost Adjustment	3/16/2018	Duke Energy Progress	NCUC	E-7 Sub 1173	Direct
Environmental Cost Recovery	4/23/2018	Duke Energy Indiana	IURC	ECR - 31	Direct
CPCN for New Landfill	6/15/2018	Duke Energy Kentucky	KY PSC	2018-00156	Direct
Base Rate Adjustment	10/9/2018	Duke Energy Progress	PSC of SC	2018-318-E	Direct
Base Rate Adjustment	10/9/2018	Duke Energy Carolinas	PSC of SC	2018-319-E	Direct
Environmental Cost Recovery	10/22/2018	Duke Energy Indiana	IURC	ECR - 32	Direct
Environmental Cost Recovery	4/22/2019	Duke Energy Indiana	IURC	ECR - 33	Direct
Plant Decertification and Abandonment	4/2/2021	Public Service Co. of New Mexico	NM PRC	21-00083-UT	Direct and Supplemental

Excerpt of April 2, 2021 Testimony of Nicholas Phillips Case No. 21-00083-UT

PNM Exhibit JAM-2

Is contained in the following 3 pages.

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	)	**Case No. 21-_____-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant.	)	

DIRECT TESTIMONY

OF

NICHOLAS L. PHILLIPS

April 2, 2021

assumed abandonment date for FCPP had little influence on the economics of the abandonment and replacement of the PVNGS leased capacity.

The overall replacement portfolio for PVNGS is somewhat sensitive to the expected availability of resources at pricing points received in the 2020 RFP. When PNM first began its evaluation, federal tax credits for renewable resources were set to expire. If prices for resources that previously would be eligible for tax credits lost the ability to capture those tax credits, our modeling showed that bringing on resources well ahead of the FCPP abandonment in 2024 as a part of the PVNGS procurement could provide additional value to customers. However, on December 27, 2020, the federal government extended the safe harbor date for currently applicable renewable tax credits for two years, which now covers the time FCPP replacements would be installed. We expect this extension will affect bidders' costs and pricing in a similar manner for delivery in 2025 as we see for delivery in 2023.[11] Consequently, the FCPP decision should have little bearing on the PVNGS replacement resource decision.

IV. RESULTS OF THE PVNGS ABANDONMENT ANALYSIS

Q. PLEASE SUMMARIZE THE RESULTS OF THE ABANDONMENT ANALYSIS.

[11] Note that the projects selected in the proposed portfolio qualify for a 30% ITC while a delay to 2025 would reduce the ITC to 26%.

DIRECT TESTIMONY
OF NICHOLAS L. PHILLIPS
NMPRC CASE NO. 21-____-UT

A. PNM conducted a thorough resource planning analysis of whether it should retain the Leased Interests and the PVNGS Assets beyond the expiration of their associated leases in 2023 (104 MW in Unit 1) and 2024 (10 MW in Unit 2). In order to retain the Leased Interests, PNM would need to acquire their ownership from the owners/lessors. The Abandonment Analysis demonstrates that there is a net economic benefit for PNM's customers if PNM does not exercise the option to repurchase the Leased Interests upon the expiration of the PVNGS leases and replaces the Leased Interests with alternative resources. Under the assumption that PNM could repurchase the Leased Interests at $515/kW, the estimated difference in cost relative to replacing the Leased Interests with alternative resources is $171 million NPV.

Q. PLEASE DISCUSS HOW SENSITIVITIES RELATED TO THE LEASE PURCHASE PRICE AFFECTED THE RESULTS.

A. As I noted previously, PNM examined a range of prices to examine the sensitivity of the analysis results to changes in the price to exercise the option to repurchase the Leased Interests. Along with the $515/kW price, PNM also analyzed a purchase price of $1,306/kW, which was the price assumed in the 2017 IRP, as well as a $0/kW price. The analysis demonstrated a customer benefit of $123 million even at a $0/kW purchase price. The results of these sensitivities are included in PNM Figure NLP-1 below. The costs labeled on the figure at the bottom of the bars are the 20-year NPV for the portfolio in millions. The costs at the top of the bars are

Excerpt of May 25, 2016 Testimony of Elisabeth Eden Case No. 15-00261-UT

PNM Exhibit JAM-3

Is contained in the following 5 pages.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NO. 513	)	**Case No. 15-00261-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant	)	

MAY 25, 2016 SUPPLEMENTAL TESTIMONY

OF

ELISABETH A. EDEN

May 25, 2016

**MAY 25, 2016 SUPPLEMENTAL TESTIMONY
OF ELISABETH A. EDEN
NMPRC CASE NO. 15-00261-UT**

(April 25, 2016) and is a summary of the proceeds of the sale/leaseback transactions and the related application of the proceeds based on the available Compliance Reports submitted to the Commission in the referenced cases.

Q. FOR EACH TRANCHE OF THE LEASES, DESCRIBE PNM'S RIGHTS UNDER EACH ORIGINAL LEASE AGREEMENT TO RE-PURCHASE ASSETS, RE-PURCHASE LEASES OR EXTEND THE LEASES. (APRIL 25, 2016 BENCH REQUEST 13)

A. Each of the eleven leases required that no later than three years from the expiration of the lease, PNM was required to give notice that it would either elect to return the undivided interest and real property interest to the Lessor, or it would exercise either its renewal or purchase options. Within two years of the expiration of the lease's expiration date, PNM was required to give written notice of its election to either exercise PNM's renewal option or exercise the purchase option. That election was irrevocable by PNM. The purchase option provided PNM with an option to purchase the leased assets at fair market value at the end of the original lease term. The Lessor and PNM had a period of time in which to negotiate a fair market sales value and if agreement could not be reached, an appraisal process would be undertaken to determine the fair market value.

In addition, the leases provided PNM with options to renew the leases at fixed rates. Some leases provided for a two year extension period and some provided for up to an eight year extension period. The lease extension term for the five Unit

2 leases that closed on August 18, 1986 was two years. The renewal option period on the Unit 1 leases and the Unit 2 lease that closed on December 17, 1986 was up to eight years.

The rental payments during the lease extension periods are 50% of the amounts during the original terms of the leases. For leases that are extended, the leases provide PNM with the option to purchase the leased assets at fair market value at the end of the extended lease terms. The process to either extend the lease or purchase the capacity was described in my Direct Testimony at pages 23-27.

None of the leases provided PNM a right to "re-purchase leases." PNM's acquisition of the beneficial interest of owner participants in certain leases occurred outside of the lease agreements' terms and procedures. Additional information on the 11 leases can be found in PNM Exhibit EAE-1 (May 25, 2016 Supp).

Q. DESCRIBE THE FINANCING AND PAYMENT RELATED TERMS OF EACH TRANCHE OF THE RENEWED LEASES, INCLUDING THE IMPLIED INTEREST RATES, IMPLIED RETURN ON EQUITY AND IMPLIED CAPITAL STRUCTURE (APRIL 25, 2016 BENCH REQUEST 16)

OUTSTANDING, THEIR MATURITIES, PNM'S LIABILITIES AND PNM'S ANNUAL FUNDING OBLIGATIONS FOR ANY RELATED SINKING FUNDS. (MAY 18 ORDER, EXHIBIT A, REQUEST 3(C))

A. The bank debt and the subsequent LOBs that were issued by First PV Funding Corporation in connection with the sale lease back transactions in 1985 and 1986 have been retired so there are no debt amounts outstanding.

Q. PROVIDE THE AMOUNTS OF ANY SINKING FUND CONTRIBUTIONS RELATED TO PALO VERDE UNITS 1 AND 2 THAT ARE INCLUDED IN THE PROPOSED REVENUE REQUIREMENT (MAY 18 ORDER, EXHIBIT A, REQUEST 3(D))

A. The debt associated with the referenced sinking funds has been fully paid (see answer to the previous question). As a result, there are no proposed sinking fund contributions related to PVNGS Units 1 and 2 included in the proposed revenue requirements in this case.

Q. DESCRIBE ANY GUARANTEES OR LIABILITIES THAT PNM HAS WITH RESPECT TO THE LEASE OBLIGATION BEFORE AND AFTER THE EXTENSION AND EXPIRATION OF THE PALO VERDE UNIT 1 AND UNIT 2 LEASES (MAY 18 ORDER, EXHIBIT A, REQUEST 3(E))

A. The leases associated with PVNGS Unit 1 and 2 are considered triple net leases, which are common commercial lease instruments. In a triple net lease, the lessee, or PNM in this case, is solely responsible for all costs associated with the

underlying assets including lease payments, capital investments, O&M expenditures and decommissioning liabilities. As discussed above, once a lease expires, and if the asset is returned to the Lessor, PNM would continue to be responsible for its share of decommissioning costs incurred following the retirement and dismantling of the unit, in addition to any capital project costs on projects pending at the date of the lease expiration.

Q. OF THE ORIGINAL $900,000,000, PLEASE LIST THE AMOUNTS OF PRINCIPAL PAID OR SET ASIDE IN A SINKING FUND AND LIST THE OUTSTANDING PRINCIPAL AMOUNT AT THE END OF EACH YEAR SINCE INCEPTION OF THE LEASE. (MAY 18 ORDER, EXHIBIT A, REQUEST 3(G)

A. Approximately 80% of the purchase price of the PVNGS interests totaling $720 million was provided through debt obligations, while the remainder was provided by the equity investors. All of the debt was secured indirectly by an assignment of the rents payable by PNM under the leases. The rents paid by PNM to the Lessors were designed to cover the debt through maturity and to provide a return on the equity investment. All of the debt was secured indirectly by an assignment of those rents payable by PNM under the leases. PNM made all necessary lease rental payments but does not have specific information about how those payments were actually applied by the Lessors, or about the outstanding principal amount in the sinking fund at the end of each year.

Excerpt of August 17, 2015 Testimony of Elisabeth Eden Case No. 15-00261-UT

PNM Exhibit JAM-4

Is contained in the following 2 pages.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NO. 513 **PUBLIC SERVICE COMPANY OF NEW MEXICO,** **Applicant**	**Case No. 15-00261-UT**

DIRECT TESTIMONY AND EXHIBITS

OF

ELISABETH A. EDEN

August 27, 2015

**DIRECT TESTIMONY OF
ELISABETH A. EDEN
NMPRC CASE NO. 15-00261-UT**

Q. HOW IS THE NDT FOR PVNGS CURRENTLY FUNDED AND MANAGED?

A. Funding for the NDT for Palo Verde Units 1 and 2 is included in rates for electric service that are paid by PNM's customers. Currently, PNM funds $2.6 million annually for PVNGS Unit 1 and 2 decommissioning based on IRS dictated methodology. The accumulated contributions and respective earnings on those funding amounts are segregated into separate trust accounts for each PVNGS unit. Although they are legally and financially separated by unit, they are managed in a combined manner to optimize investment efficiencies.

Q. WHAT IS THE CURRENT NDT FUNDING STATUS OF EACH OF THE PVNGS UNITS?

A. As of June 30, 2015, PNM's PVNGS Unit 1 NDT is funded on a pre-tax basis at 94.6 percent, while Unit 2 is at 105.3 percent of the latest cost study by TLG Services, Inc. ("TLG"), a consulting firm that provides a wide range of decommissioning services including cost estimating, program planning, mechanical and structural engineering, waste management, radiological engineering, health physics and quality assurance support for commercial nuclear power plant decommissioning projects. Each unit of PVNGS has a different estimate of its ultimate decommissioning obligation. TLG's most recent cost report, in 2015 dollars, estimates that PNM's share of decommissioning Unit 1 will cost $83.2 million and Unit 2 is at $80.9 million. As of June 30, 2015, Unit 1

Excerpt of October 9, 1985 Testimony of RB Starnes in Docket No. 1995

PNM Exhibit JAM-5

Is contained in the following 3 pages.

PUBLIC SERVICE COMPANY OF NEW MEXICO

PALO VERDE NUCLEAR GENERATING STATION UNIT 1 LEVERAGED LEASE FINANCING TRANSACTION

VOLUME II

ORIGINAL
DO NOT REMOVE
FROM P.S.C.

NMPSC DOCKET NO. 1995 ~~1994~~

PNM Exhibit ___ (RBS-1)

CONSENT AND AMENDMENT:

(A) An instrument under which the ANPP Participants (other than PNM) shall acknowledge that the Transaction Documents evidence fulfillment of the conditions set forth in the amendment to the Project Agreement described in paragraph (B) below.

(B) An amendment to the Project Agreement, executed by the ANPP Participants (including PNM) on or before the Closing Date, providing that any ANPP Participant may sell and transfer its interest in PVNGS, or any portion thereof or undivided interest therein, to a non-utility or non-utilities (or an owner trustee or owner trustees for such person or persons), subject to the following conditions and a determination of the ANPP Participants of the fulfillment thereof:

(i) concurrently with such sale and transfer, the interest so transferred shall be leased back to the transferring ANPP Participant under a net lease having a primary term of not less than 15 years;

(ii) the rights of such lessor shall be subject to the rights of all ANPP Participants, other than the transferring ANPP Participant, under the Project Agreement;

(iii) notwithstanding such sale and leaseback, the transferring ANPP Participant shall not be released from any of its payment obligations under the Project Agreement during the entire term of the Project Agreement, including, without limitation, its obligations with respect to the decommissioning of PVNGS or any Unit at PVNGS; and

(iv) notwithstanding such sale and leaseback, the transferring ANPP Participant shall continue as the sole representative of all interests of, and all interests derived from, such ANPP Participant for the entire term of the Project Agreement unless and until the transferring ANPP Participant shall have become the subject

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NO. 595	)	**Case No. 22-00270-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant	)	

SELF AFFIRMATION

JOSEPH A. MILLER, JR., President and CEO of Pegasus-Global Holdings, Inc, upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing **Direct Testimony of Joseph A. Miller, Jr.** and it is true and accurate based on my own personal knowledge and belief.

Dated this 5th day of December, 2022.

/s/ Joseph A. Miller, Jr.
JOSEPH A. MILLER, JR.

GCG # 530005