

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW MEXICO)
FOR APPROVAL OF PNM SOLAR DIRECT)
VOLUNTARY RENEWABLE ENERGY PROGRAM,)
POWER PURCHASE AGREEMENT, AND)
ADVICE NOTICE NOS. 560 AND 561,)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
_____)**

Case No. 19-00__-UT

**PUBLIC SERVICE COMPANY OF NEW MEXICO’S APPLICATION FOR
APPROVAL OF PNM SOLAR DIRECT VOLUNTARY RENEWABLE
ENERGY PROGRAM, POWER PURCHASE AGREEMENT,
AND ADVICE NOTICE NOS. 560 AND 561**

Public Service Company of New Mexico (“PNM”) hereby submits its application for approvals related to a new voluntary renewable energy program, PNM Solar Direct. The energy for the new program will be provided by a competitively-procured 50 MW solar facility through a power purchase agreement with Jicarilla Solar 2 LLC (“PPA”) over a 15 year term. Participants in PNM Solar Direct will pay program costs through proposed Rider No. 50, which includes a Contract Rider Rate of \$0.02173 per kWh to recover PPA costs and an Administrative Charge of \$0.0553758 per kW-month to recover the costs of administering and implementing PNM Solar Direct. Participating customers will receive a monthly fuel credit and a variable operation and maintenance credit for each kWh of PPA production based on their subscription through the program.

PNM Solar Direct will be open to governmental customers, and large commercial customers with aggregate demand of at least 2.5 MW. Customers that are not eligible to participate in PNM Solar Direct may participate in PNM’s other voluntary renewable energy

program, Sky Blue. To participate in PNM Solar Direct, eligible customers must enter into a 15-year contract matching the term of the PPA. PNM has received firm commitments from eligible customers equal to the entire 50 MW capacity of the program. The service agreements that govern customers' participation in the program provide that a customer who terminates the agreement must pay a fee equal to its remaining financial commitment to its subscribed capacity and Administrative Charge under the service agreement. Accordingly, approval of the PNM Solar Direct program will not result in PNM's other customers bearing the program costs. If the program is approved, PNM Solar Direct participants will begin receiving service under the program beginning with the Commercial Operation Date of the Jicarilla Solar 2 LLC facility, on March 31, 2021.

PNM requests that the New Mexico Public Regulation Commission ("Commission") issue the following approvals necessary to implement PNM Solar Direct:

- Approval of the PNM Solar Direct program pursuant to NMSA 1978, Section 62-16-7 and 17.9.572.18;
- Approval of the PPA pursuant to 17.9.551 NMAC;
- Approval of Advice Notice No. 560, which contains PNM's proposed Original Rider No. 50 – Voluntary Solar Renewable Energy Program – PNM Solar Direct for Governmental and Large Commercial Customers;
- Approval of Advice Notice No. 561, which contains PNM's proposed Original Form No. 106, PNM Solar Direct Service Agreement – Governmental Entities; Original Form No. 107, PNM Solar Direct Service Agreement – Non-Governmental Entities; and Original Form No. 108, Bill Form for PNM Solar Direct; and

- Variances from 17.1.2.10(B)(2)(b) NMAC, which requires comparisons of proposed rates with current rates and the impact on residential customers, and 17.9.530 NMAC, which requires filing of detailed schedules supporting changes in general rates.

PNM requests that the Commission grant the approvals specified above within the six months provided in 17.9.551.10(B) NMAC.

In further support of this Application, PNM states:

1. PNM is a New Mexico corporation that owns, operates and controls public utility plant, property and facilities, including generation, transmission and distribution facilities that provide retail and wholesale electric service in New Mexico. As defined in NMSA 1978, Section 62-3-3, PNM is a public utility and is subject to the jurisdiction of the Commission.

2. As a public utility, PNM is required to furnish adequate, efficient and reasonable service at just and reasonable rates. NMSA 1978, §§ 62-8-1 and -2.

3. PNM is subject to the Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10 (“REA”). Section 62-16-7(B) of the REA provides that the Commission “may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to energy provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.”

4. The Commission implemented Section 62-16-7(B) through 17.9.572.18 NMAC, which provides:

A. Each public utility shall offer a voluntary renewable energy tariff for those customers who want the option to purchase additional renewable energy.

B. The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility must develop an

educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

5. The Commission has held that renewable energy supplying a voluntary program must be in addition to renewable energy the utility would otherwise offer customers or use to satisfy the renewable portfolio standard. Case No. 10-00018-UT Recommended Decision, pp. 35, 36 (May 9, 2011) *adopted by* Post-Remand Final Order (December 11, 2012).¹

6. Sections 62-16-2(A) of the REA provide that:

(4) public utilities should be able to recover their reasonable costs incurred to procure or generate energy from renewable energy resources used to meet the requirements of the Renewable Energy Act;

(5) a public utility should have incentives to go beyond the minimum requirements of the renewable portfolio standard.

7. Section 62-16-6(C) provides:

Upon a commission motion or application by a public utility, the commission shall open a docket to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies that exceed the applicable annual renewable portfolio standard pursuant to the Renewable Energy Act. The commission shall initiate rules by June 1, 2008 to implement this subsection.

8. The Commission does not currently provide an incentive for PNM to exceed the maximum requirements of the renewable portfolio standard.

¹ Amendments to the REA contained in the Energy Transmission Act (“ETA”), which was adopted by the Legislature as SB 489 and signed by the Governor on March 22, 2019, will take effect on June 14, 2019. Section 32(B) of the ETA provides that

[a]ll renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978.

9. PNM Solar Direct is in the public interest and should be approved. The costs of the program will be collected from program participants. In addition, approving the program will allow PNM to add 50 MW of renewable energy to its system that will not count toward meeting PNM's renewable portfolio standard.

10. 17.9.551.8(A) NMAC provides that no "electric utility shall become irrevocably obligated under [a PPA with a term of five years or more] without first obtaining the commission's written approval of the agreement." 17.9.551.8(D) NMAC provides the filing requirements for approval of a PPA with a term of five years or longer.

11. In Case No. 15-00083-UT the Commission held that the review and approval procedure for a PPA is similar to the review and approval procedure for a Certificate of Public Convenience and Necessity pursuant to NMSA 1978, Section 62-9-1, and that the utility must demonstrate by a preponderance of the evidence that its proposed PPA complies with Rule 551 and is in the public interest. Recommended Decision, pp. 18-25 (September 21, 2015), *adopted by* Final Order (October 7, 2015).

12. PNM's witnesses address all requirements of 17.9.551 NMAC. Exhibit 1 to this Application is a table that shows where each of the Rule 551 requirements is addressed in the direct testimonies. The PPA is in the public interest and should be approved because it will allow PNM to procure energy to source the PNM Solar Direct program to meet customer demand for a new voluntary renewable energy program as required by 17.9.572.18 NMAC.

13. NMSA 1978, Section 62-6-15 provides that "service regulations may be established by contract between the municipality and the utility for a specified term not exceeding twenty-five years, but only by and with the approval of the commission to be expressed by its order." Original Form No. 106, PNM Solar Direct Service Agreement –

Governmental Entities, contains the service regulations that apply to governmental customers', including municipalities', participation in PNM Solar Direct and is for a term of less than twenty-five years.

14. The following designated corporate representatives and legal counsel for PNM should receive all notices, discovery requests, objections and responses, briefs, and all other documents related to this case:

Stacey Goodwin
Associate General Counsel
Madonna Bixby
Senior Corporate Counsel
Ryan Jerman
Corporate Counsel
PNMR Services Company
Corporate Offices - Legal Dept.
Albuquerque, NM 87158-0805
Phone: 505-241-4927
505-241-4929
505-241-4864
Stacey.Goodwin@pnmresources.com
Ryan.Jerman@pnmresources.com
Madonna.Bixby@pnmresources.com

All pleadings, correspondence and other documents should be delivered electronically to the following email addresses:

Stacey.Goodwin@pnmresources.com
Madonna.Bixby@pnmresources.com
Ryan.Jerman@pnmresources.com
Mark.Fenton@pnm.com
Steven.Schwebke@pnm.com

15. PNM incorporates in this Application the testimony and exhibits of Stella Chan, Thomas Fallgren, and Michael Settlege, filed contemporaneously herewith, as if fully set forth herein.

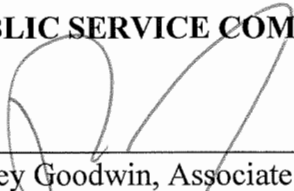
16. PNM seeks a variance from the requirements in 17.1.2.10(B)(2)(b) NMAC (which requires comparisons of proposed rates with current rates and the impact on residential customers) and from 17.9.530 NMAC ("Rule 530") (which requires filing of detailed schedules supporting changes in general rates). PNM states that a statement comparing new rates with present rates is unnecessary since Original Rider No. 50 being requested is not replacing or changing any present rates so there is nothing to compare. The minimum data requirements established by Rule 530 are appropriate for general rate cases, will provide no additional information useful for evaluation of the approvals sought by PNM's Application, and the time necessary to develop the information for the limited rate approvals sought would frustrate PNM's ability to obtain the necessary regulatory approvals in a timely manner that will allow completion of the Jicarilla Solar 2 project to supply the energy requirements of PNM Solar Direct.

17. Attached hereto as Exhibit 2 is a Proposed Form of Notice to Customers.

WHEREFORE, for the reasons stated above and in PNM's direct testimonies, PNM respectfully requests that the Commission issue an order pursuant to the REA, 17.9.572 NMAC, and 17.9.551 NMAC approving PNM Solar Direct.

Respectfully submitted this 31st day of May 2019 by:

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: 

Stacey Goodwin, Associate General Counsel
Madonna Bixby, Senior Corporate Counsel
Ryan Jerman, Corporate Counsel
PNMR Services Company
Corporate Headquarters - Legal Department
Albuquerque, NM 87158-0805

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Attorneys for Public Service Company of New Mexico
GCG#525529

Rule 551.8 General Requirements for Filing an Application for Approval of a PPA

		In Testimony Of
551.8(D)	An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:	
1	A copy of the LTPPA; and	Thomas Fallgren
2	An explanation of key terms and conditions of the LTPPA containing:	
	a the term of the LTPPA including any options to extend the agreement;	Thomas Fallgren
	b the size in MW of capacity and the amount of energy in MWh or kWh per month and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;	Thomas Fallgren
	c the price or pricing formula under which the electric utility will pay for the power and energy contracted for, including identification of when charges begin to be incurred, any price reopeners and any price escalation provisions;	Thomas Fallgren
	d obligations by the electric utility to pay for any fixed or variable administrative, transactional or operation and maintenance costs incurred through the operation of the generation facility, including start-up costs, taxes, insurance, environmental or reclamation-related costs, fuel costs and any other costs that the electric utility may incur; and	Thomas Fallgren
	e provisions related to non-performance by the counter-party and the remedies provided.	Thomas Fallgren
3	a description of transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA or both;	Thomas Fallgren
4	an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers;	Michael Settlege
5	A general description of:	
	a the generating facility or facilities that will generate the purchased power; or	Thomas Fallgren
	b if the power is to be generated from one or more specific generating units to be constructed outside New Mexico, a description of the anticipated siting of the generating unit, expected construction time the expected commercial operation date;	Not Applicable

Rule 551.8 General Requirements for Filing an Application for Approval of a PPA

		In Testimony Of	
551.8(D)		An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:	
5	c	if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of:	Applicable
	i	the approvals required to construct and operate the generating unit, including air quality and other environmental permits;	Thomas Fallgren
	ii	the expected construction time;	Thomas Fallgren
	iii	the expected commercial operation date;	Thomas Fallgren
	iv	the fuel type and supply sources; and	Thomas Fallgren
	v	other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement.	Thomas Fallgren
6		evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors;	Thomas Fallgren
7		evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics;	Stella Chan
8		evidence that the LTPPA is consistent with the electric utility's most recent commission-accepted integrated resource plan unless, as described in Section 17.7.3.10 NMAC, material changes that would warrant a different course of action by the electric utility have occurred; in which case, the testimony shall include justification for deviation from the integrated resource plan;	Thomas Fallgren
9		evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;	Thomas Fallgren
10		evidence addressing the methodology and criteria by which the purchased power agreement was selected; and	Thomas Fallgren
11		any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA.	Thomas Fallgren

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ADVICE NOTICE NOS. 560 AND 561,)	
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PUBLIC SERVICE COMPANY OF NEW MEXICO,)	
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Applicant.)	
_____)	

NOTICE

NOTICE is hereby given that on May 31, 2019, Public Service Company of New Mexico (“PNM”) filed an Application with the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) for approvals related to a new voluntary renewable energy program, PNM Solar Direct. Energy for the new program will be provided by a competitively-procured 50 MW solar facility through the Jicarilla Solar 2 power purchase agreement (“PPA”) over a 15 year term. Participants in PNM Solar Direct will pay program costs through proposed Original Rider No. 50, which includes a Contract Rider Rate to recover PPA costs and an Administrative Charge to recover the costs of administering and implementing PNM Solar Direct. Participating customers will receive a monthly fuel credit and a variable operation and maintenance credit for each kWh of PPA production based on their subscription through the program.

PNM states that PNM Solar Direct will be open to governmental customers, and large commercial customers with aggregate demand of at least 2.5 MW. To participate in PNM Solar Direct, eligible customers must enter into a 15-year contract matching the

term of the PPA. PNM has received firm commitments from eligible customers equal to the entire 50 MW capacity of the program. Approval of the PNM Solar Direct program will not result in PNM's other customers bearing the program costs. If the program is approved, PNM Solar Direct participants will begin receiving service under the program beginning with the Commercial Operation Date of the Jicarilla Solar 2 LLC facility, on March 31, 2021.

PNM requests that the New Mexico Public Regulation Commission ("Commission") issue the following approvals necessary to implement PNM Solar Direct:

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- Approval of Advice Notice No. 560, which contains PNM's proposed Original Rider No. 50 – Voluntary Solar Renewable Energy Program – PNM Solar Direct for Governmental and Large Commercial Customers;
- Approval of Advice Notice No. 561, which contains PNM's proposed Original Form No. 106, PNM Solar Direct Service Agreement – Governmental Entities; Original Form No. 107, PNM Solar Direct Service Agreement – Non-Governmental Entities; and Original Form No. 108, Bill Form for PNM Solar Direct; and
- A variance from 17.1.2.10(B)(2)(b) NMAC, which requires comparisons of proposed rates with current rates and the impact on residential customers, and from 17.9.530 NMAC, which requires filing of detailed

schedules supporting changes in general rates.

PNM proposes to recover the costs of the PPA from the participating customers, as provided in the Service Agreements entered into by PNM and the participating customers and Original Rider No. 50. Pursuant to 17.9.551 NMAC, PNM must receive Commission approval of the PPA before becoming irrevocably bound under the PPA. PNM requests that the Commission grant the approvals specified above within six months as provided in 17.9.551.10(B) NMAC.

PNM's Application states that PNM is subject to the Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10 ("REA"). Section 62-16-7(B) of the REA provides that the Commission "may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to energy provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission." The Commission implemented Section 62-16-7(B) through 17.9.572.18 NMAC, which provides:

A. Each public utility shall offer a voluntary renewable energy tariff for those customers who want the option to purchase additional renewable energy.

B. The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility must develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

PNM's Application also states that the Commission has held in Case No. 10-00018-UT that renewable energy supplying a voluntary program must be in addition to renewable energy the utility would otherwise offer customers or use to satisfy the

renewable portfolio standard (“RPS”). The PPA supplying the renewable energy for PNM Solar Direct is in addition to renewable energy PNM procures to meet its RPS.

PNM states that PNM Solar Direct is in the public interest and should be approved. The costs of the program will be collected from program participants. In addition, approving the program will allow PNM to add 50 MW of renewable energy to its system that will not count toward meeting PNM’s renewable portfolio standard.

PNM seeks a variance from 17.1.2.10(B)(2)(b) NMAC (which requires comparisons of proposed rates with current rates and the impact on residential customers) and from 17.9.530 NMAC ("Rule 530") (which requires filing of detailed schedules supporting changes in general rates). PNM states that a statement comparing new rates with present rates is unnecessary since Original Rider No. 50 being requested is not replacing or changing any present rates so there is nothing to compare. The minimum data requirements established by Rule 530 are appropriate for general rate cases, will provide no additional information useful for evaluation of the approvals sought by PNM's Application and the time necessary to develop the information for the limited rate approvals sought would frustrate PNM's ability to obtain the necessary regulatory approvals in a timely manner that will allow completion of the Jicarilla Solar 2 project to supply the energy requirements of PNM Solar Direct.

Pursuant to Rule 551.10(A) NMAC, the Commission may approve a power purchase agreement without a formal hearing if no protest is filed within sixty (60) days after the date notice is given pursuant to Commission order. The procedural schedule for this case is as follows:

Any person desiring to intervene in the proceeding must file a Motion to Intervene on or before _____, 2019, pursuant to 1.2.2.23 NMAC.

Any protest to approval of the Jicarilla Solar 2 PPA shall be filed on or before _____, 2019, and shall state the grounds for protest in sufficient detail to allow the Commission to determine if the protest raises substantial doubt that the PPA should be approved. Factual matters raised in the protests shall be supported by detailed affidavits.

The Commission's Utility Division Staff shall, and any intervenor may, file direct testimony on or before _____, 2019.

A public hearing, if deemed necessary, shall be held on _____, 2019, beginning at 9:30 A.M., and continuing as necessary at the offices of the Commission, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. Such hearing may be vacated if deemed not required at the discretion of the Commission.

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

The Commission's Procedural Rules, 1.2.2 NMAC, apply to this case except as modified by Order of the Commission. A copy of such rules may be obtained from the offices of the Commission and are available at the official New Mexico Administrative Code website, www.nmprc.state.nm.us/nmac/.

Anyone filing pleadings, documents or testimony in this case shall serve copies on the Commissioners, Office of General Counsel, and all parties of record and the Commission Staff via first class mail and email in PDF and Word formats. All filings shall be emailed on the date they are filed with the Commission.

Any interested person may appear at the public hearing referred to above and give a written or oral comment, pursuant to the Commission's Rules of Procedure, 1.2.2 NMAC, without becoming an intervenor. Such written or oral comment will not be considered as evidence in this case.

Any person with a disability requiring special assistance in order to participate in this proceeding should contact the offices of the Commission at least 24 hours prior to the commencement of the hearing.

The Commission or its designee(s) will conduct and preside over all necessary hearings pursuant to NMSA 1978, Sections 8-8-4 and 8-8-13 and 1.2.2.29(A) & (B)(1) NMAC, to take all such actions as are necessary and consistent with Commission procedure in this matter, including determination of any preliminary motions and assisting in or conducting the public hearing, and issuing a Recommended Decision.

As stated above, interested persons that choose to send written comments (such comments shall not be considered as evidence in this case) shall reference NMPRC Case No. 19-00__-UT, to the Commission at: **New Mexico Public Regulation Commission; Attention: Melanie Sandoval, Records Division, P.E.R.A. Building, 1120 Paseo de Peralta, P.O. Box 1269, Santa Fe, NM 87504-1269, Telephone: (505) 827-6968.**

Any interested person may inspect PNM's Application filed in this case at PNM's offices, 414 Silver Avenue, SW, Albuquerque, New Mexico, telephone number 505-241-2700, or the Commission's offices, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, telephone number (505) 827-6968; or through the Commission's website,

www.nmprc.state.nm.us. This case has been docketed as Case No. 19-00__-UT and any inquiries should refer to that number.

Issued at Santa Fe, New Mexico, this ____ day of _____, 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION

Commissioner

GCG#525531