

PUBLIC SERVICE COMPANY OF NEW MEXICO

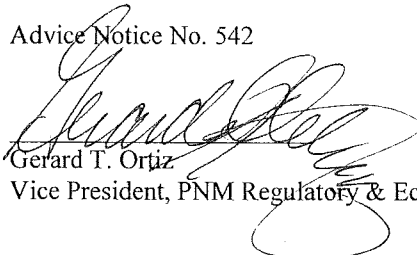
ORIGINAL RIDER 45A
ECONOMIC DEVELOPMENT RIDER CONTRACT (AMERICAN GYPSUM)

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ECONOMIC DEVELOPMENT RIDER CONTRACT (AMERICAN GYPSUM)

JUN 22 2017 10:30

Advice Notice No. 542


Gerard T. Ortiz

Vice President, PNM Regulatory & Economic Development

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REPLACED BY NMPRC

BY Commission Order Case #17-00164-UT

GCG#523522

PUBLIC SERVICE COMPANY OF NEW MEXICO
AGREEMENT NO. 1047371

STANDARD CONTRACT FOR ECONOMIC DEVELOPMENT RIDER DISCOUNT
FOR NEW AND EXISTING RETAIL CUSTOMERS

THIS STANDARD CONTRACT FOR ECONOMIC DEVELOPMENT RIDER DISCOUNT ("Contract") effective this 5th day of MAY, 2017 ("Effective Date"), is by and between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM"), and AMERICAN GYPSUM COMPANY LLC, a EXISTING ("Customer"). PNM and Customer are sometimes referred to in this Contract individually as a "Party" and collectively as the "Parties."

RECITALS

A. PNM is a public utility that owns and operates electric generation, transmission and distribution facilities and is subject to the laws of the State of New Mexico and the jurisdiction of the New Mexico Public Regulation Commission ("NMPRC").

B. PNM's Original Rider No. 45, Economic Development Rider ("EDR") Applicable to Rate No. 4B – Large Power Service Time-of-Use; Rate No. 5B – Large Service for Customers $\geq 8,000$ kW min. at 115 kV, 69 kV or 34.5 kV; Rate No. 30B – Large Service for Manufacturing $\geq 30,000$ kW minimum at distribution voltage; and Rate No. 35B – Large Power Service $\geq 3,000$ kW – Time of Use Rate (each an "Applicable Rate"), provides rates, terms and procedures by which PNM and eligible retail customers may enter into contracts that establish discounted demand charges over a four- or five-year term to encourage new industry to locate in New Mexico and to facilitate further investment by existing PNM customers in their businesses in New Mexico.

C. ☒ Customer is an Existing Retail Customer of PNM and currently receives electric service from PNM under Rate No. 3C.

☐ Customer is a New Retail Customer eligible to receive electric service from PNM under Rate No. .

D. PNM and Customer wish to establish, on the terms set forth in this Contract and consistent with the EDR, a discounted demand charge applicable to electric service provided to Customer by PNM under Rate No. 4B.

AGREEMENT

In consideration of the premises and mutual covenants contained in this Contract, the Parties, intending to be bound, hereby agree as follows:

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1. Definitions. As used in this Contract, the following terms, when initially capitalized, shall have the following meanings:

"Contract" has the meaning set forth in the Preamble, including any exhibits and attachments thereto, as each may be amended from time to time.

"Contract Term" has the meaning set forth in Section 2.

"Customer" has the meaning set forth in the Preamble.

"EDR" has the meaning set forth in Recital B.

"EDR Average Base Demand" means the average of Customer's actual metered demands for the twelve (12) consecutive billing months of normal operations immediately preceding the effective date of this Contract. The EDR Average Base Demand shall remain constant during the entire period that the EDR Discount is in effect under this Contract; for a New Retail Customer, the EDR Average Base Demand should be zero.

"EDR Discount" means the maximum discounted percentage to be applied to the effective demand charge under the Applicable Rate schedule for the service being received by Customer, subject to the limits set forth in Section 3.1.2 below.

"EDR Discount Effective Date" has the meaning set forth in Section 3.1.1.

"Effective Date" has the meaning set forth in the Preamble.

"Event of Default" has the meaning set forth in Section 6.1.

"Extended EDR Duration" has the meaning set forth in Section 2.

"Existing Retail Customer" means a customer having at least twelve (12) consecutive months of service on PNM's system immediately preceding the date of such customer's application to PNM for the EDR Discount pursuant to the EDR.

"Incremental Cost" means all additional costs incurred by PNM to serve Customer that would not otherwise have been incurred to provide service to other customers under the same rate schedule, including, but not limited to: (i) fuel and purchased power costs; (ii) costs recoverable by PNM from customers pursuant to the New Mexico Renewable Energy Act and the Efficient Use of Energy Act; and (iii) the direct costs of facilities necessary to provide service to Customer.

"Incremental Demand" means, for an Existing Retail Customer, all kW billing demand above the EDR Average Base Demand.

"Loss of Eligibility" has the meaning set forth in Section 5.3.

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"**Minimum Eligibility**" means (a) for a New Retail Customer, at least 500 kW of New Demand; and (b) for an Existing Retail Customer, at least 200 kW of Incremental Demand.

"**New Demand**" means, for a New Retail Customer, all kW billing demand above the EDR Average Base Demand.

"**New Mexico Public Regulation Commission**" or "**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**New Retail Customer**" means a customer that has not taken service from PNM under any rate schedule for twelve (12) consecutive months immediately preceding the date of such customer's application to PNM for the EDR Discount under the EDR.

"**PNM**" has the meaning set forth in the Preamble.

"**Standard EDR Duration**" has the meaning set forth in Section 2.

2. Term.

□ Standard Term Contract. The term of this Contract shall commence upon the EDR Discount Effective Date and, unless earlier terminated pursuant to Section 5, this Contract shall remain in effect for a total of eight (8) years from the EDR Discount Effective Date ("**Contract Term**"). The Contract Term shall include an initial period of four (4) years during which the EDR Discount shall be in effect ("**Standard EDR Duration**") plus an additional four (4) years during which PNM shall provide, and Customer shall continue taking from PNM, service at the full tariff rate under the Applicable Rate schedule without the benefit of the EDR Discount. This Contract is not subject to extension or renewal and shall automatically terminate at the end of the Contract Term.

□ Extended Term Contract. The term of this Contract shall commence upon the EDR Discount Effective Date and, unless earlier terminated pursuant to Section 5, this Contract shall remain in effect for a total of ten (10) years from the EDR Discount Effective Date ("**Contract Term**"). The Contract Term shall include an initial period of five (5) years during which the EDR Discount shall be in effect ("**Extended EDR Duration**") plus an additional five (5) years during which PNM shall provide, and Customer shall continue taking from PNM, service at the full tariff rate under the Applicable Rate schedule without the benefit of the EDR Discount. This Contract is not subject to extension or renewal and shall automatically terminate at the end of the Contract Term. Customer hereby certifies that the additional twelve- (12-) month period is necessary to attract the new or incremental economic development load.

3. EDR Discount; Billing Methodology.

3.1 EDR Discount.

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3.1.1 Provided that Customer maintains its eligibility for the EDR Discount as set forth in this Contract, Customer will receive a discount applicable to the demand charges for all kilowatts classified as Incremental Demand in accordance with the EDR Discount for Standard EDR Duration Table (or the Extended EDR Duration Table, if applicable), as set forth in Exhibit A. Customer's Incremental Demand shall be based on an EDR Average Base Demand of 2.02 kW. The EDR Discount shall go into effect as of the date the NMPRC approves this Contract ("**EDR Discount Effective Date**") and shall be calculated by multiplying Customer's standard demand charge under Rate No. 4B by the maximum percentage discount for the applicable billing month in the Contract Term. In no event shall the percentage discount exceed the maximum discount permitted in each year for the Standard EDR Duration (or Extended EDR Duration Table, if applicable), as set forth in Exhibit A.

3.1.2 Customer acknowledges and agrees that the total monthly charges that will be billed to Customer for service after application of the EDR Discount must be equal to or greater than the Incremental Cost. If the total estimated billings based on charges including the EDR Discount are lower than the Incremental Cost, PNM shall reduce the percentage of the EDR Discount to the level necessary to prevent the charges from falling below the Incremental Cost of providing service to Customer.

3.1.3 PNM shall verify, at least annually, that the rate charged to Customer after the EDR Discount is applied is equal to or greater than the Incremental Cost. If PNM determines, in its sole discretion, that the rates charged to Customer after the EDR Discount are less than the Incremental Cost, PNM shall promptly notify Customer in writing of the necessary revision to the EDR Discount to assure compliance with the Incremental Cost threshold and explain the reason for the revision. Any such revised EDR Discount shall become effective with the first billing cycle that occurs at least ten (10) days after the date of such written notice. Revisions to the EDR Discount shall not extend the Contract Term.

3.2 Billing Methodology. PNM shall bill Customer monthly pursuant to the Applicable Rate schedule under which service is rendered calculated as though the EDR were not in effect, except that the demand charge, after adjustment for the EDR Discount, will be shown on the bill.

4. Eligibility. To receive the EDR Discount, Customer must remain eligible to receive electric service under the Applicable Rate schedule and the EDR during the Contract Term. If Customer becomes ineligible to receive the EDR Discount, this Contract shall be subject to termination as set forth in Section 5, Termination.

5. Termination.

5.1 No Contract Termination during EDR Duration; Exceptions. Except as otherwise provided herein, this Contract shall not be subject to termination until expiration of the Standard EDR Duration, or Extended EDR Duration, if applicable. Customer shall continue to take service from PNM under the Applicable Rate schedule

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during the entire Contract Term, regardless of expiration of the period in which the EDR Discount is in effect.

5.1.1 Notwithstanding the foregoing, this Contract may be terminated for any of the following reasons:

5.1.1.1 The occurrence of an Event of Default for which no cure period is specified in Section 6.1, or, if a cure period is specified in Section 6.1, an Event of Default remains uncured after expiration of the relevant cure period;

5.1.1.2 Loss of Eligibility, as set forth in Section 5.3, in which case PNM shall terminate this Contract; or

5.1.1.3 Failure to receive NMPRC approval of this Contract within six (6) months of the Effective Date; disapproval of this Contract by the NMPRC; or approval of this Contract by the NMPRC with conditions unacceptable to either Party, in its reasonable discretion.

5.2 Termination of Service. If Customer terminates service with PNM for any reason before the expiration of the Contract Term, Customer shall reimburse PNM for the difference between the amounts charged Customer for the period the EDR Discount was in effect and the amounts that would have been charged under the otherwise Applicable Rate schedule. Customer shall pay such amount in full within thirty (30) days of the date PNM issues an invoice to Customer for the difference.

5.3 Loss of Eligibility. If circumstances change during the Contract Term such that Customer no longer qualifies for eligibility for an EDR Discount under the Applicable Rate schedule and the EDR, PNM shall promptly provide written notice to Customer of the termination of this Contract and the EDR Discount. Such termination shall be effective with the first billing cycle that is at least ten (10) days following the date of written notice given by PNM. The occurrence of any of the following events will cause Customer to lose its qualification to receive the EDR Discount (each a "Loss of Eligibility"):

5.3.1 Customer becomes ineligible to receive electric service under one of the following rate schedules; Rate 4B – Large Power; Rate 5B – Large Service $\geq 8,000$ kW; Rate 30B – Manufacturing; and the new proposed Rate 35B – Large Power $\geq 3,000$ kW; or

5.3.2 Customer fails to timely pay its PNM bill or otherwise does not comply with PNM's commercial creditworthiness standards; or

5.3.3 Customer fails to satisfy the applicable Minimum Eligibility requirements.

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5.3.3.1 If Customer is an Existing Retail Customer, PNM will periodically evaluate Customer's Incremental Demand to verify Customer's continuing eligibility for the EDR Discount. The first evaluation will be for the six-month period beginning on the EDR Discount Effective Date. Thereafter, PNM will monitor Customer's average Incremental Demand on a monthly basis to determine a twelve-month rolling average. If Customer fails to maintain an average of at least 200 kW of Incremental Demand during the initial six-month evaluation period or any twelve-month evaluation period thereafter, PNM may terminate this Contract.

5.3.3.2 If Customer is a New Retail Customer, PNM will periodically evaluate Customer's New Demand to verify Customer's continuing eligibility for the EDR Discount. The first evaluation will be for the six-month period beginning on the EDR Discount Effective Date. Thereafter, PNM will monitor Customer's average New Demand on a monthly basis to determine a twelve-month rolling average. If Customer fails to maintain an average of at least 500 kW of New Demand during the initial six-month evaluation period or any twelve-month evaluation period thereafter, PNM may terminate this Contract.

6. Default and Remedies.

6.1 Events of Default. Each of the following constitutes an event of default under this Contract ("Event of Default"): (a) failure to make, when due, any payment required under this Contract if such failure is not remedied within ten (10) days after written notice of such failure is given to the breaching Party; or (b) any representation made by the breaching Party proves to have been materially false or misleading when made; or (c) failure to perform any obligation set forth in this Contract (other than payment obligations, which are governed by Section 6.1(a)), and such failure continues for thirty (30) days; and (d) assignment or transfer of this Contract or any right or interest in this Contract, except as expressly permitted under Section 8; or (e) being unable to pay debts as they become due; or (f) making an assignment or any general arrangement for the benefit of creditors; or (g) filing a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors; or (h) otherwise becoming bankrupt or insolvent.

6.2 Remedies. In the event of an uncured Event of Default, the non-defaulting Party or its successors or assigns shall have the following rights and remedies, in addition to any other rights and remedies that may be available under this Contract and applicable law: (a) terminate this Contract by delivery of written notice to the defaulting Party; and (b) seek equitable relief to cause the defaulting Party to take action or to refrain from taking action pursuant to this Contract.

7. Notice. All notices, demands or requests provided for in this Contract shall, unless otherwise specified in this Contract, be in writing and may be delivered by hand delivery, first-class United States mail, overnight courier service, email or facsimile in accordance with

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PNV Commission Order Case # 17-00164-VT

this Section 7. Notice given by facsimile, e-mail or hand delivery shall be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be deemed given at the close of business on the next Business Day. Notice given by overnight United States mail or courier service shall be deemed given on the next Business Day after it was sent out. Notice given by first class United States mail shall be deemed given three (3) business days after the postmarked date. In order to be effective, notices must be sent to the following persons and addresses, or such other persons or addresses as a Party may add or substitute by written notice to the other:

If to PNM: Public Service Company of New Mexico
Attn: _____
414 Silver Avenue, SW
Albuquerque, NM 87102

With copy to:

Public Service Company of New Mexico
Attn: Corporate Secretary
414 Silver Avenue, SW
Albuquerque, NM 87102

If to Customer: AMERICAN GYPSUM COMPANY
Attn: STEVE WENTZEL
3811 TURTLE CREEK BLVD. SUITE 1200
DALLAS, TX 75219

8. Representations and Warranties.

8.1 Representations and Warranties by Customer. Customer represents and warrants that:

8.1.1 Customer is a LIMITED LIABILITY COMPANY, validly existing and in good standing under the laws of the State of DELAWARE, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting.

8.1.2 Customer has taken all necessary actions to authorize, effect and approve this Contract, and this Contract has been duly authorized, executed and delivered by or on behalf of Customer and is, upon execution and delivery, the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights.

8.1.3 Customer is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to perform Customer's obligations required under this Contract.

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8.1.4 Customer makes at least fifty percent (50%) of its sales from sources outside the State of New Mexico.

8.2 Representations and Warranties by PNM. PNM represents and warrants that:

8.2.1 PNM is a corporation duly formed, validly existing, and in good standing under the laws of the State of New Mexico, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting.

8.2.2 PNM has taken all necessary corporate action to authorize, effect and approve this Contract, and this Contract has been duly authorized, executed and delivered by or on behalf of PNM and is, upon execution and delivery, the legal, valid, and binding obligation of PNM, enforceable against PNM in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights.

9. Assignment. Customer shall not assign or transfer its interest in this Contract without first obtaining the written consent of PNM, which consent shall not be unreasonably withheld, conditioned or delayed. PNM may, at its option and at any time, assign this Contract, in whole or in part to an Affiliate of PNM as defined by NMSA 1978, Section 62-3-3(A) or to any other person or entity due to a reorganization of any assets, business function or structure of PNM or in connection with other corporate events involving PNM, including mergers, consolidations and asset and/or stock sales. Except as expressly permitted in this Section 8, PNM shall not assign or transfer its interest in this Contract without first obtaining the written consent of Customer, which consent shall not be unreasonably withheld, conditioned or delayed.

10. Waiver. No delay, failure or refusal on the part of a Party to exercise or enforce any right under this Contract shall impair such right or be construed as a waiver of such right or any obligation of the other Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give Notice to the other Party of a breach of this Contract shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

11. Survival. The provisions of this Contract that by their nature are intended to survive the termination, cancellation, completion, or expiration of this Contract shall continue as a valid and enforceable obligation of the Party notwithstanding any such termination, cancellation, completion, or expiration.

12. Severability. If a court or regulatory agency having jurisdiction over the Parties determines that a condition of this Contract, or any part thereof, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from this Contract, and the

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BY C. J. [illegible] #17-00164-VT

remaining conditions or parts shall be unaffected and shall be enforced to the fullest extent allowed by applicable law. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

13. Binding Effect. This Contract and all provisions hereof shall inure to the benefit of and be binding upon the Parties, their successors, and permitted assigns.

14. Counterparts. This Contract may be executed in any number of counterparts, each of which will be deemed to be an original, but all such counterparts will together constitute but one and the same instrument. PNM and Customer may retain a duplicate copy of this Contract, which will be considered an equivalent to this original.

15. Governing Law. The interpretation and performance of this Contract shall be governed and construed in accordance with the laws of the State of New Mexico, notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law.

16. Complete Agreement; Amendments. This Contract and any exhibits and attachments hereto, as each may be amended from time to time, represent the entire agreement and understanding between PNM and Customer with respect to the subject matter hereof, and supersede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Contract. This Contract may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto. Notwithstanding the foregoing, this Contract, including any Applicable Rate schedules, shall at all times be subject to change or modification by order of the NMPRC. PNM will provide Customer notice in accordance with the NMPRC's requirements when PNM is requesting the NMPRC to take action that could cause a change in the terms of this Contract.

[Signature Page(s) Follow]

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IN WITNESS WHEREOF, the Parties have caused this Contract to be duly executed as of the date first above written. This Contract shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: Becky Teague
Printed Name: Becky Teague
Its: VP External Affairs

[CUSTOMER]

By: AWH
Printed Name: STAN WENTZEL
Its: VP MANUFACTURING

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EXHIBIT A

EDR DISCOUNT

EDR Discount for Standard EDR Duration:

<u>Billing Month in Contract Term</u>	<u>Maximum Percentage Discount to Base Tariff Demand Charges</u>
1st through 12th (Year 1)	50%
13th through 24th (Year 2)	35%
25th through 48th (Years 3 & 4)	20%

EDR Discount for Extended EDR Duration:

<u>Billing Month in Contract Term</u>	<u>Maximum Percentage Discount to Base Tariff Demand Charges</u>
1st through 12th (Year 1)	50%
13th through 24th (Year 2)	35%
25th through 48th (Years 3 & 4)	20%
48th through 60th (Year 5)	10%

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