

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)	
COMPANY OF NEW MEXICO’S APPLICATION)	
FOR APPROVAL OF AN AMENDED SPECIAL)	
SERVICE CONTRACT WITH GREATER KUDU)	
LLC, TWO PURCHASED POWER AGREEMENTS)	
PURSUANT TO 17.9.551 NMAC, ORIGINAL)	
RIDER NO. 49, AMENDED RATE NO. 36B AND)	Case No. 18-00269-UT
AMENDED RIDER NO. 47)	
)	
PUBLIC SERVICE COMPANY OF NEW MEXICO,)	
)	
Applicant.)	
)	

NOTICE

NOTICE is hereby given that on August 24, 2018, Public Service Company of New Mexico (“PNM”) filed an Application with the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) for approval of:

- 1) The Second Amended and Restated Special Service Contract (“Restated SSC”) with Greater Kudu, LLC (“Customer”), which modifies the Special Service Contract (“SSC”) that was approved in Case No. 16-00191-UT. PNM asserts that the principal modification to the SSC is a renegotiated Contribution to Production Component mechanism designed to better ensure the recovery of PNM’s production costs, taking into account the value of additional renewable energy procurements to the system. This modification also eliminates from the original SSC the 110 MW “cap” on renewable energy additions to match the energy used by Facebook, Inc.’s New Mexico Data Center (“Data Center”). If approved by the Commission in this case, PNM asserts the modified Contribution to Production

Component will be derived and will take effect upon approval in PNM's next general rate case, and will preserve PNM and the Customer's original intent of No Net Adverse Impact to any other PNM retail electric service customers as a result of service to the Customer.

- 2) Purchased power agreements ("PPA") with: (1) NMRD Data Center II, LLC ("NMRD II") for 50 MW of rated capacity and associated solar energy over a twenty-five year term ("Britton PPA"), and (2) NMRD Data Center III, LLC ("NMRD III") for 50 MW of rated capacity and associated solar energy over a twenty-five year term ("Encino PPA") (collectively, the "two PPAs"). PNM proposes to recover the costs of the two PPAs from the Customer as provided in the Restated SSC. PNM asserts the energy and capacity provided by the two PPAs are necessary to meet Customer's electric service requirements.
- 3) A Production Cost Allocation Rider, Original Rider No. 49, that will allow PNM to recover from the Customer the amount of any under-collection resulting from a reconciliation of production costs when capacity factors used to determine the Customer's contribution to capacity in a general rate case are based on stipulated capacity value factors. Any such amount will then be credited back to PNM's other customers in a subsequent general rate case.
- 4) Second Amended Rate No. 36B and First Amended Rider No. 47, which include minor language modifications that recognize the modifications to the SSC as reflected in the Restated SSC and the new Rider No. 49.
- 5) Variances to certain Commission filing rules.

PNM proposes to recover the costs of the PPAs from the Customer, as provided in the SSC entered into by PNM and Facebook, Inc. and approved by the Commission in its Final Order in Case No. 16-00191-UT. Effective December 5, 2017, Facebook, Inc. assigned its interest in the SSC to its wholly-owned subsidiary Greater Kudu LLC and executed an unconditional and irrevocable parental guaranty to guarantee Greater Kudu's prompt payment of all sums due under the SSC. The energy and capacity provided by the two PPAs are necessary to meet Customer's electric service requirements.

PNM's Application states that the SSC and Restated SSC require PNM to procure sufficient renewable resources, such as the PPAs, to meet the Customer's load at its New Mexico Data Center. PNM contends that the SSC also provides that PNM shall recover from the Customer the cost of these renewable resources such that there will be No Net Adverse Impact on PNM's other retail customers. No Net Adverse Impact is defined in the SSC, and Restated SSC, as meaning that the SSC "and the PNM tariffs described [in the SSC] result in a neutral or positive impact on rates and service for PNM's other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs." PNM's Application states that the two PPAs for which PNM seeks approval are consistent with the SSC and the Commission's Final Order in Case No. 16-00191-UT.

PNM's Application also states that, pursuant to the SSC and Restated SSC, the Customer has specific requirements for its electric service needs at its Data Center, including that the electric service for the Data Center be provided, to the greatest extent practicable, by new renewable energy resources, *i.e.*, in addition to whatever renewable energy resources that are used to serve PNM's other customers, such that the production

of additional renewable energy over the course of a year will equal the Data Center's energy demand and consumption. PNM contends that to satisfy this service requirement, Customer is willing to bear the cost of procuring the PPAs, which are necessary to serve its Data Center load.

PNM's Application also states that in order to meet Customer's electric service requirements, PNM and Customer have worked collaboratively, expeditiously and in good faith to: (i) determine when it makes the most sense to bring new renewable resources into service to match the data center's projected load; (ii) identify and evaluate the costs and benefits of new renewable energy resources available to satisfy that growth; and (iii) determine the site(s) of those Additional Renewable Energy Procurements at locations that will avoid constraints on PNM's transmission system.

Pursuant to 17.9.551 NMAC, PNM must receive Commission approval before becoming irrevocably bound under the PPAs. In addition, because these PPAs are Class I transactions pursuant to NMSA 1978, Section 62-3-3(K) (2009), PNM filed written notification to the Commission within five (5) days of entering into the PPAs, on August 24, 2018, pursuant to 17.6.450.11 NMAC.

PNM seeks a variance from 17.1.210.12(B) NMAC and PNM's Rule No. 4 which require standard language in contracts with customers providing that contract rates are subject to change by Commission order and that PNM may seek Commission approval to modify the contract rates. PNM seeks a variance from these provisions because the Customer is concerned that the standard language required by these rules might be used to deprive it of the benefits of the bargain struck to locate its Data Center in New Mexico. PNM also seeks a variance from the requirement in 17.1.2.10(B)(2)(b) NMAC (which

requires a statement comparing new rates with present rates) and from 17.9.530 NMAC ("Rule 530") (which prescribes minimum data requirements to be filed in support of a tendered new rate schedule). The Application states that a statement comparing new rates with present rates is unnecessary since the modifications of the SSC and Rate No. 36B and Rider No. 47 being requested are not changing any present rates, merely modifying language, and Original Rider No. 49 has no previous rate against which 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 timely obtain the necessary regulatory approvals in a timely manner that will allow completion of these projects to meet the growing needs of the Customer's Data Center.

The procedural schedule for this case is as follows:

The Commission has shortened the 60-day period set forth in 17.9.551.10 NMAC for filing protests, to 20 days. Any person desiring to protest the Application shall, instead of filing a protest, file a Motion to Intervene pursuant to the Commission Rules of Procedure 1.1.2.23 NMAC. Such motion must state whether the intervenor opposes the Application and, if so, the reason(s) for such opposition. Any person desiring to intervene in the proceeding must file a Motion to Intervene on or before **October 2, 2018**, pursuant to 1.1.2.23 NMAC.

The Commission's Utility Division Staff shall, and any intervenor may, file direct testimony on or before **October 9, 2018**. Oral rebuttal testimony may be permitted at the hearing.

A public hearing shall be held on **October 17, 2018**, at some time during the Commission's open meeting on that date, which will begin at 9:30 A.M., and continue as necessary at the fourth floor hearing room located 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.

PNM shall prepare and file in this docket a draft proposed Final Order no later than **October 19, 2018**.

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, with the assistance of **William Herrmann** 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 will issue a Final Order in this case without 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. 18-00269-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. 18-00269-UT and any inquiries should refer to that number.

Anyone filing pleadings, testimony, or other documents in this case may file either in person at the Commission's docketing office or by mail to the Commission's

address set out above, and shall serve copies thereof on all parties of record and Staff via first class U.S. mail and e-mail.

Any such filings shall also be sent to William Herrmann via email at the following address: William.herrmann@state.nm.us. All filings shall be e-mailed on the date they are filed with the Commission. Whenever possible, all electronically transmitted documents shall be in Word or native format.