

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)	
SEVICE CONTRACT WITH GREATER KUDU)	
LLC, THREE PURCHASED POWER AGREEMENTS)	
AND THREE ENERGY STORAGE AGREEMENTS)	
PURSUANT TO 17.9.551 NMAC, AMENDED RATE)	Case No. 25-00048-UT
NO. 36B, AMENDED RIDER NO. 47 AND AMENDED)	
RIDER NO. 49)	
)	
PUBLIC SERVICE COMPANY OF NEW MEXICO,)	
)	
Applicant.)	
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PUBLIC SERVICE COMPANY OF NEW MEXICO’S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDO, LLC, THREE PURCHASED POWER AGREEMENTS, AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AN AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO. 49

Public Service Company of New Mexico (“PNM”) hereby applies to the New Mexico Public Regulation Commission (“Commission”) pursuant to 17.9.551 NMAC (“Rule 551”) for approval of the following:

- 1) The Third Amended and Restated Special Service Contract (“Restated SSC”) between PNM and Greater Kudu LLC (“Customer”), which reflects modifications to the Second Amended and Restated Special Service Contract (“Current SSC”) that was approved by the Commission in Case No. 18-00269-UT;
- 2) Three purchased power agreements (“PPA”) for a combined total of 290 MW of solar energy from the three facilities;
- 3) Three energy storage agreements (“ESA”) that are co-located respectively with the three solar facilities above with a combined total of 268 MW of four-hour battery storage capacity;

- 4) Non-substantive changes to Rate No. 36B;
- 5) Clerical changes in Rider No. 47 to align the tariff language and incorporate the term SSC Energy Resources and SSC Storage Resource as defined in the Restated SSC;
and
- 6) Changes to Rider No. 49 to provide clarity to the calculation of the Contribution to Production Component true-up mechanism while incorporating language addressing the effects of the capacity contributions resulting from the proposed SSC Storage Resources included in this Application.

As in the Current SSC, the Restated SSC allows the Customer to direct PNM to procure sufficient renewable energy resources to meet the load at Customer's data center in Los Lunas, New Mexico ("Data Center").¹ The Customer participates in a voluntary renewable program under the Renewable Energy Act ("REA").² Through that program, and as described in the Restated SSC, PNM is committed to matching one hundred percent of the Customer's energy consumption on an annual basis with new renewable energy resources that will be paid for by the Customer. The energy and capacity provided by the proposed PPAs and ESAs are necessary for PNM to fulfil its obligation to meet the expanding electric service requirements of the Data Center. PNM proposes to recover the costs of the PPAs and ESAs directly from the Customer through Rider No. 47, the Green Energy Rider, as provided at Section 5.1 of the Restated SSC.

The Commission approved the initial special service contract between PNM and the Customer as well as initial PPAs to serve the Customer in Case No. 16-00191-UT. In its Final Order in Case No. 16-00191-UT, the Commission found that, viewing the transaction as a whole,

¹ Restated SSC at § 3.1.

² NMSA 1978, § 62-16-7(B) (2019).

PNM's application provided a number of net benefits to PNM's customers and the New Mexico economy, was in the public interest, and should be approved. The Commission's approvals in that case were a key factor in the Customer's decision to locate the Data Center in New Mexico. The Commission subsequently approved Additional Renewable Energy Procurements in Case Nos. 18-0009-UT, 18-00269-UT, 21-00031-UT, and 23-00251-UT and approved amendments to the original special service contract in Case No. 18-00269-UT.

As the needs of the Customer continue to evolve, PNM is aware that changes are necessary to accommodate additional renewable energy resources and battery storage facilities, including pricing terms of the incremental resources, contractual obligations arising from the operation and dispatch of the resources, and to incorporate revised language to clarify the determination of No Net Adverse Impact to other retail customers.

In 2024, the Customer notified PNM that it needs additional renewable energy to support the ongoing expansion of its Data Center, as anticipated in the Restated SSC. PNM and the Customer worked together to identify and evaluate the proposed PPAs and ESAs as required by the Second Amended and Restated Special Service Contract ("Current SSC") and have determined that the proposed resources provide sufficient energy and capacity to meet the expanded load.

It is important to receive all approvals requested in this Application by December 31, 2025, to help PNM serve the expanding load of the Data Center buildings currently under construction. PNM respectfully requests the Commission's approval of this Application on or before December 31, 2025.

In further support of its Application, PNM states the following:

I. BACKGROUND

1. PNM is an investor-owned New Mexico corporation that owns; operates; and controls plant, property, and facilities for the generation, transmission, distribution and sale of electric energy to the public in portions of New Mexico (*i.e.*, retail services) and to purchasers for resale (*i.e.*, wholesale services). A certified copy of PNM's articles of incorporation is on file with the Commission.

2. PNM is a public utility in New Mexico, as defined in NMSA 1978, Section 62-3-3(G) and is subject to the jurisdiction and authority of the Commission.

3. PNM's principal office is located at 414 Silver Ave. SW, Albuquerque, New Mexico 87102.

4. PNM's attorneys and corporate representatives who should receive all notices, pleadings, discovery requests and responses and other documents related to this case are:

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II. THE PPAs AND ESAs

5. PNM seeks approval of three PPAs and three ESAs:

A. The Star Light PPA and ESA. This is a hybrid solar photovoltaic generation facility with a net output of 100 MW co-located with a 100 MW 4-hr battery energy storage system (“BESS”) that interconnects into the existing Sun Ranch 115 kV substation located on Interstate 25 near mile marker 200, bordering nearby Los Lunas and Belen in Valencia County. Star Light Energy Center, LLC will sell the energy output to PNM at a price of \$35.87/MWh over a twenty-year term. The twenty-year term begins upon the facility’s commercial operation date which is expected to be December 1, 2026. Star Light Energy Center, LLC will sell the energy storage capacity of the BESS to PNM at a price of \$19.32 per available hour of energy storage per MW of capacity over a twenty-year term which begins on the expected commercial operation date of December 1, 2026.

B. The Four Mile Mesa Solar PPA and ESA. This is a solar photovoltaic generation facility with a net output of 100 MW co-located with a 100 MW 4-hr BESS interconnecting into the existing San Juan 345 kV substation located near the San Juan coal mine north of Waterflow, New Mexico in San Juan County. Four Mile Mesa Solar, LLC will sell the energy output to PNM at a price of \$39.79/MWh over a twenty-year term. The twenty-year term will begin upon the facility’s commercial operation date which is expected to be December 31, 2027. Four Mile Mesa Solar, LLC will sell the energy storage capacity of the BESS to PNM at a price of \$21.25 per available hour of energy storage per MW of capacity over the twenty-year term which begins on the expected commercial operation date of December 31, 2027.

C. The Windy Lane Solar PPA and ESA. This is a hybrid solar photovoltaic generation facility with a net output of 90 MW co-located with a 68 MW 4-hr BESS interconnecting behind a shared point of interconnection with an existing wind generation facility known as Casa Mesa. Casa Mesa is located north of PNM 345 kV substation Taiban Mesa which is the point of interconnection for the project. Taiban Mesa is located along remote NM-252 14 miles northeast of Fort Sumner, New Mexico in De Baca County. Windy Lane Energy Center, LLC will sell the energy output to PNM at a price of \$37.52/MWh over a twenty-year term. The twenty-year term will begin upon the facility's commercial operation date which is expected to be December 1, 2026. Windy Lane Energy Center, LLC will sell the energy storage capacity of the BESS to PNM at a price of \$19.91 per available hour of energy storage per MW of capacity over a twenty-year term which begins on the commercial operation date expected to be December 1, 2026.

6. Pursuant to the Current SSC, PNM and the Customer are required to work collaboratively, expeditiously, and in good faith to: (1) determine when PNM should bring new renewable resources into service to match the Data Center's projected load; (2) identify and evaluate the costs and benefits of new renewable resources available to meet that load; and (3) determine the location(s) of those Additional Renewable Energy Procurements to avoid constraints on PNM's transmission system.³ As required, PNM and Customer have collaborated to identify the agreements and renewable energy and storage facilities described above to meet the Customer's energy needs at pricing and terms acceptable to Customer and consistent with PNM's operational requirements. Similar requirements are carried forward in the Restated SSC.⁴

³ SSC at § 3.1.3.

⁴ Restated SSC at § 3.4.

7. Construction of the facilities that will provide energy and capacity under the PPAs and ESAs will provide significant economic benefits to New Mexico. The Data Center, including the ongoing expansion, is estimated to have resulted in approximately \$2.5 billion of total investment in construction and equipment to-date, an estimate of over 1,100 skilled trade workers on site daily during peak construction of the past and on-going phases of buildout, and over 400 direct operational jobs following construction completion. Further, the Customer has provided a total of more than \$5 million in direct grant funding to over 115 Valencia County area schools and nonprofits since 2019.

III. RULE 551

8. Rule 551.8 provides that no electric utility may become irrevocably obligated as a purchaser under a long term purchased power agreement (“LTPPA”) without first obtaining the Commission’s written approval. An LTPPA is a PPA or ESA with a term of five years or more, inclusive of the base term and any extensions, for which the utility intends to seek rate recovery from New Mexico retail customers, excluding agreements required to be approved under the REA and PPAs with Qualifying Facilities (“QF”) pursuant to 17.9.570 NMAC. Because the PPAs and ESAs PNM proposes here are for terms of more than five years and are not subject to the REA or with a QF pursuant to 17.9.570 NMAC, PNM is obligated to obtain Commission approval before becoming irrevocably bound under them.

9. The Commission may approve the Application without a hearing sixty days after notice is provided if no protest is filed. 17.9.551.10(A) NMAC. Under Rule 551, the Commission must issue a final order no later than six months from the date PNM files its Application. 17.9.551.10(B) NMAC. The PPAs and ESAs include provisions (Section 17.3 of each agreement)

allowing termination of the agreements should the Commission not issue an order on this Application by December 31, 2025, the “Regulatory End Date.”

10. PNM requests that the Commission issue a final order approving the Application without a formal hearing provided no protest is filed within 60 days after the date notice is given, consistent with 17.9.551.10(A) NMAC. If a protest is filed and the Commission determines that the protest demonstrates a public hearing is necessary, PNM requests that the hearing be scheduled so a final order can be issued by no later than December 31, 2025, the Regulatory End Date as specified in the PPAs and ESAs.

11. Rule 17.9.551.8(D) NMAC imposes clear evidentiary requirements for approval of a LTPPA, including a copy of the LTPPA, explanation of the key terms, and description of the benefits of entering into the LTPPA. The testimony and exhibits submitted in support of this Application satisfy all requirements under Rule 551.

12. Pursuant to 17.9.551.9 NMAC, the Commission may authorize ratemaking treatment for LTPPAs. The PPAs and ESAs proposed here are necessary for, and will be utilized by, PNM to provide service to the Customer pursuant to the terms, conditions, and cost recovery provisions of the Restated SSC. PNM will recover the PPA and ESA costs directly from the Customer through Rider No. 47, as provided in the Restated SSC.

13. In Case No. 15-00083-UT the Commission held that the review and approval procedure for a LTPPA 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 a utility must demonstrate by a preponderance of the evidence that its proposed LTPPA complies with Rule 551

and is in the public interest.⁵ The proposed PPAs and ESAs are in the public interest because they are consistent with the Final Order in Case Nos. 16-00191-UT, 18-00009-UT, 18-00269-UT and 23-00251-UT as well as with the No Net Adverse Impact requirement in the Restated SSC.⁶ The agreements will provide additional economic and environmental benefits to the state through the injection of funds through construction and operation as well as additional renewable resources for PNM's portfolio.

IV. THE SPECIAL SERVICE CONTRACT

14. First approved in Case No. 16-001941-UT, the Special Service Contract controls how PNM provides electric service to the Customer. As the Customer's needs continue to evolve, the Current SSC needs amendment in order to accurately manage the relationship between PNM and the Customer.

15. The Restated SSC reflects the amendments necessary to ensure proper functioning of this relationship. It includes clarifications to the methodology in Contribution to Production calculation in order to ensure that the Customer pays its allocated share of production costs as determined in a rate case. These clarifications include updated terminology and a reflection of reduced dependence on PNM's other generation resources due to the addition of SSC Resources.

16. The Restated SSC also reflects general language updates as well as updates to clarify how resource curtailments are to be addressed.

⁵ *Recommended Decision*, pp. 18-25 (September 21, 2015), *adopted by* Final Order (October 7, 2015).

⁶ No Net Adverse Impact, as defined in the Restated SSC, "means that, on balance, this Contract and the PNM tariffs described herein result in a neutral or positive impact on rates for PNM's other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs as determined pursuant to Section 5.1.2 of this Contract." Restated SSC at § 1.1 and § 5.1.2.

17. These amendments also include updates to Rate No. 36B, Rider No. 47, and Rider No. 49. Changes to Rate No. 36B include updates to qualification language, charges terminology, and clarity for payments associated with curtailments. An updated Rider No. 47 reflects clearer eligibility items. Changes to Rider No. 49 more accurately describes the comparison of the values of Rider No. 47 and the Contribution to Production calculation and ultimate recovery of any potential Under-Collected production costs from the Rate No. 36B customer.

18. PNM files advice notices for changes to Rate No. 36B, Rider No. 47, and Rider No. 49 with this Application and requests that, if approved, they be suspended with an effective date of 10 days following the Final Order in this matter.

V. PNM'S WITNESSES

19. PNM's Application is supported by the direct testimonies of five witnesses:

A. Julio C. Aguirre, PNM's Director of Pricing and Customer Strategy, introduces PNM's other witnesses, summarizes the Application and the requested approvals, provides background information on service to the Customer, explains the purpose of the PPAs and ESAs, introduces and explains the amendments to the Current SSC as presented in the Restated SSC, addresses certain requirements of Rule 551, including the potential impact on PNM's financial metrics, and explains the need for certain variances from applicable Commission rules. Mr. Aguirre also demonstrates that the PPA and ESA are in the public interest and should be approved as requested.

B. Gary B. Barnard, Executive Director of Strategic Energy Development, Renewables and Contracts for PNM, addresses most of the requirements of Rule 551. He describes the PPAs and ESAs, summarizes their key terms and conditions, and supports

the reasonableness of the agreements. He also describes the solar facilities and energy storage facilities that are the subject of each agreement.

C. Thomas P. Duane, PNM's Director of Integrated Resource Planning, addresses the Customer's expanded retail load and the additional renewable energy resources that will be procured by PNM and paid for by the Customer.

D. Stephen Jenkins, Manager of Transmission Planning Engineering for PNM, addresses interconnection and transmission matters related to the proposed PPAs and ESAs.

E. Michael Settlage, PNM's Pricing Principal, addresses the proposed changes to the existing Rate No. 36B, Rider No. 47, and Rider No. 49. Additionally, Mr. Settlage describes the proposed modifications to the Contribution to Production methodology applied to the Customer under the Restated SSC and how all these changes impact the rates and riders applied to the Customer per the terms of the Restated SSC.

20. PNM's witnesses address all requirements of Rule 551. Exhibit 1 and Exhibit 2 to this Application show where each of the Rule 551 requirements is addressed in the PNM direct testimonies.

VI. OTHER MATTERS

21. Attached hereto as Exhibit 3 is a Proposed Form of Notice to Customers.

22. Pursuant to 17.9.551.8(C) NMAC, PNM is serving a copy of its Application on the Commission's Utility Division Staff, the New Mexico Department of Justice, and the parties to

PNM's most recent general rate case, Case No. 24-00089-UT, and the parties to the Commission's last proceeding involving the SSC, Case No. 21-00031-UT.

WHEREFORE, PNM requests that the Commission issue an order, on or before December 31, 2025, approving each PPA and each ESA as requested in the Application.

Respectfully submitted this 13th day of June 2025.

PUBLIC SERVICE COMPANY OF NEW MEXICO

/s/ Christopher Atencio

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Rule 551.8 General Requirements for Filing an Application for Approval of a PPA				
			In Testimony Of	Reference
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	Gary B. Barnard	Section I: Introduction and Purpose
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;	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
	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;	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
	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;	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
	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	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements

Rule 551.8 General Requirements for Filing an Application for Approval of a PPA				
			In Testimony Of	Reference
551.8(D)		An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:		
	e	provisions related to non-performance by the counter-party and the remedies provided.	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
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;	Stephen Jenkins	Section II: Rule 551 Requirements
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;	Julio C. Aguirre	Section IV: Required Approvals Under Rule 551
5		A general description of:		
	a	the generating facility or facilities that will generate the purchased power; or	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
	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	Not Applicable
	c	if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of:		

Rule 551.8 General Requirements for Filing an Application for Approval of a PPA				
			In Testimony Of	Reference
551.8(D)	An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:			
	i	the approvals required to construct and operate the generating unit, including air quality and other environmental permits;	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
	ii	the expected construction time;	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
	iii	the expected commercial operation date;	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
	iv	the fuel type and supply sources; and	Gary B. Barnard	Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements

Rule 551.8 General Requirements for Filing an Application for Approval of a PPA			
		In Testimony Of	Reference
551.8(D)			
	v	other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement.	Gary B. Barnard Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements
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 P Duane Section II: Safe and Reliable Service
7		evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics;	Julio Aguirre Section IV: Required Approvals Under Rule 551
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 P Duane Section III: Consistency with the IRP
9		evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;	Gary B. Barnard Section II: Methodology and Selection Process
10		evidence addressing the methodology and criteria by which the purchased power agreement was selected; and	Gary B. Barnard Section II: Methodology and Selection Process
11		any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA.	Gary B. Barnard Section V: Other Key Provisions

<u>Rule 551.9 Ratemaking Treatment For All Purchased Power Agreements</u>				
			In Testimony Of	Reference
551.9(A)		The following ratemaking treatment shall apply to all purchased power agreements unless otherwise expressly authorized by order of the commission:		
1		Energy costs incurred under a purchase power agreement are recoverable through a fuel and purchased power cost adjustment clause ("FPPCAC") according to the provisions of the FPPCAC approved for the electric utility; and	Julio Aguirre	Section IV: Required Approvals Under Rule 551
2		Capacity costs and fixed costs incurred under a purchased power agreement, as well as energy costs incurred by an electric utility without an approved FPPCAC, may be recoverable through base rates when the commission issues an order authorizing a change in base rates that includes recovery of the capacity costs and fixed costs, and energy costs in the case of an electric utility without an approved FPPCAC.	Julio Aguirre	Section IV: Required Approvals Under Rule 551
551.9(B)		An electric utility may include in an application for approval of an LTPPA a request that the commission determine other ratemaking principles and treatment that will apply to the LTPPA.	Not Applicable	Not Applicable