

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S)
APPLICATION FOR APPROVAL OF A PURCHASED POWER AGREEMENT)
AND AN ENERGY STORAGE AGREEMENT PURSUANT TO 17.9.551 NMAC,) Case No. 23-00251-UT
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
Applicant.)**

NOTICE OF PROCEEDING AND HEARING

To customers of Public Service Company of New Mexico ("PNM" or "Company"): this document is required by the New Mexico Public Regulation Commission (NMPRC or "Commission"). The purpose of this document is to provide you with notice of PNM's Application requesting NMPRC approval of a purchased power agreement and an energy storage agreement pursuant to 17.9.551 NMAC. This notice:

- Describes the PRC process for considering PNM's Application; and
- Describes how you can participate in this process if you wish to do so.

If you would like to participate in this process, the information below details how you may participate. **IF YOU DO NOT WANT TO PARTICIPATE IN THIS PROCESS, NO ACTION IS REQUIRED ON YOUR PART.**

NOTICE is hereby given that on July 24, 2023, Public Service Company of New Mexico ("PNM" or "Company") filed an Application with the New Mexico Public Regulation Commission ("Commission" or "NMPRC") for approval, pursuant to 17.9.551 NMAC, of the following long term purchased power agreement ("PPA") and energy storage agreement ("ESA"):

1. The TAG PPA. This PPA provides that NMRD Data Center IV, LLC ("NMRD IV"), will sell PNM the capacity and associated energy from the TAG Solar Energy Center at the price of \$32.50/MWh over a 20-year term. The 20-year term begins on the facility's commercial operation date, which is expected to be March 31, 2025. The TAG Solar Energy Center is a new 140 MW solar facility that will be located in Sandoval County, New Mexico.

2. The TAG ESA. This ESA provides that NMRD IV will sell PNM the energy storage capacity provided by the TAG Energy Storage facility at the price of \$11.00/kw-month over a 20-year term. The 20-year term begins on the TAG Energy Storage commercial operation date, which is expected to be March 31, 2025. The TAG Energy Storage facility is a new 50 MW 4-hour battery storage facility co-located with the TAG Solar Energy Center in Sandoval County.

PNM proposes to recover the costs of the PPA and ESA from Meta Platforms, Inc. (formerly Facebook, Inc.) subsidiary Greater Kudu LLC ("Customer"), as provided in the Second Amended and Restated Special Services Contract ("SSC") entered into by PNM and the Customer and approved originally by the Commission in Case No. 16-00191-UT and, as amended, in Case No. 18-00269-UT. The energy and capacity provided by the PPA and ESA are necessary to meet Customer's electric service requirements at its data center in Los Lunas, New Mexico ("Data Center").

PNM's Application states that the SSC requires PNM to procure sufficient renewable resources, such as the PPA and ESA, to meet Customer's load at its Data Center. PNM contends that the SSC also provides that PNM shall recover from 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 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 PPA and ESA for which PNM seeks approval are consistent with the SSC and the Commission's Final Orders in Case Nos. 16-00191-UT, 18-0009-UT, 18-00269-UT and 21-00031-UT.

PNM's Application states that, pursuant to the SSC, 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 renewable resources, 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. PNM contends it is important to Customer that these new renewable energy resources be above and beyond the state's Renewable Portfolio Standard ("RPS") requirements. This results in the PPA providing energy in PNM's resource portfolio beyond what is required by the RPS.

PNM's Application states that, in addition to meeting Customer's need for renewable energy, completing construction of the TAG Solar Energy Center and TAG Energy Storage facility will provide economic benefits to New Mexico as a whole, including through direct investment, additional tax revenue, and job creation. Further, PNM's Application also states that Customer's expansion of its Data Center will create economic benefits for New Mexico, including through the creation of construction jobs and jobs at the data center, and through a multiplier spending effect that benefits other sectors of the local and regional economy.

Pursuant to 17.9.551 NMAC, PNM must receive Commission approval before becoming irrevocably bound under the PPA and ESA.

Any interested person may examine PNM's filing in this case together with any exhibits and related papers which may be filed in this case at PNM Headquarters, Main Offices, Albuquerque, New Mexico 87158, telephone: (505) 241-2700, website www.pnm.com, or on the Commission's website at www.nmprc.state.nm.us under "Case Lookup – eDocket." This case has been docketed as Case No. 23-00251-UT and any inquiries or written comments should refer to that case number.

The procedural schedule for this case is as follows:

A. On or before **August 18, 2023**, PNM shall cause, at its sole expense, the Notice of Proceeding and Hearing to be published once in a newspaper of general circulation available in every county where PNM provides service in New Mexico. PNM shall ensure that an affidavit confirming such publication is promptly filed in the docket.

B. On or before **September 22, 2023**, PNM shall mail (by bill insert or separately at its sole expense) the Notice. PNM shall ensure that an affidavit confirming such mailing is promptly filed in the docket.

C. PNM shall also post as promptly as feasible to the "Regulatory Information" page on the PNM website, <https://www.pnm.com/regulatory>, copies of the Notice as well as the Application, and the supporting pre-filed direct testimony, exhibits, and related papers. PNM shall ensure that an affidavit confirming such posting is promptly filed in the docket.

D. Rule 551 provides that the Commission may approve the Application, as it pertains to the PPA request, without a formal hearing if no protest is filed within 60 days of the filing of the Application. If no written Protests objecting to the requested approval of the Application are filed by Friday, September 22, 2023, specifying the grounds for protest and demonstrating the need for a formal hearing on PNM's Application, the Commission may vacate and waive a formal hearing on this matter.

E. Any person desiring to become a party ("intervenor") to this case must file a motion for leave to intervene in conformity with PRC Rules of Procedure 1.2.2.23(A) and 1.2.2.23(B) NMAC on or before **September 29, 2023**. All motions for leave to intervene shall be served on all existing parties and other proposed intervenors of record.

F. Staff shall and any intervenor may file direct testimony by **October 13, 2023**.

G. With regard to PNM's direct testimony and Staff and intervenors' testimony, motions in limine, motions to strike, and other prehearing motions shall be filed on or before **October 20, 2023**. Responses to such motions shall be filed on or before **October 25, 2023**.

H. Any rebuttal testimony shall be filed on or before **October 25, 2023**.

I. Any stipulation entered into among some or all parties may be filed no later than **October 30, 2023**, together with testimony in support of that stipulation. If Staff is a stipulating party, Staff shall file direct testimony.

J. Solely with regard to rebuttal testimony, motions in limine, motions to strike, and other prehearing motions shall be filed on or before **October 30, 2023**. Responses to such motions shall be filed on or before **November 3, 2023**.

K. Any response testimony regarding a stipulation shall be filed by **November 3, 2023**.

L. Service of all documents filed in this proceeding and discovery requests and responses shall be via e-mail unless a party requests a hard copy or unless otherwise ordered. PNM shall post the discovery requests it receives from the parties or Staff and PNM's responses to discovery requests, including exhibits, on PNM's file sharing platform.

M. Responses to discovery shall be produced by close of business on the date that the certificate of service confirming such production is filed in the record. Discovery responses produced after 5:00 p.m. on the date that the certificate of service is filed shall be deemed produced the following day.

N. Responses to discovery requests solely regarding rebuttal testimony shall be served within **three (3) days** of service of the request unless otherwise agreed or ordered.

O. A prehearing conference is tentatively scheduled for **November 3, 2023**, commencing at 2:00 p.m. Mountain Time ("MT") on the Zoom videoconference platform. The purpose of that conference is to address, among other things, the following matters:

- i. The order of presentation of the parties and their respective witnesses.
- ii. Designation by each party of the witnesses they intend to cross-examine and for what length of time.
- iii. Any other matters that may expedite orderly conduct and disposition of this proceeding.

P. The **November 3, 2023** prehearing conference may be vacated by the Hearing Examiners if they determine that the conference is not necessary.

Q. A public hearing will be held beginning on **November 7, 2023** and will continue through **November 8, 2023**, or to such further date may be determined to be necessary by the Hearing Examiner. Each hearing session shall commence at 9:00 a.m. MT unless otherwise ordered.

R. The evidentiary hearing shall be conducted via the Zoom videoconference platform. Access to and participation in the evidentiary hearing shall be limited to party-participants (i.e., counsel and witnesses), the Commissioners, and other essential Commission personnel. The Zoom hearing will be livestreamed through YouTube and will be displayed on the Commission's website at <https://www.nm-prc.org>. Persons not participating in the evidentiary hearing as an attorney or witness may view the hearing on the Commission's website and shall not join the hearing via Zoom except to provide oral comment as allowed below.

S. Interested persons who are not affiliated with a party may make written comment as allowed by Rule 1.2.2.23(F) NMAC. The Commission may also schedule one or more public comment hearings at a place and time to be determined in the Commission's discretion. However, as Rule 1.2.2.23(F) provides, "commenters are not parties and shall not have the right to introduce evidence, to examine or cross-examine witnesses, to receive copies of pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than making their comments."

T. Since the evidentiary hearing will be conducted via Zoom, the parties and Staff will be required to electronically distribute the exhibits they intend to offer for admission into evidence at the hearing in advance of the hearing. That electronic distribution shall provide the documents to all parties and the Hearing Examiner. The requirements for those and any other necessary submissions shall be set forth in a subsequent prehearing order issued by the Hearing Examiner¹.

U. Any person filing prepared testimony consistent with 1.2.2.35(I) NMAC on behalf of a party shall attend the hearing and submit to examination under oath and shall appear via the Zoom video feed. All pre-filed testimonies of a witness shall be moved into evidence when the witness is first presented. Unless otherwise ordered or approved by the Hearing Examiner, only pre-filed testimony in question-and-answer form and verified by the witness – and examination of witnesses on such pre-filed testimony – shall be accepted, considered, and received in evidence along with other relevant and otherwise admissible exhibits. Oral testimony elicited by a party or Staff presenting a witness (except for appropriate redirect examination) shall consist solely of the authentication and verification of each pre-filed testimony and identifications of any permitted corrections to that testimony. The party or Staff shall not elicit oral summaries of pre-filed testimony or other oral testimony.

V. Friendly cross-examination is prohibited. Friendly cross-examination is cross-examination of a witness by a party who does not disagree with the witness's position on an issue.

W. Each witness at the hearing, and each witness's attorney, shall have readily available to him or her at the hearing a copy of the pre-filed testimony of each witness and any related exhibits.

X. Any interested person may examine PNM's application and supporting documents and other documents filed in the public record of this case on the Commission's website, <https://edocket.nmprc.state.nm.us>, or at the offices of PNM at the following address:

Public Service Company of New Mexico
PNM Headquarters, Main Office
Albuquerque, New Mexico 87158
Telephone: (505) 241-2700

Y. The procedural dates and requirements provided here are subject to further order of the Hearing Examiner or the Commission.

Z. Interested persons should contact the Commission at (505) 690-4191 or Ana.Kippenbrock@prc.nm.gov for confirmation of the hearing date, time, and place, since hearings are occasionally rescheduled or canceled if deemed not required in the discretion of the Hearing Examiner or the Commission.

AA. The Commission's Rules of Procedure, 1.2.2.1 NMAC et seq., shall apply in this case except as modified by order of the Hearing Examiner or Commission. The Rules of Procedure and other NMPRC rules are available online at the New Mexico Compilation Commission at <https://nmonesource.com/nmos/en/nav.do>.

BB. Anyone filing pleadings, documents, or testimony in this case shall comply with the Commission's electronic filing policy which is amended from time to time. This includes compliance with the following (not exhaustive) set of requirements. Filings must be in .pdf format. They must include an electronic signature and be sent to the Records Management Bureau's e-mail address, PRC.Records@prc.nm.gov, or to another Records Bureau address as set out on the Commission's webpage. Any filing must be submitted within regular business hours of the due date to be considered timely filed. Documents received after regular business hours will be considered filed the next business day. Regular Commission business hours are from 8:00 a.m. to 5:00 p.m. MT. Parties shall serve a copy on all parties of record and Staff.

CC. All filings shall be emailed to the Hearing Examiner presiding over this matter on the date filed by no later than 5:00 p.m. MT. Any filing emailed to the Hearing Examiner shall include the Word or other native version of the filing (e.g., Excel or Power Point) if created in such format. Any filings not emailed to the Hearing Examiner in compliance with the requirements of this order and Commission rules are subject to being summarily rejected and stricken from the record at the Hearing Examiner's discretion.

DD. Except as expressly provided in this Order or subsequently ruled, discovery matters and any discovery disputes shall be governed by the Commission's discovery rules at 1.2.2.25 NMAC. The parties shall raise any disputes, questions, or concerns regarding discovery with the Hearing Examiner at the earliest available opportunity so that all such issues may be considered well in advance of the hearing.

EE. An order of the Hearing Examiner or Commission is not required for agreements between or among any of the participants regarding discovery matters. All other participants shall be notified of such agreements.

FF. Motions regarding any discovery dispute shall not be considered unless accompanied by a statement that the participants have made a good faith effort to resolve the dispute but were unable to do so.

GG. This Order is effective immediately.

PERSONS WITH DISABILITIES

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COMMISSION'S ADA COORDINATOR AT (505) 412-3502 TO REQUEST SUCH ASSISTANCE AS SOON AS POSSIBLE, PREFERABLY AS SOON AS THE PERSON RECEIVES NOTICE OF THIS PROCEEDING TO ALLOW CONSIDERATION OF THE REQUEST AND TO ARRANGE FOR A POTENTIAL REASONABLE ACCOMMODATION.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this **4th** day of **August 2023**.



NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Michael C. Smith

**Michael C. Smith
Hearing Examiner**