

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S APPLICATION)
FOR APPROVAL PURSUANT TO 17.9.551 NMAC)
OF THREE PURCHASED POWER AGREEMENTS)
IN ACCORDANCE WITH SPECIAL SERVICE)
CONTRACT WITH FACEBOOK INC.,)**

**PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)**

Case No. 18-00009-UT

FINAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (the "Commission") upon Public Service Company of New Mexico's ("PNM") Application for Approval of Purchased Power Agreements ("Application").

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

Procedural Background:

1. On January 17, 2018, PNM filed its Application for approval of three purchased power agreements ("PPAs") pursuant to 17.9.551 NMAC ("Rule 551"). PNM's Application states that PNM's supporting testimonies include all of the information required by Rule 551, and that the proposed PPAs are in the public interest and should be approved because they are consistent with the Special Service Contract ("SSC") entered into by PNM and Facebook, Inc. approved by the Commission in its Final Order in Case No. 16-00191-UT, that Final Order as a whole, and PNM's provision of safe and reliable electric service at the lowest reasonable cost, and will provide additional economic and environmental benefits to the public in New Mexico. PNM's Application states PNM would recover the costs of the PPAs from Facebook, Inc.

subsidiary Greater Kudu LLC (“Customer”) as provided in the SSC approved by the Commission’s Final Order in Case No. 16-00191-UT. PNM’s Application states that the SSC requires PNM to procure sufficient renewable energy resources to meet Customer’s electric energy requirements at its Data Center in Los Lunas, and that the three PPAs are necessary because Customer is building out its Data Center and expanding its load as anticipated in the SSC. PNM’s Application is supported by the pre-filed Direct Testimonies of Gerard T. Ortiz, Gary B. Barnard, Jeff R. Mechenbier, Henry E. Monroy, and Patrick J. O’Connell. PNM served the Application on the Commission’s Utility Division Staff (“Staff”), the Office of the New Mexico Attorney General, and the service list for Case No. 16-00276-UT, PNM’s most recent general rate case.

2. Also on January 17, 2018, PNM filed its Motion to Shorten the Time for Protests and Decision Under 17.9.551.10 NMAC and Request for Expedited Consideration.

3. On January 23, 2018, New Mexico Industrial Energy Consumers, Inc. (“NMIEC”) filed its Motion for Leave to Intervene and Request for Discovery. NMIEC did not state a position on the Application.

4. On January 24, 2018, the Commission issued its Initial Order, which directed PNM to provide notice of the proceeding by mail or email to those listed on the service list in Case No. 16-00276-UT; waived the 60-day period for filing protests under 17.9.551.10 NMAC; directed that any person desiring to protest the Application do so by filing a motion to intervene stating whether that person opposes the Application and the reasons for opposing the Application; directed that any person wishing to intervene file a motion to intervene on or before February 20, 2018; directed the Commission’s Utility Division Staff (“Staff”) to file direct testimony on or before February 27, 2018; directed that any other intervenor may file direct

testimony on or before that date; stated that oral rebuttal testimony may be permitted at the public hearing; and set a date for the public hearing of March 7, 2018.

5. On February 6, 2018, Coalition for Clean Affordable Energy (“CCAEC”) filed its Motion for Leave to Intervene. CCAEC did not state a position on the Application.

6. On February 7, 2018, PNM filed an affidavit indicating it had complied with the Initial Order’s notice requirement.

7. On February 14, 2018, Citizens for Fair Rates and the Environment (“CFRE”) filed its Motion for Leave to Intervene, Motion for Relief from the Commission’s Filing Rule, and its Motion to Shorten Discovery Response Times (“Motion to Intervene”). CFRE’s Motion to Intervene stated that CFRE “is generally **supportive** of PNM’s Application” (emphasis in original) but “opposes the Application in its current form” on the following grounds: it appears to CFRE that subsidization of Customer by PNM’s other customers is taking place or will take place in the future; the battery storage associated with the three PPAs is insufficient to aid significantly in the long-term reliability of PNM’s grid; a “mechanism” should be added to allow for adjustments to the “contracts” should it ever be demonstrated that Customer has been or is being subsidized by PNM’s other customers; and that “PNM’s proposal” in this case “is discriminatory in that residential or small business customers who voluntarily request that their power gets supplied to the grid through the use of renewable power (i.e., known as ‘Sky Blue,’ ‘Rider 30,’ or ‘Voluntary Renewable Energy Program’ customers) are charged not only a premium for renewable power generation, but also a ‘Fuel Cost Adjustment’ for the **total** amount of power for which the customer uses regardless of the amount subscribed to through the Renewable Energy Rider,” whereas “Facebook is **only** required to pay the Fuel Cost Adjustment

for the **portion** of its power that is attributed to non-renewable resources.” (Emphasis in original).

8. On February 19, 2018, PNM filed its Response to CFRE’s Motion to Intervene. PNM’s Response opposed the Motion to Intervene on the grounds that CFRE failed to state an interest in the actual subject matter of the proceeding and permitting CFRE to intervene would impermissibly expand the scope of the proceeding, contrary to 1.2.2.23(D)(5) NMAC. PNM’s Response argued that CFRE’s Motion to Intervene sought to re-litigate the terms of the SSC approved in Case No. 16-00191-UT, including how to address potential subsidization of Customer by PNM’s other customers, and sought to address matters outside the scope of the proceeding.

9. On February 20, 2018, Western Resource Advocates (“WRA”) filed its Motion for Leave to Intervene and Request for Discovery. WRA did not state a position on the Application.

10. On February 22, PNM filed its Motion to Vacate Public Hearing, Request for Expedited Consideration and Request for Shortened Response Time. PNM’s Motion stated that because NMIEC, CCAE, and WRA did not state a position on the Application, it was assumed they did not oppose it. PNM also argued in its Motion that because CFRE’s grounds for opposing the application were outside the scope of the proceeding, CFRE failed to state any basis for opposing the Application that was germane to the actual issues raised by the Application. The Motion also stated that good cause existed to vacate the public hearing because the relief requested in the Application was unopposed and there were no issues or controversies within the scope of the case that required a hearing to resolve.

11. On February 26, 2018, CFRE filed its Motion for Leave to File a Response to PNM's Response to CFRE's Motion for Leave to Intervene, Motion for Relief from the Commission's Filing Rule, and Motion to Shorten Discovery Response Times.

12. On February 27, 2018, Staff filed the Direct Testimonies of Anthony R. Sisneros and Charles W. Gunter. Both of Staff's witnesses recommended that the Commission issue a final order approving the three PPAs and testified that a hearing was not necessary because the evidence supporting the Application was "sufficient and straightforward".

13. No other intervenor filed direct testimony.

14. On February 28, 2018, the Commission issued its Order Granting CFRE's Motion for Leave to Intervene; Partially Granting CFRE's Motion for Relief from the Commission's Filing Rule; Setting Deadline for Discovery Responses; Extending Deadline for Direct Testimony; Denying PNM's Motion to Vacate Public Hearing; Granting CFRE's Motion for Leave to File a Reply to PNM's Response to CFRE's Motions; Granting Motions of NMIEC, CCAE, and WRA for Leave to Intervene. The Commission's February 28 Order gave any party that had not filed direct testimony on February 27, 2018 pursuant to its Initial Order a further opportunity to do so, on or before March 5, 2018, and gave parties that had filed testimony an opportunity to file supplemental direct testimony on or before that date, addressing CFRE's opposition to the Application as expressed in CFRE's prior filings and PNM's responses thereto; ordered Staff to file supplemental direct testimony on or before March 5, 2018 addressing CFRE's opposition to the Application as expressed in CFRE's prior filings and PNM's responses thereto; ordered any outstanding discovery responses not already due on or before March 2, 2018 to be served by noon on that date; granted CFRE's motion for relief from the Commission's filing rule, but required that CFRE should send all filings to the Commission by overnight or

express delivery, not first class mail; and stated that the March 7, 2018 hearing would address the Application, CFRE's opposition to the Application, and any relevant issues raised by Staff. The Commission's February 28 Order also provided that, because NMIEC, CCAE, and WRA had not stated any opposition to the Application, they would not be allowed to file testimony opposing the Application and that any party that failed to file direct testimony on or before March 5, 2018 may be barred by the Commission from presenting evidence at the hearing in this matter.

15. On March 1, 2018, PNM filed its Motion to Allow Shane Gutierrez to adopt Patrick J. O'Connell's pre-filed Direct Testimony and exhibits at the public hearing, indicating CFRE opposed that Motion.

16. On March 5, 2018, Staff filed the Supplemental Direct Testimony of Mr. Gunter. No other party filed testimony.

17. On March 7, 2018, a public hearing was held. The Commission presided over the public hearing with the assistance of hearing examiner William Herrmann. PNM appeared through its counsel, Benjamin Phillips, Madonna Bixby, and Ryan Jerman; CFRE appeared through its director, Tom Manning; NMIEC appeared through its counsel, Peter Gould; CCAE appeared through its counsel, Chuck Noble; WRA appeared through its counsel, Steve Michel; and Staff appeared through its counsel, Cydney Beadles. NMIEC, CCAE, WRA and Staff indicated that they did not oppose PNM's Application and did not cross examine witnesses. PNM presented five witnesses (Gerard T. Ortiz, Gary B. Barnard, Jeff R. Mechenbier, Henry E. Monroy, and Shane Gutierrez) and Staff presented two (Charles W. Gunter and Anthony R. Sisneros). No other party presented witnesses or introduced exhibits.

18. At the March 7, 2018 public hearing, the Commission granted PNM's March 1, 2018 Motion to Allow Adoption of testimony.

19. During the public hearing, the following exhibits were admitted into evidence:

- PNM Exhibit 1 (Direct Testimony of Gerard T. Ortiz),
- PNM Exhibit 2 (Direct Testimony of Gary B. Barnard),
- PNM Exhibit 3 (Direct Testimony of Jeff R. Mechenbier),
- PNM Exhibit 4 (Direct Testimony of Henry E. Monroy),
- PNM Exhibit 5 (Direct Testimony of Patrick J. O'Connell, adopted by Shane Gutierrez),
- PNM Exhibit 6 (Shane Gutierrez's resume),
- Staff Exhibit 1 (Direct Testimony of Charles W. Gunter),
- Staff Exhibit 2 (Supplemental Direct Testimony of Charles W. Gunter),
and
- Staff Exhibit 3 (Direct Testimony of Anthony R. Sisneros).

At the Commission's request, each witness orally summarized his pre-filed testimony on the record.

20. On March 12, 2018, the public hearing transcript was filed.

21. On March 13, 2018, PNM filed its Proposed Form of Final Order and its Suggested Corrections to the Transcript of Proceeding.

PNM's Application and Supporting Testimonies

22. PNM's Application seeks approval of PPAs with: (1) Casa Mesa Wind, LLC ("Casa Mesa") for 50 MW of rated capacity and associated wind energy and one MW of battery storage over a twenty-five year term ("Casa Mesa PPA"); (2) Avangrid Renewables, LLC ("Avangrid") for 166 MW of rated capacity and associated wind energy over a twenty year term

("La Joya PPA"); and (3) Route 66 Solar Energy Center, LLC ("Route 66") for 50 MW of rated capacity and associated solar energy over a twenty-five year term ("Route 66 PPA").

23. PNM's Application and supporting testimonies explain that, pursuant to the SSC, PNM and 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.¹ PNM witness Gerard T. Ortiz ("Ortiz") testified that, after following this process, PNM and Customer had selected the three PPAs.²

24. PNM's Application states that its supporting testimonies and exhibits show that its Application satisfies all requirements of Rule 551 and that the three PPAs are necessary for, and will be utilized by, PNM to provide service to Customer pursuant to the terms, conditions and cost recovery provisions of the SSC, Rate No. 36B and Rider No. 47, that were approved by the Commission in Case No. 16-00191-UT. It states that the Commission has already approved the ratemaking treatment of the three PPAs in its Final Order in Case No. 16-00191-UT. It also states that the three PPAs are in the public interest and should be approved because they are consistent with the SSC approved by the Commission in Case No. 16-00191-UT and that Final Order, and with PNM's provision of safe and reliable electric service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors, as provided in

¹ PNM Ex. 1 (Ortiz Dir.) at 6-7, citing Case No. 16-00191-UT Final Order at ¶ 69 (*citing* SSC Sections 3.1.2 through 3.1.4).

² PNM Ex. 1 (Ortiz Dir.) at 17;

Commission Rule 551.8.D(6), and will provide additional economic and environmental benefits to the public in New Mexico.

Standard for PPA Approval

25. Rule 551 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 of the agreement. An LTPPA is a PPA 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, except for PPAs required to be approved under the Renewable Energy Act ("REA") and PPAs with Qualifying Facilities ("QFs"). Because each of the three PPAs is for a term of more than five years, and is not subject to the REA or with a QF, PNM is obligated to obtain Commission approval before becoming irrevocably bound under them. 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.

26. Rule 551, at Section 8(D), imposes certain evidentiary requirements when a utility seeks approval of a PPA, including that the utility provide a copy of the PPA, explain its key terms, and describe the benefits of entering into the PPA.

27. Rule 551.9 provides that the Commission may authorize ratemaking treatment for PPAs.

28. 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).

The Parties' Positions

PNM:

29. PNM testified that it filed its Application within thirty days of executing each PPA. The parties executed the La Joya PPA, the first of the three PPAs that are the subject of its Application, on December 20, 2017. The Casa Mesa PPA and Route 66 PPA were executed on December 21, 2017 and January 5, 2018, respectively.³

30. PNM witness Ortiz addressed PNM's recovery of the PPAs' costs from Customer and how the PPAs relate to the approvals granted in Case No. 16-00191-UT, in which the Commission approved the SSC between PNM and Customer, PNM Rate 36B - Special Service Rate, and PNM Rider No. 47- Green Energy Rider. Mr. Ortiz explained that, in Case No. 16-00191-UT, the Commission also approved PNM's acquisition of three solar PPAs totaling 30 MW as the initial step in complying with the SSC's requirement that PNM acquire sufficient renewable resources to match the electric service needs of Customer as its needs expand over time. Mr. Ortiz testified that the SSC further provides that PNM will recover from Customer the cost of serving Customer, including the cost of renewable resources acquired at Customer's direction, and other incremental costs to serve Customer, so that there is No Net Adverse Impact (as defined in the SSC) on PNM's other retail customers. He testified that PNM Rate No. 36B and Rider No. 47 are the rate schedules under which PNM's full cost recovery from Customer will be accomplished. The same contract terms and service rates approved in Case No. 16-00191-UT will apply to the three PPAs proposed for approval in this case, so that the costs will

³ PNM Ex. 1(Ortiz Dir.) at 10.

be borne by Customer and there will be No Net Adverse Impact from them on PNM's other retail customers.⁴

31. Mr. Ortiz testified that approval of the three PPAs is in the public interest for several reasons. First, the three PPAs are consistent with the terms and conditions of service to Customer as approved by the Commission in Case No. 16-00191-UT and provide net benefits to PNM's other customers. PNM applied to the Commission in Case No. 16-00191-UT for approval of tariffs, terms, and conditions by which PNM would provide retail electric service to Customer for its new Data Center project, as well as approval of three solar PPAs to meet Customer's initial Data Center requirements. PNM and Customer foresaw the need for PNM to procure additional renewable resources beyond those initial PPAs as the Data Center load expanded, and established in the SSC a collaborative process for acquiring additional resources. In its Final Order in Case No. 16-00191-UT, the Commission found that service to Customer under the SSC and accompanying tariffs provided a number of net benefits to PNM's customers and the New Mexico economy, was in the public interest, and should be approved. PNM's Application in this case for additional renewable energy resources to meet Customer's energy requirements for projected Data Center load growth accords with the terms and conditions of service to Customer approved in Case No. 16-00191-UT. Therefore, according to Mr. Ortiz, PNM's procurement of the additional renewable energy resources under the three PPAs proposed in this case is in accordance with the service terms previously approved by the Commission and is also in the public interest.⁵

32. Second, Mr. Ortiz testified that the PPAs, as well as Customer's expansion of its Data Center, will bring significant economic benefits to New Mexico. NextEra Energy

⁴ PNM Ex. 1 (Ortiz Dir.) at 3.

⁵ PNM Ex. 1 (Ortiz Dir.) at 11, 12.

("NextEra"), parent company of Casa Mesa and Route 66, informed PNM that, if approved by the Commission, the Casa Mesa Wind Energy Center will result in approximately \$72 million in investment, provide an expected \$3.5 million in payment in lieu of property taxes and \$4.8 million in landowner payments during the 25 year term of the PPA, and create approximately 198 construction and 2 permanent jobs in Quay and De Baca Counties. According to NextEra, the Route 66 solar facility will create up to 250 construction jobs and two or three permanent jobs in Cibola County, will result in approximately \$75 million in investment in New Mexico, and will provide approximately \$6.2 million in payments in lieu of property taxes to Cibola County and the Grants/Cibola County School District during its 25 year term. Avangrid informed PNM that, while it has not estimated the specific economic impact of the La Joya project, it expects the economic impact to be comparable to the economic impact of its 298 MW El Cabo wind project, also in Torrance County, which will have a total project investment of \$500 million, create approximately 400 construction jobs and 17 permanent jobs, and is expected to provide approximately \$1 million per year in payments in lieu of taxes to Torrance County and over \$1 million per year in landowner payments.⁶

33. Mr. Ortiz testified that expansion of the Data Center, which necessitates the three PPAs, is happening more rapidly than PNM expected when it filed its application in Case No. 16-00191-UT, increasing the economic benefits to the State. In Case No. 16-00191-UT, PNM testified that phase one of the Data Center would provide economic benefits to New Mexico, including the creation of construction jobs, permanent jobs at the Data Center, and jobs at the initial solar facilities needed to serve the Data Center, and due to a "multiplier spending effect"

⁶ PNM Ex. 1 (Ortiz Dir.) at 12-13.

that would benefit other sectors of the local and regional economy.⁷ As a result of the ongoing construction of the Data Center and related facilities, New Mexico has already begun to realize some of those economic benefits. With the expansion, Customer will add nearly 2 million square feet to the Data Center and is expected to directly invest more than \$1 billion in New Mexico. Customer already has nearly 800 workers on site at the Data Center, approximately 80% of which are from New Mexico, and anticipates that the expansion will keep construction crews busy well into 2023 and will create additional full-time positions at the Data Center.⁸

34. Third, in accordance with Section 3.2 of the SSC, all of the renewable energy certificates ("RECs") associated with energy provided under the three PPAs will be solely dedicated to Customer and retired by Customer or PNM on Customer's behalf so that none of those RECs may be used by PNM or any other utility for compliance with New Mexico's or any other state's renewable portfolio standard ("RPS"). This assures that the new renewable energy resources developed as a result of the three PPAs will be in addition to the renewable energy resources acquired by PNM and other electric utilities to satisfy their RPS obligations.⁹

35. PNM selected the three PPAs using the methodology and criteria set forth in the SSC. Section 3 of the SSC provides that PNM and Customer will collaborate in determining when to bring on additional renewable resources, will identify and evaluate the costs and benefits of proposed renewable resources, and determine sites for resources to avoid constraints on

⁷ Final Order ¶¶ 77-78 ("Based on economic impact studies performed on construction spending, Dr. Popp estimated that phase one data center construction spending would generate over a million dollars in positive economic impact beyond the amount directly spent (\$250 million) by the data center and could support about 2,000 direct jobs and 1,000 indirect and induced jobs over a number of years (i.e., for every two dollars spent on construction, an additional one dollar of activity will be generated and for every eight direct jobs in construction, four indirect and induced jobs will be generated).").

⁸ PNM Ex. 1 (Ortiz Dir.) at 15.

⁹ PNM Ex. 1 (Ortiz Dir.) at 13.

PNM's transmission system. Customer had existing relationships with Avangrid and NextEra and other potential suppliers, and therefore took the lead in identifying the projects that will best serve its needs. PNM participated in the selection of the resources to assure that they could be added to PNM's system without affecting reliability or causing PNM to have to add other generation. PNM and Customer then negotiated with Avangrid and NextEra to reach an agreement that was acceptable to PNM and Customer, which will be responsible for paying the cost of the renewable energy capacity and energy provided. Mr. Ortiz testified that, in this manner, PNM complied with the terms of the SSC to work collaboratively, expeditiously and in good faith with Customer to complete an appropriate process for selecting the provider of the additional renewable energy resources needed.¹⁰

36. Mr. Ortiz testified that the PPAs should not impact PNM's financial metrics because all of the costs of the PPAs will be recovered from Customer, and Customer is contractually obligated for the PPA costs if the SSC is terminated.¹¹

37. With respect to the requirement in Rule 551.8(D)(9), Mr. Ortiz testified that PNM did not evaluate whether PNM ownership of resources, as opposed to entering into the PPAs, would have provided greater benefit to ratepayers because Customer was involved in the process of choosing the providers and approved the costs of renewable energy in each of the PPAs and determined that the three PPAs better meet its current needs than PNM-owned resources. He also testified that PNM did not perform that evaluation because, in accordance with the terms of the SSC and rates approved by the Commission in Case No. 16-00191-UT, Customer is covering

¹⁰ PNM Ex. 1 (Ortiz Dir.) at 17.

¹¹ PNM Ex. 1 (Ortiz Dir.) at 18.

the reasonable costs of providing the renewable energy provided under the PPAs so that there will be No Net Adverse Impact to PNM's other retail service customers from those PPAs.¹²

38. PNM witness Gary B. Barnard sponsored the three PPAs and described their terms, as well as the facilities that will provide the power, in his Direct Testimony. The Casa Mesa PPA provides that Casa Mesa will sell to PNM the energy output from the Casa Mesa wind facility over a twenty-five year term. The nameplate capacity of the Casa Mesa wind facility is approximately 50 MW, and the project is expected to produce 160,000-200,000 MWh of energy per year.¹³ The project includes nineteen 2.5 MW turbines, two 1.7 MW turbines, and a 1 MW battery storage unit, located in Quay and De Baca Counties.¹⁴ PNM will purchase the energy at the rate of \$28.12/MWh. The PPA does not contain an option to extend the term beyond twenty-five years.¹⁵ The twenty-five year term begins on the Commercial Operation Date (as defined in the PPA), which is expected to be December 31, 2018. Commission approval of the PPA is a condition precedent to the PPA taking effect. The PPA is subject to early termination for specified reasons including: default under the PPA or termination of the SSC approved in Case No. 16-00191-UT. The PPA describes specific events of default and remedies.¹⁶

39. The La Joya PPA provides that Avangrid will sell to PNM the energy output of the La Joya wind facility over a twenty year term. The nameplate capacity of the La Joya wind facility is approximately 166 MW, and it is expected to produce 550,000-650,000 MWh per year.¹⁷ The La Joya wind facility is a new 166 MW wind generator located 18 miles east of Estancia, New Mexico, in Torrance County. The project will be owned and operated by

¹² PNM Ex. 1 (Ortiz Dir.) at 18.

¹³ PNM Ex. 2 (Barnard Dir.) at 3.

¹⁴ PNM Ex. 2 (Barnard Dir.) at 7.

¹⁵ PNM Ex. 2 (Barnard Dir.) at 5.

¹⁶ PNM Ex. 2 (Barnard Dir.) at 4.

¹⁷ PNM Ex. 2 (Barnard Dir.) at 9.

Avangrid. It is anticipated that the project will include 7 GE 116 turbines at 2.3 MW each and 60 GE 127 turbines at 2.5MW each.¹⁸ PNM will purchase the energy at the rate of \$27.92/MWh.¹⁹ The twenty year term begins on the Commercial Operation Date, which is expected to be November 1, 2020. Commission approval is a condition precedent to the PPA taking effect. The PPA is subject to early termination for specified reasons, including default under the PPA or termination of the SSC. The PPA describes specific events of default and remedies.²⁰

40. The Route 66 PPA provides that Route 66 will sell to PNM the energy output from the Route 66 solar facility over a twenty-five year term. The nameplate capacity of the Route 66 solar facility is 50 MW, and it is expected to produce approximately 140,000-150,000 MWh of energy annually.²¹ The Route 66 solar facility is a new 50 MW solar generator that will be located on a single site west of Albuquerque, New Mexico, in Cibola County. Construction is anticipated to begin in late 2020 and will be completed in approximately twelve months. The Expected Commercial Operation Date for the facility is December 1, 2021.²² Commission approval is a condition precedent to the PPA taking effect. The PPA is subject to early termination for specified reasons, including default under the PPA or termination of the SSC. The PPA describes specific events of default and remedies.²³ PNM will purchase the output at the rate of \$29.98/MWh.²⁴

41. According to Mr. Barnard, under each of the PPAs, PNM will pay only for energy actually received, and will not be obligated to pay fixed or variable administrative costs,

¹⁸ PNM Ex. 2 (Barnard Dir.) at 12.

¹⁹ PNM Ex. 2 (Barnard Dir.) at 9.

²⁰ PNM Ex. 2 (Barnard Dir.) at 10-11.

²¹ PNM Ex. 2 (Barnard Dir.) at 13.

²² PNM Ex. 2 (Barnard Dir.) at 16-17.

²³ PNM Ex. 2 (Barnard Dir.) at 14, 15-16.

²⁴ PNM Ex. 2 (Barnard Dir.) at 13.

transactional, operation and maintenance costs, or any costs other than for delivered energy. PNM may collect damages incurred prior to termination as a result of a default by the supplier under each of the PPAs. PNM does not have a purchase option or an option to extend the term under any of the three PPAs.²⁵

42. Under each PPA, upon the occurrence of an Event of Default (as defined in the PPA) by the seller, PNM may collect damages incurred prior to the termination date as a result of the Event of Default, as well as terminate the PPA and receive a termination payment. Such damages would include the cost of replacement energy for the renewable energy that the seller failed to deliver under the terms of the PPA.²⁶

43. Mr. Barnard also testified that the owners of the facilities covered by each PPA will install and operate automatic generator control ("AGC"), which assists grid reliability.²⁷ Placing the proposed resources on AGC allows generators to respond to system variability by automatically modifying resource output, which helps maintain the balance between supply and demand that is necessary for grid stability. PNM must continuously maintain system supply and demand balance within a narrow range to comply with required reliability standards.²⁸ Each of the PPAs also include other benefits to support PNM's ability to safely and reliably manage its transmission and distribution system, such as a specific ramp rate of 10 MW per minute and PNM's right to curtail the resources for transmission and system management.²⁹ Mr. Barnard

²⁵ PNM Ex. 2 (Barnard Dir.) at 4, 5, 7, 8, 10, 11, 13, 15, 16.

²⁶ PNM Ex. 2 (Barnard Dir.) at 5, 10, 15.

²⁷ PNM Ex. 2 (Barnard Dir.) at 17.

²⁸ PNM Ex. 5 (O'Connell Dir.) at 9.

²⁹ PNM Ex. 2 (Barnard Dir.) at 18.

testified that the terms and conditions in each PPA are typical in that they are market-based, and similar terms and conditions are generally found in any LTPPA entered into by PNM.³⁰

44. In addition to the system benefits provided under the PPAs, Article 19 of each PPA requires the sellers to post security, which increases the monetary incentive for the sellers to meet their capacity and schedule requirements.³¹

45. The owners of the Casa Mesa, La Joya, and Route 66 facilities are required to obtain the approvals and permits necessary to construct and operate the generating units. Exhibit E to each of the PPAs identifies the permits and approvals each owner is responsible for obtaining.³²

46. PNM witness Jeff R. Mechenbier described the transmission and interconnection costs necessary for PNM to receive purchased power under the three PPAs. The Route 66 Project requires \$8.67 million in interconnection facilities and the La Joya Project requires \$85 million in transmission upgrades.³³ Of the \$8.67 million cost of the Route 66 interconnection facilities, \$370,000, which is the cost of interconnection facilities that are not network upgrades, will be recovered directly from NextEra.³⁴ The remaining \$8.3 million will be recovered from all PNM transmission customers, including Customer. The Casa Mesa wind facility will not require any interconnection or transmission costs because it will be physically and electrically interconnected to NextEra's existing wind facilities in Quay and De Baca Counties.³⁵

47. Mr. Mechenbier testified that to deliver power from the La Joya facility to PNM's system, PNM must construct 42 miles of 345 kV transmission line paralleling its existing "BA-

³⁰ PNM Ex. 2 (Barnard Dir.) at 19.

³¹ PNM Ex. 2 (Barnard Dir.) at 18-19.

³² PNM Ex. 2 (Barnard Dir.) at 16.

³³ PNM Ex. 3 (Mechenbier Dir.) at 3, 4.

³⁴ PNM Ex. 3 (Mechenbier Dir.) at 10, 11.

³⁵ PNM Ex. 3 (Mechenbier Dir.) at 13.

Clines Corners” transmission line, which PNM refers to as “the BB2 Project”. The BB2 Project will be able to accommodate 362 MW of additional generation from eastern New Mexico to PNM’s northern New Mexico load centers and will go into service in November 2020, at an estimated cost of \$85 million.³⁶

48. In his Direct Testimony, PNM witness Henry E. Monroy provided the revenue requirements for the interconnection facilities and transmission upgrades required by the PPAs and a net present value analysis of the impact of these projects on retail customer rates. Mr. Monroy testified that the dollar impact of the interconnection and transmission upgrades is currently anticipated to result in a \$21.4 million net present value benefit to PNM’s retail customers due to two factors: i) a change in the allocation of transmission costs between FERC jurisdictional wholesale customers and New Mexico retail customers and ii) an increase in the retail transmission revenues provided by Customer under the Rate No. 36-B due to Customer’s growth in load.³⁷ These changes allow PNM to recover the costs of the interconnection and transmission investments without imposing incremental costs on PNM’s other retail customers.³⁸

49. PNM witness Shane Gutierrez, who adopted the prepared Direct Testimony of PNM witness Patrick J. O’Connell, testified that the three PPAs are consistent with the provision of safe and reliable electric utility service as well as with PNM’s most recent integrated resource plan (“IRP”), the 2017 IRP, although not with PNM’s most recently accepted IRP, the 2008 IRP, which is a decade out of date. To support its most recent 2017 IRP, PNM retained Astrape Consulting to perform a resource adequacy study that examined system reliability metrics under several future scenarios. This study and an update to assess the impact of the three PPAs

³⁶ PNM Ex. 3 (Mechenbier Dir.) at 15-16.

³⁷ PNM Ex. 4 (Monroy Dir.) at 7; PNM Exhibits HEM-2 and HEM-3.

³⁸ PNM Ex. 4 (Monroy Dir.) at 9-10.

proposed in PNM's Application are attached to Mr. Gutierrez's testimony as PNM Exhibit PJO-3. All of the scenarios addressed in the Astrape study include assumptions for Customer's Data Center load growth and the renewable resources needed to match its load growth. The initial study and Astrape's recent update show that no additional resources other than the matching renewable energy resources are needed to maintain system reliability in 2021, when all three of the new PPA projects are expected to be in operation. Adequate system reliability is defined in both Astrape's initial resource adequacy study and the update as a loss of load expectation ("LOLE") less than 0.2. Whether or not these PPAs are added to PNM's resource portfolio, PNM will be able to maintain adequate system reliability after 2021 as long as dispatchable flexibility (e.g. generation or storage) is added to its system as needed. The type, size and timing of the additional flexibility will depend upon future system operating conditions, including the system load forecast, PNM's interaction with emerging regional market organizations, the results of the 2020 IRP, and possibly other factors.³⁹ The current projections of Customer load and the renewable resources needed to serve the load, including the additional PPAs, are substantially the same as the corresponding projections in PNM's 2017 IRP.⁴⁰

Staff:

50. Staff supports PNM's Application. Staff witness Charles W. Gunter testified that Rule 551 applies to the three PPAs, and that PNM fully complied with all applicable provisions of the rule. Mr. Gunter considered each provision of Rule 551, and testified that PNM demonstrated compliance with each in its direct testimonies.⁴¹ Staff believes the proposed PPAs are in the public interest, as they enable opportunities for further economic development and

³⁹ PNM Ex. 5 (O'Connell Dir.) at 5- 6.

⁴⁰ PNM Ex. 5 (O'Connell Dir.) at 6.

⁴¹ Staff Ex. 1 (Gunter Dir.) at 7-18.

renewable energy resource development - exceeding the requirements of the Renewable Energy Act - with no detriment to PNM's other customers.⁴²

51. Mr. Gunter also testified that the Commission's Final Order in Case No. 16-00191-UT addresses future ratemaking treatment for the costs of serving Customer in a way that assures protections to all other PNM customers.⁴³ Specifically, with respect to the transmission costs to be incurred in connection with the La Joya and Route 66 projects, Rate No. 36B includes a number of component charges, including a Transmission Demand Charge described as "Customer's allocated share of transmission costs." The Final Order in Case No. 16-00191-UT notes that this charge, along with other component charges, will be subject to adjustment by the Commission in PNM's general rate cases as set forth in Section 5.2 of the SSC and that the Commission, in future PNM rate cases, would determine whether the "Production Charge" of \$0.0231074 per kWh, fixed during the initial 10-year period of the SSC, would cause any increased rates to all other customer classes. Specifically, the Case No. 16-00191-UT Final Order, in Decretal Paragraph I, ordered:

In any future rate case filed by PNM requesting an increase in any other customer classes' rates, the Commission shall determine whether or not any customer class will be subject to increased rates due to Facebook's fixed "Contribution to Production Charge for System Supplied Energy" ("Production Charge") of \$0.0231074 per kwh. The Commission shall determine whether or not PNM will be allowed to recover such increased costs in the form of increased rates to other customer classes.⁴⁴

52. Staff concludes that the Commission's Final Order in Case No. 16-00191-UT provides that in future rate cases all charges to Customer, including transmission charges and the

⁴² Staff Ex. 1 (Gunter Dir.) at 20-21.

⁴³ Staff Ex.1 (Gunter Dir.) at 18.

⁴⁴ Staff Ex. 1 (Gunter Dir.) at 18, 19.

10-year fixed Production Charge, will be examined to ensure that no customer class will be subject to increased rates resulting from service to Customer.⁴⁵

53. Staff witness Anthony R. Sisneros testified that the three PPAs are consistent with the approvals granted in Case No. 16-00191-UT and do not infringe upon or change the protections to PNM's other customers that were approved in Case No. 16-00191-UT. These protections in essence provide reasonable assurance that the costs to provide existing and new renewable energy service to Customer will be borne by Customer and not PNM's other customers.⁴⁶ Mr. Sisneros described PNM's Application as being in furtherance of the approvals granted in Case No. 16-00191-UT because the three PPAs arise out of the approved SSC, pursuant to which PNM is obligated to acquire sufficient renewable resources to meet Customer's expanding energy needs over time.⁴⁷ He testified that these protections in essence provide reasonable assurance that the costs to provide existing and new renewable energy requirements to Customer will be borne by Customer and not by PNM's other ratepayers. He testified that the provision of the SSC that service to Customer will have "No Net Adverse Impact" will remain in effect if the requested PPAs are approved. Mr. Sisneros testified that this is consistent with Staff's concern in Case No. 16-00191-UT, that if PNM's requested approvals are granted, they will not result in Customer being subsidized by PNM's other customers. He testified that the addition of Customer to PNM's system as well as its presence in New Mexico will provide much needed economic development in New Mexico, which is in the public interest.

⁴⁵ Staff Ex. 1 (Gunter Dir.) at 19.

⁴⁶ Staff Ex. 3 (Sisneros Dir.) at 2.

⁴⁷ Staff Ex. 3 (Sisneros Dir.) at 5.

For these reasons, he testified that Staff recommends that the Commission approve PNM's Application, and that a hearing was not necessary.⁴⁸

54. Staff noted that PNM may need to file applications for approval of additional PPAs to meet Customer's expanding needs in the future. Staff supports having these multiple PPA approval requests filed in one docket to the extent possible so as to promote efficiency.⁴⁹

55. In Mr. Gunter's Supplemental Direct Testimony, Staff addressed CFRE's arguments in its Motion to Intervene, as well as PNM's Response to CFRE's Motion to Intervene. Staff concluded that potential subsidization of Customer by other customers, one of CFRE's grounds for intervening, was an issue in Case No. 16-00191-UT, and was addressed in Paragraph L of the Commission's Final Order in that case. Staff testified that CFRE can intervene in future rate cases where potential subsidization issues may be examined.⁵⁰ Staff also concluded that alleged discrimination against Sky Blue participants, another ground for CFRE's intervention, is not the subject of this case and can be dealt with in a future proceeding. Staff recommends that the Commission not open a separate proceeding on Sky Blue, as CFRE suggested, because CFRE has not sufficiently demonstrated that discrimination exists.⁵¹ Mr. Gunter noted that "CFRE failed to provide any expert opinion or record evidence to substantiate its claims" regarding Sky Blue and the amount of renewable energy that can be added to PNM's system.⁵² Staff summarized its recommendation:

The proposed PPAs are in the public interest, as they enable opportunities for further economic development and renewable energy resource development – exceeding the requirements of the Renewable Energy Act – with no detriment to

⁴⁸ Staff Ex. 3 (Sisneros Dir.) at 10.

⁴⁹ Staff Ex. 3 (Sisneros Dir.) at 6.

⁵⁰ Staff Ex. 2 (Gunter Supp.) at 17.

⁵¹ Staff Ex. 2 (Gunter Supp.) at 18-19.

⁵² Staff Ex. 2 (Gunter Supp.) at 16.

all other customers. Staff recommends that the Commission not establish a separate docket to address any of the issues CFRE has raised in this case.⁵³

CFRE:

56. CFRE did not present witnesses or introduce evidence at the public hearing, but cross examined witnesses and presented a closing statement, through its director Tom Manning, in which it stated that it “is really very supportive of this [Application] in general.”⁵⁴ CFRE stated that “at some point [PNM] need[s] to add reliability resources or dispatchable flexibility, and if they are not adding it now, then we’re going to need to add it later.”⁵⁵ CFRE asked the Commission to consider the Sky Blue program in a future docket and stated its “hope that the Commission does all it can in the future to ensure that PPAs are given fair consideration in all resource procurement cases.”⁵⁶

Commission Determination:

The Three PPAs comply with Rule 551

57. Each of the PPAs complies with the requirements of Rule 551 as demonstrated below.

58. Rules 551.8(A-C) require a public utility to obtain Commission approval before becoming irrevocably obligated under a long-term PPA, to file an application for approval of the PPA within thirty days of executing the agreement, and to serve a copy of the application on Commission Staff, the Office of the New Mexico Attorney General, and all parties in its most

⁵³ Staff Ex. 2 (Gunter Supp.) at 20.

⁵⁴ Tr. at 89.

⁵⁵ Tr. at 90.

⁵⁶ Tr. at 90.

recent general rate case. As demonstrated in Mr. Ortiz's Direct Testimony and the filed affidavits and certificates of service, PNM complied with each of these requirements.

59. Rules 551.8(D)(1) and (2) require a utility to provide a copy of each PPA it seeks approval of and an explanation of the PPA's key terms and conditions. As demonstrated in Mr. Barnard's Direct Testimony, and as summarized below, PNM complied with each of these requirements:

- Term. The La Joya PPA has a term of twenty years and the Casa Mesa and Route 66 PPAs have terms of twenty-five years. These terms are consistent with PNM's other PPAs.
- Purchase Requirements. The Casa Mesa PPA is for 50 MW of wind energy and is expected to produce 160,000-200,000 MWh per year; the La Joya PPA is for 166 MW of wind energy and is expected to produce 550,000-650,000 MWh per year; and the Route 66 PPA is for 50 MW of solar energy and is expected to produce 140,000-150,000 MWh per year. Under each of the PPAs, PNM is required to pay only for the energy it actually receives.
- Energy Pricing Under the PPAs. The Casa Mesa purchase price is \$28.12/MWh throughout the term of the PPA; the La Joya purchase price is \$27.92/MWh throughout the term of the PPA; and the Route 66 purchase price is \$29.98/MWh throughout the term of the PPA.
- Obligations Related to Other Costs. PNM is under no obligation to pay for any fixed or variable administrative, transactional, or operation and maintenance costs. Each PPA requires the seller to post security,

increasing its monetary incentive to meet its capacity and schedule requirements.

- Non-performance Under the PPAs. Specific Events of Default, along with the remedies for each, are defined in the PPAs. Under each PPA, upon the occurrence of an Event of Default by the seller, PNM may collect damages incurred prior to the termination date as a result of the Event of Default, as well as terminate the PPA and receive a termination payment. Such damages would include the cost of replacement energy for the renewable energy that the seller failed to deliver under the terms of the PPA.

60. Rule 551.8(D)(3) requires a utility to provide a description of transmission costs the electric utility will incur or pay to receive the purchased power. In Mr. Mechenbier's Direct Testimony, PNM demonstrated that the interconnection facilities for the Route 66 Project will cost \$8.67 million (\$370,000 of which will be assigned directly to NextEra) and the transmission upgrades for the La Joya project will cost \$85 million. Mr. Monroy's Direct Testimony demonstrates that on a net present value basis the additional transmission revenues Customer is expected to provide due to its increased load, and the reallocation of transmission costs from the retail jurisdiction to the wholesale jurisdiction will more than offset the revenue requirement of the interconnection and transmission investments needed to support the Route 66 and La Joya PPAs, so that PNM's other retail customers are currently projected to realize a net present value benefit in revenue requirements of \$21.4 million. No interconnection facilities or transmission upgrades are necessary to interconnect the Casa Mesa facility.

61. Rule 551.8(D)(4) requires an explanation of how the utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers. As provided in Mr. Ortiz's Direct Testimony, PNM will recover the costs of the PPAs from Customer under the terms of the SSC, Rate No. 36B and Rider No. 47, approved by the Commission in Case No. 16-00191-UT. The PPAs will have No Net Adverse Impact on PNM's other customers.

62. Rule 551.8(D)(5) requires a general description of the generating facilities covered by the PPAs. In his Direct Testimony, Mr. Barnard testified that the Casa Mesa wind facility includes nineteen 2.5 MW turbines, two 1.7 MW turbines, and a 1 MW battery storage unit to be located in Quay and De Baca Counties. The commercial operation date of the project is expected to be December 31, 2018. The La Joya facility is anticipated to include 7 GE 116 turbines at 2.3 MW each as well as 60 GE 127 turbines at 2.5 MW each. The Commercial Operation Date is expected to be November 1, 2020. The Route 66 solar facility is a new 50 MW solar generator that will be located on a single site west of Albuquerque, New Mexico, in Cibola County. Construction of the Route 66 solar facility is expected to begin in late 2020 and will be completed in approximately twelve months, providing an expected Commercial Operation Date of December 1, 2021. A list of all approvals and permits, which the sellers are required to obtain, is attached to each PPA.

63. Rule 551.8(D)(6) requires the utility to provide evidence that entering into the PPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost. PNM demonstrated, through the Direct Testimony of Shane Gutierrez, who adopted the Direct Testimony of PNM witness O'Connell, that the three PPAs are consistent with the provision of safe and reliable electric utility service and do not require the addition of

any other resources. The costs of the PPAs are reasonable because they are acceptable to Customer, who will bear their costs.

64. Rule 551.8(D)(7) requires the utility to provide evidence of the PPA's impact on the utility's financial condition and financial metrics. PNM demonstrated, in Mr. Ortiz's Direct Testimony, that the PPAs will have no impact on PNM's financial condition or financial metrics because their costs will be recovered from Customer, and Customer will be responsible for the PPAs in the event the SSC is terminated.

65. Rule 551.8(D)(8) requires the utility to provide evidence that a PPA is consistent with the utility's most recent Commission-accepted IRP unless material changes have occurred. PNM demonstrated, through Mr. Gutierrez's Direct Testimony adopting the Direct Testimony of PNM witness O'Connell, that the three PPAs are consistent with PNM's most recently filed IRP, its 2017 IRP, and that PNM's last Commission-accepted IRP, the 2008 IRP, is a decade out of date. PNM has provided sufficient justification for deviation from the 2008 IRP, as required by the rule. PNM has complied with Rule 551.8(D)(8).

66. Rule 551.8(D)(9) requires the utility to provide evidence addressing whether a utility-owned resource could have been constructed as an alternative to the PPA with greater benefit to the utility's customers. PNM demonstrated compliance with this requirement through the Direct Testimony of Mr. Ortiz, who testified that the three PPAs better meet Customer's current needs than PNM-owned resources. In addition, in accordance with the terms of the SSC and rates approved by the Commission in NMPRC Case No. 16-00191-UT, the purpose of the requirement in this section of Rule 551 is satisfied because Customer is covering the reasonable costs of providing the renewable energy provided under all three PPAs so that there will be No Net Adverse Impact, as defined in the SSC, to PNM's other retail service customers.

67. Rule 551.8(D)(10) requires the utility to provide evidence addressing the methodology and criteria by which the PPA was selected. As described in Mr. Ortiz's Direct Testimony, PNM selected the resources in consultation and collaboration with Customer, as provided in the Commission-approved SSC. PNM selected resources that meet Customer's unique service needs and that are consistent with the provision of safe and reliable power to all of its customers.

The Three PPAs are in the Public Interest

68. In addition to complying with Rule 551, PNM must demonstrate by a preponderance of the evidence that the three PPAs are in the public interest. The Commission accepts the uncontroverted testimony of Mr. Ortiz that the PPAs are in the public interest for several reasons, including that they are consistent with the Commission's Final Order in Case No. 16-00191-UT. As explained in testimony in that case, PNM and Customer foresaw the need for PNM to procure additional renewable resources beyond the initial PPAs as the Data Center load expanded, and established in the SSC a collaborative process for acquiring additional resources. In its Final Order in Case No. 16-00191-UT, the Commission found that, viewing the transaction as a whole, 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. PNM's Application in this case for additional renewable energy resources to meet Customer's energy requirements for projected Data Center load growth accords with the terms and conditions of service to Customer approved by the Commission in Case No. 16-00191-UT. The Commission finds that PNM's procurement of the additional renewable energy resources under the three PPAs proposed in its Application is in accordance with the service terms previously approved by the Commission and is also in the public interest.

69. Approval of the PPAs, along with Customer's expansion of its Data Center, will bring significant economic benefits to New Mexico. According to PNM, the Casa Mesa Wind Energy Center could result in approximately \$72 million in investment, provide an expected \$3.5 million in payment in lieu of property tax and \$4.8 million in landowner payments during the 25 year term of the PPA, and create approximately 198 construction and 2 permanent jobs in Quay and De Baca Counties. The Route 66 solar facility could create up to 250 construction jobs and two or three permanent jobs in Cibola County, will result in approximately \$75 million in investment in New Mexico, and provide approximately \$6.2 million in payments in lieu of property taxes to Cibola County and the Grants/Cibola County School District during its 25 year term. The economic impact of the La Joya facility may be comparable to the economic impact of Avangrid's 298 MW El Cabo wind project, also in Torrance County, which will have a total project investment of \$500 million; create approximately 400 construction jobs and 17 permanent jobs; and is expected to provide approximately \$1 million per year in payment in lieu of taxes to Torrance County and over \$1 million per year in landowner payments.

70. Expansion of the Data Center, which necessitates the three PPAs proposed in PNM's Application, is happening more rapidly than PNM expected when it filed its application in Case No. 16-00191-UT, increasing the economic benefits of the Data Center to the State. In Case No. 16-00191-UT, PNM testified that phase one of the Data Center would provide economic benefits to New Mexico, including through the creation of construction jobs, permanent jobs at the Data Center, and jobs at the initial solar facilities needed to serve the Data Center, and through a "multiplier spending effect", benefits to other sectors of the local and regional economy. As a result of the ongoing construction in Los Lunas, New Mexico has already begun to realize some of those economic benefits. With the Data Center expansion,

Customer will add nearly 2 million square feet to the Data Center and is directly investing more than \$1 billion into the site. Customer already has nearly 800 workers on site, with 80% from New Mexico, and anticipates that the expansion will keep construction crews busy well into 2023 and will create additional full-time positions.

71. Finally, the Commission finds that the three PPAs are in the public interest because all of the RECs associated with energy provided under the PPAs will be solely dedicated to Customer and retired by Customer or PNM on Customer's behalf so that none of those RECs may be used by PNM or any other utility for compliance with New Mexico's or any other state's RPS. This assures that the new renewable energy resources developed as a result of the proposed PPAs will be in addition to the renewable energy resources acquired by PNM and other electric utilities to satisfy their RPS obligations.

Resolution of Issues Raised in CFRE's Motion to Intervene

72. CFRE generally supports PNM's Application⁵⁷ but claims that supposed subsidization of Customer by PNM's other customers may result from approval of the PPAs and that PNM's Voluntary Renewable Energy Program customers are supposedly discriminated against.⁵⁸ The Commission finds that neither of these CFRE concerns regarding PNM's Application are justified because (1) the Commission has already provided, in its Final Order in Case No. 16-00191-UT, an appropriate procedure for addressing potential claims of future subsidization of Customer by PNM's other customers, and (2) CFRE has not provided any evidence that Commission approval of PNM's Application would result in any improper or undue discrimination against Sky Blue program participants.

73. CFRE summarized its subsidization concern as follows:

⁵⁷ Motion to Intervene at 2; Tr. at 6 and 89.

⁵⁸ Motion to Intervene at 2-6.

We found it a little troubling today that there's no recognition that there's value in the reserve margin that's being used up, and I don't see how PNM can completely consider whether or not there is adverse impacts upon other ratepayers if they are not going to assign some monetary value to that. You know, in CFRE's eyes it's obvious that you can't add -- well, PNM has admitted that at some point you need to add reliability resources or dispatchable flexibility, and if they are not adding it now, then we're going to need to add it later. So there's a value that's being taken. That's our main points on that.⁵⁹

74. CFRE appears to claim that PNM's planning reserve margin will be reduced not as a result of Commission approval of the PPAs, the subject of PNM's Application, but rather as a result of Customer's projected increased load. The relevant inquiry in this case, however, is whether the addition of the renewable energy PPAs will require PNM to add flexible supplies to integrate the renewable resources, and the uncontroverted evidence is that no additional flexibility will be needed at least before 2022, and the need thereafter will depend on a multitude of factors.⁶⁰ Furthermore, CFRE's claim or concern ignores the fact that, in accordance with the SSC approved by the Commission in Case No. 16-00191-UT, over time PNM will be adding renewable resources, at Customer's request and cost, to provide not only the energy but also the capacity to match the projected load of Customer's Data Center, so there should be no effect on reserve margin.⁶¹ Moreover, as Staff witness Gunter correctly observed,⁶² the Commission expressly provided in Paragraph L of its Final Order in Case No. 16-00191-UT that "[i]n any future rate case filed by PNM requesting an increase in any other customer class' rates, the Commission shall determine whether or not any customer class will be subject to increased rates due to Facebook's [10-year] fixed 'Contribution to Production Charge for System Supplied Energy' ('Production Charge') of \$0.0231074 per kWh" in the SSC and "shall determine

⁵⁹ Tr. at 89-90.

⁶⁰ PNM Ex. 5 (O'Connell Dir.) at 5, 6.

⁶¹ SSC §3.1.

⁶² Staff Ex. 1 (Gunter Dir.) at 19; Staff Ex. 2 (Gunter Supp.) at 17.

whether or not PNM will be allowed to recover such increased costs in the form of increased rates to other customer classes.” In addition, as provided in Section 5.2 of the SSC and the Commission’s Final Order in Case No. 16-00191-UT, all other charges for which Customer will be responsible under PNM’s Special Service Rate No. 36B are subject to adjustment by the Commission in future rate proceedings as are charges to all of PNM’s other retail customers under their applicable rate schedules. CFRE can seek intervention in future rate cases where issues involving potential subsidization with regard to Facebook can be examined.”⁶³

75. CFRE summarized its concern regarding Sky Blue as follows:

As far as whether there's any discrimination in various renewable energy programs, I would ask the Commission how many large customers would sign up for a renewable energy program that -- that's designed in a way that increases their rates? That's the way the Sky Blue program is designed. And if the Commission would allow for that to be looked at in another docket at some future time, CFRE would appreciate that.⁶⁴

76. CFRE’s concern regarding Sky Blue is not related to the sole issue in this case: whether the three PPAs should be approved. As CFRE acknowledged at the public hearing, the Commission may consider PNM’s Voluntary Renewable Energy Program in another docket. The Commission agrees with Staff witness Gunter, however, that CFRE has not stated sufficient grounds in this case for opening such a docket. As noted by Staff, CFRE failed to provide any expert testimony or record evidence to substantiate its claim that Sky Blue customers are somehow being discriminated against.⁶⁵

77. At the public hearing, CFRE stated its “hope that the Commission does all it can in the future to ensure that PPAs are given fair consideration in all resource procurement

⁶³ Staff Ex. 2 (Gunter Supp. Dir.) at 17.

⁶⁴ Tr. at 90.

⁶⁵ Staff Ex. 2 (Gunter Supp.) at 15-16.

cases.”⁶⁶ The Commission reviews each resource procurement subject to its jurisdiction, through either a utility’s application for a CCN or approval of a PPA pursuant to Rule 551, to determine whether the proposed resource is in the public interest. The Commission finds that these resource procurement processes adequately address this CFRE concern.

IT IS THEREFORE ORDERED:

- A. PNM’s Application is approved.
- B. Because the three proposed PPAs meet the requirements of Rule 551 and are consistent with the SSC approved in Case No. 16-00191-UT, they are in the public interest and are approved.
- C. The Commission has not considered PNM’s Response to CFRE’s Suggested Alternative Language for the Commission’s Final Order, for which the Commission had not given PNM leave to file.
- D. Any matter not specifically ruled on during the course of this proceeding or in this Order is disposed of consistent with this Order and Commission Rules.
- E. Copies of this Order shall be sent to all persons listed on the official service list for this case via email, if their email addresses are known, and if not known, by regular mail.
- F. This Order is effective immediately.
- G. This docket is now closed.

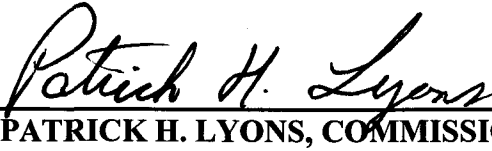
⁶⁶ Tr. at 90.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 21st day of
March 2018.

NEW MEXICO PUBLIC REGULATION COMMISSION

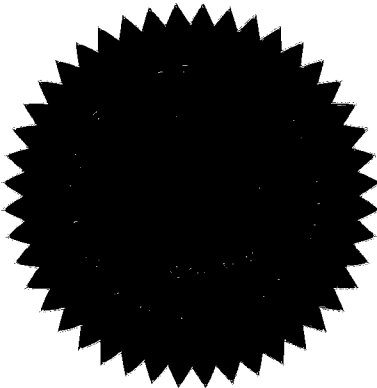

SANDY JONES, CHAIRMAN


CYNTHIA B. HALL, VICE CHAIR


PATRICK H. LYONS, COMMISSIONER


VALERIE ESPINOZA, COMMISSIONER


LYNDA LOVEJOY, COMMISSIONER



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE	)	
COMPANY OF NEW MEXICO'S APPLICATION	)	
FOR APPROVAL PURSUANT TO 17.9.551 NMAC	)	Case No. 18-00009-UT
OF THREE PURCHASED POWER AGREEMENTS	)	
IN ACCORDANCE WITH SPECIAL SERVICE	)	
CONTRACT WITH FACEBOOK INC.	)	
	)	

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **Final Order** issued by the New Mexico Public Regulation Commission on March 21, 2018, was sent via email on March 21, 2018, to the parties listed below:

Joseph Yar Alicia Armijo Nann M. Winter Kevin Higgins Peer Auh Joe Herz Steven S. Michel Shannon A. Parden Jim Dittmer Kurt J. Boehm Jody Kyler Cohn Peter J. Gould Dahl Harris Charles F. Noble Bruce C. Throne Jason Marks Rick Alvidrez Robert H. Clark Jeffrey H. Albright William P. Templeman Justin Lesky Mariel Nanasi Mark Adams Todd Hixon Andrea Crane Michael J. Garcia	jyar@nmag.gov; aarmijo@nmag.gov; nwinter@stelznerlaw.com; khiggins@energystrat.com; pauh@abcwua.org; jaherz@sawvel.com; smichel@westernresources.org; Sparden@rmjfirm.com; jdittmer@utilitech.net; kboehm@mkllawfirm.com; jkylercohn@bkllawfirm.com; pgouldlaw@gmail.com; dahlharris@hotmail.com; Noble.ccae@gmail.com; bthroneatty@newmexico.com; lawoffice@jasonmarks.com; ralvidrez@mstlaw.com; rclark@mstlaw.com; JAlbright@lrrc.com; wtempleman@cmtisantafe.com; jlesky@leskylawoffice.com; Mariel@seedsbeneaththesnow.com; mkadams@rodey.com; THixon@tep.com; ctcolumbia@aol.com; mikgarcia@bernco.gov;
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Carla Bond
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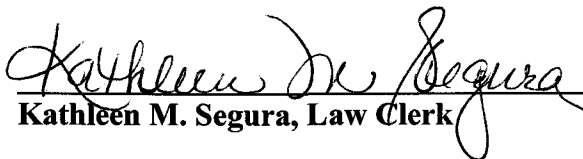
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NEW MEXICO PUBLIC REGULATION COMMISSION



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