

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW MEXICO)
FOR APPROVAL OF PNM SOLAR DIRECT)
VOLUNTARY RENEWABLE ENERGY PROGRAM,)
POWER PURCHASE AGREEMENT, AND)
ADVICE NOTICE NOS. 560 AND 561,)

Case No. 19-00____-UT

PUBLIC SERVICE COMPANY OF NEW MEXICO,)

Applicant.)
_____)

DIRECT TESTIMONY

OF

STELLA CHAN

May 31, 2019

NMPRC CASE NO. 19-00____-UT
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WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

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AFFIDAVIT

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1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 **A.** My name is Stella Chan and I am the Director of Pricing for Public Service
3 Company of New Mexico (“PNM”). For my contact information and more about
4 my qualifications, including a list of cases in which I previously testified before
5 the New Mexico Public Regulation Commission, please see PNM Exhibit SC-1.

6

7 **I. SUMMARY OF PNM’S APPLICATION**

8 **Q. WHAT APPROVALS IS PNM REQUESTING IN ITS APPLICATION?**

9 **A.** PNM is requesting approvals related to a new voluntary renewable energy
10 program, PNM Solar Direct. Specifically, PNM is seeking approval of:

- 11 • PNM Solar Direct pursuant to NMSA 1978, Section 62-16-7 and 17.9.572.18
- 12 NMAC ;
- 13 • a purchased power agreement with Jicarilla Solar 2 LLC (“PPA”) pursuant to
- 14 17.9.551 NMAC (“Rule 551”) for the output from a 50 MW solar facility that
- 15 will provide energy for PNM Solar Direct;
- 16 • Advice Notice No. 560, providing Original Rider No. 50 – Voluntary Solar
- 17 Renewable Energy Program – PNM Solar Direct for Governmental and Large
- 18 Commerical Customers (“Rider 50”);
- 19 • Advice Notice No. 561, providing Original Form No. 106, PNM Solar Direct
- 20 Service Agreement – Governmental Entities; Original Form No. 107, PNM
- 21 Solar Direct Service Agreement – Non-Governmental Entities; and Original
- 22 Form No. 108 – Bill Form for PNM Solar Direct; and

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- 1 • Variances from 17.1.2.10(B)(2)(b) and 17.9.530 NMAC.

2

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 **A.** I explain the PNM Solar Direct Program and why it is consistent with the goals of
5 the Renewable Energy Act (“REA”) and in the public interest. I also explain
6 Forms 106 and 107, the PNM Solar Direct service agreements, and certain
7 requirements for approval of the PPA. Finally, I address PNM’s request for
8 variances from certain Commission rules.

9

10 **Q. PLEASE INTRODUCE THE OTHER WITNESSES FILING TESTIMONY**
11 **IN SUPPORT OF PNM’S APPLICATION.**

12 **A.** Mr. Thomas Fallgren, Vice President of Generation for PNM, sponsors the PPA,
13 explains its key terms and conditions, and demonstrates that it complies with the
14 requirements of Rule 551. Mr. Fallgren also describes the request for proposals
15 (“RFP”) process PNM used to select the proposed PPA.

16

17 Mr. Michael Settlege, Lead Pricing Analyst for PNM, explains the proposed Rider
18 50 through which PNM proposes to recover the PPA costs and an administrative
19 charge from participating customers.

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II. OVERVIEW OF PNM SOLAR DIRECT

Q. WHAT IS PNM SOLAR DIRECT?

A. PNM Solar Direct is a voluntary renewable energy program that allows eligible governmental and large commercial customers to match a portion of their consumption with energy produced from solar facilities dedicated solely to PNM Solar Direct. The solar energy is in addition to renewable energy that customers receive from PNM's compliance with the Renewable Portfolio Standard ("RPS"). PNM is proposing to source the program from a new 50 MW solar facility ("Solar Facility") to be built and operated by Jicarilla Solar 2 LLC. PNM may propose additional resources in the future to source the program if needed to meet customer requests.

Q. WHY IS PNM PROPOSING PNM SOLAR DIRECT?

A. Governmental and large commercial customers have approached PNM seeking a means to serve their energy requirements with renewable power that is in excess of that driven by New Mexico's RPS. In essence, they were interested in a voluntary renewable program, but for energy amounts that far exceeded what was available through PNM's existing voluntary program, Sky Blue.

The City of Albuquerque ("City") is one of the governmental entities that approached PNM. The City asked PNM for ideas on solar initiatives that would meet its sustainability goal sooner and more economically than installing rooftop

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1 solar on City-owned buildings. The City and PNM worked together and explored
2 options to help the City, and came to the conclusion that a utility-scale solar
3 project would be the most economical way to provide solar energy for a
4 significant portion of the City's electric power usage. PNM Solar Direct could
5 help the City to meet its goal of offsetting 100% of its annual electricity
6 consumption with solar energy by 2022.

7
8 PNM also talked to other customers about the idea of a utility scale solar project
9 which could help customers cost effectively meet their renewable or sustainability
10 goals. PNM's governmental customers, mostly those in the southern part of
11 PNM's service territory, were very interested in a cost effective solar project.
12 Some of PNM's large commercial customers, namely those that have corporate
13 sustainability goals and also participate in utilities' voluntary programs in other
14 states, were also interested in such a project.

15
16 **Q. WHAT CUSTOMERS ARE ELIGIBLE TO PARTICIPATE IN PNM**
17 **SOLAR DIRECT?**

18 **A.** PNM is offering the project to governmental customers as well as large
19 commercial customers with aggregate demand, across all of their accounts, of
20 more than 2.5 MW.

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1 **Q. ARE CUSTOMERS NOT ELIGIBLE FOR PNM SOLAR DIRECT ABLE**
2 **TO PARTICIPATE IN ANOTHER VOLUNTARY RENEWABLE**
3 **ENERGY PROGRAM?**

4 **A.** Yes. PNM's Sky Blue program, which was approved in Case Nos. 10-00018-UT
5 and 12-00131-UT and is sourced with a 1.5 MW solar facility and a wind
6 resource, provides customers that are not eligible for PNM Solar Direct the
7 opportunity to participate in a voluntary renewable energy program.

8

9 **Q. WHY DID PNM SET AN ELIGIBILITY REQUIREMENT FOR PNM**
10 **SOLAR DIRECT?**

11 **A.** PNM developed the PNM Solar Direct program in response to interest expressed
12 by governmental and large commercial customers. The 2.5 MW eligibility
13 requirement matches the approximate size of the commercial customers that have
14 expressed an interest in the program. In addition, the eligibility requirement helps
15 ensure that the monthly billing can be handled by PNM's current billing staff,
16 thereby not creating an ongoing incremental cost to offer the program. Unlike
17 Sky Blue, PNM Solar Direct participants must be manually billed each month
18 rather than automatically billed through PNM's billing system.

19

20 **Q. HOW MANY CUSTOMERS MEET THE ELIGIBILITY**
21 **REQUIREMENT?**

22 **A.** There are 86 eligible customers in total - 63 governmental customers and 23 large
23 commercial customers.

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1 **Q. HOW DID PNM DECIDE ON A 50 MW RESOURCE?**

2 **A.** PNM wanted to ensure that the program will be cost-effective, well-received and
3 fully subscribed. A 50 MW solar facility will see the benefit of economies of
4 scale while lessening the risk of having unsubscribed capacity that would come
5 with a larger facility.

6
7 **Q. WHO WILL PAY THE COSTS ASSOCIATED WITH THE PPA?**

8 **A.** PNM will recover the costs of the PPA directly from participating PNM Solar
9 Direct customers through Rider No. 50. Mr. Settlage explains Rider No. 50 in his
10 Direct Testimony.

11

12 **Q. ARE THERE OTHER COSTS IN ADDITION TO THE PPA COSTS? IF**
13 **SO, WHO WILL BE PAYING THOSE COSTS?**

14 **A.** Yes. PNM conducted an RFP to solicit and evaluate bids and eventually selected
15 the Jicarilla Solar 2 project. The incremental costs of administrating the RFP,
16 approximately \$70,000 for a consultant to review the RFP and bids, will be paid
17 for by the participating PNM Solar Direct customers. In addition, there are one-
18 time costs incurred for IT system support to set up the manual billing process,
19 about \$10,000, and install a backup meter, around \$200,000, at the Solar Facility.
20 These one-time costs total \$280,000. PNM is requesting approval to record these
21 one-time costs in a regulatory asset and to recover them from program subscribers
22 through a monthly Administrative Charge over the term of the Service
23 Agreement. Recording the costs in a regulatory asset and recovering them over

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1 the life of the contract will allow participating customers to avoid making a
2 significant, one time payment for their share of the administrative costs. Mr.
3 Settlege explains and supports the derivation of the Administrative Charge in his
4 Direct Testimony.

5
6 **Q. HOW MANY CUSTOMERS HAVE SIGNED UP FOR PNM SOLAR**
7 **DIRECT?**

8 **A.** Seven eligible customers have committed to participate in PNM Solar Direct.
9 PNM sent emails to all eligible customers in early February explaining the
10 program and asking customers interested in participating to return a non-binding
11 interest form with their desired level of subscription. 14 customers returned their
12 interest form. After PNM selected the winning bidder for the PPA, PNM went
13 back to those 14 customers to share the pricing information and asked those
14 customers to submit a Notice of Intent (“NOI”) with a committed subscription
15 level, contingent upon the Commission’s approval of the program. PNM Exhibit
16 SC-2 includes the seven returned NOIs as well as interest letters from three
17 customers.

18
19 Just as many of PNM’s governmental customers must obtain approval through a
20 relatively lengthy process from an elected council or board, three particular
21 governmental customers, Bernalillo County, Santa Fe County and Buckman
22 Direct Diversion, requested additional time, up to June 28, 2019, to obtain
23 approval from their respective governing bodies to execute an NOI. Because one

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customer, Walmart, is amenable to taking any additional available project capacity, up to 25 MW, the 50 MW Solar Facility is fully subscribed even without current commitments from Bernalillo County, Santa Fe County or Buckman Direct Diversion.

Q. HOW DOES PNM SOLAR DIRECT IMPACT PNM'S COMPLIANCE WITH THE RENEWABLE PORTFOLIO STANDARD?

A. PNM Solar Direct will increase the amount of renewable energy on PNM's system but PNM will not use energy from PNM Solar Direct to comply with the RPS. Pursuant to recent amendments to the Renewable Energy Act, at NMSA 1978, Section 62-16-7(B) (2019), the solar energy purchased through this program:

- 1) will be excluded from the total retail sales used to determine the renewable portfolio standard requirements;
- 2) will not be subject to the Renewable Energy Rider ("RER"); and
- 3) the associated renewable energy certificates will be retired.

III. PNM SOLAR DIRECT PROGRAM DETAILS

Q. HOW WILL PARTICIPATING IN PNM SOLAR DIRECT IMPACT CUSTOMERS' BILLS?

A. PNM Solar Direct customers will continue to pay for 100% of the electric service they receive under their applicable rate schedules. In addition, participating

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1 customers will directly pay the PPA costs plus a monthly program administrative
2 charge, as described above. Participating customers will receive a separate PNM
3 Solar Direct monthly bill that contains the customer's contract subscription level
4 and share of the solar energy production corresponding to the subscribed capacity.
5 For example, if a customer contracts for 25 MW, then each month the customer
6 will be allocated 50% of the actual solar energy production from the Solar
7 Facility. If the actual solar energy production in a month is 2,000,000 kWh, then
8 the customer will be allocated 1,000,000 kWh (2,000,000 kWh x 50%) and will
9 pay the PPA price for its share of the solar energy production. Based on the share
10 of the customer's solar energy production, the customer will receive credits for
11 fuel and purchased power and variable O&M, and since the solar energy will not
12 be subject to the RER, the customer will also see an RER credit. Mr. Settlege
13 describes in detail how PNM will assess program charges and credits to PNM
14 Solar Direct participants, how the various credits are calculated and the bill
15 format.

16
17 **Q. WHY WILL PNM SOLAR DIRECT CUSTOMERS RECEIVE CREDITS**
18 **FOR FUEL AND PURCHASED POWER, NON-FUEL VARIABLE O&M**
19 **AND THE RER?**

20 **A.** A participating customer's existing PNM bills include Fuel and Purchased Power
21 charges for the customer's total usage; however, a portion of the participating
22 customer's consumption is provided by PNM Solar Direct so the customer should

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1 receive credit on the energy that the customer pays for under PNM Solar Direct
2 that displaces system energy.

3
4 Non-fuel variable O&M costs are classified as non-fuel but are related to fuel and
5 not recovered through the Fuel and Purchased Power Cost Adjustment Clause
6 (“FPPCAC”). These costs are specified in cost of service exhibits and
7 workpapers PNM files in support of applications for changes in general rates and
8 do not change between rate cases. Since the customer pays for its total usage on
9 the existing PNM bills, the customer should also receive credit for the energy
10 subscribed from PNM Solar Direct, which offsets system energy.

11
12 Finally, as discussed above, because the recent amendments to the REA require
13 sales used to calculate the RPS be reduced for voluntary program sales, it is
14 necessary to provide a credit to the participating customer for the energy supplied
15 by PNM Solar Direct on which the customer pays the RER on existing PNM
16 bills.

17
18 **Q. MUST CUSTOMERS ENTER INTO A CONTRACT TO PARTICIPATE**
19 **IN PNM SOLAR DIRECT?**

20 **A.** Yes. Participating customers will sign a long-term Service Agreement
21 (“Agreement”) with PNM that includes the terms and conditions of the program,
22 including the customers’ responsibilities and early termination terms. PNM is
23 requesting Commission approval of these form agreements, Form No. 106 and

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1 Form No. 107, pursuant to 17.1.210 NMAC. Copies of the pro-forma Agreements
2 are attached as PNM Exhibit SC-3.

3
4 **Q. PLEASE EXPLAIN THE KEY TERMS OF THE AGREEMENTS.**

5 **A.** Contract Term – The Agreement is in effect upon execution by the parties and
6 terminates with the end of the term of the Jicarilla Solar 2 PPA. All customers are
7 committed to the same term.

8
9 Subscription Level – This provision establishes the customer’s renewable energy
10 subscription level, which represents a percentage of the production from the
11 Jicarilla Solar 2 facility.

12
13 Billing – The customer will receive a separate bill for the renewable energy
14 acquired under PNM Solar Direct. The charges and credits are listed in the
15 proposed Rider 50.

16
17 RECs – The customer acknowledges that all renewable energy certificates
18 associated with its PNM Solar Direct subscription must be retired in Western
19 Renewable Energy Generation Information System (“WREGIS”). PNM will
20 retire RECs on behalf of the customer or, if the customer requests, PNM will
21 transfer the appropriate number of RECs to the customer so the customer can
22 retire RECs on its own behalf. PNM will pass through the WREGIS transfer or
23 retirement fee to participating customers.

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1

2 Termination Payment – The customer may terminate the Agreement upon 60
3 days’ advance written notice to PNM and will be subject to a termination charge
4 to cover its commitment over the remainder of the term unless it transfers its
5 interest to another eligible customer. The customer is subject to the same
6 termination charge if the Agreement must be terminated due to an uncured event
7 of default by the customer.

8

9 Assignment – The customer may assign its interest to another eligible customer
10 that is not already receiving service under Rider 50.

11

12 **Q. WHY IS PNM PROPOSING TWO DIFFERENT FORMS OF CUSTOMER**
13 **AGREEMENTS?**

14 **A.** Form No. 106 is the form of Service Agreement with governmental customers
15 and Form No. 107 is the form of Service Agreement with non-governmental,
16 commercial customers. PNM developed both agreements in consultation with
17 customers. It is necessary to have two different forms of agreement because
18 governmental customers have certain legal requirements that do not apply to other
19 customers and that must be addressed in contracts. For example, sections 22 and
20 23 of Form No. 106 address appropriations and audits and inspections,
21 respectively, requirements that pertain only to governmental customers under
22 New Mexico law. These sections are not in Form No. 107.

23

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Q. PLEASE DESCRIBE HOW THE EARLY TERMINATION FEE WORKS.

A. If a customer wishes to leave the program before the full term, the customer will have to provide PNM with a 60-day notice. After PNM receives the notice, PNM will calculate the customer's financial responsibility for its share of the 50 MW Solar Facility for the remainder of the contract term and compare the forecast fuel under the same term. If the forecast fuel is greater than the calculated financial responsibility then there will be no termination fee due PNM. If the forecast fuel is less than the calculated financial responsibility then the customer will pay PNM the difference between the two. Using the example above, of a customer that subscribes to 25 MW, the customer's allocated average monthly energy production is 1,000,000 kWh and if the customer decides to terminate the contract five years before the 15-year term then the customer will be responsible for paying for 60,000,000 kWh of energy production (1,000,000 kWh per month x 12 months x 5 years). The PPA price is \$21.73 per MWh or \$0.02173 per kWh. For illustrative purposes, suppose the forecasted fuel price, on average is \$0.02 per kWh. In that case the customer will have to pay an Early Termination Fee of \$103,800 (60,000,000 x (\$0.02173 - \$0.02 per kWh)). Alternatively, if the forecasted fuel price is \$0.024 per kWh then the customer's Early Termination Fee will be zero. In addition, it is also the responsibility of the customer to pay its remaining share of the Administrative Charge.

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1 **Q. CAN A CUSTOMER THAT WISHES TO TERMINATE AVOID PAYING**
2 **THE EARLY TERMINATION FEE?**

3 **A.** Yes. The Early Termination Fee does not apply if the current customer finds an
4 eligible replacement customer to fulfill the obligations under the Agreement for
5 the remainder of the term. The replacement customer must meet all eligibility
6 requirements under Rider 50.

7
8 **Q. IF A CUSTOMER TERMINATES ITS PARTICIPATION, HOW WILL**
9 **PNM ACCOUNT FOR THE TERMINATION FEE AND ASSOCIATED**
10 **ENERGY?**

11 **A.** PNM will flow the customer's unsubscribed energy and termination fee through
12 the FPPCAC. All customers will receive the terminating customer's share of the
13 PPA energy through the FPPCAC and PNM will recover the unsubscribed PPA
14 costs through the FPPCAC. Because the unsubscribed energy and termination fee
15 will be credited to all customers through the FPPCAC, the expected impact on all
16 customers of a termination will be at least neutral and in the case when the
17 forecasted fuel is above the PPA price, all customers will benefit. All customers
18 may also benefit from a termination because the RECs associated with the
19 unsubscribed capacity will be retained by PNM and PNM may request that they
20 be used for RPS compliance in a future REA plan case.

21

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1 **Q. PLEASE DESCRIBE THE SOLAR DIRECT TARIFF.**

2 **A.** PNM is also seeking approval of Original Rider No. 50 – Voluntary Solar
3 Renewable Energy Program – PNM Solar Direct for Governmental and Large
4 Commercial Customers. This tariff describes the customer eligibility, the
5 conditions for service, and the charges and credits for PNM Solar Direct. The
6 tariff requires customers to sign a 15-year Service Agreement with their stated
7 subscription level. The Service Agreements and Rider 50 provide the standards by
8 which the program operates. Mr. Settlege explains Rider 50 in more detail in his
9 Direct Testimony.

10

11 **Q. HAS PNM IMPLEMENTED AN EDUCATION PLAN FOR SOLAR**
12 **DIRECT?**

13 **A.** Yes. PNM utilized a variety of ways to educate customers about PNM Solar
14 Direct. Because the program is currently available to governmental customers
15 and large commercial customers with a minimum demand of 2.5 KW, PNM
16 targeted its communications to potential participants instead of conducting a
17 mass-marketing campaign to all PNM customers. The educational campaign
18 included:

19 1) Press conference: PNM issued a press release and held a press conference to
20 launch the program with the City of Albuquerque on November 21, 2018.

21 2) Website content: PNM.com/solardirect features comprehensive program
22 information that includes both a program overview and frequently asked

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1 questions, all of which will be kept up to date before and after the program
2 launch. The website went live on February 4, 2019.

3 3) Personal outreach: PNM representatives sent an email invitations on February
4 4, 2019 to all eligible customers inviting them to learn more online and/or
5 schedule a one-on-one meeting. The pre-written content ensured every eligible
6 customer received the same information. Interested participants were assigned
7 a PNM contact that could provide additional information and next steps.

8 4) Customized participation analysis: At the request from potential customers,
9 PNM provided a custom bill analysis to help potential participants determine
10 if the program made financial sense for their business or organization.

11 5) Employee training: Talking points were created to assist internal staff in
12 educating customers and to ensure that all customers received the same
13 information regardless of who they spoke with.

14
15 The overarching theme for all PNM Solar Direct communications is how the
16 program will help governmental and large commercial customers achieve their
17 clean energy/sustainability goals by receiving solar-generated electricity, while
18 also provide certainty and stability for a portion of the customer's bill during the
19 term of the Agreement.

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IV. RULE 551 REQUIREMENTS AND REQUESTED VARIANCES

Q. WHAT APPROVALS ARE NECESSARY UNDER RULE 551?

A. Rule 551 provides that no electric utility shall become irrevocably obligated as a purchaser under a Long Term Purchased Power Agreement (“LTPPA”) without first obtaining Commission written approval of the agreement. As defined in Rule 551, an LTPPA is a purchased power agreement 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 LTPPAs with Qualifying Facilities or LTPPAs required to be approved under the Renewable Energy Act (“REA”). Because PNM is proposing to enter into an LTPPA with an initial term of 15 years, which is not subject to the REA, Commission approval is required. Under Rule 551.10, the Commission may approve the Application without hearing if no protests are filed within 60 days after notice of the Application is given. Rule 551.10 also provides that, in any event, the Commission is obligated to issue a final order no later than six months from the date a utility files its application. Any application for Commission approval of an LTPPA must be filed within thirty days after the execution. Mr. Fallgren describes the Jicarilla II Solar PPA in detail in his testimony and addresses many of the Rule 551 requirements.

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1 **Q. IS PNM’S APPLICATION BEING FILED WITHIN THIRTY DAYS OF**
2 **THE EXECUTION OF THE LTPPA?**

3 **A.**Yes. The Jicarilla II PPA was executed on May 30, 2019. PNM’s Application is
4 being filed May 31, 2019, therefore, meeting the deadline established by Rule
5 551.

6
7 **Q. WILL THERE BE ANY IMPACT FROM THE PPA ON PNM’S**
8 **FINANCIAL CONDITION OR FINANCIAL METRICS (RULE 551.8**
9 **D(7))?**

10 **A.**No. The PPA should not impact PNM’s financial condition because 100% of the
11 costs will be recovered from the participating customers, and the customers are
12 contractually obligated for the PPA costs in the event the Agreements are
13 terminated due to customer default.

14
15 **Q. WHY IS PNM REQUESTING CERTAIN VARIANCES FROM THE**
16 **COMMISSION’S RATE FILING REQUIREMENTS?**

17 **A.**PNM is seeking a variance from the requirements in 17.1.2.10(B)(2)(b) NMAC to
18 provide statements comparing proposed new rates with present rates. This
19 requirement is both unnecessary and inapplicable in this case because the Rider
20 50 has no previous rate against which to compare.

21
22 PNM is also requesting a variance from compliance with the minimum data
23 requirements for general rate cases under Rule 530. Requiring PNM to provide

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1 all the data required under Rule 530 for a general rate case is unnecessary
2 because, as discussed in greater detail by Mr. Settlage, the approval of Rider 50
3 requested in PNM's Application simply recovers the new costs of the new
4 program from participating customers, and does not impact PNM's other
5 customers. Thus, that data would provide no additional information useful for
6 evaluation of the approvals sought by PNM's Application.

V. CONCLUSION

7
8 **Q. PLEASE SUMMARIZE WHY PNM SOLAR DIRECT AND THE**
9 **PROPOSED PPA ARE IN THE PUBLIC INTEREST AND SHOULD BE**
10 **APPROVED.**

11 **A.** PNM Solar Direct is a new program created by PNM and eligible customers - our
12 customers expressed a need for a new voluntary renewable energy program and
13 PNM responded. Program participation is an option that will help our
14 governmental and large commercial customers meet their renewable/sustainability
15 goals. The PPA price is the result of the RFP process, is reasonable and
16 competitive, and has been accepted by PNM Solar Direct participants. Since
17 PNM Solar Direct participants are responsible for the total costs of the PPA, other
18 non-participating customers will not be negatively impacted. The Service
19 Agreements also include provisions, including a provision requiring payment of
20 an Early Termination Fee, that protects other customers in the case of early
21 termination by the participating customers.
22

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1 The Jicarilla Solar 2 LLC 50 MW Solar Facility will be located on the Jicarilla
2 Apache Nation (“The Nation”), a sovereign, federally recognized tribe in north-
3 central New Mexico. The Solar Facility will allow the Nation to participate in
4 renewable project development.

5
6 The PNM Solar Direct program is also consistent with the goals of the REA,
7 which provide that the Commission may require utilities to offer voluntary
8 renewable energy programs and should offer incentives for utilities to exceed the
9 minimum RPS requirements.

10
11 In summary, the approvals of PNM Solar Direct and the proposed PPA 1) benefit
12 the participating customers because they can meet their renewable or
13 sustainability goals sooner and in the most cost effective way; 2) benefit the
14 Jicarilla Apache Nation by providing a tribal sovereign nation the opportunity to
15 participate in renewable solar development; and 3) the non-participating
16 customers are not adversely impacted. Therefore, the PPA, Original Rider No. 50,
17 and Original Form Nos. 106, 107 and 108 should be approved.

18
19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 **A. Yes, it does.**

GCG#525532

PNM EXHIBIT SC-1

Consisting of 3 pages

STELLA CHAN: EDUCATIONAL AND PROFESSIONAL SUMMARY

Name: Stella Chan

Address: Public Service Company of New Mexico
Main Offices
Albuquerque, New Mexico 87158-1105

Position: Director, Pricing & Load Research

Education: University of Houston, Houston, Texas

- MBA with concentration in Finance
- BBA with major in Finance

Language Skills:
Fluent in English, Mandarin Chinese and Cantonese

Employment: Public Service Company of New Mexico, Albuquerque, New Mexico:
Director, Pricing & Load Research: 2013 to present

Colorado Springs Utilities, Colorado Springs, Colorado
Manager, Pricing & Forecasting, Planning and Finance Division:
2003-2013

University of Houston, Houston, Texas, New Mexico:
Adjunct Faculty – Finance Department: 2003

Independent Consultant: 2002 to 2003

- Challenger Development, L.C.
- Boyce Power System

Energy Wholesale Operations, Houston, Texas
Director, Government and Regulatory Affairs: 2001

Enron Corporation, Houston, Texas
Director, Government Affairs: 2000-2001
General Manager, Operations, SK-Enron, Seoul, South Korea: 1999-2000
Director, Regulatory Affairs, Enron International: 1997-1999
Manager, Rates and Tariffs, Enron Energy Services: 1997

El Paso Energy, Houston, Texas
Staff Analyst, Research and Competitive Analysis: 1996-1997
Consultant, Business Development: 1995-1996

Employment (Continued):
Duke Energy (formerly Texas Eastern), Houston, Texas

Project Leader, Strategic Planning: 1994-1005
Project Leader, Market Planning and Analysis: 1992-1994

El Paso Energy (formerly Tenneco Gas), Houston, Texas
Senior Analyst, Cost Allocation and Rate Design: 1990-1992
Analyst, Special Projects: 1987-1989

Community Activities (Colorado Springs, Colorado):

Board Chair, Urban Peak Colorado Springs
Treasurer, Urban Peak Colorado Spring
Board Member, CASA (Court Appointed Special Advocate), Pikes Peak Region
Steering Committee, Community Focus Fund, Colorado Springs Utilities

Testimony Filed Before the New Mexico Public Regulation Commission:

<u>Case Number</u>	<u>Proceeding/Subject Matter</u>
Un-Docketed	Advice Notice No. 478, relating to the revision of PNM Rate No. 20- Integrated System Streetlighting and Floodlighting Service, September 27, 2013
Un-Docketed	Advice Notice Nos. 480 and 65, regarding consolidation of PNM's North and South Rules, updates to service rules, and changes to Rule 15 - Line Extension Policy, November 15, 2013
14-00118-UT	Matter of PNM's Advice Notice 493, relating to modification to the qualifying criteria for service under Rate No. 5B-Large Service to Customers, April 22, 2014
14-00150-UT	Matter of PNM's Application for Approval of the City of Rio Rancho Underground Project Rider Pursuant to Advice Notice No. 495, May 25, 2014
14-00158-UT	PNM's Renewable Energy Portfolio Procurement Plan for 2015 and Proposed 2015 Rider No. 36 Rate, June 2, 2014
14-00310-UT	PNM's Application for Approval of 2014 Electric Energy Efficiency and Load Management Program Plan and Revision to Tariff Rider No. 16, October 6, 2014
14-00332-UT	Application of PNM for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 507
14-00337-UT	Application of PNM for Approval of the City of Albuquerque 2014 Underground Project Rider pursuant to Advice Notice No. 502
15-00166-UT	In the Matter of Public Service Company of New Mexico's Renewable Energy Portfolio Procurement Plan for 2016 and Proposed 2016 Rider Rate Under Rate Rider No. 36
15-00261-UT	In the Matter of the Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 513

16-00276-UT

In the Matter of the Application of Public Service Company of
New Mexico for Revision of Its Retail Electric Rates Pursuant
to Advice Notice No. 533

PNM EXHIBIT SC-2

Consisting of 13 pages

**NOTICE OF INTENT
PNM SOLAR DIRECTSM**

Submission of this completed Notice of Intent ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. 50.

1. Customer Name:
City of Albuquerque, a municipal corporation
2. Principal Business Address:
**One Civic Plaza, City County Government Center
P.O. Box 1293
Albuquerque, NM 87103**
3. Contact Information:
Name: **Sarita Nair, Chief Administrative Officer**
Address: same as above
Phone: (505) 768-3000
Email: c/o JanelleJohnson@cabq.gov
4. Renewable Energy Subscription: Customer hereby agrees that Customer will subscribe to an aggregate of 25 MW upon issuance by the Commission of a final, non-appealable order approving all of the following, substantially as filed in PNM's application to the NMPRC: (a) PNM Solar DirectSM, (b) original Rider No. 50, Voluntary Solar Renewable Energy Program - PNM Solar DirectSM for Governmental and Large Commercial Customers, (c) the form of PNM Solar DirectSM Special Service Agreement—Governmental Entities, and (d) any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM.
5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature:  _____

Print Name: Sarita Nair

Title: Chief Administrative Officer

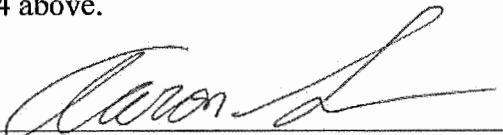
Email: SNair@cabq.gov

Date: May 31, 2019

**NOTICE OF INTENT
PNM SOLAR DIRECTSM**

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1. Customer Name: CITY OF DEMING
2. Principal Business Address: 309 S. GOLD ST.
DEMING N.M. 88030
3. Contact Information:
Name: AARON SERA
Address: 309 S. GOLD ST.
DEMING N.M. 88030
Phone: 575-546-8848
Email: asera@cityofdeming.org
4. Renewable Energy Subscription: Customer hereby agrees that, upon issuance by the Commission of a final, non-appealable order approving PNM Solar DirectSM, any new or amended PNM rate or rate rider associated with PNM Solar DirectSM and any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM, Customer will subscribe to an aggregate of [1000] kW.
5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: 

Print Name: AARON SERA

Title: CITY OF DEMING MANAGER

Email: asera@cityofdeming.org

Date: MAY 21, 2019

NOTICE OF INTENT
PNM SOLAR DIRECTSM

Submission of this completed Notice of Intent ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. [●].

1. Customer Name: Deming Public School

2. Principal Business Address: 1001 S. Diamond
Deming, NM 88030

3. Contact Information:

Name: Dr. Arsenio Romero
Address: Deming Public Schools
1001 S. Diamond
Deming, NM 88030
Phone: 575-546-8841
Email: arsenio.romero@demingps.org

4. Renewable Energy Subscription: Customer hereby agrees that, upon issuance by the Commission of a final, non-appealable order approving PNM Solar DirectSM, any new or amended PNM rate or rate rider associated with PNM Solar DirectSM and any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM, Customer will subscribe to an aggregate of [●] kW.

1000

5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: [Signature]

Print Name: Arsenio Romero

Title: Superintendent

Email: arsenio.romero@demingps.org

Date: 5/17/10

NOTICE OF INTENT
PNM SOLAR DIRECTSM

Submission of this completed Notice of Intent ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. [●].

1. Customer Name: Town of Silver City
2. Principal Business Address: P.O. Box 1188
Silver City, NM 88062
3. Contact Information:
Name: Alex C. Brown, Town Manager/Finance Director
Address: P.O. Box 1188
Silver City NM 88062
Phone: 575 534-1358
Email: townmanager@silvercitynm.gov
4. Renewable Energy Subscription: Customer hereby agrees that, upon issuance by the Commission of a final, non-appealable order approving PNM Solar DirectSM, any new or amended PNM rate or rate rider associated with PNM Solar DirectSM and any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM, Customer will subscribe to an aggregate of [●] kW.
[1,000]
5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: 

Print Name: Ken Ladner

Title: Mayor

Email: KenLadner@a hotmail.com

Date: 5-14-19

RESOLUTION NO. 2019-14

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A “NOTICE OF INTENT” AND AN AGREEMENT ENTITLED “PNM SOLAR DIRECT SERVICE AGREEMENT-GOVERNMENT ENTITIES” COMMITTING THE TOWN TO PURCHASE FROM PNM A CERTAIN QUANTITY OF SOLAR GENERATED ELECTRICITY

WHEREAS, certain opportunities have presented themselves to the Town of Silver City and to the other governments in the State of New Mexico to participate in a program to purchase solar generated electricity; and

WHEREAS, PNM operates in the Town of Silver City pursuant to a franchise agreement granted by the Town; and

WHEREAS, PNM is instituting a program entitled “PNM Solar Direct”, with the program and rates thereof being in the form of a rider to proposed tariffs of PNM as filed with the Public Regulation Commission; and

WHEREAS, PNM is soliciting a commitment from the Town to participate in the program and to purchase a fixed amount of kilowatt hours of electricity to be generated by solar power; and

WHEREAS, a draft document entitled “PNM Solar Direct Service Agreement-Government Entities”, which includes a “Notice of Intent” expressing a commitment to purchase a fixed amount of kilowatt hours of solar generated electricity, has been submitted to the Town for review and execution; and

WHEREAS, the Town finds that the program is beneficial to the Town, and is necessary for the health, safety and welfare of the Town; and

WHEREAS, the Town Council desires to authorize the Mayor to execute both documents on behalf of the Town.

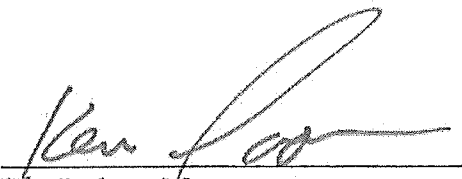
NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Silver City
to adopt the following:

The Town Council hereby authorizes the Mayor to execute a document entitled "PNM Solar
Direct Service Agreement-Government Entities" and a "Notice of Intent".

The effective date of this Resolution shall take effect upon publication.

PASSED, ADOPTED AND APPROVED this 14th day of May, 2019.




Ken Ladner, Mayor

Attest:


Ann L. Mackie, Town Clerk

**NOTICE OF INTENT
PNM SOLAR DIRECTSM**

Submission of this completed Notice of Intent ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. [●].

1. Customer Name: Grant County

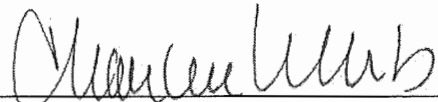
2. Principal Business Address: PO Box 898
1400 Highway 180 East
Silver City, NM 88062

3. Contact Information:

Name: Charlene Webb
Address: PO Box 898
1400 Highway 180 East
Silver City, NM 88062
Phone: (575) 574-0008
Email: cwebb@grantcountynm.com

4. Renewable Energy Subscription: Customer hereby agrees that, upon issuance by the Commission of a final, non-appealable order approving PNM Solar DirectSM, any new or amended PNM rate or rate rider associated with PNM Solar DirectSM and any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM, Customer will subscribe to an aggregate of 450 kW.

5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: 

Print Name: Charlene Webb

Title: County Manager

Email: cwebb@grantcountynm.com

Date: 5/16/19

**NOTICE OF INTENT
PNM SOLAR DIRECTSM**

Submission of this completed Notice of Intent ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. [•].

1. Customer Name: Western New Mexico University
2. Principal Business Address: 1000 W College Ave
PO Box 680
Silver City NM 88062
3. Contact Information:
Name: Joseph. Shepard
Address: PO Box 680
Silver City NM 88062
Phone: (505) 538-6238
Email: Joseph. Sheppard@wnmu.edu
4. Renewable Energy Subscription: Customer hereby agrees that, upon issuance by the Commission of a final, non-appealable order approving PNM Solar DirectSM, any new or amended PNM rate or rate rider associated with PNM Solar DirectSM and any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM, Customer will subscribe to an aggregate of 1,000 kW.
5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: Amy Baca
Print Name: Amy Baca
Title: Dir. of Purchasing
Email: Amy.baca@wnmu.edu
Date: 5-21-19

**NOTICE OF INTENT TO PARTICIPATE
PNM SOLAR DIRECTSM**


Submission of this completed Notice of Intent to Participate ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe at the level identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. [•].

1. Customer Name: Walmart Inc.
2. Principal Business Address: 2001 SE 10th Street
Bentonville, AR, 72712

3. Contact Information:

Name: Steve W. Chriss
Address: Same as above

Phone: (479) 204-1594
Email: Stephen.chriss@walmart.com
4. Renewable Energy Subscription: Customer hereby agrees that, upon issuance by the Commission of a final, non-appealable order approving PNM Solar DirectSM, any new or amended PNM rate or rate rider associated with PNM Solar DirectSM and any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM, Customer will subscribe to an aggregate of up to 25 MW.
5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: 

Print Name: Mark Vanderhelm

Title: Vice President, Energy and Facilities Maintenance

Email: mark.vanderhelm@walmart.com

Date: 5/7/2019



County of Bernalillo
State of New Mexico
Commissioner Maggie Hart Stebbins, District 3
One Civic Plaza NW, 10th Floor, Suite 10111
Albuquerque, New Mexico 87102
Office: (505) 468-7108
<http://www.bernco.gov/district-3/>

PNM Exhibit SC-2
Page 10 of 13

May 22, 2019

Ms. Stella Chan
Director of Pricing
PNM
414 Silver Ave. SW
Albuquerque, NM 87102

Dear Ms. Chan:

At my request, staff initiated discussion with PNM regarding the 50-megawatt solar photovoltaic system for PNM customers. I have been briefed regarding the proposed contract and conditions of the Power Purchase Agreement. County staff will be preparing an agenda item with the Notice of Intent to go to the Board of County Commissioners for their consideration. This agenda item will be taken on Tuesday, June 11, 2019.

The Board of County Commissioners must approve the Notice of Intent, due to the contractual period and the funding across those years, as well as the commitment being requested of the County. Given that the terms as proposes seem favorable, it is my hope that their approval will be forthcoming. However, it is ultimately a decision of the full Board. Additionally, the County must be assured that the pricing and other information provided remains similar to what is proposed and acceptable to the County.

Please contact me if you require any further information or have any questions. I can be reached at (505) 468-7000.

Sincerely,

Maggie Hart-Stebbins
Chair, Board of Commissioners

XC: Julie Morgas Baca, County Manager
Roger A. Paul, P.E., Deputy County Manager for Public Works
Ken Martinez, County Attorney

COMMISSIONERS

Maggie Hart Stebbins, Chair, District 3 Debbie O'Malley, Vice Chair, District 1
Steven Michael Quezada, Member, District 2 Lonnie C. Talbert, Member, District 4 Charlene E. Pyskoty, Member, District 5

ELECTED OFFICIALS

Tanya R. Giddings, Assessor Linda Stover, Clerk Cristy J. Carbón-Gaul, Probate Judge Manuel Gonzales III, Sheriff Nancy M. Bearce, Treasurer

COUNTY MANAGER

Julie Morgas Baca



May 24, 2019

Celestina Blair
Strategic Account Manager
Public Service Company of New Mexico

Subject: PNM Solar Direct Program

Dear Ms. Blair,

The Buckman Direct Diversion is interested in the PNM Solar Direct Program; however at this time we are not prepared to execute the Solar Direct Notice of Intent, as we do not yet have all the information we need to evaluate the program and our participation in the program must be approved by the Buckman Direct Diversion Board (BDDDB).

It is our intent to present the program to the BDDDB at our next scheduled meeting held on June 6, 2019. We are requesting that a representative from PNM attend the meeting to present an overview of the program and assist with any questions or concerns from our board members. Therefore we request that you allow an extension to execute the Solar Direct Notice of Intent to allow for the BDDDB's consideration of the program.

Sincerely,

Rick Carpenter, Acting BDD Facilities Manager



Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Rudy N. Garcia
Commissioner, District 3



PNM Exhibit SC-2
Commissioner, District 4
Page 12 of 13

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

May 28, 2019

Jamie Aranda
Local Government Affairs & Community Relations Manager
PNM Resources
528 Don Gaspar
Santa Fe, NM 87501

Dear Jamie:

Thank you for providing Santa Fe County ("County") with information about PNM Solar Direct Program ("Program"), including the form Notice of Intent to participate in the Program ("Notice of Intent") and draft PNM Solar Direct Service Agreement—Governmental Entities ("Service Agreement"). As you know, the Board of County Commissioners ("Board") has expressed a strong interest in participating in the Program and, to that end, has adopted a Resolution directing me to negotiate a service agreement with PNM. Accordingly, please accept this letter as the County's non-binding commitment to participate in the Program for approximately one half of the County's energy requirements.

The draft Service Agreement you provided is generally acceptable in my view except for one outstanding legal issue. As written, the Agreement creates future contingent liability that appears to be inconsistent with the Anti-Debt Clause of the New Mexico Constitution and the New Mexico Bateman Act.

We believe this legal issue can easily be remedied by adding additional language to the Agreement to identify a specific source or sources of funding. If the Agreement includes such language, I can recommend that the Board approve the Service Agreement, including the 15-year commitment and early termination fee. In addition, if the Board approves the form of the Agreement, I will provide you with an executed Notice of Intent no later than June 28, 2019.

I understand that PNM must receive regulatory approval from the New Mexico Public Regulation Commission prior to beginning the PNM Solar Direct Program. To assist PNM in this endeavor, you may include this letter with your filing to the New Mexico Public Regulation Commission as evidence of the County's intent to participate in the program. As described above, once the Board approves the modified Service Agreement, I will provide you an executed Notice of Intent, which you may also include in PNM's filing. I understand that capacity in the Program is limited, and that if the County does not provide the executed Notice of Intent by June 28, 2019, PNM may not reserve capacity in the Program for the County.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katherine Miller".

Katherine Miller
County Manager

PNM EXHIBIT SC-3

Consisting of 33 pages

PNM SOLAR DIRECTSM
SERVICE AGREEMENT—GOVERNMENTAL ENTITIES

This PNM Solar DirectSM (“**PNM Solar DirectSM**” or “**Program**”) Service Agreement (“**Agreement**”) is entered into this [●] day of [●], 20[●] (“**Execution Date**”), by and between [●], a [●] (“**Customer**”) and Public Service Company of New Mexico, a New Mexico corporation (“**PNM**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

PNM Solar DirectSM offers eligible customers the option to purchase solar energy in addition to the system solar energy customers receive as part of their electrical service from PNM.

Eligibility to participate in PNM Solar DirectSM and applicable rates are set forth in original Rider No. 50, Voluntary Solar Renewable Energy Program - PNM Solar DirectSM for Governmental and Large Commercial Customers (“**Rider No. 50**”), together with any successor tariff, and the PNM Solar DirectSM filing approved by the New Mexico Public Regulation Commission (“**Commission**”) in Case No. [●].

Customer is qualified to take service under Rider No. 50 and desires to subscribe to PNM Solar DirectSM on the terms set forth in this Agreement, subject to the terms of Rider No. 50, to demonstrate Customer’s commitment to the development of renewable energy projects and to help meet Customer’s sustainability and renewable energy goals. Unless otherwise defined in this Agreement, all capitalized terms have the meanings ascribed to them in Rider No. 50.

AGREEMENT

In consideration of the promises and obligations reflected in the covenants, terms and conditions set forth in this Agreement, all of which together provide the consideration for this Agreement, PNM and Customer, each intending to be legally bound, consistent with the orders, rules, rate schedules and precedents established by the Commission, hereby agree as follows:

1. Renewable Energy Subscription. Subject to the terms of Rider No. 50, PNM rules and rate schedules for electric service, and this Agreement, the amount of capacity contracted for Customer under this Agreement is [●] kW (“**Renewable Energy Subscription**”), as shown in Customer’s Notice of Intent (“**NOI**”), subject to the conditions stated in that NOI, and attached hereto as Exhibit A. The Renewable Energy Subscription represents a portion of the production from the solar photovoltaic facilities under a contract with PNM to supply energy to the Program (collectively, “**Solar Facility**”).

2. Renewable Energy Production. The renewable production available to fill Customer’s Renewable Energy Subscription will be based upon the energy produced from the Solar Facility. Customer’s Renewable Energy Subscription will determine the portion of the Solar Facility production that is used to calculate Customer’s charges and credits under Rider No. 50. PNM and through its Solar Facility contractor shall provide the Customer an annual forecast in monthly units of the amount of energy to be produced and delivered to the program in the next

year. See Exhibit B to this Agreement. Customer expressly assumes the risk that the Solar Facility may not generate energy sufficient to completely cover the forecasted production.

3. Conditions Precedent. The obligations of the Parties under this Agreement shall be conditioned upon (i) the receipt of a final order or other regulatory determination from the Commission that PNM may procure renewable energy and associated RECs pursuant to the Power Purchase Agreement—Jicarilla Solar 2 Facility dated May 30, 2019, between PNM and Jicarilla Solar 2 LLC (“**PPA**”); (ii) approval of PNM Solar DirectSM; (iii) approval of any associated new or amended PNM rate or rate rider, and (iv) approval of the form of PNM Solar DirectSM Service Agreement—Governmental Entities (“**Form Agreement**”) (collectively, “**Requested Actions**”). In particular, but without limitation:

a. PNM agrees to use commercially reasonable efforts to request and obtain Commission Approval of the Requested Actions, and Customer agrees to cooperate with and assist PNM in these efforts as PNM may reasonably request.

b. Commission Approval shall be considered received when the Commission issues a final written order that is not contested or is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications that directly impact Customer’s rates and service under Rider No. 50, provided that each of Customer and PNM agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, “**Commission Approval**”).

c. If the Commission disapproves the PPA or Rider No. 50, then this Agreement shall automatically terminate ten (10) days after the date of such action by the Commission and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other person.

d. If any Commission Approval is issued as described in clause (b)(ii) above, then the Parties shall meet and confer no later than fifteen (15) days after the date of the Commission Approval order regarding whether PNM or Customer wishes to amend this Agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification contained in the Commission Approval. If the Parties are unable to mutually agree on any amendments to this Agreement to address such Commission Approval order, then this Agreement shall automatically terminate ten (10) days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other person, unless PNM and Customer mutually agree in writing within such ten (10) Day period that this Agreement remain in effect.

e. If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by March 31, 2020 (“**Regulatory End Date**”), then the Parties shall meet and confer no later than fifteen (15) days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this Agreement shall automatically terminate ten (10)

days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party.

f. For the avoidance of doubt, this Agreement shall terminate and be of no further force or effect, with no further obligation or liability of either Party to the other Party if the PPA is terminated due to a Commission Approval order that is unsatisfactory to PNM and Contractor.

4. Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) years after the Solar Facility's commercial operation date, as determined by PNM ("**Term**"), unless and until terminated earlier pursuant to the provisions of this Agreement. "**Effective Date**" means the date of commercial operation of the Solar Facility, which is expected to be March 31, 2021. The date on which this Agreement terminates due to expiration of the Term is referred to as the "**Expiration Date**."

5. Construction Updates; Liquidated Damages.

a. On and after the start of construction on the Solar Facility and through the commercial operation date, PNM will provide Customer copies of monthly construction updates submitted to PNM by Contractor under the PPA.

b. On and after the commercial operation date of the Solar Facility and through the end of the Term, PNM will give Customer, upon Customer's request, reasonable access to the Solar Facility's performance and production metrics.

c. Customer shall be entitled to its proportionate share of any liquidated damages paid to PNM by the Contractor under the PPA due to Contractor's failure to meet the expected commercial operation date for the Solar Facility or failure to meet any annual performance or availability guarantees established in the PPA.

6. Payment and RECs.

a. *Contract Rider Rate.* Customer agrees to pay PNM the Contract Rider Rate, which is calculated on a kWh basis consistent with the terms and conditions provided in Rider No. 50 and this Agreement.

b. *Monthly Billing.* PNM will issue to Customer a separate bill for the most-recent calendar month's charges and credits, aggregated for all Customer's monthly Total Energy Usage, as defined below. All charges and other terms and conditions as provided for under the Customer's applicable standard service classification(s) will continue to be based on actual metered energy use during Customer's normal billing cycle. Monthly charges and credits to Customer for participation in the Program will consist of the following:

i. Charges.

(1) PNM Solar DirectSM Solar Production Charges – PNM will

charge Customer, on a monthly basis, applicable Solar Production Charges, which shall be calculated as the number of kWh of renewable energy produced by the Solar Facility (“**Renewable Energy Production**”) multiplied by the percentage of Renewable Energy Production allocated to Customer (“**Renewable Allocation Factor**”) multiplied by the cost per kWh assessed to Customer based on the levelized cost of the Solar Facility (“**Contract Rider Rate**”) (i.e., PNM Solar DirectSM Solar Production Charge = Renewable Energy Production * Renewable Allocation Factor [●%] * Contract Rider Rate set forth in Rider No. 50 (\$0.02173/kWh)). PNM will calculate the Renewable Energy Production for each month at the end of the month. Customer’s Renewable Allocation Factor and the Contract Rider Rate will remain constant during the term of this Agreement. If in any given month the Renewable Energy Production times the Renewable Allocation Factor exceeds Customer’s Total Energy Usage, all applicable charges and credits will be billed and subject to the rates in effect at that time and will not be carried over to the subsequent month. As used in this Agreement, “**Total Energy Usage**” means all of Customer’s aggregated monthly energy usage subject to service under Rider No. 50.

(2) Administrative Charge – PNM will assess a monthly charge to recover Customer’s share of the upfront costs associated with the Program. PNM will recover those costs with a carrying charge over the Term. The charge will be at the rate set forth in Rider No. 50 (“**Administrative Charge**”). The Administrative Charge will remain the same over the Term.

(3) Western Renewable Energy Generation Information System (“**WREGIS**”) Fee – PNM will charge Customer the fee charged by WREGIS to PNM to retire RECs on behalf of Customer or, if Customer has asked to retire its RECs pursuant to Section 6.c, to transfer RECs to Customer’s WREGIS account for retirement by Customer. As of the Execution Date, the fee charged by WREGIS for each such transaction is \$0.000005/kWh (“**WREGIS Fee**”). PNM will bill Customer in an amount equal to the WREGIS Fee multiplied by the Renewable Energy Production multiplied by the Renewable Allocation Factor. This pass-through charge will be included on Customer’s monthly bill for participation in the Program and may change from time to time when WREGIS updates its fee matrix. PNM will serve Customer with a copy of any advice notice filed by PNM that contains an adjustment to Rate No. 50 to collect the WREGIS Fee.

ii. PNM Solar DirectSM Rider Credits – PNM will apply the following credits to Customer’s monthly bill for participation in the Program:

(1) a Fuel and Purchased Power Credit, which will be calculated as the Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the average fuel and purchased power cost per the Fuel and Purchased Power Cost Rate (“**FPPCAC**”) that is paid by Customer (i.e., Fuel and Purchased Power Cost Credit = Renewable Energy Production * Renewable Allocation Factor [●%] * average fuel and purchased power cost paid by Customer). The FPPCAC is subject to periodic modification. PNM will serve Customer with a copy of any applicable advice notice or compliance filing made by PNM related to the FPPCAC rate;

(2) a Non-Fuel Variable Cost Credit, which will be calculated as Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the

system average Non-Fuel Variable Cost approved in the most-recent PNM rate case (i.e., Non-Fuel Variable Cost Credit = Renewable Energy Production * Renewable Allocation Factor [●%] * (average Non-Fuel Variable Cost Credit rate established in PNM's latest rate case)). The average Non-Fuel Variable Cost Credit rate will be subject to change in future PNM rate cases; and

(3) a Renewable Portfolio Standard Cost Credit, which will be calculated as Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the applicable rate approved in PNM's Rider No. 36, Renewable Energy Rider, or any successor or additional renewable energy rider. Rider No. 36 is reconciled and adjusted annually to reflect Commission-approved procurements, changes in revenue requirements, and other relevant factors.

c. *REC Retirement.* Customer acknowledges and agrees that all RECs associated with the renewable energy purchased by Customer under PNM Solar DirectSM must be retired. PNM agrees to retire the RECs produced from Customer's share of the Solar Facility on behalf of Customer. PNM will provide monthly statements of the number of RECs retired by PNM on Customer's behalf and provide an annual statement by March 31 of each calendar year of such retired RECs from the preceding calendar year. Alternatively, at Customer's written request on or before the beginning of the Term, PNM will transfer RECs to Customer's WREGIS account for retirement by Customer. PNM does not guarantee the production of energy or the corresponding quantity of RECs generated from the resources supplying the Solar Facility. As used in this Agreement, "REC" means a certificate or other record, in a format approved by the Commission, that represents all the environmental attributes from one megawatt-hour of electricity generation from the Solar Facility and certified as such by WREGIS.

7. Force Majeure.

a. *Customer Force Majeure.* If Customer is unable to sustain its load to support Customer's Renewable Energy Subscription due to events or circumstances beyond its reasonable control that are not the result of Customer's fault or negligence ("**Customer Force Majeure Event**"), and provided Customer (i) gives notice of such Customer Force Majeure Event to PNM as promptly as is practical after its occurrence and (ii) exercises due diligence to minimize the effect and duration of such Customer Force Majeure Event, Customer may suspend its participation in PNM Solar DirectSM and its payment obligations under this Agreement to the extent and for the duration of the Customer Force Majeure Event. In no event, however, may a Customer Force Majeure Event continue for a period longer than one hundred eighty (180) days. At the conclusion of the Customer Force Majeure Event or expiration of the 180-day period, whichever occurs first, Customer will resume participation in PNM Solar DirectSM and will be obligated to pay the Contract Rider Rate.

b. *Contractor Force Majeure.* If, in a given month, one or more facilities supplying the Solar Facility fails to produce output, or its production is reduced, due to a Force Majeure Event as provided in the PPA ("**Contractor Force Majeure Event**"), PNM will notify Customer of such Contractor Force Majeure Event within a commercially reasonable period of time. In the case of reduced production, PNM will subsequently reduce Customer's credits, Renewable Energy Subscription, PNM Solar DirectSM Rider Charge, and RECs for its share of the

Solar Facility production on a pro-rata basis with all other participating customers for the duration of the Contractor Force Majeure Event. Except as set forth in Sections 7.a and 7.b of this Agreement, Customer's credit and PNM Solar DirectSM Rider Charge will not be subject to reduction. In no event will any delay or failure of performance caused by a Contractor Force Majeure Event extend this Agreement beyond its stated Term. If any delay or failure of performance caused by a Contractor Force Majeure Event continues for an uninterrupted period of one hundred eighty (180) days from its inception and the PPA is terminated, this Agreement will automatically terminate, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

8. Default and Cure.

a. *Customer Default and Cure; Termination of Program Participation.*

i. Customer may elect to terminate this Agreement and service under Rider No. 50 prior to the Expiration Date by providing PNM written notice at least sixty (60) days before the desired early termination date ("**Early Termination Effective Date**"). In the event of an early termination for any reason other than for a PNM Default under Section 8.b, Customer will be responsible for the net cost of the remaining renewable energy that was to be delivered to the Customer during the remainder of the Term. The net cost will be based on (1) the time remaining in the Term, (2) the forecast annual renewable energy to be generated by the Solar Facility,¹ (3) Customer's Renewable Allocation Factor, and (4) the difference between the Contract Rider Rate and the forecast fuel cost during the Term, but in no event less than zero dollars, plus Customer's share of the Administrative Charge for the number of months remaining in the Service Agreement (collectively "**Early Termination Fee**"). Customer will not be obligated to pay the Early Termination Fee if another eligible customer fully subscribes to Customer's Renewable Energy Subscription before the Early Termination Effective Date. PNM may assist Customer in identifying other eligible customers to the extent PNM is required to do so under applicable law. In addition to the obligation to pay the Early Termination Fee, Customer shall retain any obligation it incurs prior to the Early Termination Effective Date. Customer shall pay the Early Termination Fee in full within fifteen (15) days of the Early Termination Effective Date. Delinquent payment shall be subject to interest at then-current rates authorized by the Commission. If Customer later wishes to resume service under Rider No. 50, Customer will be required to reapply for a new Renewable Energy Subscription, and participation shall be subject to eligibility requirements and available capacity.

ii. PNM may terminate this Agreement before the end of the Term if changes in Customer's annual Total Energy Usage during the Term cause Customer to fail to meet eligibility criteria under Rider No. 50 or due to a material default by Customer under this agreement, including but not limited to failure to make payments when due. In the event of early termination under this Section 8.a.ii by PNM, Customer will be obligated to pay the Early Termination Fee as set forth in Section 8.a.

¹ PNM and Customer shall agree on the forecasted annual renewable energy to be generated by the Solar Facility during the remainder of the term by using the data contained in the forecast of Solar Facility renewable energy production for the fifteen-year term of this Agreement. See Exhibit B.

iii. Customer is in default of this Agreement only if it fails to comply with any material obligation, agreement, term or provision of this Agreement and such failure continues for more than thirty (30) days after receipt of written notice of such failure from PNM; provided, however, that if such default cannot reasonably be cured within thirty (30) days and if Customer is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, such extension not to exceed sixty (60) days.

b. *PNM Default and Cure.* PNM is in default of this Agreement only in the event of the following (each a “PNM Default”):

i. PNM fails to comply with any material obligation, agreement, term or provision of this Agreement and such failure continues for more than thirty (30) days after receipt of written notice of such failure from Customer; provided, however, that if such default cannot reasonably be cured within thirty (30) days and if PNM is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, such extension not to exceed sixty (60) days;

ii. PNM voluntarily terminates PNM Solar DirectSM except that it shall not be a PNM Default if termination is due to the fault of Customer or any other PNM customer participating in the Program; or

iii. PNM fails to seek, voluntarily forfeits, loses or otherwise fails to maintain any regulatory approvals or authorities from the Commission necessary to implement and manage PNM Solar DirectSM in accordance with the terms and conditions of this Agreement. However, it shall not be a PNM Default if the Commission or any entity having jurisdiction over PNM or PNM Solar DirectSM issues an order requiring PNM to discontinue PNM Solar DirectSM, causing material changes to the Program or otherwise preventing or prohibiting PNM from fulfilling its obligations under this Agreement and, in addition, such action is not due to PNM’s actions or inactions.

9. Remedies. Any event of default may be waived at the non-defaulting Party’s option. Upon the failure of a Party to cure a default after notice from the other Party and expiration of the agreed cure periods, the non-defaulting Party may, subject to the terms of this Agreement:

a. File suit and seek all damages or other remedies including injunctive relief allowed by law or equity.

b. Terminate this Agreement by declaring the Early Termination Date, which will be no less than thirty (30) and no more than sixty (60) days after the notice of default and opportunity to cure, upon which this Agreement will terminate. Upon the designation of the Early Termination Date, the non-defaulting Party will have the right to immediately suspend performance under this Agreement. Neither Party will have the right to terminate this Agreement except as provided for upon the occurrence of a Customer Default or a PNM Default, as applicable and as described above or as may be otherwise explicitly provided for in this Agreement.

c. Withhold any payments due until the default or breach is cured and the non-defaulting Party has received from the defaulting Party the dollar amounts necessary to compensate the non-defaulting Party for all damages and attorneys' fees and expenses allowed pursuant to this Agreement or by law or equity.

The failure of the non-defaulting Party to pursue any remedy provided for in this Agreement will never be ratification of or acquiescence by the non-defaulting Party of the defaulting Party's default or breach. The remedies in this section are intended to be cumulative. None shall be in lieu of any other. A Party may pursue none, one, all or any combination of the remedies provided for in this section.

10. Terms and Conditions. The terms and conditions of Rider No. 50, as approved by the Commission, are incorporated by reference in this Agreement. In the event of a conflict between Rider No. 50 and this Agreement, Rider No. 50 will control to the extent of the conflict. PNM reserves the right to modify this Agreement during the Term to incorporate changes to Rider No. 50 as approved or amended by the Commission. This Agreement remains subject to changes and modifications required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. PNM will give Customer notice in accordance with the Commission's requirements if PNM asks the Commission to take action that could cause a change in terms of this Agreement or Rider No. 50.

11. Transfer and Assignment. Customer may transfer the Renewable Energy Subscription, in whole or in part, subject to all eligibility requirements, including customer usage and the requirements of this Section 11. In no event may Customer transfer all or part of the Renewable Energy Subscription to any individual or entity that is not a customer of PNM.

a. *Transfer to Another Eligible Customer.* Customer may transfer all or a portion of its Renewable Energy Subscription to another eligible Customer that is either (i) not receiving service under Rider No. 50, and/or (ii) the Renewable Energy Production times its Renewable Allocation Factor does not exceed the new customer's annual Total Energy Usage established at the time of the proposed transfer. All such proposed transfers shall be subject to prior written approval from PNM as set forth in this Section 11. The customer taking the transfer of the Renewable Energy Subscription ("**Transferee**") must demonstrate that its electric usage meets the eligibility criteria and will accommodate the transfer of the Renewable Energy Subscription. PNM shall have the sole discretion to approve, deny or modify a transfer request to meet the requirements of the Program, however, PNM shall not unreasonably withhold its approval of a transfer request.

b. *Transfer Notice and Application.* At least sixty (60) days before the proposed transfer effective date:

i. Customer shall provide written notice to PNM of its request to transfer all or a portion of its Renewable Energy Subscription. The notice must include:

- (1) Customer's name and mailing address;

- (2) the current service location address;
- (3) the Transferee's name and service address;
- (4) the portion of the Renewable Energy Subscription proposed to be transferred ("**Transfer Request**"); and
- (5) the proposed effective date of the proposed transfer.

ii. Transferee shall submit an application in the form required by PNM that will include confirmation of Transferee's intent to acquire all or a portion of Customer's Renewable Energy Subscription and the proposed effective date of the proposed transfer.

c. *Completion of Transfer.* PNM will verify the eligibility of the Transferee. If PNM approves the Transfer Request, it will give Customer notice thereof; provided, however, such transfer will not be complete until (i) Customer, Transferee, and PNM execute an Assignment and Assumption Agreement, in the case of assignment of this Agreement and the full Renewable Energy Subscription, or (ii) if the Transfer Request is for a portion of the Renewable Energy Subscription, Transferee and PNM execute a new PNM Solar DirectSM Service Agreement for the portion to be transferred, and Transferee, PNM and Customer execute all other documents that PNM may require in connection with the Transfer Request. In addition, no transfer will be effective until the start of the first billing period following PNM approval. Upon any transfer of a portion of the Renewable Energy Subscription, Customer will surrender all right, title and interest in and to that portion of the Renewable Energy Subscription and, with respect to assignment of the entire Renewable Energy Subscription, this Agreement. No assignment will extend the Term of this Agreement.

12. Customer Representations. Customer represents and warrants to PNM as follows:

a. *Purposes of Program Participation.* Customer's participation in the Program is not for investment purposes, including any capital appreciation or other profit.

b. *No Ownership Rights.* Customer understands and agrees that it is not obtaining any ownership right, title or interest in or to any portion of the underlying projects in the Solar Facility or individual solar panels, nor any capacity rights with respect thereto, and that it will not have access or control over any portion of the Solar Facility.

c. *Factors Beyond PNM Control.* Customer understands that the benefits of its Renewable Energy Subscription depend significantly on factors beyond the control of PNM, including but not limited to weather and the availability of sunlight necessary to produce solar energy, limitations in the solar technology used at the Solar Project, and the effect of changes in law or regulations.

d. *Due Diligence.* Each Party has been advised in this matter by its own legal counsel and consultants and has conducted its own due diligence with respect to the terms and conditions of this Agreement.

13. Disclaimer of Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS STATED IN THIS AGREEMENT, THE RENEWABLE ENERGY SUBSCRIPTIONS ARE MADE AVAILABLE “AS-IS,” AND WITHOUT WARRANTY OF ANY KIND. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT NONE OF PNM, ITS PARENT COMPANY OR AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OR THE OWNERS OF ANY PROJECTS IN THE SOLAR FACILITY IS PROVIDING ANY REPRESENTATION, WARRANTY, GUARANTY OR COMMITMENT WITH RESPECT TO (I) THE ACTUAL PRODUCTION, IF ANY, FROM THE SOLAR FACILITY, (II) THE NUMBER OF RECS, IF ANY, THAT WILL BE RECEIVED BY CUSTOMER UNDER THIS AGREEMENT, OR (III) THE AMOUNT OF COST SAVINGS, IF ANY, CUSTOMER MAY REALIZE BY PARTICIPATING IN THE SOLAR DIRECTSM PROGRAM. ANY WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. Trade Secrets; Confidential Information.

PNM may provide this Agreement, and any information provided to PNM in support of this Agreement, to the Commission. Any Customer information provided to PNM by Customer that is a trade secret or confidential must be marked as Trade Secret or Confidential, as applicable, but PNM cannot guarantee that the Commission will not require disclosure of such information.

15. Dispute Resolution.

a. *Mediation.* If any dispute between the Parties arises under this Agreement that cannot be resolved through negotiations between the Parties, a Party may request mediation by a mediator agreed to by both Parties. Costs of mediation shall be apportioned as set forth in Section 15.c. Disputes that are not resolved by mediation within ninety (90) days of referral to mediation shall be resolved as provided in Sections 15.b and 15.c; provided, however, nothing in this Section 15 shall prevent either Party from seeking resolution by the Commission of any dispute arising under this Agreement that is within its jurisdiction or prevent either Party from seeking any remedy by the Commission within its jurisdiction through any procedure within the Commission’s authority.

b. *Arbitrable Disputes.* The Parties acknowledge that arbitration is not available for disputes involving matters within Commission jurisdiction except as provided in 1.2.2.18 and 1.2.2.19 NMAC. If there is disagreement as to whether a dispute is within Commission jurisdiction, the parties shall seek a determination from the Commission whether the dispute is subject to its jurisdiction. The Parties may agree to arbitration pursuant to 1.2.2.18 and 1.2.2.19 NMAC of any dispute arising under this Agreement that is within the Commission’s jurisdiction.

c. *Claims Outside the Commission’s Jurisdiction.* If the dispute involves a

claim that is outside the Commission's jurisdiction and the Parties are unable to resolve a dispute regarding such matters through mediation or any other remedies within the Commission's jurisdiction, then the Parties may agree to arbitration. Failing such an agreement to arbitrate, then either Party may bring an action only in the federal or state courts of New Mexico. All costs of mediation and arbitration (including the fees of the mediator and arbitrator) shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel costs, witness fees, photocopying and similar costs. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico.

d. *Continued Performance.* The Parties agree that they will continue to diligently perform their obligations pursuant to this Agreement during the pendency of any dispute.

16. Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder must be in writing and will be deemed to have been given (i) when delivered by hand; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or electronic transmission (including by e-mail) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient and provided in each case the recipient has acknowledged receipt, or (iv) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Unless a Party has designated a different officer or address for itself by written notice to the other hereunder, such communications will be sent to the respective Party as follows:

If to PNM:

Public Service Company of New Mexico
[Title]
414 Silver Avenue SW
Albuquerque, NM 87107
Email: [●]

If to Customer:

[Customer Name]
Attention:
[Address Line 1]
[Address Line 2]
[City], [State] [Zip Code]
Email: [●]

17. No Third-Party Benefit. Nothing in this Agreement will be construed to create any duty, obligation or liability of PNM to any Person not a party to this Agreement.

18. Waiver. As a voluntary participant in PNM Solar DirectSM, Customer hereby irrevocably waives all rights to any billing adjustments or other relief arising from a claim that Customer's service would be or would have been at a lower cost had Customer not participated in the Program.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Electronic or pdf signatures will have the same effect as an original signature.

20. Governing Law. The validity, interpretation and performance of this Agreement, and each of its provisions, will be governed by the laws of the State of New Mexico without giving effect to principles of conflicts of law that would require the application of laws of another jurisdiction. The Parties agree that the state and federal courts, as applicable, of the State of New Mexico will have exclusive jurisdiction for the resolution of disputes under this Agreement and the Parties consent to such jurisdiction.

21. Amendments. This Agreement may only be amended by a written document duly executed by PNM and Producer or their successors or permitted assigns. Notwithstanding the foregoing, this Agreement shall at all times be subject to such changes and modifications as shall be ordered from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. PNM will give Customer notice in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in the terms of this Agreement.

22. Appropriations. Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the [Governing Body of Customer] making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the [Governing Body], this Agreement may be terminated at the end of Customer's then current Fiscal Year upon written notice given by Customer to PNM. All payment obligations of Customer and all of its interest in this Agreement will cease upon the date of termination. The [Governing Body's] decision as to whether sufficient appropriations are available shall be accepted by PNM and shall be final, and such event shall not constitute an event of default, provided that: (a) Customer agrees to include in its budget request appropriations sufficient to cover Customer's obligations under this Agreement; and (b) Customer agrees it will not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party.

23. Audits and Inspections. At any time during normal business hours and upon reasonable notice to PNM, there shall be made available to Customer for examination PNM's records with respect to all matters covered by this Agreement. PNM shall permit Customer to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, and other data relating to all matters covered by this Agreement.

24. Off-Taker List. Should the Contractor under the PPA with PNM display signage associated with the Solar Facility, Customer agrees that its name and logo or seal may be included in any list of partial off-takers of the Solar Facility's production.

25. Entire Agreement. This Agreement contains the entire understanding between PNM and Customer regarding the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding between PNM and Customer. Neither PNM nor Customer shall be bound by or liable for any statement, representation, promise, inducement, or understanding of any nature not set forth or provided for herein. This Agreement is binding upon and shall inure to the benefit of the respective successors and permitted assigns of the Parties.

[Signature(s) are on following page(s)]

IN WITNESS WHEREOF, Customer and PNM have caused this Agreement to be executed by their duly authorized representatives as of the Execution Date.

**PUBLIC SERVICE COMPANY OF NEW
MEXICO**

[CUSTOMER]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

[Customer's NOI Submission to be attached]

**NOTICE OF INTENT
PNM SOLAR DIRECTSM**

Submission of this completed Notice of Intent ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. 50.

1. Customer Name: _____

2. Principal Business Address: _____

3. Contact Information:

Name: _____

Address: _____

Phone: _____

Email: _____

4. Renewable Energy Subscription: Customer hereby agrees that Customer will subscribe to an aggregate of [●] kW upon issuance by the Commission of a final, non-appealable order approving all of the following, substantially as filed in PNM's application to the NMPRC: (a) PNM Solar DirectSM, (b) any new or amended PNM rate or rate rider associated with PNM Solar DirectSM, (c) the form of PNM Solar DirectSM Special Service Agreement—Governmental Entities, and (d) any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM.

5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: _____

Print Name: _____

Title: _____

Email: _____

Date: _____

EXHIBIT B

ANNUAL GENERATION FORECAST (MWhs)

			2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
				yr1	yr2	yr3	yr4	yr5	yr6	yr7	yr8	yr9	yr10	yr11	yr12	yr13	yr14	yr15
Degradation			3% first Commercial Operating Year: 0.7% every year thereafter															
50MW																		
Base																		
January	7527	50%		3763.5	3650.6	3625.0	3599.7	3574.5	3549.4	3524.6	3499.9	3475.4	3451.1	3426.9	3403.0	3379.1	3355.5	3332.0
February	8746	50%		4373.0	4241.8	4212.1	4182.6	4153.4	4124.3	4095.4	4066.7	4038.3	4010.0	3981.9	3954.1	3926.4	3898.9	3871.6
March	9961	50%		4980.5	4831.1	4797.3	4763.7	4730.3	4697.2	4664.3	4631.7	4599.3	4567.1	4535.1	4503.4	4471.8	4440.5	4409.5
April	13450	50%	6725	6523.3	6477.6	6432.2	6387.2	6342.5	6298.1	6254.0	6210.2	6166.8	6123.6	6080.7	6038.2	5995.9	5953.9	
May	15176	50%	7588	7360.4	7308.8	7257.7	7206.9	7156.4	7106.3	7056.6	7007.2	6958.1	6909.4	6861.1	6813.0	6765.3	6718.0	
June	16336	50%	8168	7923.0	7867.5	7812.4	7757.7	7703.4	7649.5	7596.0	7542.8	7490.0	7437.6	7385.5	7333.8	7282.5	7231.5	
July	14304	50%	7152	6937.4	6888.9	6840.7	6792.8	6745.2	6698.0	6651.1	6604.6	6558.3	6512.4	6466.8	6421.6	6376.6	6332.0	
August	13893	50%	6946.5	6738.1	6690.9	6644.1	6597.6	6551.4	6505.5	6460.0	6414.8	6369.9	6325.3	6281.0	6237.1	6193.4	6150.0	
September	12012	50%	6006	5825.8	5785.0	5744.5	5704.3	5664.4	5624.8	5585.4	5546.3	5507.5	5468.9	5430.6	5392.6	5354.9	5317.4	
October	10125	50%	5062.5	4910.6	4876.3	4842.1	4808.2	4774.6	4741.1	4708.0	4675.0	4642.3	4609.8	4577.5	4545.5	4513.6	4482.1	
November	7392	50%	3696	3585.1	3560.0	3535.1	3510.4	3485.8	3461.4	3437.2	3413.1	3389.2	3365.5	3341.9	3318.5	3295.3	3272.2	
December	7464	50%	3732	3620.0	3594.7	3569.5	3544.6	3519.7	3495.1	3470.6	3446.3	3422.2	3398.3	3374.5	3350.9	3327.4	3304.1	
	136386		55076	66540.7	65773.2	65312.8	64855.6	64401.7	63950.8	63503.2	63058.7	62617.3	62178.9	61743.7	61311.5	60882.3	60456.1	11613.1

PNM SOLAR DIRECTSM
SERVICE AGREEMENT—COMMERCIAL CUSTOMERS

This PNM Solar DirectSM (“**PNM Solar DirectSM**” or “**Program**”) Service Agreement (“**Agreement**”) is entered into this [●] day of [●], 20[●] (“**Execution Date**”), by and between [●], a [●] (“**Customer**”) and Public Service Company of New Mexico, a New Mexico corporation (“**PNM**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

PNM Solar DirectSM offers eligible customers the option to purchase solar energy in addition to the system solar energy customers receive as part of their electrical service from PNM.

Eligibility to participate in PNM Solar DirectSM and applicable rates are set forth in original Rider No. 50, Voluntary Solar Renewable Energy Program - PNM Solar DirectSM for Governmental and Large Commercial Customers (“**Rider No. 50**”), together with any successor tariff, and the PNM Solar DirectSM filing approved by the New Mexico Public Regulation Commission (“**Commission**”) in Case No. [●].

Customer is qualified to take service under Rider No. 50 and desires to subscribe to PNM Solar DirectSM on the terms set forth in this Agreement, subject to the terms of Rider No. 50, to demonstrate Customer’s commitment to the development of renewable energy projects and to help meet Customer’s sustainability and renewable energy goals. Unless otherwise defined in this Agreement, all capitalized terms have the meanings ascribed to them in Rider No. 50.

AGREEMENT

In consideration of the promises and obligations reflected in the covenants, terms and conditions set forth in this Agreement, all of which together provide the consideration for this Agreement, PNM and Customer, each intending to be legally bound, consistent with the orders, rules, rate schedules and precedents established by the Commission, hereby agree as follows:

1. Renewable Energy Subscription. Subject to the terms of Rider No. 50, PNM rules and rate schedules for electric service, and this Agreement, the amount of capacity contracted for Customer under this Agreement is [●] kW (“**Renewable Energy Subscription**”), as shown in Customer’s Notice of Intent (“**NOI**”), subject to the conditions stated in that NOI, and attached hereto as Exhibit A. The Renewable Energy Subscription represents a portion of the production from the solar photovoltaic facilities under a contract with PNM to supply energy to the Program (collectively, “**Solar Facility**”).

2. Renewable Energy Production. The renewable production available to fill Customer’s Renewable Energy Subscription will be based upon the energy produced from the Solar Facility. Customer’s Renewable Energy Subscription will determine the portion of the Solar Facility production that is used to calculate Customer’s charges and credits under Rider No. 50. PNM and through its Solar Facility contractor shall provide the Customer an annual forecast in monthly units of the amount of energy to be produced and delivered to the program in the next

year. See Exhibit B to this Agreement. Customer expressly assumes the risk that the Solar Facility may not generate energy sufficient to completely cover the forecasted production.

3. Conditions Precedent. The obligations of the Parties under this Agreement shall be conditioned upon (i) the receipt of a final order or other regulatory determination from the Commission that PNM may procure renewable energy and associated RECs pursuant to the Power Purchase Agreement—Jicarilla Solar 2 Facility dated May 30, 2019, between PNM and Jicarilla Solar 2 LLC (“**PPA**”); (ii) approval of PNM Solar DirectSM; (iii) approval of any associated new or amended PNM rate or rate rider, and (iv) approval of the form of PNM Solar DirectSM Service Agreement—Governmental Entities (“**Form Agreement**”) (collectively, “**Requested Actions**”). In particular, but without limitation:

a. PNM agrees to use commercially reasonable efforts to request and obtain Commission Approval of the Requested Actions, and Customer agrees to cooperate with and assist PNM in these efforts as PNM may reasonably request.

b. Commission Approval shall be considered received when the Commission issues a final written order that is not contested or is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications that directly impact Customer’s rates and service under Rider No. 50, provided that each of Customer and PNM agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, “**Commission Approval**”).

c. If the Commission disapproves the PPA or Rider No. 50, then this Agreement shall automatically terminate ten (10) days after the date of such action by the Commission and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other person.

d. If any Commission Approval is issued as described in clause (b)(ii) above, then the Parties shall meet and confer no later than fifteen (15) days after the date of the Commission Approval order regarding whether PNM or Customer wishes to amend this Agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification contained in the Commission Approval. If the Parties are unable to mutually agree on any amendments to this Agreement to address such Commission Approval order, then this Agreement shall automatically terminate ten (10) days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other person, unless PNM and Customer mutually agree in writing within such ten (10) Day period that this Agreement remain in effect.

e. If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by March 31, 2020 (“**Regulatory End Date**”), then the Parties shall meet and confer no later than fifteen (15) days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this Agreement shall automatically terminate ten (10)

days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party.

f. For the avoidance of doubt, this Agreement shall terminate and be of no further force or effect, with no further obligation or liability of either Party to the other Party if the PPA is terminated due to a Commission Approval order that is unsatisfactory to PNM and Contractor.

4. Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) years after the Solar Facility's commercial operation date, as determined by PNM ("Term"), unless and until terminated earlier pursuant to the provisions of this Agreement. "**Effective Date**" means the date of commercial operation of the Solar Facility, which is expected to be March 31, 2021. The date on which this Agreement terminates due to expiration of the Term is referred to as the "**Expiration Date**."

5. Construction Updates; Liquidated Damages.

a. On and after the start of construction on the Solar Facility and through the commercial operation date, PNM will provide Customer copies of monthly construction updates submitted to PNM by Contractor under the PPA.

b. On and after the commercial operation date of the Solar Facility and through the end of the Term, PNM will give Customer, upon Customer's request, reasonable access to the Solar Facility's performance and production metrics.

c. Customer shall be entitled to its proportionate share of any liquidated damages paid to PNM by the Contractor under the PPA due to Contractor's failure to meet the expected commercial operation date for the Solar Facility or failure to meet any annual performance or availability guarantees established in the PPA.

6. Payment and RECs.

a. *Contract Rider Rate*. Customer agrees to pay PNM the Contract Rider Rate, which is calculated on a kWh basis consistent with the terms and conditions provided in Rider No. 50 and this Agreement.

b. *Monthly Billing*. PNM will issue to Customer a separate bill for the most-recent calendar month's charges and credits, aggregated for all Customer's monthly Total Energy Usage, as defined below. All charges and other terms and conditions as provided for under the Customer's applicable standard service classification(s) will continue to be based on actual metered energy use during Customer's normal billing cycle. Monthly charges and credits to Customer for participation in the Program will consist of the following:

i. Charges.

(1) PNM Solar DirectSM Solar Production Charges – PNM will

charge Customer, on a monthly basis, applicable Solar Production Charges, which shall be calculated as the number of kWh of renewable energy produced by the Solar Facility (“**Renewable Energy Production**”) multiplied by the percentage of Renewable Energy Production allocated to Customer (“**Renewable Allocation Factor**”) multiplied by the cost per kWh assessed to Customer based on the levelized cost of the Solar Facility (“**Contract Rider Rate**”) (i.e., $\text{PNM Solar Direct}^{\text{SM}} \text{ Solar Production Charge} = \text{Renewable Energy Production} * \text{Renewable Allocation Factor} [\bullet\%] * \text{Contract Rider Rate}$ set forth in Rider No. 50 (\$0.02173/kWh)). PNM will calculate the Renewable Energy Production for each month at the end of the month. Customer’s Renewable Allocation Factor and the Contract Rider Rate will remain constant during the term of this Agreement. If in any given month the Renewable Energy Production times the Renewable Allocation Factor exceeds Customer’s Total Energy Usage, all applicable charges and credits will be billed and subject to the rates in effect at that time and will not be carried over to the subsequent month. As used in this Agreement, “**Total Energy Usage**” means all of Customer’s aggregated monthly energy usage subject to service under Rider No. 50.

(2) **Administrative Charge** – PNM will assess a monthly charge to recover Customer’s share of the upfront costs associated with the Program. PNM will recover those costs with a carrying charge over the Term. The charge will be at the rate set forth in Rider No. 50 (“**Administrative Charge**”). The Administrative Charge will remain the same over the Term.

(3) **Western Renewable Energy Generation Information System (“WREGIS”) Fee** – PNM will charge Customer the fee charged by WREGIS to PNM to retire RECs on behalf of Customer or, if Customer has asked to retire its RECs pursuant to Section 6.c, to transfer RECs to Customer’s WREGIS account for retirement by Customer. As of the Execution Date, the fee charged by WREGIS for each such transaction is \$0.000005/kWh (“**WREGIS Fee**”). PNM will bill Customer in an amount equal to the WREGIS Fee multiplied by the Renewable Energy Production multiplied by the Renewable Allocation Factor. This pass-through charge will be included on Customer’s monthly bill for participation in the Program and may change from time to time when WREGIS updates its fee matrix. PNM will serve Customer with a copy of any advice notice filed by PNM that contains an adjustment to Rate No. 50 to collect the WREGIS Fee.

ii. **PNM Solar DirectSM Rider Credits** – PNM will apply the following credits to Customer’s monthly bill for participation in the Program:

(1) a **Fuel and Purchased Power Credit**, which will be calculated as the Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the average fuel and purchased power cost per the Fuel and Purchased Power Cost Rate (“**FPPCAC**”) that is paid by Customer (i.e., $\text{Fuel and Purchased Power Cost Credit} = \text{Renewable Energy Production} * \text{Renewable Allocation Factor} [\bullet\%] * \text{average fuel and purchased power cost paid by Customer}$). The FPPCAC is subject to periodic modification. PNM will serve Customer with a copy of any applicable advice notice or compliance filing made by PNM related to the FPPCAC rate;

(2) a **Non-Fuel Variable Cost Credit**, which will be calculated as Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the

system average Non-Fuel Variable Cost approved in the most-recent PNM rate case (i.e., Non-Fuel Variable Cost Credit = Renewable Energy Production * Renewable Allocation Factor [●%] * (average Non-Fuel Variable Cost Credit rate established in PNM's latest rate case)). The average Non-Fuel Variable Cost Credit rate will be subject to change in future PNM rate cases; and

(3) a Renewable Portfolio Standard Cost Credit, which will be calculated as Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the applicable rate approved in PNM's Rider No. 36, Renewable Energy Rider, or any successor or additional renewable energy rider. Rider No. 36 is reconciled and adjusted annually to reflect Commission-approved procurements, changes in revenue requirements, and other relevant factors.

c. *REC Retirement.* Customer acknowledges and agrees that all RECs associated with the renewable energy purchased by Customer under PNM Solar DirectSM must be retired. PNM agrees to retire the RECs produced from Customer's share of the Solar Facility on behalf of Customer. PNM will provide monthly statements of the number of RECs retired by PNM on Customer's behalf and provide an annual statement by March 31 of each calendar year of such retired RECs from the preceding calendar year. Alternatively, at Customer's written request on or before the beginning of the Term, PNM will transfer RECs to Customer's WREGIS account for retirement by Customer. PNM does not guarantee the production of energy or the corresponding quantity of RECs generated from the resources supplying the Solar Facility. As used in this Agreement, "**REC**" means a certificate or other record, in a format approved by the Commission, that represents all the environmental attributes from one megawatt-hour of electricity generation from the Solar Facility and certified as such by WREGIS.

7. Force Majeure.

a. *Customer Force Majeure.* If Customer is unable to sustain its load to support Customer's Renewable Energy Subscription due to events or circumstances beyond its reasonable control that are not the result of Customer's fault or negligence ("**Customer Force Majeure Event**"), and provided Customer (i) gives notice of such Customer Force Majeure Event to PNM as promptly as is practical after its occurrence and (ii) exercises due diligence to minimize the effect and duration of such Customer Force Majeure Event, Customer may suspend its participation in PNM Solar DirectSM and its payment obligations under this Agreement to the extent and for the duration of the Customer Force Majeure Event. In no event, however, may a Customer Force Majeure Event continue for a period longer than one hundred eighty (180) days. At the conclusion of the Customer Force Majeure Event or expiration of the 180-day period, whichever occurs first, Customer will resume participation in PNM Solar DirectSM and will be obligated to pay the Contract Rider Rate.

b. *Contractor Force Majeure.* If, in a given month, one or more facilities supplying the Solar Facility fails to produce output, or its production is reduced, due to a Force Majeure Event as provided in the PPA ("**Contractor Force Majeure Event**"), PNM will notify Customer of such Contractor Force Majeure Event within a commercially reasonable period of time. In the case of reduced production, PNM will subsequently reduce Customer's credits, Renewable Energy Subscription, PNM Solar DirectSM Rider Charge, and RECs for its share of the

Solar Facility production on a pro-rata basis with all other participating customers for the duration of the Contractor Force Majeure Event. Except as set forth in Sections 7.a and 7.b of this Agreement, Customer's credit and PNM Solar DirectSM Rider Charge will not be subject to reduction. In no event will any delay or failure of performance caused by a Contractor Force Majeure Event extend this Agreement beyond its stated Term. If any delay or failure of performance caused by a Contractor Force Majeure Event continues for an uninterrupted period of one hundred eighty (180) days from its inception and the PPA is terminated, this Agreement will automatically terminate, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

8. Default and Cure.

a. *Customer Default and Cure; Termination of Program Participation.*

i. Customer may elect to terminate this Agreement and service under Rider No. 50 prior to the Expiration Date by providing PNM written notice at least sixty (60) days before the desired early termination date ("**Early Termination Effective Date**"). In the event of an early termination for any reason other than for a PNM Default under Section 8.b, Customer will be responsible for the net cost of the remaining renewable energy that was to be delivered to the Customer during the remainder of the Term. The net cost will be based on (1) the time remaining in the Term, (2) the forecast annual renewable energy to be generated by the Solar Facility,¹ (3) Customer's Renewable Allocation Factor, and (4) the difference between the Contract Rider Rate and the forecast fuel cost during the Term, but in no event less than zero dollars, plus Customer's share of the Administrative Charge for the number of months remaining in the Service Agreement (collectively "**Early Termination Fee**"). Customer will not be obligated to pay the Early Termination Fee if another eligible customer fully subscribes to Customer's Renewable Energy Subscription before the Early Termination Effective Date. PNM may assist Customer in identifying other eligible customers to the extent PNM is required to do so under applicable law. In addition to the obligation to pay the Early Termination Fee, Customer shall retain any obligation it incurs prior to the Early Termination Effective Date. Customer shall pay the Early Termination Fee in full within fifteen (15) days of the Early Termination Effective Date. Delinquent payment shall be subject to interest at then-current rates authorized by the Commission. If Customer later wishes to resume service under Rider No. 50, Customer will be required to reapply for a new Renewable Energy Subscription, and participation shall be subject to eligibility requirements and available capacity.

ii. PNM may terminate this Agreement before the end of the Term if changes in Customer's annual Total Energy Usage during the Term cause Customer to fail to meet eligibility criteria under Rider No. 50 or due to a material default by Customer under this agreement, including but not limited to failure to make payments when due. In the event of early termination under this Section 8.a.ii by PNM, Customer will be obligated to pay the Early Termination Fee as set forth in Section 8.a.

¹ PNM and Customer shall agree on the forecasted annual renewable energy to be generated by the Solar Facility during the remainder of the term by using the data contained in the forecast of Solar Facility renewable energy production for the fifteen-year term of this Agreement. See Exhibit B.

iii. Customer is in default of this Agreement only if Customer:

(1) it fails to comply with any material obligation, agreement, term or provision of this Agreement and such failure continues for more than thirty (30) days after receipt of written notice of such failure from PNM; provided, however, that if such default cannot reasonably be cured within thirty (30) days and if Customer is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, such extension not to exceed sixty (60) days; or

(2) assigns this Agreement (or any of its rights hereunder) for the benefit of creditors; or

(3) becomes the subject of a petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, reorganization, liquidation or other arrangement under the bankruptcy laws of the United States or any insolvency laws of any state.

b. *PNM Default and Cure.* PNM is in default of this Agreement only in the event of the following (each a “PNM Default”):

i. PNM fails to comply with any material obligation, agreement, term or provision of this Agreement and such failure continues for more than thirty (30) days after receipt of written notice of such failure from Customer; provided, however, that if such default cannot reasonably be cured within thirty (30) days and if PNM is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, such extension not to exceed sixty (60) days;

ii. PNM voluntarily terminates PNM Solar DirectSM except that it shall not be a PNM Default if termination is due to the fault of Customer or any other PNM customer participating in the Program; or

iii. PNM fails to seek, voluntarily forfeits, loses or otherwise fails to maintain any regulatory approvals or authorities from the Commission necessary to implement and manage PNM Solar DirectSM in accordance with the terms and conditions of this Agreement. However, it shall not be a PNM Default if the Commission or any entity having jurisdiction over PNM or PNM Solar DirectSM issues an order requiring PNM to discontinue PNM Solar DirectSM, causing material changes to the Program or otherwise preventing or prohibiting PNM from fulfilling its obligations under this Agreement and, in addition, such action is not due to PNM's actions or inactions.

9. Remedies. Any event of default may be waived at the non-defaulting Party's option. Upon the failure of a Party to cure a default after notice from the other Party and expiration of the agreed cure periods, the non-defaulting Party may, subject to the terms of this Agreement:

a. File suit and seek all damages or other remedies including injunctive relief allowed by law or equity.

b. Terminate this Agreement by declaring the Early Termination Date, which will be no less than thirty (30) and no more than sixty (60) days after the notice of default and opportunity to cure, upon which this Agreement will terminate. Upon the designation of the Early Termination Date, the non-defaulting Party will have the right to immediately suspend performance under this Agreement. Neither Party will have the right to terminate this Agreement except as provided for upon the occurrence of a Customer Default or a PNM Default, as applicable and as described above or as may be otherwise explicitly provided for in this Agreement.

c. Withhold any payments due until the default or breach is cured and the non-defaulting Party has received from the defaulting Party the dollar amounts necessary to compensate the non-defaulting Party for all damages and attorneys' fees and expenses allowed pursuant to this Agreement or by law or equity.

The failure of the non-defaulting Party to pursue any remedy provided for in this Agreement will never be ratification of or acquiescence by the non-defaulting Party of the defaulting Party's default or breach. The remedies in this section are intended to be cumulative. None shall be in lieu of any other. A Party may pursue none, one, all or any combination of the remedies provided for in this section.

10. Terms and Conditions. The terms and conditions of Rider No. 50, as approved by the Commission, are incorporated by reference in this Agreement. In the event of a conflict between Rider No. 50 and this Agreement, Rider No. 50 will control to the extent of the conflict. PNM reserves the right to modify this Agreement during the Term to incorporate changes to Rider No. 50 as approved or amended by the Commission. This Agreement remains subject to changes and modifications required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. PNM will give Customer notice in accordance with the Commission's requirements if PNM asks the Commission to take action that could cause a change in terms of this Agreement or Rider No. 50.

11. Transfer and Assignment. Customer may transfer the Renewable Energy Subscription, in whole or in part, subject to all eligibility requirements, including customer usage and the requirements of this Section 11. In no event may Customer transfer all or part of the Renewable Energy Subscription to any individual or entity that is not a customer of PNM.

a. *Transfer to Another Eligible Customer.* Customer may transfer all or a portion of its Renewable Energy Subscription to another eligible Customer that is either (i) not receiving service under Rider No. 50, and/or (ii) the Renewable Energy Production times its Renewable Allocation Factor does not exceed the new customer's annual Total Energy Usage established at the time of the proposed transfer. All such proposed transfers shall be subject to prior written approval from PNM as set forth in this Section 11. The customer taking the transfer of the Renewable Energy Subscription ("**Transferee**") must demonstrate that its electric usage meets the eligibility criteria and will accommodate the transfer of the Renewable Energy Subscription. PNM shall have the sole discretion to approve, deny or modify a transfer request to meet the requirements of the Program, however, PNM shall not unreasonably withhold its approval of a transfer request.

b. *Transfer Notice and Application.* At least sixty (60) days before the proposed transfer effective date:

i. Customer shall provide written notice to PNM of its request to transfer all or a portion of its Renewable Energy Subscription. The notice must include:

- (1) Customer's name and mailing address;
- (2) the current service location address;
- (3) the Transferee's name and service address;
- (4) the portion of the Renewable Energy Subscription proposed to be transferred ("**Transfer Request**"); and
- (5) the proposed effective date of the proposed transfer.

ii. Transferee shall submit an application in the form required by PNM that will include confirmation of Transferee's intent to acquire all or a portion of Customer's Renewable Energy Subscription and the proposed effective date of the proposed transfer.

c. *Completion of Transfer.* PNM will verify the eligibility of the Transferee. If PNM approves the Transfer Request, it will give Customer notice thereof; provided, however, such transfer will not be complete until (i) Customer, Transferee, and PNM execute an Assignment and Assumption Agreement, in the case of assignment of this Agreement and the full Renewable Energy Subscription, or (ii) if the Transfer Request is for a portion of the Renewable Energy Subscription, Transferee and PNM execute a new PNM Solar DirectSM Service Agreement for the portion to be transferred, and Transferee, PNM and Customer execute all other documents that PNM may require in connection with the Transfer Request. In addition, no transfer will be effective until the start of the first billing period following PNM approval. Upon any transfer of a portion of the Renewable Energy Subscription, Customer will surrender all right, title and interest in and to that portion of the Renewable Energy Subscription and, with respect to assignment of the entire Renewable Energy Subscription, this Agreement. No assignment will extend the Term of this Agreement.

12. Customer Representations. Customer represents and warrants to PNM as follows:

a. *Purposes of Program Participation.* Customer's participation in the Program is not for investment purposes, including any capital appreciation or other profit.

b. *No Ownership Rights.* Customer understands and agrees that it is not obtaining any ownership right, title or interest in or to any portion of the underlying projects in the Solar Facility or individual solar panels, nor any capacity rights with respect thereto, and that it will not have access or control over any portion of the Solar Facility.

c. *Factors Beyond PNM Control.* Customer understands that the benefits of its Renewable Energy Subscription depend significantly on factors beyond the control of PNM, including but not limited to weather and the availability of sunlight necessary to produce solar energy, limitations in the solar technology used at the Solar Project, and the effect of changes in law or regulations.

d. *Due Diligence.* Each Party has been advised in this matter by its own legal counsel and consultants and has conducted its own due diligence with respect to the terms and conditions of this Agreement.

13. Disclaimer of Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS STATED IN THIS AGREEMENT, THE RENEWABLE ENERGY SUBSCRIPTIONS ARE MADE AVAILABLE "AS-IS," AND WITHOUT WARRANTY OF ANY KIND. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT NONE OF PNM, ITS PARENT COMPANY OR AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OR THE OWNERS OF ANY PROJECTS IN THE SOLAR FACILITY IS PROVIDING ANY REPRESENTATION, WARRANTY, GUARANTY OR COMMITMENT WITH RESPECT TO (I) THE ACTUAL PRODUCTION, IF ANY, FROM THE SOLAR FACILITY, (II) THE NUMBER OF RECS, IF ANY, THAT WILL BE RECEIVED BY CUSTOMER UNDER THIS AGREEMENT, OR (III) THE AMOUNT OF COST SAVINGS, IF ANY, CUSTOMER MAY REALIZE BY PARTICIPATING IN THE SOLAR DIRECTSM PROGRAM. ANY WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. Trade Secrets; Confidential Information.

PNM may provide this Agreement, and any information provided to PNM in support of this Agreement, to the Commission. Any Customer information provided to PNM by Customer that is a trade secret or confidential must be marked as Trade Secret or Confidential, as applicable, but PNM cannot guarantee that the Commission will not require disclosure of such information.

15. Dispute Resolution.

a. *Mediation.* If any dispute between the Parties arises under this Agreement that cannot be resolved through negotiations between the Parties, a Party may request mediation by a mediator agreed to by both Parties. Costs of mediation shall be apportioned as set forth in Section 15.c. Disputes that are not resolved by mediation within ninety (90) days of referral to mediation shall be resolved as provided in Sections 15.b and 15.c; provided, however, nothing in this Section 15 shall prevent either Party from seeking resolution by the Commission of any dispute arising under this Agreement that is within its jurisdiction or prevent either Party from seeking any remedy by the Commission within its jurisdiction through any procedure within the Commission's authority.

b. *Arbitrable Disputes.* The Parties acknowledge that arbitration is not available for disputes involving matters within Commission jurisdiction except as provided in 1.2.2.18 and 1.2.2.19 NMAC. If there is disagreement as to whether a dispute is within Commission jurisdiction, the parties shall seek a determination from the Commission whether the dispute is subject to its jurisdiction. The Parties may agree to arbitration pursuant to 1.2.2.18 and 1.2.2.19 NMAC of any dispute arising under this Agreement that is within the Commission's jurisdiction.

c. *Claims Outside the Commission's Jurisdiction.* If the dispute involves a claim that is outside the Commission's jurisdiction and the Parties are unable to resolve a dispute regarding such matters through mediation or any other remedies within the Commission's jurisdiction, then the Parties may agree to arbitration. Failing such an agreement to arbitrate, then either Party may bring an action only in the federal or state courts of New Mexico. All costs of mediation and arbitration (including the fees of the mediator and arbitrator) shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel costs, witness fees, photocopying and similar costs. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico.

d. *Continued Performance.* The Parties agree that they will continue to diligently perform their obligations pursuant to this Agreement during the pendency of any dispute.

16. Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder must be in writing and will be deemed to have been given (i) when delivered by hand; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or electronic transmission (including by e-mail) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient and provided in each case the recipient has acknowledged receipt, or (iv) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Unless a Party has designated a different officer or address for itself by written notice to the other hereunder, such communications will be sent to the respective Party as follows:

If to PNM:

Public Service Company of New Mexico
[Title]
414 Silver Avenue SW
Albuquerque, NM 87107
Email: [●]

If to Customer:

[Customer Name]
Attention:

[Address Line 1]
[Address Line 2]
[City], [State] [Zip Code]
Email: [●]

17. No Third-Party Benefit. Nothing in this Agreement will be construed to create any duty, obligation or liability of PNM to any Person not a party to this Agreement.

18. Waiver. As a voluntary participant in PNM Solar DirectSM, Customer hereby irrevocably waives all rights to any billing adjustments or other relief arising from a claim that Customer's service would be or would have been at a lower cost had Customer not participated in the Program.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Electronic or pdf signatures will have the same effect as an original signature.

20. Governing Law. The validity, interpretation and performance of this Agreement, and each of its provisions, will be governed by the laws of the State of New Mexico without giving effect to principles of conflicts of law that would require the application of laws of another jurisdiction. The Parties agree that the state and federal courts, as applicable, of the State of New Mexico will have exclusive jurisdiction for the resolution of disputes under this Agreement and the Parties consent to such jurisdiction.

21. Amendments. This Agreement may only be amended by a written document duly executed by PNM and Producer or their successors or permitted assigns. Notwithstanding the foregoing, this Agreement shall at all times be subject to such changes and modifications as shall be ordered from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. PNM will give Customer notice in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in the terms of this Agreement.

22. Off-Taker List. Should the Contractor under the PPA with PNM display signage associated with the Solar Facility, Customer agrees that its name and logo or seal may be included in any list of partial off-takers of the Solar Facility's production.

23. Entire Agreement. This Agreement contains the entire understanding between PNM and Customer regarding the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding between PNM and Customer. Neither PNM nor Customer shall be bound by or liable for any statement, representation, promise, inducement, or understanding of any nature not set forth or provided for herein. This Agreement is binding upon and shall inure to the benefit of the respective successors and permitted assigns of the Parties.

[Signature(s) are on following page(s)]

IN WITNESS WHEREOF, Customer and PNM have caused this Agreement to be executed by their duly authorized representatives as of the Execution Date.

**PUBLIC SERVICE COMPANY OF NEW
MEXICO**

[CUSTOMER]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

[Customer's NOI Submission to be attached]

**NOTICE OF INTENT
PNM SOLAR DIRECTSM**

Submission of this completed Notice of Intent ("NOI") constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico ("PNM") Solar DirectSM program ("PNM Solar DirectSM") and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission ("Commission") approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. 50.

1. Customer Name: _____

2. Principal Business Address: _____

3. Contact Information:

Name: _____

Address: _____

Phone: _____

Email: _____

4. Renewable Energy Subscription: Customer hereby agrees that Customer will subscribe to an aggregate of [●] kW upon issuance by the Commission of a final, non-appealable order approving all of the following, substantially as filed in PNM's application to the NMPRC: (a) PNM Solar DirectSM, (b) any new or amended PNM rate or rate rider associated with PNM Solar DirectSM, (c) the form of PNM Solar DirectSM Special Service Agreement—Governmental Entities, and (d) any waivers requested by PNM in the same filing as PNM's application for approval of PNM Solar DirectSM.

5. Certification: I certify that this NOI represents the Customer's firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: _____

Print Name: _____

Title: _____

Email: _____

Date: _____

EXHIBIT B

ANNUAL GENERATION FORECAST (MWhs)

			2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
				yr1	yr2	yr3	yr4	yr5	yr6	yr7	yr8	yr9	yr10	yr11	yr12	yr13	yr14	yr15
Degradation			3% first Commercial Operating Year; 0.7% every year thereafter															
50MW																		
Base																		
January	7527	50%		3763.5	3650.6	3625.0	3599.7	3574.5	3549.4	3524.6	3499.9	3475.4	3451.1	3426.9	3403.0	3379.1	3355.5	3332.0
February	8746	50%		4373.0	4241.8	4212.1	4182.6	4153.4	4124.3	4095.4	4066.7	4038.3	4010.0	3981.9	3954.1	3926.4	3898.9	3871.6
March	9961	50%		4980.5	4831.1	4797.3	4763.7	4730.3	4697.2	4664.3	4631.7	4599.3	4567.1	4535.1	4503.4	4471.8	4440.5	4409.5
April	13450	50%	6725	6523.3	6477.6	6432.2	6387.2	6342.5	6298.1	6254.0	6210.2	6166.8	6123.6	6080.7	6038.2	5995.9	5953.9	
May	15176	50%	7588	7360.4	7308.8	7257.7	7206.9	7156.4	7106.3	7056.6	7007.2	6958.1	6909.4	6861.1	6813.0	6765.3	6718.0	
June	16336	50%	8168	7923.0	7867.5	7812.4	7757.7	7703.4	7649.5	7596.0	7542.8	7490.0	7437.6	7385.5	7333.8	7282.5	7231.5	
July	14304	50%	7152	6937.4	6888.9	6840.7	6792.8	6745.2	6698.0	6651.1	6604.6	6558.3	6512.4	6466.8	6421.6	6376.6	6332.0	
August	13893	50%	6946.5	6738.1	6690.9	6644.1	6597.6	6551.4	6505.5	6460.0	6414.8	6369.9	6325.3	6281.0	6237.1	6193.4	6150.0	
September	12012	50%	6006	5825.8	5785.0	5744.5	5704.3	5664.4	5624.8	5585.4	5546.3	5507.5	5468.9	5430.6	5392.6	5354.9	5317.4	
October	10125	50%	5062.5	4910.6	4876.3	4842.1	4808.2	4774.6	4741.1	4708.0	4675.0	4642.3	4609.8	4577.5	4545.5	4513.6	4482.1	
November	7392	50%	3696	3585.1	3560.0	3535.1	3510.4	3485.8	3461.4	3437.2	3413.1	3389.2	3365.5	3341.9	3318.5	3295.3	3272.2	
December	7464	50%	3732	3620.0	3594.7	3569.5	3544.6	3519.7	3495.1	3470.6	3446.3	3422.2	3398.3	3374.5	3350.9	3327.4	3304.1	
	136386		55076	66540.7	65773.2	65312.8	64855.6	64401.7	63950.8	63503.2	63058.7	62617.3	62178.9	61743.7	61311.5	60882.3	60456.1	11613.1

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
PUBLIC SERVICE COMPANY OF NEW MEXICO)	
FOR APPROVAL OF PNM SOLAR DIRECT)	
VOLUNTARY RENEWABLE ENERGY PROGRAM,)	
POWER PURCHASE AGREEMENT, AND)	Case No. 19-00 _____-UT
ADVICE NOTICES NO. 560 AND 561,)	
)	
PUBLIC SERVICE COMPANY OF NEW MEXICO,)	
)	
Applicant.)	

AFFIDAVIT

STATE OF NEW MEXICO)	
)	ss
COUNTY OF BERNALILLO)	

STELLA CHAN, Director of Pricing for Public Service Company of New Mexico,
upon being duly sworn according to law, under oath, deposes and states: I have read the
foregoing **Direct Testimony of Stella Chan** and it is true and correct based on my personal
knowledge and belief.

SIGNED this 22nd day of May, 2019.

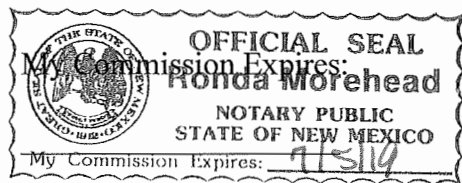


STELLA CHAN

SUBSCRIBED AND SWORN to before me this 22nd day of May, 2019.



NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO



GCG # 525502